

SUBDIVISION CONSTRUCTION AND MAINTENANCE AGREEMENT

This Agreement is entered into between the Board of Commissioners of the County of Elkhart, Indiana, ("Board of Commissioners") and "Developer" as hereinafter defined. This Agreement shall be effective as of the last date of signature of the contemplated signatures set forth below.

WHEREAS, Developer wishes to develop the following Subdivision located in Elkhart County, Indiana, which is more particularly described as follows:

_____ and which subdivision is located on the N S E W side of _____, approximately _____ feet N S E W of _____, Section _____ of _____ Township; and

WHEREAS, the final plat for said Subdivision has been filed with the Elkhart County Plan Commission for approval and recording, and with the Board of Commissioners for acceptance and the dedication of certain Rights-of-Way within said Subdivision; and

WHEREAS, the Board of Commissioners cannot execute the final plat of said Subdivision until all Public Improvements a part of said Subdivision have been constructed according to the Street Standards adopted in Elkhart County Code § 36-7-4-406, or until Developer posts a bond and agrees to the completion of said Public Improvements; and

WHEREAS, Developer desires to make such promises and post an appropriate surety, as required by the Street Standards incorporated in Elkhart County Code § 36-7-4-406.

NOW, THEREFORE, in consideration of the agreement between the parties, the Board of Commissioners and Developer agree as follows:

1. Acceptance of Dedication. The Board of Commissioners shall accept the dedication of the Right-of-Way for roads and streets described in the final plat of the above-described Subdivision for final approval and recording.
 2. Construction of Public Improvements. Developer shall construct, at its own expense, all Public Improvements described in the final construction drawings for the above-described Subdivision as approved by or developed by the Elkhart County Highway Department. All construction shall be complete within two (2) years of the signing by the Board of Commissioners of the final plat for said Subdivision. All construction shall comply with the specifications, rules, procedures, and requirements of Elkhart County Code § 36-7-4-406 and the Street Standards adopted thereby, as well as to any other applicable statutes, rules, ordinances, or other law.
 3. Surety. Developer shall post the following; surety or financial guarantees pursuant to the terms of the Street Standards incorporated in Elkhart County Code § 36-7-4-406:
 - a. A performance bond, certificate of deposit, or letter of credit in an amount and form established in the Street Standards to guaranty the proper construction of the Public Improvements for said Subdivision; and
 - b. A maintenance bond, certificate of deposit, or letter of credit covering Materials and Workmanship consistent with the terms of Elkhart County Code § 36-7-4-406, and the Street Standards.
 4. Breach by Developer. If Developer fails to construct or fails (after acceptance of construction) to maintain the Public Improvements as agreed and in violation of the Street Standards the Board of Commissioners may construct and/or maintain the Public Improvements and Developer shall be liable to the Board of Commissioners for all costs and expenses, directly and indirectly incurred by the Board of Commissioners as a result of Developer's breach of its duties, together with all costs of collection of said sums, including reasonable attorneys' fees. The Board of Commissioners may also choose to first seek damages for a Developer's failure to construct and/or maintain the Public Improvements according to the Street Standards for damages it has incurred, including all costs of collection including reasonable attorneys' fees.
- Additionally, if Developer fails to construct and/or maintain the Public Improvements as agreed and in violation of the Street Standards, or if Developer shall in any fashion breach the terms and conditions of this Subdivision Construction and Maintenance Agreement, or if Developer shall otherwise fail or refuse to comply with the Zoning and/or Subdivision Ordinances of Elkhart County, Indiana, the Board of Commissioners may seek and pursue all other remedies available at law or in equity, and in addition thereto, the Board of Commissioners may directly, or through their authorized representatives or departments, cancel, rescind, or terminate any permits or authorization heretofore granted to Developer, and may withhold any construction, building, occupancy, or other permits sought by Developer, or persons owning or developing lots in said Subdivision, until all such failures, breaches, or violations of Developer shall be cured to the satisfaction of the Board of Commissioners.

5. Developer. "Developer," for all purposes under this Agreement, shall refer to the following if a company or entity: _____ "Developer," for all purposes under this Agreement, shall refer to the following individual or individuals, if no company or entity is involved: _____

6. Personal Guaranty. If Developer as defined at 5 above is a company or entity, the shareholders, members, partners, or equity owners in Developer are herewith made parties to this Subdivision Construction and Maintenance Agreement as "Guarantors" by their signatures below, and are individually, jointly, and severally responsible for all acts, liabilities, promises, and agreements made by Developer. The Board of Commissioners shall be under no obligation to elect among remedies or Guarantors, and the Board of Commissioners shall be entitled to seek all rights and remedies under this Subdivision Construction and Maintenance Agreement as and against Developer, Guarantors, and/or any surety posted per paragraph 3 above, as the Board of Commissioners shall deem appropriate.

7. Contact Person. The contact person for Developer, and applicable address and phone number therefore, for all purposes under this Agreement, are as follows: _____

8. Binding Agreement. This Subdivision Construction and Maintenance Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of Developer, Guarantors, and the Board of Commissioners.

DEVELOPER:
(if company or entity)

NAME _____

Date: _____

By _____

Title _____

DEVELOPER:
(being the individual or individuals
per paragraph 5 above)

X
Individually _____

Date: _____

X
Individually _____

X
Individually _____

X
Individually _____

GUARANTORS:
(being the Guarantors per
paragraph 6 above for
Developer)

X
Signature _____

Printed Name _____

X
Signature _____

Printed Name _____

Date: _____

X
Signature _____

Printed Name _____

X
Signature _____

Printed Name _____

Date: _____

BOARD OF COMMISSIONERS OF THE
COUNTY OF ELKHART, INDIANA

By _____
Authorized Representative