

**RESOLUTION NO. R24-71**

**A RESOLUTION BY THE TROTWOOD CITY COUNCIL ACCEPTING THE COURT ORDER AND DECREE IN CONSOLIDATED CASES IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO, OF *PIVOTAL HOUSING PARTNERS LLC V. CITY OF TROTWOOD*, CASE NO. 2024 CV 02522, *ST. MARY DEVELOPMENT CORPORATION V. CITY OF TROTWOOD*, CASE NO. 2024 CV 02560, AND *OBERER COMPANIES, LTD. V. CITY OF TROTWOOD*, CASE NO. 2024 CV 02630, AND AUTHORIZING THE NECESSARY ACTIONS TO COMPLY WITH THE COURT ORDER AND DECREE**

**WHEREAS**, Pivotal Housing Partners LLC, St. Mary Development Corporation, and Oberer Companies, Ltd. (collectively, “Developers”), initiated administrative appeals and declaratory judgment actions against the City of Trotwood, Ohio, and the City of Trotwood City Council (together, “Trotwood”) challenging Trotwood’s decision to deny final development plans related to the rezoning and development of certain property in Trotwood; and

**WHEREAS**, the Developers’ cases were filed in the Court of Common Pleas of Montgomery County, Ohio (the “Court”) and captioned, *Pivotal Housing Partners LLC v. City of Trotwood*, Case No. 2024 CV 02522, *St. Mary Development Corporation v. City of Trotwood*, Case No. 2024 CV 02560, and *Oberer Companies, Ltd. v. City of Trotwood*, Case No. 2024 CV 02630; and

**WHEREAS**, the above-referenced cases were consolidated before the Honorable E. Gerald Parker, Jr. under Case No. 2024 CV 02522 (the “Litigation”); and

**WHEREAS**, after extensive negotiations and mediation between the parties, a proposed settlement was reached to resolve the Litigation (the “Settlement”), subject to the approval of this Council; and

**WHEREAS**, on July 16, 2024, Council adopted Resolution No. R24-59 approving the Settlement; and

**WHEREAS**, on September 30, 2024 the Court issued an Order and Decree memorializing and approving the Settlement (the “Order” attached hereto as Exhibit 1); and

**WHEREAS**, pursuant to the Settlement and as directed by the Order, the City has begun initiating necessary steps to implement Community Reinvestment Area Abatement Agreements (“CRA Agreements” attached to Exhibit 1); and

**WHEREAS**, in accordance with the CRA Agreements and pursuant to Ohio Revised Code Section 5709.83, the City provided statutory notices to Trotwood-Madison City School District and Miami Valley Career Technology Center; and

**WHEREAS**, pursuant to the Order, City Council shall take all necessary actions to comply with the Order.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TROTWOOD, STATE OF OHIO:**

**SECTION I:** The Trotwood City Council hereby accepts the Order which memorializes the Settlement and resolves and dismisses the Litigation.

**SECTION II:** The Trotwood City Council hereby authorizes the Law Director and City Manager to take all steps necessary to comply with the Order.

**SECTION III:** The Trotwood City Council affirms that the actions taken pursuant to this Resolution are consistent with the intent of Resolution No. R24-59, and all legal obligations as directed to City departments and officials to comply fully with the directives as set forth in the Order.

**SECTION IV:** This Resolution shall take effect and be in full force from and after the date of its passage.

Passed this 7th day of October, 2024.

ATTEST:

APPROVED:

  
KARA B. LANDIS  
CLERK OF COUNCIL

  
YVETTE F. PAGE  
MAYOR

  
TYNA R. BROWN  
VICE-MAYOR

CITY OF TROTWOOD  
3035 OLIVE ROAD  
TROTWOOD, OHIO 45426

### CERTIFICATE OF RECORDING OFFICER

I, the undersigned, hereby certify that the foregoing is a true and correct copy of Resolution No. R24-71 adopted by the Trotwood City Council at a regular scheduled meeting held on the 7th day of October, 2024, and that I am duly authorized to execute this certificate.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
CLERK OF COUNCIL

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO

PIVOTAL HOUSING PARTNERS LLC,	:	Case No. 2024 CV 02522
	:	
Appellant/Plaintiff,	:	Judge E. Gerald Parker Jr.
	:	
v.	:	<b><u>AGREED ORDER AND CONSENT</u></b>
	:	<b><u>DECREE</u></b>
CITY OF TROTWOOD, et al.,	:	
	:	
Appellees/Defendants.	:	

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ST. MARY DEVELOPMENT CORPORATION,	:	Case No. 2024 CV 02560
	:	
Appellant/Plaintiff,	:	
	:	
v.	:	
	:	
CITY OF TROTWOOD, et al.,	:	
	:	
Appellees/Defendants	:	

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OBERER COMPANIES, LTD.,	:	Case No. 2024 CV 02630
	:	
Appellant/Plaintiff,	:	
	:	
v.	:	
	:	
CITY OF TROTWOOD, et al.,	:	
	:	
Appellees/Defendants.	:	

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WHEREAS, Appellants/Plaintiffs, Pivotal Housing Partners LLC, St. Mary Development Corporation, and Oberer Companies, Ltd. (collectively, “Developers”<sup>1</sup>), initiated administrative appeals and declaratory judgment actions against the City of Trotwood, Ohio and the City of Trotwood City Council (together, “Trotwood”) challenging the failure of Trotwood to approve final development plans related to the rezoning and development of certain property in Trotwood; and

WHEREAS, the aforesaid actions have been consolidated by this Court under Case No. 2024 CV 02522; and

WHEREAS, on May 27, 2019, and May 28, 2019, Trotwood experienced major storms, straight-line winds, tornadoes, flooding, and landslides which caused substantial damage and destruction to its housing stock; and

WHEREAS, following the disaster, the U.S. Department of Housing and Urban Development (“HUD”) allocated \$10,450,000 in Community Development Block Grant Disaster Recovery (CDBG-DR) funds for rental development projects, 80% of which must be expended in Trotwood; and

WHEREAS, the Trotwood Community Improvement Corporation (“TCIC”), the designated economic development agent for Trotwood, is the owner of 19.2 acres of vacant land located at Main Street and Olive Road in Trotwood, more specifically described as Montgomery County Parcel Nos. H33 00214 0014, H33 00214 0015, H33 00214 0016, and H33 00214 0017 (formerly HC33 00214 0001 and H33 00214 0002)(the “Property”); and

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<sup>1</sup> For purposes of this Agreed Order and Consent Decree, “Developers” shall include any successors in interest and/or title or affiliated entities involved in the development of the Properties.

WHEREAS, in 2022, the TCIC engaged with each of the Developers to develop the Property for commercial and multi-family housing to be known as the East Main Street Development Project (the “Project”). The TCIC entered into a Purchase and Sale Agreement with each Developer, or its affiliates, which required the Property to be subdivided and rezoned (the “PSAs”). Pursuant to the PSAs with the Developers, as amended, the TCIC committed to sell certain real estate to each Developer, or their affiliate, for the Project.

WHEREAS, the TCIC submitted an application for a preliminary planned unit development (“PUD”) approval for the East Main Street Development Project to Trotwood to rezone the Property and allow the Property to be used for multi-family, recreational, and commercial uses, which was approved by Trotwood on September 6, 2022; and

WHEREAS, the TCIC additionally entered into a Pre-Development Agreement (“PDA”) with Pivotal Development LLC, a subsidiary of Pivotal Housing Partners, in which the TCIC and Pivotal Development agreed to “use their best efforts in discharging such duties, and such other duties as are necessary or appropriate to be awarded Tax Credit by the Agency, to enter into preliminary and definitive agreements with the Equity Investor, the Project lenders, and the Contractor (including approval of all reasonable construction draws by the Contractor and the ability to direct the lender as to the disbursement thereof), and to obtain all required approvals of governmental bodies or agencies”; and

WHEREAS, the Developers spent the next year refining development plans for their respective projects and working with the TCIC to secure the necessary financing and tax credits, including joint applications to the Ohio Housing and Finance Agency for Rental Housing Tax Credits, Bond Gap Financing, and other necessary funding, to fill any and all financing gaps; and

WHEREAS, on January 11, 2024, the Developers each submitted applications for Final Development Plan (“Final PUD”) approval to Trotwood; and

WHEREAS, On January 23, 2024, the Trotwood Planning Commission held a public hearing at which the TCIC presented for approval all three projects comprising the East Main Street Development Project and the Planning Commission approved all three Final PUD applications and recommended approval by City Council with conditions; and

WHEREAS, on March 4, 2024, the Trotwood Council considered the Final PUD applications and the recommendations of the Planning Commission, but tabled the applications for additional information; and

WHEREAS, on April 1, 2024, the Trotwood City Council considered the final PUD applications and recommendations of the Planning Commission, but did not approve the proposed Resolutions approving the Final PUD for each Developer; and

WHEREAS, on or about April 11, 2024, the Trotwood Council issued a written decision to each Developer stating that it had denied the Final PUD applications; and

WHEREAS, the Developers filed these actions and have asserted additional claims for monetary damages that they intend to seek due to the failure of Trotwood to approve the Final PUD applications; and

WHEREAS, Trotwood has filed Answers denying the Developers’ allegations and have asserted that their actions are legal, valid, and constitutional; and

WHEREAS, Trotwood has jurisdiction with respect to the zoning of the incorporated territory of the City of Trotwood where the Property is located; and

WHEREAS, without admitting any liability or wrongdoing on their part, the Trotwood defendants, along with the Developers, desire to resolve the subject litigation and remaining

unasserted claims in order to avoid incurring additional litigation expenses, eliminate any potential exposure of any adverse judgment and to preserve the ability of the Project to be supported by the federal and state funding as described herein; and

WHEREAS, the parties are agreeable to resolving their disputes, subject to the terms and conditions contained herein, thereby terminating and dismissing all pending or threatened claims, suits, and controversies between the parties and settling the pending cases; and

WHEREAS, on July 2, 2024 Trotwood and Developers participated in a court-ordered mediation; and

WHEREAS, Trotwood by action of City Council on July 16, 2024 did adopt Resolution R24-59 approving the Settlement reached and as outlined and set forth in this Order; and

WHEREAS, one of the terms of the Settlement as agreed to at the July 16, 2024 meeting of Trotwood Council was for the Developers to receive tax abatements and for Trotwood and Developers to take all actions necessary to implement the terms of the Settlement.

IT IS, THEREFORE, hereby ORDERED, ADJUGED AND DECREED, by agreement of the parties as follows:

1. The Final PUD application submitted by Pivotal Housing Partners, LLC on January 11, 2024, for the Jalen Lofts development is hereby deemed approved subject to the following conditions:
  - a. Final approval by the City Engineer and Fire Marshal;
  - b. Creation and placement of a shared private playground in the East Main Street Project Development area for shared benefit of the Jalen Lofts development and the Flats on Wolf Creek development;



- c. The addition of wall lighting on the east side of the building to illuminate the right-of-way;
- d. Creation and placement of a shared private pet park in the East Main Street Project Development area as agreed on March 4, 2024, for the Jalen Lofts development and the Flats on Wolf Creek development; and
- e. The provision of a 24-hour maintenance phone number to address tenant maintenance issues.

Provided that the development substantially complies with the Final PUD, no additional approvals shall be required or denied by Trotwood unless required by applicable federal, state or local code or regulation.

- 2. The Final PUD application submitted by St. Mary Development Corporation on January 11, 2024, for the Flats on Wolf Creek development is deemed approved subject to the following conditions:
  - a. Final approval by the City Engineer and Fire Marshal;
  - b. Creation and placement of a shared private playground in the East Main Street Project Development area for the Flats on Wolf Creek development and the Jalen Lofts development;
  - c. The addition of wall lighting on the east side of the building to illuminate the right-of-way; and
  - d. The provision of a 24-hour maintenance phone number to address tenant maintenance issues.

Provided that the development substantially complies with the Final PUD, no additional approvals shall be required or denied by Trotwood unless required by applicable federal, state or local code or regulation.

3. The Final PUD application submitted by Oberer Companies on January 11, 2024, for the At Main development is deemed approved subject to the following conditions:
  - a. Final approval by the City Engineer and Fire Marshal;
  - b. Creation and placement of a private playground in the East Main Street Project Development area for the At Main development; and
  - c. The provision of a 24-hour maintenance phone number to address tenant maintenance issues.

Provided that the development substantially complies with the Final PUD, no additional approvals shall be required or denied by Trotwood unless required by applicable federal, state or local code or regulation.

4. Trotwood having previously agreed as a condition of Settlement on July 16, 2024, is directed, consistent with the terms and conditions set forth in this Order, to take all necessary steps to approve by resolution standard Community Reinvestment Area Abatement Agreements (CRA Agreements) with Jalen Lofts LLC, the owner of the Jalen Lofts Development, The Flats on Wolf Creek LLC, owner of the Flats on Wolf Creek Development, and At Main, LLC, owner of the At Main Development, (or any entity that may be further identified by the entities above as the owner of the any of the above-referenced properties) providing a 75% real estate tax abatement over fifteen (15) years to each such Development.

5. Trotwood, prior to the October 7, 2024, City Council meeting, provided statutory notices pursuant to Ohio Revised Code Section 5709.83 to Trotwood-Madison City School District and Miami Valley Career Technology Center, together with the attached proposed CRA Agreements and that said notices were provided more than 14 days before the October 7, 2024 meeting.
6. Trotwood City Council, as agreed to on July 16, 2024, shall at the October 7, 2024 Council meeting adopt one or more resolutions approving the CRA Agreements attached hereto as an exhibit of this Order and incorporated herein to, approving the CRA Agreements , and directing the City Manager to sign the CRA Agreements.
7. The Developers each certify upon execution of this Order that as Parties to this court action, they do not owe any delinquent real or tangible personal property taxes as more specifically set forth in Section 6 of each CRA Agreements.
8. Trotwood and Developers acknowledge that all steps necessary to effectuate the CRA Agreements including issuance of notices to School Districts and adoption by City Council of Trotwood of one or more resolutions on October 7, 2024 authorizing such CRA Agreements, shall be deemed Ordered, even if not all specific filing and reporting terms, conditions, and requirements are set forth expressly in this “Order .”
9. Developers each agree to contribute to the City of Trotwood the sum of \$41,000, for a total of \$123,000, to be used by Trotwood in its sole discretion for a project or projects for the benefit of the residents of Trotwood. Such payment to be made following the deliverance of all approvals by Trotwood referenced herein and/or necessary to effectuate all provisions of this Order, including, without limitation, the approval of the

75% tax abatement over fifteen (15) years following the necessary notice to affected school districts.

10. Developers each agree to withdraw any pending public records requests related to this litigation and not yet fulfilled.
11. Trotwood agrees to not take any legislative or administrative actions which would hamper, impair, or prevent the Property from being used in accordance with the approved Final PUD plans without the consent of the Developers, their successors and assigns, and to support the three respective developments as approved by the TCIC and the Trotwood Planning Commission, and Ordered by this Court pursuant to the terms and conditions of the mediated settlement reached by the Parties and agreed to by the Trotwood City Council by Resolution 24-59, including supporting the Project before any third parties from whom approval is required.
12. Nothing in this Agreed Order and Consent Decree shall affect or impair Trotwood's right to zone or rezone any other real estate in the City of Trotwood.
13. Trotwood agrees to cooperate fully with Developers and the TCIC to secure and maintain federal and state funding and tax credits, as described herein.
14. Trotwood acknowledges that each of the PSAs with TCIC remain in full force and effect.
15. By virtue of the foregoing, the Developers' administrative appeals, claims for declaratory judgment, and threatened claims against Trotwood for monetary damages related to its failure to approve the Final PUD applications at its April 1, 2024, Council Meeting are hereby rendered moot and fully released herein upon fulfillment of all of Trotwood's obligations to the Developers set forth herein. Developers voluntarily

dismiss their administrative appeals and declaratory judgment actions with prejudice and release all claims against Trotwood related thereto, including any claims for monetary damages. Nothing herein precludes or prevents either the Developers or Trotwood from enforcing the obligations set forth herein through the continuing jurisdiction of this Court.

16. Each party shall be responsible for and shall pay their own court costs in their action, their respective attorneys' fees and any other expenses or charges incurred herein or related hereto.
17. The terms of this Agreed Order and Consent Decree shall run with the land and shall be binding upon and shall inure to the benefit of the parties, their successors, assigns, affiliates, agents, officers, employees, and public officials.
18. A certified copy of this Agreed Order and Consent Decree shall be filed in the Office of the Recorder of Montgomery County by the Developers.
19. In the future, if necessary, Developers shall be entitled to seek modifications to the approved Final PUD plans in accordance with the relevant provisions of the Trotwood Zoning Code, currently Section 1140.13, and otherwise avail themselves to seek relief that may be provided under the Zoning Code.
20. In the event that any party reasonably believes that the provisions of this Agreed Order and Consent Decree have not been properly followed, then such party may file a Motion in this action to enforce any such provision of this Order, and the Court shall retain jurisdiction herein.

IT IS SO ORDERED.

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JUDGE GERALD PARKER

Submitted By:

<p><u>/s/ Matthew Fellerhoff per email auth 9/25/24</u> Matthew W. Fellerhoff (0064005) Emily T. Supinger (0074006) STRAUSS TROY CO., LPA 150 East Fourth Street, 4<sup>th</sup> Floor Cincinnati, OH 45202-4018 Telephone: (513) 621-2120 Fax: (513) 241-8259 mwfellerhoff@strausstroy.com etsupinger@strausstroy.com</p> <p>Attorneys for Pivotal Housing Partners</p>	<p><u>/s/ Matthew Bakota per email 9/25/24</u> Matthew J. Bakota (0079830) DINSMORE &amp; SHOHL LLP 1 South Main St., Ste 1300 Dayton, OH 45402 Telephone: (937) 449-6400 Fax: (937) 449-2836 matthew.bakota@dinsmore.com</p> <p>Attorneys for St. Mary Development Corporation</p>
<p><u>/s/ Christine Haaker per email auth 9/25/24</u> Christine M. Haaker (0063225) Jordan L. Savory (0101581) Justin T. Elkin (0103332) THOMPSON HINE LLP 10050 Innovation Dr., Ste. 400 Miamisburg, OH 45342 Telephone: (937) 443-6822 Fax: (937) 443-6635 christine.haaker@thompsonhine.com jordan.savory@thompsonhine.com justin.elkin@thompsonhine.com</p> <p>Attorneys for Oberer Companies, Ltd.</p>	<p><u>/s/ Dawn Frick</u> Jeffrey C. Turner (0063154) Dawn M. Frick (0069068) David Shaver (0085101) SURDYK DOWD &amp; TURNER CO., LPA 8163 Old Yankee Street, Ste. C Dayton, OH 45458 Telephone: (937) 222-2333 Fax: (937) 222-1970 jturner@sdtlawyers.com dfrick@sdtlawyers.com dshaver@sdtlawyers.com</p> <p>Attorneys for the City of Trotwood and the City of Trotwood City Council</p>

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## COMMUNITY REINVESTMENT AREA ABATEMENT AGREEMENT

This Community Reinvestment Area Abatement Agreement (this “Agreement”) is made and entered as of \_\_\_\_\_, 2024 between the City of Trotwood, Ohio, a municipal corporation existing under the laws of the State of Ohio, with its offices at 3035 Olive Road, Trotwood, Ohio 45426 (the “City”), and Jalen Lofts, LLC (the “Company”), with its principal office at 9100 Centre Pointe Drive, Suite 210, West Chester, Ohio 45069, both collectively referred to herein as the “Parties” and sets forth the complete understanding of the Parties as to the exemption of real property taxes on improvements made to the Property, defined below, pursuant to the City’s Community Reinvestment Area exemption program and Ohio Revised Code (“ORC”) § 3735.65 *et seq.* (the “CRA Exemption”).

**WHEREAS**, the City has encouraged the development of real property and the acquisition of personal property located in the area designated as a Community Reinvestment Area (“CRA”); and

**WHEREAS**, the Company desires to construct a multi-family housing development to be known as “Jalen Lofts” which will consist of one four-story building with a total of sixty-six (66) units (hereinafter referred to as the “Project”), provided that the appropriate development incentives are available to support the economic viability of said Project. The Project will be located within the boundaries of the CRA at 2979 Olive Road, which land was previously identified as Parcel Nos. H33 00214 0001 and H33 00214 0002, then combined into one lot and then subsequently split into four new lots. The new Parcel No. for this Project is identified as H33 00214 0016; and

**WHEREAS**, the City, having the appropriate authority for the stated type of project, desires to provide the Company with incentives available for the development of the Project in the CRA; and

**WHEREAS**, the Company has submitted proposed agreement application (attached hereto as Exhibit One and incorporated herein by this reference) to the City (the “Application”); and

**WHEREAS**, the City has investigated the application of the Company and recommends the same to City Council on the basis that the Company is qualified by financial responsibility and business experience to create and preserve employment opportunity in the CRA and improve the economic climate of the City; and

**WHEREAS**, the Project is located within the boundaries of the Trotwood-Madison City School District and the Miami Valley Career Technology Center. While Senate Bill 33, effective April 3, 2023, only requires the applicable district’s approval for CRA tax exemptions of more than seventy-five percent (75%) of the increased assessed valuation of the Project, the City has provided to each district a notice of at least fourteen (14) days prior to the approval of this Agreement by City Council in accordance with ORC § 5709.83; and

**WHEREAS**, pursuant to ORC § 3735.67(A) and in conformance with the format required under ORC § 3735.671, the Parties desire to set forth their agreement in writing with respect to matters hereinafter contained; and

**WHEREAS**, City Council, by Resolution No. R24-59, adopted July 16, 2024, has approved a settlement proposed at the July 2, 2024 mediation in Case. No. 2024 CV 02522 in the Common Pleas Court of Montgomery County, Ohio, to include the terms of this Agreement; and

**WHEREAS**, City Council, by Resolution No. R24-71 on October 7, 2024, has approved the execution of this Agreement in accordance with ORC § 3735.671.

**NOW, THEREFORE**, in consideration of the mutual covenants hereinafter contained and the benefit to be derived by the parties from the execution hereof, the Parties herein agree as follows:

**1. Project Description.** The proposed “Jalen Lofts” development will be located at 2979 Olive Road, Parcel No. H33 00214 0016, (the “Property”). The new development will contain 66 apartment units (the “Project”). The Project is funded by the Community Development Block Grant-Disaster Recovery (CDBG-DR) to develop replacement rental housing lost in the 2019 Memorial Day Tornado, with a focus on providing workforce housing. The Project will consist of twenty (20) one-, thirty-five (35) two- and eleven (11) three-bedroom units featuring modern amenities such as washer and dryer hookups, ceiling fans, dishwashers, and central air. Community amenities will include on-site management, a community room, fitness room, indoor and outdoor security cameras, and a playground. In total, the Project will result in approximately \$18.5MM in investment.

The Project currently is expected to commence on or about November 2024 (the “Commencement Date”) and be completed on or about 18 months after the actual on-site commencement of construction of the Project.

**2. Employment Positions and Total Annual Payroll.** Between one hundred (100) and one hundred fifty (150) temporary construction jobs will be created throughout the entire twelve months or more construction period. Further, once the project is placed in service there will be two full-time (a manager and maintenance supervisor) and two part-time (a manager and maintenance supervisor) onsite employees, to be shared with The Flats on Wolf Creek Project (“New Jobs”). Pursuant to Ohio Revised Code § 3735.671(B)(4) and (5), the estimated amount of annual payroll such New Employees will add is \$80,000.



**3. CRA Exemption.** The City hereby grants the Company a real property tax exemption pursuant to ORC Section 3735.67 equal to a percentage of the assessed valuation of the Property exempted hereunder, for the improvements made under the Project, for the following period and for the following benefit level (the “Exemption”):

Exemption Period: Fifteen (15) Years

Exemption Benefit Level: Seventy-Five Percent (75%)

The exemption provided under this § 3 commences the first year for which the Property would first be taxable were that property not exempted from taxation under this Agreement. No CRA exemption hereunder shall commence after tax year 2028, nor extend beyond tax year 2043. The Company agrees and consents to the City preparing and filing all necessary applications and supporting documents to obtain the exemption authorized by the CRA Exemption Statutes, the City and this Agreement. The City shall perform such acts as are reasonably or legally necessary or appropriate to effect, claim, reserve, and maintain the CRA Exemption granted under the CRA Statutes and this Agreement, including, without limitation, joining in the execution of all documentation and providing any necessary certificates required in connection with such exemption.

**4. Taxes Otherwise Due.** The Company shall pay such real property taxes as are not exempted under this Agreement and are charged against the Property and shall file all tax reports and returns as required by law. If the Company fails to pay such taxes or file such returns and reports, exemptions under this Agreement are rescinded beginning with the year for which such taxes are charged or such reports or returns are required to be filed and thereafter.

**5. CRA Exemption Continues.** If, for any reason, the CRA designation expires, or the Director of the State of Ohio revokes his or her confirmation of the area, or the City revokes the designation of the area, entitlements granted under this Agreement shall continue for the number of years specified under this Agreement, unless the Company materially fails to fulfill its obligations under this Agreement and the City terminates or modifies the CRA Exemption pursuant to this Agreement.

**6. Certifications.** Pursuant to ORC § 3735.671(B)(4), the Company hereby certifies that at the time this Agreement is executed, the Company does not owe any delinquent real or tangible personal property taxes to any taxing authority of the State of Ohio, and does not owe any delinquent taxes for which the Company is liable under Chapter 5733, 5735, 5739, 5741, 5743, 5747, or 5753 of the ORC, or, if such delinquent taxes are owed, the Company currently is paying the delinquent taxes pursuant to an undertaking enforceable by the State of Ohio or an agent or instrumentality thereof, has filed a petition in bankruptcy under 11 U.S.C.A. 101, *et seq.*, or such a petition has been filed against the Company. For the purposes of Section 6 of this Agreement, delinquent taxes are taxes that remain unpaid on the latest day prescribed for payment without penalty under the ORC chapter governing payment of those taxes.

**7. Tax Incentive Review Council.** In accordance with ORC § 3735.671(B), the Company shall provide to the City's property tax incentive review council any information reasonably required by the council to evaluate the Company's compliance with this Agreement.

**8. Failure to Comply.** If the Company materially fails to fulfill its obligations under this Agreement, or if the City determines that the certification under Section 6, above, is fraudulent, the City may terminate or modify the CRA Exemption under this Agreement, and may require the repayment of the amount of taxes that would have been payable had the Property not been exempted from taxation under this Agreement.

**9. Discontinuing Operations.** If the Company discontinues operations at the Property prior to the expiration of the term of this Agreement, the Company and any successor or any related member shall not enter into an agreement under ORC § 3735.671, 5709.62, 5709.63 or 5709.632 within five (5) years after such discontinuation. The CRA Exemption granted under this Agreement shall be revoked if it is determined that the Company, any successor to that person, or any related member has violated the prohibition against entering into this Agreement under ORC § 3735.671(E) 5709.62 or 5709.63 prior to the time prescribed by that division of either of those section. For purposes of this Section, "successor" and "related member" have meanings as defined in ORC § 3735.671(E).

**10. Non-Discriminatory Hiring Practices.** As required under ORC § 5709.85(D), and by executing this Agreement, the Company is hereby committing to offer equal opportunity and equal consideration to all persons who seek employment with the Company, that no individual will be discriminated against on the basis of race, color, ancestry, religion, creed, national origin, age, sex, veteran status, disability, and/or any other characteristic protected by applicable federal, State or local law.

**11. Agreement Not Transferrable.** This Agreement is not transferrable or assignable without the express, written approval of the City, which such approval shall not be unreasonably withheld, conditioned or delayed.

**12. Non-Waiver.** No failure by the City to enforce its rights or seek its remedies under this Agreement upon any non-compliance or default by the Company shall affect or constitute a waiver of the City's rights to enforce that right or seek that remedy.

**13. 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 a recognized, overnight delivery service or be 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 our 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:

If to City: City of Trotwood Community Improvement Corporation  
Attn: Chad Downing, Executive Director  
3035 Olive Road, Trotwood, OH 45426

If to Company: Jalen Lofts, LLC  
Attn: Brian McGeady, Managing Partner  
9100 Centre Pointe Drive, Suite 210  
West Chester, Ohio 45069

With a Copy to: Dinsmore & Shohl LLP  
Attn: Frederick J. Caspar, Esq.  
One S. Main Street, Suite 1300  
Dayton, OH 45402

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 official, member, officer, agent, or employee of the City or the Company in other than his or her official capacity. No official executing or approving the City's or the Company's 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) Amendments. This Agreement may only be amended by a written instrument executed by both Parties.

(d) 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.

(e) 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 fullest extent permitted by law.

(f) 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 the Agreement.

(g) Governing Law and Choice of Forum. This Agreement shall be governed 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 Company, its employees and agents, arising out of or relating to this Agreement or breach will be decided in a court of competent jurisdiction within Montgomery County, Ohio.

*[Signature Page to Follow]*

In witness thereof, the Parties have caused this Agreement to be executed this \_\_\_\_ day of \_\_\_\_\_, 2024.

City:  
CITY OF TROTWOOD, OHIO

Company:  
JALEN LOFTS LLC,  
an Ohio limited liability  
company

By: PHP Jalen Lofts LLC,  
an Ohio limited liability company

Its: Managing Member

By: Pivotal GP Holding LLC,  
a Georgia limited liability  
company

Its: Sole Member

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

Quincy Pope, City Manager

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

Name: \_\_\_\_\_

Title: Authorized Signer

COMMUNITY REINVESTMENT AREA ABATEMENT AGREEMENT

This Community Reinvestment Area Abatement Agreement (this “Agreement”) is made and entered as of \_\_\_\_\_, 2024 between the City of Trotwood, Ohio, a municipal corporation existing under the laws of the State of Ohio, with its offices at 3035 Olive Road, Trotwood, Ohio 45426 (the “City”), and The Flats on Wolf Creek, LLC (the “Company”), with its principal office at 2160 East Fifth Street, Dayton, Ohio 45403, both collectively referred to herein as the “Parties” and sets forth the complete understanding of the Parties as to the exemption of real property taxes on improvements made to the Property, defined below, pursuant to the City’s Community Reinvestment Area exemption program and Ohio Revised Code (“ORC”) § 3735.65 *et seq.* (the “CRA Exemption”).

**WHEREAS**, the City has encouraged the development of real property and the acquisition of personal property located in the area designated as a Community Reinvestment Area (“CRA”); and

**WHEREAS**, the Company desires to construct a multi-family housing development to be known as “The Flats on Wolf Creek” which will consist of one four-story building with a total of sixty-five (65) units (hereinafter referred to as the “Project”), provided that the appropriate development incentives are available to support the economic viability of said Project. The Project will be located within the boundaries of the CRA at 2959 Olive Road, which land was previously identified as Parcel Nos. H33 00214 0001 and H33 00214 0002, then combined into one lot and then subsequently split into four new lots. The new Parcel No. for this Project is identified as H33 00214 0017; and

**WHEREAS**, the City, having the appropriate authority for the stated type of project, desires to provide the Company with incentives available for the development of the Project in the CRA; and

**WHEREAS**, the Company has submitted a proposed agreement application (attached hereto as Exhibit One and incorporated herein by this reference) to the City (the “Application”); and

**WHEREAS**, the City has investigated the application of the Company and recommends the same to City Council on the basis that the Company is qualified by financial responsibility and business experience to create and preserve employment opportunity in the CRA and improve the economic climate of the City; and

**WHEREAS**, the Project is located within the boundaries of the Trotwood-Madison City School District and the Miami Valley Career Technology Center. While Senate Bill 33, effective April 3, 2023, only requires the applicable district’s approval for CRA tax exemptions of more than seventy-five percent (75%) of the increased assessed valuation of the Project, the City, has provided to each district a notice of at least fourteen (14) days prior to the approval of this Agreement by City Council in accordance with ORC § 5709.83; and

**WHEREAS**, pursuant to ORC § 3735.67(A) and in conformance with the format required under ORC § 3735.671, the Parties desire to set forth their agreement in writing with respect to matters hereinafter contained; and

**WHEREAS**, City Council, by Resolution No. R24-59, adopted July 16, 2024, has approved a settlement proposed at the July 2, 2024 mediation in Case. No. 2024 CV 02522 in the Common Pleas Court of Montgomery County, Ohio, to include the terms of this Agreement; and

**WHEREAS**, City Council, by Resolution No. R24-71 on October 7, 2024, has approved the execution of this Agreement in accordance with ORC § 3735.671.

**NOW, THEREFORE**, in consideration of the mutual covenants hereinafter contained and the benefit to be derived by the parties from the execution hereof, the Parties herein agree as follows:

**1. Project Description.** The proposed “Flats on Wolf Creek” development will be located at 2959 Olive Road, Parcel No. H33 00214 0017, (the “Property”). The new development will contain 65 apartment units (the “Project”). The Project is funded by the Community Development Block Grant-Disaster Recovery (CDBG-DR) to develop replacement rental housing lost in the 2019 Memorial Day Tornado, with a focus on providing workforce housing. The Project will consist one-, two- and three-bedroom units featuring modern amenities such as washer and dryer in unit, dishwashers, and central air. Community amenities will include on-site management, a community room, fitness room, and a playground. In total, the Project will result in approximately \$18.5MM in investment.

The Project currently is expected to commence on or about November 2024(the “Commencement Date”) and be completed on or about 18 months after the actual on-site commencement of construction of the Project.

**2. Employment Positions and Total Annual Payroll.** Between one hundred (100) and one hundred fifty (150) temporary construction jobs will be created throughout the entire twelve months or more construction period. Further, once the project is placed in service there will be two full-time (a manager and maintenance supervisor) and two part-time (a manager and maintenance supervisor) onsite employees, to be shared with the Jalen Lofts Project (“New Jobs”). Pursuant to Ohio Revised Code § 3735.671(B)(4) and (5), the estimated amount of annual payroll such New Employees will add is \$80,000.

**3. CRA Exemption.** The City hereby grants the Company a real property tax exemption pursuant to ORC Section 3735.67 equal to a percentage of the assessed valuation of the Property exempted hereunder, for the improvements made under the Project, for the following period and for the following benefit level (the “Exemption”):

Exemption Period: Fifteen (15) Years

Exemption Benefit Level: Seventy-Five Percent (75%)

The exemption provided under this § 3 commences the first year for which the Property would first be taxable were that property not exempted from taxation under this Agreement. No CRA exemption hereunder shall commence after tax year 2028, nor extend beyond tax year 2043. The Company

agrees and consents to the City preparing and filing all necessary applications and supporting documents to obtain the exemption authorized by the CRA Exemption Statutes, the City and this Agreement. The City shall perform such acts as are reasonably or legally necessary or appropriate to effect, claim, reserve, and maintain the CRA Exemption granted under the CRA Statutes and this Agreement, including, without limitation, joining in the execution of all documentation and providing any necessary certificates required in connection with such exemption.

**4. Taxes Otherwise Due.** The Company shall pay such real property taxes as are not exempted under this Agreement and are charged against the Property and shall file all tax reports and returns as required by law. If the Company fails to pay such taxes or file such returns and reports, exemptions under this Agreement are rescinded beginning with the year for which such taxes are charged or such reports or returns are required to be filed and thereafter.

**5. CRA Exemption Continues.** If, for any reason, the CRA designation expires, or the Director of the State of Ohio revokes his or her confirmation of the area, or the City revokes the designation of the area, entitlements granted under this Agreement shall continue for the number of years specified under this Agreement, unless the Company materially fails to fulfill its obligations under this Agreement and the City terminates or modifies the CRA Exemption pursuant to this Agreement.

**6. Certifications.** Pursuant to ORC § 3735.671(B)(4), the Company hereby certifies that at the time this Agreement is executed, the Company does not owe any delinquent real or tangible personal property taxes to any taxing authority of the State of Ohio, and does not owe any delinquent taxes for which the Company is liable under Chapter 5733, 5735, 5739, 5741, 5743, 5747, or 5753 of the ORC, or, if such delinquent taxes are owed, the Company currently is paying the delinquent taxes pursuant to an undertaking enforceable by the State of Ohio or an agent or instrumentality thereof, has filed a petition in bankruptcy under 11 U.S.C.A. 101, *et seq.*, or such a petition has been filed against the Company. For the purposes of Section 6 of this Agreement, delinquent taxes are taxes that remain unpaid on the latest day prescribed for payment without penalty under the ORC chapter governing payment of those taxes.

**7. Tax Incentive Review Council.** In accordance with ORC § 3735.671(B), the Company shall provide to the City's property tax incentive review council any information reasonably required by the council to evaluate the Company's compliance with this Agreement.

**8. Failure to Comply.** If the Company materially fails to fulfill its obligations under this Agreement, or if the City determines that the certification under Section 6, above, is fraudulent, the City may terminate or modify the CRA Exemption under this Agreement, and may require the repayment of the amount of taxes that would have been payable had the Property not been exempted from taxation under this Agreement.

**9. Discontinuing Operations.** If the Company discontinues operations at the Property prior to the expiration of the term of this Agreement, the Company and any successor or any related member shall not enter into an agreement under ORC § 3735.671, 5709.62, 5709.63 or 5709.632 within five (5) years after such discontinuation. The CRA Exemption granted under this Agreement shall be revoked if it is determined that the Company, any successor to that person, or any related



member has violated the prohibition against entering into this Agreement under ORC § 3735.671(E) 5709.62 or 5709.63 prior to the time prescribed by that division of either of those section. For purposes of this Section, “successor” and “related member” have meanings as defined in ORC § 3735.671(E).

**10. Non-Discriminatory Hiring Practices.** As required under ORC § 5709.85(D), and by executing this Agreement, the Company is hereby committing to offer equal opportunity and equal consideration to all persons who seek employment with the Company, that no individual will be discriminated against on the basis of race, color, ancestry, religion, creed, national origin, age, sex, veteran status, disability, and/or any other characteristic protected by applicable federal, State or local law.

**11. Agreement Not Transferrable.** This Agreement is not transferrable or assignable without the express, written approval of the City, which such approval shall not be unreasonably withheld, conditioned or delayed.

**12. Non-Waiver.** No failure by the City to enforce its rights or seek its remedies under this Agreement upon any non-compliance or default by the Company shall affect or constitute a waiver of the City’s rights to enforce that right or seek that remedy.

**13. 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 a recognized, overnight delivery service or be 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 our 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:

If to City: City of Trotwood Community Improvement Corporation  
Attn: Chad Downing, Executive Director  
3035 Olive Road, Trotwood, OH 45426

If to Company: The Flats on Wolf Creek, LLC  
Attn: Wesley R. Young, Executive Vice President  
2160 East Fifth Street  
Dayton, Ohio 45403

With a Copy to: Dinsmore & Shohl LLP

Attn: Frederick J. Caspar, Esq.  
One S. Main Street, Suite 1300  
Dayton, OH 45402

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 official, member, officer, agent, or employee of the City or the Company in other than his or her official capacity. No official executing or approving the City's or the Company's 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) Amendments. This Agreement may only be amended by a written instrument executed by both Parties.

(d) 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.

(e) 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 fullest extent permitted by law.

(f) 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 the Agreement.

(g) Governing Law and Choice of Forum. This Agreement shall be governed 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 Company, its employees and agents, arising out of or relating to this Agreement or breach will be decided in a court of competent jurisdiction within Montgomery County, Ohio.

*[Signature Page to Follow]*

In witness thereof, the Parties have caused this Agreement to be executed this \_\_\_\_ day  
of \_\_\_\_\_, 2024.

City:

CITY OF TROTWOOD, OHIO

By: \_\_\_\_\_  
Quincy Pope, City Manager

Company:

The Flats on Wolf Creek LLC,  
an Ohio limited liability company

By: The Flats on Wolf Creek Manager, Inc.,  
an Ohio corporation, its Managing  
Member

By: \_\_\_\_\_  
Wesley R. Young, Executive Vice  
President

## COMMUNITY REINVESTMENT AREA ABATEMENT AGREEMENT

This Community Reinvestment Area Abatement Agreement (this “Agreement”) is made and entered as of October \_\_\_\_\_, 2024 between the City of Trotwood, Ohio, a municipal corporation existing under the laws of the State of Ohio, with its offices at 3035 Olive Road, Trotwood, Ohio 45426 (the “City”), and At Main, LLC (the “Company”), with its principal office at 130 West Second Street, Suite 1420, Dayton, Ohio 45402, both collectively referred to herein as the “Parties” and sets forth the complete understanding of the Parties as to the exemption of real property taxes on improvements made to the Property, defined below, pursuant to the City’s Community Reinvestment Area exemption program and Ohio Revised Code (“ORC”) § 3735.65 *et seq.* (the “CRA Exemption”).

**WHEREAS**, the City has encouraged the development of real property and the acquisition of personal property located in the area designated as a Community Reinvestment Area (“CRA”); and

**WHEREAS**, the Company desires to construct a multi-family housing development to be known as “At Main” which will consist of two three-story buildings with a total of sixty-three (63) units (hereinafter referred to as the “Project”), provided that the appropriate development incentives are available to support the economic viability of said Project. The Project will be located within the boundaries of the CRA on East Main Street, which land was previously identified as Parcel Nos. H33 00214 0001 and H33 00214 0002, then combined into one lot and then subsequently split into four new lots. The new Parcel Nos. for this Project are identified as H33 00214 0014 and H33 00214 0015 (partial) and being further described as Lot 1 on the Main Street CIC Plat, Located in Section 15, Town 4, Range 5 E, City of Trotwood, Montgomery County, Ohio recorded on February 8, 2024; and

**WHEREAS**, the City, having the appropriate authority for the stated type of project, desires to provide the Company with incentives available for the development of the Project in the CRA; and

**WHEREAS**, the Company has submitted proposed agreement application (attached hereto as Exhibit One and incorporated herein by this reference) to the City (the “Application”); and

**WHEREAS**, the City has investigated the application of the Company and recommends the same to City Council on the basis that the Company is qualified by financial responsibility and business experience to create and preserve employment opportunity in the CRA and improve the economic climate of the City; and

**WHEREAS**, the Project is located within the boundaries of the Trotwood-Madison City School District and the Miami Valley Career Technology Center. While Senate Bill 33, effective April 3, 2023, only requires the applicable district’s approval for CRA tax exemptions of more than seventy-five percent (75%) of the increased assessed valuation of the Project, the City has provided to each district a notice at least fourteen (14) days’ prior to the approval of this Agreement by City Council in accordance with ORC § 5709.83.

**WHEREAS**, pursuant to ORC § 3735.67(A) and in conformance with the format required under ORC § 3735.671, the Parties desire to set forth their agreement in writing with respect to matters hereinafter contained; and

**WHEREAS**, City Council, by Resolution No. R24-59, adopted July 16, 2024, has approved a settlement proposed at the July 2, 2024 mediation in Case. No. 2024 CV 02522 in the Common Pleas Court of Montgomery County, Ohio, to include the terms of this Agreement; and

**WHEREAS**, City Council, by Resolution No. R24-71 on October 7, 2024, has approved the execution of this Agreement in accordance with ORC § 3735.671;

**NOW, THEREFORE**, in consideration of the mutual covenants hereinafter contained and the benefit to be derived by the parties from the execution hereof, the Parties herein agree as follows:

**1. Project Description.** The proposed “At Main” development will be located on Main Street, Parcel Nos. H33 00214 0014 and H33 00214 00015 (partial), being further described as Lot 1 on the Main Street CIC Plat, Located in Section 15, Town 4, Range 5 E, City of Trotwood, Montgomery County, Ohio recorded on February 8, 2024. The new development will contain 63 apartment units (the “Project”). The Project is funded by the Community Development Block Grant-Disaster Recovery (CDBG-DR) to develop replacement rental housing lost in the 2019 Memorial Day Tornado, with a focus on providing workforce housing. The Project will consist one-, two- and three-bedroom units featuring modern amenities such as washer and dryer hookups, ceiling fans, dishwashers, and central air. Community amenities will include on-site management, a community room, fitness room, laundry room, and a playground. In total, the Project will result in approximately \$18,500,000 in investment.

The Project is currently expected to commence on or about November 2024 (the “Commencement Date”) and be completed on or about 18 months after the actual on-site commencement of construction of the Project.

**2. Employment Positions and Total Annual Payroll.** Between one hundred (100) and one hundred fifty (150) temporary construction jobs will be created throughout the entire twelve months or more construction period. Further, three (3) permanent, part-time jobs will be created once the project is placed in service, an onsite manager, and a maintenance supervisor (“New Jobs”). Pursuant to ORC § 3735.671(B)(4) and (5), the estimated amount of annual payroll such New Employees will add is \$80,000.

**3. CRA Exemption.** The City hereby grants the Company a real property tax exemption pursuant to ORC Section 3735.67 equal to a percentage of the assessed valuation of the Property exempted hereunder, for the improvements made under the Project, for the following period and for the following benefit level (the “Exemption”):

Exemption Period: Fifteen (15) Years

Exemption Benefit Level: Seventy-Five Percent (75%)

The exemption provided under this § 3 commences the first year for which the Property would first be taxable were that property not exempted from taxation under this Agreement. No CRA exemption hereunder shall commence after tax year 2028, nor extend beyond tax year 2043. The Company agrees and consents to the City preparing and filing all necessary applications and supporting documents to obtain the exemption authorized by the CRA Exemption Statutes, the City and this Agreement. The City shall perform such acts as are reasonably or legally necessary or appropriate to effect, claim, reserve, and maintain the CRA Exemption granted under the CRA Statutes and this Agreement, including, without limitation, joining in the execution of all documentation and providing any necessary certificates required in connection with such exemption.

**4. Taxes Otherwise Due.** The Company shall pay such real property taxes as are not exempted under this Agreement and are charged against the Property and shall file all tax reports and returns as required by law. If the Company fails to pay such taxes or file such returns and reports, exemptions under this Agreement are rescinded beginning with the year for which such taxes are charged or such reports or returns are required to be filed and thereafter.

**5. CRA Exemption Continues.** If, for any reason, the CRA designation expires, or the Director of the State of Ohio revokes his or her confirmation of the area, or the City revokes the designation of the area, entitlements granted under this Agreement shall continue for the number of years specified under this Agreement, unless the Company materially fails to fulfill its obligations under this Agreement and the City terminates or modifies the CRA Exemption pursuant to this Agreement.

**6. Certifications.** Pursuant to ORC § 3735.671(B)(4), the Company hereby certifies that at the time this Agreement is executed, the Company does not owe any delinquent real or tangible personal property taxes to any taxing authority of the State of Ohio, and does not owe any delinquent taxes for which the Company is liable under Chapter 5733, 5735, 5739, 5741, 5743, 5747, or 5753 of the ORC, or, if such delinquent taxes are owed, the Company currently is paying the delinquent taxes pursuant to an undertaking enforceable by the State of Ohio or an agent or instrumentality thereof, has filed a petition in bankruptcy under 11 U.S.C.A. 101, *et seq.*, or such a petition has been filed against the Company. For the purposes of Section 6 of this Agreement, delinquent taxes are taxes that remain unpaid on the latest day prescribed for payment without penalty under the ORC chapter governing payment of those taxes.

**7. Tax Incentive Review Council.** In accordance with ORC 3735.671(B), the Company shall provide to the City's property tax incentive review council any information reasonably required by the council to evaluate the Company's compliance with this Agreement.

**8. Failure to Comply.** If the Company materially fails to fulfill its obligations under this Agreement, or if the City determines that the certification under Section 6, above, is fraudulent, the City may terminate or modify the CRA Exemption under this Agreement, and may require the

repayment of the amount of taxes that would have been payable had the Property not been exempted from taxation under this Agreement.

**9. Discontinuing Operations.** If the Company discontinues operations at the Property prior to the expiration of the term of this Agreement, the Company and any successor or any related member shall not enter into an agreement under ORC § 3735.671, 5709.62, 5709.63 or 5709.632 within five (5) years after such discontinuation. The CRA Exemption granted under this Agreement shall be revoked if it is determined that the Company, any successor to that person, or any related member has violated the prohibition against entering into this Agreement under ORC § 3735.671(E) 5709.62 or 5709.63 prior to the time prescribed by that division of either of those section. For purposes of this Section, “successor” and “related member” have meanings as defined in ORC § 3735.671(E).

**10. Non-Discriminatory Hiring Practices.** As required under ORC § 5709.85(D), and by executing this Agreement, the Company is hereby committing to offer equal opportunity and equal consideration to all persons who seek employment with the Company, that no individual will be discriminated against on the basis of race, color, ancestry, religion, creed, national origin, age, sex, veteran status, disability, and/or any other characteristic protected by applicable federal, State or local law.

**11. Agreement Not Transferrable.** This Agreement is not transferrable or assignable without the express, written approval of the City, which such approval shall not be unreasonably withheld, conditioned or delayed.

**12. Non-Waiver.** No failure by the City to enforce its rights or seek its remedies under this Agreement upon any non-compliance or default by the Company shall affect or constitute a waiver of the City’s rights to enforce that right or seek that remedy.

**13. 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 a recognized, overnight delivery service or be 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 our 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:

If to City:	City of Trotwood Community Improvement Corporation  Attn: Chad Downing, Executive Director  3035 Olive Road, Trotwood, OH 45426
If to Company:	At Main, LLC



Attn: Steve Naas and Adam Blake  
130 West Second Street, Suite 1420  
Dayton, Ohio 45402

With copy to: Thompson Hine LLP  
10050 Innovation Drive, Suite 400  
Miamisburg, Ohio 45342  
Attn: Christine Haaker

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 official, member, officer, agent, or employee of the City or the Company in other than his or her official capacity. No official executing or approving the City's or the Company's 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) Amendments. This Agreement may only be amended by a written instrument executed by both Parties.

(d) 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.

(e) 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 fullest extent permitted by law.

(f) 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 the Agreement.

(g) Governing Law and Choice of Forum. This Agreement shall be governed 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 Company, its employees and agents, arising out of or relating to this Agreement or breach will be decided in a court of competent jurisdiction within Montgomery County, Ohio.

*[Signature Page To Follow]*

In witness thereof, the Parties have caused this Agreement to be executed this \_\_\_\_ day of \_\_\_\_\_, 2024.

City:  
CITY OF TROTWOOD, OHIO

Company:  
AT MAIN, LLC,  
an Ohio Domestic Limited Liability Company

By: At Main, Inc., its Managing Member

By: \_\_\_\_\_  
Quincy Pope, City Manager

By: \_\_\_\_\_  
Name: Stephen Naas  
Title: President of Managing Member





General Division  
Montgomery County Common Pleas Court  
41 N. Perry Street, Dayton, Ohio 45422

**Case Number:**  
2024 CV 02522

**Case Title:**  
PIVOTAL HOUSING PARTNERS vs CITY OF TROTWOOD

**Type:**

Consent Judgment Entry

So Ordered,

A handwritten signature in black ink, appearing to read "E. M. H. Park".