

Exhibit 2

AIR RIGHTS AND SUBTERRANEAN EASEMENT AGREEMENT

THIS AIR RIGHTS AND SUBTERRANEAN EASEMENT AGREEMENT (this "Agreement") is made this _____ day of _____, 2022 (the "Agreement Date"), by **THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE** (hereinafter "Metro" or "Grantor") and **215 THIRD OWNERS, LLC** and **217 THIRD OWNERS, LLC** and their successors and assigns (collectively the "Grantees"). Grantor and Grantee are sometimes hereinafter referred to individually as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, the Grantees are the owner of certain parcels of property located at 215 and 217 Third Avenue North (Parcel Nos. 09302315400 and 09302316300) (the "Property") adjacent to and on both sides of a portion of Banker's Alley; and

WHEREAS, the Grantees are constructing two buildings on the Property that will include retail and residential uses along with associated parking (the "Development Project"); and

WHEREAS, the Grantees propose to construct improvements above and beneath a portion of Banker's Alley, which will include a sky bridge over Banker's Alley connecting the two new buildings and an underground parking structure beneath a portion of Banker's Alley (the "Alley Encroachments"); and

WHEREAS, the Grantor is the owner of the Banker's Alley property; and

WHEREAS, the Grantor proposes to convey an air-rights and subterranean easement to Grantees to permit the construction, use, and maintenance of improvements above and beneath Banker's Alley; and

WHEREAS, Grantees have offered to pay to the Metropolitan Government a total sum of \$30,000 (the "Payment") as consideration for the transaction described in this Agreement; and

WHEREAS, it is in the best interest of the citizens of Nashville and Davidson County to approve this Easement Agreement.

NOW, THEREFORE, for the covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor and Grantees agree as follows:

1. Air Rights Easement. Grantor hereby grants, transfers and conveys unto Grantees, for the benefit of the Property, a perpetual exclusive right and easement in the airspace commencing at the elevation that is twenty (20) feet above the highest point of the surface of Banker's Alley (the "Air Rights Easement"), to accommodate the Alley Encroachments, consisting of buildings or other encroachments caused by or resulting from the construction, operation, and maintenance of the Development Project on the Property and within the Air Rights Easement as shown on the attached Exhibit 1. The Grantees' right to use the Air Rights Easement to construct the Project shall commence upon the Effective Date (as defined in Section 4(b)).

TO HAVE AND TO HOLD the Air Rights Easement, together with all rights and interests appurtenant thereto, belonging to the Grantees, and their respective successors and assigns forever.

2. Subterranean Easement. Grantor hereby grants, transfers and conveys unto Grantees, for the benefit of the Property, a perpetual exclusive right and easement in the subterranean space beneath Banker's Alley (the "Subterranean Easement"), to accommodate the Alley Encroachments, consisting of building or other encroachments caused by or resulting from the construction, operation, and maintenance of the Development Project on the Property and within the Subterranean Easement as shown on the attached Exhibit 1. The Grantees' right to use the Subterranean Easement to construct the Project shall commence upon the Effective Date (as defined in Section 4(b)).

TO HAVE AND TO HOLD the Subterranean Easement, together with all rights and interests appurtenant thereto, belonging to the Grantees, and their respective successors and assigns forever.

3. Temporary Construction Easement. The Grantor hereby grants, transfers and conveys unto the Grantees a temporary non-exclusive construction easement (the "Temporary Construction Easement") over, through and across the Grantor's Property. The Grantees shall have the right to use the Grantor's Property for purposes of constructing the Development Project. The Grantees' right to use the Temporary Construction Easement to construct the Development Project, including the Alley Encroachments, shall commence upon the Effective Date (as defined in Section 4(b)) and shall terminate upon full completion of the Development Project. During the term of the Temporary Construction Easement, Grantees shall take all reasonable steps to protect and secure Grantor's Property in the proximity of any construction activities undertaken by Grantees, and Grantees shall have the obligation to cause the Grantor's Property to be maintained, cleaned, and repaired as reasonable and necessary at Grantees' sole cost and expense and monitored in a manner that will allow only authorized personnel onto the Grantor's Property. Notwithstanding any of the foregoing, use of the Temporary Construction Easement shall be subject to commercially reasonable rules, limitations, and conditions adopted by Grantor, from time to time, with respect to access to and use of facilities located on Grantor's Property including, without limitation, location of construction parking areas, safety rules and regulations, security procedures, storage of materials, equipment and supplies, noise and pollution abatement and the like; provided, however, that Grantees' use of the Temporary Construction Easement during normal business hours shall not be adversely or materially impacted, unless such is necessary due to required maintenance,

repair, or safety issues or in the case of an emergency (the Air Rights Easement, Subterranean Easement, and the Temporary Construction Easement being collectively referred to hereinafter as the "Easements" and the area contained within the Easements being collectively referred to hereinafter as the "Easement areas").

4. Conditions Precedent/ Effective Date.

a. Construction Conditions Precedent. Grantor and Grantees agree that, subject only to Section 4(c) below, the Easements shall vest in Grantee on the Agreement Date. Notwithstanding the foregoing grant of such Easements, the following shall be conditions precedent to the right of Grantees to utilize the Air Rights Easement and the Temporary Construction Easement for the construction of the Development Project, including the Alley Encroachments (the "Construction Conditions Precedent"):

i. Grantees shall deliver to the Director of the Nashville Department of Transportation (the "Director") plans and specifications prepared by Grantees' architects and engineers for the construction and installation of the Development Project, including the Alley Encroachments, in sufficient detail to permit the Director to determine that the portion of the Development Project located in the Easement areas will not substantially interfere with the use of the Grantor's Property for a public alley (the "Plans and Specifications"). Within thirty (30) days following the receipt of the Plans and Specifications, the Director shall either approve the Plans and Specifications or notify Grantees of the need to modify the Plans and Specifications so that the portion of the Development Project located in the Easement areas will not substantially interfere with the use of the Grantor's Property for a public alley. The Director's approval of the Plans and Specifications shall not be unreasonably withheld or conditioned. If the Director fails to notify the Grantees of the approval or disapproval of the Plans and Specifications within the thirty (30) day period set forth above, the Plans and Specifications shall be deemed approved; provided, however, that notwithstanding the approval or deemed approval of Plans and Specifications, no portion of the Alley Encroachments may be constructed over Grantor's property outside of the Easement areas. Grantees shall not commence construction of the portion of the Development Project located in the Easement areas until the Plans and Specifications have been approved or deemed approved by the Director. Any material amendments, modifications, or revisions to the Plans and Specifications shall be subject to the same process for the Director's approval as set forth above for the initial version of the Plans and Specifications.

ii. Prior to commencing construction of the portion of the Development Project located in the Easement areas, Grantees shall deliver to the Director copies of all permits, approvals, ordinances, resolutions, licenses and easements required to commence construction of the portion of the Development Project located in the Easement areas, including all other permits from any Federal, State or other local governmental bodies or agencies required for construction of the Development Project, including the Alley Encroachments.

b. **Effective Dates.** The "Effective Date" shall be the date upon which the Construction Conditions Precedent as set forth in Section 4(a) hereof shall be satisfied (or deemed satisfied). Grantor and Grantees shall acknowledge and agree upon the specific date constituting the Effective Date by written notice executed and delivered by both Grantor and Grantees. Upon the Effective Date, subject to force majeure, Grantees shall commence and diligently proceed with construction of the Development Project, including the Alley Encroachments, in accordance with the terms of this Agreement.

c. **Termination of Easements.** In the event that the Construction Conditions Precedent set forth in Section 4(a) shall fail to be satisfied and Grantees shall have failed or been unable to commence construction of the Development Project, including the Alley Encroachments, on or prior to a date which is five years from the Agreement Date, subject to force majeure (the "Outside Effective Date") Grantor shall have the right, upon written notice to Grantees (the "Termination Notice"), to elect to terminate this Agreement ("Easement Termination"). Grantor shall have the additional rights to terminate this Agreement by issuing a Termination Notice if Grantees, despite having commenced construction prior to the Outside Effective Date, fails to diligently pursue construction of the Development Project, including the Alley Encroachments, to completion, subject to force majeure, provided, however, that such Termination Notice shall not be issued prior to the Outside Effective Date. Upon giving the Termination Notice and effective upon the Easement Termination, the Easements granted herein shall terminate and be of no further force and effect, and Grantee's rights hereunder shall terminate. Grantor and Grantees shall cooperate and execute such documentation as is reasonably necessary to show termination of the Easements in the official real estate records of Davidson County, Tennessee. In addition to the termination rights set forth above, Grantor shall have the right to terminate this Agreement if Grantee persistently fails to fulfill the material obligations assigned to Grantees under this Agreement and such failure continues for more than 60 days after written notice from Grantor (except that such 60 day period shall be automatically extended for such additional period of time as is reasonably necessary to cure such default, if such default is capable of being cured, but cannot reasonably be cured within such period, provided Grantees commence action to cure such default within such 60 day period and thereafter pursues the same to completion with reasonable diligence).

5. **Easement Reservations and Restrictions.** The easement rights granted in this Agreement shall be subject to the following reservations as well as the other applicable provisions contained in this Agreement.

a. Grantor reserves the right to construct improvements on Grantor's Property located adjacent to and below the Development Project consistent with other improvements located in the public right of way. Such improvements constructed shall not modify or adversely affect the foundations or other structural supports of the Development Project or the Alley Encroachments.

b. Notwithstanding anything in this Agreement to the contrary, Grantor reserves unto itself the right, at any time and from time to time, to enter onto Grantor's Property in the event of an emergency and to exercise such rights as it may have to act in its governmental capacity.

6. **Additional Obligations of Grantee.**

a. Use of Approved Plans. Grantees shall construct the Development Project, including the Alley Encroachments, materially in accordance with the Plans and Specifications, all applicable statutes, laws, ordinances, and all permits and approvals issued in connection therewith.

b. No Partnership; No Waiver of Claims. This Agreement shall in no way be construed to create, and shall not be deemed to have created, any relationship of partnership, joint venture, or otherwise.

c. Disruption of Construction and Operations. Grantees shall reasonably cooperate with Grantor to minimize the disruption of existing traffic flow on and about Banker's Alley for the construction of the Development Project and the Alley Encroachments other than construction activities during the term of the Temporary Construction Easement. Grantees shall obtain any permits or approvals required by Grantor prior to any temporary closure of Banker's Alley during the construction of the Development Project, including the Alley Encroachments. Following the completion of the construction of the Development Project, including the Alley Encroachments, Grantees shall take such steps as shall be required to keep the Alley fully operational and open, except for such alley closures as may be requested by Grantees and approved by Grantor.

d. Removal of Lien Claims. Grantees shall resolve with reasonable promptness and remove, or cause to be removed, at their cost, any liens (mechanics, material or otherwise) filed or asserted against Grantor's Property in connection with Grantees' construction of the Development Project, including the Alley Encroachments.

7. Ownership of Development Project. The improvements constructed by Grantees comprising the Development Project and the Alley Encroachments, shall, at all times, while the easements granted hereunder remain in effect, be owned by Grantees. Grantee shall, however, have the unrestricted right to transfer or assign its rights under this Agreement, in whole or in part, together with its ownership of the Development Project, to any private party or entity without approval of Grantor, including without limitation to any owners association which may be formed by Grantees in connection with the Development Project.

8. Grantee Claims. Grantees shall be responsible for any and all loss, costs, claims, damage, liens, or liability (collectively, "Grantee Claims") sustained by Grantor or any Grantor Parties (hereinafter defined) caused by, permitted by, or allowed by Grantees to occur in connection with (i) any defect in design, construction, or installation of the Development Project, including the Alley Encroachments, (ii) any negligent or wrongful act or omission of Grantees or any of its employees, agents, contractors, subcontractors, other representatives, licensees, guests and invitees (collectively "Grantee Parties"), (iii) any breach or default of the Grantee Parties pursuant to this Agreement, or (iv) arising from the exercise of any rights provided for in this Agreement by the Grantee Parties.

Notwithstanding the foregoing, Grantees shall have no liability for Grantee Claims resulting from (i) any negligent or wrongful act or omission by Grantor, or (ii) for any breach or default pursuant to this Agreement by the Grantor or any of its employees, agents, contractors, subcontractors, other representatives, licensees, guests and invitees, including any members of the public utilizing the Alley (collectively "Grantor Parties").

9. Covenant of No Hazardous Waste. Grantees shall not use, or permit the use of by any third party or by any of such Party's invitees, guests, employees, agents, contractors or other representatives, Hazardous Materials on, about, under or in the Development Project and on any portion of Grantor's Property, except in the ordinary course of any operations conducted thereon in accordance with this Agreement and any such use shall at all times be in compliance with all Environmental Laws. For the purpose of this Section 8, the term "Hazardous Materials" shall mean and refer to petroleum products and fractions thereof, asbestos, asbestos containing materials, urea

formaldehyde, polychlorinated biphenyls, radioactive materials and all other dangerous, toxic or hazardous pollutants, contaminants, chemicals, materials, substances and wastes listed or identified in, or regulated by, any Environmental Law. Also, for the purpose of this Section 9, the term "Environmental Laws" shall mean and refer to all federal, state, county, municipal, local and other statutes, laws, ordinances and regulations that relate to or deal with human health or the environment, all as may be amended from time to time.

10. Agreement and Easements-Run with Land; Successors and Assigns. This Agreement shall run with the Grantor's Property and the Grantee's Property and shall be binding upon and shall inure to the benefit of the successors, grantees and assigns of the Parties.

11. Miscellaneous.

a. Further Documents and Acts. Each of the Parties agrees to timely execute and deliver such further documents and perform such other acts that may be required by the applicable laws and that may be reasonably necessary to consummate and carry into effect the agreements contemplated herein.

b. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

c. Grantees' Transfer Rights. Grantor hereby acknowledges that Grantees may from time to time assign all or a portion of Grantees' interest in the Development Project, to one or more third party purchasers (expressly including affiliates of Grantee and subsequent transferees) (each, a "Successor Party"). Grantor hereby agrees and acknowledges that the Successor Party may enjoy the rights granted hereunder to Grantees and he subject to Grantees' obligations. Provided, however, that no conveyance shall be effective to transfer Grantees' rights under this Agreement until it has been memorialized in an appropriate instrument, recorded in the office of the Davidson County Register of Deeds, containing an express and unconditional acknowledgement and acceptance by the Successor Party of its obligations under this Agreement. If the terms of this Paragraph have been fully met, Grantees shall have no further obligation to Grantor under this Agreement after the conveyance of all of Grantees' interest in the Ground Lease and the Development Project to one or more Successor Parties.

d. Provisions Severable. In the event any portion of this Agreement shall be declared by any court of competent jurisdiction to be invalid, illegal, or unenforceable, such portion shall be deemed severed from this Agreement, and the remaining parts hereof shall remain in full force and effect, as fully as though such invalid, illegal or unenforceable portion had never been part of this Agreement.

e. Entire Agreement. It is intended by the parties that this Agreement be the final expression of the intentions and agreements of the Parties related to the Easements. This Agreement supersedes any and all prior or contemporaneous agreements, either oral or in writing, between the Parties hereto and contains all of the covenants and agreements between the Parties related to the Easements. No other agreements, representations, inducements, or promises not contained in this Agreement shall be valid or binding. Any modification of this Agreement shall be effective only if it is in writing and signed by the Party to be charged.

f. Construction. No inference shall be drawn from the addition, deletion, or modification of any language contained in any prior draft of this Agreement.

g. Captions. The captions in this Agreement are for convenience only and do not constitute a part of the provisions hereof.

h. Exhibits. The Parties acknowledge that all exhibits referenced in this Agreement are attached hereto and incorporated herein by reference.

i. Enforcement. This Agreement and the obligations of the Parties hereto shall be enforceable at law or in equity exclusively in the Chancery or Circuit Courts for Davidson County, Tennessee and each Party hereby submits to the jurisdiction of any such court to adjudicate any matter arising under this Agreement. The validity, construction and effect of this Agreement and any and all extensions and/or modifications thereof shall be governed by the laws of the State of Tennessee.

j. Notices. Any notice, request, demand, instruction or other document (each of which is herein called a "Notice") to be given hereunder to any Party shall be in writing and shall be delivered to the person at the appropriate address set forth below by personal service (including express or courier service), by nationally recognized overnight delivery service, or by certified mail, postage prepaid, return receipt requested, as follows:

If to Grantor:

Metropolitan Government of Nashville and Davidson County, Tennessee
c/o Director of Public Property Administration
Nashville Department of Transportation and Multimodal Infrastructure
750 S 5th Street
Nashville, Tennessee 37219

with a copy to:
Director of Law
Metropolitan Court House, Suite 108
P.O. Box 196300
Nashville, Tennessee 37219

If to Grantees, to:

215 Third Owners, LLC
c/o Gabe Coltea
315 Deaderick Street, Suite 2240
Nashville, Tennessee 37238

217 Third Owners, LLC
c/o Gabe Coltea
315 Deaderick Street, Suite 2240
Nashville, Tennessee 37238

Notices so submitted shall be deemed to have been given (i) on the date personally served, if by personal service, or (ii) one business day after the deposit of the same with a nationally recognized overnight delivery service, or (iii) 72 hours after the deposit of same in any United States Post Office mailbox, sent by certified mail, postage prepaid, return receipt requested, addressed as set forth above. The addresses and addressees, for the purpose of this Section 10(j), may be changed by giving written Notice of such change in the manner herein provided for giving Notice. Unless and until such written Notice of change is received, the last address and addressee stated by written Notice, or provided herein if no such written Notice of change has been received, shall be deemed to continue in effect for all purposes hereunder.

k. **Mortgagee Protection.** Notwithstanding anything contained herein to the contrary, if Grantees or any Successor Party shall at any time grant or convey a security interest in the Development Project or the Easement Encroachments or any part or portion thereof by mortgage, deed of trust, or otherwise (collectively, a "Mortgage") to any person or entity (collectively, a "Mortgagee"), such Mortgagee shall be entitled to receive notice of any default by the Party upon whose Property it holds a security interest provided that such Mortgagee shall have delivered a written request for notice (which shall include the Mortgagee's address) to each Party. Any such notice shall be given in the same manner as provided in Section 10(j) hereof. Giving of any notice of default or the failure to deliver a copy to any such Mortgagee shall in no event create any liability on the part of the Party so declaring a default. In the event that any Mortgagee shall require any modifications or amendments to the terms and provisions of this Agreement, the Parties hereto shall cooperate to effectuate any such modifications or amendments provided, however that the rights and obligations of the Parties hereunder shall not be materially and adversely affected by any such Mortgagee request.

l. **Remedies.** Enforcement of any provision of this Agreement shall be by proceedings at law or in equity against any persons or entities violating or attempting to violate any promise, covenant, or condition contained herein, either to restrain violation, compel action or to recover damages. Remedies Cumulative. Any and all remedies provided by this Agreement, operation of law, or otherwise, shall be deemed to be cumulative, and the choice or implementation of any particular remedy shall not be deemed to be an election of remedies to the mutual exclusion of any other remedy provided for herein, by operation of law, or otherwise.

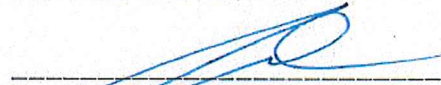
m. Effect of Waiver. No waiver of any breach of any term, covenant, agreement, restriction, or condition of this Agreement shall be construed as a waiver of any succeeding breach of the same or any other covenant, agreement, term, restriction, or condition of this Agreement. The consent or approval of either Party to or of any action or matter requiring consent or approval shall not be deemed to waive or render unnecessary any consent to or approval of any subsequent or similar act or matter.

[SIGNATURES ON FOLLOWING PAGES]

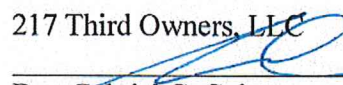
IN TESTIMONY WHEREOF, Grantor and Grantee having read the foregoing and intending to be legally bound hereby, have executed this Agreement as of the day and year first written above.

GRANTEES:

215 Third Owners, LLC


By: Gabriel C. Coltea
Managing Director

217 Third Owners, LLC


By: Gabriel C. Coltea
Managing Director

STATE OF TENNESSEE)
COUNTY OF DAVIDSON)

Before me, BROOKS R. SMITH, a Notary Public in and for said County and State, aforesaid, personally appeared Gabriel C. Coltea, the within named bargainer, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who acknowledged that he executed the within instrument for the purposes therein contained.

WITNESS my hand and seal, at the office in Nashville, Davidson County, Tennessee, this 24th day of JANUARY, 2022.


NOTARY PUBLIC

My Commission Expires: 9.2.24



GRANTOR:

METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY

By: Ronald Colter
Name: RONALD COLTER
Title: Interim Director Public Property

STATE OF TENNESSEE)
COUNTY OF DAVIDSON)

Before me, Sally E. Palmer, a Notary Public in and for said County and State, aforesaid, personally appeared Ronald Colter, the within named bargainor, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who acknowledged that he executed the within instrument for the purposes therein contained.

WITNESS my hand and seal, at the office in Nashville, Davidson County, Tennessee, this 28 day of January, 2022.

NOTARY PUBLIC

My Commission Expires:
11/08/22

Sally E. Palmer



Exhibit 1

Easement Area Description

A PARCEL OF LAND SITUATED IN THE CITY OF NASHVILLE, DAVIDSON COUNTY, TENNESSEE, BEING THE EASTERLY 45 FEET OF BANKER'S ALLEY (20' WIDE PUBLIC ALLEY) OF THE MAP OF THE ORIGINAL TOWN OF NASHVILLE, AT IT'S INTERSECTION WITH THE WESTERLY LINE OF THIRD AVENUE NORTH (50' PUBLIC RIGHT-OF-WAY), AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE WESTERLY LINE OF THIRD AVENUE NORTH (50' PUBLIC RIGHT-OF-WAY) AND THE NORTHERLY LINE OF BANKER'S ALLEY (20' PUBLIC ALLEY), BEING A PK NAIL FOUND;

THENCE, ALONG THE WESTERLY LINE OF SAID THIRD AVENUE NORTH, SOUTH $26^{\circ} 27' 05''$ EAST A DISTANCE OF 19.99 FEET TO THE INTERSECTION OF THE WESTERLY LINE OF THIRD AVENUE NORTH AND THE SOUTHERLY LINE OF BANKER'S ALLEY, BEING A MAG NAIL FOUND;

THENCE ALONG THE SOUTHERLY LINE OF BANKER'S ALLEY SOUTH $62^{\circ} 37' 45''$ WEST A DISTANCE OF 45.00 FEET;

THENCE NORTH $26^{\circ} 26' 32''$ WEST A DISTANCE OF 19.82 FEET TO THE NORTHERLY LINE OF BANKER'S ALLEY;

THENCE ALONG THE NORTHERLY LINE OF BANKER'S ALLEY NORTH $62^{\circ} 24' 10''$ EAST A DISTANCE OF 45.00 FEET TO **THE POINT OF BEGINNING**.

HAVING AN AREA OF 896 SQUARE FEET OR 0.021 ACRES, MORE OR LESS.