# TAX INCREMENT FINANCING AGREEMENT

THIS TAX INCREMENT FINANCING AGREEMENT (the "*Agreement*") is made and entered into this _____ day of _____, 20__ (the "*Effective Date*"), by and between the CITY OF POWELL, OHIO ("*City*"), a municipal corporation duly organized and validly existing under the Constitution and the laws of the State of Ohio (the "*State*") and its Charter, and HARPERS POINTE LAND COMPANY LLC, an Ohio limited liability company (the *"Developer"*), under the circumstances summarized in the following recitals (the capitalized terms not defined in the recitals are being used therein as defined in Article I hereof).

## RECITALS:

**WHEREAS**, Developer owns approximately 8.748 acres of real property west of Beech Ridge Drive north of East Olentangy Street, which real property is depicted on the map attached hereto as **EXHIBIT A** and incorporated herein by reference (the *"Developer Property"*), and Developer plans to construct forty-six (46) patio-style homes (the *"Private Improvements"* as defined herein) on that real property; and

**WHEREAS**, the Parties have determined that certain public infrastructure improvements (the *"Public Infrastructure Improvements"* as defined herein) as generally described on **EXHIBIT B** attached hereto and incorporated herein will need to be constructed to facilitate the development of the Private Improvements; and

**WHEREAS**, in accordance with the TIF Statutes and pursuant to the TIF Ordinance, the Parties desire to enter into the TIF Agreement to provide generally for the development and financing of the Public Infrastructure Improvements; and

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

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

## ARTICLE I

## DEFINITIONS

**Section 1.1. Use of Defined Terms**. In addition to the words and terms defined elsewhere in this Agreement or by reference to another document, the words and terms set forth in Section 1.2 shall have the meanings set forth in Section 1.2 unless the context or use clearly indicates another meaning or intent.

**Section 1.2.** **Definitions**. As used herein:

"***Agreement***" means this Tax Increment Financing Agreement by and between the City and the Developer and dated as of the Effective Date.

"***Authorized City Representative***" means the City Manager of the City. The City may from time to time provide a written certificate to the Developer signed on behalf of the City by the City Manager designating an alternate or alternates who shall have the same authority, duties and powers as the Authorized City Representative.

"***Authorized Developer Representative***" means David J. LaRue, Managing Member of Developer. The Developer may from time to time provide a written certificate to the City signed on behalf of the Developer by the President of the Developer designating an alternate or alternates or a substitute who shall have the same authority, duties and powers as the Authorized Developer Representative.

"***City***" means the City of Powell, Ohio, an Ohio municipality.

"***City Council***" means the City Council of City.

"***Code***" means the Internal Revenue Code of 1986, as amended, applicable Treasury Regulations (whether temporary or final) under the Code or the statutory predecessor of that Code, and any amendments of, or successor provisions to, the foregoing and any official rulings, announcements, notices, procedures and judicial determinations regarding the foregoing, all as and to the extent applicable.

"***Construction Documents***" means this Agreement and the Drawings and Specifications as such documents may be revised or supplemented from time to time with the approval of the Authorized City Representative and the Authorized Developer Representative, which Drawings and Specifications contain the detailed construction plans and specifications for the Public Infrastructure Improvements and when completed, will be placed on file with the Authorized City Representative on behalf of the City.

"***Cost of the Work***" means the actual costs of the construction and installation of the Public Infrastructure Improvements, estimates of which are reflected in **EXHIBIT B**, and the final costs of which shall be reflected in a written requisition in the form attached hereto as **Exhibit D**.

"***County***" means the County of Delaware, Ohio.

"***Developer***" means HARPERS POINTE LAND COMPANY LLC, an Ohio limited liability company organized and existing under the laws of the state of Ohio, including any successors or assigns thereof permitted under this Agreement.

"***Developer's Completion Certificate***" shall have the meaning set forth in Section 4.3(a) hereof.

***"Developer TIF Reimbursement Amount"*** means the amount of the cost to construct the Public Infrastructure Improvements which shall not exceed Nine Hundred Fifty Thousand Dollars ($950,000.00).

"***Drawings and Specifications***" shall have the meaning set forth in Section 5.1 hereof.

"***Effective Date***" means the date as defined in the preambles of this Agreement.

"***Engineer***" means CT Consultants Inc., or any other architectural or engineering firm licensed to perform architectural and engineering services within the State of Ohio and appointed by Authorized Developer Representative, with the consent of the City which consent shall not be unreasonably withheld or delayed.

"***Engineer's Completion Certificate***" shall have the meaning set forth in Section 4.3(b) hereof.

"***Event of Default***" means an Event of Default under Section 7.1 hereof.

"***Force Majeure***" means acts of God; fires; epidemics; landslides; floods; strikes; lockouts or other industrial disturbances; acts of public enemies; acts or orders of any kind of any governmental authority; insurrections; riots; civil disturbances; arrests; explosions; breakage or malfunctions of or accidents to machinery, transmission pipes or canals; partial or entire failures of utilities; shortages of labor, materials, supplies or transportation; lightning, earthquakes, hurricanes, tornadoes, storms or droughts; periods of unusually inclement weather or excessive precipitation; or any other cause or event not reasonably within the control of the Developer or the City, as the case may be, excluding, however, the inability of the Developer to obtain financing for its obligations hereunder.

"***Notice Address***" means:

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|---|---|
| as to City: | City of Powell<br>47 Hall Street<br>Powell, Ohio 43065<br>Attention: City Manager |
| as to Developer: | Harpers Pointe Land Company LLC<br>21186 Avalon Drive<br>Rocky River, OH 44116<br>Attention: David J. LaRue |
| with a copy to: | Kevin M. Maloney<br>71 E. Wilson Bridge Rd.<br>Suite A-4<br>Worthington, OH 43085-2358 |

"***Person***" shall mean an individual, a corporation, a partnership, an association, a limited liability company, a joint stock company, a joint venture, a trust, an unincorporated organization, or a government or any agency or political subdivision thereof.

"***Private Improvements***" means forty-six (46) patio-style homes.

"***Public Infrastructure Improvements***" means the public infrastructure improvements as generally described on **EXHIBIT B** and depicted on **EXHIBIT C**, each attached hereto and incorporated herein by reference and which will be more specifically described in the Construction Documents.

"***Public Infrastructure Improvements Site***" means the real property depicted on **EXHIBIT C** attached hereto and incorporated herein by reference.

"***State***" means the State of Ohio.

"***TIF Fund***" mean the Downtown Powell Tax Increment Fund created in Section 4 of the TIF Ordinance.

"***TIF Ordinance***" means Ordinance No. 2005-13 passed on June 7, 2005 by the City Council.

"***TIF Statutes***" means collectively, Sections 5709.40, 5709.42 and 5709.43 of the Ohio Revised Code, as those sections may be amended from time to time.

"***Work***" means the construction of the Public Infrastructure Improvements in accordance with this Agreement.

**Section 1.3. <u>Interpretation</u>**. Any reference in this Agreement to City or to any officers of City includes those entities or officials succeeding to their functions, duties or responsibilities pursuant to or by operation of law or lawfully performing their functions.

Any reference to a section or provision of the Constitution of the State, or to a section, provision or chapter of the Ohio Revised Code shall include such section, provision or chapter as modified, revised, supplemented or superseded from time to time; provided, that no amendment, modification, revision, supplement or superseding section, provision or chapter shall be applicable solely by reason of this paragraph if it constitutes in any way an impairment of the rights or obligations of the Parties under this Agreement.

Unless the context indicates otherwise, words importing the singular number include the plural number, and vice versa; the terms "*hereof*", "*hereby*", "*herein*", "*hereto*", "*hereunder*" and similar terms refer to this Agreement; and the term "*hereafter*" means after, and the term "*heretofore*" means before, the date of this Agreement. Words of any gender include the correlative words of the other gender, unless the sense indicates otherwise. References to articles, sections, subsections, clauses, exhibits or appendices in this Agreement, unless otherwise

indicated, are references to articles, sections, subsections, clauses, exhibits or appendices of this Agreement.

**Section 1.4.** **Captions and Headings**. The captions and headings in this Agreement are solely for convenience of reference and in no way define, limit or describe the scope of the intent of any article, section, subsection, clause, exhibit or appendix of this Agreement.

**Section 1.5.** **Conflicts among the TIF Ordinance, TIF Agreement and Construction Documents**. Where there is a conflict between the TIF Ordinance, the Agreement and the Construction Documents, the conflict shall be resolved by providing the better quality or greater quantity and compliance with the more stringent requirement.

If an item is shown on the Drawings but not specified, the Developer shall provide the item of the same quality as similar items specified, as determined by the Engineer. If an item is specified but not shown on the Drawings, it shall be located as directed by the Engineer.

## ARTICLE II

## GENERAL AGREEMENT AND TERM

**Section 2.1.** **General Agreement Among Parties**. For the reasons set forth in the Recitals hereto, which Recitals are incorporated herein by reference as a statement of the public purposes of this Agreement and the intended arrangements among the Parties, the Parties shall cooperate in the manner described herein to facilitate the construction of the Public Infrastructure Improvements.

**Section 2.2.** **Term of Agreement**. This Agreement shall become effective as of the Effective Date and shall continue until the Parties have satisfied their respective obligations as set forth in this Agreement, unless sooner terminated in accordance with the provisions set forth herein.

## ARTICLE III

## REPRESENTATIONS AND COVENANTS OF THE PARTIES

**Section 3.1.** **Representations and Covenants of City**. City represents and covenants that:

(a) It is a municipal corporation duly organized and validly existing under the Constitution and applicable laws of the State and its Charter.

(b) It is not in violation of or in conflict with any provisions of the laws of the State or of the United States of America applicable to City which would impair its ability to carry out its obligations contained in this Agreement.

(c) It is legally empowered to execute, deliver and perform this Agreement and to enter into and carry out the transactions contemplated by this Agreement. To the knowledge of City, that execution, delivery and performance do not and will not violate or conflict with any provision of law applicable to City, including its Charter, and do not and will not conflict with or result in a default under any agreement or instrument to which City is a party or by which it is bound. Among other things, it has determined that it is appropriate to enter into this Agreement in lieu of constructing the Public Infrastructure Improvements pursuant to a competitive bidding process because the Developer's payment therefor is limited to the Developer TIF Reimbursement Amount.

(d) This Agreement to which it is a Party has, by proper action, been duly authorized, executed and delivered by City and all steps necessary to be taken by City have been taken to constitute this Agreement, and the covenants and agreements of City contemplated herein are valid and binding obligations of City, enforceable in accordance with their terms.

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

(f) It will do all things in its power in order to maintain its existence or assure the assumption of its obligations under this Agreement by any successor public body.

(g) The TIF Ordinance has been duly passed and is in full force and effect.

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

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

(b) It is not in violation of or in conflict with any provisions of the laws of the State or of the United States of America applicable to the Developer which would impair its ability to carry out its obligations contained in this Agreement.

(c) It is legally empowered to execute, deliver and perform this Agreement and to enter into and carry out the transactions contemplated by this Agreement. To the knowledge of the Developer, that execution, delivery and performance do not and will not violate or conflict with any provision of law applicable to the Developer, and do not and will not conflict with or result in a default under any agreement or instrument to which the Developer is a party or by which it is bound.

(d) This Agreement to which it is a Party has, by proper action, been duly authorized, executed and delivered by the Developer and all steps necessary to be taken by the Developer have been taken to constitute this Agreement, and the covenants and agreements of the Developer contemplated herein are valid and binding obligations of the Developer, enforceable in accordance with their terms.

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

(f) It will do all things in its power in order to maintain its existence or assure the assumption of its obligations under this Agreement by any successor entity.

(g) The Developer hereby agrees to make the Service Payments due with respect to any parcel of the Property owned by it during its period of ownership, all pursuant to and in accordance with the requirements of the TIF Statutes, the TIF Ordinance, the provisions of Ohio law relating to real property tax collections and any subsequent amendments or supplements thereto. Service Payments will be made semiannually to the County Treasurer (or to that Treasurer's designated agent for collection of the Service Payments) on or before the final dates for payment of real property taxes for the Property, until expiration of the TIF Exemption. Any late payments will bear penalties and interest at the then current rate established under Sections 323.121 and 5703.47 of the Ohio Revised Code or any successor provisions thereto, as the same may be amended from time to time. Service Payments will be made in accordance with the requirements of the TIF Statutes and the TIF Ordinance and, for each parcel of the Property, will be in the same amount as the real property taxes that would have been charged and payable but for the TIF Exemption, including any penalties and interest. The Developer will not, under any circumstances, be required (i) for any tax year to pay both real property taxes and Service Payments with respect to any increase in assessed value of the Property, whether pursuant to Section 5709.42 of the Ohio Revised Code or this Agreement, and (ii) to make Service Payments as to any portion of a structure for any period it is subject to an exemption pursuant to Sections 3735.65 through 3635.70 of the Ohio Revised Code.

(h) Enforcement of Obligation to Make Service Payments; Priority of Lien. The Developer acknowledges that the provisions of Section 5709.91 of the Ohio Revised Code, which specify that the Service Payments for each parcel within the Property will be treated in the same manner as taxes for all purposes of the lien described in Section 323.11 of the Ohio Revised Code, including, but not limited to, the priority of the lien and the collection of Service Payments, will apply to this Agreement and to the parcels within the Property and any improvements thereon.

(i) Failure to Make Payments. Should the Developer fail to make any payment required hereunder, the Developer shall pay, in addition to the Service Payments it is required to pay hereunder, such amount as is required to reimburse the City for any and all reasonably and actually incurred costs, expenses and amounts (including reasonable attorneys' fees) required by the City to enforce the provisions of this Agreement against the Developer.

## ARTICLE IV

## CONSTRUCTION OF PUBLIC INFRASTRUCTURE IMPROVEMENTS

**Section 4.1. General Considerations**. In consideration of the Developer' promise to construct or cause to be constructed the Public Infrastructure Improvements, the City agrees,

subject to Section 4.4 hereof, to reimburse and/or otherwise pay the Developer the Developer TIF Reimbursement Amount in accordance with Section 6.2 and/or any other applicable provisions of this Agreement.

**Section 4.2. Construction of the Public Infrastructure Improvements**. The Developer covenants and agrees that it will cause to be constructed and installed all of the Public Infrastructure Improvements in accordance with this Agreement and the Construction Documents.

The Developer shall supervise, perform and direct the Work utilizing qualified personnel, and in accordance with the standards of care normally exercised by construction organizations performing similar work. The Developer shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures for coordinating all portions of the Work.

The Developer agrees that the Public Infrastructure Improvements, including all rights-of-way and easements associated therewith, including those identified on **EXHIBIT C** (which is attached hereto and incorporated herein by reference), shall be dedicated for public use upon completion and acceptance as provided in Sections 4.3 and 4.4 hereof.

**Section 4.3. Completion of the Public Infrastructure Improvements**. The Public Infrastructure Improvements shall be deemed completed upon fulfillment of the following conditions:

(a) Receipt of written notice (the "*Developer's Completion Certificate*") from the Authorized Developer Representative that the Public Infrastructure Improvements have been completed and are ready for final acceptance by the City, which notice shall (i) generally describe all property installed as part of the Public Infrastructure Improvements; (ii) state the cost of the Public Infrastructure Improvements as such costs are certified by the Engineer, and (iii) state and shall constitute the Developer's representation that the construction, improvement and equipping of the Public Infrastructure Improvements have been completed substantially in accordance with the Construction Documents, all costs then due and payable in connection therewith have been paid, there are no mechanics' liens or to its knowledge, after reasonable inquiry, any basis for such liens, and all obligations, costs and expenses in connection with the Public Infrastructure Improvements have been paid or discharged.

(b) Receipt from the Engineer of a final Certificate of Completion (the "*Engineer's Completion Certificate*") stating that to the best of the Engineer's knowledge, information and belief, and on the basis of the Engineer's on-site visits and inspections, that the Public Infrastructure Improvements have been satisfactorily completed in accordance with the terms and conditions of the Construction Documents, including all punch list items, that the construction, improvement and equipping of the Public Infrastructure Improvements have been accomplished in a manner that conforms to all then applicable governmental laws, rules and regulations; and that the Public Infrastructure Improvements have been approved by the applicable governmental authorities. Such Engineer's Completion Certificate shall be

delivered to both Developer and City no more than five (5) calendar days after Engineer confirms all of the foregoing requirements.

**Section 4.4.** **Acceptance of the Public Infrastructure Improvements**. The City shall have no obligation to determine the Public Infrastructure Improvements complete until (a) the Public Infrastructure Improvements have been satisfactorily completed in accordance with the Construction Documents, as evidenced by the Engineer's Completion Certificate and properly dedicated as public rights-of-way and easements to the City, Del-Co Water Co., Inc. ("Del-co"), and/or the County, as the case may be; (b) the City has received the Developer's Completion Certificate, the Engineer's Completion Certificate, and reasonable evidence of the County/Del-co's acceptance of the Public Infrastructure Improvements, copies of the approval letters issued by the public authorities as referenced in Section 4.3 herein, and copies of all documents and instruments to be delivered to the County/Del-co pursuant to the Construction Documents; and (c) the City has received evidence reasonably satisfactory to it that all liens on the Public Infrastructure Improvements, including, but not limited to, tax liens, the lien of any mortgage, and any mechanic's liens, have been or shall be released, or, with respect to mechanic's liens, security therefor has been provided pursuant to Section 5.8 hereof. The City agrees to determine that the Public Infrastructure Improvements have been completed without unreasonable delay upon satisfaction of the conditions listed in (a) though (c) of the immediately preceding sentence. The determination by the City of the Public Infrastructure Improvements have been completed shall not relieve the Developer of its responsibility for defects in material or workmanship as set forth in Section 5.10. hereof.

**Section 4.5.** **Extensions of Time**. If the Developer or the City is delayed in the commencement or progress of its obligations hereunder by a breach by the other Party of its obligations hereunder, or by failure of the Engineer to act as provided in this Agreement, or by Force Majeure, then the time for performance under this Agreement by the Party so delayed shall be extended for such time as is commercially reasonable under the circumstances.

**Section 4.6.** **Changes in the Work**. After the execution of this Agreement, and without invalidating this Agreement, the Developer, the City and the Engineer by written agreement (a "*Change Order*") may agree to changes in the Work. Changes in the Work shall be performed under applicable provisions of this Agreement and the Construction Documents, unless otherwise provided in the Change Order.

A Change Order shall be in the form of a written instrument prepared by the Engineer and signed by the Authorized City Representative, the Authorized Developer Representative and the Engineer, stating their agreement upon (a) the change in the Work, (b) any adjustment of the Cost of the Work and Developer TIF Reimbursement Amount, and (c) any extension of the time for performance under this Agreement. A Change Order shall be prepared by the Engineer and presented to the City and Developer within three (3) business days after all necessary cost and time information associated with the change is provided to the Engineer by the Developer. The Owner, Developer and Engineer shall have a reasonable amount of time to review and approve or reject the Change Order not to exceed five (5) business days after the Change Order is presented to each of them. The Developer shall have no obligation to perform any change in the Work prior to receipt of a fully-executed Change Order nor delay the completion of the Work as originally contemplated in the previously-approved Drawings and Specifications, hereinafter

defined, on account of a pending Change Order. Any costs or time extension made necessary due to the pendency of a Change Order shall be added to the Change Order and Developer TIF Reimbursement Amount.

**Section 4.7.** **Engineer**. Whenever this Agreement requires an action by or response from the Engineer, the same shall be provided within three (3) business days of Developer's request for the same. When Developer believes it has completed all punch list items, it shall notify the City and Engineer, and the Engineer shall visit the site and confirm the punch list has been completed within three (3) business days of Developer's notice or otherwise provide Developer with a detailed list of all items the Engineer believes are not in accordance with the Construction Documents as well as a list of any approvals or documents needed in order for issuance of the Engineer's Certificate of Completion.

## ARTICLE V

## FURTHER PROVISIONS RELATING TO THE CONSTRUCTION OF THE PUBLIC INFRASTRUCTURE IMPROVEMENTS

**Section 5.1.** **Construction Documents**. The Developer is causing to be prepared the Construction Documents, which shall be in a form satisfactory to the Authorized City Representative and the Developer. Any working drawings, plans and specifications prepared in connection with the Work (collectively, the "*Drawings and Specifications*") and that comprise the Construction Documents are instruments of service through which the Work to be executed is described. The Developer may retain one record set. The design professionals that create the Drawings and Specifications shall own the copyrights on the Drawings and Specifications and will retain all common law, statutory and other reserved rights, in addition to the copyrights; provided, however, that the Developer shall ensure that the agreements with each of the design professionals grant a non-exclusive, irrevocable, perpetual, and unlimited license to the City to use and reproduce the Drawings and Specifications solely and exclusively for the construction and maintenance of the Public Infrastructure Improvements. All copies of the Drawings and Specifications, except the record set of the Developer, shall be returned or suitably accounted for to the City, on request, upon final completion of the Public Infrastructure Improvements, and the copy thereof furnished to the Developer is for use solely with respect to the Public Infrastructure Improvements. They are not to be used by the Developer on other projects without the specific written consent of the City. The Developer is authorized to use and reproduce applicable portions of the Drawings and Specifications appropriate to the execution of obligations with respect to the Public Infrastructure Improvements; provided, however, that any reproduction and distribution of copies of the Drawings and Specifications by the Developer to the extent necessary to comply with official regulatory requirements or obligations of law shall not be construed as an infringement of the copyrights or other reserved rights of the City with respect to the Drawings and Specifications. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the Drawings and Specifications.

**Section 5.2.** **Prevailing Wage**. The City designates its Finance Director as the prevailing wage coordinator for the Public Infrastructure Improvements (the "*Prevailing Wage Coordinator*"). The Developer acknowledges and agrees that the Public Infrastructure Improvements are subject to the prevailing wage requirements of Chapter 4115 of the Ohio Revised Code and all wages paid to laborers and mechanics employed on the Public Infrastructure Improvements shall 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 Infrastructure Improvements, which wages shall be determined in accordance with the requirements of that Chapter 4115. The Developer shall comply, and the Developer shall require compliance by all contractors and shall require all contractors to require compliance by all subcontractors working on the Public Infrastructure Improvements, with all applicable requirements of that Chapter 4115, including any necessary posting requirements. The Developer (and all contractors and subcontractors thereof) shall cooperate with the Prevailing Wage Coordinator and respond to all reasonable requests by the Prevailing Wage Coordinator when the Prevailing Wage Coordinator is determining compliance by the Developer (and all contractors and subcontractors thereof) with the applicable requirements of that Chapter 4115.

The Prevailing Wage Coordinator shall notify the Developer of the prevailing wage rates for the Public Infrastructure Improvements. The Prevailing Wage Coordinator shall notify the Developer of any change in prevailing wage rates within seven working days of receiving notice of such change from the Director of the Ohio Department of Commerce. The Developer shall immediately upon such notification: (a) insure 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) insure that all contractors and subcontractors make the same necessary adjustments.

The Developer shall, upon beginning performance of this Agreement, notify the Prevailing Wage Coordinator of the commencement of Work and supply to the Prevailing Wage Coordinator the schedule of the dates during the life of this Agreement on which the Developer (or any contractors or subcontractor thereof) is required to pay wages to employees. The Developer (and each contractor or subcontractor thereof) shall also deliver to the Prevailing Wage Coordinator a certified copy of its payroll within two weeks after the initial pay date, and supplemental reports for each month thereafter and in connection with any Written Requisition, as illustrated in **EXHIBIT D** attached hereto and incorporated herein, which shall exhibit for each 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. The certification of each payroll shall be executed by the Developer (or contractor, subcontractor, or duly appointed agent thereof, if applicable) and shall recite that the payroll is correct and complete and that the wage rates shown are not less than those required by this Agreement and Chapter 4115 of the Ohio Revised Code.

The Developer shall provide to the Prevailing Wage Coordinator a list of names, addresses and telephone numbers for any contractors or subcontractors performing any Work on the Public Infrastructure Improvements as soon as they are available, and the name and address of the bonding/surety company and the statutory agent (if applicable) for those contractors or

subcontractors. The Developer shall not contract with any contractor or subcontractor listed with the Ohio Secretary of State for violations of Chapter 4115 of the Ohio Revised Code pursuant to Section 4115.133 of the Ohio Revised Code.

Prior to final payment under this Agreement, the Developer (and any contractor or subcontractor thereof) shall submit to the Prevailing Wage Coordinator the affidavit required by Section 4115.07 of the Ohio Revised Code.

**Section 5.3.** **Traffic Control Requirements**. The Developer shall be responsible for ensuring the provision, through contractors or otherwise, of all traffic control devices, flaggers and police officers required to properly and safely maintain traffic during the construction of the Public Infrastructure Improvements. All traffic control devices shall be furnished, erected, maintained and removed in accordance with the Ohio Department of Transportation's "Ohio Manual of Uniform Traffic Control Devices" related to construction operations and in consultation with the City's Engineer.

**Section 5.4.** **Equal Opportunity Clause**. The Developer will, in all solicitations or advertisements for employees placed by or on behalf of the Developer, state that the Developer is an equal opportunity employer. The Developer shall require all contractors and shall require all contractor's subcontractors to include in each contract a summary of this equal opportunity clause.

**Section 5.5.** **Insurance Requirements**. The Developer shall furnish proof to the City at the time of commencing construction of the Work of possession of comprehensive general liability insurance naming the City and its authorized agents as an additional insured. The minimum limits of liability for the required insurance policies shall not be less than the following unless a greater amount is required by law:

(a) Commercial General Liability ("*CGL*"): Bodily injury (including death) and property damage with a combined single limit of $1,000,000 each occurrence, with a $2,000,000 aggregate; $100,000 for damage to rented premises (each occurrence); $5,000 for medical expenses (person); and $1,000,000 for personal and advertising injury. CGL shall include (i) premises-operations, (ii) explosion and collapse hazard, (iii) underground hazard, (iv) independent contractors' protective, (v) broad form property damage, including completed operations, (vi) contractual liability, (vii) products and completed operations, with $2,000,000 aggregate and to be maintained for a minimum period of one (1) year after acceptance of the Public Infrastructure Improvements pursuant to Section 2.4, (viii) personal injury with employment exclusion deleted, (ix) owned, non-owned, and hired motor vehicles, and (x) stopgap liability for $100,000 limit. The general aggregate shall be endorsed to provide that it applies to the Work only.

(b) Automobile liability, covering all owned, non-owned, and hired vehicles used in connection with the Work: Bodily injury (including death) and property damage with a combined single limit of $1,000,000 per person and $1,000,000 each occurrence.

(c) Such policies shall be supplemented by an umbrella policy, also written on an occurrence basis, to provide additional protection to provide coverage in the total amount

of $5,000,000 for each occurrence and $5,000,000 aggregate. The Developer's insurance shall be primary to any insurance maintained by the City.

(d) The Developer shall obtain an additional named insurance endorsement for the CGL and automobile liability coverage with the following named insureds for covered claims arising out of the performance of the Work under the Construction Documents:

(i) the City of Powell; and

(ii) Powell City Council members, executive officers, and employees;

Each policy of insurance and respective certificate of insurance shall expressly provide that no less than 30 days prior written notice shall be given to City in the event of cancellation or non-renewal of the coverage contained in such policy.

(e) Insurance policies shall be written on an occurrence basis only.

(f) Products and completed operations coverage shall commence with the certification of the acceptance of the Public Infrastructure Improvements pursuant to Section 4.4 and shall extend for not less than two years beyond that date.

(g) The Developer shall require all contractors and subcontractors to provide workers' compensation, CGL, and automobile liability insurance with the same minimum limits specified herein, to the extent reasonably practicable.

**Section 5.6.** **City Income Tax Withholdings**. The Developer shall withhold and pay, shall require all contractors to withhold and pay, and shall require all contractors to require all subcontractors to withhold and pay, all City income taxes due or payable with respect to wages, salaries, commissions and any other income subject to the provisions of Chapter 181 of the Powell Codified Ordinances.

**Section 5.7.** **Compliance with Occupational Health and Safety Act of 1970**. The Developer and all contractors and subcontractors shall be solely responsible for their respective compliance with the Occupational Safety and Health Act of 1970 under this Agreement.

**Section 5.8.** **Provision of Security for Mechanic's Liens**. To the extent any materialman, contractor, or subcontractor files and records a mechanic's lien against the Public Infrastructure Improvements, the Developer shall, or shall require the appropriate contractor to, provide any security required by Section 1311.11 of the Ohio Revised Code to cause that mechanic's lien to be released of record with respect to the Public Infrastructure Improvements.

**Section 5.9.** **Security for Performance**. The Developer shall furnish or require all contractors performing Work to furnish prior to commencement of construction of the Public Infrastructure Improvements a performance and payment bond or such other security which is acceptable to the City that shall name the Developer and the City as obligees in the form provided

by Section 153.57 of the Ohio Revised Code. The bond or security shall cover all Costs of the Work, including a guarantee period of one (1) year set forth in Section 5.10 hereof.

Any bond shall be executed by sureties that are licensed to conduct business in the State as evidenced by a Certificate of Compliance issued by the Ohio Department of Insurance. All bonds signed by an agent must be accompanied by a power of attorney of the agent signing for the surety. If the surety of any bond so furnished by a contractor declares bankruptcy, become insolvent or its right to do business is terminated in Ohio, the Developer, within five (5) days thereafter, shall substitute another bond and surety or cause the contractor to substitute another bond and surety, both of which shall be acceptable to the City and the Developer. The Developer shall provide to the City prior to commencement of any Work by any contractor a copy the security for performance provided by the Developer or contractor pursuant to this Section.

**Section 5.10. <u>Further Developer Guaranties Relating to the Public Infrastructure Improvements</u>**. The Developer guarantees that it will cause to be exercised in the performance of the Work the standard of care normally exercised by well-qualified engineering and construction organizations engaged in performing comparable services in Central Ohio. The Developer further warrants that the Work and any materials and equipment incorporated into the Work will be free from defects, including defects in the workmanship or materials (without regard to the standard of care exercised in its performance) for a period of one (1) year after final written acceptance of the Work by City (the "Guarantee Period").. The performance and payment bond or other security provided in Section 5.09 of the contractor(s) shall remain in effect until the expiration of the Guarantee Period. The guarantee provided in this Section shall be in addition to, and not in limitation of, any other guarantee, warranty or remedy provided by law, a manufacturer or the Construction Documents.

If defective Work becomes apparent within the warranty or Guarantee Period, the City shall promptly notify the Developer in writing and provide a copy of said notice to the Engineer. Within ten (10) days of receipt of said notice, the Developer shall visit the project in the company of one or more representatives of the City to determine the extent of the defective work and agree upon the repairs necessitated thereby. The Developer shall, within a reasonable time frame, repair or replace (or cause to be repaired or replaced) the defective Work, including all adjacent Work damaged as a result of such defective Work or as a result of remedying the defective Work. If the defective Work is considered by the City to be an emergency (i.e., it threatens exposure to personal injury, death or significant property damage to the City or the public), the City may require the Developer to visit the project within one (1) day of receipt of said notice. The Developer shall be fully responsible for the cost of temporary materials, facilities, utilities or equipment required during the repair or replacement of the defective Work.

If the Developer does not repair or replace defective Work within a reasonable time frame, the City shall repair or replace such defective Work and charge the cost thereof to the Developer or the Developer's surety; provided, however, that Developer shall have no less than thirty (30) days in which to effectuate the repairs after agreement on the scope of such repairs is reached by Developer and City (or, in the event of an emergency, no less than twenty-four hours after visiting the project to implement sufficient temporary measures). Work which is repaired or replaced by the Developer shall be inspected and accepted by the Engineer and City within

seven (7) calendar days of Developer's notification that the same has been completed and shall be guaranteed by the Developer for one (1) year from the date of acceptance of the corrective work by the City.

## ARTICLE VI

## PAYMENT OF COST OF THE WORK

**Section 6.1.** **Deposit of Monies in the TIF Fund**. Pursuant to the TIF Ordinance, the City has established the TIF Fund for, inter alia, the payment of the Cost of the Work. Upon the execution of this Agreement, the City covenants and agrees to deposit monies into the TIF Fund as such funds are received from the Delaware County Auditor from service payments paid by the owners of the Developer Property, upon which the Private Improvements shall be constructed.

**Section 6.2.** **Disbursements from the TIF Fund**. The City hereby agrees to pay to the Developer in accordance with the terms of this Agreement, upon the satisfaction of the conditions of this Agreement and for which a written requisition substantially in the form attached as **EXHIBIT D** (a "Written Requisition") is submitted to the City, the Cost of the Work up to the Developer TIF Reimbursement Amount, plus interest on the Cost of the Work as set forth below, as such funds are deposited into the TIF Fund from service payments paid by the owners of the Developer Property. Such payments shall be made after the City's receipt of the funds from the Delaware County Auditor in perpetuity until satisfaction of the Developer TIF Reimbursement Amount or the expiration of the Powell Downtown TIF.

The City shall pay all such monies on deposit in the TIF Fund from service payments paid by the owners of the Developer Property to or as directed by the Developer on the first business day following each May 31 and November 30 (each, a "Payment Date") until the Cost of the Work and all interest thereon has been paid in full. In addition to submission of a Written Requisition for the Cost of the Work, the Developer shall deliver to the City, at least fifteen (15) days prior to each Payment Date, a statement showing the total amount of interest then due to the Developer under this Agreement, along with a brief description of the basis and calculations for the same. Any monies paid pursuant to this Agreement will be applied first to the payment of interest on those Cost of the Work at the Interest Rate as set forth below and second to the payment of the Cost of the Work, so that all interest due shall be paid before the payment of any Cost of the Work.

Interest on the unpaid portion of the Cost of the Work will accrue from the date on which the conditions of Section 6 are satisfied at the Interest Rate. Any interest on any Cost of the Work that remains unpaid on the day following each Payment Date will itself accrue interest in the same manner as the Cost of the Work. For Cost of the Work accruing tax-exempt interest, as used in this Agreement, "*Interest Rate*" means, as of the date of each statement, the LIBOR index preceding such date, plus two hundred seventy-five basis points. Interest shall be calculated on the basis of a 360-day year consisting of twelve 30-day months.

All payments to the Developer hereunder on each Payment Date must be made pursuant to written instructions provided by the Developer.

Notwithstanding any other provision of this Agreement, the City's payment obligations hereunder are limited to the monies in the TIF Fund and do not constitute an indebtedness of the City within the provisions and limitations of the laws and the Constitution of the State of Ohio, and the Developer does not have the right to have taxes or excises levied by the City for the payment of the Cost of the Work and accrued interest.

The parties hereto intend that the interest payable by the City hereunder be exempt from federal income taxation and taxation by the State of Ohio to the extent permitted by law. With respect to any portion of that interest so intended to be exempt from federal and Ohio taxation, the City covenants that it will, to the extent possible, (i) comply with all applicable laws to obtain and maintain the federal and State of Ohio tax exemptions for such interest, including any expenditure requirements, investment limitations, rebate requirements or use restrictions, and (ii) without limiting the generality of the foregoing, that it will restrict the use of any "proceeds" of this Agreement (as defined in the Internal Revenue Code) in such manner and to such extent, if any, as may be necessary after taking into account reasonable expectations at the time the City's obligation is incurred, so that this Agreement will not constitute an "arbitrage bond" under Sections 103(b)(2) and 148 of the Internal Revenue Code, and will timely file an IRS Form 8038G or similar form when and as applicable.

**Section 6.3.** **Tax Covenants**. The obligation of the City to make payments to the Developer pursuant to this Agreement is not an obligation or pledge of any moneys raised by taxation and does not represent or constitute a debt or pledge of the faith and credit of the City. Except for the payments from the TIF Fund and in the aggregate amount described in this Agreement, the Developer shall receive no other monies from the City in connection with the construction of the Public Infrastructure Improvements.

## ARTICLE VII

## EVENTS OF DEFAULT AND REMEDIES

**Section 7.1.** **General**. Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement, or any of its terms or conditions, by either Party hereto, such Party shall, upon written notice from the other, proceed promptly to cure or remedy such default or breach, and, in any event, within thirty (30) days after receipt of such notice. In the event such default or breach is of such nature that it cannot be cured or remedied within said thirty (30) day period, then in such event the Party shall, upon written notice from the other, commence its actions to cure or remedy said breach within said thirty (30) day period, and proceed diligently thereafter to cure or remedy said breach. In case such action is not taken or not diligently pursued, or the default or breach shall not be cured or remedied within a reasonable time, the following remedies may be pursued: (i) the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to, proceedings to compel specific performance by the party in default or breach of its obligations; and (ii) in addition, if the default or breach is a failure of the Developer to achieve completion of the Work by the date set forth in Section 4.2 herein, as adjusted by Change Order, then City may proceed to perform the Developer's obligations under

this Agreement, and pay the costs thereof from the TIF Fund up to the amount designated for the Developer TIF Reimbursement Amount. The Developer and its surety shall be responsible for any deficiency in paying for curing the breach that cannot be covered out of the TIF Fund.

**Section 7.2.** **Other Rights and Remedies; No Waiver by Delay**. The Parties shall each have the right to institute such actions or proceedings as it may deem desirable for effectuating the purposes of, and its remedies under, this Agreement; provided, that any delay by either party in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Agreement shall not operate as a waiver of such rights or to deprive it of or limit such right in any way (it being the intent of this provision that neither party should be constrained, so as to avoid the risk of being deprived of or limited in the exercise of the remedy provided in this Agreement because of concepts of waiver, laches, or otherwise, to exercise such remedy at a time when it may still hope otherwise to resolve the problems created by the default involved); nor shall any waiver in fact made by either party with respect to any specific default by the other party under this Agreement be considered or treated as a waiver of the rights of such party with respect to any other defaults by the other party to this Agreement or with respect to the particular default except to the extent specifically waived in writing.

**Section 7.3.** **Force Majeure**. Notwithstanding anything contained in Sections 7.1 and 7.2 to the contrary and except as otherwise provided herein, no Party shall be considered in default in its obligations to be performed hereunder, if delay in the performance of such obligations is due to unforeseeable causes beyond its control and without its fault or negligence, including but not limited to, acts of God or of the public enemy, acts or delays of the other party, fires, floods, unusually severe weather, epidemics, freight embargoes, unavailability of materials, strikes or delays of contractors, subcontractors or materialmen but not including lack of financing capacity; it being the purpose and intent of this paragraph that in the event of the occurrence of any such enforced delay, the time or times for performance of such obligations shall be extended for the period of the enforced delay; provided, however, that the Party seeking the benefit of the provisions of this Section 7.3 shall within fourteen (14) days after the beginning of such enforced delay, notify the other Party in writing thereof and of the cause thereof and of the duration thereof or, if a continuing delay and cause, the estimated duration thereof, and if the delay is continuing on the date of notification, within thirty (30) days after the end of the delay, notify the other Party in writing of the duration of the delay.

## ARTICLE VIII

## DISPUTE RESOLUTION PROVISIONS AS TO AMENDMENTS AND CLAIMS

**Section 8.1.** **Notice and Filing of Requests**. Any request by the City or the Developer for amendment of the terms of this Agreement, including without limitation, for additional funds or time for performance shall be made in writing and given prior to completion of the Public Infrastructure Improvements.

**Section 8.2.** **Request Information**. In every written request given pursuant to Section 8.1 hereof, the party giving notice shall provide the nature and amount of the request;

identification of persons, entities and events responsible for or related to the request; and identification of the activities on the applicable schedule affected by the request.

**Section 8.3.** **Meeting**. Within ten (10) days of receipt of the request given pursuant to Section 8.1 hereof, the parties shall schedule a meeting in an effort to resolve the request and shall attempt in good faith to reach a decision on the request promptly thereafter or reach a decision on the request without a meeting, unless a mutual agreement is made to extend such time limit. The meeting shall be attended by persons expressly and fully authorized to resolve the request on behalf of the City and the Developer. Any decision on the request shall be made to the mutual reasonable satisfaction of the parties.

**Section 8.4.** **Mediation**. If no decision is reached within 30 days of the date of the meeting held pursuant to Section 8.3 hereof, the parties may submit the matter to mediation, upon written agreement between them, or exercise any other remedy permitted to them at law or in equity. All costs of mediation shall be split evenly between the Parties except that each Party shall pay its own attorneys' fees and preparation costs.

**Section 8.5.** **Performance**. The City and the Developer shall proceed with their respective performance of this Agreement during any dispute resolution process, unless otherwise agreed by them in writing.

## ARTICLE IX

## MISCELLANEOUS

**Section 9.1.** **Notice**. Except as otherwise specifically set forth in this Agreement, all notices, demands, requests, consents or approvals given, required or permitted to be given hereunder shall be in writing, fax or email and shall be deemed sufficiently given if actually received or if hand-delivered or sent by recognized, overnight delivery service or by certified mail, postage prepaid and return receipt requested, addressed to the other party at the address set forth in this Agreement or any addendum to or counterpart of this Agreement, or to such other address as the recipient shall have previously notified the sender of in writing, and shall be deemed received upon actual receipt, unless sent by certified mail, in which event such notice shall be deemed to have been received when the return receipt is signed or refused. Any process, pleadings, notice of other papers served upon the Parties shall be sent by registered or certified mail at their respective Notice Address, or to such other address or addresses as may be furnished by one party to the other.

**Section 9.2.** **Extent of Covenants; No Personal Liability**. All covenants, obligations and agreements of the Parties contained in this Agreement shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any present or future member, officer, agent or employee of any Party other than his or her official capacity, and neither the members of the legislative body of City nor any official executing this Agreement shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of the

execution thereof or by reason of the covenants, obligations or agreements of the Parties contained in this Agreement.

**Section 9.3.** **Severability**. If any provision of this Agreement, or any covenant, obligation or agreement contained herein is determined by a court to be invalid or unenforceable, that determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if the invalid or unenforceable portion were not contained herein. That invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision, covenant, obligation or agreement shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

**Section 9.4.** **Binding Effect Against Successors and Assigns**. The provisions of this Agreement shall be binding upon the successors or assigns of the Parties.

**Section 9.5.** **Recitals**. The Parties acknowledge and agree that the facts and circumstances as described in the Recitals hereto are an integral part of this Agreement and as such are incorporated herein by reference.

**Section 9.6.** **Entire Agreement**. This Agreement embodies the entire agreement and understanding of the Parties relating to the subject matter herein and therein and may not be amended, waived or discharged except in an instrument in writing executed by the Parties.

**Section 9.7.** **Executed Counterparts**. This Agreement may be executed in several counterparts, each of which shall be deemed to constitute an original, but all of which together shall constitute but one and the same instrument. It shall not be necessary in proving this Agreement to produce or account for more than one of those counterparts.

**Section 9.8.** **Governing Law**. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio or applicable federal law. All claims, counterclaims, disputes and other matters in question between any of the Parties and their respective agents and employees, arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction within Delaware County, Ohio.

**Section 9.9.** **Assignment**. This Agreement may not be assigned without the prior written consent of all non-assigning Parties.

**Section 9.10.** **Survival of Representations and Warranties**. All representations and warranties of the Parties in this Agreement shall survive the execution and delivery of this Agreement.

**Section 9.11** **Declaration Regarding Material Assistance/Nonassistance To a Terrorist Organization**. Developer hereby warrants and represents that neither it nor any person, company, affiliated group or organization that holds, owns or otherwise has a controlling interest in Developer has provided material assistance to an organization listed on the U.S. Department of State Terrorist Exclusion List. Developer acknowledges receipt of a current

version of the Terrorist Exclusion List, and Developer shall provide to Client a fully completed and executed Declaration Regarding Material Assistance/Nonassistance to a Terrorist Organization.

**[SIGNATURE PAGES TO FOLLOW]**

**CITY OF POWELL, OHIO**

By: _____

Printed: Steve Lutz

Title: City Manager

Approved as to Form:

By: _____

Printed: Eugene L. Hollins

Title: Director of Law

**DEVELOPER**

**HARPER POINTE LAND COMPANY LLC**

By: _____

Printed: _____

Title: _____

## FISCAL OFFICER'S CERTIFICATE

The undersigned, Director of Finance of the City of Powell, Ohio under the foregoing Agreement, certifies hereby that the moneys required to meet the obligations of the City during the year 20__ under the foregoing Agreement have been appropriated lawfully for that purpose, and are in the Treasury of the City or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

Dated: _____, 20__

_____
Director of Finance
City of Powell, Ohio

EXHIBIT A

MAP OF DEVELOPER'S PROPERTY


ILLUSTRATIVE PLAN - PUBLIC R.O.W.

# HARPER'S POINTE

PREPARED FOR ARLINGTON HOMES

DATE: 3.28.2017

SITE DATA

| | |
|---|---|
| TOTAL ACRES | +/- 8.75 ACRES |
| TOTAL UNITS | 47 |
| DENSITY | +/- 5.37 D.U./AC. |
| TREE PRESERVE / SCENIC / OPEN SPACES | 2.05 ACRES (23.4%) |

NORTH
SCALE: 1"=30'

Faris Planning & Design

LAND PLANNING • LANDSCAPE ARCHITECTURE


922 Grandview Avenue Suite 230 Columbus, OH 43212
(614) 487-1964 F (614) 487-1970

EXHIBIT B

PUBLIC INFRASTRUCTURE IMPROVEMENTS

The Public Infrastructure Improvements include:

- Public Storm Sewer and Susan Lane Public Street Construction. The TIF reimbursement eligible components of the improvements are identified in the Preliminary Cost Estimate (Exhibit B-1) and depicted on the Public Infrastructure Improvements Plan (Exhibit C, page 1 – Susan Lane; Exhibit C, page 2 – storm sewer).

# Harper's Pointe TIF Cost Considerations

12/13/2019

**EXHIBIT B-1**

**OFFSITE STORM SEWER COSTS**

| | | | |
|---|---|---|---|
| **Public Improvement Construction Costs** | | | |
| Layton Services - Sitework | | $ | 501,628.00 |
| Construction contingency | 10% | $ | 50,163.00 |
| General Conditions | | $ | 5,016.00 |
| Performance Bond | | $ | 9,426.00 |
| Construction Inspection Fees | | $ | 62,841.00 |
| **SUB-TOTAL** | | **$** | **629,074.00** |
| **Construction/Project Management** | 15% | $ | 94,361.00 |
| **Engineering Costs** | | | |
| Offsite Water Study | | $ | 4,200.00 |
| Project Engineering | | $ | 19,200.00 |
| As Built Drawings | | $ | 3,500.00 |
| Geo Tech Services | | $ | 10,000.00 |
| **SUB-TOTAL** | | **$** | **36,900.00** |
| **Other Costs** | | | |
| City of Powell Review Fees | | $ | 3,120.00 |
| Landscaping Repairs | | $ | 10,000.00 |
| **SUB-TOTAL** | | $ | 13,120.00 |
| **SUB-TOTAL** | | $ | 773,455.00 |
| **Cost of Capital - 6 months at** | 4.85% | $ | 18,756.00 |
| **TOTAL COSTS** | | $ | 792,211.00 |
| **TOTAL HARPER'S POINTE TIF COST CONSIDERATIONS** | | | |

**SUSAN LANE CONSTRUCTION - Public Burden Portion**

| | | | |
|---|---|---|---|
| **Public Improvement Construction Costs** | | | |
| Construction Bids | | $ | 59,259.00 |
| Construction Contingency 10% | | $ | 5,926.00 |
| General Conditions | | $ | 592.00 |
| Performance Bond | | $ | 3,089.00 |
| Street Signs and Striping | | $ | 6,500.00 |
| Construction Inspection Fees | | $ | 20,594.00 |
| **SUB-TOTAL** | | $ | 95,960.00 |
| **Construction Project Management** | 15% | $ | 14,394.00 |
| **Engineering Costs** | | | |
| Project Engineering | | $ | 930.00 |
| As Built Drawings | | $ | 1,085.00 |
| Geo Tech Services | | $ | 10,000.00 |
| **SUB-TOTAL** | | **$** | **12,015.00** |
| **Other Costs** | | | |
| City of Powell Review Fees | | $ | 930.00 |
| Landscaping Repairs | | $ | 930.00 |
| **SUB-TOTAL** | | $ | 1,860.00 |
| **SUB-TOTAL** | | $ | 124,229.00 |
| **Cost of Capital - 6 months at** | 4.85% | $ | 3,013.00 |
| **TOTAL COSTS** | | $ | 127,242.00 |
| OFF SITE SEWER COST = | | $ | 792,211.00 |
| | | **$** | **919,453.00** |

Exhibit C - Page 1

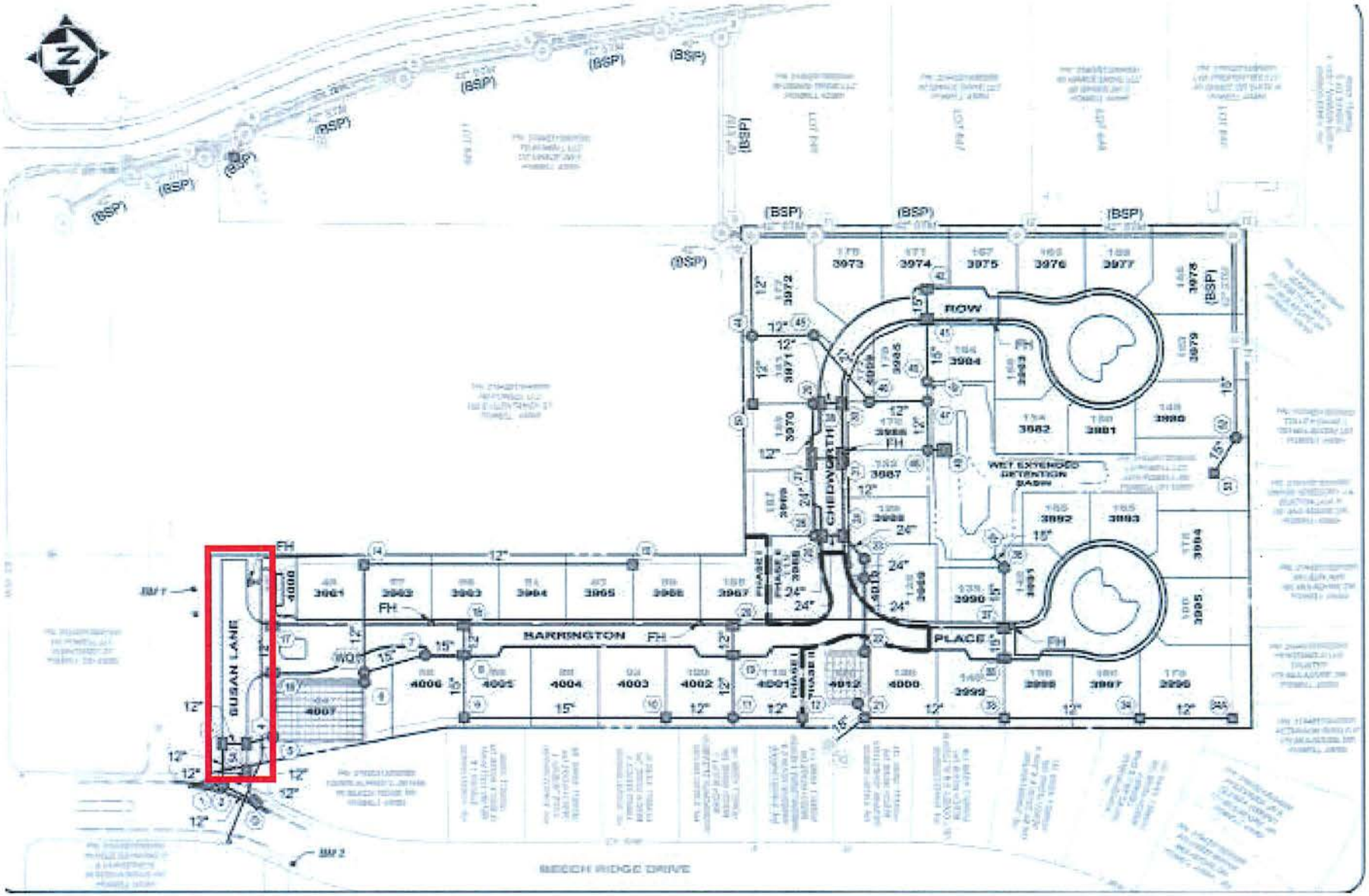

Exhibit C - Page 2

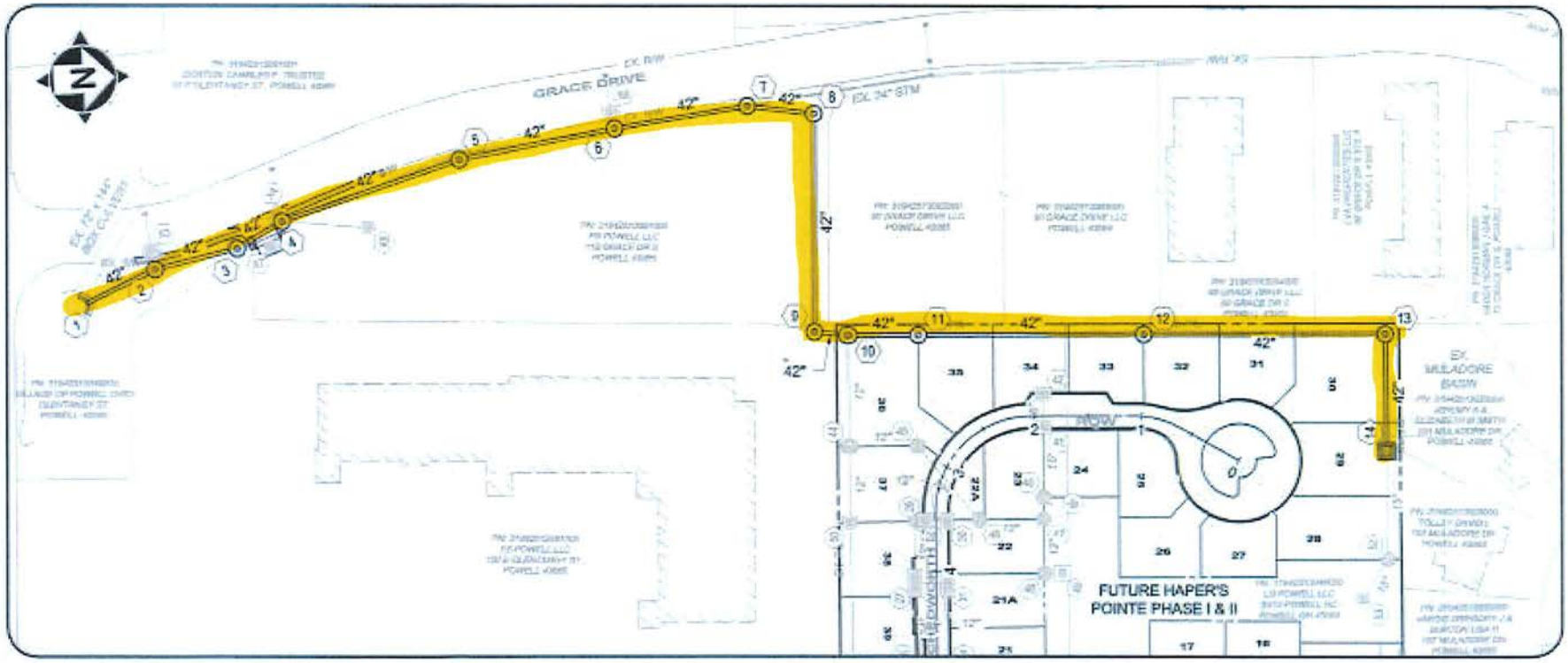

EXHIBIT C

PUBLIC INFRASTRUCTURE IMPROVEMENTS PLAN

Exhibit C - Page 1

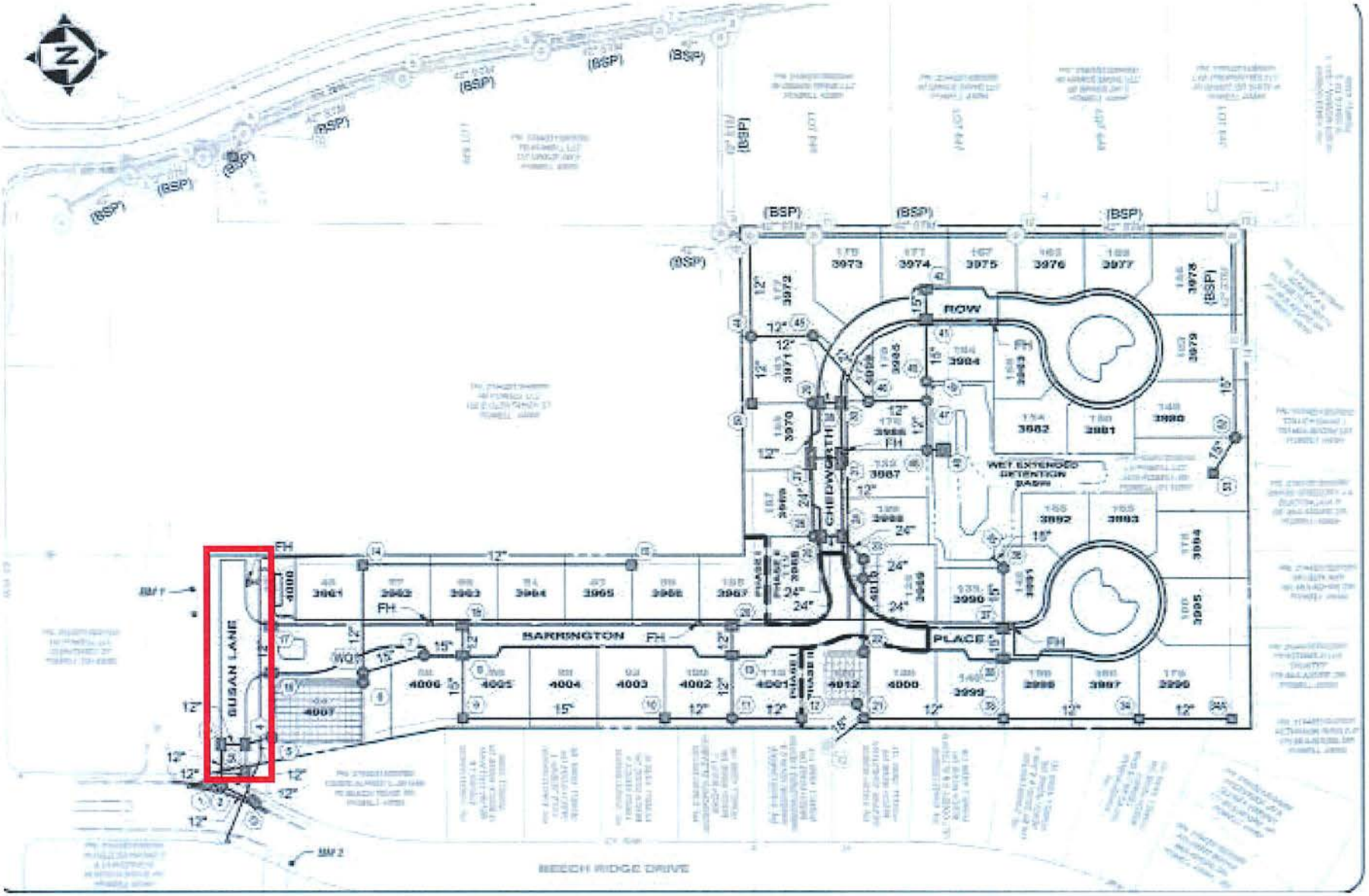

Exhibit C - Page 2

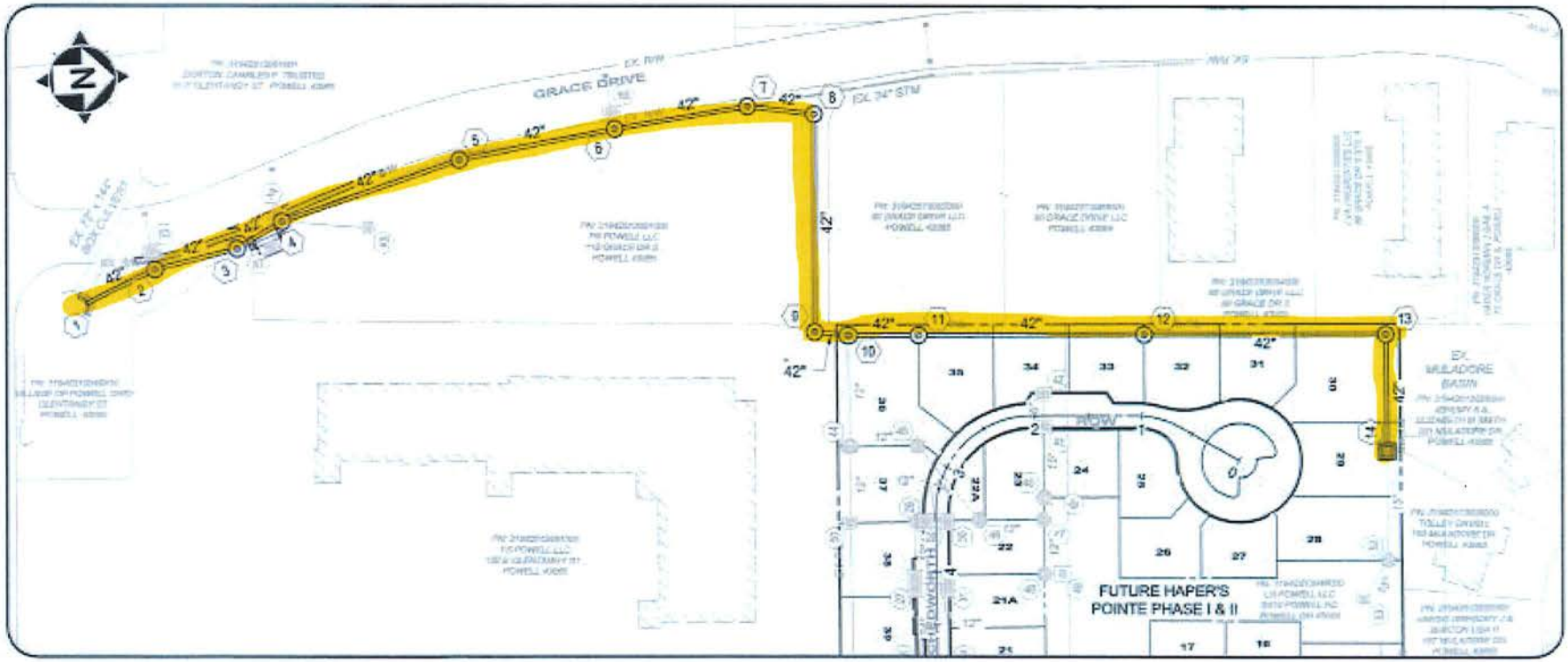

EXHIBIT D

City of Powell
36 S. High St.
Powell, Ohio 43110
Attention: Finance Director

Subject: Certificate and Request for Disbursement of Funds

You are hereby requested to disburse from the TIF Fund, which was created by Ordinance No. 2005-13, and in accordance with the provisions of Section 6.2 of the Tax Increment Financing Agreement, dated _____, 20__ (the "*Agreement*") by and between the City and Harpers Pointe Land Company LLC (the "*Developer*"), the amount of $_____ as more fully set forth on Schedule A attached hereto to be paid pursuant to this Written Requisition to the Developer at _____. All capitalized terms not otherwise defined in this Written Requisition have the meanings assigned to them in the Agreement.

The undersigned Authorized Developer Representative does hereby certify in compliance with Section 6.2 of the Agreement that:

(i) I have read the Agreement and definitions relating thereto and have reviewed appropriate records and documents of Developer relating to the matters covered by this Written Requisition;

(ii) The amount and nature of the portion of the Cost of the Work requested to be paid are shown on Schedule A attached hereto;

(iii) The disbursement herein requested is for an obligation properly incurred, is a proper charge against the TIF Fund as a Cost of the Work, has not been the basis of any previous payment to the Developer from the TIF Fund, and was made in accordance with the Construction Documents;

(iv) The Public Infrastructure Improvements have not been materially injured or damaged by fire or other casualty in a manner which, if not repaired or replaced, would materially impair the ability of the Developer to meet its obligations under the Agreement;

(v) To the best of the Developer's knowledge, the Developer is in material compliance with all provisions and requirements of the Agreement, including, but not limited to, all prevailing wage requirements;

(vi) To the best of the Developer's knowledge, no Event of Default set forth in Article VII of the Agreement, and no event which, but for the lapse of time or the giving of notice or both, would be such an Event of Default has occurred and is continuing;

(vii) Attached hereto as Schedule B are conditional lien waivers from any material suppliers, contractors and subcontractors who have provided services or materials to the Public Infrastructure Improvements as required by the Agreement, and the Developer further acknowledges its obligation to require, or require provision of, certain security pursuant to Section 5.8 of the Agreement in the event any mechanics' liens are filed in connection with the Public Infrastructure Improvements;

(viii) The Public Infrastructure Improvements are being and have been installed substantially in accordance with the Construction Documents for the Public Infrastructure Improvements and all materials for which payment is requested have been delivered to and remain on the Public Infrastructure Improvements Site;

(ix) The payment requested hereby does not include any amount which is not entitled to be retained under any holdbacks or retainages provided for in any agreement;

(x) The Developer has asserted its entitlement to all available manufacturers' warranties to date upon acquisition of possession of or title to such improvements or any part thereof which warranties have vested in Developer and shall be wholly transferable to the City.

EXECUTED this _____ day of _____, 20__.

By:_____
Authorized Developer Representative