

ORDINANCE 2021 - 92

AUTHORIZING THE CITY MANAGER TO ENTER INTO A DEVELOPMENT AGREEMENT WITH KEYSTONE LOT, LLC RELATED TO A DOWNTOWN MASON DEVELOPMENT PROJECT

WHEREAS, the City of Mason has determined to proceed with a development agreement related to the development of a portion of downtown Mason; and

WHEREAS, the City has negotiated a development agreement with Keystone Lot, LLC for said project; and

WHEREAS, as part of the development agreement, the City has agreed to convey certain City-owned property, consisting of parcel numbers: 16-301-51-0010, 16-301-51-0020, 16-301-51-0030, 16-301-51-0040, 16-301-51-0200, 16-301-52-0040, 16-301-52-0010, 16-301-52-0020, 16-301-52-0080, 16-301-52-0121 and 16-301-52-0122, for a purchase price of \$100,000; and

WHEREAS, other material transaction terms include the vacation of certain streets by the City; Keystone Lot, LLC constructing a mixed-use residential and commercial development consisting of not more than 120 high-end custom residential units, between 15,000 and 20,000 square feet of commercial space, and improved parking area consisting of approximately 217 parking spaces; the establishment and funding of a Downtown Development Fund; and the potential for a Community Reinvestment Area tax abatement.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Mason, Ohio, four members elected thereto concurring:

Section 1. That the City Manager is hereby authorized to enter into a development agreement with Keystone Lot, LLC related to the development of a portion of downtown Mason, substantially in the form of the agreement attached hereto as Exhibit A.

Section 3. That City Manager is further authorized to execute any and all other documents related to and required by the terms of said development agreement.

Section 4. That this Ordinance shall be effective from and after the earliest period allowed by law.

Passed this 13th day of September, 2021.

Mayor

Attest:

Clerk of Council

DEVELOPMENT AGREEMENT

THIS **DEVELOPMENT AGREEMENT** (“Agreement”) is made and entered into effective as of the ___ day of _____, 2021 (the “Effective Date”) by and between THE CITY OF MASON, OHIO, an Ohio municipal corporation, having a mailing address at 6000 Mason-Montgomery Road, Mason, Ohio 45040 (the “City”) and KEYSTONE LOT, LLC, an Ohio limited liability company, having a mailing address of 10925 Reed Hartman Highway, Suite 200, Cincinnati, Ohio 45242 (“Developer”), under the following circumstances:

RECITALS:

A. The City currently owns land located within the City of Mason, Warren County, Ohio, as approximately shown on **Exhibit A**, and legally described in **Exhibit B**, both attached hereto and incorporated herein by reference (the “City Property”) and Developer owns the real property as approximately shown on **Exhibit C**, and legally described in **Exhibit D**, both attached hereto and incorporated herein by reference (the “Developer Property”). The City Property and Developer Property may sometimes be collectively referred to as “Properties.”

B. Pursuant to its Home Rule authority and the general powers of local self-government, the City has the authority to dispose of the City Property as it deems appropriate and in the best interest of the City.

C. Subject to the terms and conditions contained in this Agreement, Developer will acquire the City Property, and develop, construct, and operate the City Property together with the Developer Property (collectively, the “Properties”) as a mixed-use residential and commercial project consisting of: (i) not more than one hundred twenty (120) high-end custom-style residential units; (ii) between fifteen thousand (15,000) and twenty thousand (20,000) square feet of commercial space shown on **Exhibit E** (the “Project ”); and (iii) an improved parking area containing approximately two hundred seventeen (217) parking spaces, some of which spaces shall be available for public use. The preliminary plan for the project, including site improvements, parking details, and surrounding streets (vacations) is shown on **Exhibit F** (the “Site and Parking Improvements”).

D. The City believes that the Project, Site and Parking Improvements, and related improvements are consistent with the City’s Comprehensive Plan for the designated area, and are in the vital and best interests of the City and the health, safety, and welfare of its residents, and in accordance with the public purposes and provisions of applicable federal, state, and local laws and requirements, which purposes include, but are not limited to, furtherance of the City’s goals to revitalize the part of the City’s downtown area in which the Property is located, to provide public access, parking, and other amenities, and to facilitate commercial and residential development in close proximity to the City’s downtown area.

E. The City has determined it to be a public purpose for certain long-term strategic community, economic development, and planning efforts to enter into this Agreement.

NOW, THEREFORE, for and in consideration of the mutual agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by both parties hereto, the City and Developer agree as follows:

1. **Transfer of Property.** Within ninety (90) days after the earlier to occur of (i) the satisfaction or waiver of the “Developer Contingencies” and the “City Contingencies” (each as hereinafter defined) or (ii) the “Contingency Deadline” (as hereinafter defined), but subject to the terms and conditions contained in this Agreement, the “Closing”, as defined below, shall occur. The City shall transfer to Developer fee simple title to the City Property by Quit Claim Deed, subject only to: real estate taxes and assessments not yet due and payable; easements, conditions, and restrictions of record as of the date of this Agreement or as otherwise agreed upon by the parties prior to the Contingency Deadline; zoning and building laws and regulations; the “Claw Back” (defined herein) and any other easements or items to be created in accordance with the terms hereof (collectively, all such items hereinafter being referred to as the “Permitted Exceptions”). Nothing contained herein shall be deemed to be a waiver by the Developer of the right to terminate this Agreement prior to the Contingency Deadline due to its determination that the City Property is unacceptable to Developer for the Project for any or no reason. The following terms and conditions shall apply to such transfer of the Property and the closing of such transfer (the “Closing”):

(a) The purchase price to be paid by Developer and accepted by the City for the City Property shall be One Hundred Thousand Dollars (\$100,000). The City and Developer acknowledge and agree that the City Property has a current real estate tax valuation of Four Hundred Thousand Five Hundred Sixty Dollars (\$400,560), and that the current real estate tax valuation of the Developer Property being incorporated into the Project is Four Hundred Three Thousand Two Hundred Ten Dollars (\$403,210). The purchase price paid by the Developer for the City Property shall be added by the City to the City’s Downtown Development Fund.

(b) The City shall cause the portions of Tucker Street and Church Street shown on **Exhibit F** to be vacated prior to Closing with ownership of all of the City-controlled real property subject to such right of ways to be vacated to be transferred to Developer at Closing. Any legal access currently provided through the vacated streets shall be provided for through the Project pursuant to plans to be approved by the City and Developer during the planning process for the Project.

(c) The City shall deliver to Developer exclusive possession of the City Property upon completion of the Closing, which shall take place at the Developer’s title company by escrow closing on a date and time (subject to the first paragraph of this Section) to be selected by Developer and with at least fourteen (14) business days advance written notice to the City.

(d) In addition to the Quit Claim Deed, the parties agree to execute and deliver at Closing the Claw Back Agreement and such assignments, as contemplated by Section 9, affidavits, certified ordinances, certificates, and other instruments as are reasonably necessary to complete the Closing, and which are typical for commercial real estate transfers and as otherwise required by this Agreement, provided, however, that the City shall not be

obligated to provide any affidavit or other instrument creating open-ended indemnification obligations on the part of the City.

(e) Real estate taxes, assessments, or other expenses will be prorated at Closing as is customary for commercial real estate transfers, with Developer receiving a credit for real estate taxes and assessments charged for periods prior to Closing but that will be due and payable after Closing.

(f) Developer shall pay all closing costs and expenses, including costs of title or escrow closing agent and costs of any title insurance desired by the Developer. Developer shall be responsible for expenses of any survey of the Property desired by Developer or its lender, including a consolidation plat, consolidated legal description, and other survey products as necessary so that the City Property and Developer Property can be consolidated as one tax parcel after Developer owns the Properties. Developer shall obtain necessary approvals and be responsible for recording the consolidation documents as the owner of Properties.

2. **Construction of Project.** Developer shall construct and install upon the Properties the Project, including the Site and Parking Improvements. The Project, including the engineering and design therefor, the plans and specifications, and the construction and installation, shall be completed: (i) in conformance with all applicable codes, ordinances, and laws, including the City zoning code; and (ii) in a good and workmanlike manner. The Project, Site and Parking Improvements, and related improvements will be constructed and installed in compliance with the final, approved plans and specifications as approved by the City Council and City Planning Commission. Subject to delay caused by Force Majeure events described below, Developer shall commence construction of the Project within twelve (12) months after the date of Closing and shall substantially complete such construction within twenty-four (24) months after commencing construction. Compliance with this timing is further outlined herein. Developer shall prepare and submit to appropriate government agencies all applications for such approvals as are required to develop and construct the Project in accordance with applicable laws, rules, regulations, codes and ordinances, and the following specifications for the Project:

(a) **Quality of Development.** Developer shall construct or cause to be constructed not more than one hundred twenty (120) residential high-end custom-style residential units unique to Mason and further outlined in **Exhibit G** in one or more buildings on the Properties. The Project will be constructed with a material quality and sustainability that will cause the rents charged for the apartment units of the Project to be within the top ten percent (10%) of rental rates in the Greater Cincinnati, Ohio market area when the Project is placed into service. Developer will use commercially reasonable efforts to cause the rents for the Project apartments to remain in the top ten (10) percentile on a continuing basis and such product quality will necessitate individuals and/or family units with an annual household income of Seventy-Five Thousand Dollars (\$75,000) or more (or the equivalent thereof based on 2021 statistics), subject however to obsolescence due to changes in design and style of apartment projects that cannot be controlled by typical management and maintenance efforts ten (10) years and later after the Project is substantially completed and which would require substantial capital improvement investments for new features. Quality shall remain consistent with generally accepted industry standards and guidelines for other similar-quality custom-style residential units and mixed-use projects in the Greater Cincinnati, Ohio market area.

(i) Oversight. The City shall have the right to oversight review of the long-term quality of the Project as it relates to the maintenance of the structure, internal and external. In the event of evidence of failure by Developer, its successors, and/or assigns, to properly maintain the Property, the City shall have the right to request access to the Property for inspection by the City Building Department, or similar agency, and/or industry professional, and shall provide requirements to comply with the above quality standards in Section 2(a).

(ii) Cause to Remedy. Subject to Force Majeure events, such requirements shall be corrected and/or documented in writing by Developer, its successors, and/or assigns, to the City, of plan to remedy within one hundred (100) days after the City issues the same.

(iii) Failure to Comply. If Developer, its successors, and/or assigns fail to substantially comply with the above-described requirements within the one hundred (100) day period, subject to Force Majeure events, the City shall have the right to cure by performing improvements directly or by hiring outside contractors to make said improvements. Any reasonable, third-party documented costs or expenses incurred by the City to enforce these requirements shall be paid by Developer within thirty (30) days after the City requests and provides the documentation evidencing such costs and expenses. If Developer fails to pay such costs within thirty (30) days, such costs may be assessed to Developer property taxes.

(b) Commercial Space. Developer shall construct or cause to be constructed a minimum of fifteen thousand (15,000) and a maximum of twenty thousand (20,000) square feet of commercial space unless otherwise agreed by the City and the Developer. The Developer agrees to reserve the use and occupancy of the commercial space at the time of completion of construction to retail use, including restaurant, food and beverage businesses, consistent with Downtown Mason objectives, attracting targeted business that will enhance the foot traffic and quality of life for the Downtown area and the City of Mason at-large. Businesses should be compatible with the operation of the high-end customized mixed-use Project. The Developer will work with the public including Downtown Mason stakeholders to gain feedback on design and to identify ideal targeted and excluded uses. The outreach work shall include but not be limited to: community open houses; charrette with Downtown Mason stakeholders; and employment of experienced design professionals and brokers to recruit dining and retail experiences to Downtown Mason. The results of the Developer's public outreach recommendations will be presented to City Council. During the first five (5) years of operation of open rentable commercial space, Developer and the City shall cooperate to mutually attract agreed upon retail targets. The City may choose to further incentivize retail target tenants for the Project with the use of the Downtown Development Fund as agreed upon by Developer and the City. Developer shall consult and seek advice of the City when recruiting and selecting commercial tenants, but, subject to zoning or any other applicable ordinances or regulations, the City shall not legally restrict the tenants Developer may rent to in the commercial space, and the ultimate decisions with regard to commercial tenant selections shall be made by Developer.

(c) Parking. Developer shall construct, as part of the Site and Parking Improvements, approximately one hundred sixty (160) surface parking spaces and fifty-seven (57) garage parking spaces substantially consistent with the Site and Parking Improvements attached hereto as **Exhibit F**, and made a part hereof. Developer shall make at least twenty (20) of such surface parking spaces available for operation of the commercial space and available at no charge for public use during days and hours to be determined by Developer, based on when such public use will not materially interfere with the parking spaces necessary for the normal operation of the residential apartment units. Developer will contribute Twenty-Five Dollars (\$25) per month for each garage parking space to the Downtown Development Fund for a period of ten (10) years after the construction of the Project is substantially completed (as evidenced by the issuance of a Certificate of Occupancy) and placed into service, for a total amount not to exceed One Hundred Seventy-Five Thousand Dollars (\$175,000) payable on a quarterly basis throughout the ten (10) years (or until a total of One Hundred Seventy-Five Thousand Dollars (\$175,000) has been paid). These obligations of Developer shall run with the land and a Memorandum of Development Agreement shall be recorded in the Warren County, Ohio records. The City will utilize the parking revenues from Developer, along with other funds, to acquire, construct, and operate public parking lots in the Downtown Mason area and for other purposes.

(d) Concept Plan. The Properties shall be subject to the City of Mason Planned Unit Development (PUD) process and shall be developed in a manner that is consistent with the site development concept plan referenced within as **Exhibit H** hereto attached and further reviewed and approved through the planning and regulatory process and memorialized by the Project's covenants and restrictions. This includes but is not limited to the percentage of greenspace shown in the concept plan, building heights and orientation, parking locations, and all other aspects of the Project plan.

(e) Storm Water System. Developer may discharge storm water from the Property and the Project into the existing storm water system subject to available piping capacity and fee-in-lieu of detention not to exceed Twenty Thousand Dollars (\$20,000). A water quality device or basin will be provided by Developer without any additional detention or retention volume being required except for any excess volume needed to meet retention requirements to reduce flow to the limits of available piping capacity (design to the downstream restriction). Credit shall be given for impervious surface on the Property when calculating water quality volume in accordance with the Stormwater Manual.

(f) Concept Building Elevations. The buildings shall be constructed in a manner that is consistent with Project requirements of high-end custom-style residential units unique to Mason and consistent with the proposed building elevations shown in **Exhibit I**, or as otherwise approved by the Planning Commission and City Council through the regulatory process. This shall include proposed building materials, architectural details, quality of materials, feature variation, and overall appearance as outlined in detail in **Exhibit G**.

(g) Downtown Gateway. Developer acknowledges that the Properties are identified by the City to be located at a critical "gateway" for the City's Downtown area, and the Developer will work closely and collaboratively with the City to instill a high-quality design to set a consistent tone for current and future development of the Downtown area and of the Project.

Developer acknowledges that the final plans for the Project, including Site and Parking Improvements, will be subject to approval by the City Council and Planning Commission, and that any deviation from the specifications set forth in subsections (a) – (g) of this Section 2, shall require the necessary approval of the City Council and/or Planning Commission.

3. Inspection of Property.

(a) At any time after the Effective Date, the Developer, at Developer's expense, shall have the right to enter onto the City Property to conduct such inspections as the Developer may deem appropriate to determine if the condition and suitability of the City Property are satisfactory to the Developer for its intended development of the Project, including, without limitation, soil borings, survey, environmental audits, and other physical inspections.

(b) Developer will rely upon its own inspections to determine the condition and suitability of the City Property. Developer acknowledges and agrees that neither City nor any agent, attorney, employee, or representative has made any representation whatsoever regarding the physical condition or suitability of the City Property, or any part thereof. The Developer agrees to accept the City Property "AS IS, WHERE IS," with respect to its physical condition, subject to all physical defects as may afflict the City Property at the time of Closing, subject only to the specific representations, warranties, and agreements by the City in this Agreement. The Developer further acknowledges that the City is under no obligation to repair any physical damage or defects to the City Property that have accrued at the time of Closing.

(c) Developer will keep the City Property free from liens arising out of the Developer's inspection, pay all expenses incurred in connection with the Developer's inspection, and shall restore any damage to the property caused by Developer inspections. Developer shall provide the City with at least one full business day's prior written notice of any inspection or test and, with respect to any intrusive inspection or test (*i.e.*, core sampling or drilling), shall obtain the City's prior written consent (which consent shall not be unreasonably withheld or delayed), and the City's failure to respond within two business days shall be deemed to be an approval for the requested activity. Notwithstanding the foregoing, prior to performing any inspection or test, Developer must deliver a certificate of insurance to the City evidencing that it has in place reasonable amounts of comprehensive general liability insurance and workers compensation insurance for its activities (and the activities of their respective contractors, agents, and representatives) on the City Property, and in terms and for amounts equal to at least \$1,000,000 per occurrence, \$2,000,000 aggregate any accident arising in connection with the presence of them, its contractors, agents, and representatives on the City Property and, which insurance shall name the City as an additionally insured thereunder. Developer shall bear the entire cost of all such inspections or tests performed by or on its behalf and shall be responsible for the proper disposal of any wastes generated by those tests in accordance with all applicable laws.

4. Indemnification and Insurance.

(a) Notwithstanding anything in this Agreement to the contrary, as a material inducement to the City to enter into this Agreement, Developer shall defend,

indemnify and hold the City, its officers, council members, employees, and agents (collectively, the “Indemnified Parties”) harmless from and against any and all actions, suits, claims, losses, costs (including without limitation attorney’s fees), demands, judgments, liability, and damages (collectively, “Claims”) suffered or incurred by or asserted against the Indemnified Parties, or any of them, as a result of or arising from injuries, deaths, or loss or damage to property to the extent caused by the acts or omissions of Developer, its agents, employees, contractors, subcontractors, licensees, invitees, or anyone else acting at the request of Developer in connection with the development and construction of the Project and on or around the City Property; provided, however, that Developer’s obligations under this paragraph shall only apply to Claims that accrue or arise due to events which occur or actions taken during the period from the commencement of inspection or construction related activities on or around the Properties by Developer, through its substantial completion by the issuance of Certificates of Occupancy.

(b) Until such time as all construction work associated with the Project has been completed, Developer shall maintain, or cause to be maintained, at no expense to the City, the following insurance: (i) Commercial General Liability insurance with coverage at least as broad as ISO Form CG 0001, with limits of no less than Three Million Dollars (\$3,000,000) per occurrence, combined single limit, covering the City and its officials and employees as additional insureds; (ii) builder’s risk insurance of not less than one-hundred percent (100%) of the value of the improvements constructed, naming the City as a loss payee as the City’s interests may appear; (iii) worker’s compensation insurance in such amount as required by law; and (iv) all insurance as may be required by Developer’s construction lenders. Developer’s insurance policies shall: (x) be written in standard form by companies of recognized responsibility and credit reasonably acceptable to the City, authorized to do business in Ohio, and having an A.M. Best rating of A VII or better, unless otherwise approved by the City; and (y) provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City. Developer may cause any or all of the above-described insurance requirements to be satisfied by requiring one or more of its contractors to provide such insurance coverages. Developer shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Developer shall provide the City with verification of compliance with these specifications by providing a certificate of insurance and additional insured endorsement prior to commencing work hereunder. The City reserves the right to require complete policies, including endorsements, required by the specifications at any time.

5. Downtown Development Fund.

(a) Establishment of Fund. The City will establish a Downtown Development Fund structured through a public-private agreement that captures certain revenues generated from both City and private investments to be used to incentivize development/improvements and for targeted business attraction within the Project and the Downtown area. The Fund structure will be developed by and controlled by the City of Mason, with consultation and input from Developer. In any event, proceeds generated from the Project and paid to the Downtown Development Fund will be targeted toward parking improvements, streetscape improvements, traffic improvements and commercial tenant recruitment incentives to benefit the Project and/or the Downtown area.

(b) Sanitary Sewer Fees and Building Permit Fees. The City agrees that the initial building permit fees and sanitary sewer tap-in fees (totaling approximately \$800,000) for the Project will be waived. Developer agrees to pay Seventy-Five Thousand Dollars (\$75,000) to the Downtown Development Fund at the time of building permit approval. The City will make a general fund contribution to the sewer fund in lieu of the waived sanitary sewer tap-in fees.

(c) Residential Contribution. Developer agrees to commit a portion of its monthly rent from the rented residential units to the City, payable on an annual basis each January for the prior year, beginning on the first day of January of the year after the Certificate of Occupancy is issued, for a period of ten (10) years, based on Five Hundred Dollars (\$500) per rented residential unit per year. During this period, the minimum amount to be paid by the Developer shall be Fifty Thousand Dollars (\$50,000) per year. The Developer, its successors and/or assigns will submit a report with the payment of each rented unit for each month throughout the year. The Developer will pay a prorated amount of such payment for residential units not rented for an entire year. These obligations of Developer shall run with the land and a Memorandum of Development Agreement shall be recorded in the Warren County, Ohio records. The annual rent contribution will be added to the Downtown Development Fund.

6. City and Developer Incentive Obligations.

(a) Property Tax Abatement Agreement. The City and Developer acknowledge the importance of a property tax abatement as a critical component of the Developer entering into this Agreement and developing the Properties and the Project and to perform all of Developer's other obligations under this Agreement. The City affirms that the proposed Project, as a mixed-use development that includes rented residential units in conjunction with commercial space, is allowable within the Community Reinvestment Area Program ("CRA Program") subject to meeting the criteria of new investment, job creation, and school reimbursement. The City intends to offer a 100% abatement on the qualifying investment on the new real property taxes for fifteen (15) years under the CRA Program. The CRA Program is subject to a payment-in-lieu of taxes to the Mason City School District. The CRA Program requires annual reporting on jobs and school payment to the City in order to maintain compliance.

The provisions of this Section shall survive the expiration or earlier termination of this Agreement, provided the City Property is transferred to Developer pursuant to this Agreement.

(b) Mason School Board Agreement. The Developer intends to pursue an agreement with the Mason City School Board seeking approval of the Tax Abatement described in this Agreement and to enter into a School Compensation Agreement. The City shall cooperate with the Developer's efforts.

(c) City Amenities. In support of the City, Developer will, at Developer's cost, provide first time tenants of the Project with one-year memberships to the City Aquatic Center or the City Community Center until the Project reaches 90% occupancy for residential units.

7. **General City Cooperation.** The City acknowledges that, in connection with the development and construction of the Project, from time to time, the Developer will be submitting to various City departments site plans showing proposed locations of buildings, building footprints and other structures and improvements, plans for landscaping, parking lots, paving improvements, and storm water management and utility lines, facilities and systems, and applications for necessary approvals and building permits for the same. The City agrees, in addition to the specific agreements and obligations of the City contained in this Agreement, and subject to all normal and applicable department rules, regulations, and processes, and to applicable law, all of which apply to all persons who do business with the City, that it will cooperate with Developer and review and approve all applications and submissions for the Project, including, without limitation, any zoning related approvals or actions, in the normal course of business as the same is regularly brought before and handled by the City. In addition, the City shall cooperate with and assist the Developer in all of its efforts with respect to the development, construction and operation of the Project, and the efforts by the Developer to satisfy its conditions hereunder, including coordinating and assisting with efforts with the Mason Port Authority, the Board of Education of the Mason City School District, and other third parties and agencies.

8. **Defaults.** Except as otherwise provided in this Agreement, in the event of any default or breach of any of the terms or agreements herein contained, by either party hereto, such party shall, upon written notice from the other, proceed to cure or remedy such default or breach within thirty (30) days after receipt of such notice, or in the event the default or breach does not involve the payment of money and cannot be cured within said thirty (30) days, then cure shall be made within such longer period of time as may be reasonable under the circumstances and the party will not be deemed in default of this Agreement provided the cure is promptly commenced (to the extent commercially practical to do so) within the original thirty (30) day period and diligently pursued to completion thereafter. In the event the default or breach is not remedied in the time periods and manner provided in this paragraph, then the aggrieved party may take such actions as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to, proceedings to compel specific performance or injunctive action. All remedies shall be nonexclusive to all other remedies allowed at law, in equity, or as otherwise provided in this Agreement.

9. **Claw Back.** In addition to the remedies set forth in Section 8, there shall be a right for the City to re-acquire the City Property (the "Claw Back") pursuant to the terms and conditions contained in this Section 9. It is expressly understood by the City and the Developer that the sale and purchase of the Property is based upon a mixed-use development and job creation within targeted retail industry sectors that the City seeks to attract to the Downtown Mason Area. The economic incentives as outlined herein, being an integral part of this Agreement, and the City's consideration and approval of this transaction is based on the highest and best use of the Properties. Should Developer not substantially complete construction of the Project pursuant and subject to the terms and conditions of this Agreement within four (4) years after the date of Closing, as evidenced by the issuance of a Certificate of Occupancy, City shall be entitled to exercise the Claw Back right from the Developer, successors and assigns as outlined herein. The Claw Back right is the right to purchase the City Property from the Developer for the amount paid by Developer to the City for the City Property plus the amounts expended by Developer for third party costs for the development and construction of the Project, not to exceed \$75,000, as of the exercise of the Claw Back right by the City,

exercisable by the City after a four (4) year deadline and before Developer has completed construction of the Project, except the foregoing deadline shall be subject to reasonable extensions for Force Majeure events. The Claw Back will not apply should construction of the Project not be completed due to market conditions adversely impacting Developer's company or industry. City agrees to reasonably consider and allow extensions of the foregoing dates if Developer provides evidence that it is proceeding with due diligence to commence and/or complete the Project. These obligations of Developer shall run with the land and a Memorandum of Claw Back Agreement shall be recorded in the Warren County, Ohio records to evidence the same. The City's Claw Back right shall be subordinate to any first mortgage lien on the Properties and within ten (10) days after any request by Developer, the City shall execute a subordination agreement in a form reasonably approved by the City Law Director for the benefit of the holder of such first mortgage agreeing that the City's Claw Back rights are completely subordinate to the lien of such first mortgage, agreeing not to exercise the Claw Back right so long as the loan secured by such first mortgage is outstanding, and agreeing that any foreclosure by the holder of such mortgage shall foreclose and terminate the Claw Back right. The obligations of Developer under and pursuant to this Section 9 shall survive the Closing.

10. **Due Diligence and Contingencies.** The following items are intended to serve as due diligence to close for the Developer and the City. Items identified within this Section 10 shall be satisfied and/or waived prior to the expiration of the contingency periods. Items may also be subject to amendment and become part of a subsequent agreement.

(a) Developer Contingencies. Developer shall have no obligation to acquire the City Property or to develop and construct the Project unless and until all of the following contingencies (collectively, the "Developer Contingencies") have been satisfied or waived by Developer in writing:

(i) The Developer and the City, including all of its required departments, boards, and agencies, shall have reached agreement on and shall have approved all of the plans and specifications for the Project and all components thereof, including that Developer shall be satisfied that the City Property, as developed, will be sufficient to comply with the space for not more than one hundred twenty (120) residential apartment units, not less than fifteen thousand (15,000) up to twenty thousand (20,000) square feet of commercial space and approximately two hundred seventeen (217) parking spaces.

(ii) All necessary building and construction permits and approvals required for the Project and all components thereof shall have been issued with only such conditions as are contemplated in this Agreement or as are otherwise acceptable to the Developer, in its sole discretion, and any applicable appeal or referendum periods for the same shall have expired without any such appeal or referendum having been initiated.

(iii) Developer shall have reviewed and approved the CRA and all binding documents and components of the same affecting the City Property and the Project and all approvals necessary for the CRA (to the extent then available) shall have been obtained with only such conditions as are acceptable to the Developer in its sole discretion.

(iv) Developer shall be satisfied with the terms and conditions of the Downtown Development Fund as agreed to by the City and Developer, including the monetary obligations and the benefits thereof.

(v) Developer shall be satisfied, in its sole discretion, with the results of Developer's due diligence efforts with respect to the City Property and the Project, including, without limitation, title, survey, utility availability, stormwater issues, environmental, geotechnical, marketing studies, and the Utility Relocation Agreement.

(vi) Developer shall seek an agreement or agreements with the City of Mason Port Authority to effectuate a sales tax exemption for materials purchased in connection with the construction of the Project upon terms and conditions satisfactory to Developer in its sole discretion.

(vii) The Mason City School Board shall have entered into the School Compensation Agreement as referenced in this Agreement and otherwise in form and content acceptable to the Developer.

(viii) Developer shall be satisfied with the plan and program for the provision of memberships to residents to the Mason Municipal Aquatic Center and the Mason Community Center, including the costs of the same, in order that Developer can provide such memberships to new residents during the lease-up of the Project as contemplated under this Agreement.

(ix) Developer shall be satisfied with the status and progress of the vacation of the portions of Tucker Street and Church Street and the ability of the City to transfer the City-controlled underlying real property to Developer as required by the terms of this Agreement.

(x) Overhead Utility Relocation Study – The City shall take all necessary actions, at City's cost, to determine the costs and feasibility of relocating overhead utility lines on and around the Properties and surrounding and nearby Downtown Mason streets (the "Utility Relocation Study"). The City and Developer shall determine the practicality of relocating utility lines to underground locations and attempt to reach agreement on a cost sharing agreement between them for the terms and costs of such relocation (the "Utility Relocation Agreement").

(xi) Main Street Corridor Traffic Analysis - Developer shall provide to the City, at Developer's cost, a traffic impact study for the proposed development in accordance with the City's regulations. The City shall then take actions to analyze existing and proposed traffic conditions along the Main Street Corridor ("Corridor Analysis") from Kings Mills Road traffic signal to the Main Street/Reading Road traffic signal utilizing the results of the Developer's traffic impact study. All costs for the Corridor Analysis shall be paid by the City. Corridor Analysis may include study of an option proposed/preferred by Developer. The City and Developer shall determine the practicality of implementing recommendations from the Corridor Analysis and attempt to reach agreement on a cost sharing agreement between them for the terms and costs of such improvements (the "Main Street Corridor

Improvements”). Developer shall be satisfied with the plan for implementing the recommendations.

(b) City Contingencies. The City shall have no obligation to sell the City Property unless and until all of the following contingencies (collectively, the “City Contingencies”) have been satisfied or waived by the City in writing, by appropriate action of City Council, on or prior to the dates set forth below (in each case, as applicable “City Contingency Deadline”):

(i) On or before the Developer Contingency Deadline, the Developer shall have notified the City in writing that the Developer has waived or satisfied all of the Developer Contingencies. In addition, any agreements entered into or approvals granted by the City as contemplated by this Agreement may include a contingency to the effectiveness thereof that Developer must satisfy or waive the Developer Contingencies, and that Developer must close on the acquisition of the City Property and commence, proceed with, and complete the development of the Project pursuant to this Agreement.

(ii) On or before the date that is six (6) months after the Effective Date, all necessary zoning, including any required density overlay, subdivision and planning approvals, and all building and construction permits and approvals required for the Project and the Public Improvements and all components thereof shall have been approved by the City Council, Planning Commission or City staff, as applicable, by all appropriate legislative or administrative action, and any applicable appeal or referendum periods for the same shall have expired without any such appeal or referendum having been initiated. Such approvals shall include approvals of access, traffic impact, the details of the Downtown Development Fund program, and the public input process for the Project as implemented by Developer.

(iii) On or before the Developer Contingency Deadline, the City shall be satisfied with the status and progress of the vacation of the portions of Tucker Street and Church Street and the form and status of the provision of any legal access through the Project.

(c) Right to Terminate.

(i) Termination by Developer. Unless all of the Developer’s Contingencies set forth above in subsections (a)(i) through (xi) are satisfied or waived in writing by the Developer on or before the date that is nine (9) months after the Effective Date (the “Developer Contingency Deadline”, also referred to herein from time to time as the “Contingency Deadline”), then the Developer shall have the right to terminate this Agreement by written notice to the City. In addition, if prior to the Developer Contingency Deadline, the Developer determines that any or all of the Developer’s Contingencies will not be satisfied by the above-described deadline, the Developer may elect to terminate this Agreement by written notice to the City prior to such date. Any or all of the Developer Contingencies may be waived by the Developer, but only by a written instrument executed by the Developer; provided, however, that if the Developer does not terminate this Agreement, pursuant to its right above in this paragraph, by the Developer Contingency Deadline, Developer shall be deemed to have satisfied or waived the Developer Contingencies.

(ii) Termination by City. Unless all of the City's Contingencies set forth above in subsection (b)(i) through (iii) are satisfied or waived in writing by the City as applicable, on or before the date that is six (6) months after the Effective Date (the "City Contingency Deadline"), then the City shall have the right to terminate this Agreement by written notice to the Developer. Any or all of the City Contingencies may be waived by the City, but only by a written instrument executed by the City; provided, however, that if the City does not terminate this Agreement, pursuant to its right above in this paragraph, within thirty (30) days after the City Contingency Deadline, City shall be deemed to have satisfied or waived the City Contingencies.

(iii) Upon any termination of this Agreement by the Developer or the City pursuant to this Section above, neither party hereto shall have any further obligations to the other hereunder except for those specifically stated to survive such termination.

11. **Estoppel Certificate.** Each party hereto agrees that, within fifteen (15) days after receipt of written request from the other party, it will issue to such requesting party, or its prospective mortgagee or successors, an estoppel certificate approved by City Law Director, stating, to the best of such party's knowledge, as of such date:

(a) whether it knows of any default under this Agreement by the requesting party, and if there are any known defaults, specifying the nature thereof;

(b) whether this Agreement has been assigned, modified or amended in any way by it and if so, then stating the nature thereof;

(c) whether this Agreement is in full force and effect; and

(d) any other reasonable matters relating to the transactions described in this Agreement.

12. **Termination of Agreement.** Upon completion of the substantial completion of the Project and the performance by both Parties hereto of all other obligations of the City and the Developer hereunder, or in the event of termination of this Agreement as a matter of right pursuant to any of its terms, the Parties agree to execute, in recordable form if requested by either party, a statement confirming termination of this Agreement.

13. **Easements, Covenants and Restrictions.** Prior to the Developer Contingency Deadline, City and the Developer shall reach agreement on the form and content of such easements, covenants, and restrictions as the Parties determine to be necessary in order to effectuate their respective obligations described in this Agreement, including the Claw Back.

14. **Representations, Warranties, and Covenants of Developer.** Developer makes the following representations, warranties, and covenants, effective as of the date of this Agreement and also as of the date of the Closing, to induce the City to enter into this Agreement:

(a) Developer is a limited liability company duly organized and validly existing under the laws of the State of Ohio, has properly filed all certificates and reports

required to be filed by it under the laws of the State of Ohio, and is not in violation of any laws of the State of Ohio relevant to the transactions contemplated by this Agreement.

(b) Developer has full power and authority to execute and deliver this Agreement and to carry out the transactions provided for herein. This Agreement has, by proper action, been duly authorized, executed, and delivered by Developer and all actions necessary have been taken to constitute this Agreement, when executed and delivered, valid and binding obligations of Developer.

(c) The execution, delivery, and performance by Developer of this Agreement and the consummation of the transactions contemplated hereby will not violate the organizational documents of Developer, or any mortgage, indenture, contract, agreement or other undertaking to which Developer is a party or which purports to be binding upon Developer or upon any of its assets, nor is Developer in violation or default of any of the foregoing.

(d) There are no actions, suits, proceedings, or governmental investigations pending, or to the knowledge of Developer, threatened against or affecting Developer, at law or in equity or before or by any governmental authority.

(e) Until the construction of the Project is substantially completed, Developer shall give prompt notice in writing to the City of the occurrence or existence of any litigation, labor dispute, or governmental proceeding or investigation affecting Developer that could reasonably be expected to interfere substantially with its normal operations or materially and adversely affect its financial condition and of any notice of default to Developer from any of its lenders.

15. **Management and Ownership of Development.** Developer acknowledges and agrees that among the City's inducements to enter into this Agreement with Developer was the Developer's reputation as an experienced developer, owner, and manager of residential apartment and mixed-use projects such as the Project. Therefore, Developer agrees that: (a) the restrictions set forth in this Agreement on Developer's rights to assign, sell, and delegate management of the Project are reasonable and necessary to the success of the Project; (b) except for an assignment by the Developer of this Agreement prior to Closing to an entity under common control with the Developer or owned in whole or in part, directly or indirectly by any of the persons who own Developer or any of its affiliated CMC companies, directly or indirectly, and formed to own and develop the City Property and the Project, which is specifically permitted; (c) Developer shall not sell or ground lease any of the City Property or allow any change of the ownership of Developer (except as contemplated by this Agreement, including a potential ground and facility lease structure with the City of Mason Port Authority) or assign its rights or delegate its obligations under this Agreement without the City's prior consent, which shall not be unreasonably withheld, until the date five (5) years after the Effective Date; and (d) Developer shall be the property manager and shall not contract out such duties, except to an affiliate of Developer that is owned or controlled by Developer or by one or more of the Developer's owners, for the same period as is set forth in the preceding subpart (b), except Developer may hire professional multi-family apartment managers with at least comparable multi-family management experience as Developer or its affiliates to manage the Project. Notwithstanding anything to the contrary above in this Section, nothing in this Section

shall be deemed to prohibit Developer or its principals or their heirs from transferring the Property or transferring membership interests in Developer: (i) to any affiliate entity of Developer that is owned in whole or in part or controlled by any of the same principals as own or control Developer, or their heirs; (ii) for purposes of granting security interests in the same pertaining to third party financing of the Project or to any transfers by foreclosure, deed in lieu transfers, receivership sales, or other sales or transfers related to such financing, or to any transfers once any of the above described transfers have occurred; or (iii) for estate planning purposes, provided that legal control of Developer and the Project remains in any of the same persons as in effect on the date of this Agreement, or their heirs. The provisions of this Section shall survive Closing.

16. **Temporary Signage and Sales Trailer.** City hereby grants to Developer the right to erect a temporary sign or signs on the City Property, subject to applicable laws and codes, except that such signage may remain in place throughout the duration of the construction of the Project, notifying the public that the Project is “coming soon” and any related information regarding the project, the parties involved, and any lender providing financing, which sign shall be in form and final content approved by both Parties, such approval not to be unreasonably withheld, delayed, or conditioned. In addition, the Developer may locate a temporary Sales Trailer on the City Property, which may include signage for the Project logo, contact information, and hours of operation, which trailer and signage thereof shall be subject to applicable laws and codes, including the City of Mason Zoning Code, except such signage may remain in place for the entire period of the construction of the Project.

17. **Offer to Purchase.** If Developer executes this Agreement prior to City, then this Agreement shall constitute and be an Offer to Purchase by Developer that shall remain open to acceptance by City, based upon approval by Mason City Council, on or before the date thirty (30) days after Developer executes this Agreement. Upon City’s acceptance, execution, and delivery of this Agreement, this Agreement shall constitute and be a valid Development Agreement that is binding upon all parties hereto.

18. **City Council Approval.** The City, by the City Manager’s execution of this Agreement, represents that all required approvals by all necessary action of the Mason City Council (including approval by ordinance, as applicable) of this Agreement and any incentives offered under this Agreement, have been obtained and this Agreement is the binding and enforceable agreement of the City, subject to its terms and conditions. Once executed by the City, the City shall not negotiate or enter into any agreements with any other third parties for the sale or development of the City Property, unless and until this Agreement has been terminated.

19. **Miscellaneous.**

(a) **Severability.** If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid, illegal, or unenforceable provisions had not been contained herein.

(b) **Waiver.** The failure of either party to insist, in any one or more instances, upon a strict performance of any of the terms and conditions of this Agreement, or to exercise or fail to exercise any option or right contained herein, shall not be construed as a waiver or a relinquishment for the future of such right or option, but the same shall continue and remain in full force and effect. The continued performance by either party of this Agreement with knowledge of the breach of any term or condition hereof shall not be deemed a waiver of such breach, and no waiver by either party of any provision hereof, shall be deemed to have been made, or operate as estoppel, unless expressed in writing and signed by such party.

(c) **Notices.** All notices herein authorized or required to be given to the respective Parties hereto City shall be sent certified or registered mail, return receipt requested or by overnight courier service, postage prepaid, or by hand delivery as follows:

If to the City:

City of Mason
Attn: City Manager
6000 Mason-Montgomery Road
Mason, OH 45040

With a copy to:

Wood + Lamping LLP
Attn: Jeffrey D. Forbes,
Law Director
600 Vine Street, Suite 2500
Cincinnati, Ohio 45202

If to Developer:

Keystone Lot, LLC
Attn: James Cohen
10925 Reed Hartman Hwy, Suite 200
Cincinnati, Ohio 45242

With a copy to:

Griffin Fletcher & Herndon LLP
Attn: Richard D. Herndon, Esq.
3500 Red Bank Road
Cincinnati, Ohio 45227

or to such other address as either party may from time to time designate in accordance with this Section.

(d) **Entire Agreement.** This Agreement sets forth the complete understanding and agreement of the Parties with respect to the transaction that is the subject of this Agreement. No oral statements, representations, or agreements other than this Agreement shall have any force or effect and the City and the Developer agree that they will not rely on any representations or agreements other than those contained in this Agreement.

(e) **Further Assurances.** Either party, upon the request of the other party, shall execute and deliver such further documents and instruments as such other party may reasonably deem appropriate to carry out the terms and conditions of this Agreement, provided that such further documents and instruments are consistent with the terms and conditions of this Agreement.

(f) **Non-Merger/Survival.** In addition to the specific language of non-merger found in certain sections of this Agreement, any provision thereof, which by its terms

would be performed after the Closing shall survive Closing and shall not merge in the Closing or the deed, except if specifically provided to the contrary herein.

(g) **Headings.** The headings in this Agreement are for the purposes of reference only and shall not affect or define the meanings hereof.

(h) **Recitals.** The above-stated Recitals are a part of this Agreement.

(i) **Exhibits.** The Exhibits attached hereto are a part of this Agreement.

(j) **Applicable Law.** This Agreement shall be construed and interpreted in accordance with the laws of the State of Ohio.

(k) **Counterparts.** This Agreement may be signed in multiple identical counterparts with the same effect as if the signatures thereof and hereto were upon the same instrument.

(l) **Mechanics Liens.** Neither party shall permit any mechanics' or other liens to be filed against the other party's property as a result of such party's construction activities. If a mechanics' lien shall at any time be so filed, the party performing such work shall, within sixty (60) days after notice of the filing thereof, cause the same to be discharged of record by posting a bond therefor or by such other action as causes the lien to be discharged.

(m) **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the Parties and their respective successors and permitted assigns.

(n) **No Third Party Beneficiaries.** The parties hereby agree that no third party beneficiary rights are intended to be created by this Agreement.

(o) **No Brokers.** The City and Developer represent to each other that they have not dealt with a real estate broker, salesperson, or other person who might claim entitlement to a fee or other compensation as a result of the Parties' execution of this Agreement.

(p) **Amendments.** This Agreement may be amended only by a written amendment signed by both Parties.

(q) **Official Capacity.** All representations, warranties, covenants, agreements, and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements, or obligations shall be deemed to be a representation, warranty, covenant, agreement, or obligation of any present or future officer, agent, employee, or attorney of the City in other than his or her official capacity.

(r) **Construction of Agreement.** Each of the undersigned Parties has cooperated in the drafting and preparation of this Agreement and each has been represented by separate legal counsel during such process. Therefore, in any construction to be made of this

Agreement, the same will not be construed against any party hereto on the basis that the party was the drafter.

(s) **Survival of Separate Agreements.** Notwithstanding any other provision of this Agreement to the contrary, nothing contained herein shall supersede, terminate or otherwise affect the respective rights and obligations of the City and Developer under any other agreement hereinafter entered into between the Parties.

(t) **Force Majeure.** "Force Majeure" shall mean any act of God, fire, earthquake, flood, explosion, war, insurrection, riot, mob violence, sabotage, inability to procure labor, equipment, facilities, materials, or supplies, strikes, lockouts, action of labor unions, condemnation, laws, orders of governmental authorities, including without limitation, orders related to COVID-19 or other pandemic or epidemic conditions, litigation involving a party hereto relating to zoning, subdivision or other governmental action or inaction pertaining to Project, or any portion thereof, inability to obtain government permits or approvals, and other similar matters not within the commercially-reasonable control of the party charged with the subject obligation affected by any of the above. Notwithstanding the foregoing to the contrary, lack of funds necessary to perform shall not qualify as a Force Majeure event excusing or delaying performance by either party hereunder, and failure to obtain permits or approvals required from the City shall not qualify as a Force Majeure event for any City obligations under this Agreement.

(u) **Effective Date.** The Effective Date shall be the date upon which the last of the Parties executes this Agreement.

EXECUTED by the Parties on the dates written below.

*****SIGNATURE PAGE FOLLOWS*****

THE CITY OF MASON, OHIO,
an Ohio municipal corporation

KEYSTONE LOT, LLC,
an Ohio limited liability company

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

Agreement approved as to form:

Jeffrey D. Forbes, Law Director

EXHIBITS

Exhibit A – Plan Showing City Property

Exhibit B – General Description of City Owned Property

Exhibit C – Plan Showing Developer Property

Exhibit D – Legal Description of Developer Property

Exhibit E – The Project

Exhibit F – Site and Parking Improvements

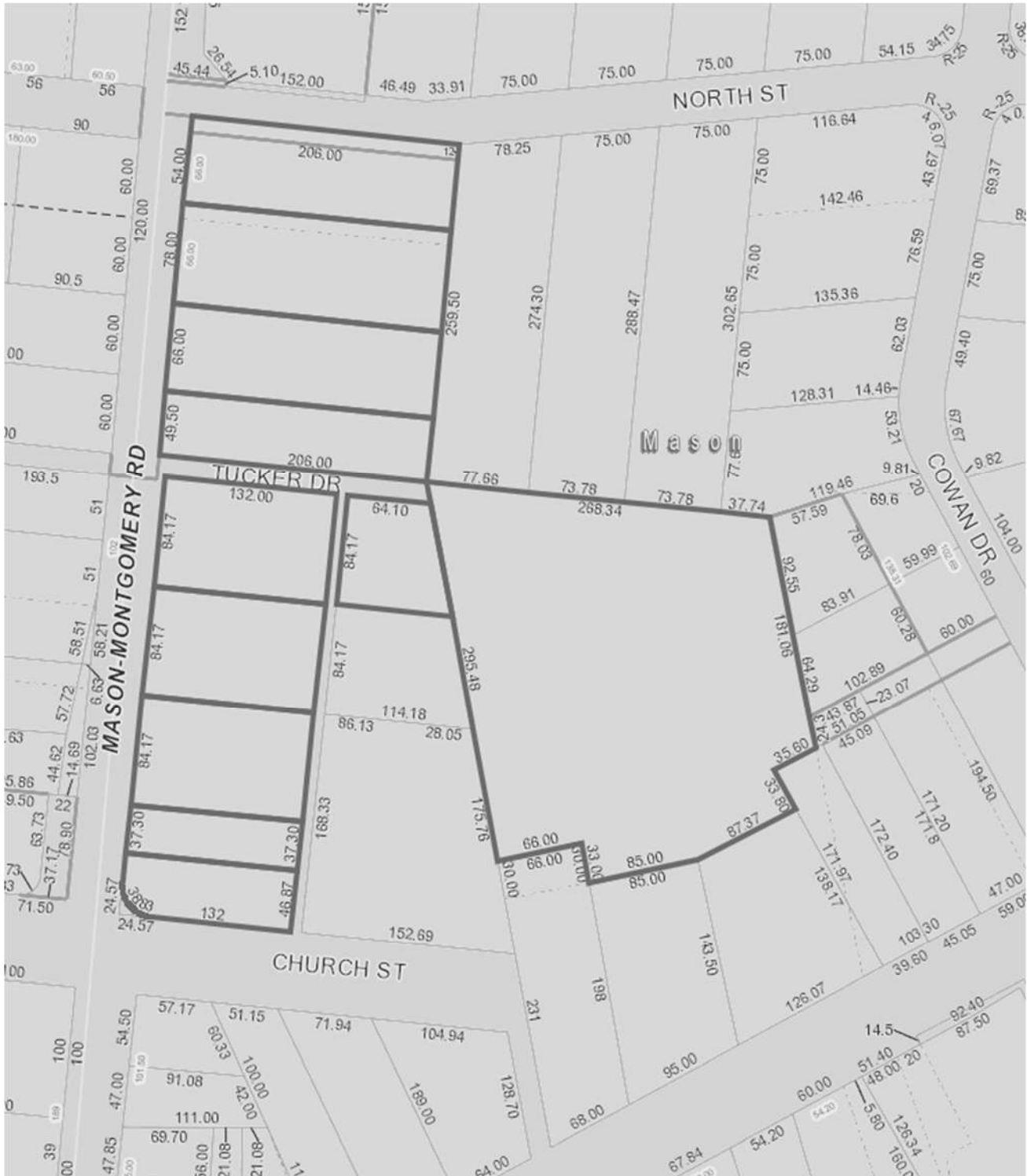
Exhibit G – Quality of Development (to define architectural standards, materials, industry standard up-keep)

Exhibit H – Site Development Concept Plan

Exhibit I – Building Elevations

EXHIBIT A

PLAT OR PLAN SHOWING CITY PROPERTY



City Property

EXHIBIT B

GENERAL DESCRIPTION OF CITY OWNED PROPERTY

Situated in Section 30, Town 4 East, Range 2 North, in the City of Mason, Warren County Ohio, and being Lots 127, 128, 129, 130, 131, 276, 277, 278, 279 and part of Lot 133 (further described below) as designated on the plat of said City of Mason, Ohio (adopted December 1890) Plat Book 1, Page 220 of the Warren County, Ohio Recorder's Office Records.

Part of Lot 133, as designated on the plat of said City of Mason, Ohio (adopted December 1890) Plat Book 1, Page 220 of the Warren County, Ohio Recorder's Office Records and bounded and described as follows:

Beginning at an iron pin at the easterly terminus of a 16.5 foot wide alley at the northwesterly corner of said lot 133; thence, with the boundary of said lot 133 on the following courses: (1) S 83° 07' 25" E, 268.34 feet to an iron pin; (2) S 10° 01' 25" E, 181.06 feet to an iron pin at the northwesterly corner of lot 136; thence S 61° 30' 55" W, 35.60 feet to an iron pin; S 27° 38' 05" E, 33.80 feet to an iron pin; thence, by a new division line, S 62° 21' 10" W, 87.37 feet to an iron pin at the northwesterly corner of lot 134; thence, with the northerly line of lot 134, S 79° 41' 20" W, 85.00 feet to an iron pin at the northeasterly corner of lot 135; thence N 9° 55' 15" W, 33.00 feet to an iron pin; thence S 80° 48' 10" W, 66.00 feet to an iron pin in the westerly line of lot 133; thence, with said westerly line, N 9° 49' 55" W, 295.48 feet to the point of beginning, containing One and Five Hundred Ninety-eight Thousands (1.598) Acres (Part of Lot 133 only), subject to all easements of record.

Parcel #s:

16-30-152-0121 (Pt. Lot 127)
16-30-152-0122 (Pt. Lot 127)
16-30-152-0080 (Lot 128)
16-30-152-0020 (Lot 129)
16-30-152-0010 (Lot 130)
16-30-152-0040 (Lot 131)
16-30-151-0040 (Lot 276)
16-30-151-0030 (Lot 277)
16-30-151-0020 (Lot 278)
16-30-151-0010 (Lot 279)
16-30-151-0200 (pt. lot 133)

EXHIBIT C

PLAN SHOWING DEVELOPER PROPERTY



Developer Property

EXHIBIT D

LEGAL DESCRIPTION OF DEVELOPER OWNED PROPERTY

108 E. Church Street

Parcel No. 16-30-152-010 (lot 126) and 16-30-152-005 (lot 132)

Situated in Section 30, Town 4 East, Range 2 North, in the City of Mason, Warren County Ohio, and being Lot 132 and 126, as designated on the plat of said City of Mason, Ohio (adopted December 1890) Plat Book 1, Page 220 of the Warren County, Ohio Recorder's Office Records.

Prior Deed Reference: Document Number 2020-023194, recorded July 1, 2020

EXHIBIT E
THE PROJECT



FILE NO.	2021-001
DATE	03-05-2021
PROJECT NUMBER	1 OF 1

DESIGNED BY	CHOICE ONE ENGINEERING
CHECKED BY	CHOICE ONE ENGINEERING
DATE	03-05-2021

MASON DOWNTOWN CONCEPT
MASON, OHIO
CONCEPTUAL RENDERING

SOVELL, OHIO 43085-4200
LONDON, OHIO 43122-8800
MCKEAN, INDIANA 46764-2006
WWW.CHOICEONEENGINEERING.COM



EXHIBIT F

SITE AND PARKING IMPROVEMENTS



EXHIBIT G

QUALITY OF DEVELOPMENT

(to define architectural standards, materials, industry standard up-keep)

Quality Definition: For the purpose of this contract, the definition of “Quality” is focused primarily on long-term durability of the real estate. The building construction shall have a material quality that establishes a timeless design that works and holds its value now and into the future. The choice and volume of high-quality materials should weather over time and become part of the character of the building(s). The building should have a functional longevity and have a lasting financial value.

Planning & Design Vocabulary Criteria: Since the Property (as defined in the Contract for Sale and Purchase), is located at a key “gateway” that will set the design theme, brand and image in Downtown, the site planning and architectural vocabulary of the Developers Project must convey a mixed-use design vocabulary that will set the tone for future development and protect adjacent property owner’s investment. The Developer agrees to implement the concept goals as listed and deliver signature buildings that helps project the desired image and Quality, as defined.

Building Composition

General

- All sides of buildings shall include a variety of architectural treatments. Architectural treatments shall include both vertical and horizontal features that break up façade walls including building projections, recesses, cornices, pilasters, contrasting horizontal or vertical bands, awnings, canopies, balconies, varying colors, or colonnades.
- Buildings shall be designed to the human scale and should promote an active street frontage and high-quality streetscape design. The primary building entrance shall be clearly identified and shall be oriented to a public street or public gathering area.
- Encourage use of covered canopy at corners and over main entrances.
- Expression line: building should use horizontally oriented expression line or form to divide portions of the façade into horizontal divisions. Elements may include a cornice, belt course, molding, string course, water table on top of stone base, or other continuous horizontal ornamentation a minimum of 1.5 inches in total depth at each façade transition. The intent is to divide the façade into multiple horizontal sections.
- Walls shall be differentiated with recesses, off sets, building height, variations in roof lines, windows, awnings, and materials.
- Outward facing building corners should incorporate design features, such as glass curtainwalls, change of material, or similar, to enhance and better define this portion of the building
- All buildings must include a base, middle and top:

Base

- Mixed-Use

- o Storefront should feature basic components of a storefront system including a bulkhead, transom, display windows, columns, pilasters cornice/lintel and entry door.
- o Storefront windows should be recessed a minimum of 2 inches from the surrounding stone/brick base at the storefront level.
- o Door and window glazing should account for at least 60% of the total storefront system.
- o Masonry materials are required at street level for durability and scale.
- Residential
 - o Base typically rises between 9 inches and 2 feet and is capped by a water table.
 - o A change in material is required that marks the transition from base to middle.

Middle

- Middle component contains window openings, sills, lintels and other detailing and articulation that contributes to both vertical emphasis and rhythm of design.
- Middle components in mixed use building is typically distinguished from storefront through strong horizontal element such as change of materials in terms of a lintel
- Middle components in residential building is typically distinguished at the water table line.
- Balcony railing required to be commercial grade.

Top

- Strong terminating elements at the top of a building is primary defining feature. Element shall be of a sufficient height to create a strong architectural design feature clearly visible from ground level.
- Projecting cornices may be supported by decorative brackets and bold decorative frieze panels or less elaborate bracket less box gutters and corbelled parapet walls.
- Variation in cornice heights is encouraged.
- All rooftop HVAC equipment is required to be screened from view and from surrounding buildings using durable compatible opaque materials.

Fenestration

- Windows should be regularly spaced, vertically oriented individual window openings formed into horizontally and vertically aligned, symmetrical rows and columns.
- Windows should be recessed into opening to create strong shadow detail.
- Windows must have decorative projecting sills and lintels to create shadow lines and depth to the façade.
- Windows should be of a height-to-width proportion of at least 2:1 (twice as high as wide).
- Windows should occupy a total of between 30% and 60% of the middle portion of facades.
- No horizontal segment of a façade greater than 15 feet in width may be windowless. Stair towers placed on the side or rear of the building may exceed the 15 feet window requirement.
- Patio doors/windows should be minimum of 8'-0" high (vs. 6'-8" high). Either 8'-0" doors or 6'-8" high doors with transom window for a total height of 8'-0". Encourage use of transoms above patio doors.

- Design should emphasize exterior window frames that are black, bronze, or silver or similar color. Exterior window frame colors are to match the overall character of the entire building design and may vary from colors outlined here. However, exterior window frame colors of white, off white or similar light color are discouraged. Interior window frames may be white.

Materials

Materials choices should reflect the definition of Quality in this Contract and articulate specific elaborations on functional detail that will achieve the long-term durability and timeless requirement.

- A minimum of three building materials should be used on every building façade. For example: brick, stone, siding.
- Permitted building materials shall be high quality, durable materials including but not limited to stone, manufactured stone, brick, wood siding, glass, and fiber cement siding.
- Architectural grade metal panels may be used as accent materials on a building's exterior but may not account for more than 10% of each building façade.
- EFIS and stucco are discouraged materials to be used in limited quantities, not to exceed 10% of the entire façade, in select detail elements on the façade.
- Fiber cement panels and fiber cement siding are discouraged materials to be used in limited quantities, not to exceed 25% of entire façade.
- Prohibited materials include vinyl, aluminum, or steel siding; exposed fastener metal wall panels; T1-11 or other hard board material; standard concrete masonry units or plain/ smooth CMU's, tilt-up concrete.
- Interior materials and infrastructure should reflect Quality requirement including but not limited to flooring, cabinetry, windows, doors and hardware.

Parking Lot/Detached Garages

- Exterior garages shall have similar design aesthetic as main structure, taking into account their scale and size.

EXHIBIT H

SITE DEVELOPMENT CONCEPT PLAN



EXHIBIT I
BUILDING ELEVATIONS

