

AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, _____, by and between the City of North Royalton, an Ohio Municipal Corporation hereinafter referred to as the “City,” and _____ (name of company, partnership), a _____ (form or organization) licensed to do business in Ohio, hereinafter referred to as “Developer”.

WITNESSETH:

WHEREAS, Developer is the owner of certain real property located within the City of North Royalton, Ohio which the Developer plans to subdivide and develop as a subdivision, commonly referred to as “_____ (name of development)”; and

WHEREAS, the City, the City Council and/or the City Planning Commission have been delegated authority pursuant to the applicable provisions of the Ohio Revised Code and the City Charter and Codified Ordinances to direct and control the platting of property located within the City or under the jurisdiction of the City; and

WHEREAS, the plat of the “_____ (name of development)” hereinafter referred to as “Subdivision”, has been previously presented to the City for approval; and

WHEREAS, in accord with the aforesaid authority, the City has promulgated regulations and requirements governing the method and the manner in which streets, public ways, water mains, sanitary sewers, storm sewers, utility mains, and other facilities to be located in and adjacent to a subdivision shall be installed, constructed and improved; and

WHEREAS, the Developer has received the approval of the City Planning Commission of its Subdivision Plat (as hereinafter defined), conditioned on execution of this Development Agreement, and

WHEREAS, the City desires to insure the complete and proper construction and installation of all subdivision improvements in compliance with the approved subdivision plat and this Development Agreement; and

WHEREAS, Chapter 1248 of the Codified Ordinances of the City requires the completion of all required improvements within a subdivision, or a guarantee of completion of all improvements prior to the recording of a plat for record purposes; and

WHEREAS, Developer desires to install the improvements required for the development of the Subdivision in accordance with the Subdivision Construction Drawings (as hereinafter defined).

NOW THEREFORE, the City and Developer hereby mutually promise and agree as follows:

1. DEFINITIONS

It is agreed between the City and the Developer that the following definitions shall apply to and control the construction and interpretation of this Development Agreement:

- (a) Subdivision Plat shall be defined as the plat entitled “_____ (name of development)” that has been approved by the City Engineer, and the City Planning Commission and the City Council, a copy of which is attached hereto as Exhibit “A.”
- (b) _____ (name of development) shall be defined as all of the real estate contained in or shown on the Subdivision Plat, together with all Subdivision Improvements specified in the Subdivision Plat and the Subdivision Construction Drawings.
- (c) Subdivision Construction Drawings shall be defined as that set of final prints and drawings as approved by the City Engineer, the Cuyahoga County Sanitary Engineer and/or the Cleveland Water Department and which contain construction specifications governing the manner and method of installing the roads, streets, rights-of-way, storm sewers, sanitary sewers, water mains, utility mains and such other facilities to be installed in the Subdivision.
- (d) Subdivision Improvements shall mean and include all streets, roads, rights-of-way, traffic signals, sidewalks, public sidewalks, guardrails, bridges, conduits, culverts, ditches, storm sewers, sanitary sewers, detention basins, erosion control, water mains, waterlines, utility mains (whether gas, electric or telephone), easements, parks, recreation facilities, landscaping and recreation areas, together with all other improvements and facilities whether on site or off-site, that are named, specified or referred to in the Subdivision Plat and/or Subdivision Construction Drawings.
- (e) Storm sewers shall be defined as any detention basin, erosion control, ditch, culvert, pipe, conduit, waterway, stream, watercourse, river or other device existing or designed to contain or control the flow of all types of surface and drainage water.
- (f) City Engineer shall be defined as the duly appointed North Royalton City Engineer.
- (g) City Law Director shall be defined as the duly appointed North Royalton Law Director.
- (h) Mayor shall be defined as the duly elected North Royalton Mayor.

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- (i) Cuyahoga County Sanitary Engineer shall be defined as the duly appointed Cuyahoga County Sanitary Engineer.
- (j) City Planning Commission shall be defined as the Planning Commission of the City of North Royalton as created and authorized pursuant to ORC 711.02, the City Charter and Code Chapter 1220 et seq.
- (k) Commissioner shall be defined as the duly appointed Building Commissioner of the City of North Royalton.
- (l) Dedication shall mean the process defined in NRCO 1244 and 1248 and final approval by the City Planning Commission and City Council by which the City accepts transfer of title to public properties, easements, utilities that are dedicated for public use and effective date of transfer shall be the date of recordation of the final plat with the Cuyahoga County Recorder's Office.

Except as otherwise herein defined and provided, the various definitions or words, terms and phrases as set forth in the City Code, Part Twelve, Planning and Zoning Code, shall apply to and control the construction and interpretation of this Development Agreement. The whereas paragraph recitals are incorporated herein fully by reference.

2. CONSTRUCTION OF IMPROVEMENTS

Developer promises and agrees that on or before the expiration of two (2) years from the date hereof, it will construct and install, within the areas shown and described on Exhibit A hereof, at its sole expense, and without any cost, expense or liability whatsoever to the City, the Subdivision Improvements, all in accordance with the Subdivision Construction Drawings and in accordance with the Ordinances, regulations, and specifications of the City, currently in effect and in the case of water mains by the Utilities Department of the City of Cleveland. Developer agrees to discharge all liabilities in connection with the installation of the above mentioned improvements. Developer agrees to comply with Section 1244.06(e) prohibiting the sale or transfer of lots prior to recording the final plat. Further, Developer agrees that during the construction phase, said property constitutes a construction site and Developer agrees to prohibit non-construction persons from entering the property for any purpose unless directly related to construction of the property.

3. DEVELOPER WARRANTY

Developer agrees that if the City accepts the Subdivision Improvements upon their completion and approval by the City Engineer (which the City agrees to do provided that the Subdivision Improvements are completed in accordance with the provisions of Paragraph 2, above), Developer shall maintain, or cause to be maintained, the Subdivision Improvements in good repair and free from defects for a period of two (2) years following the dedication thereof to public use by the City, regardless of the cause of such defects.

4. SUBDIVISION IMPROVEMENT FUNDS

Developer further agrees that it will furnish to the City a letter from its lender (the “Lender”) confirming that Developer has available a commitment from Lender to lend funds in an amount not less than \$ _____ (the estimated cost of the improvement) to be used to solely to finance and pay the total cost and expense of installing all of the Subdivision Improvements. Disbursement of the aforesaid funds shall be made only upon certification by the Project Engineer, selected by Developer and approved by the City Engineer, in accordance with the terms of the construction contracts between the Developer and its contractor(s).

5. DEDICATION AND TRANSFER OF TITLE TO PUBLIC LAND, RIGHTS OF WAY, EASEMENTS AND UTILITIES

Prior to application for dedication and transfer of title to public land, rights of way, easements and utilities, the Developer shall complete construction of the Subdivision Improvements. Completion of the Subdivision Improvements shall mean substantially complete to the satisfaction of the City Engineer. In order to achieve substantial completion, the Developer and the City Engineer shall jointly inspect the project and agree on a punch list of items to be completed including a reasonable time line for completion to the satisfaction of the City Engineer. All utilities shall be complete, operational, and signed off on by the appropriate City or government utility representative. The final plat, once recorded shall serve to transfer title in fee simple of the land being conveyed to the City. However, all other instruments of transfer of property rights (easements), even though expressly stated on the final plat, shall be reduced to a separate document in a form approved by the Law Director and shall be separately recorded in a timely fashion in connection with the filing of the final plat. The Developer shall also complete all aspects of the work and documents required by Section 1244.07 of the NRCO and provide all bonds, title insurance and other documents required by city code or in this agreement.

A. MAINTENANCE BOND; CASH BOND

At the time Developer requests that the Subdivision Improvements be accepted for dedication by the City, Developer shall present to the Finance Director of the City a bond for warranty and maintenance of the Subdivision Improvements. This bond may be in cash or in the form of a Certificate of Availability of funds from a financial institution or a bond of a surety company and equal to 10% of the total cost of the improvements installed (the “Maintenance Bond”). The Maintenance Bond shall be available to the City where, at the discretion of the City Engineer, a problem with the Subdivision Improvements is discovered or damage (other than normal wear and tear) to the Subdivision Improvements has occurred and Developer fails promptly to make necessary repairs. The Maintenance Bond shall have an effective date beginning at the time of presentment and shall remain in place for a period of two (2) years after dedication.

In addition to the Maintenance Bond, Developer shall deposit with the City a cash bond equal to five percent (5%) of the total cost of the Subdivision Improvements installed (the “Cash Bond”). The Cash Bond shall be held by the City and shall be available for the same purposes as

the Maintenance Bond. However, prior to using any of the proceeds of the Cash Bond, the City Engineer shall notify Developer in writing of the problem with the Subdivision Improvements for which the City intends to use all or part of the proceeds of the Cash Bond, and shall provide Developer with no less than thirty (30) days to correct the problem prior to utilizing any of the proceeds of the Cash Bond. Developer shall notify the City Engineer of completion of repairs or corrections. Said repairs or corrections shall be completed to the satisfaction of the City Engineer. If, after notice and after the time has expired for Developer to make such repairs or corrections to the Subdivision Improvements, the City Engineer determines that the repairs or corrections are not completed or below his satisfaction, the City shall notify Developer of said decision in writing and shall have the right to utilize said proceeds to pay for necessary corrections without further recourse or delay. The Cash Bond shall remain in place until the later of (i) the date on which residences have been constructed on 90% of the Subdivision building lots or (ii) two (2) years after dedication (the applicable period being herein referred to as the “Cash Bond Period”). All proceeds remaining on deposit at the end of the Cash Bond Period promptly shall be refunded to Developer.

B. WATER MAIN

At the time Developer desires to obtain approval and acceptance by the City of the Subdivision Improvements, Developer agrees that it will, as an additional condition precedent to the acceptance by the City, provide the City with either a certificate or proof of acceptance of the water main by the City of Cleveland. The City Engineer shall certify that said water mains, storm sewer lines, sanitary sewer lines, streets and sidewalks, street connections, and all appurtenances thereto, have been properly installed in accordance with the Subdivision Construction Drawings, and that the construction and installation thereof have been duly completed, inspected and approved by each of the hereinabove mentioned respective entities.

6. SIDEWALKS

Developer agrees that prior to the release of any Bonds guaranteeing installation, materials or repairs, or any funds remaining on deposit as specified in Paragraph 5, above, at the time said Subdivision is ninety per cent (90%) completed. Developer shall proceed at once to complete, or cause to be completed, all remaining sidewalks in said Subdivision.

7. INSPECTION DEPOSIT

Developer, simultaneously with the execution of the Agreement, shall pursuant to Section 214.08(o)(5)(B) of the Codified Ordinances of the City, deposit with the City an amount equal to three percent (3%) of the estimated construction cost of the Subdivision Improvements to defray all reasonable costs of legal, engineering and inspection fees, costs and expenses incurred by the City, and the Finance Director is hereby authorized and directed to disburse said sum upon proper billing to the City for said services. A monthly accounting of disbursements will be provided to Developer. Developer acknowledges that the foregoing sum is based upon an estimate and that in the event said sum is insufficient to fully pay all of the aforementioned expenses reasonably incurred by the City, it shall deposit such additional sums as may be

required upon the request of the Finance Director of the City. Any funds not expended by the City shall be refunded to Developer.

8. CONTRACTOR'S INSURANCE

Developer agrees that before any work hereunder is commenced, it will submit evidence to the satisfaction of the City Law Director that it, or its contractors, have obtained public liability and property damage insurance covering and insuring the City as its interests may appear against any liability whatsoever in the amount of Two Hundred Fifty Thousand Dollars (\$250,000) for injury or death to any one person, with a minimum aggregate limit of One Million Dollars (\$1,000,000), and Three Hundred Thousand Dollars (\$300,000) for property damage, which insurance shall be furnished and maintained at the expense of Developer (or Developer's contractor) until all the work agreed to be done by Developer has been fully completed and accepted, including the maintenance of the Subdivision Improvements agreed by Developer to be maintained. Developer (or its contractor) may provide such insurance under a blanket type of insurance provided the City is properly named as an insured thereunder in accordance with the provisions of this Agreement. Developer (or its contractor) shall be liable for any damages, whether direct or indirect, to any underground or above ground utilities in the aforementioned Subdivision, and further agrees to comply both singularly and on behalf of the City with the provisions contained in Section 153.64 of the Ohio Revised Code and any amendments made thereof to the extent said Section shall be applicable.

9. WORKERS COMPENSATION

Developer agrees to comply (and cause its contractor to comply) with the State Law known as Workers' Compensation Act, and any amendments made thereto, and to cause to be covered thereunder all employees working under the control of the Developer and its contractor, and the Developer agrees to defend, indemnify and hold harmless the City and its officers, agents and employees from all claims, demands, payments, loss and expenses, including attorney fees, suits, actions, recoveries and judgments of every kind and description, whether or not well founded in law, made brought or recovered against it, arising from any cause whatever of for any reason whatever connected with the performance of the Agreement by Developer or its agents, contractors, subcontractors or employees, including any of the foregoing arising in consequence of insufficient protection or of the use of any patented invention by said Developer.

10. NO CITY LIABILITY

Developer agrees that the performance of this Agreement by it shall be solely at its expense and cost, and at no expense or cost, to, or liability or obligation of the City.

11. TITLE INSURANCE

Developer agrees to deliver to the City a preliminary title report prior to review and approval by the City Planning Commission. Thereafter, the Developer shall deliver a final report and a Title Insurance Policy in the amount of a minimum of Thirty Thousand Dollars (\$30,000) insuring title to all land to be dedicated to the City to be good in the name of the City. Evidence

in the form of affidavits and release shall be provided by the Developer establishing that the property to be conveyed is free and clear of all liens and encumbrances.

12. BUILDING PERMITS

Building permits shall not be issued until dedication of property to the City is complete, accepted by the City and the properly plat recorded.

13. DEVELOPER'S AUTHORITY

Developer represents and warrants that it is a limited liability company duly organized, validly existing and in full force and effect under the laws of the State of Ohio and that it has all of the requisite power and authority to enter into this Development Agreement. This Development Agreement, the consummation of the transactions herein contemplated, and the performance, observance and fulfillment by Developer of all of the terms and conditions hereof on its part to be performed, observed and fulfilled, have been approved and authorized by all action, if any, required in accordance with Developer's corporate governing documents and Ohio law. This Development Agreement has been duly and validly executed and delivered by Developer and constitutes the valid, binding and enforceable obligation of Developer. Developer, by and through its Manager, President or other officer, has the right, power, legal capacity and authority to enter into and perform its obligations under this Development Agreement, and no consent of any third party is necessary with respect thereto. The execution and delivery of this Development Agreement by Developer, the consummation of the transactions herein contemplated, and the performance of, fulfillment of and compliance with the terms and conditions hereof by Developer does not and will not conflict with any of the provisions of the Developer's Articles of Organization or corporate governing documents.

At the time of the execution of this Development Agreement, Developer shall provide the following documents and items to the City:

(a) A certificate of good standing issued by the Secretary of the State of Ohio which reflects the fact that Developer is a limited liability company in good standing in the State of Ohio and such other documents and/or evidence that the North Royalton City Law Director may reasonably require to establish the fact that Developer is a limited liability company in good standing in the State of Ohio, copies of the foregoing certificate of good standing and such other documents and/or evidence being attached hereto as Exhibit B.

(b) An incumbency certificate with respect to the Manager or officers of Developer executing this Development Agreement, which reflects the fact that such Manager or officers are the duly elected and/or appointed Manager or officers of Developer at the time of the execution of this Agreement, a copy of which is attached hereto as Exhibit C.

14. COMPLIANCE WITH LAWS

The Developer specifically represents and warrants that it will abide by the terms and provisions of this Development Agreement and all applicable local, state, and federal laws.

15. BINDING EFFECT; ASSIGNMENT

This Agreement shall be binding upon any successors in interest, assignee, heir, executor, administrator or trustee of Developer. This Agreement may not be assigned by either party hereto, unless said assignment is in writing and executed by both parties. Each party shall remain liable to the other under this Agreement after any such assignment unless Developer agrees that prior to any voluntary or involuntary assignment of the Agreement, Developer obtains a written statement forwarded to the City signed by assignee acknowledging the obligation of any successor in interest to comply with the terms of the Agreement.

16. This Agreement supersedes all prior agreements between the parties with respect to the subject matter of this Agreement, both written and unwritten, and constitutes the entire agreement between the parties as of the date hereof.

17. This Agreement shall not be amended, modified, discharged or extended except by written instrument executed by _____ (name of company, partnership), a _____ (form or organization) and North Royalton pursuant to the laws of the State of Ohio and their respective ordinances, charters or partnership agreements.

18. GOVERNING LAW

This Agreement shall be governed by the laws of the State of Ohio.

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Exhibit A – Appendix V

IN WITNESS WHEREOF, the parties hereto have affixed their signatures upon this Agreement as duly authorized agents, warranting that they are empowered to bind their respective party, on the date first written above.

WITNESS:
AS TO THE CITY:

CITY OF NORTH ROYALTON, OHIO

By: _____
Mayor

By: _____
Finance Director

APPROVED as to Form:

By: _____
Director of Law

AS TO DEVELOPER:

(corporate or partnership name)

By: _____