

To: Members of Dublin City Council

From: Dana L. McDaniel, City Manager

Date: December 1, 2020

Initiated By: Megan D. O'Callaghan, P.E., Deputy City Manager/Chief Operating Officer
Jennifer D. Readler, Dublin Law Director
Paul A. Hammersmith, P.E., Director of Engineering/City Engineer
Jean-Ellen Willis, P.E., Engineering Manager - Transportation
Tina C. Wawzkiewicz, P.E., Civil Engineer II
C. Aaron Stanford, P.E., Senior Civil Engineer

Re: Ordinance 52-20 - An Ordinance Authorizing the City Manager to Enter Into an Infrastructure Agreement with Schottenstein Real Estate Group, LLC and Union County, for Dublin Gateway (Gorden Development) – Follow Up Information

Summary

Ordinance 52-20 was introduced at the November 16, 2020 City Council meeting. This Ordinance proposes establishing an Infrastructure Agreement ("Agreement") between the Schottenstein Real Estate Group, LLC ("Developer"), Union County and Dublin, for the Dublin Gateway development. Staff previously listed outstanding items for the Infrastructure Agreement as of November 12, 2020. The Developer and Dublin staff have continued to meet and have achieved resolution of a majority of these items. Each previously outstanding item and the status of its resolution is as follows:

- **Issue:** The Traffic Impact Study (TIS) has not yet been approved by Dublin and the Union County Engineer.

Resolution: The TIS and its findings are in large part complete through additional information and language being added to the TIS. Staff anticipates the TIS will have final approval of both Dublin and the Union County Engineer prior to the second reading of this Ordinance on December 7, 2020.

- **Issue:** The trigger for the contribution payment to Union County has been changed from final development plan approval to "approval of the final development plan, final plat and the final engineering approvals and permits that allow Developer to commence construction..." (Section 1)

Resolution: This payment shall be due within 60 days after the approval of the final development plan, final plat and all engineering permits necessary to commence construction of the first section of the Development and the improvements subject to this Agreement.

- **Issue:** The Developer reinserted a qualification on the Hyland-Croy Road turn lanes (225' turn lane with 50' diverging taper). (Section 3)

Resolution: Union County, Dublin and Developer agreed to new language in Section 3.

- **Issue:** The Developer reinserted a limitation that right-of-way and easement dedication is "[c]ontingent upon receipt of all public approvals required to commence unconditional construction of the Development, including but not limited to zoning, preliminary and final development plans, final plat, and all engineering plan approvals and permits necessary for Developer to begin Phase 1 of the development and construction of the improvements subject of this Agreement." (Section 5)

Resolution: Contingent upon receipt of the approval of the final development plan, final plat and all engineering permits necessary to commence construction of the first section of the Development and the improvements that are subject to this Agreement in the first section of the development.

- **Issue:** The Developer inserted additional public approvals required before the obligation to construct Grand Gateway Drive, Stillhouse Lane, Freedom Drive, Springview Lane kicks in. (Section 5)

Resolution: Contingent upon receipt of the approval of the final development plan, final plat and all engineering permits necessary to commence construction of the first section of the Development and the improvements that are subject to this Agreement in the first section of the development.

- **Issue:** The Developer reduced the retainage requirements from 5% to 3%. (Section 14)

Resolution: Retainage changed back to 5%.

- **Issue:** The Developer reinserted a 5% management fee on the total construction costs. (Section 14)

Resolution: The 5% management fee will apply only to the portion of the total construction cost for which cost Dublin is responsible.

- **Issue:** The Developer inserted additional contingencies to performance. (previous Section 24, current Section 27)

Resolution: The Developer inserted language which Dublin has determined to be acceptable.

- **Issue:** The Developer reinserted a statement that no additional payments, conditions, construction or obligations of any kind shall be required of Developer. (previous Section 26, current Section 29)

Resolution: No additional payments, beyond the normal and customary application and permit fees associated with plan submittals, reviews, inspections or the like, shall be required of Developer or its assigns as a condition to use of the land as contemplated by the pending zoning, preliminary development plan and final development plan or as a condition for any future approvals for plans, permits, etc.

Furthermore, Section 8 has been amended to provide for Grand Gateway Drive, Stillhouse Lane, Freedom Drive, Springview Lane, Holbein Drive and associated intersection improvements and gateway entrance features to be constructed and concurrently open to traffic no later than 24 months from receipt of final development plan approval, final plat approval and all engineering permits required to commence construction of either the single-family sub-areas and/or the Adult Congregate Living Facility.

Outstanding Items for Discussion

The Developer revised the assignment clause to provide for certain instances in which prior Dublin approval would not be required prior to assignment. Staff requests Council direction as to whether such language is acceptable:

- **Section 24. Assignment.** Developer may assign this Agreement, in whole or in part, to a subsidiary or affiliate of Developer, and such assignment is deemed approved by Dublin with execution hereof. Developer may assign this Agreement, in whole or in part to a third-party developer/builder without the requirement for prior written approval or consent from Dublin, if such assignment is made to a developer/builder set forth in the attached approved developer/builder list (see Exhibit "D"). Assignment to an entity on the attached Exhibit D shall be deemed accepted by Dublin with execution hereof. Any other assignment shall require written approval from Dublin, within 30 days of Developer notice of same and Dublin's approval shall not be unreasonably withheld. Any such assignment shall fully and completely release and relieve Developer from any and all obligations and/or liabilities imposed in this Agreement with regard to only that portion of the Agreement which is the subject of the assignment.

The entities listed on Exhibit D include the following; Romanelli and Hughes, Pulte Homes, Virginia Homes, Fischer Homes, Epcon Communities, M/I Homes and Bob Webb Homes.

Recommendation

Staff recommends approval of Ordinance 52-20, at the second reading and public hearing on December 7, 2020, authorizing the City Manager to enter into an Infrastructure Agreement with Schottenstein Real Estate Group, LLC and Union County, for Dublin Gateway (Gorden Development).

RECORD OF ORDINANCES

Ordinance No. 52-20

Passed _____, _____

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO AN INFRASTRUCTURE AGREEMENT WITH SCHOTTENSTEIN REAL ESTATE GROUP, LLC AND UNION COUNTY, FOR THE DUBLIN GATEWAY (GORDEN DEVELOPMENT)

WHEREAS, Schottenstein Real Estate Group, LLC ("Developer") desires to develop the site located at Hyland-Croy and Post Roads as Dublin Gateway (Gorden Development), a residential development with 90 single-family housing lots and up to 150 Adult Congregate Living Facility (ACLF) units with 12.5 acres of open space and five public streets ("the Development"); and

WHEREAS, the Developer has performed a traffic impact study (TIS) as required for the rezoning necessary for the Development; and

WHEREAS, the Parties agree to enter into this Agreement, relating to construction of, and the Developer's contribution of the Developer's proportionate share for, certain transportation improvements to the surrounding roadway network to mitigate the impact of additional traffic generated by the Development; and

WHEREAS, some of the impacted roadways are under the jurisdiction of Union County.

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

Section 1. The City Manager is hereby authorized to execute the attached Infrastructure Agreement with Schottenstein Real Estate Group and Union County for the Dublin Gateway (Gorden Development), in substantially the same form as attached, with changes not inconsistent with this Ordinance and not substantially adverse to the City and which shall be approved by the City Manager.

Section 2. The City Manager, for and in the name of this City, is hereby authorized to execute the foregoing agreement, provided further that the approval of changes to any such agreement by that official, and their character as not being substantially adverse to the City, shall be evidenced conclusively by the execution thereof. This City Council authorizes the City Manager, for and in the name of the City, to execute any amendments to the agreement, which amendments are not inconsistent with this Ordinance and not substantially adverse to this City. This City Council further hereby authorizes and directs the City Manager, the Director of Finance, the Director of Law, the Clerk of Council or other appropriate officers of the City to prepare and sign all documents and instruments this Ordinance.

Section 3. This Ordinance shall take effect upon the earliest date permitted by law.

Passed this _____ day of _____, 2020.

Mayor – Presiding Officer

ATTEST:

Clerk of Council

INFRASTRUCTURE AGREEMENT FOR THE DUBLIN GATEWAY DEVELOPMENT

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**INFRASTRUCTURE AGREEMENT
FOR THE
DUBLIN GATEWAY DEVELOPMENT**

This Infrastructure Agreement (the "*Agreement*") dated , _____ 2021, by and between the **CITY OF DUBLIN, OHIO** ("*Dublin*"), a municipal corporation duly organized and validly existing under the Constitution and laws of the State of Ohio (the "*State*") and its Charter, **UNION COUNTY, OHIO** ("*Union County*") and collectively with Dublin, the "*Jurisdictions*"), a county duly organized and validly existing under the laws of the State of Ohio, and **SCHOTTENSTEIN REAL ESTATE GROUP, LLC** ("*SREG*," and collectively with Dublin and Union County, the "*Parties*"), a limited liability company authorized to conduct business in the State of Ohio, witnesseth:

WHEREAS, SREG is presently engaged in the improvement of certain land, being 45 +/- acres along Hyland Croy Road in the City of Dublin, Ohio (within Union County) and is desirous of constructing public street infrastructure, and related public facilities to service the development known as Dublin Gateway, as such development is finally approved by Dublin City Council and depicted by the Preliminary Development Plan attached hereto as Exhibit "A" (the "*Development*"); and

WHEREAS, SREG has commissioned a traffic impact study, prepared by The Mannik and Smith Group ("*TIS*") for the Development, that has been reviewed and approved by the Jurisdictions; and

WHEREAS, the unique relationship of the Development and the planned Post Preserve Access Modifications associated with the scheduled US 33 – SR 161 – Post Road Interchange Improvements causes a non-traditional funding approach to be proposed in this Agreement; and

WHEREAS, the Parties agree to enter into this Agreement relating to the contribution to certain transportation improvements to the surrounding roadway network to mitigate the impact of the additional traffic generated by the Development; and

NOW THEREFORE, the Parties covenant, agree and obligate themselves as follows:

1. **Regional Transportation Improvement Contribution:** Developer agrees to contribute \$178,396 to Union County, which amount constitutes full and final payment for all required contributions due to Union County and Dublin for regional traffic impacts from the Development. This payment shall be due within 60 days after the approval of the final development plan, final plat and all engineering permits necessary to commence construction of the first section of the Development and the improvements subject to this Agreement.

2. **Internal Roadways:**

The Parties agree that Developer will design and construct the internal roadways which consists of grading, storm sewer, pavement, curbing, lighting, sidewalk/shared use path, and appurtenances. Responsibility for payment for the Internal Roadways shall be allocated between the Parties as follows:

- Developer agrees to pay 100% of the cost to design and construct the following roadway improvements (see Exhibit "B") solely at Developer's cost, which consists of grading, storm sewer, pavement, curbing, lighting, sidewalk/shared use path, watermain, and appurtenances:
 - Holbein Drive
 - Woodfield Loop
 - Freedom Drive from Stillhouse Lane south to Springview Lane
 - Freedom Drive from Hyland-Croy Road east to the Freedom Drive intersection with Stillhouse Lane

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- Dublin agrees to pay 100% of the cost to design and construct the following roadway improvements (see Exhibit "B"), which consists of grading, storm sewer, pavement, curbing, lighting, sidewalk/shared use path, and appurtenances:
 - Grand Gateway Drive
 - Springview Lane from existing Springview Lane west to Freedom Drive
- Developer and Dublin agree to pay the cost to design and construct the following roadway improvements (see Exhibit "B") at a proportional cost share of 1/3 Developer and 2/3 Dublin, which consists of grading, storm sewer, pavement, curbing, lighting, sidewalk/shared use path, and appurtenances.
 - Freedom Drive from Springview Lane south and west to Stillhouse Lane
 - Stillhouse Lane from existing Stillhouse Lane west and south to Freedom Drive

3. **Intersection Improvements:**

The Parties agree that Developer will design and construct the identified intersection improvements on Hyland Croy Road at the proposed intersections with Freedom Drive, Grand Gateway Drive, and Holbein Drive which consists of grading, storm sewer, pavement, curbing, lighting, traffic control devices/signals, pavement striping, sidewalk/shared use path, utility relocations, and all other appurtenances, if applicable, and with obligations for payment and reimbursement to Developer as follows:

- At Hyland-Croy Road and Freedom Drive, Developer agrees to pay for 100% of all costs related to design and construction of a 225 ft northbound right turn lane (includes 50 ft. diverging taper).
- At Hyland-Croy Road and Grand Gateway Drive, Dublin agrees to reimburse the Developer for 100% of the costs of design, acquisition, and construction of approved intersection improvements, which may include but are not limited to all turn lanes regardless of length, traffic signals, roundabouts or other improvements required for the final approved intersection.
- At Hyland-Croy Road and Holbein Drive, for opening day, Developer agrees to pay for 100% of all costs related to design, construction and acquisition of a 225' northbound right turn lane (includes 50 ft. diverging taper) and a 225' southbound left turn lane (includes 50 ft. diverging taper). Given the existing northbound left turn lane at Park Mill Drive/Jerome Grand, Dublin and Union County will require a connection of the existing and proposed left turn lanes with a full three-lane section along Hyland-Croy Road between Holbein Drive/Weldon Road and Park Mill Drive/Jerome Grand. Dublin and Union County will reimburse the Developer for extending this widening beyond the required 225' southbound left turn lane. This reimbursement will be divided equally between Dublin and Union County.

4. **Gateway Entrance Features:**

- The Parties agree that Developer will pay 1/3 of the cost and Dublin will pay 2/3 of the cost of the design and construction of the entry feature at Grand Gateway Drive and Hyland-Croy Road.
- The entry feature at Grand Gateway Drive and Hyland-Croy Road will be maintained by the Adult Congregate Living Facility and the Dublin Gateway Homeowners Association.
- Developer agrees to pay 100% of the cost and will be responsible for the design and construction of the entry features at Freedom Drive and Hyland-Croy Road and at Holbein Drive and Hyland-Croy Road. These entry features will be maintained by the Adult Congregate Living Facility and the Dublin Gateway Homeowners Association, respectively.

5. **Right-of-Way and Easement Dedication:**

Contingent upon receipt of the approval of the final development plan, final plat and all engineering permits necessary to commence construction of the first section of the Development and the improvements that are subject to this Agreement in the first section of the development:

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- Developer agrees to donate the right-of-way, for land which Developer is under contract to purchase for Dublin Gateway as depicted on the Preliminary Development Plan (PDP), necessary for all roadways within the development (Internal Roadways), at no cost to Dublin or Union County.
 - The Developer will donate the right-of-way, for land which Developer is under contract to purchase for Dublin Gateway (50' from the centerline of Hyland-Croy Road) as depicted on the PDP, necessary for all intersection improvements, adjacent to Dublin Gateway, at no cost to the City or Union County.
 - Developer will donate the right-of-way, for land which Developer is under contract to purchase for Dublin Gateway as depicted on the PDP, necessary for all rights-of-way and Reserves for the construction of the gateway entrance features, at no cost to the City or Union County.
 - Developer will donate at no cost to the City any other utility, public improvement and/or temporary construction easements, for land which the Developer has under contract to purchase for Dublin Gateway, that may be necessary or otherwise required as long as said easements do not negatively impact the development of Dublin Gateway as depicted on the PDP and as determined by Developer and the City prior to approval of the final plat.
 - Acquisition of land for right of way, easements or otherwise needed for any improvements or construction required by this Agreement shall be the 100% responsibility of Dublin, excepting therefrom the land which the Developer is obligated to provide above in this Section 5 and which Developer is in contract to purchase for Dublin Gateway.
6. The Parties agree that the entrance islands in the right-of-way at Freedom Drive and Grand Gateway Drive are in Reserves "C" and "E", respectively. These Reserves "C" and "E" will be owned by Dublin, but will be maintained by the Adult Congregate Living Facility and the Dublin Gateway Homeowner Association.
 7. All roadways, intersection improvements, and gateway entrance features will be built to public standards and/or as otherwise approved in design by Dublin and Union County.
 8. Grand Gateway Drive, Stillhouse Lane, Freedom Drive, Springview Lane, Holbein Drive and associated intersection improvements and gateway entrance features as specifically provided for herein shall be constructed and concurrently open to traffic no later than 24 months from receipt of final development plan approval, final plat approval and all engineering permits required to commence construction of the single-family sub-areas and these roadways that are the subject of this Agreement.

In the event that future development and construction of the Adult Congregate Living Facility is commenced before the single-family sub areas, then Grand Gateway Drive, Stillhouse Lane, Freedom Drive, Springview Lane, Holbein Drive and associated intersection improvements and gateway entrance features as specifically provided for herein, shall be constructed and concurrently open to traffic no later than 24 months from receipt of final development plan approval, plat approval and all engineering permits required to commence construction on the Adult Congregate Living Facility and these roadways.
 9. Dublin will construct and pay 100% of costs associated with the Post Preserve Boulevard and Post Road intersection closure/removal for the planned Post Preserve access modification in accordance with the Ohio Department of Transportation (ODOT) requirements and timing relative to the scheduled US 33 – SR 161 – Post Road Interchange Improvements.
 10. Water and Sanitary Sewer Improvements – Developer will pay 100% of all costs associated with water and sanitary sewer improvements along Freedom Drive, Stillhouse Lane, Springview Lane, Woodfield Loop, Holbein Drive and Grand Gateway Drive.
 11. Parkland Dedication – Developer will donate at no cost to the City all parkland required by the approved rezoning as described in the text and depicted on the PDP for Dublin Gateway.

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12. Developer will submit detailed plans and specifications, for the improvements to be installed by Developer, to the appropriate jurisdictions for review and approval. No work shall begin until such time that the appropriate jurisdictions have granted approval of the plans and specifications. All plans and bids shall be developed such that the quantities are summarized in way that the actual costs can be easily assigned and tracked for reimbursement.
13. Construction, Project Owner, General Contractor and Bids. Developer in its capacity as owner will obtain a general contractor to perform the work in accordance with this Agreement. Developer in its capacity as owner will pay the cost of the work in accordance with this Agreement, and seek reimbursements from Dublin as permitted herein above, following the procedures set forth below in Section 15. Developer shall request and receive bids from prospective general contractor(s) on the public improvements in one or more packages, the number and form of which shall be subject to the reasonable approval of the authorized city representative. Developer agrees that with respect to each proposed subcontract representing each of the trades (with a value of not less than \$25,000), Developer shall request and use commercially reasonable efforts to obtain no less than three (3) responsible bids. Developer shall award the subcontract for each bid package to the most responsive and responsible bidder, as determined by the Developer in its sole and absolute discretion. Developer will enter into all construction contracts in its own name and not in the name of the City. Developer will provide to the City drafts of all construction contracts with a value in excess of \$75,000 to which Developer is a party at least seven (7) days prior to execution thereof in order to allow the City to review and comment on the same. No pay requests shall be paid (or credit given for any Developer Payments) with respect to any expenditure under a construction contract until the Developer has provided to the City a copy of the fully executed contract.

Developer in its capacity as owner will supervise and direct the work utilizing qualified personnel, and in accordance with the standards of care normally exercised by construction organizations performing similar work.

14. Reimbursements - Developer agrees to design and build the roads, intersection improvements, and gateway features identified above, excluding the work identified in Section 9 as the 100% responsibility of Dublin, and will be reimbursed by Dublin for its share of actual costs, which shares are set forth above herein. This obligation of Developer includes the gateway entry feature which incorporates the closure of Post Preserve for subdivision identification purposes. However, such Developer obligation does not include the actual closure or construction as allocated to Dublin in Section 9 hereinabove.

The City agrees to reimburse Developer in accordance with the Construction Documents based on pay requests executed by the authorized Developer representative. No amounts shall be reimbursed with respect to any construction contract until Developer provides to the City a fully executed copy of that contract, as well as proof of insurance, notice of commencement, required bond, and affidavit. The parties agree that pay requests and payments to Developer shall be subject to the retainage requirements of five percent (5%) of the amount requested in a pay request on a trade by trade basis. In addition, the parties agree that Developer shall function as the construction manager and may include a 5% management fee on portion of the total construction cost for which cost Dublin is responsible pursuant to this Agreement, and which shall be included for all such pay requests. To the extent consistent with the customary payment process of the City with respect to payment applications from contractors on City public improvement contracts, each pay request must be accompanied by conditional lien waivers and releases from all subcontractors and suppliers to be paid from the payment resulting from the pay request, and unconditional lien waivers and releases from all subcontractors and suppliers for which Developer was required to provide a conditional lien waiver in connection with a prior pay request. All payments will be based on prior work completed and pay requests will detail quantities and progress of work. The period covered by each pay request must be at least one (1) calendar month, ending on the last day of the month. The City may object to a pay request by giving written notice of and specific reasons for the objection(s) and of the amounts subject to the objection(s) within ten (10) business days of receipt. Following receipt of any objection by the City, Developer may provide additional information on a supplemental form (such being a

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“Supplemental Requisition”) in order to substantiate any objected amounts. The City may object to a Supplemental Requisition by giving written notice of and specific reasons for the objection(s) and of the amounts subject to the objection(s) within five (5) business days of receipt. Objections may be made because of a good faith belief that there is a material defect in Work or the percentage of completion of the Work in question in the pay request is materially overstated. A pay request is not payable until the objection is resolved; provided, however, that the City may only withhold from disbursement any expenses specifically objected to in any given pay request, and all other amounts from such pay request shall be disbursed subject to below. Unless the City objects to any such pay request, the City will within thirty (30) days following receipt of the pay request (forty-five (45) days in case of the final pay request) pay to the Developer the amounts reflected in any pay request. To the extent that Developer has not theretofore paid the applicable subcontractor(s) and/or supplier(s) the amount requested in such pay request, Developer will promptly pay to the applicable subcontractor(s) and/or supplier(s) the amounts payable to such subcontractor(s) and/or supplier(s). Upon final completion of the Work and acceptance by the City, the Developer will submit to the City a final pay request for payment of all remaining sums. Retainage shall be disbursed to Developer along with the final disbursement. Payment of the final payment is subject to the aforementioned provisions. Developer will deliver to the City copies of conditional final lien waivers executed by all subcontractors, suppliers or lien claimants along with the final pay request together with the final payroll report and prevailing wage affidavit. Acceptance of construction improvements shall be processed by the Jurisdictions in an expedited manner and in no event later than _____ .

All reimbursements are subject to the prior approval of the City Engineer and the Director of Finance, which such approvals shall not be unreasonably withheld and which shall occur within the prescribed timelines as set forth herein above in this Section 14.

15. Plan Review and Inspection Fees –Developer will pay standard Plan Review and Inspection Fees for all public improvements that will be inspected by the City of as set forth in Engineering Administrative Policy 95-005, for those construction improvements items provided for herein as the responsibility of Developer. For construction items that are the payment / responsibility of Dublin, in whole or in part, Dublin shall be responsible for the permit and inspection/plan review fees in the same percentages as identified for such items herein.

16. Boundary Adjustment.

- Dublin plans to file a petition for a boundary adjustment if City Council approves the rezoning of the Property in order to ensure uniformity of services. Such action will practically result in the exclusion of the Property from Jerome Township's jurisdiction. Currently, pursuant to Ohio Revised Code Section 709.19, Dublin must make reparations to Jerome Township of a percentage of the Township taxes that would have been due the Township if annexation had not occurred. If Dublin elects to pursue a Township boundary adjustment, it must do so within 60 days following the effective date of this Agreement, and diligently pursue all final approvals and recordation of same to make the boundary adjustment final and effective. The boundary adjustment must be final not later than June 1, 2021. If Dublin obtains such boundary adjustment, Developer and its successors and assigns hereby agree to compensate Dublin for all reparations payments Dublin is required to make to Jerome Township in accordance with the law in effect as of the date of this Agreement. An estimated schedule of such payments is attached hereto (see Exhibit “C”). To that end, Developer agrees to make a lump sum payment to Dublin upon the approval of the rezoning by Dublin City Council in the amount of five thousand dollars (\$5,000.00) as a deposit on the reparations payments that will be due to Jerome Township.
- Dublin will deposit all monies received under this subsection in an Agency Fund maintained by Dublin for the purpose of making reparations payments to Jerome Township. In the event that Dublin does not elect to pursue a Township boundary adjustment, Dublin will reimburse Developer or its successors or assigns for all monies received pursuant to this subsection. Additionally, should Dublin elect to

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pursue a Township boundary adjustment and should there be any excess funds after the expiration of the reparations period they shall be returned to Developer.

- Developer and its successors and assigns agree to reiterate these requirements in any deed subsequently conveying the Property.

17. Developer, its general contractor or its assignee, shall repair, replace or correct any improvements, which have been installed by Developer, that have been improperly installed or which have been proven faulty during the Maintenance Periods. The length of the Maintenance Period shall be in accordance with the Dublin Subdivision Regulations.
18. Prevailing Wage - The City designates its Contract & Procurement Coordinator as the prevailing wage coordinator for the Public Improvements (the "*Prevailing Wage Coordinator*"). Developer acknowledges and agrees that the construction improvements subject to payment or reimbursement by Dublin are Public Improvements are subject to the prevailing wage requirements of Chapter 4115 of the Ohio Revised Code and all wages paid to laborers and mechanics employed on the construction improvements subject to payment or reimbursement by Dublin are Public Improvements must be paid at not less than the prevailing rates of wages of laborers and mechanics for the classes of work called for by the Public Improvements in Franklin County, Ohio, which wages must be determined in accordance with the requirements of that Chapter 4115. Developer must comply, and Developer must require compliance by all contractors and must require all contractors to require compliance by all subcontractors working on the construction improvements subject to payment or reimbursement by Dublin as Public Improvements, with all applicable requirements of that Chapter 4115, including any necessary posting requirements. Developer (and all contractors and subcontractors thereof) must cooperate with the Prevailing Wage Coordinator and respond to all reasonable requests by the Prevailing Wage Coordinator when the Prevailing Wage Coordinator is determining compliance by Developer (and all contractors and subcontractors thereof) with the applicable requirements of that Chapter 4115.

The Prevailing Wage Coordinator will notify the Developer of the prevailing wage rates for the Public Improvements. The Prevailing Wage Coordinator will notify the Developer of any change in prevailing wage rates within seven (7) working days of receiving notice of such change from the Director of the Ohio Department of Commerce. The Developer must immediately upon such notification (a) ensure that all contractors and subcontractors receive notification of any change in prevailing wage rates as required by that Chapter 4115; (b) make the necessary adjustment in the prevailing wage rates and pay any wage increase as required by that Chapter 4115; and (c) ensure that all contractors and subcontractors make the same necessary adjustments.

Developer, its general contractor or assignee, must, upon beginning performance of this Agreement, notify the Prevailing Wage Coordinator of the commencement of Work, supply to the Prevailing Wage Coordinator the schedule of the dates during the life of this Agreement on which Developer (or any contractors or subcontractor thereof) is required to pay wages to employees. Developer (and each contractor or subcontractor thereof) must also deliver to the Prevailing Wage Coordinator a certified copy of its payroll relating to laborers performing the Work within two (2) weeks after the initial pay date, and supplemental reports for each month thereafter and in connection with any pay request exhibiting for each such employee paid any wages, the employee's name, current address, social security number, number of hours worked during each day of the pay periods covered and the total for each week, the employee's hourly rate of pay, the employee's job classification, fringe payments and deductions from the employee's wages; *provided, however*, that Developer must submit such payroll reports weekly if construction of the Public Improvements is contemplated to last less than four (4) calendar months. The certification of each payroll must be executed by Developer (or contractor, subcontractor, or duly appointed agent thereof, if applicable) and recite that the payroll is correct and complete and that the wage rates shown are not less than those required by this Agreement and Chapter 4115 of the Ohio Revised Code.

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Developer, its general contractor or its assignee, must provide to the Prevailing Wage Coordinator a list of names, addresses and telephone numbers for any contractors or subcontractors performing any Work on the construction improvements subject to payment or reimbursement by Dublin as Public Improvements within a reasonable amount of time after they become available, and the name and address of the bonding/surety company and the statutory agent (if applicable) for those contractors or subcontractors. Developer or its general contractor may not contract with any contractor or subcontractor listed with the Ohio Secretary of State for violations of Chapter 4115 of the Ohio Revised Code pursuant to Section 4115.133 of the Ohio Revised Code.

In connection with any pay request, Developer or its general contractor (and any contractor or subcontractor thereof) must submit to the Prevailing Wage Coordinator the affidavit required by Section 4115.07 of the Ohio Revised Code for the Work to which that pay request relates. Notwithstanding anything to the contrary, Developer shall be under no obligation to record any covenant or obligation for a tax-exempt future property owner to pay such real estate property taxes.

19. Tax Increment Financing. Developer acknowledges that the City expects to include the property within a tax increment financing area (a "non-school" TIF) and agrees that it will reasonably cooperate with the City in connection therewith.
20. Indemnification and Hold Harmless. Developer agrees to defend, indemnify, protect and hold harmless the Jurisdictions, their elected officials, officers, employees, agents, and volunteers from and against any liability for all actions, claims, losses, damages, costs and/or expenses (including reasonable attorney's fees) to the extent that such actions, claims, losses, damages, costs and/or expenses arise out or are in any way caused by the performance or non-performance of this Agreement, either directly or indirectly, irrespective of whether such actions, claims, losses, damages, costs and/or expenses are caused by the acts, omissions or conduct of Developer or its employees, agents and representatives. Developer shall not be required to indemnify or hold harmless Dublin to the extent any such actions, claims, losses, damages, costs and/or expenses are caused by the acts, omissions or conduct of Dublin, its employees, agents, officers or other representatives.
21. Notices. Except as otherwise specifically set forth in this Agreement, notices, demands, requests, consents or approvals given, required or permitted to be given hereunder shall be in writing and shall be deemed sufficiently given if actually received or if hand-delivered or sent by recognized, overnight delivery service or by certified mail, postage prepaid and return receipt requested, addressed to the other Parties at the addresses set forth in this Agreement or any addendum to or counterpart of this Agreement, or to such other addresses as the recipients shall have previously notified the sender of in writing, and shall be deemed received upon actual receipt, unless sent by certified mail, in which event such notice shall be deemed to have been received when the return receipt is signed or refused. A duplicate copy of each notice, certificate, request, or other communication given hereunder to the Parties shall be given also to the others. The Parties, by notice given hereunder, may designate any further or different addresses to which subsequent notices, certificate, requests, or other communications shall be sent.

(a) As to Dublin:

City of Dublin, Ohio
Attention: Director of Engineering
6555 Shier-Rings Road
Dublin, Ohio 43016-7295

(b) As to Union County:

Union County, Ohio
Attn: County Engineer

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233 West Sixth Street
Marysville, Ohio 43040

(c) As to Developer:

Schottenstein Real Estate Group LLC

Attn:

2 Easton Oval, #510

Columbus, Ohio 43219

Copies to:

Laura MacGregor Comek, Esq.

Laura M Comek Law LLC

17 S High St., Ste 700

Columbus, Ohio 43215

22. Extent of Provisions Regarding the Parties; No Personal Liability. No representation, warranty, covenant, agreement, obligation or stipulation contained in this Agreement shall be deemed to constitute a representation, warranty, covenant, agreement, obligation or stipulation of any present or future official, member, officer, agent or employee of the Parties in an individual capacity, and to the extent authorized and permitted by applicable law, no official executing or approving the Parties' participation in this Agreement shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of the issuance thereof.

23. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the Parties, and their respective permitted successors and assigns. The Parties will observe and perform faithfully at all times all covenants, agreements and obligations under this Agreement. This Agreement may be amended only by a writing signed by authorized representatives of all Parties.

24. Governing Law/Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, without giving effect to the principles thereof relating to conflicts or choice of laws.

25. Miscellaneous. Where construction costs are referenced herein, such term shall include all permit and inspection fees associated with the item of construction referenced.

26. Assignment. Developer may assign this Agreement, in whole or in part, to a subsidiary or affiliate of Developer, and such assignment is deemed approved by Dublin with execution hereof. Developer may assign this Agreement, in whole or in part to a third-party developer/builder without the requirement for prior written approval or consent from Dublin, if such assignment is made to a developer/builder set forth in the attached approved developer/builder list (see Exhibit "D"). Assignment to an entity on the attached Exhibit D shall be deemed accepted by Dublin with execution hereof. Any other assignment shall require written approval from Dublin, within 30 days of Developer notice of same and Dublin's approval shall not be unreasonably withheld. Any such assignment shall fully and completely release and relieve Developer from any and all obligations and/or liabilities imposed in this Agreement with regard to only that portion of the Agreement which is the subject of the assignment.

27. Conditions and Contingencies to Performance. Dublin acknowledges and agrees that Developer's performance of any term or condition on this Agreement is expressly conditioned upon the following: (i) Closing on the purchase of land; (ii) Receipt of all public approvals required to commence construction of the Development, including but

INFRASTRUCTURE AGREEMENT FOR THE DUBLIN GATEWAY DEVELOPMENT

DATE OF AGREEMENT: _____

not limited to the pending rezoning application, the pending Preliminary Development Plan (PDP) application and the final development plan, final engineering approvals and permits for the first phase of the Dublin Gateway Development and final engineering permits for the improvements subject of this Agreement; and (iii) Developer closing on a construction loan for development and all improvements (construction or reimbursements possible) required hereunder and receipt of proceeds from such loan. To the extent that acts of god, government or other force majeure conditions occur, including but not limited to the COVID 19 global pandemic, such that Developer's performance is delayed or precluded, in whole or in part, the parties agree to negotiate in good faith to negotiate a workable and practicable solution or schedule for completion of the work or parts thereof as may be determined mutually by the parties to allow the Development to progress, as may apply at the time.

28. Representations and Warranties. Dublin hereby makes the affirmative representation and warranty to Developer that all sums which may be required hereunder for payment or reimbursement to Developer have been appropriated and are available for such purposes as prescribed herein. The failure to appropriate funds shall not be permitted as a defense to non-payment and any sums not paid to Developer and which are more than thirty days past due shall accumulate interest at the statutory rate or ten percent, whichever is greater.

29. Complete Agreement. This Agreement constitutes the full and final agreement between the Parties with regard to traffic impacts and improvements for the Development. Dublin and Union County acknowledge and agree that the Development TIS is hereby approved. No additional payments, beyond the normal and customary application and permit fees associated with plan submittals, reviews, inspections or the like, shall be required of Developer or its assigns as a condition to use of the land as contemplated by the pending zoning, preliminary development plan and final development plan or as a condition for any future approvals for plans, permits, etc.

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INFRASTRUCTURE AGREEMENT FOR THE DUBLIN GATEWAY DEVELOPMENT

DATE OF AGREEMENT: _____

IN WITNESS WHEREOF, Dublin, Union County, and the Developer have caused this Agreement to be executed in their respective names by their duly authorized representatives, all as of the date written above.

Developer

Board of Commissioners, Union County, Ohio

Signature _____ Date _____
Printed Name: _____
Company Name: **Schottenstein**
Real Estate Group, LLC

Signature _____ Date _____
Charles Hall, Commissioner

City of Dublin, Ohio

Signature _____ Date _____
Christiane Schmenk, Commissioner

Signature _____ Date _____
Dana L. McDaniel, City Manager

Signature _____ Date _____
Steve Stolte, Commissioner

Approved as to form:

Approved as to form:

Signature _____ Date _____
Jennifer D. Readler, Law Director

Signature _____ Date _____
Thayne Gray, Prosecuting Attorney

INFRASTRUCTURE AGREEMENT FOR THE DUBLIN GATEWAY DEVELOPMENT

DATE OF AGREEMENT: _____

EXHIBITS:

A. Preliminary Development Plan, approved by Dublin City Council ____date____

B. Improvements Plan (Map form)

C. Reparations Estimate

D. Approved Developer Builder List

Romanelli and Hughes

Pulte

Virginia Homes

Fischer Homes

Epcon

M/I

Bob Webb

EN00348.Public-00348 4823-6168-3411v1

EXHIBIT "A"

100% Developer Cost Streets and Intersection Improvements

100% City Cost Streets and Intersection*

Developer Cost (1/3)
City Cost (2/3)
Streets

100% Developer Cost Streets and Intersection Improvements

100% City Cost Streets

