

# DO NOT DETACH



Instrument Number: 201910290143767  
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**Return To (Mail Envelope):**

TORTA - TRANSOHIO RESIDENTIAL TITLE AGENCY

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TORTA - TRANSOHIO RESIDENTIAL TITLE AGENCY

Walk-In

**First Grantor:**

GAHANNA CITY OF

**First Grantee:**

MI HOMES OF CENTRAL OHIO LLC

**Fees:**

Document Recording Fee: \$34.00

Additional Pages Fee: \$48.00

**Total Fees:** \$82.00

**Amount Paid:** \$82.00

**Amount Due:** \$0.00

**Instrument Number:** 201910290143767

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OFFICIAL RECORDING COVER PAGE

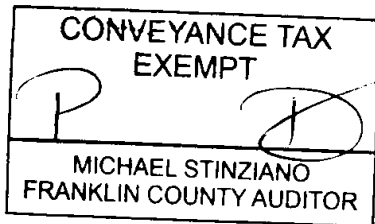
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TRANSFER  
NOT NECESSARY

OCT 29 2019

MICHAEL STINZIANO  
AUDITOR  
FRANKLIN COUNTY, OHIO

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT ("Agreement") dated this day of <sup>24<sup>th</sup></sup> October, 2019, by and between M/I Homes of Central Ohio LLC, a Limited Liability Company (together with its successors and assigns, "Grantee"), and the City of Gahanna, a Municipal Corporation (together with its successors and assigns, "Gahanna", together Grantee with sometimes herein collectively, the "Parties").

RECITALS

- A. Gahanna is the owner of certain property located in Gahanna, Franklin County, Ohio and known as of the date of this Agreement as Franklin County Parcel Number 027-000077-00.
- B. Gahanna desires to grant a nonexclusive easement over it's land, more particularly described in Exhibit A and depicted in Exhibit B attached hereto.
- C. Grantee is owner of certain property depicted in Exhibit B as "Weldon Phase I" and known as of the date of this Agreement as Franklin County Parcel Number 170-004180-00.
- D. The Franklin County Parcel Numbers referenced above shall hereinafter be referred to as the "Parcels".

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the Parties hereby agree as follows:

- 1. Recitals. The foregoing recitals are true, accurate, and complete statements of fact and are hereby incorporated into and made a part of this Agreement.
- 2. Grant of Easement for Benefit of Grantee. Gahanna hereby grants to Grantee, its employees, agents, contractors, subcontractors, suppliers, invitees, licensees, tenants, successors, and assigns, a perpetual, non-exclusive right and easement for pedestrian ingress and egress over a portion of the land more particularly

described in Exhibit A and depicted in Exhibit B attached hereto and made a part hereof ("Easement Area").

3. **No Construction in the Easement Areas.** Subject to the rights herein granted to the Parties, each of the Parties reserve the right to use and enjoy the land included within the Easement Area; provided, however, no buildings, structures, equipment, machinery or other types of improvements or property of a permanent nature other than a pedestrian trail that meets or exceeds city approved standards, shall be located on or maintained within the Easement Area, provided Grantee shall be permitted to construct and to temporarily place within the Easement Area the equipment necessary to construct, install, and maintain such pedestrian trail.

4. **Maintenance.** Grantee shall, at their sole cost and expense, construct to city approved standards and maintain or cause to be maintained the Easement Area and shall keep the same in good condition and repair. For purposes of this Section, the term "maintenance" shall be deemed to include repairing and surfacing the applicable Easement Area and removing brush, leaves and tree limbs, pruning trees and snow removal along the applicable Easement Area, all as may be reasonably required for the proper use of said Easement Area. Maintenance shall be deemed to be "reasonably required" if it would be customary practice for public parks and paths in the City of Gahanna, Ohio of similar materials character, width, and usage, to be so maintained. M/I Homes of Central Ohio LLC, a Limited Liability Company, shall remain responsible for maintenance of the easement regardless of any assignment.

5. **Insurance.** Upon execution of this Agreement, the Parties agree Grantee will maintain and provide evidence of (a) Commercial General Liability Insurance including Property Damage, Bodily Injury and Contractual Liability Insurance subject to standard insurance carrier exclusions, in the amount of no less than One Million Dollars (\$1,000,000) per occurrence with a combined single limit of liability of Two Million Dollars (\$2,000,000); (b) Worker's Compensation Insurance to comply with the applicable laws of the State of Ohio. The insurance required hereunder may be provided through a blanket policy of insurance or through the use of an umbrella policy.

6. **Indemnification.** Grantee shall be fully responsible for and agrees to indemnify, and hold Gahanna safe and harmless from and against any claim, loss, damage, cause of action, liability, judgment, cost or expense (including, without limitation, reasonable attorneys' fees) to the extent arising from: (i) bodily injury (including, without limitation, death) suffered by users of the pedestrian trail, or any of their respective employees, agents, contractors, subcontractors, suppliers, tenants, licensees or invitees, arising from the negligence, gross negligence, or willful misconduct of Grantee and/or its employees, agents, contractors, subcontractors, suppliers, tenants, licensees or invitees; and (ii) any damage to the real or personal property of Gahanna, or any of their respective employees, agents, contractors, subcontractors, suppliers, tenants, licensees or invitees, arising out of Grantee breach of its obligations set forth in this Agreement and/or caused by the negligence, gross negligence, or willful misconduct of Grantee and/or its employees, agents, contractors, subcontractors, suppliers, tenants, licensees or invitees.

7. **Breach Remedies.** Upon a breach of this Agreement by any party hereto, in addition to any other remedy set forth herein, the non-breaching party may pursue any remedy available at law or in equity. Notwithstanding anything in this Agreement to the contrary, nothing herein is intended to, nor shall it, prevent the parties from seeking injunctive relief at any time as may be available under law or equity. The remedies of the non-breaching party shall be cumulative, and no one of them shall be construed as exclusive of any other or of any remedy provided at equity or by law. In the event of any action or proceeding brought by either party against the other under this Agreement, the prevailing party shall be

entitled to recover all costs and expenses, including reasonable attorneys' fees.

8. **Waiver.** It is covenanted and agreed that no waiver at any time of the provisions hereof by either party shall be construed as a waiver of any of the other provisions hereof and that a waiver at any time of any of the provisions hereof shall not be construed at any subsequent time as a waiver of the same provisions. The approval of either party to or for any action by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary the party's consent or approval to or of any subsequent similar act by the other party.

9. **Notices.** Any notice, request, demand, or other document required or permitted to be given under this Agreement shall be in writing and be deemed to have been given when (a) received, if delivered and given in person, (b) on the date of delivery if sent by: (i) nationally recognized overnight mail carrier, such as FedEx; or (ii) United States mail, postage prepaid, certified and return receipt requested, and addressed as follows:

To Grantee:                   M/I Homes of Central Ohio, LLC  
                                  3 Easton Oval, Suite 300  
                                  Columbus, OH 43219  
                                  Attn: VP of Land

To Gahanna:                 City of Gahanna  
                                  Attn: Director of Parks and  
                                  Recreation 200 S. Hamilton  
                                  Road Gahanna, OH 43230

or to such other individual, entity, or address as a party may designate for itself by notice given as provided above.

10. **Easement Area Title.** The Parties hereto agree that Grantee's rights and easements created pursuant to this Agreement shall be superior in right to any and all mortgages and other encumbrances which Gahanna may have imposed or may hereafter impose on the property and that to that end, Gahanna agrees to obtain, on the reasonable request of the other party, a subordination of any such mortgages or other encumbrances to Gahanna's respective rights and easements set forth herein, such subordination in form and substance to be reasonably satisfactory to Grantee as the case may be. In the event of a foreclosure sale under any mortgage that hereafter may be placed on fee title to any portion of the Easement Areas, the parts or portions so encumbered shall be sold and conveyed subject to and together with the rights, benefits, burdens, and obligations established by this Agreement.

11. **Not a Public Dedication.** Nothing herein contained shall be deemed to be a gift or dedication of any portion of any property or portion thereof to the general public, or for any public use or purpose whatsoever. Except as herein specifically provided, no right, privileges or immunities of any party hereto shall inure to the benefit of any third-party person, nor shall any third-party person be deemed to be a beneficiary of any of the provisions contained herein.

12. **Run with the Land.** All easements, covenants and agreements as are contained in this Agreement, whether made by Grantee or Gahanna shall be deemed and shall constitute covenants running with the land, and shall be binding upon and inure to the benefit of the successors and assigns in title of the Parcels; it being understood and agreed that, from and after conveyance or transfer of the Parcels burdened or benefited by this Agreement, the successor grantee or transferee shall be liable for the performance or observance of said covenants and agreements and liability of the grantor or transferor for breach of any covenant or obligation; and any indemnification obligations set forth herein,

shall automatically terminate .

13. Amendment and Termination. This Agreement may be amended or terminated by the execution and recording of a written instrument signed by the Parties or their respective successors and assigns. If the Grantee fails to maintain the easement as required in section 4 of this Easement Agreement, then Gahanna may, at its discretion, terminate this easement after providing notice to the Grantee as outlined in section 9 and allowing a reasonable time for the Grantee to cure the default following such notice.

14. Interpretation. This Agreement shall be construed according to its fair meaning and without application of the rule of construction that ambiguities are to be resolved against the party with primary drafting responsibility therefore. The captions used herein, if any, are for convenience of reference only and shall not be deemed to modify or construe this Agreement.

15. Invalidity and Severability. If any provision of this Agreement or the application thereof to any person or circumstance, for any reason and to any extent, shall be held to be invalid or unenforceable, then neither the remainder of this Agreement nor the application of such provision to any other person or circumstance shall be affected thereby, but rather the same shall be enforced to the greatest extent permitted by law. The invalid or unenforceable provision shall be deemed modified to the minimum extent necessary to make the provision valid or enforceable; and, in its modified form, that provision shall then be enforceable and enforced.

16. Governing Law; Venue. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Ohio. Each party consents to the jurisdiction of any federal or state court within Franklin County, Ohio and also consent to service of process by any means authorized by Ohio or federal law or any other law.

17. Authorization. Each of Grantee and Gahanna hereby covenants, warrants and represents that: (a) the individual executing this Agreement on its behalf is duly authorized to execute and deliver this Agreement and grant the interests in the estates demised hereunder in accordance with the organizational documents of such party; and (b) this Agreement is binding upon such party.

18. Counterparts. This Agreement may be executed in multiple counterparts, each of which, when so executed, shall be deemed an original, but all such counterparts, taken together, shall constitute one and the same Agreement.

19. Waiver of Jury Trial. TO THE FULLEST EXTENT PERMITTED BY LAW, THE PARTIES HEREBY WAIVE THE RIGHT TO A TRIAL BY JURY WITH RESPECT TO ANY MATTER ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

*[Remainder of page left intentionally blank; signatures follow]*

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

GAHANNA

The City of Gahanna  
a Municipal Corporation

By: [Handwritten Signature]  
Printed Name: Thomas R. Knechtel  
ITS: Mayor

STATE OF OHIO )  
  ) SS:  
COUNTY OF FRANKLIN )

The foregoing instrument was acknowledged before me this 24 day of October, 2018 by Mary Tomkowiak, as Mayer of Gahanna on behalf of City of Gahanna  
2019



NANCY BALLENGER  
Notary Public, State of Ohio  
My Commission Expires 01-28-2023

[Handwritten Signature]  
Notary Signature  
Printed Name: Nancy Ballenger  
My Commission Expires: 1-28-2023

[Signatures continue on following page]

[Signatures continued from previous page]

**GRANTEE**

M/I Homes of Central Ohio,  
an Ohio limited liability company

By: Josh Barkan  
Printed Name: Josh Barkan  
ITS: VP of Land

STATE OF OHIO )  
) SS:  
COUNTY OF FRANKLIN )

The foregoing instrument was acknowledged before me this 25<sup>th</sup> day of October,  
2019 by Josh Barkan, as V.P. of Land, on behalf of M/I Homes of Central Ohio, LLC

Darlene W. Smith  
Notary Signature  
Printed Name: Darlene W. Smith  
My Commission Expires: 6/25/24



Darlene W. Smith  
Notary Public, State of Ohio  
My Commission Expires 06-25-2024

**EXHIBIT A****ACCESS EASEMENT  
0.058 ACRE**

Situated in the State of Ohio, County of Franklin, City of Gahanna, in Quarter Township 1, Township 1, Range 16, United States Military Lands, being on, over, and across Reserve "F" of the subdivision entitled "Village at Hannah Farms Phase 1", of record in Plat Book 110, Page 95, said Reserve "F" being conveyed to City of Gahanna, Ohio by deed of record in Instrument Number 200709270169844 (all references are to the records of the Recorder's Office, Franklin County, Ohio) and more particularly bounded and described as follows:

Beginning, for reference, at the southwesterly corner of said "Reserve F", the northwesterly corner of "Reserve D" of the subdivision entitled "Weldon Phase 1", of record in Plat Book 124, Page 32, in the easterly line of that 2 acre tract conveyed to Karen L. Laparo by deed of record in Instrument Number 201210100152190.

Thence South 86° 12' 28" East, with the northerly line of said Reserve "D", a distance of 151.76 feet to the TRUE POINT OF BEGINNING for this description;

Thence crossing said "Reserve F" the following courses and distances:

North 17° 10' 03" East, a distance of 15.89 feet to a point;

North 03° 50' 26" East, a distance of 56.33 feet to a point;

North 16° 41' 30" West, a distance of 52.77 feet to a point;

South 83° 50' 19" East, a distance of 3.43 feet to a point of curvature to the left.

with the arc of said curve, having a central angle of 32° 49' 02", a radius of 30.00 feet, an arc length of 17.18 feet, a chord bearing of North 79° 45' 20" East and chord distance of 16.95 feet to a point;

South 16° 41' 30" East, a distance of 53.16 feet to a point;

South 03° 50' 26" West, a distance of 62.29 feet to a point; and

South 17° 10' 03" West, a distance of 13.47 feet to a point in the northerly line of said Reserve "D";

Thence North 86° 12' 28" West, with said northerly line, a distance of 20.56 feet to the TRUE POINT OF BEGINNING, containing 0.058 acre of land, more or less.

EVANS, MECHWART, HAMBLETON & TILTON, INC

*Matthew A. Kirk*

Matthew A. Kirk  
Professional Surveyor No. 7865

7 MAY 19

Date

MAK:nc  
0.058 ac 201910290143767-ESMT-ACCESS411.doc





EXHIBIT B

