

MUTUAL RELEASE OF ALL CLAIMS

This Mutual Release of All Claims (hereinafter the "Agreement") is made as of this ____ day of ____, 2017, by and between **Bonita25 Real Estate Investors LLC**, an Ohio limited liability company ("Bonita25"), **BW Investors LLC**, an Ohio limited liability company ("BW Investors"), **Gahanna-Creekside Investments LLC**, an Ohio limited liability company ("GCI"), and their respective members, officers, directors, managers, affiliates, predecessors-in-interest, employees and any related individuals and entities (collectively, "DEVELOPER") and the **City of Gahanna**, an Ohio municipal corporation ("CITY") (each a "Party" and collectively the "Parties"), *witnesseth*:

SECTION ONE: PRELIMINARY STATEMENTS

WHEREAS, DEVELOPER owns real property known as ____ (address) See Exhibit A for property description (the "Property"); and

WHEREAS, the CITY, through a "right-of-entry" previously recorded with the Franklin County Recorder, placed excavated and stockpile material ("Excavated Material") on the Property and subsequently agreed to the remove such Excavated Materials from the Property; and

WHEREAS, the City asserts that DEVELOPER'S agent removed certain trees ("Trees") located on the property, without prior permission from the City, in violation of City Ordinance; and

WHEREAS, DEVELOPER, pursuant to City Ordinance, paid various fees, obtained certain permits, and obtained certain easements from the CITY ("Permits and Fees"); and

WHEREAS, DEVELOPER asserts that CITY owes DEVELOPER compensation for placement of the Excavated Material on the Property and that the City improperly levied certain Fees against the Developer ("Developer Allegations"), said allegations which CITY denies; and

WHEREAS, CITY asserts that DEVELOPER owes the City fines, assessments, and civil forfeitures for the unlawful removal of the Trees in violation of City Ordinances ("City Allegations"), said allegations which DEVELOPER denies; and

WHEREAS, a dispute has arisen between the Parties as to the Trees, Excavated Material, Fees, Developer Allegations, and City Allegations;

WHEREAS, in order to avoid the costs and uncertainty of litigation of the aforementioned dispute, the Parties desire to settle and release all claims pertaining to Permits and Fees, Trees, Excavated Material, Developer Allegations, and City Allegations, which were or could have been asserted by the Parties, the Account Balance, the Lawsuit and/or ALL OTHER MATTERS, KNOWN OR UNKNOWN, BETWEEN AND AMONG THEM RELATED THERETO (collectively, the "Settled Matters").

SECTION TWO: COVENANTS

NOW, THEREFORE, in consideration of the terms contained in this Agreement, and other valuable consideration given, the sufficiency which is hereby acknowledged, the Parties, agree to the following terms and conditions.

1. **Payment.** The City promises to pay \$110,000.00 (the "Settlement Funds") to DEVELOPER via a check made payable to "BONITA25 REAL ESTATE DEVELOPERS LLC" within ten (10) days of receipt of this Agreement. This payment by Defendants is made to compromise disputed claims, and is not to be construed as an admission of liability on the part of either party, or any of the entities identified in this Agreement.

2. **Claims Released.** The parties, on behalf of themselves and their respective attorneys, members, agents, employees, officers, directors, shareholders, partners, affiliates, successors and assigns, hereby release, waive, and forever discharge any and all claims which they may have, or will have, against the other party arising from the excavated material, permit fees, trees, Developer Allegations, and City Allegations, and all other claims, whether known or unknown, fixed or contingent, liquidated or unliquidated, that relate to any claim related to the facts contained in this Agreement. This release applies to any and all manners of actions and causes of actions, suits, debts, obligations, choses in action, contracts, covenants, warranties, claims, sums of money, judgments, demands, damages, and rights whatsoever in law or in equity. Further, this release runs to the benefit of the respective attorneys, agents, employees, officers, directors, members, shareholders, partners, affiliates, successors and assigns of the parties.

3. **Subsequent Discovery of Different Facts.** The Parties acknowledge that they may discover facts different from, or in addition to, those they now know or believe to be true with respect to this matter and/or the claims released in this Agreement. Nevertheless, the Parties agree that the release contained in this Agreement shall be, and shall remain, effective pursuant to its terms, in all respects, notwithstanding the discovery of such different and/or additional facts.

4. **No admission of Liability.** This Agreement is a compromise and is intended and shall never be treated as an admission of liability, guilt, or wrongdoing by any Party.

5. **Costs.** Each Party agrees to be entirely responsible for their own expenses pertaining to this Agreement. The Parties understand and acknowledge the significance and consequence of such specific intention to release all claims and hereby assume full responsibility for their own respective damages, losses, and liability that they may hereafter incur.

6. **Informed Consent.** Each and every Party to this Agreement further agrees that they have carefully read the foregoing Mutual Release of All Claims and that they have had ample time and opportunity to discuss the terms and contents of this Agreement with their respective attorney, understand the contents of this Agreement, and sign the same as their free and voluntary act.

7. **Authority to Sign.** In regard to any Party to this Agreement which is a business entity, each individual executing this Agreement on behalf of said entity represents and warrants that he or she has full authority to sign on said entity's behalf and that this Agreement binds the entity.

8. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which, when executed by the parties, shall be deemed an original and all of which shall be deemed the Agreement.

9. **Choice of Law.** All questions governing the construction, validity and enforcement, or otherwise, of this Agreement shall be judged and resolved in accordance with the laws of Ohio, without regard to conflicts of law, the place of contract formation, or the place of performance. Any lawsuit alleging any breach of this Agreement shall be brought in the Courts of Franklin County, Ohio. The Parties expressly consent to personal jurisdiction and venue in this Court.

10. **Severability.** If any part or term of this Agreement is held to be illegal, unenforceable, or ineffective, the validity of the remaining provisions shall not be affected and shall be enforced as though the Agreement did not contain the invalid part or term. Each Party covenants not to attack the legality, enforceability, effectiveness, or validity of any provision of this Agreement, except that each Party shall have the right to bring an action to enforce the terms of this Agreement.

11. **Successors and Assigns.** This Agreement shall be binding upon, and inure to the benefit of, the Parties and their respective successors and assigns.

12. **Amendment.** This Agreement may only be amended in a writing signed by all Parties.

13. **Entire Agreement.** This Agreement contains the entire agreement of the Parties, and supersedes any prior discussions, negotiations, agreements or understandings. Neither Party is relying upon any representation of the other Party which is not expressly set forth herein.

14. **Joint Drafting of Language.** The Parties hereto agree that this Agreement was not drafted by any Party, but was drafted jointly by both Parties, and neither Party shall be able to argue that the other Party is responsible for the drafting of the Agreement.

15. **Counterparts.** This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same Agreement.

16. **Captions.** Captions and section headings used herein are for convenience of reference only, are not part of this Agreement, and are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement.

IN WITNESS WHEREOF, each of the Parties hereto has caused this Mutual Release of All Claims to be signed as of the date indicated above.

BONITA25 REAL ESTATE INVESTORS LLC CITY OF GAHANNA

By _____
Its _____
Date: _____

By _____
Its _____
Date: _____

GAHANNA-CREEKSIDE INVESTMENTS LLC BW INVESTORS LLC

By _____
Its _____
Date: _____

By _____
Its _____
Date: _____

DRAFT

EXHIBIT A

PARC PARCELS:

025001972
025013690
025013610

BERCLEY WOODS PARCELS:

025013448
025013617
025001991
025013657
025013676
025013104
025013331
025013328
025013329
025013330

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