



To: Members of Dublin City Council
From: Dana L. McDaniel, City Manager
Date: November 13, 2015
Initiated By: Terry D. Foegler, Director of Strategic Initiatives & Special Projects
Philip K. Hartmann, Assistant Law Director
Re: ORDINANCE 89-15 - AUTHORIZING THE CITY MANAGER TO EXECUTE AN ASSIGNMENT OF A REAL ESTATE PURCHASE CONTRACT AND OTHER NECESSARY DOCUMENTS TO ACQUIRE A 0.93 ACRES, MORE OR LESS, FEE SIMPLE INTEREST LOCATED WEST OF MONTEREY DRIVE, SOUTH OF W. BRIDGE STREET AND EAST OF CORBINS MILL DRIVE (AKA SUNOCO) FROM WAGENBRENNER DEVELOPMENT, INC.

BACKGROUND

On September 8, 2015 Wagenbrenner Development, Inc. ("Wagenbrenner") entered into a real estate purchase contract with WMM of Ohio, LLC for the one-acre Sunoco gas station site owned by WMM and located at the southwest corner of Monterey Drive and Bridge Street, in Dublin Ohio ("Sunoco Parcel"). The contract purchase price is \$1,745,000 with an additional \$30,000 non attributable and nonrefundable fee, making the total purchase price \$1,775,000. Wagenbrenner and their development partners are also in contract to purchase adjacent parcels, and the Assignment Agreement provides that they must close on these parcels before the City is obligated to close on the Sunoco Parcel. The Sunoco Parcel and surrounding parcels are a potentially important gateway redevelopment site and are located just east of the City's historic downtown in the core of the City's Bridge Street District (BSD). In 2005, pursuant to Ordinance 52-05 (and before the creation of the City's creation of the BSD), Dublin purchased the former Duke & Duchess gas station site located on the southeast corner of this intersection. That site has been cleared and is ready for redevelopment. Similarly, years ago the City purchased two gas stations located on the northwest and southwest corners of the Bridge Street and High Street intersection, both of which sites have subsequently redeveloped for more walkable, urban redevelopments.

Wagenbrenner and their development partners desire to move forward with the preparation of proposed redevelopment plans of these parcels; the negotiation of the associated City development agreements; and the pursuit of the needed development reviews and approvals associated with developing a substantial mixed-use development project on this redevelopment site. However, because of the development risk associated with these steps, the developers are not able to justify the purchase of the Sunoco station in the event they would be unsuccessful in their development reviews and development agreement negotiations. Given the City's history of recognizing this impediment to redevelopment (by its purchase of three other gas station redevelopment sites on Bridge Street), the developers have approached the City about the City's interest in acquiring the Sunoco site (through their assignment of their purchase agreement to the City), in exchange for the Developer team being given 24 months to seek exclusively the needed approvals and negotiate the required development agreements with the City. If such efforts by the developers prove unsuccessful, the City will have in any case acquired an important

redevelopment site for an important gateway redevelopment location (that could otherwise prove more difficult to acquire at a future date). It is expected that if this sale does not move forward under this purchase contract, a new operating and/or lease agreement will be entered into by the owner for the ongoing operation as a gas station.

The City is having both Phase 1 and limited Phase 2 environmental reviews performed for the site, and the City would not purchase the site if it is not satisfied with the findings of these investigations. Additionally, the Robert Weiler Company performed an appraisal report for the Sunoco Parcel concluding that it has a market value of \$1,600,000 to \$1,750,000.

ACQUISITION

The Sunoco Parcel consists of two legal parcels, an active gas station and a 0.93 acres, more or less. The Real Estate Purchase Contract being assigned to the City would be in the amount of \$1,775,000. The Robert Weiler Company has performed an appraisal for the Sunoco Parcel and ongoing business determining that it has a market value of \$1,600,000 to \$1,750,000. If acquired by the City, it is anticipated that the operation of the gas station would cease at the termination of the current operating agreement, which requires only a 60-day notice of termination.

RECOMMENDATION

The Administration recommends that Council approve Ordinance 89-15 by emergency at the second reading/public hearing on December 7, 2015. The emergency language is required in order to comply with the terms of the Contract, which requires closing on the Sunoco Parcel by the end of 2015.

RECORD OF ORDINANCES

Ordinance No. 89-15 Passed _____, 20____

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO EXECUTE AN ASSIGNMENT OF A REAL ESTATE PURCHASE CONTRACT AND OTHER NECESSARY DOCUMENTS TO ACQUIRE A 0.93 ACRES, MORE OR LESS, FEE SIMPLE INTEREST LOCATED EAST OF CORBINS MILL DRIVE, MONTEREY DRIVE, SOUTH OF WEST BRIDGE STREET AND WEST OF MONTEREY DRIVE (AKA SUNOCO) FROM WAGENBRENNER DEVELOPMENT, INC.

WHEREAS, Wagenbrenner Development Inc. ("Wagenbrenner") executed a real estate purchase contract ("*Contract*") to purchase certain real estate and business with a commonly known address 201 West Bridge Street, Dublin, Ohio 43017 consisting of 0.93± acres, Franklin County Auditor Tax Parcels Number 273-000206 and 273-000207 and in the City of Dublin, County of Franklin, and State of Ohio ("Sunoco Parcel"), as generally depicted in Exhibit "A" attached hereto and incorporated herein by reference; and

WHEREAS, Dublin previously adopted the Community Plan and the Bridge Street District Special Area Plan for the purpose of setting forth the long-term vision and recommendations for development and/or redevelopment of real property within an area of the municipality identified as the Bridge Street District; and

WHEREAS, the Bridge Street District is located within the corporate boundaries of Dublin and identified as being south of I-270, between I-270/US 33 interchange and Sawmill Road, and along State Route 161/Bridge Street; and

WHEREAS, the Sunoco Parcel is located within the boundaries of the Bridge Street District; and

WHEREAS, Dublin owns an adjacent parcel (a former gas station site) to the east with a tax ID # 273-000208 and across Monterey Drive ("City Parcel"); and

WHEREAS, an affiliate of Wagenbrenner is in contract to purchase some additional parcels surrounding the Sunoco Parcel and hopes to negotiate the purchase of the City Parcel identified in Exhibit "B" ("Surrounding Parcels") and is required to close prior to the end of 2015; and

WHEREAS, the Bridge Street District recommends that the Sunoco Parcel, City Parcel and Surrounding Parcels be redeveloped into a historic transition neighborhood; and

WHEREAS, the Agreement herein is contingent on the affiliate closing on the Surrounding Parcels (other than the City Parcel) as a condition precedent to the City closing on the Sunoco Parcel; and

WHEREAS, in order to facilitate the possible redevelopment along Bridge Street Council desires to enter into this assignment to purchase the Sunoco Parcel Wagenbrenner desires to assign to Dublin, and Dublin desires to assume from Wagenbrenner the rights and obligations under the Contract; and

WHEREAS, Dublin agrees after closing on the Sunoco Parcel as part of the consideration for the assignment to provide Wagenbrenner and/or an affiliate a twenty four (24) month exclusive right to endeavor to secure the needed entitlements and development agreements in order to develop the Sunoco Parcel and City Parcel in conjunction with the Surrounding Parcels pursuant to the Bridge Street District Development Code; and

WHEREAS, Dublin has determined that the transactions contemplated by this Agreement will benefit Dublin's economy, further the recommendations and vision of the Bridge Street District, better provide for the future redevelopment of an important "gateway" location at the entry to Dublin's Historic Downtown, and enhance the health, safety, and welfare of its residents.

RECORD OF ORDINANCES

Ordinance No. 89-15

Passed Page 2 of 2, 20

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

Section 1. The City Manager is hereby authorized to execute all necessary documentation, including but not limited to the Assignment of Real Estate Purchase Contact in substantially the same form as the one attached hereto as Exhibit "A," with changes not inconsistent with this Ordinance, not substantially adverse to the City, and which shall be approved by the City Manager and Finance Director as depicted in the attached Exhibit "A." The approval of changes thereto by those officials, and their character as not being substantially adverse to the City, shall be evidenced conclusively by their execution thereof.

Section 2. This Ordinance shall take effect upon the earliest date allowed by law.

Passed this _____ day of _____, 2015.

Mayor – Presiding Officer

ATTEST:

Clerk of Council

ASSIGNMENT OF REAL ESTATE PURCHASE CONTRACT

THIS ASSIGNMENT OF REAL ESTATE PURCHASE CONTRACT (this “*Agreement*”) is made and entered into as of the last date of signature by a party below (the “*Effective Date*”), by and between the CITY OF DUBLIN, OHIO, a municipal corporation (“*Dublin*”), WAGENBRENNER DEVELOPMENT INC., an Ohio corporation (“*Wagenbrenner*”) and _____, an Ohio LLC (“ _____”), under the circumstances summarized in the following recitals. Dublin, Wagenbrenner and _____ hereinafter may be referred to individually as a “*Party*” or together as the “*Parties*.”

RECITALS:

WHEREAS, Wagenbrenner executed a real estate purchase contract (“*Contract*”) to purchase certain real estate and business from WMM of Ohio, LLC (“*WMM*”) with a commonly known address 201 West Bridge Street, Dublin, Ohio 43017, consisting of 0.92± acres, Franklin County Auditor Tax Parcels Number 273-000206 & 273-000207, in the City of Dublin, County of Franklin, State of Ohio, and as generally depicted in **Exhibit A** attached hereto and incorporated herein by reference.; and

WHEREAS, Dublin previously adopted the Community Plan and the Bridge Street District Special Area Plan (*the “Bridge Street District”*) for the purpose of setting forth the long-term vision and recommendations for development and/or redevelopment of real property within an area of the municipality identified as the Bridge Street District; and

WHEREAS, the Sunoco Parcel is located within the boundaries of the Bridge Street District; and

WHEREAS, Dublin owns a surrounding parcel with a tax ID # 273-000208 and referred to hereafter together with the Sunoco Parcel as “*City Parcels*” and depicted and identified in **Exhibit C**; and

WHEREAS, _____ is in contract to purchase several parcels surrounding the Sunoco Parcel identified in Exhibit B (“*Surrounding Parcels*”) and is required to close prior to the end of 2015; and

WHEREAS, the Bridge Street District recommends that the City Parcels and Surrounding Parcels be redeveloped into a historic transition neighborhood; and

WHEREAS, this Agreement is contingent on _____ closing on the Surrounding Parcels prior to the City closing on the Sunoco Parcel; and

WHEREAS, in order to facilitate the possible redevelopment of this area Dublin Council desires to enter into this assignment to purchase the Sunoco Parcel and Wagenbrenner desires to assign to Dublin and Dublin desires to assume from Wagenbrenner the rights and obligations under the Contract; and

WHEREAS, if Dublin closes on the acquisition of the Sunoco Parcel and in exchange for the assignment of their purchase rights, Wagenbrenner and _____ desire to have a twenty -four (24) month exclusive right to work/negotiate with the City for the purpose of securing all approvals needed for the redevelopment the City Parcels, in conjunction with the Surrounding Parcels, and pursuant to the Bridge Street District Development Code; and

WHEREAS, Dublin has determined that the transactions contemplated by this Agreement will benefit the Dublin's economy, further the recommendations and vision of the Bridge Street District, and enhance the health, safety, and welfare of its residents.

NOW, THEREFORE, in consideration of the promises and covenants contained herein, the Parties hereto agree and obligate themselves as follows:

ARTICLE I

ASSIGNMENT AND ASSUMPTION OF CONTRACT

Section 1.1 Statement of Intent. Wagenbrenner is a party to the Contract, attached hereto and incorporated herein as **Exhibit A** and dated September 1, 2015, pursuant to which Wagenbrenner agreed to purchase the Sunoco Parcel from WMM and WMM agreed to sell the Property to Wagenbrenner in accordance with the terms set forth therein. In order to further the objectives of the Bridge Street District by the facilitation of the redevelopment of the City Parcels and Surrounding Parcels, Dublin desires to purchase the Sunoco Parcel. Wagenbrenner desires to provide Dublin with the right to purchase the Sunoco Property by assigning all of its rights and obligations under the Contract to Dublin.

Section 1.2 Assignment and Assumption. Wagenbrenner hereby assigns, transfers, and conveys unto Dublin all of Wagenbrenner's rights, duties, and obligations under the Contract pursuant the Contract. Dublin hereby assumes all of Wagenbrenner's rights, duties, and obligations under the Contract. As of the Effective Date, Wagenbrenner shall have no further rights, duties, and/or obligations under the Contract, it being acknowledged by Wagenbrenner and Dublin that all such rights, duties, and obligations shall benefit and burden Dublin. Wagenbrenner shall remain responsible and shall indemnify and hold Dublin harmless for all claims, injuries,

damages, or losses of any sort that are the result of Wagenbrenner's actions under the Contract before the Effective Date or any claim relating to the Contract not being assignable to Dublin.

Section 1.3 To the extent that such items are in its possession, within five (5) business days following the Effective Date of this Agreement Wagenbrenner and _____ shall deliver all surveys, title reports, environmental studies, and other documents concerning the Sunoco Parcel and Surrounding Parcels that are contained within its records. Wagenbrenner shall be permitted to keep copies of such information for use in developing any real property that it owns or in the future may own in the vicinity of the Sunoco Parcel. Notwithstanding the foregoing, for the purposes of this Agreement Wagenbrenner and _____ shall not be required to deliver any documents to Dublin containing Wagenbrenner's or _____ proprietary information, financial analyses, or other work product that it does not desire to become of public record in its reasonable discretion.

Section 1.4 Diligent Pursuit of Closing by Dublin. Dublin, by its acceptance of the rights, duties, and obligations of Wagenbrenner under the Contract, agrees to diligently and in good faith take all actions that are necessary in order to consummate the Closing in accordance with the terms of the Contract and this Agreement. Dublin shall have the right to conduct title, physical due diligence, environmental reviews and other investigations of the Sunoco Parcel in accordance with the terms of the Contract, and shall make reasonable good faith efforts to resolve or have WMM or _____ resolve any objectionable matters that may cause Dublin to fail to close on the Sunoco Parcel.

Section 1.5 Diligent Pursuit of Closing by _____. _____ agrees to diligently and in good faith take all actions that are necessary in order to consummate the closings on the Surrounding Parcels as a contingency to Dublin's obligations of closing on the Sunoco Parcel herein.

Section 1.6 Broker. Dublin, to the extent permitted by law, hereby warrants and represents to Wagenbrenner that Dublin has not engaged or dealt with any broker or agent in regard to the Sunoco Contract. Dublin hereby agrees to indemnify Wagenbrenner and hold Wagenbrenner harmless against any liability, loss, cost, damage, claim and expense (including, but not limited to, attorneys' fees and costs of litigation) which Wagenbrenner shall ever incur or be threatened with because of any claim of any broker or agent claiming through Dublin, whether or not meritorious, for any such fee or commission.

Wagenbrenner hereby represents and warrants to Dublin that Wagenbrenner has not engaged or dealt with any broker or agent in regard to the Contract and this Agreement. Wagenbrenner agrees to indemnify Dublin and hold Dublin harmless against any liability, loss, cost, damage, claims and expense (including, but not limited to, attorneys' fees and cost of litigation) which Dublin may ever suffer, incur, or be threatened with because of any claim by any broker or agent claiming through Wagenbrenner, whether or not meritorious, for any such fee or commission.

ARTICLE II
EXCLUSIVE TWENTY FOUR (24) MONTH RIGHT
TO DEVELOP THE CITY PARCELS

Section 2.1 Exclusive Right to Develop City Parcels. Provided that Dublin has ownership of the Sunoco Parcel, then Wagenbrenner and _____ shall have the exclusive right to endeavor to negotiate with the City and seek the needed development approvals for the redevelopment of the City Parcels in conjunction with Surrounding Parcels for a period of twenty four (24) months immediately following the date of Dublin's closing on the Sunoco Parcel. This term shall be deemed met by Wagenbrenner and/or _____ executing a development agreement with Dublin on the City Parcels and Surrounding Parcels and securing the Final Development Plan approval within the twenty four (24) month period. The Parties agree to negotiate in good faith a development agreement contemporaneous with the development process to include, but not be limited to, compensation to the City for the City Parcels. Nothing in the development agreement shall circumvent the planning and zoning process.

Section 2.2 Conditions of Redevelopment. Wagenbrenner and _____ agree that as a condition of this development that Wagenbrenner will be required to follow the City's zoning and all other development review processes for the City Parcels and Surrounding Parcels.

ARTICLE III
REPRESENTATIONS AND COVENANTS OF THE PARTIES

Section 3.1 Representations and Covenants of Dublin. Dublin represents and covenants to Wagenbrenner and _____ that to the best of its knowledge:

- (a) It is a municipal corporation duly organized and validly existing under the Constitution and applicable laws of the State of Ohio and its Charter.
- (b) It is not in violation of or in conflict with any provisions of the laws of the State of Ohio or of the United States of America applicable to Dublin 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 the City Manager, the execution, delivery and performance under this Agreement do not and will not violate or conflict with any provision of law applicable to Dublin, including its Charter, and do not and will not conflict with or result in a default under any agreement or instrument to which Dublin is a party or by which it is bound.
- (d) This Agreement has, by proper action, been duly authorized, executed, and delivered by Dublin.
- (e) There is no litigation pending or to its knowledge threatened against or by Dublin wherein an unfavorable ruling or decision would materially adversely affect Dublin's ability to carry out its obligations under this Agreement.
- (f) It will do all things in its power in order to maintain its existence or assure the assumption of its obligations under this Agreement by any successor public body.
- (g) Dublin will not enter into or execute any recorded or off-record mortgages or liens that will apply to the Sunoco Parcel during its period ownership of the same.
- (h) Dublin will not allow mechanics or materialmen's liens to be applied to any portion of the Sunoco Parcel during the time when it owns the same.
- (i) The Authorizing Ordinance has been duly passed and shall be in full force and effect on the earliest date permitted by law.
- (j) Dublin is not a "Foreign Person" as that term is defined in the Foreign Investment in Property Tax Act.

Section 3.2 Representations and Covenants of Wagenbrenner. Wagenbrenner represents and covenants to Dublin that to the best of its knowledge:

- (a) It is legally recognized as a for-profit corporation by the State of Ohio and is authorized to undertake business in the State of Ohio.

- (b) It is not in violation of or in conflict with any provisions of the laws of the State of Ohio or of the United States of America applicable to Wagenbrenner 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. The execution, delivery and performance of the obligations placed upon Wagenbrenner by this Agreement do not and will not violate or conflict with any provision of law applicable to Wagenbrenner, and do not and will not conflict with or result in a default under any agreement or instrument to which Wagenbrenner 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 Wagenbrenner and all steps necessary to be taken by Wagenbrenner have been taken to constitute this Agreement, and the covenants and agreements of Wagenbrenner contemplated herein are valid and binding obligations of Wagenbrenner, enforceable in accordance with their terms.
- (e) There is no litigation pending or to its knowledge threatened against or by Wagenbrenner wherein an unfavorable ruling or decision would materially adversely affect Wagenbrenner's ability to carry out its obligations under this Agreement.

Section 3.3 Representations and Covenants of _____.

represents and covenants to Dublin that to the best of its knowledge:

- (a) It is legally recognized as a for-profit LLC by the State of Ohio and is authorized to undertake business in the State of Ohio.
- (b) It is not in violation of or in conflict with any provisions of the laws of the State of Ohio or of the United States of America applicable to _____ 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. The execution, delivery and performance of the obligations placed upon _____ by this Agreement do not and will not violate or conflict with any provision of law applicable to _____, and do not and will not conflict with or result in a default under any agreement or instrument to which Wagenbrenner 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 _____ and all steps necessary to be taken by _____ have been taken to constitute this Agreement, and the covenants and agreements of _____ contemplated herein are valid and binding obligations of _____, enforceable in accordance with their terms.

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

ARTICLE IV
DEVELOPMENT OF PROPERTY; EXISTING IMPROVEMENTS

Section 4.1 Review of Applications. At any time following the Effective Date of Dublin's purchase of the Sunoco Parcel, Wagenbrenner and/or _____ shall be permitted to file all applications and related materials necessary for review by Dublin (the "*Submittals*") to endeavor to obtain (a) all necessary zoning and related entitlements on the City Parcels and Surrounding Parcels in accordance with the requirements of the Bridge Street Code and all other applicable development regulations (including, without limitation, all administrative approvals) (together, the "*Applications*"). Wagenbrenner and/or _____ shall pay all application fees and shall pay the costs of and be responsible for the creation of all relevant plans and documentation necessary for the review of the same by Dublin. Nothing herein shall be read to prohibit Wagenbrenner and/or _____ from filing additional Applications for review by Dublin in the future for consideration by Dublin as permitted by Dublin's Codified Ordinances. Dublin agrees to act in good faith to timely process all Applications when they are filed by Wagenbrenner and/or _____ and Wagenbrenner and/or _____ agree to act in good faith to assist Dublin as may be needed from time to time to timely process the Applications. Dublin makes no representations as part of this Agreement as to the approvability of the Wagenbrenner and/or _____'s submittals.

Section 4.2 Existing Improvements. Wagenbrenner and Dublin acknowledge that certain Improvements exist on the Sunoco Parcel as of the Effective Date. Should Wagenbrenner Develop the City Parcels and Surrounding Parcels within the twenty four (24) month period

Wagenbrenner shall be responsible for removing, at its sole cost and expense, all Improvements on the City Parcels as further outlined in the Development Agreement.

ARTICLE V
EVENTS OF DEFAULT AND REMEDIES

Section 5.1 General. Except as otherwise provided in this Agreement, in the event of any default under or breach of this Agreement or any of its terms or conditions by any Party hereto, such Party shall, upon written notice from the other, proceed, within ten (10) days after receipt of such notice to cure or remedy such default or breach. In the event such default or breach is of such nature that it cannot be cured or remedied within said ten (10) day period, then in such event the Party shall upon written notice from the other commence its actions to cure or remedy said breach within said ten (10) day period, and proceed diligently thereafter to cure or remedy said breach. In case such action is not taken or not diligently pursued, or the default or breach shall not be cured or remedied within a reasonable time, the aggrieved Party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach.

Section 5.2 Other Rights and Remedies; No Waiver by Delay. The Parties shall 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 any Party in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Agreement shall 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 no 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 shall any waiver in fact made by any Party with respect to any specific default by another 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 Parties to this Agreement or with respect to the particular default except to the extent specifically waived in writing.

Section 5.3 Force Majeure. Except as otherwise provided herein, no Party shall be considered in default in its obligations to be performed hereunder, if delay in the performance of such obligations is due to unforeseeable causes beyond its control and without its fault or

negligence, including but not limited to, acts of God or of the public enemy, acts or delays of the other party, fires, floods, unusually severe weather, epidemics, freight embargoes, unavailability of materials, strikes or delays of contractors, subcontractors or materialmen but not including lack of financing capacity; 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 shall be extended for the period of the enforced delay; provided, however, that the Party seeking the benefit of the provisions of this Section shall within ten (10) days after having actual knowledge of the beginning of such enforced delay, notify the other Parties in writing thereof and of the cause and of the duration thereof.

ARTICLE VI **OPTION TO PURCHASE**

Section 6.1 Grant of Option. Wagenbrenner and/or _____ do hereby grant to Dublin the exclusive irrevocable right in option (the “Option”) to and upon the terms and conditions herein set forth, purchase the all the Surrounding Parcels (“Option Parcels”) should Wagenbrenner fail to initiate the development on the City Parcels and Surrounding Parcels, as set forth herein, within the twenty-four (24) month period.

Section 6.2 City’s Option to Purchase. City’s option to purchase shall begin after the expiration of the twenty-four (24) month outlined herein or any agreed upon extensions and expire one (1) year thereafter. After such expiration, the Parties shall have no further obligations to each other with respect to the City Parcels or Surrounding Parcels.

Section 6.3 Term of Purchase. In the event Dublin exercises its Option, the term of the purchase and sale of the remaining parcels shall be as follows:

(a) The purchase price of the Surrounding Parcels (“Purchase Price”) shall be the price paid by Wagenbrenner and/or _____ at closing of each Surrounding Parcel; shouldn’t we reference something?

(b) The closing of the purchase and sale of the remaining parcels shall occur within Sixty (60) days after Dublin exercises its Option at a time and place reasonably designated by Dublin;

(c) The closing shall occur on such other terms and conditions as set forth in this Article;

(d) Wagenbrenner and/or _____'s Closing Deliveries At Closing, Wagenbrenner and/or _____ shall (i) convey good and marketable fee simple title to the Option Parcels to Dublin by general warranty deed, free and clear of all encumbrances except those set forth in the deed; (ii) deliver to Dublin a non-foreign affidavit and vendor's affidavit in form acceptable to Dublin and Dublin's title insurance company; and (iii) provide Dublin with any other information or documents reasonably necessary to carry out the transaction contemplated in this Option;

(e) Dublin's Closing Deliveries. At Closing, Dublin shall pay to Wagenbrenner the Purchase Price via certified check or wire transfer;

(f) Closing Costs. Dublin will pay all closing costs, including the cost of title insurance, the cost of preparation and recording of closing documents, and other fees associated with the transfer of the Option Property; and

(g) Closing Prorations. All taxes on the Option Parcels that have accrued for any prior calendar year that remains unpaid shall be paid by Wagenbrenner and/or _____ in the form of a credit against the Purchase Price at Closing. All taxes that have accrued for the current calendar year shall be prorated as of the date of Closing, based on the most recent available tax statement, and the portion attributable to Wagenbrenner shall be credited against the Purchase Price at Closing. All other charges, fees or assessments against the Option Parcels, including but not limited to utility charges, special assessments, or sewer and storm water fees, shall be prorated as of the date of Closing, and the portion attributable to Wagenbrenner and/or _____ shall be credited against the Purchase Price at Closing.

(h) Title and Survey. Dublin intends to obtain a title commitment issued by Dublin's selected title company. Wagenbrenner and/or _____ recognize that Dublin may wish, at its expense, to have a new survey for the Real Estate made, and for the Real Estate to be conveyed in accordance with the new survey.

(i) Dublin's Option to Take "AS IS." Dublin represents to Wagenbrenner and/or _____ that the City knows or will know, has examined or will examine, and has investigated or will investigate in accordance with the terms of this Option to the full satisfaction of the Dublin the physical nature and condition of the Option Parcels, the improvements thereon, and the fixtures and appurtenances annexed thereto, agreed to be transferred to the Dublin hereunder; that neither Wagenbrenner and/or _____ nor any agent, attorney, employee, or representative have made any representation whatsoever regarding the subject matter of this sale, or any part thereof,

including (without limiting the generality of the foregoing) representations as to the physical nature or condition of the Option Parcels transferred to Dublin hereunder; and that Dublin, in executing, delivering, and/or performing its duties and obligations under this Agreement, does not rely upon any statement and/or information to whomsoever made or given, directly or indirectly, verbally or in writing, by any individual, firm, or corporation as to the physical nature and condition of the Option Parcel. Dublin agrees to take the Option Parcel "AS IS."

(j) Possession. Dublin shall take possession of the Option Parcels at Closing.

(k) Broker's Fee. Wagenbrenner and/or _____ and Dublin acknowledge that no Brokers, Realtors or finders are due any brokerage fees, commissions, or other fees arising out of this transaction or transactions.

(l) Successors and Assigns. This Option shall be binding upon, and shall inure to the benefit of the Parties hereto, their respective heirs, legal representatives, successors and assigns and run with the land.

(m) Recording. The Parties agree that this Option shall be recorded, in the Franklin County Recorder's office.

ARTICLE VII **MISCELLANEOUS**

Section 7.1 Assignment. This Agreement may not be assigned by any Party without the prior written consent of the non-assigning Parties.

Section 7.2 Binding Effect. The provisions of this Agreement shall be binding upon the successors or assigns of the Parties.

Section 7.3 Interpretation. Any reference in this Agreement to Dublin, Wagenbrenner or _____ or to any officers of Dublin, Wagenbrenner or _____ includes those entities or officials succeeding to their functions, duties or responsibilities pursuant to or by operation of law or lawfully performing their functions.

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 7.4 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 7.5 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 7.6 Notice to the other Parties

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

Copy to: Stephen J. Smith, Sr.
City of Dublin Law Director
Frost Brown Todd LLC
One Columbus, Suite 2300
10 W. Broad Street
Columbus, Ohio 43215

As to Wagenbrenner:

Copy to:

As to _____:

Copy to:

or such other address as the Parties may hereinafter designate by written notice to other.

Section 7.7 Entire Agreement. This Agreement embodies the entire agreement and understanding of the Parties relating to the subject matter herein and therein and may not be amended, waived or discharged except in an instrument in writing executed by the Parties.

Section 7.8 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.

Section 7.9 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, trustee, officer, agent or employee of the Parties other than in his or her official capacity, and neither the members of the legislative body of Dublin, the trustees of Wagenbrenner or _____, nor any official 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 Parties contained in this Agreement.

Section 7.10 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio or applicable federal law. All claims, counterclaims, disputes and other matters in question between Dublin, its agents and employees, Wagenbrenner its employees and agents, and/or _____, 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 7.11 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 by hand-delivery, or if 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), then the same 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.

Section 7.12 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 7.13 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.

(SIGNATURE PAGES TO FOLLOW)

IN WITNESS WHEREOF, Dublin has caused this Agreement to be executed by its duly authorized representatives on the dates written below

CITY OF DUBLIN, OHIO

By: _____

Printed: _____

Title: City Manager

Date: _____

By: _____

Printed: _____

Title: Director of Finance

Date: _____

Approved as to Form:

By: _____

Printed: _____

Title: _____

Date: _____

IN WITNESS WHEREOF, Wagenbrenner has caused this Agreement to be executed by its duly authorized representative on the date written below.

WAGENBRENNER DEVELOPMENT, INC.

By: _____

Printed: _____

Title: _____

Date: _____

DRAFT

IN WITNESS WHEREOF, _____, LLC has caused this Agreement to be executed by its duly authorized representative on the date written below.

_____, LLC

By: _____

Printed: _____

Title: _____

Date: _____

DRAFT

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 Fiscal Year 2014 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: _____, 2014

Printed: _____

Director of Finance
City of Dublin, Ohio

DRAFT