

INFRASTRUCTURE AGREEMENT
(EASTGATE INDUSTRIAL PARK IMPROVEMENTS)

THIS INFRASTRUCTURE AGREEMENT (the "Agreement") dated December 30, 1999, between the CITY OF GAHANNA, OHIO, a municipal corporation organized and existing under the Constitution and laws of the State of Ohio (the "City"), and Pizzuti Properties/Eastgate Limited, an Ohio limited liability company having its principal office in Columbus, Ohio ("Pizzuti").

WITNESSETH:

WHEREAS, Pizzuti is the owner of certain parcels of real property on which it is developing a commercial business complex; and

WHEREAS, Pizzuti desires to cause to be developed the Infrastructure Improvements and has requested financial assistance from the City with respect to the costs of the Infrastructure Improvements; and

WHEREAS, in accordance with Ohio Revised Code Sections 5709.40, 5709.42 and 5709.43 and pursuant to Ordinance No. 990164, passed August 16, 1999, the City and Pizzuti have entered into a Tax Increment Financing Agreement, dated December 30, 1999 (the "TIF Agreement"), to provide for the development and financing of certain public infrastructure improvements in and around the Infrastructure Improvements Site (all as more fully described in Exhibit A and referred to herein as the "Infrastructure Improvements");

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

ARTICLE I
DEFINITIONS

Section 1.1. Definitions. Unless otherwise defined herein, words and terms used in this Agreement with initial capital letters shall have the meanings set forth in this Section 1.1.

"Act" means collectively Ohio Revised Code Sections 5709.40, 5709.42 and 5709.43, as enacted or amended from time to time.

"Agreement" means this Infrastructure Agreement dated December 30, 1999, between the City and Pizzuti, as duly amended or supplemented from time to time in accordance with its terms.

"Agreement Term" means the period commencing with the delivery of this Agreement and ending on the Termination Date.

"Authorized City Representative" means initially the Director of Public Service of the City. The City may from time to time provide a written certificate to Pizzuti signed on behalf of the City

EXHIBIT A

by the Mayor designating an alternate or alternates who shall have the same authority, duties and powers as the initial Authorized City Representative.

"Authorized Pizzuti Representative" means initially Richard C. Daley. Pizzuti may from time to time provide a written certificate to the City signed on behalf of Pizzuti by the managing member of Pizzuti designating an alternate or alternates who shall have the same authority, duties and powers as the initial Authorized Pizzuti Representative.

"City" means the City of Gahanna, Ohio.

"City Documents" means this Agreement and the Legislation; provided that when reference is made to the execution and delivery of the City Documents, the reference with respect to Legislation means instead its passage or adoption.

"Completion Date" means the date specified in a certificate given pursuant to Section 2.3 of this Agreement.

"Construction Documents" means the detailed construction documents for the Infrastructure Improvements including, without limitation, schematic and preliminary design drawings, final construction drawings, plans and specifications for the Infrastructure Improvements, all as on file with and approved by the Authorized City Representative on behalf of the City as the same may be revised or supplemented from time to time with the approval of the Authorized City Representative.

"Construction Fund" means the City Account of the Eastgate Industrial Center TIF District Municipal Public Improvement Tax Increment Equivalent Fund created under the Legislation.

"Construction Management Fee" means an amount equal to \$100,000.

"Construction Period" means the period beginning with the commencement of the construction of the Infrastructure Improvements and ending on the Completion Date therefor.

"Cost of Work" means the total consideration paid or to be paid for the construction or installation of the Infrastructure Improvements pursuant to Article II, including without limitation, any reimbursable expenses shown on Exhibit E, all in accordance with the budget attached hereto as Exhibit E.

"Event of Default" means an Event of Default under Section 6.1 of this Agreement.

"Financing Ordinance" or *"TIF Ordinance"* means Ordinance No. 990164 passed by the Gahanna City Council on August 16, 1999.

"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 cause or event not reasonably within the control of Pizzuti or the City, as the case may be.

"Guaranteed Maximum Sum" means \$2,630,950 plus the costs, if any, of any undercutting or lime stabilization required as a result of bad soils, which costs must be approved in writing by the City prior to being added to the budget attached as Exhibit E and paid for under this Agreement.

"Infrastructure Improvements" means any real and/or personal property identified generally in Exhibit A attached to this Agreement and specifically described in the Construction Documents.

"Infrastructure Improvements Site" means the real estate described in Exhibit B of this Agreement.

"Legislation" means the TIF Ordinance, as amended or supplemented from time to time.

"Pizzuti" means Pizzuti Properties/Eastgate Limited, an Ohio limited liability company.

"Notice Address" means:

(a) As to the City:

City of Gahanna, Ohio
200 South Hamilton Road
Gahanna, Ohio 43230
Attention: Director of Public Service

(b) As to Pizzuti:

Pizzuti Properties/Eastgate Limited
250 East Broad Street
Columbus, Ohio 43215
Attention: Richard C. Daley

or a different address as to which notice is given pursuant to Section 7.1 of this Agreement.

"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.

"State" means the State of Ohio, one of the United States of America.

"Termination Date" means the date which is one (1) year after the Completion Date.

"*TIF Agreement*" means the Tax Increment Financing Agreement dated December 30, 1999, entered into pursuant to the TIF Ordinance and by and between the City and Pizzuti, as duly amended or supplemented from time to time.

"*Work*" means the construction of the Infrastructure Improvements in accordance with Articles 2 and 3 of this Agreement.

Section 1.2. Certain Words Used Herein; References. Any reference herein to the City, any members or officers thereof, or other public boards, commissions, departments, institutions, agencies, bodies or other entities, or members or officers thereof, includes without limitation, entities or officials succeeding to their respective functions, duties or responsibilities pursuant to or by operation of law or performing their functions lawfully.

Any reference to a section or provision of the Constitution of the State, the Act, a section, provision or chapter of the Ohio Revised Code, federal or State laws includes without limitation, that section, provision or chapter, or those laws or regulations, as amended, modified, revised, supplemented or superseded from time to time.

Words of any gender include the correlative words of any other gender. Unless the context indicates otherwise, words importing the singular number include the plural number, and vice versa. The terms "hereof", "herein", "hereby", "hereto" and "hereunder", and similar terms, refer to this Agreement; and the term "hereafter" means after, and the term "heretofore" means before the date of delivery of this Agreement.

ARTICLE II CONSTRUCTION OF THE INFRASTRUCTURE IMPROVEMENTS

Section 2.1. General Considerations. In consideration of Pizzuti's promise to cause to be developed the Infrastructure Improvements, the City agrees to pay for the Cost of Work, up to but not exceeding the Guaranteed Maximum Sum, in accordance with this Agreement.

Section 2.2. Construction of the Infrastructure Improvements. Pizzuti covenants and agrees that it will contract for the construction of the Infrastructure Improvements in Pizzuti's name with a contractor or contractors, and the City covenants and agrees to pay for the costs of the Infrastructure Improvements solely from funds of the City deposited in the Construction Fund in accordance with the terms and provisions of this Agreement and the Legislation. Requests for reimbursement shall be made by Pizzuti in the form attached hereto as Exhibit C.

Pizzuti covenants and agrees:

(a) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions hereafter delivered, and do all other things which may be necessary or advisable for the construction, improvement and equipping of the Infrastructure Improvements, all in conformity with all then applicable governmental laws, rules and regulations;

(b) pursuant to the provisions of this Agreement, to provide for the payment of all fees, costs and expenses incurred in the construction, improvement and equipping of the Infrastructure Improvements from funds made available therefor in accordance with this Agreement, by the City or otherwise; and

(c) to the extent commercially reasonable, to ask for, demand, sue for, levy upon, recover and receive all sums of money, indebtedness and other demands whatsoever which may be due, owing or payable to Pizzuti under the terms of each contract, agreement, obligation, bond, performance security, order and receipt in connection with the construction, improvement and equipping of the Infrastructure Improvements and to enforce the provisions of each contract, agreement, obligation, bond, performance security, order and receipt in connection therewith.

Section 2.3. Completion Date. The City and Pizzuti agree that the Work may be completed in several phases as mutually agreed upon in writing by the City and Pizzuti. The Completion Date of each phase of the Work shall be specified to the City in a certificate signed by the Authorized Pizzuti Representative, which certificate (a) shall describe all property acquired or installed as part of that completed phase of the Work from the proceeds of the Obligations, (b) shall state the Cost of Work allocable to that completed phase, and (c) shall state that:

(i) the construction, improvement and equipping of that phase of the Work have been completed substantially in accordance with the related Construction Documents, all costs then due and payable in connection therewith have been paid, and all obligations, costs and expenses in connection with that phase of the Work and payable out of the Construction Fund or otherwise have been paid or discharged except for any amounts retained in the Construction Fund as provided below;

(ii) all other facilities necessary in connection with that phase of the Work have been constructed, improved and equipped; and

(iii) the construction, improvement and equipping of that phase of the Work have been accomplished in a manner which conforms to all then applicable governmental laws, rules and regulations.

The certificate also shall specify (d) the date by which the foregoing events shall have occurred, (e) which costs and expenses, if any, are not yet due, or are being contested by Pizzuti, and (f) what amounts should be retained for any other reasons. In reliance thereon, the City may retain in the Construction Fund an amount equal to the aggregate of those costs and expenses. Notwithstanding the foregoing, the certificate shall state that it is given without prejudice to any rights against third parties which then exist or which may come into being subsequently.

Section 2.4. Acceptance of Infrastructure Improvements. Acceptance by the City of the Infrastructure Improvements in one or more phases shall not relieve Pizzuti of its responsibility for defects in material or workmanship as set forth in Section 5.5.

Section 2.5. Soil Problems. Notwithstanding any provision in this Agreement to the contrary, in the event that (a) bad soils are encountered during construction of the Infrastructure Improvements, (b) Pizzuti does not believe, in its commercially reasonable opinion, that there are sufficient monies available in the contingency line item to pay for the cost of any necessary undercutting and lime stabilization and maintain sufficient monies for future contingent items based on information available at that time, and (c) the City does not agree to pay for the cost of any necessary undercutting and/or lime stabilization, Pizzuti will not be obligated to pay such costs or to complete construction of the Infrastructure Improvements.

ARTICLE III
FURTHER PROVISIONS RELATING TO
THE CONSTRUCTION OF THE INFRASTRUCTURE IMPROVEMENTS

Section 3.1. Construction Documents. Pizzuti covenants and agrees that the construction, improvement and equipping of the Infrastructure Improvements will be accomplished in accordance with the Construction Documents as approved by the Authorized City Representative, as those Construction Documents may be revised or supplemented from time to time, provided such revisions or supplements are approved by the City.

Section 3.2. Prevailing Wage. The City and Pizzuti acknowledge and agree that the Infrastructure Improvements are subject to the prevailing wage requirements of Ohio Revised Code Chapter 4115 and all wages paid to laborers and mechanics employed on the 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 Infrastructure Improvements, which wages shall be determined in accordance with the requirements of that Chapter 4115. The City and Pizzuti shall comply, and Pizzuti shall require compliance by all contractors and shall require all contractors to require compliance by all subcontractors working on the Infrastructure Improvements, with all applicable requirements of that Chapter 4115.

Section 3.3. Awarding of Contracts. The City shall have the right to review any contract for construction of the Infrastructure Improvements to determine if Pizzuti is complying with the requirements of this Article III.

Section 3.4. Traffic Control Requirements. Pizzuti 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. All traffic control devices shall be furnished, erected, maintained and removed in accordance with the "Ohio Manual of Traffic Control Devices for Construction and Maintenance Operation."

Section 3.5. Security for Performance. Pizzuti shall require all contractors performing Work to furnish prior to commencement of construction of the Infrastructure Improvements, one of the following types of project guarantees:

(a) Contract Bonds. A surety bond which shall name Pizzuti and the City as obligee in the form provided by Section 153.57 of the Ohio Revised Code. The performance and materialman's bond shall cover all Costs of Work, including a guarantee period of one (1) year set forth in Section 5.5 hereof.

(b) Irrevocable Letter of Credit. A letter of credit naming Pizzuti and the City as obligee in the form provided by 153.57 of the Ohio Revised Code. The letter of credit shall be subject to the Uniform Customs and Practices for Documentary Credits (1993 Revision), International Chamber of Commerce Publication No. 500. The letter of credit shall cover all Costs of Work, including a guarantee period of one (1) year set forth in Section 5.5 hereof.

Any bond shall be executed by sureties that are licensed to conduct business in the State and are named in the current list of "companies Holding Certificates of Authority as Acceptable Securities on Federal Bonds and as Acceptable Insurance Companies" as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts, U.S. Treasury Department. All bonds signed by an agent must be accompanied by a certified copy of the authority to act. 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, Pizzuti shall within five (5) days thereafter cause the contractor to substitute another bond and surety, both of which shall be acceptable to the City and Pizzuti. Pizzuti shall provide to the City prior to commencement of any Work by each contractor a copy of the Contract Documents relating to the Work to be performed by that contractor and the security for performance provided by the contractor pursuant to this Section.

Section 3.6. Cost of Work in Excess of Guaranteed Maximum Cost. Pizzuti agrees to assume and pay the Cost of Work in excess of the Guaranteed Maximum Sum and to indemnify the City against any Cost of Work in excess of the Guaranteed Maximum Sum.

Section 3.7. Public Use. Pizzuti agrees that the Infrastructure Improvements shall be dedicated for public use upon satisfactory completion of the Infrastructure Improvements in accordance with this Agreement.

Section 3.8. Equal Opportunity Clause. Pizzuti will, in all solicitations or advertisements for employees placed by or on behalf of Pizzuti, state that Pizzuti is an equal opportunity employer. Pizzuti shall require all contractors and shall require all contractors to require all subcontractors to include in each contract a summary of this equal opportunity clause.

Section 3.9. Insurance Requirements. Pizzuti shall require all contractors and shall require all contractors to require all subcontractors to take out or cause to be taken out and maintained until such time as that contractor or subcontractor has completed its portion of the Work, such insurance as is required by the Construction Documents, which insurance shall protect Pizzuti and the City and any contractor or subcontractor performing Work covered by this Agreement from the types of claims for damages as set forth in the Construction Documents. Such insurance policy or policies shall include Pizzuti and the City as additional named insureds. Such insurance policies shall further provide that any attorney fees accruing or payable with respect to a claim under such policy shall be paid by the insurer and shall not count against the coverage limits of such policy.

Prior to commencement of any portion of the Work by any contractor or subcontractor, such contractor or subcontractor, as the case may be, shall provide to Pizzuti and the City an original certificate of insurance as proof of such insurance coverage.

Such insurance shall remain in full force and effect during the Agreement Term. Insurance may not be changed or canceled unless all insureds, including Pizzuti and the City, are notified in writing not less than thirty (30) days prior to such change or cancellation.

Section 3.10. City Income Tax Withholdings. Pizzuti 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 161, Gahanna City Codes.

Section 3.11. Ohio Products. Pizzuti shall use, and shall require all contractors to use and require all contractors to require all subcontractors to use, all to the extent practicable, Ohio products, materials, services, and labor in connection with the Infrastructure Improvements.

Section 3.12. Compliance with Occupational Health and Safety Act of 1970. Pizzuti 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 3.13. Provision of Security for Mechanic's Liens. To the extent any materialman, contractor, or subcontractor files and records a mechanic's lien against the Infrastructure Improvements, Pizzuti shall, or shall require the appropriate contractor to, provide any security required by Ohio Revised Code Section 1311.11 to cause that mechanic's lien to be released of record with respect to the Infrastructure Improvements.

ARTICLE IV PAYMENT OF COSTS

Section 4.1. Disbursements from Construction Fund.

(a) The City agrees to pay the Cost of Work up to a maximum amount of the Guaranteed Maximum Sum and with those payments made in accordance with the Construction Documents, including any retainage as provided for therein, based on written requisitions executed by the Authorized Pizzuti Representative substantially in the form attached hereto as Exhibit C. The Authorized City Representative, with the concurrence of the City Attorney, may agree to vary the lien waiver requirements in paragraph (vii) of attached Exhibit C. All disbursements requested pursuant to this section shall be subject to the prior approval of the City Director of Finance. All disbursements pursuant to this Section shall be made solely from available funds of the City on deposit in the Construction Fund.

(b) The City has established the Construction Fund for the payment of the Cost of Work up to but not exceeding the Guaranteed Maximum Sum. The moneys on deposit in the Construction Fund shall be disbursed from time to time to make payments to Pizzuti or persons designated by Pizzuti in respect of portions of the Cost of Work, upon receipt by the City of a written requisition executed by the Authorized Pizzuti Representative substantially in the form attached hereto as Exhibit C. Upon request of the Authorized City Representative, Pizzuti shall furnish invoices or other documentation in connection with each such Written Requisition. Any Written Requisition under this Section 4.02 may be in the form of a communication by telegram, telex, or facsimile transmission, but if in such form, it shall be promptly confirmed by a Written Requisition executed by an Authorized Pizzuti Representative and approved by the Authorized City Representative.

(c) In paying any Written Requisition under this Section 4.2, the City shall be entitled to rely as to the completeness and accuracy of all statements in such Written Requisition upon the approval of such Written Requisition by an Authorized Pizzuti Representative, execution thereof, and communication thereof by telegram, telex, or facsimile transmission, to be conclusive evidence of such approval, and Pizzuti shall indemnify and save harmless the City from any liability incurred in connection with any Written Requisition so executed or communicated by an Authorized Pizzuti Representative.

(d) Pizzuti shall not submit or cause to be submitted to the City any Written Requisition pursuant to this Section 4.02 and shall have no claim upon any moneys in the Construction Fund, so long as there shall have occurred and be continuing any Event of Default.

(e) The City shall remit payment in accordance with a Written Requisition submitted in compliance with this Agreement within thirty (30) days following receipt of such Written Requisition.

(f) No later than thirty (30) days after the City (i) receives a certificate of completion under Section 2.3 of this Agreement for all of the Work and (ii) accepts the Infrastructure Improvements, the City will remit to Pizzuti the first of six equal semi-annual installments of the Construction Management Fee, with the remaining installments to be paid semi-annually thereafter; provided the Mayor shall have determined at the time of each installment that there has been satisfactory progress with respect to the marketing and development of the Project as defined in the TIF Agreement. If the Mayor determines there has not been such satisfactory progress at the time any installment of the Construction Management Fee is to be paid, the Mayor shall withhold payment of that installment until he determines satisfactory progress has been made with respect to the marketing and development of the Project, which determination shall not be unreasonably withheld.

Section 4.2. Pizzuti Required to Pay Costs if Amount in Construction Fund Insufficient.
The City represents and warrants that it will deposit the Guaranteed Maximum Sum into the Construction Fund in accordance with the terms of this Agreement. In the event that the moneys in the Construction Fund are not sufficient as needed to pay in full the Cost of Work, Pizzuti covenants

and agrees, for the benefit of the City, to pay that portion of the Cost of Work necessary to complete the construction, improvement and equipping to be accomplished pursuant to this Agreement which may be in excess of the moneys available therefor in the Construction Fund.

The City does not make any representation or warranty, either express or implied, that the moneys which will be paid into the Construction Fund, and which under the provisions of this Agreement will be available for payment of the costs of the construction, improvement and equipping to be accomplished pursuant hereto, will be sufficient to pay all of the costs thereof or costs and expenses which will be incurred in connection therewith.

ARTICLE V
CERTAIN REPRESENTATIONS, WARRANTIES,
COVENANTS AND AGREEMENTS

Section 5.1. Certain Representations, Warranties, Covenants and Agreements of City.
The City represents and warrants as of the date of delivery of this Agreement that:

(a) It is a municipal corporation and political subdivision duly organized and validly existing under the Constitution and laws of the State.

(b) It will have duly accomplished all conditions necessary to be accomplished by it prior to the issuance and delivery of the Obligations and the execution and delivery of each of the City Documents and to constitute such Obligations and the City Documents as valid and binding instruments enforceable in accordance with their respective terms.

(c) It is not in violation of or in conflict with any provision of the laws of the State which would impair its ability to observe and perform its covenants, agreements and obligations under the City Documents.

(d) It has and will have full power and authority (i) to execute, deliver, observe and perform the City Documents and all other instruments and documents executed and delivered by the City in connection with the Obligations and (ii) to enter into, observe and perform the transactions contemplated in the City Documents and those other instruments and documents.

(e) It has or will have duly authorized the execution, delivery, observance and performance of the City Documents and the issuance and delivery of the Obligations.

(f) The TIF Ordinance and the TIF Agreement are each valid and binding, have not been amended, modified or rescinded, and are in full force and effect.

Section 5.2. Certain Representations, Warranties, Covenants and Agreements of Pizzuti.
Pizzuti represents and warrants as of the date of delivery of this Agreement that:

(a) Pizzuti (i) is an Ohio limited liability company duly organized, validly existing and in good standing under the laws of the State of Ohio and (ii) has all requisite power and authority and all necessary licenses and permits to own and operate its properties and to carry on its business as now being conducted and as presently proposed to be conducted.

(b) There are no actions, suits, proceedings, inquiries or investigations pending, or to the knowledge of Pizzuti threatened, against or affecting Pizzuti in any court or before any governmental authority or arbitration board or tribunal which involve the possibility of materially and adversely affecting the transactions contemplated by this Agreement or the ability of Pizzuti to perform its obligations under this Agreement.

(c) The execution and delivery by Pizzuti of this Agreement and the compliance by Pizzuti with all of the provisions hereof (i) are within the authority and powers of Pizzuti, (ii) will not conflict with or result in any breach of any of the provisions of, or constitute a default under, any agreement, [articles of organization, operating agreement] or other instrument to which Pizzuti is a party or by which it may be bound, or any license, judgment, decree, law, statute, order, rule or regulation of any court or governmental agency or body having jurisdiction over Pizzuti or any of its activities or properties, and (iii) have been duly authorized by all necessary action on the part of Pizzuti.

(d) No event has occurred and no condition exists with respect to Pizzuti that would constitute a default under this Agreement or which, with the lapse of time or with the giving of notice or both, would become an Event of Default under this Agreement.

Section 5.3. Pizzuti to Maintain Legal Existence. Pizzuti covenants and agrees that it will maintain its legal existence so long as Pizzuti remains liable under this Agreement.

Section 5.4. Indemnification. Pizzuti shall indemnify, defend and hold harmless the City, its agents, and employees from and against any and all suits or claims for damages or losses arising or allegedly arising out of, or resulting from performance of the Work by Pizzuti, its contractors, subcontractors, agents, employees or representatives. Pizzuti shall require that all contractor agreements, and shall require all contractors to require that all subcontractors agreements, include indemnification language as found above. Pizzuti shall promptly reimburse the City and its successors and assigns, for any cost, expense or attorney's fees incurred on account of any such suit or claim incurred in enforcing the terms of this Agreement. This indemnification provision is agreed by Pizzuti to expressly waive Pizzuti's immunity, if any, as a complying employer under Section 35, Article II of the Ohio Constitution and Worker's Compensation laws of the Ohio Revised Code from indemnifying and holding the City harmless from claims by employees, agents or contractors of Pizzuti. This indemnity does not cover (a) any injuries or damages occurring after the completion of construction of the improvements by Pizzuti, or (b) any injuries or damages arising out of the actions or inactions of the City or its agents or employees.

Section 5.5. Further Pizzuti Guaranties Relating to the Infrastructure Improvements. Pizzuti warrants that it will cause to be exercised in the performance of the Work the standard of

care normally exercised by nationally recognized engineering and construction organizations engaged in performing comparable services. Pizzuti further warrants that each phase of the Work shall be free from defects in materials and workmanship (without regard to the standard of care exercised in its performance) for a period of one (1) year after final written acceptance of that phase of the Work. Pizzuti shall at its own expense:

(a) Correct or re-execute, or cause to be corrected or re-executed, any of the Work that fails to conform with the requirements of the Construction Documents and appears during the prosecution of the Work;

(b) Correct, or cause to be corrected, any defects in materials and workmanship of the Work (without regard to the standard of care exercised in its performance) which appear within a period of one (1) year after final written acceptance of that Work or within such longer period of time as may be set forth in the Construction Documents; and

(c) Replace, repair, or restore, or cause replacement, repair or restoration of, any parts of the Work or any of the fixtures, equipment, or other items placed therein that are injured or damaged as a consequence of any such failure or defect, or as a consequence of corrective action taken pursuant hereto. Should Pizzuti fail to make, or cause to be made, corrections required by this Section, then the City may do so at the expense and for Pizzuti.

Section 5.6. Pizzuti Representations as to Personal Property Taxes. Pizzuti represents that at the time of the execution of this Agreement, Pizzuti was not charged with any delinquent personal property taxes on the general tax list of personal property of Franklin County, Ohio. Further, Pizzuti shall require all contractors to execute an affidavit in the form attached as Exhibit D, a copy of which certificate shall be delivered to the Authorized City Representative prior to the commencement of any work by that contractor or subcontractor.

ARTICLE VI EVENTS OF DEFAULT AND REMEDIES

Section 6.1. Events of Default and Remedies. (a) 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, or any successor to such party, such party or successor shall, upon written notice from the other, proceed promptly to cure or remedy such default or breach. In case such remedial action is not taken or not diligently pursued within thirty (30) days of such written notice, the party asserting default or breach may institute such proceedings at law or in equity, or in the case of a claim against the City, an action in mandamus, as may be necessary or desirable in its opinion to remedy such default or breach.

(b) Notwithstanding the preceding paragraph, if by reason of Force Majeure any party fails in the observance or performance of any of its agreements, duties or obligations to be observed or performed under this Agreement, the party shall not be deemed to be in default under this agreement. The party will give notice promptly to the other of any event of Force Majeure and will

use its best efforts to remedy that event with all reasonable dispatch; provided that a party will not be required to settle strikes, lockouts or other industrial disturbances by acceding to the demands of any opposing Person, when in that party's judgment, that course would be unfavorable to it; and no suspension will constitute an Event of Default if that suspension is a result of the application of federal or State wage, price or economic stabilization controls, cost containment requirements, restrictions on rates, charges or revenues of Pizzuti, which prevents Pizzuti from observing and performing the applicable covenant, agreement or obligation.

(c) The declaration of an Event of Default hereunder and the exercise of rights, remedies and powers upon the declaration are subject to any applicable limitations of federal bankruptcy law affecting or precluding the declaration or exercise during the pendency of or immediately following any bankruptcy, liquidation or reorganization proceedings.

Section 6.2. No Remedy Exclusive. Unless provided expressly otherwise herein, no right, remedy or power conferred upon or reserved to the either party under this Agreement is intended to be exclusive of any other available right, remedy or power, but each right, remedy and power shall be cumulative and concurrent and shall be in addition to every other right, remedy and power available under this Agreement or existing at law, in equity or by statute or otherwise now or hereafter.

No exercise, beginning of the exercise, or partial exercise by either party of any one or more rights, remedies or powers shall preclude the simultaneous or later exercise by that party of any or all other rights, remedies or powers. No delay or omission in the exercise of any right, remedy or power accruing upon any Event of Default hereunder shall impair that or any other right, remedy or power or shall be construed to constitute a waiver of any Event of Default hereunder, but any right, remedy or power may be exercised from time to time and as often as may be deemed to be expedient.

Section 6.3. No Additional Waiver Implied by One Waiver. In the event that any covenant, agreement or obligation under this Agreement shall be breached by either Pizzuti or the City and the breach shall have been waived thereafter by Pizzuti or the City, as the case may be, the waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other or any subsequent breach thereunder.

No failure by either party to insist upon the strict observance or performance by the other party of any covenant, agreement or obligation under this Agreement and no failure to exercise any right, remedy or power consequent upon a breach thereof, shall constitute a waiver of any right to strict observance or performance or a waiver of any breach. No express waiver shall be deemed to apply to any other breach or to any existing or subsequent right to remedy the breach.

Section 6.4. Waiver of Appraisalment, Valuation and Other Laws. In the event that there is an Event of Default under this Agreement and the defaulting party does not contest the existence of the Event of Default, the defaulting party covenants and agrees to waive, and waives hereby, the benefit of all appraisalment, valuation, stay, extension or redemption laws in force from time to time, all right of appraisalment and redemption to which it may be entitled, and all rights of marshaling, all

to the extent that the defaulting party may effect that waiver lawfully. Neither the defaulting party, nor anyone claiming through it, shall set up, claim or seek to take advantage of any of those laws or rights.

Section 6.5. Right to Observe and Perform Covenants, Agreements and Obligations. If Pizzuti shall fail to observe or perform any covenant, agreement or obligation, under this Agreement, without demand upon Pizzuti and without waiving or releasing any covenant, agreement, obligation or Event of Default, upon thirty (30) days' written notice to Pizzuti, the City may observe or perform that covenant, agreement or obligation for the account and at the expense of Pizzuti, provided that the City shall have no obligation to take any of those actions.

Section 6.6. Provisions Subject to Applicable Law. All rights, remedies and powers hereunder may be exercised only to the extent permitted by applicable law. Those rights, remedies and powers are intended to be limited to the extent necessary so that they will not render this Agreement invalid, unenforceable or not entitled to be recorded, registered or filed under any applicable law.

ARTICLE VII MISCELLANEOUS

Section 7.1. Notices. Except as otherwise specifically set forth in this Agreement, all notices, demands, requests, consents or approvals given, required or permitted to be given hereunder shall be in writing and shall be deemed sufficiently given if actually received 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. A duplicate copy of each notice, certificate, request or other communication given hereunder to the City or Pizzuti shall be given also to the others. The parties, by notice given hereunder, may designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent.

Section 7.2. Extent of Provisions Regarding City. All representations, warranties, covenants, agreements and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future member, officer, agent or employee of the City in other than his or her official capacity.

Section 7.3. Extent of Provisions Regarding the City and Pizzuti; No Personal Liability. No representation, warranty, covenant, agreement, obligation or stipulation contained in this Agreement shall be deemed to constitute a representation, warranty, covenant, agreement, obligation or stipulation of any present or future trustee, member, officer, agent or employee of the City or Pizzuti in an individual capacity, and to the extent authorized and permitted by applicable

law, no official executing or approving the City's or Pizzuti's participation in this Agreement shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of the issuance thereof.

Section 7.4. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the City, Pizzuti and their respective permitted successors and assigns, subject, however, to the specific provisions hereof; provided that any covenant, agreement or obligation of the City which requires the expenditure of funds shall not be a general debt of the City.

The City will observe and perform faithfully at all times all covenants, agreements and obligations under this Agreement.

Each covenant, agreement and obligation of the City under this Agreement is binding upon each officer of the City who may have the authority or duty from time to time under law to take any action which may be necessary or advisable to observe or perform that covenant, agreement or obligation.

Section 7.5. Execution Counterparts. This Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same agreement. It shall not be necessary in proving this Agreement to produce or account for more than one of those counterparts.

Section 7.6. Severability. In case any section or provision of this Agreement, or any covenant, agreement, obligation or action, or part thereof, made, assumed, entered into or taken, or any application thereof, is held to be illegal or invalid for any reason,

(a) that illegality or invalidity shall not affect the remainder hereof or thereof, any other section or provision hereof, or any other covenant, agreement, obligation or action, or part thereof, made, assumed, entered into or taken, all of which shall be construed and enforced as if the illegal or invalid portion were not contained herein or therein,

(b) the illegality or invalidity of any application hereof or thereof shall not affect any legal and valid application hereof or thereof, and

(c) each section, provision, covenant, agreement, obligation or action, or part thereof, shall be deemed to be effective, operative, made, assumed, entered into or taken in the manner and to the full extent permitted by law.

Section 7.7. Captions. The captions and headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

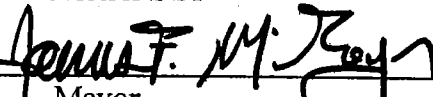
Section 7.8. Governing Law and Choice of Forum. This Agreement shall be governed by and construed in accordance with the laws of the State. All claims, counterclaims, disputes and other matters in question between the City, its agents and employees, and Pizzuti, its employees,

contractors, subcontractors and agents arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction within the State of Ohio.

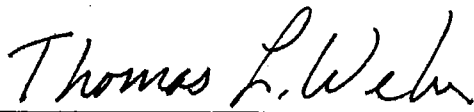
Section 7.9. Survival of Representations and Warranties. All representations and warranties of Pizzuti and the City in this Agreement shall survive the execution and delivery of this Agreement and the issuance and delivery of the Obligations.

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

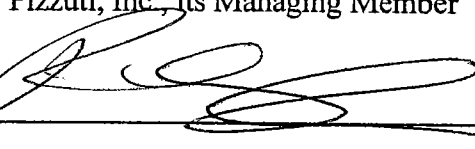
CITY OF GAHANNA

By: 
Title: Mayor

Approved as to form:


City Attorney

PIZZUTI PROPERTIES/EASTGATE LIMITED
By: Pizzuti, Inc., its Managing Member

By: 

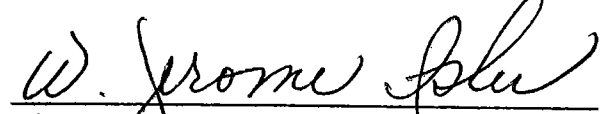
Printed: Richard C. Daley

Title: CEO

FISCAL OFFICER'S CERTIFICATE

As the Director of Finance of the City of Gahanna, I certify that the money required to meet the obligations of the City of Gahanna during the year 1999 under the foregoing Agreement has been lawfully appropriated by the Council of the City for those purposes and is 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 Section 5705.41 of the Revised Code.

Dated: December 30, 1999



Director of Finance

EXHIBIT A

INFRASTRUCTURE IMPROVEMENTS

The Infrastructure Improvements include the construction of approximately 6,000 lineal feet of roadway including lighting, approximately 6,000 lineal feet of sanitary sewer service, approximately 7,000 lineal feet of storm sewer improvements and related storm water retention basins, and the realignment and reconstruction of the existing water main, together with all necessary appurtenances.

EXHIBIT B

INFRASTRUCTURE IMPROVEMENTS SITE

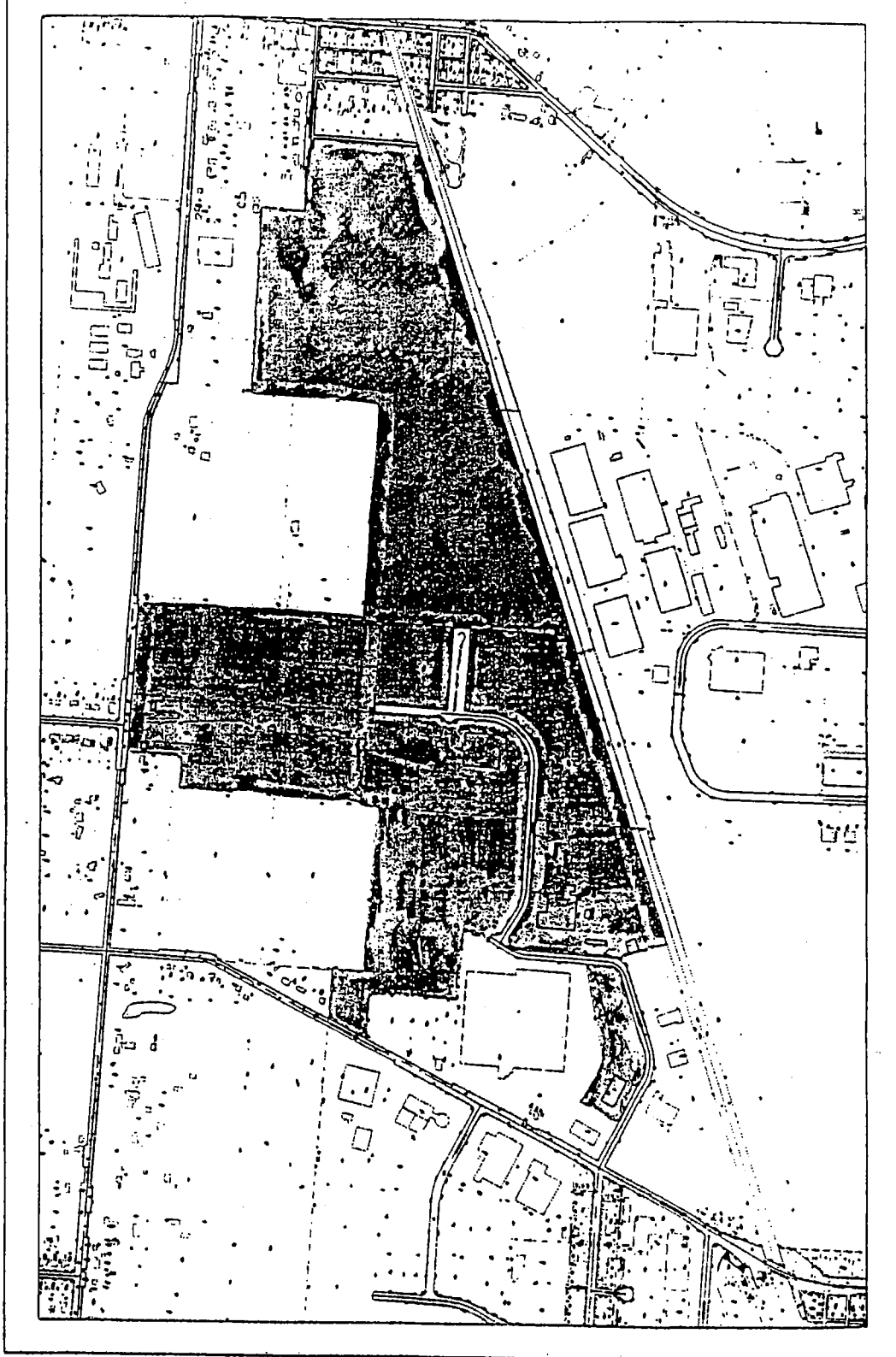


EXHIBIT C

WRITTEN REQUISITION

The City of Gahanna, Ohio
200 South Hamilton Road
Gahanna, Ohio 43230

Attention: Director of Public Service, as Authorized City Representative

Re: Certificate and Request for Disbursement of Funds From the Eastgate Industrial Park Construction Fund

You are hereby requested to disburse from the Eastgate Industrial Park Construction Fund described above and in accordance with the provisions of Section 2.2 of the Infrastructure Agreement, dated December 30, 1999 (the "Agreement") between the City and Pizzuti Properties/Eastgate Limited (the "Pizzuti"), the amount of \$_____ as more fully set forth on Schedule A attached hereto to be paid pursuant to this Written Requisition No. _____ to the payee(s) listed on such Schedule A for the purposes therein set forth.

The undersigned Authorized Pizzuti Representative does hereby certify in compliance with Section 4.2 of that certain Agreement that:

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

(ii) The amount and nature and the name and address of the payee of each item of the Cost of Work hereby 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 Construction Fund as a Cost of Work (as defined in the Agreement), has not been paid out of Bond proceeds, and has not been the basis of any previous withdrawal from the Construction Fund, and, if for acquisition or installation of the Infrastructure Improvements, was made in accordance with the Construction Documents;

(iv) The Infrastructure Improvements has 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 Pizzuti to meet its obligations under the Agreement;

(v) Pizzuti is in material compliance with all provisions and requirements of the Agreement;

(vi) No Event of Default set forth in Article VI 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 lien waivers from any materialmen, contractors and subcontractors who have provided services or materials to the Infrastructure Improvements in excess of Five Hundred Dollars (\$500) and who were paid pursuant to the previous Written Requisition and Pizzuti acknowledges its obligation to require, or require provision of, certain security pursuant to Section 3.13 of the Infrastructure Agreement in the event any mechanic's liens are filed in connection with the Infrastructure Improvements;

(viii) The Infrastructure Improvement are being and have been installed substantially in accordance with the Construction Documents for the Infrastructure Improvements, and all materials for which payment is requested have been delivered to and remain on the 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) Pizzuti has asserted its entitlement to all available manufacturer's warranties to date upon acquisition of possession of or title to such improvements or any part thereof which warranties have vested in Pizzuti and shall be wholly transferable to the City; and

(xi) All proceeds of the Construction Fund heretofore disbursed have been spent in accordance with the Written Requisition applicable thereto.

(xii) The amount requested herein represents \$_____ from the original estimated cost in the budget and \$_____ from the contingency portion of the budget.

EXECUTED this _____ day of _____, _____.

By: _____
Authorized Pizzuti Representative

Schedule A

Requisition No. _____
(for the Eastgate Industrial Park Construction Fund of the City of Gahanna)

For the purpose of making the following payments:

1. Amount \$ _____
Paid to :
Address of Payee:

Purpose:
2. Same Format as Above
(if necessary).

INFRASTRUCTURE AGREEMENT AMENDMENT NO. 1
(EASTGATE INDUSTRIAL PARK IMPROVEMENTS)

THIS INFRASTRUCTURE AGREEMENT AMENDMENT NO. 1 (the "Amendment") dated July ____, 2002, is made and entered into between the CITY OF GAHANNA, OHIO, a municipal corporation organized and existing under the Constitution and laws of the State of Ohio (the "City"), and Pizzuti Properties/Eastgate Limited, an Ohio limited liability company having its principal office in Columbus, Ohio ("Pizzuti").

WITNESSETH:

WHEREAS, the City and Pizzuti heretofore entered into the Infrastructure Agreement (Eastgate Industrial Park Improvements) dated December 30, 1999 (the "Agreement"), which Agreement provided for the construction of certain Infrastructure Improvements (as defined in the Agreement) and further provided that the City would be obligated to pay an amount not exceed \$2,630,950 towards the costs of constructing those Infrastructure Improvements; and

WHEREAS, the City and Pizzuti have identified certain additional public infrastructure improvements, including but not limited to the widening of Taylor Road at its intersection with Eastgate Drive and all necessary appurtenances (the "Additional Infrastructure Improvements"), which are necessary to facilitate the development described in the Agreement; and

WHEREAS, the City, by passage of Ordinance No. ____ on _____, 2002, has determined that it would be in the City's best interest if the Additional Infrastructure Improvements were constructed and has authorized (i) additional monies in an amount not to exceed \$269,050 to pay costs of those Additional Infrastructure Improvements and (ii) the execution of an amendment to the Agreement to provide for the construction of those Additional Infrastructure Improvements;

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

ARTICLE I
DEFINITIONS

Section 1. Existing Definitions. The following terms, as originally defined in the Agreement, are hereby amended and such amended terms shall have the same meaning and effect as if originally included in the Agreement:

"Guaranteed Maximum Sum" means \$2,630,950 plus the costs, if any, of any undercutting or lime stabilization required as a result of bad soils, which costs must be approved in writing by the City prior to being added to the budget attached as Exhibit E and paid for under this Agreement, and an amount not exceeding \$269,050 which amount shall be applied solely to the costs of the Additional Infrastructure Improvements.

'Infrastructure Improvements' means any real and/or personal property identified generally in Exhibit A attached to this Agreement and specifically described in the Construction Documents, and shall also include the Additional Infrastructure Improvements.

Section 2. New Definition. The following term shall have the same meaning and effect as if originally included in the Agreement:

"Additional Infrastructure Improvement" means, but is not limited to, the widening of Taylor Road at its intersection with Eastgate Drive, together with all necessary appurtenances.

Section 3. Continued Effect of Agreement. The Agreement, except as amended herein, shall remain in full force and effect.

Section 4. Execution Counterparts. This Amendment may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same agreement. It shall not be necessary in proving this Amendment to produce or account for more than one of those counterparts.

IN WITNESS WHEREOF, the City and Pizzuti have caused this Amendment to be executed in their respective names by their duly authorized representatives, all as of the date first written above.

CITY OF GAHANNA

By: _____

Title: Mayor

Approved as to form:

City Attorney

PIZZUTI PROPERTIES/EASTGATE LIMITED

By: Pizzuti, Inc., its Managing Member

By: _____

Printed: _____

Title: _____

FISCAL OFFICER'S CERTIFICATE

As the Director of Finance of the City of Gahanna, I certify that the money required to meet the obligations of the City of Gahanna during the year 2002 under the foregoing Amendment has been lawfully appropriated by the Council of the City for those purposes and is 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 Section 5705.41 of the Revised Code.

Dated: _____, 2002

Director of Finance

INFRASTRUCTURE AGREEMENT AMENDMENT NO. 1
(EASTGATE INDUSTRIAL PARK IMPROVEMENTS)

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WITNESSETH:

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WHEREAS, the City and Pizzuti have identified certain additional public infrastructure improvements, including but not limited to the widening of Taylor Road at its intersection with Eastgate Drive and all necessary appurtenances (the "Additional Infrastructure Improvements"), which are necessary to facilitate the development described in the Agreement; and

WHEREAS, the City, by passage of Ordinance No. ____ on _____, 2002, has determined that it would be in the City's best interest if the Additional Infrastructure Improvements were constructed and has authorized (i) additional monies in an amount not to exceed \$269,050 to pay costs of those Additional Infrastructure Improvements and (ii) the execution of an amendment to the Agreement to provide for the construction of those Additional Infrastructure Improvements;

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EXHIBIT B

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IN WITNESS WHEREOF, the City and Pizzuti have caused this Amendment to be executed in their respective names by their duly authorized representatives, all as of the date first written above.

CITY OF GAHANNA

By: _____
Title: Mayor

Approved as to form:

City Attorney

PIZZUTI PROPERTIES/EASTGATE LIMITED
By: Pizzuti, Inc., its Managing Member

By: _____

Printed: _____

Title: _____

FISCAL OFFICER'S CERTIFICATE

As the Director of Finance of the City of Gahanna, I certify that the money required to meet the obligations of the City of Gahanna during the year 2002 under the foregoing Amendment has been lawfully appropriated by the Council of the City for those purposes and is 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 Section 5705.41 of the Revised Code.

Dated: _____, 2002

Director of Finance