

## SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

This Settlement Agreement and Release of All Claims (“Agreement”) is entered into by and between Plaintiff, **Southgate Company Limited Partnership** (“Southgate”), and Defendant, **City of Pataskala, Ohio** (“City”). Together, Southgate and the City may be referred to as the “Parties”, and each may singularly be referred to as a “Party.” This Agreement is effective as of the date of the last-dated signature below (the “Effective Date”).

### RECITALS

This Agreement is made with reference to the following:

**WHEREAS**, Southgate owns real property located in Pataskala, Ohio that includes Parcel Nos. 64-152964-00.000 (the “First Parcel”) and 64-152964-00.001 (the “Second Parcel”) (together, the First Parcel and the Second Parcel are the “Property”).

**WHEREAS**, on or about March 5, 2007, through Ordinance No. 2006-3746, the City rezoned the First Parcel to a Planned Development District (“PDD”) zoning classification and approved development standards text and a preliminary development plan covering the First Parcel.

**WHEREAS**, on or about May 16, 2016, through Ordinance No. 2016-4257, the City rezoned the Second Parcel to the PDD zoning classification and approved development standards text and a preliminary development plan that included the Property.

**WHEREAS**, on or about September 6, 2019, Southgate submitted a revised development text standards and a revised preliminary development plan concerning the Property (“2019 Development Plan”).

**WHEREAS**, a dispute arose between the Parties concerning the review, consideration, and approval of the 2019 Development Plan.

**WHEREAS**, Southgate filed a lawsuit in the Court of Common Pleas in Licking County, Ohio, captioned as *Southgate Company Limited Partnership v. The City of Pataskala, Ohio*, Case No. 20CV0045, in which Southgate seeks compensatory damages, attorney fees, and costs for alleged constitutional violations, as well as declaratory, injunctive, and other equitable relief (the “Litigation”).

**WHEREAS**, the City disputes the claims and allegations contained in the Litigation.

**WHEREAS**, the Parties wish to resolve the Litigation, pursuant to the terms set forth herein.

**NOW, THEREFORE**, based upon the foregoing recitals, which are incorporated herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and the mutual promises and covenants contained herein, the Parties mutually agree as follows:

1. ***Approval of Preliminary Development Plan and Development Text.*** The City will approve Southgate's Preliminary Development Plan and Development Text. A true and accurate copy of the Preliminary Development Plan and Development Text is attached hereto as **Exhibit 1** and is incorporated herein.

2. ***Impact and Development Fees on the Property.*** In lieu of paying Southgate any amount of money for settlement of its claims against the City in the Litigation the City shall not impose any Impact Fees associated with the development or improvement of the Property for twenty (20) years from the Effective Date. However, Southgate and its successors and assigns will pay timely all costs and expenses for infrastructure improvements outlined in the Memorandum of Understanding attached hereto as **Exhibit 2** and incorporated herein.

3. ***Dismissal of the Litigation with Prejudice.*** Southgate shall dismiss the Litigation, with prejudice, each Party to bear its own costs and attorneys' fees, within ten (10) days of the latter of the City's approval of the Preliminary Development Plan and Development Text.

4. ***Release by the Parties.*** For and in consideration of the terms and conditions of this Agreement, the Parties hereby agree as follows:

A. Southgate on behalf of itself, its parents, subsidiaries, general partners, limited partners, affiliates, predecessors, and successors, as well as its officers, directors, shareholders, employees, agents, insurers, members, heirs, administrators, guarantors, indemnitors, and assigns, absolutely and unconditionally release the City, and each of its current and former elected and appointed officials, heirs, beneficiaries, executors, administrators, insurers, officers, partners, current and former employees, agents, affiliates, successors, guarantors, indemnitors, and assigns and all persons acting by, through, and under them from any and all damages, injuries, omissions, actions and causes of action, suits, debts, disputes, consultant's fees, attorneys' fees, expenses, costs, liabilities, and demands whatsoever, whether known or unknown, past and current, that in any way arise out of or relate to claims made, or claims that could have been made in the Litigation. This release does not apply to any obligations, claims, or other liabilities created by this Agreement.

B. The City on behalf of itself, its current and former elected and appointed officials, heirs, beneficiaries, executors, administrators, insurers, officers, partners, current and former employees, agents, affiliates, successors, guarantors, indemnitors, and assigns, absolutely and unconditionally release Southgate, and each of its parents, subsidiaries, general partners, limited partners, affiliates, predecessors, and successors, as well as its officers, directors, shareholders, employees, agents, insurers, members, heirs, administrators, guarantors, indemnitors, and assigns and all persons acting by, through, and under them from any and all damages, injuries, omissions, actions and causes of action, suits, debts, disputes, consultant's fees, attorneys' fees, expenses, costs, liabilities, and demands whatsoever, whether known or unknown, past and current, that in any way arise out of or relate to claims made, or claims that could have been made in the Litigation. This release does not apply to any obligations, claims, or other liabilities created by this Agreement.

5. ***No Admission of Liability.*** Southgate and the City acknowledge that this Agreement represents the compromise of disputed contentions and claims between the Parties

concerning the Litigation, and this Agreement shall not be construed as: (a) an admission of the truth or falsity of any contentions or claims heretofore asserted in the Litigation; or (b) an acknowledgment or an admission of liability by the City, which are expressly denied. All Parties explicitly deny any and all liability to each other.

6. ***Binding Nature of Agreement; Successors and Assigns.*** This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, personal representatives, predecessors, successors, and current and former subrogees, assigns, insurers, parents, subsidiaries, affiliates, shareholders, officers, directors, employees, general partners, limited partners, members, managers, administrators, and all persons acting by, through, under, or in concert with the Parties, or otherwise legally entitled to recover through the Parties.

7. ***Authority.*** Each Party, by signing below, represents and warrants that the person signing this Agreement has the full power, legal capacity, and authority: (i) to enter this Agreement on behalf of the respective Party; (ii) to make this Agreement and the promises contained therein binding on such Party; and (iii) to perform the obligations under this Agreement.

8. ***No Assignment.*** The Parties represent and warrant that they (i) have not made or purported to make any assignment or other disposition, in whole or in part, of any claim or claims that was, were, or are the subject of this Agreement, and (ii) are the sole owner of the claims asserted by them.

9. ***Limitations on Waiver.*** No course of dealing among or between Southgate and the City, no waiver by any or all of the Parties hereto, and no refusal or neglect of any of the Parties hereto, in exercising any rights hereunder or in enforcing compliance with the terms of this Agreement, shall constitute a waiver of any provision herein unless such power is expressed in writing by the waiving Party.

10. ***Entire Agreement; Modifications to Be in Writing.*** This Agreement constitutes the entire agreement between the Parties regarding settlement of the Litigation. All prior and contemporaneous agreements, contracts, promises, representations, and statements, if any, between the Parties or their representatives are merged into this Agreement, which shall constitute the entire agreement and understanding between the Parties. No waiver, modification, or termination of the terms hereof shall be valid unless in writing signed by the Party to be charged and only to the extent set forth therein.

11. ***Expenses; Costs.*** Each Party shall be responsible for its own costs and expenses, including attorneys' fees and court costs, incurred in connection with this Agreement or with the Litigation.

12. ***Governing Law.*** This Agreement shall be governed by and construed in accordance with the internal substantive law of the state of Ohio, without regard to its conflicts of law principles. The actual development of the Property shall be governed, as applicable by the Pataskala Codified Ordinances, as they currently exist or as amended, unless specifically exempted by this Agreement or expressly covered in Preliminary Development Plan and Development Text (Exhibit 1).

13. **Severability.** The provisions of this Agreement are severable and no provision hereof shall be affected should any paragraph, provision, or clause be found to be ineffective, invalid, or unenforceable.

14. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be treated as an original and all of which shall be construed together and shall constitute one Agreement. The Parties agree that this Agreement, or counterparts as provided for herein, may be executed and transmitted via electronic means, and shall, when so executed and transmitted, be valid as though an original.

15. **Additional Documents and Continued Cooperation.** The Parties agree to act in good faith to execute all documents reasonably necessary or advisable to fulfill the terms and obligations of this Agreement or as necessary to comply with any legal requirement to put third parties on notice of the terms of this Agreement.

16. **Interpretation.** This Agreement shall not be interpreted against any Party due to the fact that a Party's attorney drafted any language of this Agreement in whole or in part. The headings are for the convenience of the Parties and are not to be used in construing the meaning of any provision of this Agreement.

17. **Representation by Counsel.** The Parties represent and warrant that they have each been represented by counsel in all matters concerning this Agreement; that they have been fully advised by their attorney(s) of their rights and obligations contained in this Agreement; and that they have read and understood the provisions of this Agreement.

**IN WITNESS WHEREOF**, the Parties execute this Agreement on the dates set forth below.

*[Signatures Appear on the Next Page]*

**SOUTHGATE COMPANY LIMITED PARTNERSHIP,**  
an Ohio limited partnership

By: Southgate Corporation, an Ohio corporation

Its: General Partner

\_\_\_\_\_ Date: \_\_\_\_\_  
Robert E. O'Neill, President  
Southgate Corporation

**CITY OF PATASKALA, OHIO**

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

Its: \_\_\_\_\_