

**CITY OF XENIA, OHIO
RESOLUTION 2021 – A**

APPROVING AND AUTHORIZING THE EXECUTION OF THE MUTUAL RELEASE AND SETTLEMENT AGREEMENT WITH BLUE ROCK INVESTMENTS, LLC, FOR THE ACQUISITION OF LEASEHOLD INTERESTS AND PERMANENT IMPROVEMENTS IN THE XENIA TOWNE SQUARE AND A DISMISSAL OF CLAIMS, AND DECLARING AN EMERGENCY

WHEREAS, during the course of litigation in the case of *Blue Rock Investments, LLC, et al. v. the City of Xenia, Ohio, et al.*, Case No. 3:17-CV-00409 in the United States District Court for the Southern District of Ohio, Western Division, the parties have come to a reasonable and amicable settlement;

WHEREAS, under the terms of the lease executed with Blue Rock Investments, LLC's predecessors, which lease was executed in 1979, there is no termination date of said lease as the Lessee has the perpetual right to renew the lease for ten-year terms indefinitely;

WHEREAS, this Council finds that approving the proposed Mutual Release and Settlement Agreement will allow for termination of the lease and thereby allow for the redevelopment of the Xenia Towne Square property that otherwise would not be available without the termination of the lease; and

WHEREAS, this Council believes it to be in the best interests of the City and its inhabitants to enter into a settlement agreement with Blue Rock Investments, LLC, upon the agreed upon terms, conditions, releases and restrictions contained in the Mutual Release and Settlement Agreement.

NOW, THEREFORE, THE CITY OF XENIA HEREBY RESOLVES, at least five (5) members of Council concurring, that:

Section 1. This Resolution is declared to be an emergency for the reason that the United States District Court is awaiting filing of the proposed Agreement, which must be filed with the Court immediately upon execution.


Section 2. The proposed Mutual Release and Settlement Agreement in United States District Court, Southern District of Ohio, Western Division, Case No. 3: 17-CV-00409, attached hereto as Exhibit A, is hereby approved and the City Manager is hereby directed, on behalf of the City, to execute said Mutual Release and Settlement Agreement and any other documents necessary to complete or finalize said Mutual Release and Settlement Agreement including, but not limited to, the Memorandum of Ground Lease Assignment.

Section 3. Upon the Court's acceptance and filing of the Mutual Release and Settlement Agreement, the City Manager, Finance Director, Law Director and/or City Clerk are hereby authorized and directed to take such actions as are necessary to carry out the conditions of the Agreement including, but not limited to, payment to Blue Rock Investments, LLC, and recording the Assignment of Lease and Memorandum of Ground Lease Assignment.

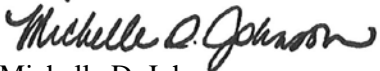
Section 4. It is found that all formal actions of this Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council that resulted in this formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 5. This Resolution shall become effective immediately upon its passage, in accordance with Section 5.04 of the Xenia City Charter.

Passed: January 14, 2021


Wesley E. Smith
President, Xenia City Council

Attest:


Michelle D. Johnson
City Clerk

**CERTIFICATE OF COPY
STATE OF OHIO**

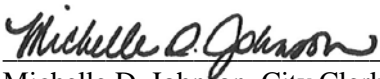
City of Xenia, Greene County, Ohio

I, Michelle D. Johnson, as Clerk of the City of Xenia, Greene County, Ohio, do hereby certify that the foregoing is a true and correct copy of Resolution 2021-A, adopted by the legislative authority of the said City of Xenia, Ohio on the 14th day of January, 2021; that the publication of such Resolution 2021-A has been made and certified of record according to law; that no proceedings looking to a referendum upon such Resolution 2021-A have been taken; and that such Resolution 2021-A and certificate of publication thereof are on record in hard copy and/or electronic format in the Office of the City Clerk.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal, if applicable, this 15th day of January, 2021.



(CITY SEAL)



Michelle D. Johnson, City Clerk

MUTUAL RELEASE AND SETTLEMENT AGREEMENT

This Mutual Release and Settlement Agreement (the “Agreement”) is entered into by and between **Blue Rock Investments, LLC**, an Ohio limited liability company, with an address of P.O. Box 37804, Cincinnati, Ohio 45222 (“Blue Rock”), and **The City of Xenia, Ohio**, a chartered municipal corporation and body politic under the laws of the State of Ohio, with an address of 107 East Main Street, Xenia, Ohio 45385 (“Xenia” or the “City”), and **Badger Construction Co., Inc.**, a West Virginia corporation, with an address of 51 Stockett Road, Morgantown, West Virginia 26508 (“Badger”), and **Levin Porter Architects, Inc. d/b/a Levin Porter Architects**, an Ohio corporation, with an address of 3011 Newmark Drive, Miamisburg, Ohio 45342 (“Levin Porter”), and **Charles F. Jergens Construction, Inc.**, an Ohio corporation, with an address of 1280 Brandt Pike, Dayton, Ohio 45402 (“Jergens Construction”). Blue Rock, Xenia, Badger, Levin Porter, and Jergens Construction are collectively referred to in this Agreement as the “Parties” and individually as a “Party.” This Agreement is effective as of the date of the last-dated signature below (the “Effective Date”).

RECITALS

WHEREAS, Blue Rock owns and operates several commercial buildings that comprise the Xenia Towne Square Shopping Center located in Xenia, Ohio the (“Towne Square”);

WHEREAS, Blue Rock leases the Towne Square from the City through a long-term ground lease in which the City owns title to the parcel of land and Blue Rock owns the Towne Square’s improvements, including without limitation, a large commercial building at the far west-end of the Towne Square that was formerly occupied by a Fulmer’s grocery store (the “Fulmer’s Building”);

WHEREAS, the City owned the building that was previously occupied by K-Mart and situated adjacent to the Fulmer’s Building such that one side of each building’s walls was tied to the other (the “K-Mart Building”);

WHEREAS, the City decided to redevelop the area around the Towne Square and demolish the K-Mart Building that abutted the Fulmer’s Building;

WHEREAS, the City retained Levin Porter to provide architectural and engineering services related to the demolition of the K-Mart Building;

WHEREAS, the City entered into an Agreement for Construction Services with Badger to provide for the demolition of the K-Mart Building;

WHEREAS, Badger entered into an agreement whereby Jergens Construction would provide services related to the demolition of the K-Mart Building;

WHEREAS, certain disputes concerning the demolition of the K-Mart Building and alleged damages to the Fulmer’s Building have arisen between the Parties as set forth in a civil action in the United States District Court for the Southern District of Ohio, Western Division,

captioned *Blue Rock Investments, LLC, et al. v. The City of Xenia, Ohio, et al.*, being Case No. 3:17-cv-00409 (the “Action”);

WHEREAS, Blue Rock seeks recovery in the Action for certain damages to the Fulmer’s Building that Blue Rock alleges to have been caused by the demolition of the K-Mart Building;

WHEREAS, Badger brought third-party claims against Jergens Construction and Levin Porter in the Action related to the demolition of the K-Mart Building (the “Third-Party Claims”);

WHEREAS, the City asserted certain cross-claims against Badger concerning the demolition of the K-Mart Building and alleged damages to the Fulmer’s Building in the Action (the “Cross-Claims”);

WHEREAS, the Court dismissed the Cross-Claims with prejudice; and

WHEREAS, the Parties have agreed to resolve the claims that were or could have been asserted in the Action, including those against Jeff Assif or Penny Assif, on the terms and conditions set forth in this Agreement.

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. ***Settlement of Claims by Blue Rock Against Xenia.*** For and in consideration of the terms and conditions of this Agreement, Blue Rock and Xenia agree to resolve Blue Rock’s claims against Xenia as follows:

1.1 ***Payment by Xenia to Blue Rock.*** Within thirty (30) days of the latter of the date Blue Rock or Xenia executes this Agreement or approval of this Agreement by the Probate Court, Xenia shall pay \$3,350,000 via wire transfer to Blue Rock’s counsel, Vorys, Sater, Seymour and Pease LLP (the “Xenia Settlement Payment”).

1.2 ***Assignment of Lease.*** In exchange for the Xenia Settlement Payment, Blue Rock assigns to Xenia effective when Xenia completes the Xenia Settlement Payment all of its right, title, and interest in the Lease originally recorded in the Greene County Recorder’s Office on July 23, 1970, at Volume 25 Page 196, and subsequently assigned to Blue Rock on September 12, 2014, and recorded in the Greene County Recorder’s Office on September 23, 2014, at Volume 3540, Page 528, together with all of Blue Rock’s right, title, and interest in and to the improvements constructed on the leased premises as defined in the Lease. A memorandum of this agreement titled Memorandum of Ground Lease Agreement and attached hereto as Appendix 1, shall be executed by Blue Rock and Xenia and thereafter recorded in the Greene County Recorder’s Office.

1.3 ***Blue Rock’s Dismissal of Claims Against Xenia.*** Blue Rock shall dismiss its claims against Xenia in the Action, with prejudice, within ten (10) days of the

recording of the Assignment of Lease and Memorandum of Ground Lease Assignment described in Paragraph 1.2.

1.4 **Indemnification.** Xenia assumes and agrees to timely perform the tenant's obligations under the Lease from and after the Effective Date. Xenia further agrees that Xenia shall remain fully responsible for and pay all claims and defend Blue Rock at Xenia's sole cost and expense and hold Blue Rock harmless from any and all claims, costs, liabilities, and causes of action arising from Xenia's performance of, or failure to perform, the tenant's obligations under the Lease from and after such date. Blue Rock agrees to indemnify, defend and hold Xenia harmless from any and all claims, costs, liabilities, and causes of action arising from Blue Rock's performance of, or failure to perform, the tenant's obligations under the Lease prior to the Effective Date.

2. **Settlement of Claims by Blue Rock Against Badger.** For and in consideration of the terms and conditions of this Agreement, Blue Rock and Badger agree to resolve Blue Rock's claims against Badger as follows:

2.1 **Payment by Badger to Blue Rock.** Mesa Underwriters Specialty Insurance Company ("MUSIC"), on behalf of its insured, Badger, agrees to pay to Blue Rock the sum of \$100,000 in full and final settlement of the claims asserted by Blue Rock against Badger in the Action. The payment shall be delivered via check made payable to Vorys, Sater, Seymour, and Pease, LLP within thirty (30) days of the Effective Date.

2.2 **Blue Rock's Dismissal of Claims Against Badger.** Blue Rock shall dismiss its claims against Badger in the Action, with prejudice, within ten (10) days of counsel for Blue Rock receiving the payment described in 2.1 of this Agreement.

3. **Settlement of Third-Party Claims by Badger Against Levin Porter and Jergens Construction.** For and in consideration of the terms and conditions of this Agreement, Badger, Levin Porter, and Jergens Construction agree to resolve Badger's Third-Party Claims against Levin Porter and Jergens Construction as follows:

3.1 **Payment by Levin Porter to Blue Rock.** Levin Porter shall pay to Blue Rock the sum of \$5,000 in full and final settlement of the third-party claims asserted by Badger against Levin Porter in the Action. The payment shall be delivered via wire transfer or via check USPS first class mail to Blue Rock's counsel, Vorys, Sater, Seymour and Pease LLP within thirty (30) days of Levin Porter's execution of this Agreement.

3.2 **Payment on Behalf of Jergens Construction to Blue Rock.** Jergens Construction shall ensure that the sum of \$5,000 is paid to Blue Rock on behalf of Jergens Construction in full and final settlement of the third-party claims asserted by Badger against Jergens Construction in the Action. The payment shall be delivered via check made payable to Vorys, Sater, Seymour, and Pease, LLP within thirty (30) days of the Effective Date.

3.3 ***Badger's Dismissal of the Third-Party Claims Against Jergens Construction and Levin Porter.*** Badger shall dismiss its Third-Party Claims against Levin Porter and Jergens Construction in the Action, with prejudice, within ten (10) days of counsel for Blue Rock receiving the respective payments described in Paragraphs 3.1 and 3.2 of this Agreement.

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

4.1 ***Blue Rock's Release of Claims.*** Blue Rock 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 each other Party, and each of their parents, subsidiaries, general partners, limited partners, affiliates, predecessors, and successors, as well as their officers, directors, shareholders, current and former elected and appointed officials and employees, agents, insurers, members, heirs, administrators, guarantors, indemnitors, and assigns, the Public Entities Pool of Ohio, Sedgwick Claims Management Services, Inc. and its affiliates, and each of their officers, directors, employees, successors and assigns, and Public Entity Risk Services of Ohio, 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, from the beginning of time until the Effective Date, arising out of or related to the demolition of the K-Mart Building or any of the claims made, or that could have been made, by any Party in the Action. This release does not apply to any obligations, claims, or other liabilities created by this Agreement or to claims or rights, if any, based totally on events occurring after the Effective Date.

4.2 ***Xenia's Release of Claims.*** Xenia 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 each other Party, and each of their parents, subsidiaries, general partners, limited partners, affiliates, predecessors, and successors, as well as their 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, from the beginning of time until the Effective Date, arising out of or related to the demolition of the K-Mart Building or any of the claims made, or that could have been made, by any Party in this Action. This release does not apply to any obligations, claims, or other liabilities created by this Agreement or to claims or rights, if any, based totally on events occurring after the Effective Date.

4.3 ***Badger's Release of Claims.*** For and in consideration of the terms and conditions of this Agreement, Badger 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 each other Party, and each of their parents, subsidiaries, general partners, limited partners, affiliates, predecessors, and successors, as well as their officers, directors, shareholders, current and former elected and appointed officials, 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, from the beginning of time until the Effective Date, arising out of or related to the demolition of the K-Mart Building or any of the claims made, or that could have been made, by any Party in this Action. This release does not apply to any obligations, claims, or other liabilities created by this Agreement or to claims or rights, if any, based totally on events occurring after the Effective Date.

4.4 ***Levin Porter's Release of Claims.*** For and in consideration of the terms and conditions of this Agreement, Levin Porter on behalf of itself, its parents, subsidiaries, general partners, limited partners, affiliates, predecessors, and successors, as well as its officers, directors, shareholders, current and former elected and appointed officials, employees, agents, insurers, members, heirs, administrators, guarantors, indemnitors, and assigns, absolutely and unconditionally release each other Party, and each of their parents, subsidiaries, general partners, limited partners, affiliates, predecessors, and successors, as well as their 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, from the beginning of time until the Effective Date, arising out of or related to the demolition of the K-Mart Building or any of the claims made, or that could have been made, by any Party in this Action. This release does not apply to any obligations, claims, or other liabilities created by this Agreement or to claims or rights, if any, based totally on events occurring after the Effective Date.

4.5 ***Jergens Construction's Release of Claims.*** For and in consideration of the terms and conditions of this Agreement, Jergens Construction on behalf of itself, its parents, subsidiaries, general partners, limited partners, affiliates, predecessors, and successors, as well as its officers, directors, shareholders, current and former elected and appointed officials, employees, agents, insurers, members, heirs, administrators, guarantors, indemnitors, and assigns, absolutely and unconditionally release each other Party, and each of their parents, subsidiaries, general partners, limited partners, affiliates, predecessors, and successors, as well as their 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, from the beginning of time until the Effective Date, arising out of or related to the demolition of the K-Mart Building or any of the claims made, or that could have been made, by any Party in this Action. This release does not apply to any obligations, claims, or other liabilities created by this Agreement or to claims or rights, if any, based totally on events occurring after the Effective Date.

5. ***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.

6. ***No Admission of Liability.*** The Parties expressly understand and agree that this Agreement is made in full settlement and satisfaction of disputed claims, and the performance of any act pursuant to this Agreement shall not be construed as an admission of liability by any person. Xenia expressly denies any and all liability for the claims and damages asserted by Blue Rock in the Action. Badger expressly denies any and all liability for the claims and damages asserted by Blue Rock in the Action and by the City in the Cross Claims in the Action. Levin Porter and Jergens Construction expressly deny any and all liability for the claims and damages asserted by Badger in the Third-Party Claims in the Action.

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. As a material inducement for Blue Rock to enter into this Agreement, and after reasonable diligence by the City, the City represents and warrants that Blue Rock has fully performed all of its obligations under the Lease and is not known to be in default of the Lease prior to the Effective Date. As a material inducement for Badger to enter into this Agreement, Blue Rock and the City represent and warrant that: (a) during the period of time the demolition of the K-Mart Building occurred, Blue Rock leased the Towne Square from the City through a long-term ground lease in which the City owned title to the parcel of land which the Fulmer's Building occupied and Blue Rock owned the improvements on that parcel of land, including without limitation, the Fulmer's Building, and (b) upon completion of the Assignment of Lease described in Paragraph 1.2, Xenia will own all of the improvements, including the buildings, structures, and fixtures in the Towne Square, including the Fulmer's Building free and clear of any claims of Blue Rock.

8. ***Interpretation.*** The Parties and their legal counsel have had the opportunity to review this Agreement, and 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.

9. **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.

10. **Entire Agreement; Modifications to Be in Writing.** This Agreement constitutes the entire agreement between the Parties regarding settlement of the Action. 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 of the Parties hereto shall be responsible for its own costs and expenses, including attorneys' fees and court costs, incurred in connection with this Agreement or with the Action.

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.

13. **Severability.** Any provision of this Agreement that may prove limited or unenforceable under any law or judicial ruling shall not affect the validity or enforceability of the remainder of this Agreement.

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. **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 have caused this Mutual Release and Settlement Agreement to be executed on the dates set forth below and effective as of the last-dated signature below.

BLUE ROCK INVESTMENTS, LLC,
an Ohio limited liability company

By: _____

Name: _____

Title: _____

Date: _____

THE CITY OF XENIA, OHIO

By: _____

Name: _____

Title: _____

Date: _____

BADGER CONSTRUCTION CO., INC.,
a West Virginia corporation

By: _____

Name: _____

Title: _____

Date: _____

CHARLES F. JERGENS CONSTRUCTION, INC.,
an Ohio corporation

By: _____

Name: _____

Title: _____

Date: _____

LEVIN PORTER ARCHITECTS, INC., d/b/a LEVIN PORTER ARCHITECTS,
an Ohio corporation

By: _____

Name: _____

Title: _____

Date: _____

MEMORANDUM OF GROUND LEASE ASSIGNMENT

THIS MEMORANDUM OF GROUND LEASE ASSIGNMENT (this "Memorandum") is executed effective as of the ___ day of _____, 20__ (the "Effective Date"), by and between **Blue Rock Investments, LLC**, an Ohio limited liability company, with an address of P.O. Box 37804, Cincinnati, Ohio 45222 ("Blue Rock"), and **The City of Xenia, Ohio**, a chartered municipal corporation and body politic under the laws of the State of Ohio, with an address of 107 East Main Street, Xenia, Ohio 45385 ("Xenia" or the "City")

Recitals

WHEREAS, Blue Rock owns and operates several commercial buildings that comprise the Xenia Towne Square Shopping Center located in Xenia, Ohio (the "Towne Square");

WHEREAS, Blue Rock leases the property where the Towne Square is located as more fully described on Exhibit A attached hereto (the "Property") from the City of Xenia, Ohio (the "City") through a long-term ground lease (the "Ground Lease") in which the City owns title to the Property and Blue Rock owns the Towne Square's improvements (the "Improvements");

WHEREAS, Blue Rock has assigned the Ground Lease to Xenia;

WHEREAS, the parties have executed and delivered this memorandum in order to evidence, of record, the assignment of the Ground Lease;

NOW, THEREFORE, the parties state as follows:

1. Blue Rock has assigned to Xenia all of its right, title, and interest in the Ground Lease originally recorded in the Greene County Recorder's Office on July 23, 1970, at Volume 25 Page 196, and subsequently assigned to Blue Rock on September 12, 2014, and recorded in the Greene County Recorder's Office on September 23, 2014, at Volume 3540, Page 528, together with all of Blue Rock's right, title, and interest in and to the Improvements constructed on the Property.

2. As a result of said assignment, Xenia now holds fee title to all of the Improvements, including the buildings, structures and fixtures now or hereafter located on the Property.

3. Complete copies of the Ground Lease are in the possession of Xenia.

4. This Memorandum is intended for recording purposes only, and, except as specifically noted herein, does not modify, supersede, diminish, add to or change all or any of the terms of the Ground Lease in any respect.

5. This Memorandum may be executed in one or more counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, the parties hereto have caused this Memorandum to be duly executed as of the Effective Date.

THE CITY OF XENIA, OHIO

By: _____
Its: _____

STATE OF OHIO)
) ss.
COUNTY OF _____)

This is an acknowledgement clause; no oath or affirmation was administered to the signer. The foregoing instrument was acknowledged before me on the __ day of _____, 20__ by _____, the _____ (title) on behalf of The City of Xenia, Ohio.

Notary Public

My Commission Expires:

BLUE ROCK INVESTMENTS, LLC

By: _____
Its: _____

STATE OF OHIO)
) ss.
COUNTY OF _____)

This is an acknowledgment clause; no oath or affirmation was administered to the signer. The foregoing instrument was acknowledged before me on the __ day of _____, 20__ by _____, the _____ (title) on behalf of Blue Rock Investments, LLC.

Notary Public

My Commission Expires:

Instrument prepared by:
Timothy Cole, Esq.
Vorys, Sater, Seymour & Pease
52 East Gay Street, Columbus, OH
614-464-6400

EXHIBIT A

Located in the City of Xenia, County of Greene, and State of Ohio, and being part of Lot No. 1 of the Xenia Redevelopment Project No. 1 as recorded in Plat Book 18, pages 111-113 of the Plat Records of Greene County, Ohio and being further described as follows: Beginning at the point of intersection of the northerly right-of-way line of Main Street with the westerly right-of-way line of Detroit Street, thence in a westwardly direction with the northerly line of Main Street on a bearing of south seventy-five degrees, thirty-seven minutes forty seconds ($75^{\circ} 37' 40''$) west for a distance of one hundred thirteen and $44/100$ (113.44) feet to the true point of beginning, said point being the southwest corner of land conveyed to the Home Federal Savings and Loan Association by deed recorded in Volume 421, Page 443 of the Deed Records of Greene County, Ohio; thence continuing in a westwardly direction with the northerly line of Main Street on the last described course for a distance of two hundred eighty-two and $55/100$ (282.55) feet to a point; thence in a northwardly direction on a bearing of north fourteen degrees twenty-four minutes thirty-five seconds ($14^{\circ} 24' 35''$) west for a distance of one hundred sixty-five and $00/100$ (165.00) feet to a point; thence in a westwardly direction crossing King Street and with the northerly line of lands conveyed to the Peoples Building and Savings Association by deed recorded in Volume 357, Page 90 and Volume 447, Page 682 and the Commenco Corporation by deed recorded in Volume 424, Page 177, and the Peoples Building and Savings Association by deed recorded in Volume 560, Page 151, and the G.K.Z. Development Company by deed recorded in Volume 553, Page 372, and Ralph Kopelove, et al., by deeds recorded in Volume 478, Page 903 and Volume 501, Page 135, all deeds recorded in said Deed Records, on a bearing of south seventy-five degrees thirty-seven minutes forty seconds ($75^{\circ} 37' 40''$) west for a distance of three hundred eighty and $75/100$ (380.75) feet to a point, said point being a northwest corner of said Ralph Kopelove, et al. land; thence in a southwardly direction with a westerly line of said Ralph Kopelove et al. land on a bearing of south fourteen degrees twenty-four minutes thirty-five seconds ($14^{\circ} 24' 35''$) east for a distance of forty-four and $25/100$ (44.25) feet to a point, said point being also a corner to the Ralph Kopelove, et al. land; thence in a westwardly direction with a northerly line of said Ralph Kopelove, et al. land on a bearing of south seventy-five degrees thirty-seven minutes forty seconds ($75^{\circ} 37' 40''$) west for a distance of fifty-two and $85/100$ (52.85) feet to a point, said point being a

southeast corner of the Xenia Redevelopment Project No. 1, Section Two, as recorded in Plat Book 17, Page 111 of said Plat Records, said point also being at the northern terminus of Galloway Street; thence in a northwardly direction with the eastwardly line of said Section Two on a bearing of north fourteen degrees twenty-two minutes twenty seconds ($14^{\circ} 22' 20''$) west for a distance of five hundred sixty-nine and no/100 (569.00) feet to a point in the southerly right-of-way of West Church Street, said point being the northeast corner of said Section Two; thence in an eastwardly direction with the southerly line of Church Street on a bearing of north seventy-five degrees thirty-seven minutes forty seconds ($75^{\circ} 37' 40''$) east for a distance of one hundred seventy-five and 54/100 (175.54) feet to a point; thence continuing with the southerly line of Church Street on a curve to the left having a radius of one thousand eight hundred forty-six and 44/100 (1846.44) feet for a distance of two hundred thirty-five and 18/100 (235.18) feet to a point; thence continuing with the southerly line of Church Street on a bearing of north sixty-eight degrees nineteen minutes forty-eight seconds ($63^{\circ} 19' 48''$) east for a distance of twenty-seven and 63/100 (27.63) feet to a point; thence continuing with the southerly line of Church Street on a curve to the right having a radius of one thousand five hundred ninety and 85/100 (1590.85) feet for a distance of one hundred twenty-one and 62/100 (121.62) feet to a point; thence continuing with the southerly line of Church Street on a bearing of north seventy-two degrees forty-two minutes thirty-seven seconds ($72^{\circ} 42' 37''$) east for a distance of seventy-two and 78/100 (72.78) feet to the northwest corner of land conveyed to the First Reformed Church by deed recorded in Volume 116, Page 323 of said Deed Records; thence in a southwardly direction with the westerly line of said First Reformed Church land on a bearing of south fourteen degrees twenty-four minutes thirty-five seconds ($14^{\circ} 24' 35''$) east for a distance of one hundred thirty-six and 76/100 (136.76) feet to the southwest corner of said First Reformed Church land; thence in an eastwardly direction with the southerly line of said First Reformed Church land on a bearing of north seventy-five degrees thirty-five minutes fifty-five seconds ($75^{\circ} 35' 55''$) east for a distance of twenty-three and 01/100 (23.01) feet to a point, said point being the northwest corner of the Xenia Redevelopment Project No. 1, Section Three, as recorded in Plat Book 17, Page 128 of said Plat Records; thence in a southwardly direction with the westerly line of Section Three on a bearing of south fourteen degrees twenty-four minutes thirty-five seconds ($14^{\circ} 24' 35''$) east for a distance of one hundred thirty-one and 49/100 (131.49) feet to the southwest corner of Section Three; thence in an eastwardly direction with the southerly line of Section Three on a bearing of north seventy-five degrees thirty-five minutes

fifty-five seconds ($75^{\circ} 35' 55''$) east for a distance of thirty-eight and $20/100$ (38.20) feet to a point, said point being the northwest corner of the Singer land; thence in a southwardly direction with the westerly line of said Singer land on a bearing of south fourteen degrees twenty-four minutes thirty-five seconds ($14^{\circ} 24' 35''$) east for a distance of fifty and $80/100$ (50.80) feet to a point, said point being the southwest corner of said Singer land; thence in an eastwardly direction with the southerly line of said Singer land on a bearing of north seventy-five degrees thirty-five minutes twenty-five seconds ($75^{\circ} 35' 25''$) east for a distance of one hundred thirty-six and $80/100$ (136.80) feet to a point, said point being the southeast corner of said Singer land and in the westerly right-of-way line of North Detroit Street; thence in a southwardly direction with the westerly line of Detroit Street on a bearing of south fourteen degrees twenty-four minutes thirty-five seconds ($14^{\circ} 24' 35''$) east for a distance of one hundred eighty-seven and $79/100$ (187.79) feet to a point, said point being the northeast corner of land conveyed to Charles W. Adair, Sr., by deed recorded in Volume 223, Page 23 of said Deed Records; thence in a westwardly direction with the northerly line of said Charles W. Adair, Sr. land on a bearing of south seventy-five degrees thirty-five minutes twenty-five seconds ($75^{\circ} 35' 25''$) west for a distance of ninety-nine and $00/100$ (99.00) feet to a corner of said Charles W. Adair, Sr. land; thence in a northwardly direction with a line of said Charles W. Adair, Sr. land on a bearing of north fourteen degrees twenty-four minutes thirty-five seconds ($14^{\circ} 24' 35''$) west for a distance of seven and $13/100$ (7.13) feet to a corner; thence in a westwardly direction with a line of said Charles W. Adair, Sr. land on a bearing of south seventy-five degrees thirty-five minutes twenty-five seconds ($75^{\circ} 35' 25''$) west for a distance of forty-nine and $50/100$ (49.50) feet to a corner; thence in a southwardly direction with a line of said Charles W. Adair, Sr. land on a bearing of south fourteen degrees twenty-four minutes thirty-five seconds ($14^{\circ} 24' 35''$) east for a distance of fifty-one and $20/100$ (51.20) feet to a corner; thence in a westwardly direction with a line of said Charles W. Adair, Sr. land on a bearing of south seventy-five degrees thirty-five minutes twenty-five seconds ($75^{\circ} 35' 25''$) west for a distance of thirty-seven and $6/100$ (37.06) feet to the northwest corner of said Charles W. Adair, Sr. land; thence in a southwardly direction with the westerly line of said Charles W. Adair, Sr. land on a bearing of south fourteen degrees twenty-four minutes thirty-five seconds ($14^{\circ} 24' 35''$) east for a distance of forty-two and $52/100$ (42.52) feet to a corner; thence in an eastwardly direction with the southerly line of said Charles W. Adair, Sr. land and its extension on a bearing of north seventy-five degrees thirty-five minutes

twenty-five seconds (75° 35' 25") east for a distance of seventy-two and 12/100 (72.12) feet to a corner, said corner being in the westerly line of said Home Federal Savings and Loan Association land; thence in a southwardly direction with the westerly line of said Home Federal Savings and Loan Association on a bearing of south fourteen degrees twenty-four minutes thirty-five seconds (14° 24' 35") east for a distance of one hundred twenty-eight and 98/100 (128.98) feet to the true point of beginning, containing 9.873 acres more or less and subject to all easements of records.

The above description was prepared by Louis A. Green, Registered Surveyor No. 6147, State of Ohio, July 29, 1980.

Together with assignor's rights under an Easement Agreement between the City of Xenia, Koetzle Corporation and Linclay Corporation of Cincinnati dated July 19, 1979, filed for record on September 14, 1979 at 3:21 P.M. recorded in Vol. 557, Page 792 of the Deed Records of Greene County, Ohio.