

AGREEMENT

THIS AGREEMENT made and entered into this 1st day of 20\_\_\_\_, by and between the City of North Royalton, and herein referred collectively to as "Developer"; and hereinafter referred to as "Bank".

WITNESSETH:

WHEREAS, the plat of the \_\_\_\_\_ hereinafter referred to as "Subdivision", has been previously presented to the City for approval; 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 these required improvements and has presented its improvement plan to City, a copy of said plan is attached hereto and marked Exhibit A; and

WHEREAS, Developer has obtained a commitment from Bank for financing development of the Subdivision, Bank having agreed to make available funds in the amount of \$\_\_\_\_\_, for the improvements of the Subdivision;

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

1. 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 sanitary sewer lines, water lines, storm sewer lines, construction and maintenance of storm sewer detention facilities, water mains and appurtenances thereto, the grading and construction of street pavement and appurtenances incident to a street, clearing, grading of land and yard maintenance, installation of concrete sidewalks, all in accordance with the plans and specifications approved by the City Engineer and as contained in said Exhibit A 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.
2. Developer further agrees that if the City accepts the aforementioned improvements upon their completion and approval by the City Engineer, to maintain said improvements in good repair and free from defects for a period of two (2) years following the acceptance of the dedication thereof to public use by the City, regardless of the course of such defects.
3. Developer further agrees that it will furnish to the City a letter from Bank confirming that the Developer has available a commitment from Bank to lend funds in an amount not less than \$\_\_\_\_\_ (the estimated cost of the improvement) to be used solely to finance and pay the total cost of all the required subdivision improvements in the said Subdivision. Bank and Developer agree that disbursement of the aforesaid funds shall be made only upon certification by the Project Engineer, approved by the Developer and the City Engineer in accordance with the terms of the construction contracts between the developer and his contractors.
4. Developer further agrees that a condition precedent to the acceptance by the City of the dedication to the public use of said streets and roads contained in the Subdivision, it will, pursuant to Section 1248.08 of the Codified Ordinances of the City of North Royalton, furnish to the City as a Surety Bond in the penal sum of not less than 10% and a cash bond of 5% of the construction cost of City owned utilities and pavement guaranteeing that the materials and the improvements are free from defects for a period of two (2) years following the acceptance of the dedication of streets and roads in said Subdivision to the public use by the City.

Maintenance Guarantee. At the time the developer requests that his or her subdivision be accepted for dedication by the City, the developer shall present to the City Engineer a bond for warranty and maintenance of the improvements, This bond may be in cash or in the form of a Certificate of Availability of funds from a financial institution and equal to 10% of the total cost of the improvements installed.

These funds are to be used by the City where, at the discretion of the City Engineer, a problem with the improvements is discovered or damage to the improvements have occurred and the developer fails to make immediate and necessary repairs. This cash funding shall remain in place until 90% of the subdivision building lots have been completed with residences, but no sooner than 2 years from dedication.

5. Developer further agrees that during the aforesaid two (2) year period, it shall at its sole expense, repair all faults and defects of every kind and nature, whether arising out of the defects in workmanship or defective materials or otherwise.

6. In addition to the surety required in Paragraph 4 above, at the time Developer desires to obtain approval and acceptance by the City of the aforesaid improvements, Developer agrees that it will, as an additional condition precedent to the said 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 aforementioned plans and specifications, and that the construction and installation thereof have been duly completed, inspected and approved by each of the hereinabove mentioned respective entities.

7. **Developer further agrees that a condition precedent to the acceptance by the City of the dedication to the public use of said streets and roads contained in the Subdivision, it will, furnish to the City as a Surety Bond in the penal sum of not less than \$1,000.00 per unsold lot and/or parcels retained by Developer, not to exceed \$5,000.00 per Subdivision, guaranteeing that the lots and parcels are maintained pursuant to North Royalton Ordinances 660.14 and 1464.08 for a period of two (2) years following the acceptance of the dedication or until 90% of the Subdivision building lots have been completed with residences whichever occurs first.**

**These funds are to be used by the City, in addition to any and all other ordinances and/or penalties, where, at the discretion of the Building Commissioner, Developer has failed to maintain the lots and/or parcels and despite notice has failed to comply with North Royalton Ordinance 660.14 and 1464.08.**

8. Developer agrees that during the term of this Agreement and prior to the release of any Bonds guaranteeing installation, materials or repairs, ***maintenance*** or any funds remaining on deposit as specified in Paragraph 1 above, at the time said Subdivision is ninety per cent (90%) completed, Developer shall proceed at once to complete all remaining sidewalks in said Subdivision.

9. Developer, simultaneously with the execution of this Agreement, shall pursuant to Section 214.08 (0)(5)(B) of the Codified Ordinances of the City of North Royalton, include in the escrow account, the sum equal to 3% of the estimated construction cost of the improvements to defray the cost 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 of the City, it shall deposit such additional sums as may be required upon the request of the Finance Director of the City.

10. Developer agrees that simultaneously with the execution of this Agreement, and 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 anyone 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 the Developer until all the work agreed to be done by the Developer has been fully completed and accepted, including the maintenance of the aforementioned improvements agreed by the Developer to be maintained. Developer 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 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.

11. Developer agrees to comply with the State Law known as Workmen's Compensation Act, and any amendments made thereto, and to cause to be covered thereunder all employees working under the control of the Developer, or its agents, 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 or for any reason whatever connected with the performance of this 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.

12. 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.

13. Developer agrees, if applicable hereunder, to deliver to the City, a Title Guarantee in the fair market value as determined by the City Engineer showing title to private property conveyed to the City by easement, if any, to be vested in the City free and clear of all liens and encumbrances.

14. This Agreement shall be binding upon any successors in interest, assignee, heir, executor, administrator or trustee of Developer and Developer agrees that prior to any voluntary or involuntary assignment of this Agreement, to obtain a written statement forwarded to City acknowledging the obligation of any successor in interest to comply with the terms of this Agreement.

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: CITY OF NORTH ROYALTON, OHIO

AS TO THE CITY:

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

Mayor

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

Finance Director

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

APPROVED: Director of Law

AS TO DEVELOPER:

\_\_\_\_\_ BY: \_\_\_\_\_

AS TO BANK:

\_\_\_\_\_ BY: \_\_\_\_\_