

ORDINANCE 2022-08

AN ORDINANCE AUTHORIZING AND DIRECTING THE MAYOR AND VILLAGE ADMINISTRATOR OF THE VILLAGE OF COMMERCIAL POINT TO ENTER INTO A PRE-ANNEXATION AGREEMENT WITH RONIN HOLDINGS, LLC AND M/I HOMES OF CENTRAL OHIO, LLC FOR THE ANNEXATION OF 60.962 +/- ACRES INTO THE VILLAGE OF COMMERCIAL POINT, AND DECLARING AN EMERGENCY.

WHEREAS, Ronin Holdings, LLC ("Landowner") owns approximately 60.962 +/- acres in Scioto Township, Pickaway County, Ohio, which is contiguous with the boundaries of the Village of Commercial Point, Ohio (the "Village"); and

WHEREAS, the Landowner desires to develop or contract with M/I Homes of Central Ohio, LLC ("Developer") to develop the entire 60.962 +/- acres for residential use and the construction of approximately 150 dwelling units; and

WHEREAS, the Village has negotiated a proposed, written Pre-Annexation Agreement with the Landowner and Developer setting forth each party's respective rights and duties with regard to the 60.962 +/- acreage proposed for annexation.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF COMMERCIAL POINT, PICKAWAY COUNTY, OHIO THAT:

SECTION 1. Authorizing and Directing Mayor and Village Administrator to Enter into Pre-Annexation Agreement. The Council of the Village of Commercial Point hereby authorizes and directs the Mayor and Village Administrator to enter into a Pre-Annexation Agreement in a form substantially similar to, and on substantially the same terms as, the Pre-Annexation Agreement attached hereto as Exhibit A and incorporated herein by reference, to provide for the annexation of approximately 60.962 acres owned by Landowner into the Village of Commercial Point.

SECTION 2. Open Meetings Certification. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and of any other committees that resulted in such 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 3. Declaration of Emergency: Effective Date. In order to preserve development opportunities within the Village of Commercial Point, this Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety in the Village of Commercial Point and shall, therefore, take immediate effect upon passage.

Vote on Suspension of the Readings:

Motion by: Tracy Joiner 2nd: Nancy Geiger

Roll Call:

Yes Nancy Geiger Yes Tracy Joiner Yes Jason West
Yes Ross Crego Yes Ryan Mitchem Yes Laura Wolfe

Vote on Passage of the Ordinance:

Motion by: Tracy Joiner 2nd: Ross Crego

Roll Call:

Yes Nancy Geiger Yes Tracy Joiner Yes Jason West
Yes Ross Crego Yes Ryan Mitchem Yes Laura Wolfe

Adopted this 8th day of February, 2022.

Allan D. Goldhardt, Mayor

Wendy Hastings, Fiscal Officer

Approved as to Form:

Joshua Cartee, Village Solicitor

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**Exhibit A**

**PRE-ANNEXATION AGREEMENT**

This Pre-Annexation Agreement (the "Agreement") is entered into, by and between: (i) The Village of Commercial Point, Ohio, an Ohio municipal corporation (hereinafter the "Village"); (ii) Ronin Holdings, LLC, an Ohio limited liability company (hereinafter the "Landowner"); and (iii) **M/I HOMES OF CENTRAL OHIO, LLC** ("Developer") (collectively, the "Parties").

PURPOSE

Landowner is the owner of certain tracts of land consisting of approximately 60.962 +/- acres located at 10649 State Route 104 in Scioto Township, Pickaway County, Ohio, being Parcel Number L2700010052900 and being more particularly described in **Exhibit "A"** attached hereto and incorporated herein (the "Property"), which Property is contiguous with the boundaries of the Village of Commercial Point.

Landowner intends to annex and has or will be contracting with, *inter alia*, Developer to re-zone, develop and build single-family homes on the Property, together with related public infrastructure improvements, including, but not limited to, streets, drainage facilities, water lines, sanitary sewers, entry features, open spaces, recreational trails, community amenities, model homes, signage, and other public improvements and/or permanent improvements and the costs associated with or related thereto as defined under Ohio Revised Code Sections 5709.40(A)(8) and 133.15(B) (collectively, the "Public Improvements") on the Property (the "Project"). The Landowner and Developer also intend to file for and seek approval with the Village of a proposed zoning and development plan for the Project by and through a rezoning application with the Village (the "Zoning and Development Plan").

In general, the Property and the Project would benefit from Village services including, but not limited to, sanitary sewer, water, police protection, refuse service and planning and zoning services. As described in more detail in the following sections of this Agreement, if the Property is annexed, the Village would, over a period of years, offer its municipal services to the Property and the Project developed thereon, subject to and conditioned upon the capacity and availability of such Village services, on a first come first served basis, as and when such service capacity is available. The mutual purposes of the Village and Landowner can be accomplished through the

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**Exhibit A (continued)**

annexation of the Property to the Village, and appropriate rezoning and development under the Village's zoning ordinances for the Project.

Therefore, in order to gain mutual benefits, the Village and the parties hereto agree as follows:

1. Annexation Petition. The Landowner and Developer and/or its agent will prepare an annexation petition for the purpose of seeking annexation of the Property not already annexed into the Village (the "Annexed Acreage"). Landowner will sign the annexation petition agreeing to request annexation of the Annexed Acreage into the Village pursuant to Ohio Revised Code Section 709.023 and appointing each of Aaron Underhill, Esq., David Hodge, Esq., and Eric Zartman, Esq. as the petitioner's agents (collectively, the "Agents") in connection therewith. The petition will be filed with the Pickaway County Board of County Commissioners. Should the Village desire for its own attorney to represent its interests with regard to the annexation petition, those costs will be borne by Village. Once this Agreement is signed and accepted by the Village, Landowner agrees they will not remove their name from the petition and will continue to support the annexation of the Annexed Acreage to the Village throughout the entire annexation process, including any appeal or court action, provided however, Landowner's continued cooperation in the annexation of the Annexed Property shall be subject to and conditioned upon the Village's full and complete performance of its duties and obligations as memorialized in this Agreement.

The Landowner or one of its Agents will provide the statutorily required affidavits to the Village for presentation to the Pickaway County Board of County Commissioners in support of the annexation of the Property and, if necessary, Landowner and/or the Village, and/or their respective agents or assigns, will testify at the request of each other regarding the merits of the annexation at a hearing held before the Pickaway County Board of County Commissioners or subsequent court hearings.

2. Service Resolution. Pursuant to R.C. Section 709.03(D), the Village agrees to enact the appropriate Village Service Resolution stating the municipal services that will be provided to the area sought to be annexed, not less than 20 days after the filing of the annexation petition by the Landowner. The Parties to this Agreement acknowledge that, at this time sufficient

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sanitary sewer treatment capacity necessary to support and service the entire Development Plan and Property as it is contemplated under this Agreement is not constructed and available from the Village. For this reason, the Village Service Resolution shall specifically state that with regard to sanitary sewer treatment, the provision of such services to the Property are subject to and conditioned upon the then available plant capacity at the time of development which shall be provided on a first come first served basis when such service capacity is available. At the discretion of and at the request of the Village Administrator, the Landowner and Developer will agree to place appropriate limits on the issuance of building permits as a condition of any approved rezoning of the Property and to make any approved Development Plan subject to such capacity limits and to limit the constructability of the Property, in a manner consistent with any ongoing sanitary sewer treatment capacity limitations, and until such capacity and supply limitations are resolved and such services are made available. Notwithstanding the foregoing, nothing in this Agreement shall be interpreted to limit the Landowner's or Developer's ability to continuously develop the Property and/or the Landowner's or Developer's right to access the Village's sanitary sewer service once those services are made available by the Village at sufficient capacities. The Village agrees to provide witnesses for the hearing before the Pickaway County Board of County Commissioners and to provide affidavits in support of its Service Resolution. The Landowner and the Village will cooperate with each other in the timing of the filing of the Petition for Annexation with Pickaway County to meet statutory requirements.

3. Zoning. The Annexed Acreage is currently zoned under the Scioto Township zoning ordinance. Contemporaneously with or subsequent to the filing or approval of the annexation petition, Landowner and Developer, will file its Zoning and Development Plan to re-zone the Property to a Planned Unit Development ("PUD"), which PUD Zoning District will, among other things, permit Developer's intended use as a single-family development and allow for the installation of the related Public Improvements to support such uses on the Property as permitted uses and the Village will permit installation on the Property of road access, streets, drainage facilities, model homes, signage and other Public Improvements, generally in accordance with the Development Plan appended hereto as **Exhibit B** ("Development Plan") and otherwise in

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accordance with applicable law. The Parties agree and understand that Exhibit B is a conceptual development plan and is approved for the limited purposes described in this Agreement.

The parties recognize and agree it is the Landowner's and Developer's intent to gain final zoning approval of the Zoning and Development Plan that allows for a gross density (dwelling units per acre), across the totality of the Property at or about a collective total average of 2.45 units per acre. When such Zoning and Development Plan is filed by the Landowner and/or Developer, the Village agrees it will expeditiously process the application to re-zone the Annexed Acreage and the Property consistent with the Zoning and Development Plan and as necessary for Landowner and Developer to obtain the approval of the Zoning and Development Plan (the "Zoning Approvals"). Furthermore, the Zoning and Development Plan will be considered in tandem and contemporaneously with the Village's annexation acceptance ordinance. Notwithstanding the foregoing, the Parties recognize that this Agreement is not intended to constitute a promise or covenant of the Village to approve the contemplated Zoning and Development Plan and that such approvals must be provided by following the procedures and requirements of the Village's zoning code.

4. Acceptance of Annexation/Detachment of Property. The Village understands it must wait at least sixty (60) days before the approved resolution of the Pickaway County Board of County Commissioners to approve the annexation petition and a copy of the record is filed with the Clerk of Village Council may be laid before Village Council (ORC Section 709.04), and then Village Council shall have no longer than one hundred twenty (120) days after such materials are laid before it in which pass an ordinance or resolution to accept the annexation of the Property (ORC Section 709.04). At the request of Landowner, the Village agrees to delay acceptance of the annexation until legislative approval of the Zoning Approvals can be accomplished at the same Village Council meeting when Village Council acts on the acceptance of the annexation but after an ordinance or resolution to accept the annexation has been approved by Village Council.

If, for any reason, the Zoning Approvals cannot be approved or are not approved in a form or substance acceptable to Landowner, the Village agrees it will fully cooperate with, and at the request of Landowner (or the Developer, if and after it purchases the Property): (i) permit

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Landowner to withdraw its request for the Village to accept the annexation and will not annex the Property to the Village; or (ii) to forbear from acceptance of the annexation by allowing the one hundred twenty (120) day period to expire, thus effectively rejecting the annexation of the Property. Furthermore, if for any reason: (i) The annexation approval occurs prior to or other than concurrently with the legislative approval of the Zoning Approvals and/or the Zoning Approvals are not approved to Landowner's satisfaction (or as it may be modified acceptably to Landowner in Landowner's sole discretion); or (ii) The Zoning Approvals are referred to the electorate for approval/referendum vote; or (iii) A building or other moratorium or restriction is enacted which would limit Landowner's use of the Property the Village agrees; or (iv) The Village is unable to provide sanitary service to the Property or on or after the third (3<sup>rd</sup>) anniversary of the date when Village Council's acted to approve the Service Resolution contemplated in Section 2 above, then at Landowner's request or the request of any other owner of a portion of the Property if no longer owner by Landowner, the Village agrees: (i) To reconsider the ordinance accepting the annexation, and to rescind, repeal and reject the annexation approval; and/or (ii) To cooperate fully with Landowner to detach/de-annex the Property from the Village under applicable Ohio Revised Code procedure, and to consent to, wholly and fully support with appropriate legislative action (and not oppose) any petition to detach/de-annex the Property from the Village and take any other action provided or required by law to detach or de-annex the Property. Landowner reserves, for itself and for its successors and assigns with regard to ownership of all or any portion of the Property, the right to seek specific performance of the Village's obligations hereunder.

5. Public Improvements. The parties agree that any development of the Property and the Project will follow all ordinary and customary Village procedures, regulations, including subdivision regulations, evaluations and studies as historically required of owners or developers of property located in the Village.

The Village acknowledges that, conditioned upon the payment of the Village's applicable tap fees for water and sanitary service, for the Project, and subject to the development of additional and future service capacities, public sanitary and water services are planned to be or will timely be available for the development of the Property pursuant to the Zoning Approvals. The

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**Exhibit A (continued)**

Village, Landowner, and Developer agree other Public Improvements for the benefit of the Village and the Project will be made by mutual agreement of the Parties hereto.

6. Tax Increment Financing. Landowner and Developer agree to cooperate with any and all procedures required for the Village to create a Tax Increment Financing (TIF) District or Districts (“Incentive District(s)”) on the Property, provided that the costs of creating the Incentive District(s) shall be the sole responsibility of the Village.. The Parties agree that the Village will seek to create a TIF District or Districts, by ordinance (“Enacting TIF Legislation”), on the Property that declares up to one-hundred percent (100%) of the increase in assessed value of each parcel of the Property subsequent to the effective date of the Enacting TIF Legislation (“Improvement” as defined in Section 5709.40(A) of the Ohio Revised Code) is a public purpose and exempt from taxation for a period coextensive with the life of the Incentive District(s), which life commences with the first tax year that begins after the effective date of the Enacting TIF Legislation and in which an Improvement attributable to a new structure would first appear on the tax list and duplicate of real and public utility property for any parcel within the Incentive District(s) were it not for the exemption granted by the Enacting TIF Legislation, and ends on the earlier of (a) up to thirty (30) years after such commencement or (b) the date on which the Village can no longer require service payments in lieu of taxes, all in accordance with the requirements of Sections 5709.40, 5709.42, and 5709.43 of the Ohio Revised Code (the “TIF Statutes”).

The Parties further agree that the Enacting TIF Legislation will provide direction to the Pickaway County Treasurer that the Teays Valley Local School District and the Eastland-Fairfield Joint Vocational School District (the “School Districts”) shall receive Service Payments and Property Tax Rollback Payments (as defined in the Enacting TIF Legislation) in an amount equal to the amount the School Districts would otherwise have received as real property tax payments derived from the Improvement to the Property located within the respective boundaries of the School Districts as if the Improvement had not been exempt from taxation pursuant to the Enacting TIF Legislation. The Enacting TIF Legislation shall provide that, after the school districts have received their payments from the County Treasurer, the Village shall receive all remaining amounts distributed by the County Treasurer into a TIF Fund (as defined in the Enacting TIF

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Legislation) for the payment of costs of the Public Infrastructure Improvements (as defined in the Enacting TIF Legislation), including, but not limited to, debt service on any securities issued to finance those costs. In the event that securities are issued to finance such costs, Landowner and Developer acknowledge that the Village anticipates requesting the fee title owner(s) of the Property at or before such time to enter into a service agreement or similar agreement, which agreement is anticipated, among other things, to obligate such owner(s) of the Property and all future owners thereof (or portions thereof) to pay certain service payments in lieu of taxes, including, but limited to, service payments in lieu of taxes and minimum service payment obligations (each as described in Section 5709.91 of the Ohio Revised Code), which payments shall accrue to the Village and be used, among other things, to pay debt service on the securities issued or to be issued.

Landowner and Developer agree to cooperate with the Village in the filing of any and all necessary forms with the Pickaway County Auditor, Pickaway County Treasurer, Pickaway County Recorder, and/or any other governmental office, agency, or entity necessary to carry out this Section. In particular, subject to the Village's review and approval prior to the filing thereof, Landowner and Developer agree to prepare and execute, while they own any portion of the Property, one or more DTE Form(s) 24 and/or DTE Form(s) 24P and file all such documents with the Pickaway County Auditor.

7. Standard of Conduct by the Village. In all matters related to the (i) adoption of the statutorily required Village Service Resolution; (ii) the re-zoning of the Property and the granting of the Zoning Approvals in accordance with the terms of this Agreement; and (iii) the implementation of the other terms of this Agreement, the Village will act in good faith with all reasonable dispatch, concurrent with the timing and requirements of the annexation and zoning process and use its best efforts to complete those processes contemporaneously with the acceptance of the annexation of the Annexation Acreage, in accordance with the Village zoning procedures and applicable law.

8. Condition Precedent. Landowner and the Village acknowledge and agree that this Agreement is not effective until authorized to be executed by formal action of the Village Council



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and shall take effect upon such approval and execution. Landowner and the Village also acknowledge that any action on a rezoning or annexation matter must be finally approved by the Village Council to become effective.

9. Miscellaneous.

(a) **Intent of Parties.** This Agreement shall be binding upon the Parties hereto and their respective successors and/or assigns, and by execution hereof, all Parties represent that they are duly authorized to sign it. By passage of Ordinance No. \_\_\_\_\_ on \_\_\_\_\_, the Village authorized the execution of this Agreement.

(b) **Cancellation or Termination.** This Agreement may be cancelled or otherwise terminated by mutual written agreement of the Parties hereto or pursuant to the terms of this Agreement as to conflict in law, impracticality, and/or acts of God provided however the Village will wholly cooperate with Landowner in rescinding its application for annexation and/or detachment of the Property from the Village, to the extent it is not able to fulfill its obligations to Landowner hereunder.

(c) **Remedies.** Except as otherwise limited by ORC Chapter 2744 as to action for or against the Village, the Parties hereto shall be afforded and do possess the right to seek every remedy available at law or in equity provided for under the laws of the State of Ohio as pertains to the terms and conditions, duties, obligations, privileges, and rights of this Agreement and the specific enforcement thereof, including rescission of this Agreement and/or detachment of the Property.

(d) **Enforcement.** Unless this Agreement is cancelled or otherwise terminated, this Agreement will be enforceable against any Party hereto per the laws, ordinances, resolutions, regulations, or policies in effect at the time of the execution of this Agreement.

(e) **Addresses for Notices.** Notice to the Parties as required or provided for herein shall be in writing and shall be deemed if given or sent in typed memo or e-mail form to all Parties of this Agreement, or such other method as mutually agreeable:

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Exhibit A (continued)**

If to Landowner: Ronin Holdings, LLC  
J.C. Ramey  
805 E. Marks Street  
Orlando, Florida 32803

With a copy to: John W. Hilbert, II, Esq.  
Shumaker, Loop & Kendrick LLP  
1000 Jackson Street  
Toledo, Ohio 43604  
jhilbert@shumaker.com

If to Village: Village Solicitor  
c/o Joshua Cartee  
Dinsmore & Shohl LLP  
191 West Nationwide Blvd, Suite 300  
Columbus, OH 43215  
joshua.cartee@dinsmore.com

With separate copy to the Village Fiscal Officer  
PO Box 56  
10 West Scioto Street  
Commercial Point, Ohio 43116  
614-877-9248

If to Developer M/I Homes of Central Ohi, LLC  
Attn: Josh Barkan,  
VP of Land  
4131 Worth Avenue, 3<sup>rd</sup> Floor  
Columbus, Ohio 43219  
jbarkan@mihomes.com

(f) **Relative Rights.** The rights and obligations of the parties hereunder shall be subject to the terms and conditions hereof, and will inure to the benefit of, and be binding on, the respective successors and assigns.

(g) **Entire Agreement Merger Clause; Statement of Incorporation.** It is agreed that the Agreement merges all of the oral negotiations, representations, discussions and understandings between the Parties, their legal counsel, agents, and representatives. This Agreement contains the entire Agreement of the Parties with respect to its subject matter. All documents related to this Agreement and/or attached hereto as exhibits or addendums shall be incorporated into this Agreement by reference as if fully set out at length herein.

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(h) **Severability.** If any clause, sentence, paragraph, or part of this Agreement shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Agreement and the remainder of said Agreement shall continue in full force or effect.

(i) **Cooperation.** The Village will cooperate with Landowner and/or Landowner's developer agent, if any, to obtain any required and/or necessary permit from any government or governmental agency not a party to this Agreement.

(j) **Modifications or Amendment of Agreement.** No modifications, amendments, alterations, or additions shall be made to this Agreement except in a writing signed by all Parties hereto. Landowner may fully rely on an opinion of counsel for the Village that any amendment or modification has been duly authorized by the Village and/or one or more of its representatives.

(k) **Recitals.** The Parties acknowledge and agree that the facts and circumstances as described in the Recitals hereto are an integral part of this Agreement and as such are incorporated herein by reference.

(l) **Execution.** Both parties shall provide an original (wet) signature on the same copy of this document, which will constitute the original of this Agreement. Each party shall be provided with at least two (2) copies of the fully executed agreement.

(m) **Captions.** The captions and headings in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provisions or sections of this Agreement.

(n) **Survival of Representations and Warranties.** All representations and warranties of the Parties in this Agreement shall survive the execution and delivery of this Agreement and/or the annexation of the Property.

(o) **Effective Date.** This Agreement shall be effective when signed by all the Parties hereto.

(p) **Time.** Time shall be of the essence in doing and performing all things to be done under the terms of this Agreement.

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Exhibit A (continued)**

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives on the date set forth below. This Agreement shall be effective on the date last executed.

Signed as of the \_\_\_\_\_ day of \_\_\_\_\_, 2022.

**The Village of Commercial Point**

By: \_\_\_\_\_  
Allan D. Goldhardt, Mayor

By: \_\_\_\_\_  
John R. Grosse, Village Administrator

APPROVED AS TO FORM:

\_\_\_\_\_  
Joshua Cartee, Village Solicitor

**Landowner:**

\_\_\_\_\_  
[\_\_\_\_\_] , Ronin Holdings, LLC

**Developer:**

**M/I Homes of Central Ohio, LLC**

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