

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this “Agreement”) is entered into so as to be effective on the last date of signature below by a party hereto (the “Effective Date”), by and between the **CITY OF GAHANNA**, an Ohio municipal corporation (“City”), and **MILL STREET INVESTORS LLC**, an Ohio limited liability company (“Developer”). City and Developer may be referred to herein individually as a “Party” and collectively as the “Parties”.

W I T N E S S E T H:

WHEREAS, Developer intends to acquire certain real property located in the Olde Gahanna area of the City, a portion of which is presently owned by Homestead Development LLC and is known on the Effective Date as Franklin County Auditor Parcel Numbers 025-000101, 025-000130, and 025-000036, and a portion of which is owned by MJM Investment Co. LLC and is known on the Effective Date as Franklin County Auditor Parcel Number 025-000114 (all of the foregoing parcels are generally depicted in **Exhibit A**, which is attached hereto and incorporated herein by reference, and are referred to collectively as the “Property”); and

WHEREAS, Developer intends to develop a project on the Property consisting of approximately 74 apartment units and consisting of approximately 84,680+/- square feet, all as generally shown in **Exhibit B** (attached hereto and incorporated herein by reference) (the “Project”), subject to final review and approval by the City of applications for a development plan and certificate of appropriateness for the Project; and

WHEREAS, because the Project is classified as a residential project under the City’s zoning regulations, the Project is classified as a residential/dwelling project under the Ohio Community Reinvestment Area Act (i.e., Sections 3735.65 - .70 of the Ohio Revised Code); and

WHEREAS, the Project is an “infill” redevelopment, meaning that it will serve to redevelop blighted and underutilized real property within the core of the City; and

WHEREAS, there are certain financial challenges and public infrastructure issues that are unique to such redevelopments and therefore require a public-private partnership in order to allow them to become reality; and

WHEREAS, City has found and determined, and hereby finds and determines, that such challenges and issues are present with the proposed Project, that the commercial and economic welfare of the City will be benefited by the development and operation of the Project, and that it is in the best interest of City to take certain steps as described and provided for in this Agreement in order to facilitate the Project and enhance the character and economic vitality of Olde Gahanna.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements hereinafter set forth, the Parties hereby agree as follows:

1. Community Reinvestment Area Eligibility. The Property is located in the City's Community Reinvestment Area #5 (the "CRA"). City acknowledges and agrees that the Project, as proposed, is eligible for a 15-year, 100% abatement of real property taxes that otherwise would be applicable thereto, and the Developer need not enter into an agreement with the City with respect to the Project. Developer anticipates that it will file an application with the City to secure the abatement for the Project and will identify the commencement year for the abatement therein, and City agrees to certify the CRA abatement to the Franklin County Auditor once the application is filed. City acknowledges that the Project's participation in the CRA and the abatement that it provides is of material significance to Developer's decision to undertake the Project, and represents and warrants to Developer that the CRA and the related tax abatement will take priority over any exemptions that apply to the Property based on its location in the Olde and West Gahanna Tax Increment Financing District.

2. Public Infrastructure Improvements. City and Developer agree that certain public infrastructure improvements, particularly the dedication of an additional 3' of Wilson Alleyway Right-Of-Way, widening of the Western shoulder of Wilson Alleyway, as well as the installation of a "Hammerhead T-Turnaround" at the future terminus of North Street at the intersection with Wilson Alleyway, and as detailed in **Exhibit C** (attached hereto and incorporated herein by reference) (the "New Public Infrastructure") are necessary to be installed and constructed to serve the Project as well as the Olde Gahanna area at large. Developer shall, at its own cost and expense without any right to reimbursement from the City therefor, install and construct the New Public Infrastructure in conjunction with its development of the Project.

The Developer and the City acknowledge and agree that the construction of New Public Infrastructure owned or to be owned by the City or another "public authority" (as defined in Section 4115.03(A) of the Ohio Revised Code) that is not excepted from prevailing wage requirements under Section 4115.04(B) or otherwise excepted from prevailing wage requirements may be subject to the prevailing wage requirements of Ohio Revised Code Chapter 4115, and if those requirements apply, all wages paid to laborers and mechanics employed to construct the New Public Infrastructure must be paid at not less than the prevailing rates of wages of laborers and mechanics for the classes of work called for by the New Public Infrastructure, which wages must be determined in accordance with the requirements of that Chapter 4115, if so required. The City and the Developer have or will comply, and the Developer has or will require compliance by all contractors working on any such New Public Infrastructure, with all applicable requirements of that Chapter 4115, including, without limitation, (i) obtaining the determination required by that Chapter 4115 of the prevailing rates of wages to be paid for all classes of work called for by the New Public Infrastructure, (ii) obtaining the designation of a prevailing wage coordinator, who shall be appointed by the City, for the New Public Infrastructure, and (iii) insuring that all subcontractors receive notification of changes in prevailing wage rates as required by that Chapter 4115.

3. Contingencies to Performance – City Council Actions. The obligations of Developer hereunder shall be expressly conditioned upon the occurrence of all of the following within sixty (60) days after the City’s Planning Commission has voted to approve required applications for a development plan, zoning variance application and certificate of appropriateness for the Project (the “Applications”):

(a) City Council shall have taken legally effective action to vacate existing right-of-way within that portion of North Street which is generally identified in **Exhibit D**, which is attached hereto and incorporated herein by reference (the “North Street ROW”), with the legal effect being that one-half of such vacated right-of-way shall then be owned by the owner of Franklin County Auditor Parcel Number 025-000114 and the other half shall then be owned by the owner of Franklin County Auditor Parcel Number 025-000101. Once such action becomes legally effective, Developer shall dedicate three (3) feet of right-of-way to the City from the Property along its entire length adjacent to Wilson Alley (as generally illustrated in **Exhibit D**), in consideration for vacation of the North Street ROW and, once such dedication is completed by the delivery of an executed deed for the same to the City, Developer shall be permitted to record evidence of the vacation of the North Street ROW with the Office of the Recorder of Franklin County, Ohio (the “Recorder”); and

No later than fifteen (15) days following the first date when the Applications have been approved by the City’s Planning Commission and are legally effective, City shall deliver any necessary executed and duly acknowledged instruments to be recorded with the Recorder in order to effectuate the vacation of the North Street ROW. Developer shall then cause these instruments to be recorded with the Recorder at its sole cost and expense. The costs of creating the legal descriptions and surveys relating to the vacation of the North Street ROW, the New Easement, and the Released Area shall be the responsibility of Developer. Developer and City shall work cooperatively and in good faith to negotiate the forms of all such instruments prior to such time as City completes the actions in subsection (a) above.

4. Right of Reversion. In the event Developer or its successors and/or assigns fails to substantially comply with any obligations of Developer under this Agreement, if Developer fails to commence construction of the Project on or before December 31, 2025, or if Developer fails to complete construction of the Project by September 30, 2027 in substantial conformity with the illustrative site plan (Exhibit B), and fails to cure such failure in accordance with this Section 4, the title to the North Street ROW shall be reverted to the City (as described in this Section, the “North Street ROW Reversion”). In connection with the vacation of the North Street ROW, the City shall execute two deeds, each conveying one half (1/2) of the interest in the North Street ROW to the owner of Franklin County Auditor Parcel Number 025-000114 and the owner of Franklin County Auditor Parcel Number 025-000101 in form and substance reasonably satisfactory to the Developer, which deeds shall include the North Street ROW Reversion. The North Street ROW Reversion shall be automatically terminated in full upon completion of the Project in substantial conformity with the illustrative site plan (Exhibit B), as evidenced by receipt of a certificate of occupancy, and substantial completion of the New Public Infrastructure, as evidenced by a

certificate from the Developer's civil engineer. Upon the termination of the North Street ROW Reversion, the City hereby agrees to execute the document attached hereto as Exhibit E to evidence the termination of the North Street ROW Reversion. Upon Developer's breach of any substantial obligations of the Developer under this Agreement or Developer's failure to commence or complete the construction of the Project as set forth above, the City shall give a written notice to the Developer, specifically identifying the obligations of the Developer with which the Developer has not complied. The Developer or its successors and/or assigns shall have one hundred and eighty (180) days to cure such non-compliance (the "Cure Period"); provided, however, the Developer may extend the Cure Period if: (i) the failure cannot reasonably be cured within the Cure Period; (ii) the Developer notifies the City that such failure cannot be reasonably cured within the Cure Period by no later than the end of the Cure Period; (iii) the Developer has theretofore been diligent in pursuing the cure; and (iv) the Developer in such extension notice covenants to diligently pursue the cure. Upon the failure of the Developer to cure within the Cure Period, which may be extended pursuant to this Section 4, the City may request the Developer to execute and deliver to the City a deed of confirmation affirming that title to the North Street ROW has reverted to the City. Developer's execution of this Agreement evidences Developer's agreement to and acceptance of the North Street ROW Reversion, and Developer further waives any objection to the form or operation of the North Street ROW Reversion as well as any effect it may have on the marketability of title.

5. Compensation for North Street ROW. In lieu of payment or compensation from the Developer to the City for the underlying land associated with the North Street ROW:

- a. The Developer commits to engage with a local nonprofit arts organization and to fund an exterior public arts component (sculpture, mural, art installation or otherwise) in order to promote vibrancy through street-level engagement within or as part of the Project within 12 months following receipt of a certificate of occupancy;
- b. The Developer commits to continuing future engagement and local community participation for 10 consecutive years following receipt of a certificate of occupancy through community memberships, sponsorships and other related activities.

6. Program Compliance. The Developer shall provide annual reports to the City to enable the City to evaluate the property owner's compliance with the agreement.

- a. The Developer shall annually file with the City occupancy reports as well as reports or updates regarding community engagement -- to include but not limited to community memberships, sponsorships, and other related activities, all with a minimum aggregate value over the 10 consecutive year term of \$45,000.

7. Additional Contingencies to Performance. The obligations of Developer hereunder also shall be expressly conditioned upon the occurrence of both of the following:

(a) City shall have taken all actions reasonably necessary to confirm that the Project will receive the maximum benefits of the tax abatement afforded by the CRA and to subject the Project thereto; and

(b) Developer shall have closed on its acquisition of the Property on or before June 30, 2023.

8. Miscellaneous.

(a) Amendment; Waiver. No amendment or waiver of any provision of this Agreement shall be effective against any Party hereto unless in writing and signed by that Party.

(b) Enforceability. If any provision of this Agreement is or becomes invalid, illegal or unenforceable for any reason, such invalidity, illegality or unenforceability shall not affect the remainder of this Agreement and the remainder of this Agreement shall be construed and enforced as if such invalid, illegal or unenforceable portion were not contained herein, provided and to the extent such construction would not materially and adversely frustrate the original intent of the Parties hereto as expressed herein.

(c) Successors and Assigns. This Agreement shall inure to the benefit of, and be binding upon, each of City and Developer and their respective successors and assigns. Neither City nor Developer may assign its rights and obligations under this Agreement to an unaffiliated third party without the other Parties' prior written consent, not to be unreasonably withheld, conditioned, or delayed. Developer shall be permitted to assign its rights and obligations hereunder to another business entity in which it or its principals holds a controlling ownership interest.

(d) Warranties and Representations. Each Party to this Agreement represents and warrants to each other Parties as follows:

(i) It has the full right, power and authority to enter into this Agreement and to carry out its obligations hereunder, and the execution and delivery of this Agreement and the performance of its obligations hereunder have been duly and validly authorized by all necessary action.

(ii) This Agreement has been duly executed and delivered by it, and it constitutes a valid and binding obligation, enforceable against it in accordance with its terms.

(e) Notices. All notices and other communications hereunder shall be sufficiently given and shall be deemed given when personally delivered, when mailed by registered or certified mail, postage prepaid, or by e-mail, addressed the appropriate Party at its address indicated as follows:

If to Developer: Mill Street Investors LLC
c/o Metropolitan Holdings
1429 King Avenue
Columbus, Ohio 43212
Attn: Matthew R. Vekasy and Andrew Lemmon
mvekasy@metropolitanholdings.com
alemmon@metroplitanholdings.com

If to City: City of Gahanna
200 South Hamilton Road
Gahanna, Ohio 43230
Attn: City Attorney
Email:ray.mularski@gahanna.gov_____

or such different addresses of which notice shall have been given in accordance with this Agreement.

(f) This Agreement will be governed by the laws of the State of Ohio without regard to conflicts of laws principles.

(g) Dispute Resolution. Each Party acknowledges and agrees that in the event any alleged defaults under or breaches of this Agreement are alleged against another Party (the “Claims”) and are not resolved through mediation as set forth herein, the Claims shall be determined by arbitration as set forth herein and that the award of the arbitrators shall be determinative of the merit of the claims.

(i) The Parties agree that their respective Claims shall be submitted first to mediation as hereinafter described and prior to any Claims being filed in a court of law:

(A) The Parties agree to select a mutually agreeable mediator within 14 days of the date when requested by a Party making a Claim.

(B) The costs and expenses of the mediator and the mediation shall be shared equally by the Parties.

(C) The Parties agree that the mediation shall be conducted at a mutually-agreeable place in Franklin County, Ohio.

(D) The mediation shall be conducted in accordance with the rules and procedures established by the selected mediator.

(E) The Parties shall each submit to the others, as well as the mediator, a complete Statement of Claims, which identifies with reasonable particularity the factual basis of each Claim asserted by that Party and the quantum thereof, or such other relief sought. The Statement of Claims shall be exchanged by the Parties and submitted to the mediator on or before a date selected by the

mediator.

(ii) In the event that the Claims are not resolved through mediation as set forth above, the Parties agree to submit their respective claims to binding arbitration as hereinafter described:

(A) The Parties agree to submit their Claims to binding arbitration before a panel of three (3) arbitrators. The arbitration process shall be commenced by either party submitting a written demand therefore to the other Parties.

(B) The Parties agree that one arbitrator shall be selected by the Claimant and one arbitrator shall be selected by the respondents. The claimant and respondents shall identify to the others the identity of their appointed arbitrator within thirty (30) days of the execution of this Agreement. The Parties shall, subject to the final award of the panel, be responsible for the compensation and expenses of their respective Party-appointed arbitrators. The Party-appointed arbitrators shall be subject to challenge for good cause, including but not limited to the current or past representation of the Parties, or other business dealings, in matters adverse to the other Parties or their respective counsel. The Party-appointed arbitrators shall disclose any matter or relationship which may give rise to a challenge for cause. Prior service of a Party-appointed arbitrator as a mediator or arbitrator in a matter involving the Parties or their respective counsel, shall not be grounds for a challenge for cause.

(C) The Parties shall attempt to agree upon the third arbitrator, who will serve as the chair of the arbitration panel. In the event that the Parties are unable to agree upon the identity of the third arbitrator within fourteen (14) days of the selection of the two Party-appointed arbitrators, they shall so notify the two Party-appointed arbitrators, who shall then select the third arbitrator. The third arbitrator selected by the two Party-appointed arbitrators shall be an attorney that is a member of the American Arbitration Association Large Complex Case Panel. The Parties shall, subject to the award of the panel, share equally the compensation and expenses of the third arbitrator.

(D) The Parties agree that the arbitration shall be conducted in general conformity with applicable Rules of the American Arbitration Association, but shall not be administered by, or be filed with, the American Arbitration Association. The Parties also agree to be subject to, and conduct the arbitration in accordance with, any rules prescribed by the arbitration panel. The award of the panel shall be final and binding upon the Parties and may be enforced in any court of competent jurisdiction in Ohio.

(E) The Parties agree that the exchange of information and documents, and the recording of testimony prior to arbitration, shall be consistent with the Rules identified in paragraph (d) above and that in the event of disagreement

between the Parties, such dispute shall be determined by the Arbitrators.

(F) The arbitration panel shall decide each of the Claims asserted by the Parties and shall set forth its reasoned decision, in writing, signed by a majority of the arbitrators. The arbitration panel shall be specifically authorized to include as part of any award amounts due and/or paid as compensation to the arbitrators and any other arbitration fees, costs or expenses incurred.

The arbitration shall take place in Franklin County, Ohio, at a time and place agreed to by the Parties and the arbitration panel.

(h) Counterparts. This Agreement may be executed in any number of counterparts and each of such counterparts shall, for all purposes, be deemed to be an original, and all such counterparts shall together constitute but one and the same agreement.

(i) Default and Remedies. Except as provided otherwise in this Agreement with respect to the North Street ROW Reversion, if any Party hereto fails to comply with any obligation, term, covenant, warranty or agreement to be kept, honored, observed or performed by that Party pursuant to the terms and provisions of this Agreement (a “Default”), and such Default is not cured within fifteen (15) days after written notice thereof from the other Party and the other Party does not expressly waive such Default, then the non-defaulting Party may pursue the remedy of specific performance of the obligations under this Agreement from the other Party but may not pursue any remedies available at law.

(j) Force Majeure. Each Party hereto shall be excused from performing any obligation or undertaking provided in this Agreement, except any obligation to pay any sums of money under the applicable provisions hereof, in the event that, and only for as long as, the performance of any such obligation is prevented, delayed, retarded or hindered by acts of God (which shall be deemed to include weather delays caused by rainfall, snow or other factors in excess of such weather for the season in which such performance is to occur that actually cause a delay in performance), fire, flood, tornado, earthquake, strikes, lockouts, unavoidable casualties, war, acts of terrorism, criminal activities (other than criminal activities perpetrated by the other Party or its agents or employees), civil commotion, demonstration or riot, embargos or blockades, fire or other casualty, theft of materials, unseasonable shortages of materials or supplies, national emergency, epidemic, pandemic, quarantine restrictions, governmental moratoriums, orders, actions or inactions (including shelter in place or so-called “stay at home” orders, or failure, refusal, or delay in issuing permits, approvals, or authorizations), injunction or court order, or any other cause whatsoever beyond the commercially reasonable control of the delayed Party (the “Force Majeure Event”). The delayed Party shall provide the other Party hereto with written notice of any delay within ten (10) days after such Party has knowledge of both the circumstances that are the cause of the delay and the delay caused by those circumstances; provided, however, that only one notice is necessary in the case of a continuing delay.

(k) Term and Termination. This Agreement shall remain effective for so long as any

Party hereto has remaining obligations as detailed in this Agreement that have not been completed or fulfilled, unless earlier terminated pursuant to a specific right provided hereunder or as otherwise ordered by a court of competent jurisdiction; provided, however, the Developer shall have the right to voluntarily terminate the Project or completion of the New Public Infrastructure, in any stage or phase, should at any time the Developer determine, in its sole discretion, that completing the Project or the New Public Infrastructure is not feasible. The City shall have the right upon voluntary termination by the Developer to exercise the North Street ROW Reversion.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the dates written below.

City:

CITY OF GAHANNA

By: _____

Print Name: _____

Title: _____

Date: _____

Approved at to Form:

By: _____
_____, City Attorney

Developer:

MILL STREET INVESTORS LLC,
an Ohio limited liability company

By: _____
Matthew R. Vekasy, Manager

Date: _____

[Add exhibits]
EXHIBIT A

Depiction of 025-000101, 025-000130, and 025-000036
owned by Homestead Development LLC

Depiction of 025-000114
owned by MJM Investment Co. LLC

EXHIBIT B

Illustrative site plan and preliminary floor plans
showing approximately 74 apartment units with approximately 84,680+/- square feet.

EXHIBIT C

- a. Exhibit showing extent and scope of Wilson Alleyway widening
- b. Diagram of “Hammerhead T-Turnaround”

EXHIBIT D

Legal description for Additional Wilson Alleyway ROW

EXHIBIT E

TERMINATION AND RELEASE OF POSSIBILITY OF REVERTER

This Termination and Release of Possibility of Reverter (this "Release") is made this ___ day of _____, 20[___] by the City of Gahanna, an Ohio municipal corporation (the "City") in favor of Mill Street Investors LLC, an Ohio limited liability company (the "Developer").

RECITALS

A. On _____, 20[___], the City vacated the right-of-way within that portion of North Street which is generally identified in Exhibit A, which is attached hereto and incorporated herein by reference (the "North Street ROW"), and the Developer acquired title to the North Street ROW, via deeds recorded on _____, 20[___] with the Franklin County Recorder's office as Instrument Numbers: _____ (the "Deeds").

B. The Deeds contained a possibility of reverter in favor of the City, whereby title to the North Street ROW could revert back to the City in the event of an uncured breach by Developer of that certain development agreement between the City and the Developer dated _____, 20[___] (the "Development Agreement").

AGREEMENT

NOW THEREFORE, in consideration of the foregoing recitals and other good valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City, intending to be legally bound, hereby states and agrees as follows for the benefit of the Developer, its successors and assigns:

1. As of the date hereof, the construction of the Project has been completed and of the New Public Infrastructure (as defined in the Development Agreement) has been substantially completed and no breach of the Development Agreement has occurred.

2. The possibility of reverter contained in the Deeds in favor of the City is hereby released, terminated, rendered null and void and is of no further force and effect, it being the intention of the City to convey title in the Developer, in fee simple absolute upon delivery of this Release. The City hereby quitclaims and conveys all remaining interest it may have in the North Street ROW to the Developer in fee simple absolute.

[Signature page follows.]

IN WITNESS WHEREOF, the City has caused this Release to be executed as of the date first above written.

CITY:

CITY OF GAHANNA,
an Ohio municipal corporation

By: _____
Name: _____
Title: _____

STATE OF OHIO)
) ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20[___], by _____, the _____ of City of Gahanna, an Ohio municipal corporation, on behalf of said municipal corporation. This is an acknowledgement, no oath or affirmation was administered to the signer with regard to this notarial act.

Notary Public

This instrument prepared by:
Scott J. Ziance, Esq.
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
Columbus, Ohio 43216-1008