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**ATTORNEY CLIENT PRIVILEGED**

Michael Blackford
City of Gahanna
200 South Hamilton Road
Gahanna, Ohio 43230

**Subject: Mill Street Investors LLC Apartment Project Development Agreement**

Dear Michael:

This letter is in response to your request for an evaluation of the proposed incentives contained in the draft Development Agreement among the City of Gahanna, the Gahanna Community Improvement Corporation (the "CIC") and Mill Street Investors LLC (the "Developer") received from the Developer on August 23, 2019 (the "Development Agreement"). Below is a brief summary of the incentives requested by the Developer in connection with its development of a proposed 128 unit apartment and 3,000 square foot retail project in the City's downtown core ("Project"), along with our preliminary assessment of the requested incentives. We would be pleased to further discuss our assessment with you

**Community Reinvestment Area Real Property Tax Abatement.** The Project is located in an existing Community Reinvestment Area, under which it qualifies for a 15 year, 100% abatement of new real property taxes resulting from the construction of the Project. This incentive is typical for projects such as the Project, especially in older urban areas of cities, and is a common tool to attract developer interest in a redevelopment area. The City and the Developer may agree on a lower effective abatement, which would be accomplished by the Project owner making payments in lieu of taxes to the City. Statutory income tax sharing may be required depending on the level of payroll taxes created at the Project during the abatement period.

**Reimbursement of Public Infrastructure Costs.** The Developer requests reimbursement of public infrastructure costs from the Olde and West Gahanna Tax Increment Financing District (the "TIF") and from a $300,000 cash contribution from the CIC. The public infrastructure costs outlined in the Development Agreement are generally in the nature of site preparation and utility work for the Project and are estimated at roughly $800,000.

It is not unusual for TIF funds to be used to repay developers for public infrastructure improvements in connection with priority projects. Should the City wish to agree to reimburse some or all of the expenses from the TIF, we will need to review additional information regarding the proposed infrastructure work to ensure that it is eligible for reimbursement under the TIF statute and TIF ordinance. In addition, the Development Agreement calls for prompt repayment of expenses from existing TIF balances. The City would need to determine whether such balances exist prior to approving the proposed Development Agreement.

Cash contributions by a City or CIC for site preparation and utility work are rare, except in connection with large, job and income tax producing projects. We could not readily locate an example of a city or CIC making a cash contribution for infrastructure in connection with a project similar to the Project. The CIC will also need to determine whether it has available the $300,000, plus any shortfall in the TIF Fund.

We note that maximum infrastructure reimbursements are typically capped in development agreements; there is no cap in the proposed Development Agreement. Also, the proposed Development Agreement calls for 9% interest to be paid on costs that cannot be immediately reimbursed by the City and CIC. We have never seen an interest rate that high in a development agreement. Interest is not uncommon, but is generally in the 4%-5% range.

**Vacation of Right of Way; Easement.** The proposed Development Agreement calls for the City to vacate North Street right of way and transfer title to the Developer for the Project. It also calls for certain parking and access easements to be granted. It is not uncommon for cities to vacate unneeded right of way and/or grant easements for projects. The developer is typically responsible for costs incurred by a city if vacating rights of way causes the city to incur costs for replacement rights of way or infrastructure. The City should evaluate whether it might incur additional costs as a result of the vacations or easements.

**Fee Waiver.** The proposed Development Agreement provides for approximately $130,000 of fee waivers. Cities will occasionally waive fees in connection with priority projects. Fees are not typically waived for projects like the Project. Even if fees are waived, the developer is typically responsible for out of pocket costs incurred by the city for plan review, inspections, and similar costs.

**Cost Contingencies.** The Development Agreement provides that the City is responsible for reimbursement to the Developer additional development costs incurred by the Developer as a result of unmarked utility lines, inadequate condition of utility lines or subsurface condition issues in City rights of way (the proposed Development Agreement is not clear if this includes vacated rights of way). The Ohio Attorney General has opined that cities may not agree to unlimited reimbursements for contingent liabilities. If the City wishes to reimburse the Developer for any such conditions, City Council will need to establish a maximum cap on such reimbursement and appropriate and set aside funds equal to the cap in the City's budget during the construction of the Project. Aside from legal requirements, we note that it is extremely rare for a city to agree to agree to cover cost contingencies of this nature even for priority projects (we could not find an example);

the Developer is normally the party that is at risk for such contingencies, especially where it is requesting city right of way and easements over city property free of charge.

**Summary.** It is common for cities to provide a CRA tax abatements for developments such as the Project that redevelop property in the city's urban core. It is also common for cities to grant certain easements and vacate rights of way that are no longer needed for public purposes to assist the development. The other incentives requested in the Development Agreement are typically only used for priority projects of the city – typically projects that will bring a significant number of jobs and payroll taxes to the city. It is rare to see TIF reimbursements, cash contributions, fee waivers and contingency funding incentives for small residential developments like the Project. While every project is different and there may be particular facts, apartment projects in central Ohio can typically be developed with limited or no incentives beyond tax abatements in the current real estate market. If the City is considering granting the additional requested incentives, it may want to analyze the Developer's construction cost estimates and development pro forma in order to assess the need for those incentives.

Very truly yours,

*Greg Daniels*

Gregory R. Daniels/sc