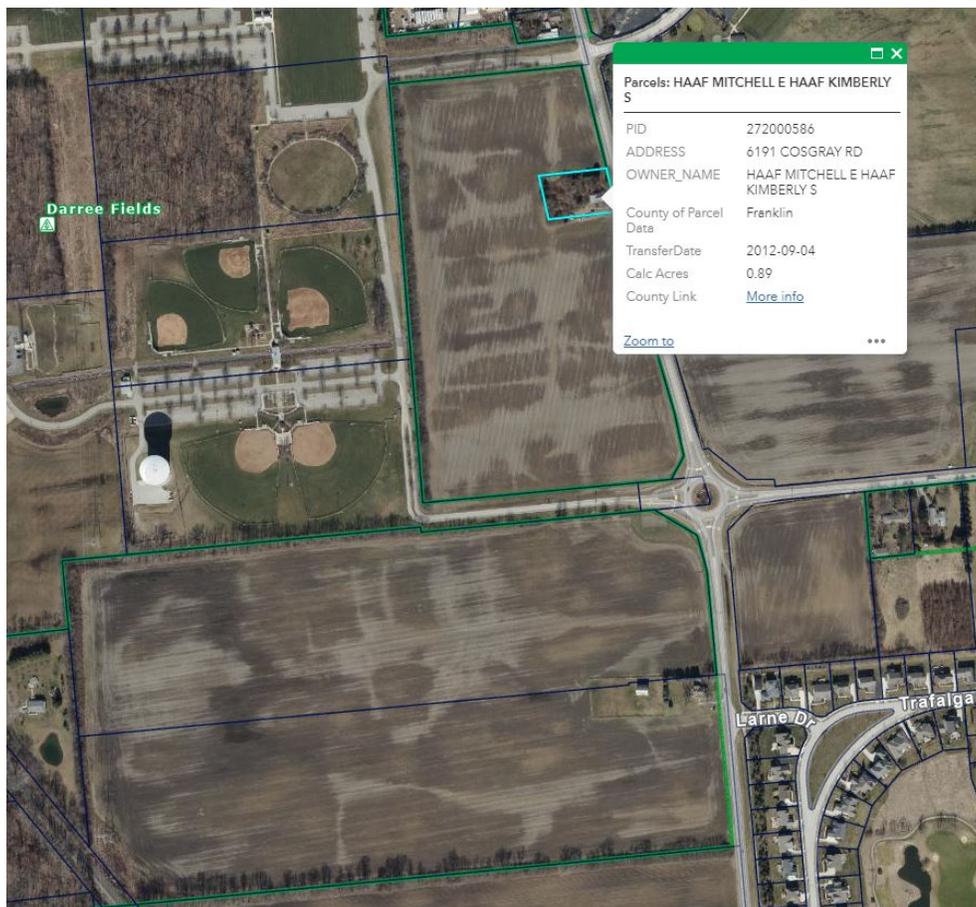


**To:** Members of Dublin City Council  
**From:** Dana L. McDaniel, City Manager  
**Date:** September 7, 2021

**Re:** Ordinance 58-21 – AUTHORIZING THE CITY MANAGER TO ENTER INTO A REAL ESTATE PURCHASE AGREEMENT FOR CERTAIN PROPERTY OWNED BY MITCHELL AND KIMBERLY HAAF LOCATED AT 6191 COSGRAY ROAD IN FRANKLIN COUNTY, OHIO, AUTHORIZING THE EXECUTION OF RELATED AGREEMENTS AND DOCUMENTS, AND APPROPRIATING FUNDS THEREFOR.

## Summary

The City has engaged in discussions with Mitchell E. and Kimberly S. Haaf to purchase property owned by them comprised of approximately 0.89 acres of land (said real property, together with all improvements constructed thereon, and all rights, appurtenances and hereditaments appertaining thereto, shall hereinafter be referred to as the “Premises”)(Parcel No. 272-000586). Below is a depiction of the Premises.



## **Background**

City Council has discussed the need to have additional acreage in the City's possession. Such purchases of land enable the City to control the ultimate use of the property. The City recently acquired 93.54 acres of land surrounding the Premises owned by Denise Jewett. Acquisition of the Premises will maximize the future development of the Jewett property. Additionally, as the City continues to grow and/or build out, opportunities to purchase property will diminish. The City has experienced much success over the years through such purchases be they for economic development, transportation and/or recreational use.

After negotiations with the owners, the purchase price of the Premises has been determined to be \$149,000. The price of the Premises is consistent with purchases made in the immediate area, including the Jewett acquisition.

The Real Estate Purchase Agreement, if authorized by City Council, explains all terms, conditions and closing requirements.

## **Recommendation**

Staff recommends approval of Ordinance No. 58-21 at the second reading/public hearing on September 27, 2021, to allow the purchase of this property.

# RECORD OF ORDINANCES

Ordinance No. 58-21

Passed \_\_\_\_\_, 20\_\_\_\_

**AUTHORIZING THE CITY MANAGER TO ENTER INTO A REAL ESTATE PURCHASE AGREEMENT FOR CERTAIN PROPERTY OWNED BY MITCHELL E. AND KIMBERLY S. HAAF LOCATED AT 6191 COSGRAY ROAD IN FRANKLIN COUNTY, OHIO, AUTHORIZING THE EXECUTION OF RELATED AGREEMENTS AND DOCUMENTS, AND APPROPRIATING FUNDS THEREFOR.**

WHEREAS, the City, over the years has entered into Real Estate Transfer Agreements, Real Estate Purchase Agreements and Development Agreements within the City that advance the goals of the City and enhance the public services provided by the City; and

WHEREAS, the City previously bought property owned by Denise M. Jewett comprised of approximately 93.54 acres, located in Franklin County, Ohio (Parcel No. 272-000085 – Cosgray Road – 27.77 acres)(Parcel No. 272-000195 – 6047 Cosgray Road – 32.95 acres)(Parcel No. 272-000086 – 5987 Cosgray Road – 32.82 acres)(the "Jewett Property"); and

WHEREAS, Mitchell E. and Kimberly S. Haaf own approximately 0.89 acres of land (the "Property") (said real property, together with all improvements constructed thereon, and all rights, appurtenances and hereditaments appertaining thereto, shall hereinafter be referred to as the "Premises") (6191 Cosgray Road - Parcel No. 272-000586) that is surrounded by the Jewett Property; and

WHEREAS, in order to maximize the future development of the Jewett Property, City Council has determined that it is in the best interest of the City to 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 Purchase 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 Purchase Agreement.

Section 3. Appropriations. There be appropriated from the unappropriated balance in the General Fund the total amount of \$149,000.00 allocated to Account No. 10180190-735001. Any proceeds from any future sale of the Property shall be deposited back into the General Fund.

Section 4. Further Authorizations. 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 and to take any other actions as may be appropriate to implement this Ordinance.

Section 5. 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

# RECORD OF ORDINANCES

Ordinance No. 58-21

Page 2  
Passed \_\_\_\_\_, 20\_\_\_\_

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

Passed this \_\_\_\_\_ day of \_\_\_\_\_, 2021

\_\_\_\_\_  
Mayor – Presiding Officer

Attest:

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

**REAL ESTATE PURCHASE AGREEMENT**

**THIS REAL ESTATE PURCHASE AGREEMENT** (hereinafter the “Agreement”) is made and entered into on the \_\_\_ day of \_\_\_\_\_, 2021 (the “Effective Date”) by and between the **CITY OF DUBLIN**, Ohio, an Ohio municipal corporation (the “City”), having an office at 5555 Perimeter Drive, Dublin, Ohio 43017, and **MITCHELL E. HAAF AND KIMBERLY S. HAAF, HUSBAND AND WIFE** (“Sellers”), having a mailing address of 4227 Winterringer Street, Hilliard, Ohio 43026. The City and Sellers may hereinafter be referred to individually as a “Party”, or collectively as the “Parties”.

**BACKGROUND INFORMATION**

WHEREAS, the City, over the years has entered into Real Estate Transfer Agreements, Real Estate Purchase Agreements and Development Agreements within the City that advance the goals of the City and enhance the public services provided by the City; and

WHEREAS, the City previously bought property owned by Denise M. Jewett comprised of approximately 93.54 acres, located in Franklin County, Ohio (Parcel No. 272-000085 – Cosgray Road – 27.77 acres)(Parcel No. 272-000195 – 6047 Cosgray Road – 32.95 acres)(Parcel No. 272-000086 – 5987 Cosgray Road – 32.82 acres)(the “Jewett Property”); and

WHEREAS, Sellers own approximately 0.89 acres of land with a commonly known address of 6191 Cosgray Road (the “Property”) (said real property, together with all improvements constructed thereon, and all rights, appurtenances and hereditaments appertaining thereto, shall hereinafter be referred to as the “Premises”)(Parcel No. 272-000586) that is surrounded by the Jewett Property; and

WHEREAS, in order to maximize the future development of the Jewett Property, City Council has determined that it is in the best interest of the City to purchase the land as described above; and

WHEREAS, it is the desire of the Parties to memorialize the terms of the transfer in this Agreement.

**STATEMENT OF AGREEMENT**

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

**ARTICLE I**  
**SALE AND PURCHASE OF THE PREMISES**

- 1. Sale.** Sellers hereby agree to sell and convey to the City, and the City hereby agrees to purchase and obtain from Sellers the Premises. The Parties acknowledge and represent that this conveyance of the Premises is a voluntary transfer.

2. **Purchase Price.** The total Purchase Price for the Premises shall be One Hundred Forty-Nine Thousand Dollars (\$149,000.00) (the “Purchase Price”) which sum shall constitute the entire amount of the compensation due to Sellers for the Premises described and depicted in the attached Exhibit “A”.

## **ARTICLE II** **CONTINGENCIES**

3. **Contingent Agreement.** The Closing in this Agreement shall be completely contingent upon the City’s satisfaction or waiver of the contingencies set forth in Article II, Paragraph 4 below (individually, a “Contingency” and collectively the "Contingencies"). The City shall have until November 30, 2021, to satisfy or waive the Contingencies set forth in Article II, Paragraph 4 below, which shall be referred to as the “Contingency Date”.
4. **Contingencies.** The Contingencies are as follows:
  - a. The City shall determine that the Premises have soil conditions, as determined by engineering tests or studies satisfactory to the City, which without substantial corrective measures, permit construction thereon of additional improvements within and upon the Premises; and
  - b. The City shall determine that the Premises shall have drainage conditions acceptable to the City, in its sole discretion; and
  - c. The City shall receive a report, prepared by a certified environmental engineer selected by the City, indicating that the Premises (including improvements located thereon) is free of all hazardous wastes, asbestos and substances and materials which may require remediation or which may result in penalties under applicable laws, rules or regulations; and
  - d. The City shall determine that the Premises is free of asbestos or determine the cost to remediate the same is acceptable to the City, in its sole discretion; and
  - e. The City shall have determined, in its sole judgment, that the use and further development of the Premises for the City's intended use is economically and physically feasible.

The City shall pay all expenses relating to or arising out of the Contingencies

The City shall have the obligation to satisfy the Contingency under this Paragraph 4 by November 15th, 2021 (“Contingency Period”).

5. **Notice of Satisfaction or Waiver.** The Contingencies above in Paragraph 4 shall be deemed to have been satisfied or waived, unless on or before the expiration of the Contingency Period, the City gives to Sellers written notice of the City's failure to satisfy the Contingencies. Upon

delivery of such written notice, this Agreement shall terminate, and thereafter both Parties shall be fully released from all further liability and obligations hereunder.

**ARTICLE III**  
**SUBMISSION MATERIALS**

6. **Sellers' Cooperation.** Sellers shall, within five (5) business days after the Effective Date of this Agreement, submit to the City the following information and/or materials not already provided by Sellers, to the extent the same is in the possession of Sellers, for use by the City in preparation for the purchase of the Premises (hereinafter, the "Property Information"):
- a. Surveys, site plans, topographical studies, plat maps, property descriptions and all engineering drawings for the utilities and public services servicing the Premises, including, by way of example, but not of limitation, the sanitary sewers, water lines and street improvements for the Premises; and
  - b. Soils reports for the Premises; and
  - c. Environmental studies of the Premises; and
  - d. Asbestos studies of the Premises; and
  - e. Copies of the title insurance policies issued upon Sellers' acquisition of the Premises.

All materials provided to the City pursuant to this Article III shall be deemed conditional. If this transaction is not closed in accordance with the terms hereof, such materials shall be returned to Sellers upon demand. No representation or warranty, express or implied, is or will be made with respect to the accuracy or completeness of any of the Property Information or any other information provided by Sellers to the City in connection with the sale of the Premises. Any use of or reliance upon the Property Information by the City is made at the City's sole risk and Sellers shall have no liability in connection therewith. Sellers hereby agree to reasonably cooperate with the City in all respects during the term of this Agreement, including Sellers joining in the execution of any and all reasonable notices, addendums, applications, instruments, licenses and documents contemplated pursuant hereto.

**ARTICLE IV**  
**EVIDENCE OF TITLE**

7. **Title Commitment.** The City may obtain a commitment (a "Title Commitment") from a title insurance company licensed to do business in the State of Ohio (the "Title Company") to issue an ALTA Owner's Title Insurance Policy (Form 6/17/06) in the full amount of the Purchase Price of the Premises (the "Title Policy"). The cost of the Title Policy shall be paid by the City. The Title Commitment will be certified to the Effective Date and will include copies of all recorded documents evidencing title exceptions raised in Schedule B of the Title Commitment. On or before the date of Closing, the Title Commitment must show in Sellers good and insurable title to the Premises, free and clear, except for the standard printed

exceptions contained in the final form of Schedule B of the Title Policy, and free and clear of all liens, charges, encumbrances and clouds of title, whatsoever, except the following (collectively, the "Permitted Encumbrances"):

- a. Those created or assumed by the City; and
- b. Zoning ordinances, legal highways and public rights-of-way which do not interfere with the practical use of the Premises; and
- c. Real estate taxes which are a lien on the Premises but which are not yet due and payable; and
- d. Easements and restrictions of record acceptable to the City which do not interfere with the City's anticipated use of the Premises, which shall be reflected in the final form of Schedule B to the Title Policy.

The Title Commitment shall fully and completely disclose all easements, negative or affirmative, rights-of-way, ingress or egress or any other appurtenances to the Premises, and shall provide insurance coverage in respect to all of such appurtenant rights. The Title Commitment shall include the results of a special tax search and examination for any financing statements filed of record which may affect the Premises. As used herein, Title Company means Stewart Title Company, 259 Schrock Road, Westerville, Ohio 43081.

8. **Endorsement at Closing.** At the Closing, the Title Company shall provide the City with endorsements to the Title Commitment updating the commitment to the Closing Date and showing no change in the state of the title to the Premises (other than mortgages which shall be released by Sellers at the Closing). After the Closing, the Title Company shall issue a final owner's title insurance policy in the amount of the Purchase Price.
9. **Survey.** The City may, at its own expense, obtain a current survey of the Premises. The survey shall include a legal description of the Premises and shall be certified by the surveyor to the City and the Title Company. Subject to the approval of the Title Company, the legal description set forth on the survey shall be used in the Title Commitment and policy and in all documents of transfer contemplated hereby. The survey shall be sufficient to waive or insure over any and all questions or survey.
10. **Status of Title; Permitted Encumbrances; Objections.** Up and until fifteen (15) days prior to the Closing Date (the "Deadline for Objections"), the City may provide Sellers with written objections to the extent that the Title Commitment reveals matters other than the Permitted Encumbrances (the "Objections") which constitute a monetary lien or which interfere with the City's use of the Premises for its intended purpose. The City's failure to make written Objections by the Deadline for Objections will constitute a waiver of the City's right to make Objections. Upon the City giving Seller written notice of Objections, Sellers may either agree in writing to satisfy the Objections, or in the absence of Sellers' written agreement to satisfy, the City shall either waive the Objections, five (5) days prior to the Closing or terminate this Agreement. In the event the Objections are not cured or removed, or in the event Sellers cannot

provide satisfactory evidence that the Objections will be cured on or before the Closing Date or that satisfactory endorsements to the Title Policy will be issued in order to satisfy the Objections, the City shall make its election at closing, by written notice to Sellers, to either:

- a. Accept title to the Premises, at which point such uncured Objections shall be Permitted Encumbrances hereunder; or
- b. Terminate this Agreement.

The City's failure to make its election five (5) days prior to Closing shall constitute the City's election to accept title to the Premises, at which point such uncured Objections shall be Permitted Encumbrances hereunder.

#### **ARTICLE V** **DEED AND OTHER DOCUMENTS**

11. **Deed of Conveyance.** Sellers, as grantors, shall convey to the City, at the Closing, good and insurable title in fee simple to the Premises by transferable and recordable limited warranty deed under O.R.C. 5302.07, signed by all parties necessary, free and clear of all defects, mortgages, easements, restrictions, reservations, conditions, agreements, liens and encumbrances, except the Permitted Encumbrances.
12. **Supplemental Instruments.** Sellers agree to execute any and all reasonable supplemental instruments or documents necessary to vest the City with the rights, titles, and interests described and depicted in Exhibit "A".

#### **ARTICLE VI** **INSPECTION**

13. **Tests and Engineering Studies.** During the Contingency Period, the City shall, at its sole cost, have the right through the City's associates, employees and/or contractors and agents, upon not less than 24 hours prior notice to Sellers, which for purposes of meeting the requirements of this Section, notice may be given solely by email to Sellers and Sellers' agent, to enter upon the Premises for the purpose of surveying, inspecting, making contour surveys, temporary excavations, test borings and other purposes required by the City to enable the City to ascertain whether it is feasible to complete the proposed development of the Premises.

#### **ARTICLE VII** **CLOSING**

14. **Closing.** The Parties agree that the purchase and sale of the Premises shall be closed (the "Closing") no later than December 15, 2021, (the "Closing Date"), unless otherwise agreed to in writing by the Parties. Said Closing shall be held at a time and place in Franklin County, Ohio as shall be selected by the City, and agreed to by Sellers.

- 15. Possession.** At Closing, Sellers shall deliver exclusive possession of the Premises, except as provided in Article X herein.
- 16. Sellers' Closing Documents.** In addition to the deed described in Article V, at the Closing, Sellers shall deliver to the City: (i) a closing statement showing the Purchase Price and all charges, prorations and/or credits to the City or Sellers provided for herein, (ii) all consents, affidavits or other documents reasonably and customarily required by the Title Company to issue the Title Policy, (iii) such evidence of authority as the City or the Title Company reasonably may deem necessary to evidence the authority of the Sellers signatory to enter into this Agreement and to consummate the transactions contemplated hereby, and (iv) an affidavit that Sellers are not non-resident "aliens", "foreign corporation", "foreign partnership", "foreign trust", or "foreign estate" within the meaning of the Internal Revenue Code and Regulations thereunder.
- 17. The City's Closing Documents.** At the Closing, the City shall deliver to Sellers: (i) the Purchase Price, (ii) a closing statement showing the Purchase Price and all charges, prorations and/or credits to the City or Sellers provided for herein, (iii) such evidence of authority as Sellers or the Title Company reasonably may deem necessary to evidence the authority of the City's signatory to enter into this Agreement and to consummate the transactions contemplated hereby, and (iv) any other documents reasonably requested by the Title Company.
- 18. Adjustments at Closing.** At Closing, the Parties shall apportion, adjust, prorate and pay the following items in the manner hereinafter set forth:
- a. Real Estate Taxes and Assessments. Sellers shall pay or credit against the Purchase Price all delinquent real estate taxes, together with penalties and interest thereon, all assessments which are a lien against the Premises as of the Closing Date (both current and reassessed, whether due or to become due and not yet payable), all unpaid real estate taxes for years prior to Closing, and real estate taxes for the year of Closing, prorated through the Closing Date. The proration of undetermined taxes shall be based upon a three hundred sixty-five (365) day year and on the last available tax rate, giving due regard to applicable exemptions, recently voted millage, change in tax rate or valuation (as a result of this transaction or otherwise), etc., whether or not the same have been certified. It is the intention of the Parties in making this tax proration to give the City a credit in an amount as close as possible to the amount which the City will be required to remit to the County Auditor for the period of time preceding the Closing Date hereof.
  - b. CAUV. Sellers acknowledge that the Premises is not currently valued as "Current Agriculture Use Value" ("CAUV") property on the books of the Franklin County Auditor and Treasurer and there is no real estate tax recoupment owed on the Premises for removing it from CAUV classification.
  - c. The prorations provided in 19(a) and (b) above shall be final at Closing. Sellers warrant and represent that, to each of its actual knowledge, (1) all assessments presently constituting a lien are shown on the County Treasurer's records and (2) no

improvement, site or area, has been installed by any public authority, the cost of which is to be assessed against the Premises in the future. Sellers further warrant and represent that neither Sellers nor any of their agents or representatives have received written notice, or have actual knowledge of any proposed improvement, any part of the cost of which would or might be assessed against the Premises in the future. The covenants and agreements set forth in this Agreement shall not be cancelled by performance under this Agreement, but shall survive the Closing and the delivery of the deed of conveyance hereunder for a period of one (1) year.

- d. *Sellers' Expenses.* Sellers shall, at the Closing (unless previously paid) pay by credit against the Purchase Price the following:
  - i. The cost of all municipal services and public utility charges due for the Premises (if any) through the Closing Date; and
  - ii. One-half (1/2) the fee, if any, charged by the Title Company for closing the transaction contemplated herein.
  
- e. *The City's Expenses.* The City shall at the Closing (unless previously paid) pay the following:
  - i. The cost of the Title Commitment and Owner's Title Policy; and
  - ii. The recording fees required for recording the general warranty deed; and
  - iii. The cost of the survey referred to in Article IV paragraph 10; and
  - iv. One-half (1/2) the fee, if any, charged by the Title Company for closing the transaction contemplated herein.
  
- f. *Brokers.* The City represents and warrants that they have not dealt with any real estate broker or realtor in connection with the sale of the Premises, and that no realtor's or finder's fees, brokerage commissions, or other forms of compensation are due to any realtor or broker in connection with this transaction. Sellers represent that they have dealt with a broker and that such commissions and/or fees to paid with such broker shall be handled as part of the Closing. Sellers shall indemnify and hold harmless the City in relation to any such claims made by any realtor and/or broker claiming a right to commissions and/or fees by, through or under Sellers.

**ARTICLE IX**  
**WARRANTIES AND REPRESENTATIONS OF THE PARTIES**

**19. Warranties and Representations of Sellers.** In addition to any other representation or warranty contained in this Agreement, Sellers hereby represent and warrant, to the best of their knowledge, as follows:

- a. The Sellers or any agent or representative of Sellers have not received any written notice or notices, from any municipal, county, state or any other governmental agency or body, of any zoning, fire, health, environmental or building violation, or violation

of any laws, ordinances, statutes or regulations relating to pollution or environmental standards, which have not heretofore been corrected; and

- b. The execution, delivery and performance of this Agreement, and the consummation of the transaction contemplated hereby, will not result in any breach of, or constitute any default under, or result in the imposition of any lien or encumbrance against, the Premises, under any agreement or other instrument to which Sellers are a party or by which Sellers or the Premises might be bound; and
- c. The Sellers or any agent, employee or representative of Sellers have not received any written notice, of any change contemplated in any applicable laws, ordinances or restrictions, or any judicial or administrative action, or any action by adjacent landowners, which would prevent, limit or in any manner interfere with the City's proposed use of the Premises; and
- d. Through and until the Closing Date, Sellers shall not enter into any easement, new lease or other contract pertaining to the Premises, unless otherwise approved herein or in writing by the City; and
- e. To the best of Sellers' knowledge, there are no hazardous wastes, hazardous substances, or hazardous materials located in, on or about or generated from the Premises which may require remediation or which may result in penalties under any applicable law; and
- f. Sellers are not a "Foreign Person" as that term is defined in the Foreign Investment in Property Tax Act.

Notwithstanding anything to the contrary contained herein, no such representation and/or warranty is made in relation to any notice received from or delivered by the City, as the same pertain to the underlying substance of those warranties and representations made in subsections 19 a. or 19 c. above.

**20. Breach of Warranties by Sellers Prior to Closing.** If, during the pendency of this Agreement, the City determines that any warranty or representation given by Sellers to the City under this Agreement was untrue, incorrect, or misleading, in whole or in part, in any material respect, the same shall constitute a default by Sellers hereunder. In such event, the City may give written notice thereof and shall thereafter have the right to terminate this Agreement or the right to pursue in a court of competent jurisdiction a claim for specific performance hereunder.

**21. "As Is" Condition.** The City acknowledges and agrees that, except as otherwise expressly stated in this Agreement and/or in any documents provided to the City by Sellers (i.e., the Deed) at Closing, (a) Sellers have not made any warranty, guaranty or representation relating to the Premises, (b) The City is relying solely on its own investigation of the Premises and not on any information provided or to be provided by Sellers, and (c) The City agrees to accept the Premises and acknowledges that the sale thereof as provided for in this Agreement is made by

Sellers on an “As Is, Where Is and with all faults” basis, except as otherwise expressly stated in this Agreement and/or in any documents provided to the City by Sellers (i.e., the Deed) at Closing. For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the City, saving and excepting as otherwise expressly stated in this Agreement and/or in any documents provided to the City by Sellers (i.e., the Deed) at Closing, the City hereby remises, releases and forever discharges Sellers and its members, managers, agents and employees from any and all obligations, claims, liabilities, suits, costs, expenses, damages, actions and/or causes of action, matured or contingent, known or unknown, which may arise out of, or are in any way or in any manner connected with or related to, in whole or in part, the condition of the Premises, including, but not limited to any claims under applicable Environmental Laws, or otherwise. The term “Environmental Laws” shall mean all present and future federal, state and local laws, regulations and ordinances and principles of common law relating to the protection of the environment, public health or public safety, including, but not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act, (42 U.S.C. § 9601, et seq., as amended), the Resource Conservation and Recovery Act (42 U.S.C. § 6901, et seq., as amended), the Clean Water Act (33 U.S.C. § 7401, et seq. as amended), the Safe Drinking Water Act (42 U.S.C. § 300f, et seq., as amended) the Toxic Substances Control Act (15 U.S.C. § 2601, et seq. as amended), any state and local counterparts of such statutes or regulations and any state voluntary cleanup programs, each as amended from time-to-time. The substance of this Section 22 is intended to survive the Closing or earlier termination of this Agreement.

**22. Warranties and Representations of the City.** In addition to any other representation or warranty contained in this Agreement, the City hereby represents and warrants as follows:

a. N/A

**23. Warranties and Representations Survive Closing.** The warranties, representations, covenants and agreements set forth in this Agreement shall not be cancelled by performance under this Agreement, but shall survive the Closing and the delivery of the deed of conveyance hereunder for a period of one (1) year after the Closing Date. All representations and warranties set forth in this Article IX shall be true and correct as of the date hereof and as of the Closing Date, and at Closing, if requested by the City, Sellers shall so certify, in writing, in form reasonably requested by the City. Sellers hereby agree to indemnify and hold the City harmless from and against any and all claims, demands, liabilities, costs and expenses of every nature and kind (including attorneys' fees) which the City may sustain at any time by reason of the material untruth, breach, misrepresentation or nonfulfillment of any of the covenants, representations, warranties or agreements made by Sellers in this Agreement or in any documents or agreements delivered in connection with this Agreement or with the closing of the transaction contemplated hereby.

## **ARTICLE X** **NOTICES**

**24. Notices.** Whenever in this Agreement it shall be required or permitted that notice be given or served by either Party hereto on the other, such notice shall be in writing and shall be deemed

served when either delivered in person to the following designated agents for that purpose, or deposited in the United States Mail, by certified or registered mail, postage prepaid, return receipt requested, or with a national courier service (e.g., Federal Express) addressed to the other Party as follows:

If to Sellers: Mitchell E. Haaf and Kimberly S. Haaf  
4227 Winterringer Street  
Hilliard, Ohio 43026  
@ .com

With copy to: Skip Weiler, President  
The Robert Weiler Company  
10 N. High Street, Suite 104  
Columbus, OH 43215  
skip@rweiler.com

or to such other address as Sellers may hereinafter designate by written notice to City. Any notice to be served on City shall be addressed as follows:

If to the City: Dana McDaniel  
City Manager  
City of Dublin  
5555 Perimeter Drive  
Dublin, Ohio 43017  
[dmcdaniel@dublin.oh.us](mailto:dmcdaniel@dublin.oh.us)

with copy to: Jennifer D. Readler, Esq.  
Frost Brown Todd LLC  
One Columbus, 10 West Broad Street  
Columbus, Ohio 43215  
[jreadler@fbtlaw.com](mailto:jreadler@fbtlaw.com)

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

## **ARTICLE XV** **GENERAL PROVISIONS**

**25. Governing Law.** This Agreement is being executed and delivered in the State of Ohio and shall be construed and enforced in accordance with the laws of the State of Ohio. For all litigation, disputes and controversies which may arise out of or in connection with this Agreement, the undersigned hereby waive the right to trial by jury and consent to the jurisdiction of the courts in the State of Ohio.

- 26. Entire Agreement.** This Agreement constitutes the entire contract between the Parties hereto, and may not be modified except by an instrument in writing signed by the Parties hereto, and supersedes all previous agreements, written or oral, if any, of the Parties.
- 27. Time of Essence.** Time is of the essence of this Agreement in all respects.
- 28. Assignment.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto, their respective heirs, legal representatives, successors and assigns.
- 29. Waiver.** No waiver of any of the provisions of this Agreement shall be deemed, nor shall the same constitute a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing waiver. No waiver shall be binding, unless executed, in writing, by the Party making the waiver.
- 30. Headings.** The section headings contained in this Agreement are for convenience only and shall not be considered for any purpose in construing this Agreement.
- 31. Survival.** The terms and provisions of this Agreement shall survive the delivery of the deed of conveyance hereunder.
- 32. Counterparts.** This Agreement may be executed in one or more counterparts all of which will be considered one and the same agreement, binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.
- 33. Day for Performance.** Wherever herein there is a day or time period established for performance and such day or the expiration of such time period is a Saturday, Sunday or legal holiday, then such time for performance shall be automatically extended to the next business day.
- 34. Severability.** If any provision of this Agreement, or any covenant, obligation or agreement contained herein is determined by a court to be invalid or unenforceable, that determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if the invalid or unenforceable portion were not contained herein. That invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision, covenant, obligation or agreement shall be deemed to be effective, operative, made, entered into or taken in the manner and to the fullest extent permitted by law.

**SELLERS:**  
MITCHELL E. HAAF &  
KIMBERLY S. HAAF

**CITY:**  
THE CITY OF DUBLIN, OHIO  
An Ohio Municipal Corporation

\_\_\_\_\_  
Mitchell E. Haaf

\_\_\_\_\_  
Dana L. McDaniel, City Manager

\_\_\_\_\_  
Kimberly S. Haaf

Approved as to Form:

\_\_\_\_\_  
Jennifer D. Readler, Law Director

CERTIFICATE OF AVAILABILITY OF FUNDS

I certify that the money required to meet the obligations of the City of Dublin hereunder has hereby been lawfully appropriated for such purpose and is in the treasury or in the process of collection to the credit of this fund, free from any previous obligation or certification as required by Ohio Revised Code §5705.01 to §5705.47.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Matthew Stiffler, Dublin Finance Director

## **EXHIBIT A**

0127219.0620173 4830-3339-3145v1

**EXHIBIT "A"**

Situated in the Township of Washington, County of Franklin, State of Ohio, located in Virginia Military Survey No. 6748, being 1.000 acre out of an original 33.562 acre tract conveyed as Parcel "C" to Subsidiary Development Corporation in Deed Book 3677, page 668, and being more particularly described as follows:

Commencing, for reference, at a monument box found at the intersection of the centerline of Shier-Rings Road (County Road 42) and Cosgray Road (County Road 39), being the southeasterly corner of said 33.562 acre tract;

Thence, North 19 deg. 41' 30" West, along the centerline of said Cosgray Road, a distance of 888.10 feet to a railroad spike found at an angle point in said centerline;

Thence North 17 deg. 30' 18" West, continuing along said centerline, a distance of 190.00 feet to a spike set at THE TRUE POINT OF BEGINNING of the tract herein to be described;

Thence, from said TRUE PLACE OF BEGINNING, South 81 deg. 07' 38" West (passing an iron pin set at 30.34 feet) a total distance of 275.37 feet to an iron pin set;

Thence North 17 deg. 30' 18" West, parallel to the centerline of Cosgray Road, a distance of 160.00 feet to an iron pin set;

Thence North 81 deg. 07' 38" East, (passing an iron pin set at 245.03 feet) a total distance of 275.37 feet to a railroad spike set in the centerline of Cosgray Road;

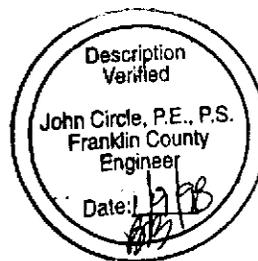
Thence South 17 deg. 30' 18" East, along said centerline, a distance of 160.00 feet to THE TRUE PLACE OF BEGINNING.

Containing 1.000 acre of land, more or less.

All iron pins set are 5/8" solid iron pins with yellow plastic caps stamped "STULTS & ASSOC."

Bearings are based on the centerline of Cosgray Road, County Road 39 (North 17 deg. 30' 23" West) as contained in the deed to Allen S. Shepherd, III, of record in O.R. 7209, page H14.

All references being to records of the Recorder's Office, Franklin County, Ohio.



0109B  
0109A  
ALL OF  
(272)  
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