

## DEVELOPERS AGREEMENT

THIS DEVELOPERS AGREEMENT (the "*Agreement*") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2003, by and among the CITY OF GAHANNA, OHIO (the "City"), a city and political subdivision duly organized and validly existing under the Constitution and the laws of the State of Ohio (the "*State*"), and PIZZUTI MANAGEMENT LLC, an Ohio limited liability company having its principal office at Two Miranova Place, Suite 800, Columbus, Ohio (the "*Developer*" and together with the City, the "*Parties*"), under the circumstances summarized in the following recitals.

### RECITALS:

WHEREAS, the City is desirous of promoting the economic welfare and improving the economic opportunities of the people in the City, respectively, by assisting in the establishment or expansion within the City, respectively, of industrial, commercial, or research facilities and by creating and preserving job and employment opportunities for the people of the City, respectively; and

WHEREAS, the City has heretofore created a Department of Development and employed a Director of Development to develop and promote plans and programs designed to assure that City resources are efficiently used, economic growth is properly balanced, and that City economic development is coordinated with that of the State and other local governments; and

WHEREAS, the Developer has proposed to the City that the real property depicted in Exhibit A attached hereto (the "*Site*") be developed as a commercial development; and

WHEREAS, in connection with that development, the Developer expects that Suburban Steel Supply Co., LP will construct an assembly and distribution center on the Site which is expected to result in the creation of approximately 100 new jobs; and

WHEREAS, the Developer has further proposed to the State, and the City that a certain roadway improvement (as depicted on Exhibit B and referred to herein as the "Roadway Improvement") be constructed within the Site to facilitate the development of the Site; and

WHEREAS, the State, acting through the Director of the Ohio Department of Development, has reviewed the proposed development of the Site and determined that, because of the creation of new jobs and retention of existing jobs, such development is in the best interests of the citizens of the City and has authorized a grant in the amount of \$200,000 from its Fiscal Year 2003 Roadwork Development (629) Account (the "*629 Grant*") to be administered and paid by the City in respect of the construction of the Roadway Improvement; and

WHEREAS, the Council of the City of Gahanna has reviewed the proposed development of the Site and determined that, because of the creation of new jobs and retention of existing jobs, such development is in the best interests of the citizens of the City and has, by adoption of

**EXHIBIT A**

Ordinance No. \_\_\_\_\_ on \_\_\_\_\_, 2003, authorized the execution of this Agreement and the acceptance of the Roadway Improvement from the Developer as a public road; and

WHEREAS, the Developer has determined to construct the Roadway Improvement, pay or caused to have paid, any costs of the design and construction of the Roadway Improvement not otherwise paid from the 629 Grant and, upon completion, provide for any required dedication of such Roadway Improvement to the appropriate political jurisdiction; and

WHEREAS, the City, and the Developer have determined to enter into this Agreement to provide for the necessary development of the Site and to provide for the creation of new jobs and retention of existing jobs;

NOW THEREFORE, in consideration of the premises and mutual representations and agreements in this Agreement, the City, and the Developer covenant, agree and obligate themselves as follows:

Section 1. Developer Agreement to Develop Site, Induce Creation and Retention of Employment Opportunities and to Construct the Roadway Improvement.

(a) Location of Suburban Steel Supply Co., LP The Developer represents and covenants that it will use its best efforts to cause Suburban Steel Supply Co., LP to locate an assembly and distribution center within the Site. The Developer represents that the location of such operations by Suburban Steel Supply Co., LP is expected to result in the creation of approximately 100 new jobs.

(b) Construction of Roadway Improvement. In connection with the development of the Site, the Developer agrees and covenants that it will improve the roadway known as the North Street.

(i) Plans and Specifications. The Developer agrees that it will construct the Roadway Improvement pursuant to plans and specifications that are acceptable to the Franklin County Engineer.

(ii) Prevailing Wage. The Developer agrees that State prevailing wage rates will be paid on the construction of the Roadway Improvement.

(iii) Payment of Excess Costs. The Developer agrees and acknowledges that the Developer will pay or caused to have paid any costs of the Roadway Improvement that exceed the amount of the 629 Grant. The parties agree and acknowledge that the City shall not have obligation to pay for or finance any of the costs of the design and construction of the Roadway Improvement; however, the City agrees to apply the amount of the 629 Grant towards the cost of said Roadway Improvements.

Section 2. City Agreement to Accept the 629 Grant and Apply the Proceeds.

(a) General. The Parties acknowledge and agree that the State has authorized the 629 Grant to provide for the payment of a portion of the costs of the construction of the Roadway Improvement.

(b) Application of 629 Grant Proceeds. The City agrees that, pursuant to the 629 Grant, the City, acting through the Director of Development, will accept the 629 Grant from the State and pay the proceeds thereof to the Developer to pay the costs of the Roadway Improvement, all in accordance with the 629 Grant.

Section 3. Dedication of the Roadway Improvement. Upon completion of the construction of the Roadway Improvement in a manner that is reasonably satisfactory to the Franklin County Engineer, the Developer agrees to take those steps necessary to cause the Roadway Improvement to be dedicated to the County. Upon dedication of the Roadway, the Developer shall have no responsibility with respect to the Roadway Improvement subsequent to the dedication.

Section 4. Miscellaneous.

(a) Notices. Except as otherwise specifically set forth in this Agreement, all notices, demands, requests, consents or approvals given, required or permitted to be given hereunder shall be in writing and shall be deemed sufficiently given if actually received or if hand-delivered or sent by recognized, overnight delivery service or by certified mail, postage prepaid and return receipt requested, addressed to the other party at the address set forth in this Agreement or any addendum to or counterpart of this Agreement, or to such other address as the recipient shall have previously notified the sender of in writing, and shall be deemed received upon actual receipt, unless sent by certified mail, in which event such notice shall be deemed to have been received when the return receipt is signed or refused. For purposes of this agreement, notices shall be addressed to:

(i) the City at:

The City of Gahanna  
200 S. Hamilton Ave  
Gahanna, Ohio 43230  
Attention: City Engineer

(ii) the Developer at:

Pizzuti Management LLC  
Two Miranova Place, Ste. 800  
Columbus, Ohio 43215  
Attention: Scott West

The parties, by notice given hereunder, may designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent.

(b) Extent of Provisions; No Personal Liability. All rights, remedies, representations, warranties, covenants, agreements and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. No representation, warranty, covenant, agreement, obligation or stipulation contained in this Agreement shall be deemed to constitute a representation, warranty, covenant, agreement, obligation or stipulation of any present or future trustee, member, officer, agent or employee of any of the Parties in other than his or her official capacity. No official executing or approving any of the Parties' participation in this Agreement shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of the issuance thereof.

(c) Successors. This Agreement shall be binding upon and inure to the benefit of the Developer and its successors and assigns.

(d) Recitals. The Parties acknowledge and agree that the facts and circumstances as described in the Recitals hereto are an integral part of this Agreement and as such are incorporated herein by reference.

(e) Amendments. This Agreement may only be amended by written instrument executed by the Parties.

(f) Executed Counterparts. This Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same agreement. It shall not be necessary in proving this Agreement to produce or account for more than one of those counterparts.

(g) Severability. In case any section or provision of this Agreement, or any covenant, agreement, obligation or action, or part thereof, made, assumed, entered into or taken, or any application thereof, is held to be illegal or invalid for any reason,

(i) that illegality or invalidity shall not affect the remainder hereof or thereof, any other section or provision hereof, or any other covenant, agreement, obligation or action, or part thereof, made, assumed, entered into or taken, all of which shall be construed and enforced as if the illegal or invalid portion were not contained herein or therein,

(ii) the illegality or invalidity of any application hereof or thereof shall not affect any legal and valid application hereof or thereof, and

(iii) each section, provision, covenant, agreement, obligation or action, or part thereof, shall be deemed to be effective, operative, made, assumed, entered into or taken in the manner and to the full extent permitted by law.

(h) Captions. The captions and headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

(i) Governing Law and Choice of Forum. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio or applicable federal law. All claims, counterclaims, disputes and other matters in question between the City, its agents and employees, and the Developer, its employees and agents, arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction within Franklin County, Ohio.

(j) Survival of Representations and Warranties. All representations and warranties of the Parties in this Agreement shall survive the execution and delivery of this Agreement.

[THIS SPACE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the City, and the Developer have caused this Agreement to be executed in their respective names by their duly authorized representatives, all as of the date first written above.

CITY OF GAHANNA, OHIO

\_\_\_\_\_  
Mayor

PIZZUTI MANAGEMENT LLC

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

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

FISCAL OFFICER'S CERTIFICATE

The undersigned, Finance Director of the City of Gahanna under the foregoing Agreement, certifies hereby that the moneys required to meet the obligations of the City during the year 20003 under the foregoing Agreement have been appropriated lawfully for that purpose, and are in the Treasury of the City or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Section 5705.41, Ohio Revised Code.

Dated: \_\_\_\_\_, 2003

\_\_\_\_\_  
Finance Director  
City of Gahanna

EXHIBIT A  
DEPICTION OF SITE



EXHIBIT B

DEPICTION OF ROADWAY IMPROVEMENT