

#110004

LOAN AGREEMENT

between

OHIO DEPARTMENT OF TRANSPORTATION

and

**CITY OF GAHANNA
I-270/ TECH CENTER DRIVE PROJECT**

Dated

as of

October ____, 2010

EXHIBIT A

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(The Table of Contents is not a part of this Loan Agreement
and is only for convenience of reference.)

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LOAN AGREEMENT

THIS LOAN AGREEMENT (this "Loan Agreement") made and entered into as of October____, 2010, by and between the Director of the Ohio Department of Transportation ("ODOT") and the City of Gahanna, a political subdivision duly organized and validly existing under the laws of the State of Ohio ("the City"), 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):

A. Pursuant to the Act, ODOT is authorized, among other things, to make loans to assist in the financing of a Qualified Project.

B. The City has requested that ODOT provide the financial assistance for the ODOT Project hereinafter described.

C. ODOT has determined that the ODOT Project constitutes a Qualified Project and that the financial assistance to be provided pursuant to this Loan Agreement is appropriate under the Act and will be in furtherance and in implementation of the public policy set forth in the Act.

D. The financial assistance to be provided pursuant to this Agreement has been reviewed and approved by ODOT, pursuant to the Act.

NOW, THEREFORE, in consideration of the promises and the representations and agreements hereinafter contained, ODOT and the City agree as follows:

ARTICLE I DEFINITIONS

Section 1.1 Use of Defined Terms. In addition to the words and terms elsewhere defined in this Loan Agreement or by reference to other instruments, the words and terms set forth in Section 1.2 hereof shall have the meanings therein set forth unless the context or use expressly indicates a different meaning or intent. Such definitions shall be equally applicable to both the singular and plural forms of any of the words and terms therein defined.

Section 1.2 Definitions. As used herein:

"Act" means Section 5531.09, Ohio Revised Code, as from time to time enacted and amended.

"Application" means the Application of the City submitted to the SIB dated August 5, 2010, requesting assistance under the Act.

"Accrual Date" means first day of the calendar month which is thirteen (13) months after the date on which monies are first disbursed to the City pursuant to Section 3.5 hereof.

“Closing Date” means October ___, 2010, the date of execution and delivery of the Loan Documents.

“Commitment” means the Preliminary Term Sheet between ODOT and the City dated September 16, 2010.

“Disbursement Date” means each date, including the Final Disbursement Date, upon which the proceeds of the Loan are disbursed to, or for the benefit of the City.

“Environmental Law” means any federal, state or local law, regulation, ordinance, order or directive pertaining to the protection of the environment.

“Event of Default” means any of the events described as an event of default in Section 5.1 hereof

“Final Disbursement Date” means no later than March 31, 2013, or such subsequent date as may be established by ODOT in writing in accordance with Section 3.5 hereof for the disbursement of the Loan.

“Force Majeure” means, without limitation:

- (a) acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States or of the State or any of their departments, agencies, political subdivisions or officials, or any civil or military authority; insurrections; civil disturbances; riots; epidemics; landslides; nuclear accidents; lightning; earthquakes; fires; hurricanes; tornadoes; storms, droughts; floods; arrests; restraint of government and people; explosions, breakage, malfunction or accident to facilities, machinery, transmission pipes or canals; partial or entire failure of utilities; shortages of labor, materials, supplies or transportation; or
- (b) any cause, circumstances or event not reasonably within the control of the City.

“General Revenues” means all non-designated funds available to the City and includes non-tax revenues.

“Governing Instruments” means the Charter under which the City was created as a municipal corporation pursuant to Article XVIII, Ohio Constitution.

“Governmental Authority” means, collectively, the State, any political subdivision thereof, any municipality, and any agency, department, board or bureau of any of the foregoing having jurisdiction over the Project.

“Hazardous Substance” means a hazardous substance as defined under the Comprehensive Emergency Response Compensation and Liability Act of 1980, 42 U.S.C. Section 6901, as from time to time amended.

“Hazardous Waste” means a hazardous waste as defined under the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6901, as from time to time amended.

“Loan” means the loan by ODOT to the City in the total sum of the Loan Amount, to be disbursed pursuant to Section 3.5 hereof.

“Loan Agreement” means this Loan Agreement, as from time to time amended or supplemented.

“Loan Amount” means the amount of Six Million Three Hundred Forty Seven Thousand Five Hundred Eight Dollars (\$6,347,508) of the Cost of the Project.

“Loan Documents” means all documents, instruments and agreements delivered to or required by ODOT to evidence or secure the Loan as required by the Commitment and this Loan Agreement, as the same may be amended, modified, supplemented, restated or replaced from time to time.

“Nontax Revenues” means all money of the City, to the extent available for payment of the Note, including, but not limited to the following:

- (a) payments in lieu of taxes now or hereafter authorized by State statute, including payments in lieu of taxes with respect to the Project.
- (b) fines and forfeitures that are deposited in the City’s General Fund;
- (c) fees deposited in the City’s General Fund from property imposed licenses and permits;
- (d) investment earnings on the City’s General Fund and that are credited or transferred to the City’s General Fund;
- (e) investment earnings of other funds of the City that are credited to the City’s General Fund;
- (f) proceeds from the sale of assets that are deposited in the City’s General Fund;
- (g) rental income that is deposited in the City’s General Fund;
- (h) gifts and donations;

- (i) charges for services and payments received in reimbursement for services, and
- (j) grants from the United States of America and the State of Ohio.

“Note” means the promissory note, in the form attached hereto as Exhibit A, evidencing the obligation of the City to repay the Loan, as the same may be amended, modified supplemented, restated or replaced from time to time.

“Notice Address” means:

As to ODOT:	Ohio Department of Transportation ATTN: State Infrastructure Bank 1980 West Broad Street Columbus, Ohio 43223 FAX: (614) 887-4962
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As to the City:	City of Gahanna 200 South Hamilton Road Gahanna, Ohio 43230 FAX: (614) 342-4153
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or such additional or different address, notice of which is given under Section 6.2 hereof.

“Petroleum” means petroleum as defined under the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6901, as from time to time amended.

“Plans and Specifications” means the plans and specifications or other appropriate documents describing the Project prepared by or at the direction of ODOT.

“Project” means the construction of a new roadway from SR 317 proceeding easterly 3,000 feet and the construction of a new structure over I-270 to connect the new road to Techcenter Drive on the north side of I-270.

“Project Site” means the Project in the County of Franklin in the City of Gahanna, described in Exhibit B attached hereto.

“Project Purposes” means the construction of the Project.

“Provision” means, as applicable, the acquiring, constructing, reconstructing, rehabilitating, renovating, enlarging, installing, improving, or furnishing of the Project.

“Qualified Project” means a qualified project within the meaning of the Act.

“Security Documents” means, collectively, the Certificate of Available Resources and any ancillary documents, as from time to time amended or supplemented.

“State” means the State of Ohio.

“State Infrastructure Bank” or “SIB” means the State Infrastructure Bank created by the Act.

“Toxic Chemicals” means toxic chemicals as defined under Title III of the Superfund Amendments and Reauthorization Act of 1986 (also cited as the Emergency Planning and Community Right-to-Know Act) 42 U.S.C. Section 11001, as from time to time amended.

Section 1.3 Certain Words and References. Any reference herein to ODOT shall include those succeeding to ODOT’s functions, duties or responsibilities pursuant to or by operation of law or lawfully performing such functions. Any reference to a section or provision of the Constitution of the State or to the Act or to a section, provision, chapter or title of the Ohio Revised Code shall include such section, provision, chapter or title as from time to time amended.

The terms “hereof,” “hereby,” “herein,” “hereto,” “hereunder” and similar terms refer to this Loan Agreement; and the term “heretofore” means before, and the term “hereafter” means after, the Closing Date. Words of the masculine gender include the feminine and the neuter, and when the sense so indicates, words of the neuter gender may refer to any gender.

ARTICLE II DETERMINATIONS AND REPRESENTATIONS

Section 2.1 Determinations of ODOT. Pursuant to the Act and on the basis of the representations and other information provided by the City, ODOT hereby determines that the financial assistance to be provided by the State pursuant to this Loan Agreement will conform to the requirements of the Act, and will further implement the purposes of the Act by (i) encouraging public and private investment in transportation facilities that contribute to the multimodal and intermodal capabilities of the State; and (ii) improving the efficiency of the State transportation system by using and developing the particular advantages of each transportation mode to the fullest extent.

Section 2.2 Representations and Warranties of the City. The City hereby represents and warrants that:

- (a) The City is a political subdivision duly organized and validly existing under its Charter and Sections 701.01 through 765.04 of the Ohio Revised Code.

- (b) The City has full power and authority to execute, deliver and perform its obligation under the Loan Documents, and the Security Documents, and carry out the transactions contemplated thereby. Such execution, delivery and performance do not, and will not, violate any provision of law applicable to the City or the Governing Instruments of the City and do not, and will not, conflict with or result in a default under any agreement or instrument to which the City is a party or by which the City or any property or assets of the City is or may be bound. The Loan Documents and the Security Documents have, by proper action, been duly authorized, executed and delivered and all necessary actions have been taken in order for the Loan Documents and the Security Documents, to constitute legal, valid and binding obligations of the City.
- (c) The Provision of the Project will be completed by ODOT, and the Project will be maintained by the City in such manner as to conform with all applicable Environmental Law and zoning, planning, building and other governmental regulations imposed by any Governmental City and as to be consistent with the purposes of the Act.
- (d) The provision of financial assistance pursuant to this Loan Agreement induced the City to share a cost of the Project, thereby materially contributing to the economic revitalization of the State and improving the economic welfare of all the people of the State.
- (e) There are no actions, suits or proceedings pending or threatened against or affecting the City or the Project which, if adversely determined, would individually or in the aggregate materially impair the ability of the City to perform any of the City's obligations under the Loan Documents, or the Security Documents, or adversely affect the financial condition of the City.
- (f) The City is not in default under any of the Loan Documents, or the Security Documents, or in the payment of any indebtedness for borrowed money or under any agreement or instrument evidencing any such indebtedness, and no event has occurred which by notice, the passage of time or otherwise would constitute any such event of default.
- (g) No representation or warranty made by the City and contained in the Loan Documents, or the Security Documents, and no statement contained in any certificate, schedule, list, financial statement or other instrument furnished to ODOT by or on behalf of the City (including, without limitation, the Application), contains any untrue statement of a material fact, or omits to state a material fact necessary to make the statements contained herein or therein not misleading.

- (h) All proceeds of the Loan shall be used for the payment or reimbursement for previous payments of costs relating to Provision of the Project. No part of any such proceeds shall be knowingly paid to or retained by the City or any partner, officer, shareholder, director or employee of the City as a fee, kick-back or consideration of any type. The City has no identity of interest with any supplier, contractor, architect, subcontractor, laborer or material man performing work or services or supplying materials in connection with the Provision of the Project.
- (i) The City has made no contract or arrangement of any kind, other than the Loan Documents, which has given rise to, or the performance of which by the other party thereto would give rise to, a lien or claim of lien on the Project, or the City's Nontax Revenues or MORPC FY 2013 revenues.
- (j) To the extent under the control or within the knowledge of the City, no Hazardous Substance, Hazardous Waste, Toxic Chemical or Petroleum shall be discharged, dispersed, released, stored or treated at the Project, other than in accordance with any applicable Environmental Law. No asbestos or asbestos-containing materials have been or will be installed, used or incorporated into any buildings, structures, additions, improvements, facilities, fixtures or installations at the Project, or disposed of on or otherwise released at or from the Project. No investigation, administrative order, consent order and agreement, litigation or settlement under any Environmental Law with respect to any Hazardous Substance, Hazardous Waste, Toxic Chemical, Petroleum, asbestos or asbestos-containing material is proposed, in existence, or, to the best of the City's knowledge, threatened or anticipated with respect to the Project. The Project is in compliance with all applicable Environmental Law and the City has not received any notice from any entity, governmental body, or individual claiming any violation of, or requiring compliance with any Environmental Law. The City has not received any request for information, notice of claims, demands or other notification that the City may be responsible for a threatened or actual release of any Hazardous Waste, Hazardous Substance, Toxic Chemical, Petroleum, asbestos or asbestos-containing material or for any damage to the environment or to natural resources.

ARTICLE III LOAN, PROVISION OF THE ODOT PROJECT AND CONDITIONS TO DISBURSEMENT

Section 3.1 Loan and Repayment. On the terms and conditions of this Loan Agreement and the Commitment, ODOT shall lend to the City the Loan Amount to assist in the financing of the ODOT Project. The Loan shall be evidenced by this Loan Agreement and the Note and secured by the Security Documents, and other Loan Documents, as applicable. Those instruments and documents shall be executed by the City and all other parties, as applicable and

delivered by the City to ODOT on the Closing Date, concurrently with the execution and delivery of this Loan Agreement and the delivery of all other documents and the satisfaction of all other closing conditions required by this Loan Agreement and the Commitment. The Loan shall be disbursed pursuant to Section 3.5 hereof upon the satisfaction of the conditions set forth in Section 3.4 hereof. The Loan shall be disbursed only from, and only to the extent that, on the Disbursement Dates funds not heretofore committed are available to make the Loan from moneys provided for in accordance with the Act.

The terms of repayment of the Loan shall be as set forth in the Note, and the City shall make all payments required to be made under the Note as and when due.

Section 3.2 Provision of The ODOT Project. The City and ODOT (a) have commenced or shall promptly hereafter commence the Provision of the Project, and (b) shall pay all expenses incurred in such Provision from funds made available therefor in accordance with this Loan Agreement, or otherwise.

Section 3.3 The City Required to Pay Costs in Event Proceeds Insufficient. In the event that the proceeds of the Loan are not sufficient to pay all costs of the ODOT Project, the City may be required by ODOT, nonetheless and irrespective of the cause of such deficiency to, complete the Project in accordance with the Plans and Specifications and pay all costs of such completion in full, or a lesser amount to be determined as appropriate by ODOT.

Section 3.4 Conditions Precedent to Disbursement. The disbursement of the Loan shall be made in disbursements not more frequently than twice every month during and/or upon the completion of the Provision of the Project (and on or before the Final Disbursement Date), provided ODOT, if not already under the control or within ODOT's knowledge, shall have received the following on or before each Disbursement Date, as applicable:

- (a) this Loan Agreement, duly executed;
- (b) the duly executed Note;
- (c) duly executed Certificate of Available Resources;
- (d) certified copies of the resolutions of the City authorizing execution and delivery of all documents with respect to the Loan Documents and Security Documents and performance thereunder, as applicable;
- (e) an opinion of the City's counsel, which sets forth substantially the following:
 - (1) the City has full power and authority to execute and deliver the Loan Documents, and the Security Documents;

- (2) the City has duly authorized the taking of any and all actions necessary to carry out and give effect to the transactions contemplated to be performed on the City's part under the Loan Documents, and the Security Documents;
- (3) each of the Loan Documents, and the Security Documents has been duly authorized, executed and delivered by the City, and is a legal, valid and binding obligation of the City, enforceable in accordance with its terms, except as such enforcement may be limited by the application of bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium and other similar laws or equitable principles affecting creditors' rights generally;
- (4) the execution and delivery of each of the Loan Documents, and the Security Documents and the performance by the City of the actions required of the City thereby and the consummation of the transactions contemplated therein do not and will not or constitute a default under, conflict with or violate any judgment, decree, indenture, mortgage, deed of trust, guaranty, agreement or other instrument to which the City is a party or by which the City is bound, or conflict with or violate any provisions of law, administrative regulation, or court order or consent decree;
- (5) there is no action, temporary restraining order, injunction, suit, proceeding, inquiry or investigation at law or in equity, before or by any judicial or administrative court or agency, pending or to the best knowledge of such counsel threatened against or affecting, or involving the properties, securities or businesses of the City, and to the best knowledge of such counsel, there is no reasonable basis for any such action, temporary restraining order, injunction, suit, proceeding, inquiry or investigation, which would, individually or in the aggregate, adversely affect the transactions contemplated by the Loan Documents, or the Security Documents, the delivery, validity or enforceability of any of the Loan Documents or the Security Documents or materially and adversely affect the financial condition of the City;
- (6) the City has obtained any and all requisite governmental consents, permits, licenses and approvals necessary for each of them to enter into, execute and deliver the Loan Documents, and the Security

Documents and to perform the City's obligations thereunder; and

(7) to the knowledge of such counsel, the City is not in default under any contract, agreement or other instrument by which it is bound, in the payment of any monetary obligation or with respect to any judgment, order, injunction or regulation of any court or governmental City, and there exists no condition or event which after notice or lapse of time or both would constitute any such default; and

(8) the security interests granted to ODOT by the Security Documents will constitute a valid first lien on the Nontax Revenues and MORPC FY 2013 revenues of the City; and

- (f) a construction contract with a guaranteed fixed price;
- (g) determination of applicability of either Davis Bacon Act wage rule, or of prevailing wage by the Ohio Department of Commerce, Division of Labor and Worker Safety, Wage and Hour Bureau of the State as well as certified payrolls issued by the Project's general contractor to the Ohio Department of Commerce, Division of Labor and Worker Safety, Wage and Hour Bureau of the State, certifying as to full compliance with Chapter 4115, Ohio Revised Code;
- (h) evidence of any and all environmental approvals required by federal or state law for construction of the Project;
- (i) evidence satisfactory to ODOT of the approval and availability of MORPC FY2013 funds for the Project;
- (j) such other certifications, documents or opinions as ODOT may reasonably request.

Section 3.5 Disbursement of Loan. At the request of the City for disbursement of the Loan Amount hereunder, ODOT shall disburse the Loan by delivering funds as determined by ODOT in ODOT's sole discretion to the order of the City, or on the City's behalf, on each Disbursement Date.

Section 3.6 Payment of Costs; Indemnification.

- (a) The City shall pay all costs incident to the Loan incurred by ODOT.

(b) The City shall, to the extent permitted by Ohio law, at its sole cost and expense, defend, indemnify and hold ODOT and any officials, employees, agents and representatives of ODOT and the State, its and their successors and assigns, harmless from and against, and shall reimburse ODOT and any officials, employees, agents and representatives of ODOT and the State, its and their successors and assigns for, any and all loss, cost, claim, liability, damage, judgment, penalty, injunctive relief, expense or action or cause of action arising out of or connected with the execution and delivery of this Agreement or any other Loan Documents and the transactions contemplated thereby, and the preparation of documents relating to the disbursement of the Loan, including all aforementioned costs and expenses, regardless of whether or not the disbursement of the Loan shall actually occur.

(c) The provisions of this Section 3.6 shall survive the termination of this Agreement.

Section 3.7 Plans and Specifications; Inspections. ODOT may revise the Plans and Specifications from time to time; provided that no revision shall be made (a) which would change the Project Purposes to purposes other than those permitted by the Act; (b) without obtaining, to the extent required by law, the approval of any applicable Governmental Authority.

Section 3.8 Pledge. The City pledges its rights, title and interest in the City's Nontax Revenues and its MORPC FY2013 revenues to ODOT.

The City represents that its anticipated Nontax Revenues and MORPC FY2013 revenues will be sufficient to, and covenants that it will not pledge or otherwise commit to other obligations those resources it determines necessary to pay Loan payments when they come due.

Section 3.9 Completion Date. The Completion Date shall occur not later than December 31, 2012, and shall be evidenced to ODOT by a certificate of the City stating (a) the Completion Date, (b) that all licenses, permits and approvals for the ODOT Project required by any Governmental Authority have been procured and/or obtained, (c) that all improvements reflected in the Plans and Specifications have been made and the Provision of the ODOT Project has been completed, and (d) that all costs of providing the ODOT Project have been paid.

ARTICLE IV ADDITIONAL COVENANTS AND AGREEMENTS

Section 4.1 Affirmative Covenants of the City. Throughout the term of this Loan Agreement, the City shall:

(a) Deliver Notice. Forthwith upon learning of any of the following, deliver written notice thereof to ODOT, describing the same and the steps being taken by the City with respect thereto:

(1) the occurrence of an Event of Default or an event or circumstance which would constitute an Event of Default, but for the requirement that notice be given, elapse of time or otherwise; or

(2) any action, suit or proceeding by or against the City at law or in equity, or before any governmental instrumentality or agency, instituted or threatened which, if adversely determined, would materially impair the right or ability of the City to carry on the business which is contemplated in connection with the Project or would materially impair the right or ability of the City to perform the transactions contemplated by the Loan Documents, or Security Documents, or would materially and adversely affect the City's business, operations, properties, assets or condition;

(3) any material communication adversely affecting the Project, and the City will promptly respond fully to any inquiry of ODOT made with respect thereto.

(b) Inspection Rights. Permit ODOT, or any agents or representatives thereof, to examine and make copies of and abstract from the records and books of account of the City related to the Project or collateral for the Loan, visit the Project, and discuss the general business affairs of the City with any of the City's officers.

(c) Compliance with Laws, Etc. Comply in all material respects with all statutes, laws, ordinances and governmental rules, regulations and orders to which it is subject or which are applicable to the Project.

(d) Maintain Existence. Do or cause to be done all things necessary to preserve and keep in full force and

effect the City's existence and ownership of its material rights and franchises.

(e) Maintain Property. Maintain and keep the Project in good repair, working order and condition.

(f) Furnish Information. Furnish or cause to be furnished to ODOT:

(1) Financial Statements. Within one hundred eighty (180) days after the last day of each Fiscal Year, the annual financial statements for the City accompanied by an opinion of an independent certified public accountant as well as a replacement Certificate of Available Resources.

(2) Certificate; No Default. With each of the financial statements required to be furnished pursuant to this Section, a certificate of the City's chief financial officer stating that (a) no Event of Default has occurred and is continuing and no event or circumstance which would constitute an Event of Default, but for the requirement that notice be given or time elapse or both, has occurred and is continuing, or, if such an Event of Default or such event or circumstance has occurred and is continuing a statement as to the nature thereof and the action which the City shall propose to take with respect thereto, and (b) no action, suit or proceeding by the City or against the City at law or in equity, or before any governmental instrumentality or agency, is pending or, to the best of the City's knowledge; threatened, which, if adversely determined, would materially impair the right or ability of the City to carry on the business which is contemplated in connection with the Project or would materially impair the right or ability of the City to perform the transactions contemplated by the Loan Documents, all as of the date of such certificate, except as disclosed in such certificate.

Section 4.2 Negative Covenants of the City. Throughout the term of this Loan Agreement, the City shall not:

- (a) Agreements. Enter into any agreement containing any provision which would be violated or breached by the performance of the City's obligations hereunder or under any instrument or document delivered or to be delivered by the City hereunder or in connection herewith.
- (b) Assignment. In whole or in part, assign this Loan Agreement.
- (c) Financial Covenants. Violate any financial covenant contained in any agreement evidencing, relating to or securing any indebtedness for borrowed money in excess of Five Hundred Thousand Dollars (\$500,000).
- (d) Creation of Liens. Create or suffer to exist any pledge, security interest, encumbrance or other lien affecting the Nontax Revenues or MORPC FY13 revenues superior to the interests of ODOT therein.

ARTICLE V EVENTS OF DEFAULT, REMEDIES AND TERMINATION

Section 5.1 Events of Default. Each of the following shall be an "Event of Default":

- (a) Failure by the City to pay when due any amount payable pursuant to the Note or this Loan Agreement, or any other Loan Document on the date on which payment is due and payable; or
- (b) the City shall fail to observe and perform any agreement, term or condition contained in this Agreement other than as required pursuant to subsection (a) above, and such failure continues for a period of thirty (30) days after the City has knowledge thereof; *provided*, however, that such thirty (30) day cure period shall not apply to (i) any failure which in the good faith opinion of ODOT is incapable of cure, (ii) any failure which has previously occurred, or (iii) any failure to maintain and keep in effect any insurance required by the Loan Documents; or
- (c) the City commences a voluntary case concerning it under Title 11 of the United States Code entitled

“Bankruptcy” as now or hereafter in effect, or any successor thereto (the “Bankruptcy Code”); or the City is not generally paying the City’s debts as such debts become due; or a custodian (as defined in the Bankruptcy Code) is appointed for, or takes charge of, all or substantially all of the property of the City; or the City commences any other proceeding under any reorganization, arrangement, readjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar law of any jurisdiction whether now or hereafter in effect; or there is commenced against the City any such proceeding which remains undismissed for a period of ninety (90) days; or the City is adjudicated insolvent or bankrupt; or the City fails to controvert in a timely manner any such case under the Bankruptcy Code or any such proceeding or any case or proceeding for the appointment of any custodian or the like of or for the City or any substantial part of the City’s property or suffers any such appointment to continue undischarged or unstayed for a period of ninety (90) days; or the City makes a general assignment for the benefit of creditors; or any action is taken by the City for the purpose of effecting any of the foregoing; or a receiver or trustee or any other officer or representative of the court or of creditors, or any court, governmental officer or agency, shall under color of legal City, take and hold possession of any substantial part of the property or assets of the City for a period in excess of ninety (90) days; or

(d) any representation or warranty made by the City, or any of the City’s officers, herein or in any of the other Loan Documents, or the Security Documents, or in connection herewith or therewith shall prove to have been incorrect in any material respect when made; or

(e) any Event of Default under the Note or any other Loan Documents shall have occurred and be continuing.

Section 5.2 Remedies. If an Event of Default shall have occurred and be continuing, ODOT, at any time, at ODOT’s election, may exercise any or all or any combination of the remedies conferred upon or reserved to ODOT under this Loan Agreement, the Note, any of the other Loan Documents or any instrument or document collateral thereto, or now or hereafter existing at law, or in equity or by statute. Subject to the foregoing, any or all of the following remedies may be exercised:

- (a) if the Loan has not been disbursed, termination of any and all of ODOT’s obligations under this Loan Agreement and the Commitment;

- (b) declaration that the entire unpaid balance of all indebtedness owed to ODOT is immediately due and payable;
- (c) exercise of all or any rights and remedies as ODOT may have under this Loan Agreement, Security Documents, and any of the other Loan Documents;
- (d) ODOT may inspect, examine and copy the books, records, accounts and financial data of the City;
- (e) ODOT may pursue all remedies now or hereafter existing at law or in equity to collect all amounts then due and thereafter to become due under this Loan Agreement, Security Documents or any other Loan Document, or to enforce the performance and observance of any other obligation or agreement of the City under the Loan Documents.

Section 5.3 No Remedy Exclusive. No remedy conferred upon or reserved to ODOT by this Loan Agreement is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Loan Agreement, each other Loan Document, Security Documents or now or hereafter existing at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle ODOT to exercise any remedy reserved to ODOT in this Article, it shall not be necessary to give any notice, other than such notice as may be expressly provided for herein or required by law.

Section 5.4 Agreement to Pay Expenses and Attorneys' Fees. If an Event of Default shall occur and ODOT shall incur expenses, including reasonable attorney's fees, in connection with the enforcement of this Loan Agreement, Security Documents, or any other Loan Documents, or the collection of sums due thereunder, the City shall reimburse ODOT for the expenses so incurred upon demand. If any such expenses are not so reimbursed, the amount thereof, together with interest thereon from the date of demand for payment at the rate specified in the Note for any default under the Note, shall constitute additional indebtedness secured by the Security Documents, and in any action brought to collect such indebtedness or to enforce the Security Documents, ODOT shall be entitled to seek the recovery of such expenses in such action.

Section 5.5 No Waiver. No failure by ODOT to insist upon the strict performance by the City of any provision hereof shall constitute a waiver of ODOT's right to strict performance and no express waiver shall be deemed to apply to any other existing or subsequent right to remedy the failure by either of the City to observe or comply with any provision hereof.

ARTICLE VI
MISCELLANEOUS PROVISIONS

Section 6.1 Term of Loan Agreement. This Loan Agreement shall be and remain in full force and effect from the date of its delivery until (a) the termination of this Loan Agreement pursuant to Section 5.2(a) hereof or (b) such time as the Loan shall have been fully repaid and all other sums payable by the City under this Loan Agreement, the Note and any other Loan Documents shall have been paid.

Section 6.2 Notices. All notices, certificates, requests or other communications hereunder shall be in writing and shall be deemed to be sufficiently given when mailed by registered or certified mail, postage prepaid, or sent by facsimile and confirmed by telephone, and addressed to the appropriate Notice Address. The City or ODOT may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, requests or communications shall be sent.

Section 6.3 Extent of Covenants of ODOT; No Personal Liability. All covenants, obligations and agreements of ODOT contained in this Loan 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 ODOT Director in other than such ODOT Director's official capacity acting pursuant to the Act.

Section 6.4 Binding Effect. This Loan Agreement shall inure to the benefit of and shall be binding in accordance with its terms upon ODOT, the City and their respective successors and assigns. The City shall not assign any of the City's rights or obligations under this Loan Agreement without the written consent of ODOT.

Section 6.5 Amendments and Supplements. This Loan Agreement may not be amended or supplemented except by an instrument in writing executed by ODOT and the City.

Section 6.6 Execution Counterparts. This Loan Agreement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

Section 6.7 Severability. If any provision of this Loan Agreement, or any covenant, obligation or agreement contained herein is determined by a court to be invalid or unenforceable, such determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if such invalid or unenforceable provision were not contained herein. Such 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 6.8 Captions; Entire Agreement. The captions and headings in this Agreement shall be solely for convenience of reference and shall in no way define, limit or

describe the scope or intent of any provisions or Sections of this Agreement. All exhibits and schedules to this Agreement shall be annexed hereto and shall be deemed to be part of this Agreement. This Agreement and the exhibits and schedules attached hereto and the Loan Documents embody the entire agreement and understanding between ODOT and the City and supersede all prior agreements and understandings relating to the subject matter hereof.

Section 6.9 Interpretation. This Agreement shall be deemed to have been prepared jointly by the parties hereto and any uncertainty or ambiguity existing herein shall not be interpreted against any party but shall be interpreted according to the rules for the interpretation of arm s length agreements.

Section 6.10 Governing Law. This Agreement shall be deemed to be a contract made under the laws of the State and for all purposes shall be governed by and construed in accordance with the laws of the State.

Section 6.11 Further Assurance. The City agrees to execute such other and further documents and instruments as ODOT may request to implement provisions of the Loan Documents.

IN WITNESS WHEREOF, this Loan Agreement has been executed and delivered all as of the date first herein before written.

OHIO DEPARTMENT OF TRANSPORTATION

Jolene M. Molitoris., Director

CITY OF GAHANNA

By: _____

Print Name: _____

Print Title: _____

EXHIBIT A

FORM OF
PROMISSORY NOTE

EXHIBIT B

PROJECT DESCRIPTION

EXHIBIT C

CERTIFICATE OF AVAILABLE RESOURCES

This certificate is given in compliance with Section 5705.41, Revised Code. It is attached to the Loan Agreement dated as October ____, 2010 (the "Loan Agreement") between the Director of Transportation of the State of Ohio ("ODOT") and the City of Gahanna, Ohio ("City"). Under Section 3.1 of the Loan Agreement, ODOT has agreed to loan \$6,347,508 to the City. The undersigned certifies as follows:

1. The Loan and the Note have been authorized by the City by Ordinance No. _____ passed on _____, 2010.
2. The Note has been executed and delivered to ODOT. Under Section 5705.41(D), Revised Code, amounts required to meet scheduled payments on the Note in the current fiscal year have been lawfully appropriated for such purpose and are either in the treasury, or in the process of collection to the credit of the Nontax Revenues or MORPC FY13 revenues as defined in the Loan Agreement, the funds designated by the City for deposit of funds to pay the Note, free from any previous encumbrances.

Dated: October ____, 2010

Fiscal Officer of Gahanna