

**To:** Members of Dublin City Council

**From:** Dana McDaniel, City Manager

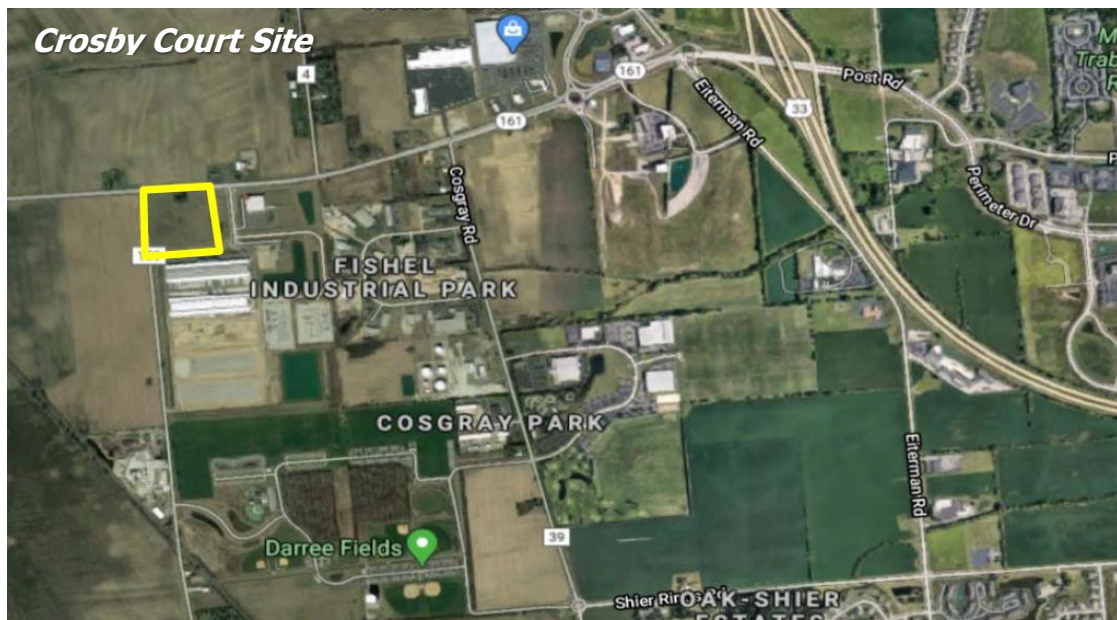
**Date:** July 20, 2020

**Initiated By:** Colleen Gilger, CECD, Director of Economic Development  
Rachel Ray, AICP, Economic Development Administrator

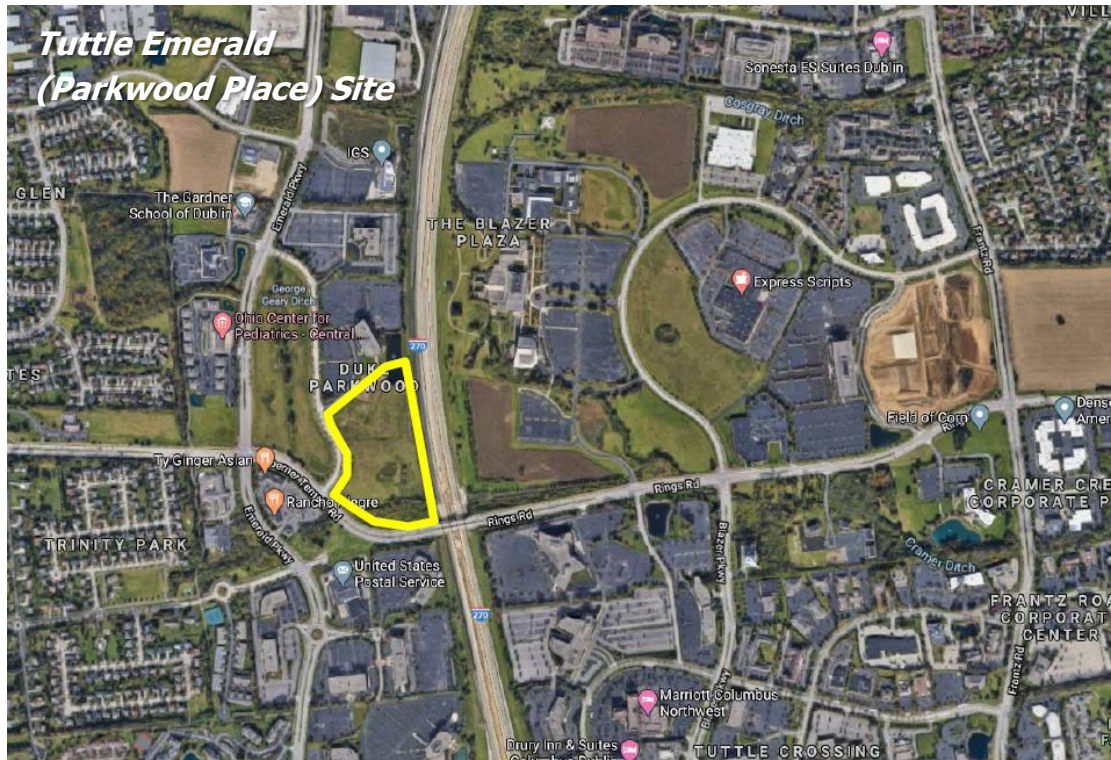
**Re:** Ordinance 18-20 – Authorizing the City Manager to Enter into a Real Estate Transfer Agreement for Certain City Owned Property on Crosby Court and Certain Property Owned By Tuttle Emerald LLC on Parkwood Place, and Authorizing the Execution of Related Agreements and Documents

## Background

Economic Development staff has been in discussions with VanTrust Real Estate regarding an immediate development opportunity on a parcel owned by the City of Dublin. To facilitate this project and create future economic development opportunities, the City and VanTrust have negotiated terms for a real estate transfer agreement tied to this specific development opportunity, involving an exchange of two parcels:



The City of Dublin owns a 9.338-acre parcel of vacant land located on the south side of Post Road/S.R. 161, east of Houchard Road, and accessed from Crosby Court in the West Innovation District ("Crosby Court site"). The City of Dublin periodically acquires strategic parcels of land throughout the City's [seven business districts](#) to leverage as a unique economic development incentive. This 9.338-acre parcel was part of an original 100-acre tract that was certified by the State of Ohio as a Job-Ready Site in 2012, and is the only vacant lot remaining out of the original tract after development of other projects including the new Command Alkon facility (opened in 2016), Vadata data center, and a new AEP substation.



The developer, VanTrust Real Estate (“Tuttle Emerald Development, LLC”), owns a 16.594-acre parcel of vacant land located east of Parkwood Place, north of Rings Road/Woerner-Temple Road, with frontage on I-270 (“Tuttle Emerald property”). The site is zoned PCD, Planned Commerce District, and is south of the United Healthcare offices at 5900 Parkwood Place.

### Summary

The key terms in the proposed real estate purchase agreement are summarized below:

**Land Transfer:** Both sites will be valued equally at \$100,000 per acre, with repurchase rights and the payment of a “Development Fee,” described below, due upon the fulfillment of certain conditions.

- The 16.594-acre Tuttle Emerald site will be valued at \$1,659,400.
- The Crosby Court site will be valued at \$933,800.

**Conveyance:** The properties will be conveyed following the specified due diligence period and upon documentation that the developer has successfully concluded negotiations for a lease agreement with the industrial user for the Crosby Court site. No monetary payments will be made at this time. If the developer fails to secure a lease agreement with the industrial user contemplated as part of this agreement, the properties will not be transferred, and the City will retain ownership of the Crosby Court site and the developer will retain ownership of the Tuttle Emerald site.

**Development Fee:** The City will issue the “development fee” payment of \$725,600 to the developer, equal to the difference in total value (\$100,000/acre) between the Tuttle Emerald and Crosby Court sites once there is an immediate development opportunity/economic development project for the Tuttle Emerald site.

Repurchase Rights: For a period of three (3) years from and after the Closing Date, VanTrust Real Estate will have the right to repurchase the Tuttle Emerald site for an amount equal to 120% of the agreed upon land value. For the 16.594-acre site, the repurchase price would be \$1,991,280.

Repurchasing is contingent on two conditions:

- VanTrust Real Estate shall have an “immediate development opportunity,” defined as the execution of a written agreement with an unaffiliated entity or person to develop all or any portion of the Tuttle Emerald site, and the filing of a preliminary development plan or zoning application with the City that is consistent with existing zoning within 90 days of the execution of the agreement.
- The City shall not have advanced an economic development project involving the Tuttle Emerald site. An “advanced economic development project” is defined as the City entering into a real estate agreement to transfer or lease all or any portion of the Tuttle Emerald site for its development subject to an Economic Development Agreement or other agreement that has been placed on the City Council’s agenda for a first or second reading, or the City issuing an unexpired incentive offer letter involving the property.

Any development project on either parcel will be subject to applicable zoning and development approval processes prior to building permitting.

Following City Council approval of the proposed real estate purchase agreement, the City and the developer will have effectively exchanged these two parcels of land.

- The developer expects to move forward with pursuing the project opportunity for the Crosby Court site, with zoning and building permitting to move forward as soon as Q4 2020.
- Economic Development staff will work to ensure the Tuttle Emerald site is “shovel-ready” and marketable for economic development projects consistent with the recommendations of the [Dublin Corporate Area Plan](#). Given the site’s prominent visibility on I-270, access to the regional transportation network, and proximity to nearby amenities and residential neighborhoods, Economic Development believes this site will be attractive to companies in [Dublin’s target industries](#) seeking relocation and/or expansion opportunities.

### **Recommendation**

Staff recommends approval of Ordinance 18-20, authorizing the City Manager to enter into a real estate transfer agreement and authorizing the execution of related agreements and documents, at the second reading/public hearing on August 10, 2020. Please contact Rachel Ray at 614-410-4630 or [rrey@dublin.oh.us](mailto:rrey@dublin.oh.us) with questions.

# RECORD OF ORDINANCES

Ordinance No. 18-20

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

**AUTHORIZING THE CITY MANAGER TO ENTER INTO A REAL ESTATE TRANSFER AGREEMENT FOR CERTAIN CITY OWNED PROPERTY ON CROSBY COURT AND CERTAIN PROPERTY OWNED BY TUTTLE EMERALD LLC ON PARKWOOD PLACE, AND AUTHORIZING THE EXECUTION OF RELATED AGREEMENTS AND DOCUMENTS**

**WHEREAS**, Tuttle Emerald LLC (VanTrust Real Estate) is the fee owner of that certain parcel of vacant property (parcel no. 273-012234-00) containing approximately 16.594 gross acres and abutting Parkwood Place, Woerner Temple Road and Interstate Route 270, in the City of Dublin, Franklin County, Ohio ("**Tuttle Emerald Property**"); and

**WHEREAS**, the City is the fee owner of that certain parcel of vacant property (parcel no. 275-000008-00) containing approximately 9.338 gross acres and commonly known as 6777 Crosby Court, in the City of Dublin, Franklin County, Ohio ("**City Property**"); and

**WHEREAS**, Economic Development staff has been in discussions with VanTrust Real Estate regarding an immediate development opportunity on the City Property; and

**WHEREAS**, to facilitate this project and create future economic development opportunities, the City and VanTrust have negotiated the terms of a real estate transfer agreement for the exchange of the Tuttle Emerald Property and the City Property; and

**WHEREAS**, Tuttle Emerald desires to sell all of the Tuttle Emerald Property to the City, and the City desires to purchase all of the Tuttle Emerald Property from Tuttle Emerald; and the City desires to sell all of the City Property to Tuttle Emerald, and Tuttle Emerald desires to purchase all of the City Property from the City.

**WHEREAS**, City Council has determined that it is in the best interest of the City to transfer and purchase the land as described above;

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

Section 1. Authorization of Agreements. The City Manager is hereby authorized to execute the Real Estate Transfer Agreement in substantially the same form as that set forth in the attached agreement. This City Council further authorizes the City Manager, for and in the name of the City, to execute any amendments to the foregoing agreement, which amendments are not inconsistent with this Ordinance and not substantially adverse to this City.

Section 2. Real Estate Transfers. The City Manager is hereby authorized to execute any and all agreements and other instruments necessary to implement the real estate transactions contemplated in the Real Estate Transfer Agreement.

Section 3. Further Authorizations. This City Council further hereby authorizes and directs the City Manager, the Director of Finance, the Director of Law, the Director of Development, the Clerk of Council or other appropriate officers of the

# RECORD OF ORDINANCES

Ordinance No. 18-20

Passed Page 2 of 2, \_\_\_\_\_

City to prepare and sign all documents and instruments and to take any other actions as may be appropriate to implement this Ordinance.

Section 4. Open Meetings. This City Council finds and determines that all formal actions of this City Council and any of its committees concerning and relating to the passage of this Ordinance were taken in an open meeting of this City Council or any of its committees, and that all deliberations of this City Council and any of its committees that resulted in those formal actions were in meetings open to the public, all in compliance with the law including Ohio Revised Code Section 121.22.

Section 5. Effective Date. This Ordinance shall take effect and be in force from and after the earliest date permitted by law.

Passed this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

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

ATTEST:

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

## Real Estate Transfer Agreement

This Real Estate Transfer Agreement (“**Agreement**”) is made and entered as of the \_\_\_\_ day of August, 2020, by and between Tuttle Emerald Development, LLC, an Ohio limited liability company (“**Tuttle Emerald**”), and the City of Dublin, Ohio, an Ohio municipal corporation (“**City**”). Each of Tuttle Emerald and the City is also sometimes herein called a “**Party**,” or together as the “**Parties**.” The “**Effective Date**” will mean the date on which this Agreement has been executed and delivered by both of the Parties.

### Recitals

A. Tuttle Emerald is the fee owner of that certain parcel of vacant property (parcel no. 273-012234-00) containing approximately 16.594 gross acres and abutting Parkwood Place, Woerner Temple Road and Interstate Route 270, in the City of Dublin, Franklin County, Ohio (“**Tuttle Emerald Land**”). The Tuttle Emerald Land is legally described on Exhibit A-1 attached hereto and made a part hereof, and is generally depicted on the copy of the survey set forth on Exhibit B-1 attached hereto and made a part hereof. The Tuttle Emerald Land, and all of the easements and appurtenances, and all of the estates and rights of Tuttle Emerald from time to time, in, to and with respect to the Tuttle Emerald Land and any and all improvements thereon, are herein collectively called the “**Tuttle Emerald Property**.”

B. The City is the fee owner of that certain parcel of vacant property (parcel no. 275-000008-00) containing approximately 9.338 gross acres and commonly known as 6777 Crosby Court, in the City of Dublin, Franklin County, Ohio (“**City Land**”). The City Land is legally described on Exhibit A-2 attached hereto and made a part hereof and is generally depicted on the copy of the existing land use map set forth on Exhibit B-2 attached hereto and made a part hereof. The City Land, and all of the easements and appurtenances, and all of the estates and rights of the City from time to time, in, to and with respect to the City Land and any and all improvements thereon, are herein collectively called the “**City Property**.”

C. Each of the Tuttle Emerald Land and the City Land is also sometimes herein called the “**Land**,” and each of the Tuttle Emerald Property and the City Property is also sometimes herein called the “**Property**.”

D. Upon and subject to all of the terms and conditions of this Agreement, (i) Tuttle Emerald desires to sell all of the Tuttle Emerald Property to the City, and the City desires to purchase all of the Tuttle Emerald Property from Tuttle Emerald; and (ii) the City desires to sell all of the City Property to Tuttle Emerald, and Tuttle Emerald desires to purchase all of the City Property from the City. Upon the occurrence of certain events, Tuttle Emerald and the City also desire that the City pay a so-called development fee to Tuttle Emerald.

E. In addition, Tuttle Emerald desires to obtain, and the City desires to grant, certain repurchase rights with respect to the Tuttle Emerald Property as set forth in this Agreement.

### Agreements

Now, therefore, for and in consideration of the foregoing Recitals and the mutual covenants and agreements herein set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Tuttle Emerald and the City agree as follows:

1. Incorporation of Recitals; Effective Date. The foregoing Recitals are hereby incorporated into and made a part of this Agreement, as if fully set forth herein.

2. Agreement to Sell and Purchase; Conveyance Consideration; Development Fee.

(a) Agreement to Sell and Purchase. Simultaneously at the Closing (as such term is defined in Section 5 hereof), (i) Tuttle Emerald will sell the Tuttle Emerald Property to the City, and the City will purchase the Tuttle Emerald Property from Tuttle Emerald, on the terms and conditions hereinafter set forth; and (ii) the City will sell the City Property to Tuttle Emerald, and Tuttle Emerald will purchase the City Property from the City, also on the terms and conditions hereinafter set forth.

(b) Consideration for Conveyance. Neither Tuttle Emerald nor the City will make any monetary payment to the other Party for the conveyance of the City Property or the Tuttle Emerald Property, as the case may be. Rather, the consideration to be paid to each conveying Party will be the other Party's conveyance of the other Party's Property hereunder.

(c) Development Fee Payment. In addition to the consideration for the Tuttle Emerald Property described in Section 2(b) hereof (and also in addition to Tuttle Emerald's rights under Section 4 hereof), the City will pay to Tuttle Emerald (or to another person or entity designated by Tuttle Emerald) a fee ("**Development Fee**") equal to \$725,600.00 (being \$100,000.00 times the difference between the aforesaid approximate gross acreage of the Tuttle Emerald Land and the aforesaid approximate gross acreage of the City Land) upon the earlier to occur of the following events:

- (i) the City's transfer or conveyance of fee title or any other ownership or leasehold interest (other than a mortgage or similar collateral interest solely for the purpose of securing debt or an easement or right of way for utilities or other uses granted in the City's normal course of operations) in, to or with respect to the Tuttle Emerald Property, or any portion thereof; or
- (ii) the issuance of a development, building or similar permit for the commencement of any construction activities whatsoever on the Tuttle Emerald Property, or any portion thereof, in connection with the development thereof, by, for or on behalf of the City or any division, department, agency or body thereof or related thereto.

The Parties' respective rights and obligations with respect to the Development Fee under this Section 2(c) will run with the Tuttle Emerald Property, be binding upon the City's successors and assigns, and be set forth in, and evidenced by, a memorandum ("**Development Fee/Repurchase Memorandum**") in the form set forth on Exhibit C attached hereto and made a part hereof. The Development Fee/Repurchase Memorandum will be recorded against all of the Tuttle Emerald Property at the Closing.

### 3. Due Diligence; Investigations; Due Diligence Date; Termination Rights.

(a) Delivery of Due Diligence Materials. Subject to this Section 3(a), within five business days after the Effective Date, each Party will deliver to the other Party (or will make reasonably available to other Party for review) copies of all reports, documents and other information regarding each Property that a sophisticated purchaser would reasonably deem to be material, including, without limitation, environmental site assessment reports and test boring reports (collectively, "**Due Diligence Materials**"), if and to the extent the Due Diligence Materials are within the delivering Party's possession or control. If and when additional documents and information that constitute Due Diligence Materials thereafter come into a Party's possession or control, such Party will promptly deliver the same to other Party (or make the same reasonably available to the other Party for review).

(b) Investigations. From the Effective Date to the Closing Date (as such term is defined in Section 5 hereof), and subject to this Section 3(b), each Party will grant the other Party commercially reasonable access to the Tuttle Emerald Property or the City Property, as the case may be, for the purpose of, and will cooperate fully in all reasonable respects in connection with, the other Party's conducting (either itself or through its consultants, agents and other representatives) such tests, inspections and investigations with regard to the applicable Property as such other Party deems appropriate in its sole and absolute discretion (collectively, "**Investigations**"). Among other things, the Investigations for each Property may include, without limitation, (i) determinations regarding any required alterations to existing flood plains, floodways, streams or wetlands areas, (ii) verifications that all title encumbrances and survey matters are acceptable, (iii) the review of all leases, easement agreements, maintenance agreements and other agreements, if any, (iv) "Phase I," "Phase II" or other environmental studies to determine the extent to which any Hazardous Materials (as such term is defined in Section 7(h) hereof) are located on any portion of such Property, (v) soil, boring, percolation, traffic, parking and other similar tests and studies, (vi) topographic, engineering and other feasibility and physical surveys and studies, (vii) determinations regarding utilities, access, storm water detention, curb cuts, drives and other improvements or installations, (viii) the availability of all necessary governmental and quasi-governmental permits and approvals, and (ix) investigations as to zoning and other entitlement matters; provided, however, that neither Party will not be obligated to conduct any particular Investigations, and further

provided that any invasive testing of any kind on either Property shall be subject to the prior approval of the owner of that Property, not to be unreasonably withheld, conditioned or delayed. Further, but with respect to Tuttle Emerald and the City Property only, Tuttle Emerald's successfully concluding negotiations for a lease agreement with an industrial/warehouse user ("**City Property Lease**"), on terms and conditions acceptable to Tuttle Emerald in its sole and absolute discretion, will also be included among the Investigations. Each Party, at no out-of-pocket cost or expense, will reasonably cooperate and assist the other Party in connection with the other Party's conduct of the Investigations. In the event that the transaction contemplated by this Agreement is not consummated, then each Party will promptly repair any physical damage to the applicable Land resulting from the conduct of its Investigations. The terms of this Section 3(b) shall survive the termination of this Agreement.

(c) Due Diligence Date. The "**Due Diligence Date**" will be the date that is 90 days after the Effective Date. If the Due Diligence Date does not fall on a business day, then the Due Diligence Date will be the next business day thereafter.

(d) Mutual Termination Rights. Anything in this Agreement to the contrary notwithstanding, either Party, in its sole and absolute discretion, and for any reason or reasons or for no reason whatsoever, may terminate this Agreement by delivering written notice of such termination to the other Party at any time on or before the Due Diligence Date, and upon such termination, the Parties will have no further rights or obligations hereunder, except as expressly provided herein.

4. Tuttle Emerald's Repurchase Rights.

(a) Price and Terms. For a period of three years from and after the Closing Date ("**Repurchase Period**"), Tuttle Emerald will have the sole, exclusive and superior (over any and all third parties) right to repurchase the Tuttle Emerald Property for a purchase price in the amount of \$1,991,280 (being \$120,000.00 times the aforesaid approximate gross acreage of the Tuttle Emerald Land) to be paid in full to the City at the closing of such repurchase. This repurchase is contingent on the follow two precedent conditions: (1) Tuttle Emerald has an immediate development opportunity (as such term is defined in Section 4(b)(i) hereof), and (2) the City does not then have an advanced economic development project (as such term is defined in Section 4(b)(ii) hereof). Tuttle Emerald, in its sole and absolute discretion, may exercise its repurchase right subject to the two precedent conditions under this Section 4 by delivering a 30-day written notice thereof to the City at any time during the Repurchase Period. Following any such exercise, and subject to this Section 4, Tuttle Emerald's repurchase (and the City's resale) of the Tuttle Emerald Property will be consummated on the date set forth in Tuttle Emerald's written election notice (which date will be not less than 30 days or more than 60 days after Tuttle Emerald's delivery of such notice). Tuttle Emerald will be entitled to (a) a due diligence period with a duration as set forth in its written election notice (not longer than 30 days) and otherwise on the same terms and conditions as set forth in Section 3(b) hereof, and (b) the right to terminate its repurchase election on or before the expiration of such due diligence period in its sole and absolute discretion. If it does not exercise such termination option, then Tuttle Emerald will pay the foregoing repurchase price to the City at the closing of the repurchase, and such closing will be conducted in the same manner (to the extent reasonably applicable) as the Closing. The Parties' respective rights and obligations under this Section 4 will run with the Tuttle Emerald Property, be binding upon the City and its successors and assigns having an interest in the Tuttle Emerald Property, and be set forth in, and evidenced by, the Development Fee/Repurchase Memorandum to be recorded against all of the Tuttle Emerald Property at the Closing.

(b) Definitions. For purposes of this Section 4, the following terms will have the respective definitions set forth below:

(i) Immediate Development Opportunity. The term "**immediate development opportunity**" is defined as the execution of a written agreement with an unaffiliated entity or person to develop all or any portion of the Tuttle Emerald Property and the filing of a preliminary development plan or zoning application with the City that is consistent with existing zoning within 90 days of the execution of the aforesaid written agreement.

(ii) Advanced Economic Development Project. The term "**advanced economic development project**" is defined as the City entering into a real estate agreement to transfer or lease all or any portion of the Tuttle Emerald Property, or any interest therein, for its development



pursuant to an economic development agreement or other agreement that has been placed on the City Council's agenda for a first or second reading or the City issuing an unexpired (for not more than 90 days from its initial issuance) incentive offer letter involving the Tuttle Emerald Property.

5. Closing; Closing Date. The consummation of the simultaneous purchase and sale ("**Closing**") of the Tuttle Emerald Property and the City Property will occur on the date ("**Closing Date**") that is 15 business days after Tuttle Emerald has obtained all necessary City approvals for the preliminary development plan for the City Property or applicable zoning application consistent with the existing zoning of the City Property, or on such other date as Tuttle Emerald and the City may mutually agree in writing in each Party's sole and absolute discretion. If the initially scheduled Closing Date does not fall on a business day, then the Closing Date will be the next business day thereafter.

6. Title Insurance; Survey.

(a) Title Commitment; Title Policy. Within 10 business days after the Effective Date, Tuttle Emerald will obtain and deliver to the City a title commitment (each, "**Title Commitment**") for a 2006 ALTA owners title insurance policy (each, "**Title Policy**") for each Property, issued by the downtown Chicago, Illinois office of First American Title Insurance Company ("**Title Company**"), showing fee simple absolute title to the Tuttle Emerald Property in Tuttle Emerald, and fee simple absolute title to the City Property in the City, and with (or ultimately with) the commitment of the Title Company to delete the general exceptions that can be deleted with the execution and delivery of the Title Company's standard owner's affidavit and to issue the title endorsements described in Section 6(b) hereof. Each Title Commitment may initially be in a nominal amount, which each applicable selling Party will cause to be increased upon the issuance of the corresponding Title Policy to an amount equal to \$1,659,400.00 in the case of the Tuttle Emerald Property and \$933,800.00 in the case of the City Property. In addition, Tuttle Emerald will order copies of all documents to which reference is made in each Title Commitment (other than any financing documents encumbering each Property). The Parties will reasonably cooperate with each other in connection with the ordering of each Title Commitment and the documents to which reference is made therein.

(b) Title Endorsements. Prior to each Closing Date, each selling Party (albeit at the purchasing Party's sole cost and expense, except as provided in this Agreement) will cause the applicable Title Commitment to be amended to provide for extended coverage over all general exceptions contained in the policy and insuring as separate parcels any easements included as part of the applicable Property, and also to include the following endorsements if the purchasing Party desires such endorsements in its sole discretion:

- (i) restrictions or comprehensive endorsement insuring against any loss or diminution of title to or interest in the applicable Property by reason of a violation of a covenant, condition or restriction of record affecting the applicable Property;
- (ii) an ALTA Form 3.0 zoning endorsement (or, if the purchasing Party has delivered appropriate plans and specifications to the Title Company, an ALTA Form 3.2 zoning endorsement with parking based on such plans and specifications);
- (iii) an "access" or "contiguity" endorsement insuring access from the applicable Property to such roads, streets or thoroughfares as the purchasing Party may designate;
- (iv) a location endorsement 5 (*i.e.*, "a survey endorsement") insuring that the legal descriptions in the Title Commitment and the applicable Survey (as such term is defined in Section 6(c) hereof) describe and cover the same real property); and
- (v) a tax parcel endorsement.

Notwithstanding anything to the contrary herein, a purchasing Party may elect in its sole discretion to alter the title insurance coverage of the Property it is acquiring, and each purchasing Party shall be solely responsible for any and all title insurance costs related to the Property it is acquiring.

(c) Survey. Within five business days after the Effective Date, each Party will deliver to the other Party true and correct copies, if any, of all surveys pertaining to the Property that the selling Party is to sell hereunder, which are in such selling Party's possession or control. Each purchasing Party, at its sole cost and expense, will order a separate plat of survey (each, "**Survey**") of the Land that it is purchasing, which has been (i) prepared by a registered land surveyor duly licensed in the State of Ohio, and (ii) certified to such purchasing Party, the Title Company and such purchasing Party's lender, if any, as having been prepared in compliance with the Minimum Standard Detail Requirements for Class A Land Title Surveys (jointly established by ALTA/NSPS, as adopted in 2016) and sufficient for the deletion of all survey-related general exceptions under the applicable Title Commitment. Each Survey will include such Table A Items as the purchasing Party or its lender (if any) may require.

(d) Unpermitted Encumbrances. If a Title Commitment shows, or a Survey discloses, any matters that are objectionable to the purchasing Party, in its sole and absolute discretion, then such purchasing Party will notify the selling Party thereof, in writing, on or before the date that is 10 business days before the Due Diligence Date, specifying the matters to which such purchasing Party objects (collectively for each applicable Property, "**Objectionable Matters**"). In such event, prior to the Due Diligence Date, such purchasing Party must have received adequate assurances (in such purchasing Party's sole and absolute discretion) that the Objectionable Matters will be removed or otherwise addressed to the purchasing Party's satisfaction on or before the Closing. Any Objectionable Matters that have been removed or otherwise addressed to the purchasing Party's satisfaction on or before the Due Diligence Date (or that such purchasing Party has been informed or assured, in writing from either the selling Party or the Title Company, will be removed or otherwise addressed to the purchasing Party's satisfaction on or before the Closing) will be "**Unpermitted Encumbrances**" for the applicable Property. Any matters that are shown on a Title Commitment or disclosed on a Survey, and in each case to which a purchasing Party does not object as provided in this Section 6(d), will be "**Permitted Encumbrances**" for the applicable Property. Anything in this Section 6(d) or elsewhere in this Agreement to the contrary notwithstanding, all mortgages, deeds of trust, deeds to secure debt, assignments of leases and rents, security agreements, financing statements, other financing-related or construction-related liens on the Property, and tax liens (other than the lien of real property taxes not yet due and payable), will conclusively be deemed to be Unpermitted Encumbrances and will be removed by the selling Party, at its sole cost and expense, at or before the Closing. If any update to the Title Commitment or Survey for a Property discloses additional title or survey matters after the Due Diligence Date, any objections to such matters must be made, in writing, within 10 business days after disclosure of such matters. The non-objecting Party shall have 10 business days after the delivery of such written notification to respond, in writing, to such Objectionable Matters, and such Objectionable Matters will be classified as Unpermitted Encumbrances or Permitted Encumbrances pursuant to the process described above. If an objecting Party does not receive adequate assurances (in such purchasing Party's sole and absolute discretion) that the Objectionable Matters disclosed after the Due Diligence Date will be removed or otherwise addressed to the purchasing Party's satisfaction on or before the Closing Date, then the objecting Party may terminate this Agreement by delivering written notice of such termination to the other Party within 10 business days after the non-objecting Party's response to the Objectionable Matters (or the expiration of the 10-business day period if the non-objecting Party does not respond). In the event of such termination, the Parties shall have no further rights or obligations hereunder, except as expressly provided herein.

7. Representations and Warranties of Tuttle Emerald. Tuttle Emerald hereby represents and warrants to the City that all of the following are true and correct on and as of the Effective Date, will continue to be true and correct as of the Closing Date, and will survive the Closing and the delivery of the Deed (as such term is defined in Section 10(a) hereof) for the Tuttle Emerald Property for a period of three months:

- (a) Tuttle Emerald is a limited liability company duly organized and validly existing and in good standing under the laws of the State of Ohio. All requisite action (as required under its organizational governance documents, or by applicable law) has been taken (or with respect to the instruments referenced herein, by the Closing Date, will be) by Tuttle Emerald in connection with entering into this Agreement and the instruments referenced herein, and the consummation of the transactions contemplated hereby. No consent of any creditors, partners, members, managers, directors, officers or shareholders, judicial or administrative bodies, governmental or quasi-governmental authorities, or other parties is required for the performance of Tuttle Emerald's obligations hereunder. Each of the individuals executing this Agreement and the instruments referenced herein on behalf of Tuttle Emerald has the legal power, right and actual authority to bind Tuttle Emerald to the

terms and conditions hereof and thereof. This Agreement and all instruments that Tuttle Emerald is required to execute hereunder are (or with respect to such instruments, by the Closing Date, will be) valid, legally binding obligations of and enforceable against Tuttle Emerald in accordance with their respective terms, subject only to applicable bankruptcy, insolvency, reorganization, moratorium laws or similar laws or equitable principles affecting or limiting the rights of contracting parties generally.

- (b) Tuttle Emerald has not received and, to the Tuttle Emerald's Knowledge (as such term is defined below in this Section 7), no predecessor of Tuttle Emerald has received written notice of any violation of any law, municipal ordinance or other governmental requirement affecting the Tuttle Emerald Property or any portion thereof. To Tuttle Emerald's Knowledge, no such violation exists.
- (c) Tuttle Emerald has not received written notice of any condemnation or eminent domain proceedings, or of negotiations for purchase in lieu of condemnation, relating to the Tuttle Emerald Property, or any portion thereof. To Tuttle Emerald's Knowledge, no condemnation or eminent domain proceedings have been commenced or threatened in connection with the Tuttle Emerald Property or any portion thereof.
- (d) Tuttle Emerald is not a party to any agreement, contract or commitment to sell, convey, let, assign, transfer, provide rights of first refusal or other similar rights with respect to, or otherwise dispose of, all or any portion of the Tuttle Emerald Property, or any interest therein or occupancy right thereto, other than this Agreement. Except for this Agreement and any matters of record, neither Tuttle Emerald nor any person or entity claiming by, through or under Tuttle Emerald has done, suffered or permitted anything whereby any lien, claim or right of another has been created against the Tuttle Emerald Property, any portion thereof or any interest therein.
- (e) To Tuttle Emerald's Knowledge, there are no so-called recapture agreements with respect to the Tuttle Emerald Property or any portion thereof.
- (f) To Tuttle Emerald's Knowledge, there is no action, proceeding or investigation pending or threatened against Tuttle Emerald or with respect to the Tuttle Emerald Property or any portion thereof, before any court or governmental department, commission, board, agency or instrumentality.
- (g) To the best of Tuttle Emerald's Knowledge, Tuttle Emerald has not received written notice of any contemplated special assessments relating to the Tuttle Emerald Property or any portion thereof.
- (h) To Tuttle Emerald's Knowledge and except as disclosed by that certain Phase I Environmental Site Assessment (Parkwood Place Development/Parkwood Place/Dublin, Franklin County, Ohio -- Terracon Project No. N4157087), dated December 1, 2015, and prepared by Terracon Consultants, Inc., a copy of which has heretofore been delivered to the City, no Hazardous Materials have been stored, transported, discharged or released on the Tuttle Emerald Property or any portion thereof. For purposes of this Agreement, the term "**Hazardous Materials**" will mean any hazardous substances or hazardous materials, including, without limitation, all substances, the presence of which could subject the owner or occupant of property to civil or criminal penalties or damages, or responsibility for clean-up of such substances, including, without limitation, any material or substance that is:
  - (i) a "hazardous waste," a "toxic waste," a "hazardous substance," a "toxic substance," an "extremely hazardous waste," a "restricted hazardous waste," a "chemical substance," or a "hazardous chemical," as such terms are defined

under any environmental laws, ordinances or regulations governing or controlling the applicable Property or any portion thereof;

- (ii) petroleum or petroleum waste, including, without limitation, crude oil or any petroleum derived substance or constituent of any such petroleum substance or waste;
  - (iii) asbestos or asbestos containing materials;
  - (iv) polychlorinated biphenyl;
  - (v) radioactive material; or
  - (vi) pesticides.
- (i) To Tuttle Emerald's Knowledge, there are no (i) orders from or agreements with any governmental authority or private party or any judicial or administrative proceedings or investigations, whether pending or threatened, respecting any environmental, health or safety requirements under federal, state or local laws or regulations relating to the Tuttle Emerald Property or any portion thereof, or (ii) pending, asserted or threatened claims or matters involving material liabilities, obligations or costs arising from the existence, release or threatened release of any Hazardous Materials at, on or beneath the Tuttle Emerald Property or any portion thereof.

For all purposes of this Agreement the term "**Tuttle Emerald's Knowledge**" will mean the actual knowledge of either Andrew R. Weeks or Tyler Ford, both employees of VanTrust Real Estate, LLC, a Delaware limited liability company that is affiliated with Tuttle Emerald, without any duty of inquiry or investigation. The accuracy of the foregoing representations and warranties will be a condition precedent to the City's obligations under this Agreement. If any of the foregoing representations or warranties is untrue, and is not cured (at no cost to the City) prior to the Closing Date, then Tuttle Emerald will be allowed a period of five business days after the scheduled Closing Date in order to cause such representations and warranties to be true, and will use commercially reasonable efforts to do so (and Tuttle Emerald will notify the City promptly if Tuttle Emerald determines that it will not be able to do so). Subject to this Section 7, if Tuttle Emerald fails to cause such representations and warranties to conform to the requirements of this Agreement within such five-business day period, then the City may elect (y) to purchase the Tuttle Emerald Property as it then is, thereby waiving and releasing any and all claims with respect to such non-conforming representations and warranties; or (z) to terminate this Agreement. Further, if the representations or warranties were untrue when made, or if the matter that causes the representations or warranties to fail to conform to the requirements of this Agreement is a matter that was caused or permitted by Tuttle Emerald, then the City's rights set forth in the immediately preceding sentence will be in addition to, and not in lieu of, any other rights and remedies available to the City for default by Tuttle Emerald and will include, without limitation, any and all damages that the City may suffer as a result of the failure of the representations or warranties to conform to the requirements of this Agreement.

8. Representations and Warranties of the City. The City hereby represents and warrants to Tuttle Emerald that all of the following are true and correct on and as of the Effective Date, will continue to be true and correct as of the Closing Date, and will survive the Closing and the delivery of the Deed for the City Property for a period of three months:

- (a) The City is a municipal corporation duly organized and validly existing and in good standing under the laws of the State of Ohio. All requisite action (as required under its organizational governance documents, or by applicable law) has been taken (or with respect to the instruments referenced herein, by the Closing Date, will be) by the City in connection with entering into this Agreement and the instruments referenced herein, and the consummation of the transactions contemplated hereby. No consent of any creditors, judicial or administrative bodies, governmental or quasi-governmental authorities, or other parties is required for the performance of the City's obligations hereunder. Each of the individuals executing this Agreement and the instruments referenced herein on behalf of

the City has the legal power, right and actual authority to bind the City to the terms and conditions hereof and thereof. This Agreement and all instruments that the City is required to execute hereunder are (or with respect to such instruments, by the Closing Date, will be) valid, legally binding obligations of and enforceable against the City in accordance with their respective terms, subject only to applicable bankruptcy, insolvency, reorganization, moratorium laws or similar laws or equitable principles affecting or limiting the rights of contracting parties generally.

- (b) The City has not received and, to the City's Knowledge (as such term is defined below in this Section 8), no predecessor of the City has received written notice of any violation of any law, municipal ordinance or other governmental requirement affecting the City Property or any portion thereof. To the City's Knowledge, no such violation exists.
- (c) The City has not received written notice of, nor has the City instituted, any condemnation or eminent domain proceedings, or of negotiations for purchase in lieu of condemnation, relating to the City Property, or any portion thereof. To the City's Knowledge, no condemnation or eminent domain proceedings have been commenced or threatened in connection with the City Property or any portion thereof.
- (d) The City is not a party to any agreement, contract or commitment to sell, convey, let, assign, transfer, provide rights of first refusal or other similar rights with respect to, or otherwise dispose of, all or any portion of the City Property, or any interest therein or occupancy right thereto, other than this Agreement. Except for this Agreement and any matters of record, neither the City nor any person or entity claiming by, through or under the City has done, suffered or permitted anything whereby any lien, claim or right of another has been created against the City Property, any portion thereof or any interest therein.
- (e) To the City's Knowledge, there are no so-called recapture agreements with respect to the City Property or any portion thereof.
- (f) To the City's Knowledge, there is no action, proceeding or investigation pending or threatened with respect to the City Property or any portion thereof, before any court or governmental department, commission, board, agency or instrumentality.
- (g) To the best of the City's Knowledge, the City has not received written notice of any contemplated special assessments relating to the City Property or any portion thereof.
- (h) To the City's Knowledge, no Hazardous Materials have been stored, transported, discharged or released on the City Property or any portion thereof.
- (i) To the City's Knowledge, there are no (i) orders from or agreements with any governmental authority or private party or any judicial or administrative proceedings or investigations, whether pending or threatened, respecting any environmental, health or safety requirements under federal, state or local laws or regulations relating to the City Property or any portion thereof, or (ii) pending, asserted or threatened claims or matters involving material liabilities, obligations or costs arising from the existence, release or threatened release of any Hazardous Materials at, on or beneath the City Property or any portion thereof.
- (j) The zoning classification of the City Property will permit the unconditional (other than the necessity of customary building permits, business licenses and the like) use thereof for all warehouse, distribution and e-commerce purposes ("**Zoning Classification**"). If and to the extent necessary, the City hereby covenants to cause the Zoning Classification to be effected prior to the Closing.

For all purposes of this Agreement the term “**City’s Knowledge**” will mean the actual knowledge of either Dana McDaniel or Colleen Gilger, both employees of the City, without any duty of inquiry or investigation. The accuracy of the foregoing representations and warranties will be a condition precedent to Tuttle Emerald’s obligations under this Agreement. If any of the foregoing representations or warranties is untrue, and is not cured (at no cost to Tuttle Emerald) prior to the Closing Date, then the City will be allowed a period of five business days after the scheduled Closing Date in order to cause such representations and warranties to be true, and will use commercially reasonable efforts to do so (and the City will notify Tuttle Emerald promptly if the City determines that it will not be able to do so). Subject to this Section 8, if the City fails to cause such representations and warranties to conform to the requirements of this Agreement within such five-business day period, then Tuttle Emerald may elect (y) to purchase the City Property as it then is, thereby waiving and releasing any and all claims with respect to such non-conforming representations and warranties; or (z) to terminate this Agreement. Further, if the representations or warranties were untrue when made, or if the matter that causes the representations or warranties to fail to conform to the requirements of this Agreement is a matter that was caused or permitted by the City, then Tuttle Emerald’s rights set forth in the immediately preceding sentence will be in addition to, and not in lieu of, any other rights and remedies available to Tuttle Emerald for default by the City and will include, without limitation, any and all damages that Tuttle Emerald may suffer as a result of the failure of the representations or warranties to conform to the requirements of this Agreement.

9. Escrow; Gap Closing. The Closing hereunder will be a “New York Style” or “gap” closing with the Title Company as escrowee, in accordance with the general provisions of the usual form of “New York Style” or “gap” escrow agreement then in use by the Title Company, with such special provisions inserted in the escrow agreement as may be required to conform with this Agreement (“**Closing Escrow**”). Each Party hereby authorizes its respective attorneys to sign the Closing Escrow agreement on behalf of its client. Any payments required under this Agreement and the delivery of each Deed will be made through the Closing Escrow. The Closing will be concluded by use of “gap undertakings” furnished by the Title Company and executed by each selling Party with respect to the Property that it is selling hereunder, so that the Title Company is prepared, at the Closing, to issue each Title Policy, insuring the purchasing Party’s fee simple absolute title to the applicable Property in the amount of \$1,659,400.00 in the case of the Tuttle Emerald Property and \$933,800.00 in the case of the City Property, and subject only to the applicable Permitted Encumbrances. The cost of the Closing Escrow will be divided equally between the Parties.

10. Closing. Provided that all conditions of closing hereunder have occurred, the Closing will occur through the downtown Chicago, Illinois offices of the Title Company on the Closing Date; provided, however, that the Closing may be effected by the delivery of documents without the necessity of the Parties being present in person. On the Closing Date (or earlier as required by the Closing Escrow agreement):

- (a) Selling Party’s Deliveries. Each selling Party, with respect to the Property that it is selling under this Agreement, will execute and deliver to the Title Company for delivery to the applicable purchasing Party on the Closing Date, the following:
  - (i) Such selling Party will provide a limited warranty deed (“**Deed**”) compliant with Ohio Revised Code Section 5302.07 and in a commercially reasonable and recordable form sufficient to convey to the purchasing Party fee simple absolute title to the applicable Property, subject only to the applicable Permitted Encumbrances, signed by such selling Party or its agent (in the case of the Deed for the City Property, Tuttle Emerald may elect to name a designee that is under common ownership with Tuttle Emerald or otherwise affiliated to the City’s reasonable satisfaction with VanTrust Real Estate, LLC, to take title thereto, by delivering written notice of such election to the City at least five days prior to the Closing Date);
  - (ii) Appropriate transfer tax or other similar declarations, executed by such selling Party or its agent in the form required pursuant to applicable law, and such selling Party will pay the amount of all transfer, deed, stamp and similar taxes imposed by governmental authorities having jurisdiction;
  - (iii) A counterpart of a closing statement signed by such selling Party or its agent;

- (iv) An original counterpart of the Development Fee/Repurchase Memorandum in recordable form and signed by such selling Party or its agent, to be recorded against all of the Tuttle Emerald Property at the Closing;
  - (v) If required by the Title Company, an owner's affidavit duly executed and acknowledged by such selling Party in form and content required by the Title Company;
  - (vi) If required by applicable law, a "FIRPTA" affidavit conforming to the requirements of Section 1445 of the Internal Revenue Code of 1986, as amended, and the regulations applicable thereto, and if such selling Party fails to furnish any such required FIRPTA affidavit, such selling Party will deposit any required sums of money into a commercially reasonable escrow with the Title Company; and
  - (vii) Such other documents as may be reasonably necessary or appropriate to comply with this Agreement or reasonably required of such selling Party (by the Title Company or otherwise) to carry out the terms of this Agreement.
- (b) Purchasing Party's Deliveries. Each purchasing Party, with respect to the Property that it is purchasing under this Agreement, will execute and deliver to the Title Company for delivery to the applicable selling Party on the Closing Date, the following:
- (i) Appropriate transfer tax or other similar declarations, executed by such purchasing Party or its agent in the form required pursuant to applicable law;
  - (ii) A counterpart of a closing statement signed by such purchasing Party or its agent;
  - (iv) An original counterpart of the Development Fee/Repurchase Memorandum in recordable form and signed by such purchasing Party or its agent, to be recorded against all of the Tuttle Emerald Property at the Closing; and
  - (v) Such other documents as may be reasonably necessary or appropriate to comply with this Agreement or reasonably required of such purchasing Party (by the Title Company or otherwise) to carry out the terms of this Agreement.

11. General Real Estate Taxes; Other Payments. General real estate taxes and general and special assessments for the years prior to Closing shall be paid by the selling Party on or prior to the Closing Date. General real estate taxes and general and special assessments for the year of Closing will be prorated on a per diem basis as of the Closing Date based on the most recently available tax rate and valuation for the Property, and the purchasing Party will receive a credit for such amount at Closing. Any other payments with respect to either Property applicable to the selling Party's period of ownership shall be paid by the applicable selling Party when due. Any service contracts or other agreements with respect to a Property shall be terminated prior to Closing at no cost to the purchasing Party unless the purchasing Party elects prior to Closing to accept an assignment of any such service contracts or other agreements. The Parties' respective rights and obligations under this Section 11 will survive the Closing and delivery of each Deed.

12. Conditions of Closing.

(a) Purchasing Party's Closing Conditions. The obligation of each purchasing Party (in such capacity) to consummate each transaction contemplated under this Agreement is expressly subject to and contingent upon the occurrence of each and every one of the following conditions precedent:

- (i) Such purchasing Party or the Title Company, as applicable, will have received the items set forth in Section 10(a) hereof.
- (ii) The Title Company will have issued the applicable Title Policy, dated as of the Closing Date and showing fee simple title in such purchasing Party, subject only to the applicable Permitted Encumbrances, and otherwise in accordance with the provisions of and containing the extended coverage and the endorsements specified in Section 6(a) and 6(b) hereof.
- (iii) All representations and warranties of the applicable selling Party will be true and correct as of the Closing Date.
- (v) Since the Due Diligence Date, such purchasing Party will not have received any notice that (A) the applicable Property, or any portion thereof, was ever used for the treatment, transportation, storage, handling or disposal of any Hazardous Materials, (B) the applicable Property, or any portion thereof, has ever appeared on any federal or state registry of inactive hazardous waste site, or (C) there has been any notice or claim concerning the presence, release or alleged release of Hazardous Materials at the applicable Property or any portion thereof.
- (vi) Since the Due Diligence Date, there will not have been any material adverse change in the physical condition or characteristics of, or otherwise with respect to, the applicable Property, or any portion thereof.
- (vii) The applicable selling Party (in such capacity) will have complied with all terms, provisions and conditions of this Agreement.

(b) Purchasing Party's Right to Terminate. In the event any of the foregoing conditions has not been fulfilled or expressly waived in writing by the applicable purchasing Party, then in addition to any other remedy available to such purchasing Party, it may terminate this Agreement by delivering written notice to the selling Party on or before the Closing Date, without limiting such purchasing Party's remedies under this Agreement and otherwise at law or in equity.

(c) Selling Party's Closing Conditions. The obligation of each selling Party (in such capacity) to consummate the transaction hereunder is expressly subject to and contingent upon the occurrence of each and every one of the following:

- (i) Such selling Party or the Title Company, as applicable, will have received the items set forth in Section 10(b) hereof.
- (ii) All representations and warranties of the applicable purchasing Party will be true and correct as of the applicable Closing Date.
- (iii) The applicable purchasing Party will have complied with all terms and conditions of this Agreement.

(d) Selling Party's Right to Terminate. In the event any of the foregoing conditions has not been fulfilled or expressly waived in writing by the applicable selling Party, then in addition to any other remedy available to such selling Party, it may terminate this Agreement by delivering written notice to the purchasing Party on or before the Closing Date, without limiting such selling Party's remedies under this Agreement and otherwise at law or in equity.

13. DISCLAIMERS. EXCEPT AS MAY BE EXPRESSLY SET FORTH IN THIS AGREEMENT, (A) IT IS UNDERSTOOD AND AGREED THAT NEITHER PARTY IS MAKING, AND NEITHER PARTY HAS MADE, AT ANY TIME MADE ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESSED OR IMPLIED, WITH RESPECT TO THE PROPERTY IT IS SELLING,



INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OR REPRESENTATIONS AS TO HABITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, ZONING, TAX CONSEQUENCES, LATENT OR PATENT PHYSICAL OR ENVIRONMENTAL CONDITIONS, UTILITIES, VALUATION, GOVERNMENTAL APPROVALS, COMPLIANCE OF SUCH PROPERTY WITH GOVERNMENTAL LAWS, OR ANY OTHER MATTER OR THING REGARDING SUCH PROPERTY; (B) EACH PARTY EXPRESSLY DISCLAIMS ANY REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE PROPERTY IT IS SELLING; (C) EACH PARTY ACKNOWLEDGES AND AGREES THAT IT IS PURCHASING THE CITY PROPERTY OR THE TUTTLE EMERALD PROPERTY (AS THE CASE MAY BE) "AS IS, WHERE IS, WITH ALL FAULTS;" AND (D) EACH PARTY ACKNOWLEDGES AND AGREES THAT IT WILL CONDUCT SUCH INVESTIGATIONS OF THE PROPERTY IT IS PURCHASING, INCLUDING, BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, AS SUCH PARTY DEEMS NECESSARY TO SATISFY ITSELF AS TO THE CONDITION OF SUCH PROPERTY, AND WILL RELY SOLELY UPON THE SAME AND NOT UPON ANY INFORMATION PROVIDED BY OR ON BEHALF OF THE SELLING PARTY OR ITS AGENTS OR EMPLOYEES WITH RESPECT THERETO.

14. Default. IF EITHER PARTY BREACHES ITS OBLIGATION TO COMPLETE THE SALE AND CONVEYANCE OF ITS PROPERTY AS PROVIDED IN THIS AGREEMENT AND SUCH BREACH CONTINUES FOR TWO BUSINESS DAYS AFTER THE PURCHASING PARTY'S DELIVERY TO SUCH SELLING PARTY OF WRITTEN NOTICE THEREOF, THEN THE PURCHASING PARTY WILL BE ENTITLED TO THE REMEDY OF SPECIFIC PERFORMANCE. EACH PARTY ACKNOWLEDGES AND AGREES THAT EACH PROPERTY IS UNIQUE IN NATURE AND A FAILURE BY A SELLING PARTY TO PERFORM THE TERMS OF THIS AGREEMENT WILL MATERIALLY AND IRREPARABLY INJURE, AND RESULT IN THE SUFFERING OF A MATERIAL LOSS BY, THE PURCHASING PARTY, AND THAT SUCH INJURY AND LOSS CANNOT BE FULLY OR ADEQUATELY COMPENSATED BY THE PAYMENT OF MONEY OR BY AN AWARD OF DAMAGES. EACH PARTY THEREFORE FURTHER ACKNOWLEDGES AND AGREES THAT IF A SELLING PARTY SHOULD BREACH ITS OBLIGATIONS TO COMPLETE THE SALE AND CONVEYANCE OF ITS PROPERTY HEREUNDER, THE PURCHASING PARTY SHALL BE ENTITLED TO THE SPECIFIC PERFORMANCE OF THIS AGREEMENT. THE APPLICABLE SELLING PARTY (IN SUCH CAPACITY) WILL NOT OBJECT TO AND WILL NOT HINDER OR DELAY THE ENTRY OF A DECREE OF SPECIFIC PERFORMANCE IN ANY ACTION BROUGHT UNDER OR IN RESPECT TO THIS AGREEMENT. IN ADDITION, IN THE EVENT THAT EITHER PARTY TERMINATES THIS AGREEMENT DUE TO (I) A DEFAULT OR BREACH OF COVENANT BY THE OTHER PARTY (OTHER THAN AS SET FORTH ABOVE IN THIS SECTION 13), (II) A REPRESENTATION OR WARRANTY OF THE OTHER PARTY BEING UNTRUE WHEN MADE AS OF THE EFFECTIVE DATE (TAKING INTO ACCOUNT, AS APPLICABLE, ANY "KNOWLEDGE" QUALIFIERS PERTAINING TO SUCH REPRESENTATION AND WARRANTY), OR (III) A REPRESENTATION OR WARRANTY OF THE OTHER PARTY BECOMING UNTRUE (TAKING INTO ACCOUNT, AS APPLICABLE, ANY "KNOWLEDGE" QUALIFIERS PERTAINING TO SUCH REPRESENTATION AND WARRANTY) DUE TO SUCH OTHER'S ACTION, THEN SUCH DEFAULTING PARTY SHALL REIMBURSE THE NON-DEFAULTING PARTY FOR ALL THIRD-PARTY OUT-OF-POCKET COSTS AND EXPENSES AND ALL OTHER DAMAGES INCURRED BY SUCH NON-DEFAULTING AS A RESULT THEREOF.

15. Condemnation. In the event that, between the Effective Date and the Closing Date, any condemnation or eminent domain proceedings are instituted that might result in the taking of all or any portion of an applicable Property, the selling Party will immediately notify the purchasing Party in writing of such occurrence, and thereupon such purchasing Party may elect (in its sole and absolute discretion) to:

- (a) terminate this Agreement, in which event all rights and obligations of the Parties hereunder will cease; or
- (b) elect to consummate the transaction with respect to the applicable Property and require the selling Party to deliver to the purchasing Party a duly executed assignment, in form and substance reasonably satisfactory to the purchasing Party, of proceeds payable as a result of the selling Party's right to receive any condemnation award.

A purchasing Party will have 30 days after the date of its receipt of written notice of such institution of proceedings within which to exercise its rights under this Section 15. If the Closing is scheduled to occur within such 30-day period, then the Closing will be delayed until the purchasing Party makes such election, and if the purchasing Party elects to consummate the transaction, the Closing Date will be adjusted accordingly.

16. Covenants of Selling Parties. Between the Effective Date and the Closing Date, each selling Party will (with respect to the Property that it is selling):

- (a) not, without first obtaining the written consent of the purchasing Party (which consent may be given or withheld in such purchasing Party's sole and absolute discretion), promote, solicit, entertain or negotiate with respect to any offers for the sale of, or enter into any contracts, leases or other agreements pertaining to, the applicable Property or any portion thereof;
- (b) comply with all laws, ordinances, regulations and restrictions affecting the applicable Property or any portion thereof (including, without limitation, the use thereof);
- (c) comply with the terms of all mortgages, liens, pledges, leases, licenses, easements and other similar encumbrances affecting the applicable Property or any portion thereof;
- (d) not create or permit to be created any mortgage (or amendment to any existing mortgage), lien, pledge, lease, license, easement or other similar encumbrance in any way affecting the applicable Property or any portion thereof;
- (e) not knowingly permit the physical condition of the applicable Property, or any portion thereof, to change materially from the physical condition thereof as of the Due Diligence Date;
- (g) not knowingly permit (i) the applicable Property, or any portion thereof, to be used for the treatment, transportation, storage, handling or disposal of any Hazardous Materials, (ii) the applicable Property, or any portion thereof, to appear on any federal or state registry of inactive hazardous waste site, or (iii) any notice or claim to be made by the federal or any state government concerning the release or alleged release of Hazardous Materials at the applicable Property, or any portion thereof; and
- (h) comply with all requirements of the Title Company in connection with its insurance hereunder.

17. Notices. Any notice or other communication in connection with this Agreement will be in writing and will be sent by United States certified mail, return receipt requested, postage prepaid, by a nationally recognized overnight courier guaranteeing next day delivery, by electronic transmission, or by personal delivery, properly addressed as follows:

If to Tuttle Emerald: Tuttle Emerald Development, LLC  
c/o VanTrust Real Estate, LLC  
Suite 100  
950 Goodale Boulevard  
Columbus, Ohio 43212  
Attention: Andrew R. Weeks  
E-Mail: [andy.weeks@vantrustre.com](mailto:andy.weeks@vantrustre.com)

with a copy to: VanTrust Real Estate, LLC  
Suite 400  
4900 Main Street  
Kansas City, Missouri 64112  
Attention: David M. Harrison

E-Mail: [dave.harrison@vantrustre.com](mailto:dave.harrison@vantrustre.com)

and with a copy to: O'Rourke, Hogan, Fowler & Dwyer  
Suite 3700  
10 South LaSalle Street  
Chicago, Illinois 60603  
Attention.: W. Craig Fowler  
E-Mail: [wcfowler@ohfdlaw.com](mailto:wcfowler@ohfdlaw.com)

If to City: City of Dublin  
5200 Emerald Parkway  
Dublin, Ohio 43017  
Attention: Dana McDaniel, City Manager  
E-Mail: [dmcdaniel@dublin.oh.us](mailto:dmcdaniel@dublin.oh.us)

with a copy to: Frost Brown Todd LLC  
Suite 2300  
10 West Broad Street  
Columbus, Ohio 43215  
Attention.: Jennifer Readler, Law Director  
E-Mail: [jreadler@fbtlaw.com](mailto:jreadler@fbtlaw.com)

All notices will be deemed given, delivered and received three business days following deposit in the United States mail with respect to certified or registered letters, one business day following deposit if delivered to an overnight courier guaranteeing next day delivery, and on the same day if sent by personal delivery or by electronic transmission (with proof of transmission). Attorneys for each Party will be authorized to give notices for each such Party. Any Party may change its address for the service of notice by giving written notice of such change to the other Party, in any manner above specified.

18. Miscellaneous.

(a) Intentionally Deleted.

(b) Counterpart; Electronic Transmission. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. To facilitate execution of this Agreement, the Parties may execute and deliver counterparts hereof (or counterparts of the signature page or pages hereof) by facsimile or electronic transmission, and such facsimile or electronically transmitted counterparts will be binding and enforceable to the same extent as originals thereof.

(c) Section Headings. The Section headings or captions appearing in this Agreement are for convenience only, are not a part of this Agreement, and are not to be considered in interpreting this Agreement.

(d) Entire Agreement; No Waiver. This written Agreement constitutes the entire agreement between the Parties and supersedes any prior oral or written agreements between the Parties regarding the Property. There are no verbal agreements that can or will modify this Agreement, and no waiver of any of its terms will be effective unless in a writing executed by the Parties.

(e) Severability. The unenforceability or invalidity of any provisions hereof will not render any other provisions herein contained unenforceable or invalid.

(f) Assignment. Neither party may assign this Agreement or any of its rights hereunder without the other Party's prior written consent, which may be withheld, conditioned or delayed in such other Party's sole and absolute discretion.

(g) Brokers. With respect to real estate brokers:

- (i) Tuttle Emerald represents and warrants to the City that, other than The Robert Weiler Company (“**Broker**”), Tuttle Emerald has not engaged or dealt with any broker or other person or entity who would be entitled to any brokerage fee or commission with respect to the finding, negotiation or execution of this Agreement or the consummation of the transactions contemplated hereby. Tuttle Emerald will be solely responsible for all commissions due to Broker pursuant to one or more separate agreements. Tuttle Emerald will indemnify, defend and hold harmless the City, and its successors and assigns, with respect to any claim by Broker and any other person or entity claiming to have been engaged by Tuttle Emerald, or claiming by, through or under Tuttle Emerald, so as to become entitled to any such fee or commission.
- (ii) The City represents and warrants to Tuttle Emerald that the City has not engaged or dealt with any broker or other person or entity, other than Broker, who would be entitled to any brokerage fee or commission with respect to the finding, negotiation or execution of this Agreement or the consummation of the transactions contemplated hereby.
- (h) Governing Law. This Agreement will be construed and enforceable in accordance with the laws of the State of Ohio, without application of its choice of law rules.
- (i) Binding Nature. This Agreement will be binding upon and inure to the benefit of the Parties, and their respective successors and permitted assigns.
- (j) Time of Essence. Time is of the essence of this Agreement.

[Signatures on following page]

In witness whereof, the Parties hereto have caused this Agreement to be executed and delivered the day and the date first above written.

Tuttle Emerald:

Tuttle Emerald Development, LLC, an Ohio limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Date: August \_\_\_\_, 2020

City:

City of Dublin, Ohio, an Ohio municipal corporation

By: \_\_\_\_\_  
Dana McDaniel, City Manager

Date: August \_\_\_\_, 2020

APPROVAL AS TO FORM:

By: \_\_\_\_\_  
Jennifer D. Readler, City Attorney

Exhibit A-1 -- Legal Description of Tuttle Emerald Land

Situated in the City of Dublin, County of Franklin, and State of Ohio and known as being Lot 2 of the Duke Parkwood Plat recorded in Plat Book 111, Page 100 of Franklin County records

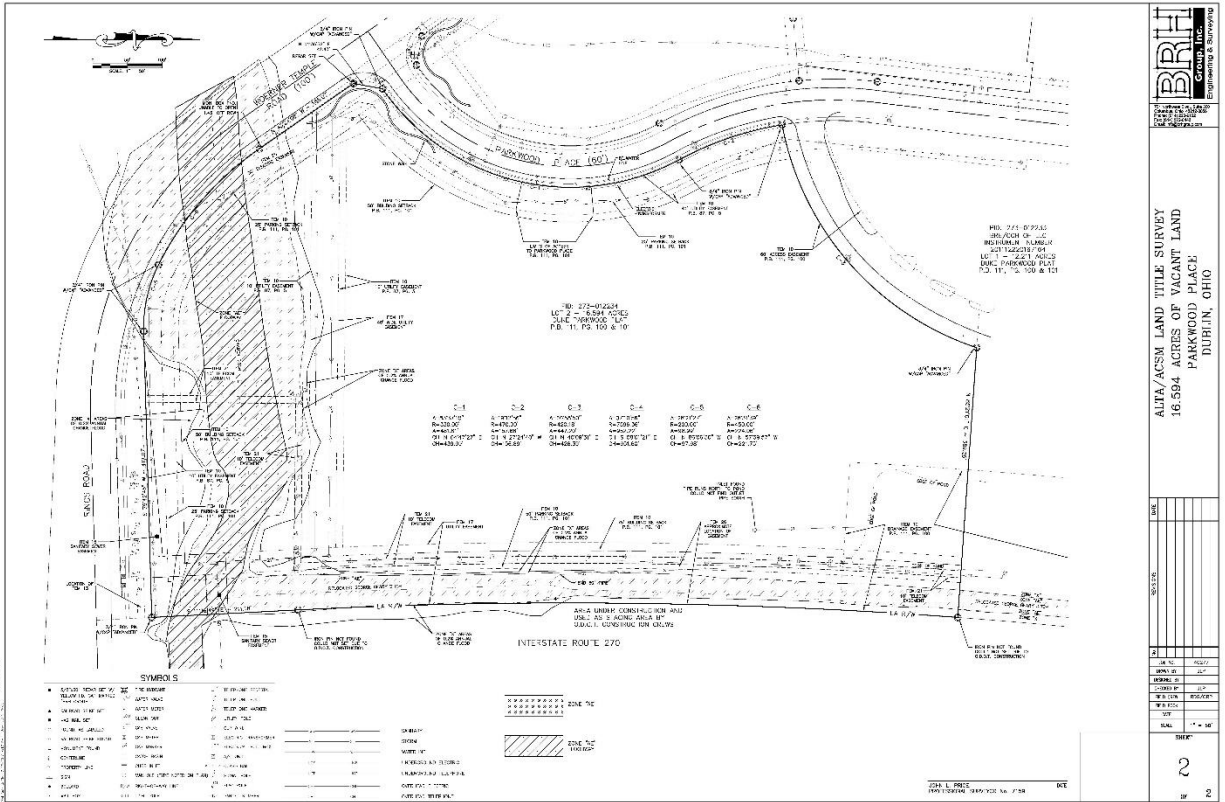
Tax Parcel: 273-012234-00

Exhibit A-2 -- Legal Description of City Land

Situated in the City of Dublin, County of Franklin, and State of Ohio and known as being Lot 1 of the Crosby Business Park Plat recorded in Plat Book 118, Page 41 of Franklin County records

Tax Parcel: 275-000008-00

# Exhibit B-1 -- Site Plan of Tuttle Emerald Land





**BRH**  
**Group, Inc.**  
 Engineering & Surveying

**ALTA/ACSM LAND TITLE SURVEY**  
**16.594 ACRES OF VACANT LAND**  
**PARKWOOD PLACE**  
**DUBLIN, OHIO**

NO.	DATE	DESCRIPTION
1	10/27/20	PREPARED
2	11/10/20	REVISION
3	11/10/20	REVISION
4	11/10/20	REVISION
5	11/10/20	REVISION
6	11/10/20	REVISION
7	11/10/20	REVISION
8	11/10/20	REVISION
9	11/10/20	REVISION
10	11/10/20	REVISION

**2**





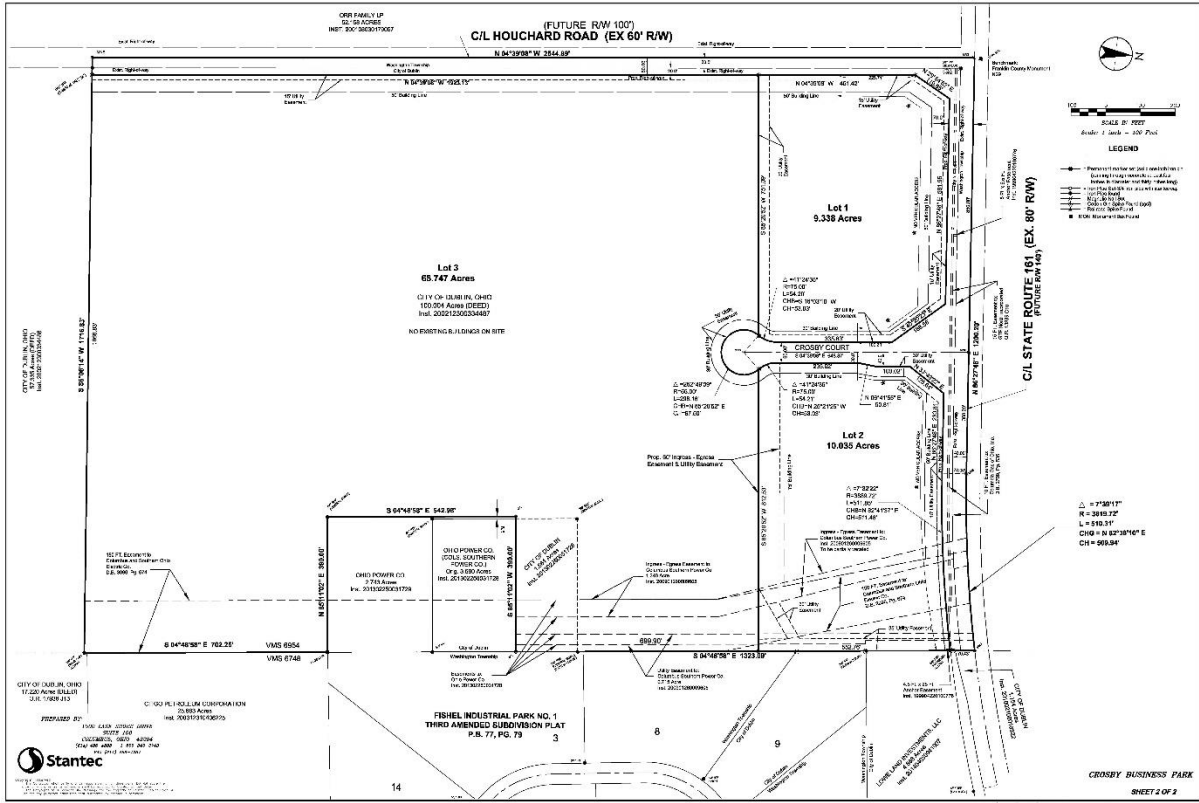


Exhibit C -- Form of Development Fee/Repurchase Memorandum

Memorandum of Development Fee and Repurchase Right

This Memorandum of Development Fee and Repurchase Right (“**Memorandum**”) is entered into as of \_\_\_\_\_, 2020, by and between Tuttle Emerald Development, LLC, an Ohio limited liability company (“**Tuttle Emerald**”), and the City of Dublin, Ohio, an Ohio municipal corporation (“**City**”). Each of Tuttle Emerald and the City is also sometimes herein called a “**Party**,” or together as the “**Parties**.”

Recitals

A. The City and Tuttle Emerald are parties to that certain Real Estate Transfer Agreement dated as of August \_\_\_\_, 2020, with an Effective Date (as defined therein) of August \_\_\_\_, 2020 (“**Agreement**”). Pursuant to the Agreement, among other things, (i) Tuttle Emerald has conveyed to the City fee title to that certain parcel of vacant property containing approximately 16.594 gross acres, abutting Parkwood Place, Woerner Temple Road and Interstate Route 270, in the City of Dublin, Franklin County, Ohio, and legally described on Exhibit A attached hereto (“**Tuttle Emerald Land**”), together with all of the easements and appurtenances, and all of the estates and rights from time to time, in, to and with respect to the Tuttle Emerald Land and any and all improvements thereon (collectively, “**Tuttle Emerald Property**”); and (ii) the City (on behalf of itself and its successors and assigns) has agreed to pay a certain fee (“**Development Fee**”) to Tuttle Emerald in connection with Tuttle Emerald’s conveyance of the Tuttle Emerald Property to the City, and also to grant to Tuttle Emerald a certain sole, exclusive and superior (over any and all third parties) right (“**Repurchase Right**”) to repurchase all of the Tuttle Emerald Property.

B. The Parties now desire to record this Memorandum in order to notify third parties of the Development Fee and the Repurchase Right with respect to the Tuttle Emerald Property.

Agreements

Now, therefore, for and in consideration of the foregoing Recitals and the covenants and agreements herein set forth, and for other good and valuable consideration, the receipt and sufficiency of all of which are hereby acknowledged, the Parties agree as follows:

1. Incorporation of Recitals; Definitions. The Recitals set forth above are hereby incorporated into this Memorandum and are hereby made a part hereof, as if fully set forth herein. All capitalized terms used in this Memorandum and not otherwise defined herein will have the respective meanings given them in the Agreement.
2. Notice of Development Fee. Under the Agreement, the City has agreed to pay the Development Fee (in the amount set forth in the Agreement) to Tuttle Emerald upon the earlier to occur of the following events:
  - (a) the City’s transfer or conveyance of fee title or any other ownership or leasehold interest (other than a mortgage or similar collateral interest solely for the purpose of securing debt or an easement or right of way for utilities or other uses granted in the City’s normal course of operations) in, to or with respect to the Tuttle Emerald Property, or any portion thereof; or
  - (ii) the commencement of any construction of improvements on the Tuttle Emerald Property in connection with the development thereof.
3. Notice of Repurchase Right. The City has granted the Repurchase Right to Tuttle Emerald, which Tuttle Emerald may exercise at any time within three years after the date of the recordation of this Memorandum, at the price and on the other terms and conditions set forth in the Agreement.
4. Rights and Obligations Run with the Land. The Parties’ respective rights and obligations with respect to both the Development Fee and the Repurchase Right run with the Tuttle Emerald Property, and are binding upon the City and its successors and assigns.

5. Purpose of Memorandum; Superiority of Agreement. This Memorandum is made solely for purposes of creating record notice of the Development Fee and the Repurchase Right granted to Tuttle Emerald with respect to the Tuttle Emerald Property. This Memorandum does not in any manner amend or modify the respective rights and obligations of the Parties under the Agreement. In the event of any conflict or inconsistency between the terms and conditions of the Agreement and the terms and conditions of this Memorandum, the terms and conditions of the Agreement will in all cases govern and control.

6. Counterparts. This Memorandum may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

[Signatures on following page]



Exhibit A -- Legal Description of Tuttle Emerald Land

Situated in the City of Dublin, County of Franklin, and State of Ohio and known as being Lot 2 of the Duke Parkwood Plat recorded in Plat Book 111, Page 100 of Franklin County records

Tax Parcel: 273-012234-00