

## PRE-ANNEXATION AGREEMENT

THIS AGREEMENT is entered into by and between the CITY OF GAHANNA, an Ohio chartered municipal corporation (hereinafter the "City"), and CANINI & ASSOCIATES LTD, LLC., an Ohio limited liability company (hereinafter "CANINI").

### PURPOSE:

CANINI owns or controls, by contract, property that is contiguous with the boundaries of the City of Gahanna. The property owned or controlled by CANINI is shown on Exhibit A attached hereto and made a part hereof (hereinafter the "Real Property"). The Real Property would benefit from certain City services, including police, sanitary sewer, water, economic development assistance, and street maintenance. The City can offer such municipal services to the Real Property if the Real Property is annexed to the City. The mutual purposes of both the City and CANINI can be accomplished through the annexation of the Real Property to the City. Therefore, in order to gain mutual benefits, the City and CANINI agree as follows:

1. Annexation Petition. CANINI will, at its sole cost, prepare and file an annexation petition within thirty (30) days of the full execution of this Agreement agreeing to annex the Real Property to the City. Once this Agreement is signed and accepted by the City, CANINI and the City both agree that the Parties will continue to support the annexation to the City through the entire annexation process, including any appeal or court action. The City agrees it will not take any action that would result in the Real Property becoming non-contiguous to the City or otherwise make the Real Property not qualify for annexation. The annexation of the Real Property shall include portions of Shull Road at the request of the City, provided the inclusion of such additional right of way does not cause the proposed annexation to fail to comply with the requirements of ORC 709.021.
2. Service Resolution. The City agrees to enact the City Service Resolution setting out the services that will be provided to the Real Property upon annexation pursuant to the requirements of R.C. §709.031(B). The City agrees to provide witnesses for any hearing before the County Commissioners and to provide affidavits in support of its Service Resolution. The developer will be responsible for all costs associated with off-site utility improvements necessary for servicing the Real Property.
3. Roadway Access. The City agrees that the Real Property will be permitted to have one curb cut / access point to Shull Road for a public street within the development and a separate, private

driveway to access the barn, generally as shown on the Preliminary Plan set forth in Paragraph 4 below. The City staff has evaluated the proposed use of the property as identified in Paragraph 4 herein and has determined that although no road improvements are necessary to mitigate traffic caused by the proposed use of the Real Property in accordance with the Preliminary Plan attached hereto as Exhibit B, "Maintenance" of the annexed portion of Shull Road may be required by the developer to ensure that the roadway is in a maintenance free state at the time of subdivision acceptance. "Maintenance" would include items such as roadway base repair, resurfacing, and striping. "Maintenance" would not include curb and gutter, or major widening of the roadway. Further, in order to preserve and enhance the rural ambiance of the development, the City agrees that the construction of Rocky Pointe Court, which is the internal road on the Preliminary Plan, shall be constructed with an "open ditch" construction section, with no curbs and gutter, or sidewalks required, however, uniform mail boxes shall be provided adjacent to any driveway and an 8' multi-use trail along both sides of Rocky Pointe Court and the west side of Shull Road shall be constructed generally as located on the Preliminary Plan. All "details" related to the "open ditch" section shall be approved by the City Engineer. The "details" shall include but not be limited to pavement width and composition, underdrain, storm sewer, and ditch slopes. A minimum of two street lights shall be provided, one generally at the intersection of Rocky Pointe Court and Shull Road and one located near the proposed cul-de-sac. The final location of these street lights shall be subject to the final determination of the City Engineer. Street trees shall be provided in accordance with City code along Rocky Pointe Court and Shull Road if required by the Landscape Board. Any variances or deviations to City Code or subdivision requirements to provide this open ditch street section shall be conducted through the typical process and review by the City. The items referenced in Section 3 and Section 4 shall be referred to as Public Infrastructure Improvements.

4. Use. The City, through its development and planning staff, has reviewed the Preliminary Plan and believes the Real Property will be zoned for single family residential use upon annexation to the City as set forth on the Preliminary Plan. The City therefore agrees to support the rezoning of the Real Property immediately following annexation to allow for the development of single family residential units with a maximum density of .7 units / acre in compliance with the Preliminary Plan attached hereto as Exhibit B. All rezoning applications are subject to Planning Commission and Council approval. Such review and consideration shall occur during the pendency of the annexation process. The City's planning staff and administration agree that, if the rezoning application and accompanying Preliminary Plan and development standards text is generally

consistent with Exhibit B attached hereto, the application will be supported by staff as responsive to the planning and zoning plans, principles, and objectives of the City. City further agrees that it shall issue, upon application and subject to codified processes, all setback and area variances necessary to permit the conversion of the barn located on the Real Property to a residence. Conversion of the barn to residential use shall, however, comply with all applicable building code requirements. At the request of CANINI, the City agrees to delay acceptance of the annexation until legislative approval of the rezoning can be accomplished contemporaneously with the acceptance of the annexation. If, for some reason, the rezoning ordinance and/or variances to permit the development of the Real Property in accordance with the Preliminary Plan cannot be approved in a form or substance acceptable to CANINI, the City agrees, at the request of CANINI, to permit CANINI to withdraw its request to annex the Real Property to the City and/or to forbear from acceptance of the annexation by allowing the 120-day acceptance period to expire, thus effectively rejecting the annexation of the Real Property. If the annexation approval occurs prior to or other than concurrently with the legislative approval of the rezoning, and the rezoning is subsequently not approved substantially in accordance with Exhibit B (or as it may be modified acceptably to CANINI and City staff) or is referred or a building moratorium is enacted which would limit CANINI's use of the Real Property, City agrees, at CANINI's request: (i) to reconsider the ordinance accepting the annexation, and to rescind, repeal and reject the annexation approval within fourteen (14) days of the date of the disapproval of the rezoning or referral to a vote of the electorate or the enactment of the building moratorium, or (ii) to detach/de-annex from City the Real Property or not oppose any owner's petition to detach/de-annex its part of the Real Property from the City. CANINI agrees to dedicate an additional 5' of additional right of way in Shull Road at the time of Final Plat. CANINI further agrees that the maintenance of the leisure path along Shull Road and along Rocky Pointe Court shall be provided by the subdivision homeowner's association to the standards as determined by the City Engineer, which shall further maintain any sanitary sewer pump station constructed for the development.

5. Parkland. CANINI agrees to pay the Parkland dedication/fee in lieu as set forth in Gahanna City Code.
6. Tax Increment Financing. CANINI consents to and, upon the request of the City, agrees to reasonably cooperate with the City to create a tax increment financing area on the Real Property. The creation and terms of any such tax increment financing area shall be within the sole discretion of the City.

7. New Community Authority. CANINI agrees that promptly following the annexation of the Real Property to the City, CANINI shall submit a petition to establish a New Community Authority pursuant to Ohio Revised Code Chapter 349 (hereinafter the “Authority”), the boundaries of which shall include, but may not limited be to, the Real Property. The form and contents of the petition shall be prepared by the City with the cooperation of CANINI. The petition shall provide, among other things, that the City shall be entitled to appoint all members to the Authority’s board of trustees. The City and CANINI shall each pay the costs of their own counsel in forming the Authority. The proceedings providing for the creation of the Authority shall authorize the Authority to levy and collect a community development charge in an amount not to exceed 7 mills, in accordance with Ohio Revised Code Chapter 349 for the purpose of paying the cost of “land acquisition”, “land development” and “community facilities”, each as determined by the City and defined in Ohio Revised Code Chapter 349 as amended from time to time. To provide for collection of the community development charge, CANINI agrees to record a declaration of covenants against the property in the form provided by the City and reasonably acceptable to CANINI. CANINI further agrees that it will, upon the request of the City, execute or consent to any and all supplemental or amending petitions to add property to the Authority. The City and CANINI agree that to the extent provided by Ohio Revised Code Chapter 349, the City and the City Council shall have discretion, authority and responsibility to consider and approve the creation of the Authority subject to the limitations of this paragraph.

8. Construction of the Public Infrastructure Improvements: CANINI shall take all reasonable action such that the Public Infrastructure Improvements are substantially complete on the second anniversary of the date the City first approves the Final Plat. The City and CANINI agree that such completion date may be extended by mutual written agreement of the Authorized City Representative and CANINI.

The Completion Date of the Work shall be specified to the City in a certificate signed by CANINI, which certificate shall state that:

- a. the construction, improvement and equipping of the Public Infrastructure Improvements has 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 such Public Infrastructure Improvements;

- b. all other facilities necessary in connection with the Public Infrastructure Improvements have been constructed, improved and equipped; and
- c. the construction, improvement and equipping of the Public Infrastructure Improvements has been accomplished in a manner which conforms to all then applicable governmental laws, rules and regulations.

Acceptance by the City of the Public Infrastructure Improvements shall not relieve CANINI of its responsibility for defects in material or workmanship.

9. Miscellaneous.

- a. This Agreement and the rights and obligations of the parties hereunder shall be subject to the terms and conditions hereof and inure to the benefit of and be binding on the respective successors and assigns.
- b. This Agreement supersedes any and all prior agreements, arrangements, negotiations or understandings and acknowledgments between the City and the CANINI or any related party, relative to matters contained herein whether oral or written. No amendment, modification or alteration of this Agreement shall be valid unless in writing and signed by the parties hereto.
- c. If for any reason any one or more articles, sections, sentences, clauses or parts of this Agreement are held invalid by any court of law or duly authorized public body, such determination shall not affect, impair or invalidate the remaining provisions of this Agreement but shall be confined in its operation to the specific articles, sections, sentences, clauses or parts of this Agreement held invalid and the invalidity of any article, section, sentence, clause or part of the Agreement in any one or more instance shall not prejudice in any way the validity of the Agreement in any other instance.
- d. The City agrees to act within thirty-five (35) days of CANINI's execution of the Agreement.
- e. In order to apply the developmental commitments and financial obligations contained in this Agreement fairly and equitably to all properties which seek the advantages of annexation to the City of Gahanna, in the event the City annexes any taxable property east of its current easterly boundary of the Real Property for single family residential use after the effective date of this Agreement, the City agrees to enact, apply and enforce the required millage provisions set forth in Paragraph 7 above to any property contained in such annexation(s) at not less than the millage rate provided in such paragraph

f. The obligations of and agreements by the City contained herein shall be effective and enforceable upon the approval of all necessary legislation and/or motions by Council. It is acknowledged that the initial legislation approving this Agreement is merely the first in a series of legislative acts implementing this Agreement. All subsequent City Council actions implementing this Agreement shall be considered to be in furtherance of this original Council action. The development contemplated by this Agreement is necessary to preserve the orderly development, economic progress and prosperity for the City of Gahanna, its residents, citizens, and taxpayers. Further, the availability of statutory provisions and processes may be limited or terminated by the Ohio Legislature. Therefore, City Council shall pass the legislation authorizing the execution of this Agreement, and all subsequent legislation necessitated by this Agreement, with an emergency clause which requires that such legislation take effect at the earliest period permitted by law.

Signed and Acknowledged in the presence of:

**CANINI & ASSOCIATES, LTD.,  
an Ohio limited liability company**

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By: \_\_\_\_\_

\_\_\_\_\_  
*Witness —printed name*

Its: \_\_\_\_\_

**CITY OF GAHANNA**

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By: \_\_\_\_\_

\_\_\_\_\_  
*Witness —printed name*

\_\_\_\_\_  
*(Printed Name/Title)*

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Date: \_\_\_\_\_

\_\_\_\_\_  
*Witness —printed name*

Per authority granted in Ordinance

No. \_\_\_\_\_ passed \_\_\_\_\_, 2016.

**LIST OF EXHIBITS TO PRE-ANNEXATION AGREEMENT**

Exhibit A – Description and/or map of property owned or controlled by CANINI

Exhibit B – Preliminary Site Plan

EXHIBIT A

**ALTA COMMITMENT FOR TITLE INSURANCE  
EXHIBIT "A"  
LEGAL DESCRIPTION**

ISSUED BY  
STEWART TITLE GUARANTY COMPANY

**File No.:** 01032-19804

Situated in the State of Ohio, County of Franklin and in the Township of Jefferson, being in the Second Quarter, Township 1, Range 16, United States Military Lands, and bounded and described as follows:

Beginning at an iron pin found in the center line of Headley Road extended, being the northwest corner of the Frederick H. Dean 14.275 acre tract, as the same is shown of record in Deed Book 1897, Page 354, Recorder's Office, Franklin County, Ohio;

Thence along the west line of the Frederick H. Dean tract, South 1° 44' West, (passing an iron pin at 21 feet), 355.3 feet to a point in the center line of Rocky Fork Creek;

Thence along the center line of said creek, following its meanders as follows:

North 32° 16' West, 280 feet to a point;

North 56° 16' West, 60 feet to a point

North 64° 39' West, 223.80 feet to a point;

North 55° 55' 30" West, 67.97 feet to a point;

North 73° 31' West, 70.81 feet to a point

North 41° 24' West 79.45 feet to a point;

North 13° 01' West 198.65 feet to a point;

North 41° 47' 30" West, 129.46 feet to a point;

North 75° 49' 30" West, 107.08 feet to a point;

Thence leaving the creek, North 73° 41' 30" East, (passing an iron pin at 99.8 feet) 512.35 feet to an iron pin in the end of the fence line;

Thence along the fence line, North 88° 02' 30" East, (passing an iron pin at 621.87 feet) 641.9 feet to a nail in the center line of Shull Road;

Thence along the center line of the road, South 1° 21' 30" West, 618.5 feet to an iron pin found in the north line of the Frederick H. Dean 14.275 acre tract and at an angle point in the center line of Shull Road;

Thence along the center line of Headley Road extended (being the north line of the said Frederick H. Dean 14.275 acre tract), North 88° 30' West, 294.6 feet to the place of beginning, containing 13.486 acres, more or less.



EXHIBIT B

