

**INFRASTRUCTURE MAINTENANCE AGREEMENT
BETWEEN
CITY OF COLUMBUS
AND
ANNEX AT RIVER SOUTH II, LTD.
FOR
MAINTENANCE OF STORMWATER COLLECTION AND CONVEYANCE SYSTEM
IN THE HIGH STREET RIGHT-OF-WAY AT OTTO BEATTY BUILDING AS PART
OF OTTO BEATTY BUILDING STREETSCAPE IMPROVEMENTS, PLAN 3244-E
AND
DECLARATION OF COVENANTS**

This Infrastructure Maintenance Agreement, (the "Contract") made and entered into this _____ day of _____, 20__ (the "Effective Date"), by and between the City of Columbus, State of Ohio acting through its Director of Public Utilities, (the "CITY"), pursuant to and under the authority of Ordinance No. _____, passed by the City Council of the City of Columbus, approved by the Mayor of said City, and attested to by the City Clerk on the _____, and ANNEX AT RIVER SOUTH II, LTD., with its office at 230 West Street, Suite 200, Columbus, Ohio, 43215, Attention: Legal Department, (the "DEVELOPER"); and

WITNESSETH THAT:

WHEREAS, the responsible management of privately maintained Stormwater facilities within the public rights-of-way and the continued development of the CITY are of major civic importance; and

WHEREAS, it is the purpose of this Agreement to promote the health and safety of users of the public rights-of-way within the CITY and to enhance the aesthetics of the CITY; and

WHEREAS, the DEVELOPER is undertaking stormwater improvements within the public rights-of-way of the CITY in association with the development of the property located at 229-237 South High Street, PID 010-008955 (the "Property"); and

WHEREAS, the stormwater improvements are set forth within City of Columbus Plan Number 3244-E OTTO BEATTY BUILDING STREETSCAPE IMPROVEMENTS (the "Improvements"), the limits of said improvements being between the roadway pavement and right-of-way line of S. High St. from a point 194 ft. south of W. Rich Street to W. Rich Street (the "Premises") as outlined in the Exhibit "A"; and

WHEREAS, The Improvements to be installed by the DEVELOPER are intended to manage stormwater flows and include storm sewers and inlets; and

WHEREAS, the Improvements will be owned by the City and privately maintained by the Developer; and

WHEREAS, the approval of the installation of these Improvements by the DEVELOPER is conditioned upon the promise and obligation of the DEVELOPER to undertake all maintenance of the stormwater facilities as outlined in Exhibit "B"; and

WHEREAS, the DEVELOPER is the owner of the abutting Property and has expressed a willingness to undertake all maintenance responsibilities associated with the stormwater facilities in Exhibit "A"; and

NOW, THEREFORE, in consideration of the premises and the respective representations, warranties, covenants and agreements of the parties hereto, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I. TERM; TERMINATION; EFFECTIVENESS; TITLE

1.01 Term. This Agreement shall be perpetual in nature, unless terminated in accordance with the provisions of this Agreement (the "Term").

1.02 Termination. This Agreement may only be terminated as follows:

- (a) by written mutual agreement of the parties hereto;
- (b) in the event of a material breach of this Agreement by the DEVELOPER, this Agreement shall terminate sixty (60) days following delivery of a Termination Notice from the CITY to the DEVELOPER, unless such material breach is cured prior to the expiration of such sixty (60) day period; provided, however, if the material breach is not susceptible of a cure within such sixty (60) day period, and the DEVELOPER has commenced and diligently pursues such a cure, then the DEVELOPER shall have an additional thirty (30) days to cure the material breach prior to termination; and
- (c) in the event termination occurs in accordance with the provisions of this section as a result of a breach of this Agreement by DEVELOPER, the DEVELOPER shall make payment to the CITY in accordance with Section 2.06 of this Agreement.

1.03 Title. The parties acknowledge and agree that title in and to all features installed by the DEVELOPER within the public rights-of-way as a part of the Improvements and all modifications, additions or alterations thereto, if any, shall be and remain the sole property of the CITY.

ARTICLE II. THE DUTIES AND OBLIGATIONS OF THE CITY AND THE DEVELOPER

2.01 Authority to Execute this Agreement. The DEVELOPER represents and warrants to the CITY that it has all necessary statutory authority to enter into this Agreement and that the execution, delivery and performance of this Agreement by it has been duly and validly authorized by all necessary corporate action.

2.02 Compliance with Laws. The DEVELOPER shall abide and comply fully with any applicable statute, rule, regulation, order or restriction of any federal, state or municipal governmental authority lawfully exercising jurisdiction over the DEVELOPER's use of the public rights-of-way for the features described within this Agreement, including, but not limited to, the Americans with Disabilities Act and the regulations promulgated thereunder.

- 2.03 Providing of Improvements. The DEVELOPER, shall as part of their construction of the Improvements, install storm sewers and inlets as shown on the approved 3244-E plans. Copies of these plans are on file in the offices of the Department of Public Service. An itemized list of these features and a location plan are included within Exhibit "A".
- 2.04 Recording of Agreement. The DEVELOPER's obligations and rights provided herein shall be appurtenant to the Property; and the rights and obligations established hereunder shall be covenants running with the land, binding upon, and inuring to the benefit of, the parties hereto and their respective successors and assigns. This Agreement shall be recorded by the DEVELOPER in the Franklin County Recorder's Office and evidence of such shall be provided to the CITY prior to the CITY's issuance of building permits and/or certificate of occupancy for the Property.
- 2.05 Permit. The DEVELOPER shall apply for and maintain during times when maintenance is being performed on the facilities a right-of-way permit issued by the Department of Public Service pursuant to Chapter 910 of Columbus City Code. Failure to maintain a right-of-way permit shall be considered a material breach of this Agreement.

If any work by the DEVELOPER as outlined in this Agreement requires blocking a traffic lane, the DEVELOPER or authorized agent is required to apply for a Street Occupancy Permit from the Department of Public Service. Permits are available at Department of Public Service, Division of Infrastructure Management, Permits Section, 1st Floor, 111 N. Front Street, Columbus, Ohio, 43215. A copy of this Agreement shall be presented when applying for said permit.

- 2.06 Maintenance of Improvements. The DEVELOPER agrees to maintain the Premises and the stormwater facility Improvements as outlined in Exhibit "B" in such a manner that provides for responsible management of stormwater and does not interfere with the safe use of the adjacent right-of-way and in the manner set forth below.

If the DEVELOPER fails to maintain the Premises and/or the Improvements to the CITY's satisfaction as provided for herein, the CITY shall have the right, but no obligation whatsoever, to perform any maintenance, repairs, or improvements deemed necessary in the CITY's discretion to maintain proper functioning of the Improvements and to prevent any hazards or nuisance conditions. The DEVELOPER shall fully and immediately reimburse the CITY for the actual cost of any such work upon receipt of an invoice itemizing the cost, which shall include any costs and expenses of filing suit and/or attorney's fees.

If this Agreement is terminated by the CITY pursuant to Section 1.02(b), the DEVELOPER shall pay the CITY upon demand the sum of \$60,000 for future maintenance of the Premises and/or the Improvements.

- 2.07 Exclusive Right. Per Columbus City Code Section 902.02, the Director of Public Service has the exclusive right to remove improvements, if they are deemed by him to be a safety hazard, or to facilitate other necessitated improvements to the public right-of-way, and the DEVELOPER shall not be compensated for said removal.
- 2.08 Indemnification. The DEVELOPER shall protect, indemnify and save the CITY harmless from and against any damage, cost, or liability, including reasonable attorneys' fees, resulting from claims for any or all injuries to persons or damage to property arising from intentional,

willful or negligent acts or omissions of the DEVELOPER, its officers, employees, agents, or Subcontractors during occupation or use of the Premises including but not limited to the installation and maintenance of any materials within the Premises, excluding, however, claims arising from the sole negligence or willful misconduct of the CITY.

2.09 Insurance Requirements. The DEVELOPER shall take out or cause to be taken out and maintain during the life of the Agreement such General Liability (Bodily Injury and Property Damage) Insurance as shall protect them and any subcontractor performing work on said improvements from claims for damages for personal injury, including accidental death, as well as from claims for property damage which may arise from operations under the Agreement, whether such operations are performed by the DEVELOPER, or by a subcontractor or by anyone directly or indirectly employed by them. SUCH INSURANCE POLICY SHALL INCLUDE THE CITY AS AN ADDITIONAL INSURED. The DEVELOPER shall maintain coverage of the types and in the amounts as specified below. Prior to execution of this Agreement, the DEVELOPER shall provide a copy of the insurance policy as proof of such insurance coverage and shall provide one annually. An "umbrella" type policy with limits specified below may be submitted for this requirement, with the CITY as named insured.

The amounts of such insurance shall be as follows:

BODILY INJURY LIABILITY
EACH PERSON \$500,000.00
EACH ACCIDENT \$1,000,000.00

PROPERTY DAMAGE LIABILITY
EACH ACCIDENT \$500,000.00
ALL ACCIDENTS. \$1,000,000.00

Such insurance shall remain in full force and effect during the life of the Agreement. Insurance may not be changed or canceled unless the insured, including the CITY, are notified in writing not less than thirty days (30) prior to such change or cancellation. Cancellation or lapse of insurance coverage during the life of this contract shall be considered a default by the DEVELOPER sufficient to relieve the CITY of its obligations under this Agreement and a material breach of the Agreement.

Future insurance certificates are to be sent to:

Department of Public Utilities
Division of Sewerage and Drainage
1250 Fairwood Ave.
Columbus, Ohio 43206
Attn: Plan Review Section Manager
Re: OTTO BEATTY BUILDING STREETScape IMPROVEMENTS, 3244-E

2.10 Independent Contractor. The parties hereto agree that nothing in this Agreement shall make either party the agent, employee, servant, representative, partner, or co-venturer of the other. As such, the DEVELOPER shall be solely responsible for the supervision, daily direction and control of its officers, agents and employees, and for the payment of all applicable compensation, benefits and employer taxes relating to such persons (including workers' compensation and disability). The DEVELOPER has no authority, either express or implied, to bind or obligate the CITY in any manner.

- 2.11 Assignment. The CITY and the DEVELOPER, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. The DEVELOPER shall not assign this Agreement without the written consent of the CITY.
- 2.12 Severability Clause. In the event any of the conditions, covenants, restrictions, obligations, and easements contained in this instrument or any part thereof should be declared void or for any reason unenforceable, the validity and binding effect of the others shall be unimpaired and unaffected and the same shall remain in full force and effect.
- 2.13 Legal Jurisdiction. All claims, counterclaims, disputes and other matters in question between the CITY, its agents and employees, and the DEVELOPER, his contractors, subcontractors and agents arising out of or relating to this agreement or its breach will be decided in a court of competent jurisdiction within the County of Franklin, State of Ohio.
- 2.14 Notice. All notices required or permitted under this Agreement shall be deemed effective if made in writing and delivered to the recipient's address as set forth below (or as changed in accordance with this provision) by any of the following means: (a) hand delivery; (b) registered or certified mail, postage pre-paid, with return receipt requested; or (c) Fed Ex or substantially similar overnight courier service.

City: Department of Public Utilities
Division of Sewerage and Drainage
1250 Fairwood Ave.
Columbus, Ohio 43206
Attn: Plan Review Section Manager

Developer: Annex at River South II, Ltd.
230 West Street, Suite 200
Columbus, Ohio 43215
Attn: Legal Department

ARTICLE III. ATTACHMENTS REQUIRED

The following documents are hereby incorporated into and made part of the Agreement:

- 3.01 Exhibit A – Location Plan
- 3.02 Exhibit B – List of Maintenance Responsibilities
- 3.03 Exhibit C – Proof of Insurance with City named as additional insured with the agreement name and drawing number on the certificate.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have set their hands and seals and have executed this Agreement on the day and year first below written.

Annex at River South II, Ltd.

T.R. B...
Signature

Senior Vice President
Title

April 24 2020
Date

CITY OF COLUMBUS
DEPARTMENT OF PUBLIC UTILITIES

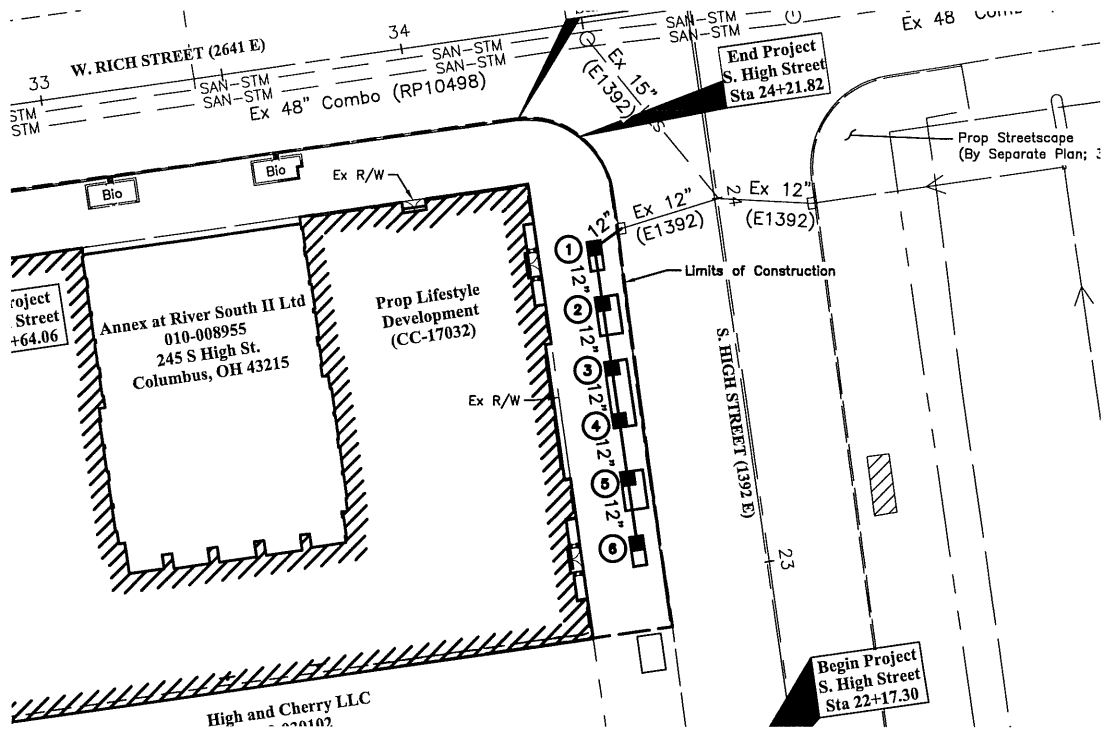
Tracie Davies
Director of Public Utilities

Date

APPROVED AS TO FORM

Zachary M. Klein
Columbus City Attorney

EXHIBIT A



ITEM	QUANTITY	UNIT	DESCRIPTION
604	6	EA	STANDARD CATCH BASIN (AA-S133A), (AA-S139 LIGHT DUTY GRATE/FRAME)
901	90	LF	12" STORM PIPE (706.02) CLASS IV, w/TYPE 1 BEDDING (REINFORCED CONCRETE PIPE)

Exhibit "B" – Maintenance Responsibilities

<i>Storm inlets in sidewalk on west side of High St right of way, south of Rich Street</i>		
<i>Components</i>	<i>Responsible Parties</i>	<i>Maintenance Requirements</i>
<i>Storm sewer pipe and structures</i>	DEVELOPER	<i>Inspect storm sewer pipe and structures for sediment and trash accumulation or failures at a minimum every quarter.</i>
<i>Storm sewer pipe and structures</i>	DEVELOPER	<i>Clean sewer and structure as needed.</i>
<i>Storm sewer pipe and structures</i>	DEVELOPER	<i>Repair any failures of the sewer pipe or structures.</i>
<i>Storm sewer pipe and structures</i>	DEVELOPER	<i>Provide DOSD SMOC Manager at 1250 Fairwood Ave, Columbus, Ohio a record of all inspections, cleaning, repairs and emergency contact annually.</i>

CERTIFICATE OF LIABILITY INSURANCE

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer any rights to the certificate holder in lieu of such endorsement(s).

PRODUCER: Huntington Insurance, Inc. 37 W. Broad St. Columbus, OH 43215 888 576-7900
CONTACT NAME: Kim Reiser
PHONE (A/C, No, Ext): 614-899-8538
FAX (A/C, No):
E-MAIL ADDRESS: kim.m.reiser@huntington.com
INSURER(S) AFFORDING COVERAGE:
INSURER A: Cincinnati Insurance Company NAIC # 10677
INSURER B: Chubb Ins Co of NJ 41386
INSURER C: Travelers Property Casualty Co of Ameri 25674
INSURER D:
INSURER E:
INSURER F:

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

Table with columns: INSR LTR, TYPE OF INSURANCE, ADDL SUBR INSR WVD, POLICY NUMBER, POLICY EFF (MM/DD/YYYY), POLICY EXP (MM/DD/YYYY), LIMITS. Rows include Commercial General Liability, Umbrella Liab, and Excess Liability.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Trautman - The Annex at River South II, Ltd.
Location: 203-213 S High Street, Columbus, OH 43215

CERTIFICATE HOLDER: Proof of insurance
CANCELLATION: SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE: [Signature]

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