

CITY OF CIRCLEVILLE, OHIO
DEVELOPMENT AGREEMENT

THIS AGREEMENT made and entered into this _____ day of _____, 20____, at Circleville, Ohio by and between _____, whose mailing address is _____, hereinafter referred to as the Developer and the City of Circleville, 104 E Franklin Street, Circleville, Ohio 43113, hereinafter referred to as the City.

WITNISSETH:

WHEREAS, the Developer wishes to develop a residential community on approximately _____ acres of real property situated in the State of Ohio, Township of _____, in the City of Circleville, hereinafter referred to as the Property. In order to develop the residential community, the Developer anticipates having to construct certain public infrastructure improvements, including utility, sanitary sewer, waterline, storm water improvements and appurtenances that will be located upon, through, or within the Property, hereinafter referred to as the On-Site Improvements and that shall, after construction, be owned and operated by the City; and

WHEREAS, in addition and as a part of developing the residential community upon the Property, the Developer will be obligated to construct certain public improvements located off-site of the Property, including utility, sanitary sewer, waterline, storm water, roadway, sidewalk improvements and appurtenances, including but not limited to, approximately _____ acres of public right of way, anticipated to be known as _____, hereinafter referred to as the Public Improvements, and that shall, after construction, be owned and operated by the City. Hereinafter and collectively, the On-Site Improvements and Public Improvements shall be referred to as the Project; and

(street/project name)

WHEREAS, the City of Circleville Zoning Ordinance and Subdivision Regulations in force on the date of this agreement, hereinafter referred to as the City Regulations, state the requirements for developing within the City.

NOW THEREFORE, the Developer and the City, in consideration of the mutual covenants set forth herein, agree that:

I. DEVELOPER RESPONSIBILITIES: The Developer will:

1.1 Develop or cause the development of the Project in accordance with the City Regulations and the construction drawings and specifications of components of the Project approved by the City, hereinafter referred to as the Approved Development Plans.

1.2 Unless specifically stated otherwise, be responsible for the entire cost associated with developing the Project, including providing the real estate, engineering, construction, fees and deposits.

1.3 Provide the City with construction drawings, specifications and supporting data describing the Project and included with the Approved Development Plans. The improvements to be provided as part of the Project may include, but are not limited to:

- a. Roads and parking areas, graded full width and paved including drainage structures, sidewalks and other improvements all as dictated in the City Regulations and required for this Project;
- b. Sanitary sewers including manholes and all required appurtenances;
- c. Water mains, valves and all required appurtenances;
- d. Storm drainage improvements including catch basins, manholes and all other required appurtenances;
- e. Monuments, stakes and property pins;
- f. Street signs designating the name of each street at each intersection within the development and other traffic control signage;
- g. Street lighting including decorative poles (wood is not an acceptable material), underground conduits and appurtenances, and maintenance costs including electric to be paid by Home Owners Association;
- h. Utilities, including electric, telephone and internet services.
- i. All other improvements shown on the construction drawings as approved by the City including grading, seeding and landscaping.

1.4 Await the City's approval of the Approved Development Plans of the Project before beginning any construction work on said components of the Project.

1.5 Prior to commencing the construction of any improvement or component of the Project, pay all fees, obtain all permits, and pay all deposits, if any, related to the relevant improvement or component, including engineering plan review, park fees, utility fees, inspection fees and all other fees as determined by the City.

1.6 Provide a cost opinion for the Public Improvements, as stated in the City's Subdivision Regulations, by a Professional Engineer.

1.7 Guarantee that the labor, material and equipment used to construct the Public Improvements meet the City requirements by providing a performance bond, or other acceptable method in the City's Subdivision Regulations, in the amount equal to the estimated cost of the Public Improvements \$_____

1.8 Provide the City with at least three (3) business days' notice prior to the initial commencement of construction work and, if requested in writing by the City, will keep the City advised of the work schedule throughout the development of the Project.

1.9 Provide the City with a written notice when Developer considers the Public Improvements and On-Site Improvements, respectively, to be substantially completed in accordance with the Approved Development Plans, and a date that the Public Improvements and On-Site Improvements, respectively, shall be ready for final inspection, hereinafter referred to as the Final Inspection Notice.

1.10 Upon written receipt of the City's determination of "Substantial Completion," as set forth within Section 2.1, the Developer shall guarantee all labor, material and equipment incorporated for the Public Improvements and On-Site Improvements, respectively, against defect and deficiencies for one (1) year from the Date of Substantial Completion, hereinafter referred to as the Warranty Period, by providing one or more of the following:

- a. A maintenance bond equal to ten percent (10%) of the construction cost of the Public Improvements and/or On-Site Improvements; or

- b. A certification to the City by a financial institution or corporation acceptable to the City Law Director;
 - i. That funds equal to ten percent (10%) of the estimated construction cost for the Public Improvements and/or On-Site Improvements have been set aside in an escrow account;
 - ii. That these funds cannot be released without a release by the City;
 - iii. That the institution or corporation holding the funds shall release to the City and or all of the funds so escrowed for the purpose enumerated herein; and
 - iv. That the escrow account will not be closed out without the approval of the City with the expiration of the Warranty Period by the City constituting release of the escrow account lacking any formal release by the City; or
- c. A bank irrevocable letter of credit payable to the City equal to ten percent (10%) of the construction cost for the Public Improvements and/or On-Site Improvements

1.11 Provide a written request for the release of the maintenance guarantees upon the expiration of the Warranty Period, and assure that all maintenance and/or repair expenses incurred by the City during the Warranty Period pursuant to this Agreement have been paid in full by the Developer.

1.12 Cause the work described in the Approved Development Plans and support data, as required herein, to be completed efficiently and expediently upon the approval of the Approved Development Plans. The foregoing notwithstanding, Developer agrees to commence the construction of _____ Public Improvement within twelve (12) months of the date of this Agreement, and substantially complete the _____ Public Improvement within twenty-four (24) months of the date of this Agreement.

(street/project name)

(street/project name)

1.13 Remove or cause to be removed such dirt, debris and foreign matter from all public rights-of-way, improvements and/or easements, within twenty-four (24) hours after being

notified by the City that such work is required, and after Substantial Completion. Such removal shall be done to the reasonable satisfaction of the City.

1.14 Upon the City's determination of Substantial Completion, Developer shall provide the City with a copy of the original signed construction drawings, with two (2) sets of prints annotated to reflect the "as-constructed" conditions (and a digital PDF copy), and a copy of the original recorded plat (and a digital PDF copy).

1.15 Developer agrees and acknowledges that residential occupancy of any dwelling that shall be constructed upon the Property shall not occur until after the date of Substantial Completion of the _____ Public Improvement.

(street/project name)

1.16 Developer shall ensure that all construction and marketing related signage related to the Project is consistent with the City's zoning regulations and restrictions.

1.17 In the event Developer decides to utilize or place a construction trailer or mobile office facility on the Property, Developer shall ensure that construction trailer or mobile office facility is consistent with the City's zoning regulations and restrictions, and Developer agrees to promptly remove said construction trailer or mobile office facility after the completion of construction of the residential dwellings within the Project.

1.18 Developer agrees to reimburse the City for costs and expenses incurred by the City, relating to the City's review, inspection, and overseeing of the construction of the Public Improvements, including, but not limited to site inspection, plan review, and reasonably necessary administrative costs. City shall provide an invoice, receipt, or other accounting of the costs and expenses prior to the Developer's reimbursement, Notwithstanding the foregoing, prior to the City's written acceptance of Substantial Completion, the City shall issue a final statement to the Developer with all outstanding expenses and shall be reimbursed by the Developer prior to the City's acceptance of Substantial Completion.

1.19 Developer agrees to execute and comply with the Stormwater Maintenance Agreement.

1.20 The Developer hereby agrees to petition to join the Circleville New Community Authority (NCA) upon it's formation and to record upon the project site a supplemental

declaration encumbering the project site with the terms and conditions of the Circleville New Community Authority.

1.21 Upon signing of this Agreement, the Developer shall record this document with the Pickaway County Recorder and provide the City with a copy.

II. CITY RESPONSIBILITIES: The City will:

2.1 Upon receipt of a Final Inspection Notice, promptly conduct its final inspection of the Public Improvements and/or On-Site Improvements, respectively, and provide Developer with written certification of acceptance of "Substantial Completion," or submit a written request to the Developer to cure any portion of the Public Improvements and/or On-Site Improvements that have not been completed in conformance with the Approved Development Plans. Upon receipt of any such notice from the City, additional inspection(s) will be made until the City issues a written certification acknowledging the acceptance of Substantial Completion and ownership of the improvements within the Public Improvements and/or On-Site Improvements, respectively. The date contained within the certificate of Substantial Completion shall be the "Date of Substantial Completion." The parties acknowledge and agree that the Date of Substantial Completion for the Public Improvements and the On-Site Improvements may be different.

2.2 Upon the Date of Substantial Completion of the Public Improvements, the City shall return and release to the Developer and guarantee or bond provided by the Developer as set forth within Section 1.6.

2.3 Prior to exercising any rights that the City may have for payment under a bond, certification, or letter of credit set forth within this Agreement, the City shall provide the Developer with written notice of the City's intent to seek payment under said bond certification, or letter of credit, and shall provide the Developer with a reasonable opportunity to cure and address any items for which the City is claiming a right to seek payment and/or to pay all amounts due and owing under this Agreement, at the Developer's discretion.

2.4 Upon the immediate expiration of the Warranty Period, the City shall return and release to the Developer any guarantee, bond, certification or letter of credit provided for within Section 1.9.

III. GENERAL TERMS

3.1 When there appears to be, or there is in fact, a conflict between this Agreement and the City Regulations, the City Regulations shall govern.

3.2 During the Warranty Period, the Developer shall hold the City free and harmless from any and all claims for damage of every nature arising or growing out of the construction of improvements that are a part of the Project and shall defend, at its own cost and expense, any suit or action brought against the City resulting from its sole negligence arising or growing out of the construction of the improvements that are a part of the Project. The forgoing notwithstanding, the parties expressly agree and acknowledge that the Developer shall have no further warranty, indemnification, or other obligation to the City in relation to the construction of the Project upon the expiration of the Warranty Period.

3.3 By signing this Agreement, the Developer understands and acknowledges possession of copies of the City of Circleville Zoning Ordinance, Subdivision Regulations and Storm Water Regulations, and that the procedures described in the City Regulations will be followed during the development, acceptance and maintenance period for this Project.

3.4 Upon violation of, or failure to comply with, any of the terms of this Agreement by the Developer, the City may take any of the following actions:

- a. Stop all work on the Project forthwith;
- b. Send written notice to Developer, and if after a reasonable opportunity to cure, Developer fails, to correct and cure the conditions set forth within the notice, the City may continue any unfinished work or replace any unaccepted work to a point that any Public Improvements do not appear to create a health or safety hazard or create maintenance or repair expense to the City because of their state of completion by:
 - i. Holding the bonding company responsible,
 - ii. Using the certified check or proceeds thereof,
 - iii. Using the funds in the escrow account, or
 - iv. Draw on the letters of credit.

- c. Take necessary action to eliminate apparent or actual safety or health hazards of any emergency nature when, after prior written notification to the Developer, Developer does not cause a timely and satisfactory response or an immediate response is required. The cost of using City labor material or equipment necessary to eliminate the emergency, shall be a cost to the Developer to be paid thirty (30) days after being billed by the City. Failure to pay may result in the City taking actions provided in 3.4(a) or 3.4(b) herein.

3.5 This Agreement represents the entire and integrated agreement between the Developer and the City for the Project and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instruction signed by both the Developer and the City.

3.6 The Developer and the City each binds themselves and their partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement; except as above neither the Developer or the City shall assign, sublet, or transfer their interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the Developer and the City.

3.7 Notices: Any notice required by the Agreement shall be conclusively presumed to have been received if in writing and if delivered personally or sent by registered or certified mail. Postage prepaid, to the party to be notified at the party's last address on file with the party sending notice.

3.8 Legal Interpretation: This Agreement shall be construed and interpreted in accordance with the laws of the State of Ohio.

IN CONSIDERATION WHEREOF, the City hereby grants the Developer the right and privilege to commence and construct the Project stipulated herein.

IN WITNESS WHEREOF, the parties hereto have set their hand and seals, and have executed this agreement on the day and year set forth below.

DEVELOPER

BY;

Date: _____

CITY OF CIRCLEVILLE

BY; Director of Public Service

Date: _____

Approved as-to Form:

Gary Kenworthy, City Law Director

Date

The foregoing Agreement was acknowledged before me this _____ day
of _____, 20____, by _____.

NOTARY PUBLIC

My Commission

Expires:

County of _____, Ohio