

**RESIDENTIAL SUBDIVISION
DEVELOPMENT CONTRACT**

INTRODUCTION

THIS RESIDENTIAL SUBDIVISION DEVELOPMENT CONTRACT (sometimes called herein “**Contract**”) is made and entered into effective this the ____ day of _____, **20**____, (the “**Effective Date**”) by and between _____, the address of which is _____, (“**Developer**”), and the Town of Collierville, a municipality organized and existing under the laws of the State of Tennessee (“**Town**”).

WITNESSETH

WHEREAS, the Developer is the owner¹ of a tract of land zoned _____, which contains approximately _____ acres (the “Subdivision Site”) and desires to improve and develop the Subdivision Site into a _____ lot subdivision to be known as _____ (the “Subdivision”²); and

WHEREAS, the Town’s Planning Commission has approved the subdivision plan of the Developer with respect to the Subdivision (the “Subdivision Plan”); and

WHEREAS, the Developer is required to install with respect to the Subdivision, as applicable and as provided herein, public improvements, including, but not limited to, water lines, fire hydrants, sanitary sewer lines, grading, stormwater drainage system, streets, curbs, gutters, sidewalks, street name signs, traffic control devices, street lights and underground electrical power and gas utilities in said project at its own cost; and

WHEREAS, the Developer may be required pursuant to its application and Planning Commission approval and, as applicable, Design Review Commission or Historic District Commission approval, to install private improvements and amenities, including, but not limited to, private streets and alleys, fences, walls, lakes, swimming pools, tennis courts and other recreational facilities, common open space, stormwater retention and/or detention basins, landscaping and related irrigation systems, relative to said Subdivision, none of which shall be accepted for maintenance by the Town; and,

WHEREAS, the Town is willing to enter into this Contract with the Developer relative to the development of the Subdivision Site and the Town is willing to provide services to the Subdivision in accordance with the Town’s standard policies and applicable rates; and

¹ If the Developer is not the owner of the Subdivision Site but has permission from the owner to develop same, the owner will be required to join herein and all obligations imposed upon the Developer hereunder shall be the joint and several obligations of the Developer and the owner.

² The project contemplated hereunder may be developed under the ordinances and regulations of the Town relative to Planned Developments. In such event, terms used herein to refer to subdivision shall be read so as to apply to such Planned Development.

WHEREAS, the Town is willing to approve the Subdivision (or Planned Development), subject to the applicant's compliance with applicable existing laws, ordinances, and regulations and the conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and the mutual covenants of the parties herein contained, it is understood and agreed as follows:

GENERAL CONDITIONS

1. Construction Standards. The Developer shall construct the Subdivision in accordance with the Subdivision Plan, as approved by the Planning Commission, and if applicable, the requirements of the Design Review Commission or the Historic District Commission, and in accordance with the requirements of (a) the Collierville Subdivision Regulations; (b) the Collierville Construction Specifications; (c) the Standard Building Code (as adopted by the Town of Collierville); (d) the Collierville Fire Code; (e) the Collierville Grading and Tree Protection Ordinance; and (f) the applicable Ordinances of the Town. Items (a) through (d) are hereby made a part of this Contract by reference and are hereinafter referred to collectively as the "Codes". References herein to the Codes are to those in effect on the Effective Date unless amendments are hereafter made which apply to all improvements or subdivisions regardless of their date of commencement and/or completion of construction. The conditions of approval established by the Planning Commission, and, as applicable, the Design Review Commission or the Historic District Commission (any or all of which as may have been modified by the Board of Mayor and Aldermen) are set forth in Exhibit A to this Contract and are incorporated herein by reference and made a part hereof.

The Developer shall also construct the Subdivision in accordance with the following, which are also made a part of this Contract by reference:

- (a) The standards of the American Society for Testing Materials (ASTM);
- (b) The requirements of the Occupational Safety and Health Administration (OSHA);
- (c) The requirements of the Federal Americans with Disabilities Act (ADA);
- (d) The Standard Specifications for Road and Bridge Construction of the Tennessee Department of Transportation; and
- (e) The Standards of the American National Standards Institute (ANSI);

all as are in effect on the Effective Date unless amendments are hereinafter made which apply to all improvements or projects regardless of their date of commencement and/or completion of construction.

2. Approval of the Subdivision Plans. The Developer shall obtain the approval of the Town Engineer and Town Planner for the Subdivision Plan prior to the official recording of the Subdivision Plat. All construction relating to the Subdivision shall be subject to inspection and approval by the Town until **Final Acceptance** [as defined in Section 17(b) hereinbelow].

OWNERSHIP

3. The Developer agrees it shall have no claim, direct or implied, in the title or ownership of the improvements, except sidewalks, specified in this contract that are to be dedicated to the Town by virtue of the official recording of the plat for the Subdivision and accepted (except for sidewalks) for perpetual maintenance by the Town (the “**Public Improvements**”). The Town, upon **Initial Acceptance** [as defined in Section 13(a) hereinbelow] and plat recording, will take full title to the Public Improvements. Maintenance responsibilities of the Developer prior to Final Acceptance are provided for hereinafter.

4. (a) Until Initial Acceptance, the Developer agrees that neither the Subdivision Site nor any portion thereof will be transferred without first providing the Town with notice of when the proposed transfer is to occur and who the proposed transferee is, along with the appropriate address and telephone number of the proposed transferee.

(b) If it is the proposed transferee’s intention to develop the Subdivision Site or any portion thereof in accordance with this Contract, the Developer agrees to furnish the Town with an assumption agreement by which the transferee agrees to perform the obligations required under this Contract that are applicable to the property to be acquired by the transferee. Unless otherwise agreed by the Town, the Developer will not be released from any of its obligations hereunder by virtue of such transfer and the Developer and the transferee both shall be jointly and severally liable to the Town following such transfer for all obligations hereunder that are applicable to the property transferred. Said assumption agreement will be subject to the approval of the Town Attorney.

(c) If the Developer and the transferee intend to enter into an assumption agreement whereby the Developer is released from its obligations under this Contract, the Developer must present the assumption agreement to the Town for consideration and possible approval by the Board of Mayor and Aldermen. In the event of such approval, the transferee will be required to furnish new security acceptable to the Town.

(d) If it is not the proposed transferee’s intention to develop the Subdivision Site or any portion thereof in accordance with this Contract, the transferee must satisfy all applicable requirements of the Town, including review by and approval of all appropriate Boards and Commissions.

5. The Owner understands that if it transfers said property without providing the notice of transfer and Assumption Agreement as required herein, it will be in breach of this Contract and the Town may require that all work be stopped relative to the Subdivision.

6. The Developer (and the owner of the Subdivision Site if different from Developer) agrees to furnish, on demand, satisfactory evidence that it has the lawful right to enter into this Contract for the purposes herein contained. Any security for the Developer’s obligations hereunder is subject to the approval of the Town Attorney.

7. Duration of Obligations. The obligations of the Developer hereunder shall run with the Subdivision Site until the Developer’s obligations have been fully met.

SECURITY

8. (a) The Developer will furnish to the Town, not later than the execution of this Contract, an estimate as to quantity and cost of all public and private improvements (i. e., specific Design Review Commission requirements: brick walls, landscaping, fencing, lighting, etc.) required by the Town relative to the Subdivision, with the exception of electrical power and gas utilities.

(b) The Developer shall provide a Letter of Credit with an expiration date of one (1) year but automatically renewable for successive one (1) year periods unless the issuer gives the Town notice, in writing, ninety (90) days prior to its expiration date, at which time the Town can draw up to the full face value of the Letter of Credit, or other adequate security acceptable to the Town, (the “**Security**”), in the amount of \$100,000 for all public and/or private internal improvements, plus a sum equal to the cost, as estimated by the Developer and approved by the Town Engineer, of improvements public or private required by the Town relative to the Subdivision but to be constructed or installed off of the Subdivision Site. It is the policy of the Town to only accept as Security a Letter of Credit or cash or its equivalent.

(c) The plat of the Subdivision shall not be officially recorded until the Subdivision has reached the level of **Substantial Completion** [as defined in Section 11 hereinbelow]. At that time, upon application of the Developer and approval of the Board of Mayor and Aldermen of the Town, the amount of the Security may be reduced to the cost, as estimated by the Town, of uncompleted requirements relative to the Subdivision plus a reasonable sum to cover Developer’s warranty obligations hereunder.

(d) (i) Although the amount of the Security shall be less than the total cost of compliance by Developer with all of Developer’s obligations hereunder, it is understood and agreed that the Security, subject to its limit, is to furnish security for the performance of all of the Developer’s obligations hereunder but that such obligations are not limited by the amount of such Security. The Security shall remain in force through the date of **Final Acceptance** of the Subdivision, although same may be reduced from time to time as provided herein. All collection expenses, court costs and attorney’s fees incurred by the Town in connection with collection under the Security shall be paid by the Developer and such obligation shall be secured by the Security. The Town may charge a reasonable administrative fee in connection with collecting under the Security. If the Town performs any of the Developer’s obligations under the Contract, the Town shall be entitled to recover the cost thereof plus interest thereon of ten percent (10%) per annum until reimbursed.

(ii) The form and substance of any Security shall be subject to the approval of the Town Attorney. The Town shall not approve the recording of the plat nor the issuance of building permits until the public improvements and other required improvements yet to be completed will cost less than the amount of the security in the judgment of the Town Engineer. The Security shall be attached as an addendum to this Contract guaranteeing, to the extent of the security, the faithful performance of this Contract by the Developer. The Security, if a Letter of Credit, shall provide that the physical presence of a representative of the Town shall

not be required for presentation and that any litigation regarding same shall be held in a court in Shelby County, Tennessee.

INSURANCE

9. Insurance. (a) The Developer shall purchase and maintain comprehensive general liability and other insurance that shall insure against claims arising out of the Developer's performance under this Contract, whether such claims arise out of the actions of the Developer, any subcontractor of the Developer, their employees, agents or independent contractors or anyone for whose acts any of them may be liable, including, without limitation:

(1) Claims brought under worker's compensation; provided, however, if Developer has no employees who are eligible to be covered under worker's compensation insurance, the Developer shall not be required to furnish insurance against worker's compensation but shall require the party(s) contracting with Developer to perform work on the Subdivision Site to furnish evidence of such insurance for the employees of same;

(2) Claims for the personal injury, occupational illness or death of the Developer's employees, if any;

(3) Claims for the personal injury, illness or death of any person other than the Developer's employees or agents;

(4) Claims for injury to or destruction of tangible property, including loss of use resulting therefrom;

(5) Claims for property damage or personal injury or death of any person arising out of the ownership, maintenance or use of any motor vehicle; and,

(6) Claims by third parties for personal injury and property damage arising out of the Developer's failure to comply with the Developer's obligations under this Contract.

(b) The insurance coverage required by this paragraph shall include the coverage specified above with policy limits of not less than \$1,000,000 Combined Single Limit general liability and \$500,000 Combined Single Limit automobile liability per occurrence. The comprehensive general liability insurance coverage shall include completed operations insurance coverage and liability insurance applicable to the Developer's obligations under this Contract. Each insurance policy shall contain a provision stating that the insurer will give the Town thirty (30) days prior written notice of its intent to cancel or materially change the policy. All such insurance shall remain in effect until the Town issues its written notice of Final Acceptance and release of Security of the completed Subdivision. In addition, the Developer shall maintain completed operations insurance for at least one (1) year after the Town issues its written notice of Final Acceptance and release of Security. The Developer shall furnish the Town with evidence of the continuation of all such insurance at the time of issuance of the notice of Final Acceptance and release of Security.

(c) Prior to commencing any work on the Subdivision, the Developer will furnish to the Town a certificate of insurance evidencing the required coverages.

(d) The furnishing of the aforesaid insurance shall not relieve the Developer of its obligation to indemnify the Town in accordance with the provisions of this Contract.

TIME SCHEDULE

10. (a) It is agreed by the Developer and the Town that this Contract may become void unless the Developer commences Construction within one (1) year from the Effective Date. "Construction" as used in this Section 10 is defined as (i) permanent fastening and positioning of construction materials and/or (ii) extensive grading (including demolishing or removing existing structures necessary for the development of the Subdivision). If demolition of any improvement on the Subdivision Site is anticipated, a demolition permit from the Town shall be required.

(b) The Developer must pay all fees, furnish the Security and provide the required certificate of insurance on or before the Effective Date, all in accordance with the applicable provisions of this Contract.

(c) The failure of the Developer to commence construction within one (1) year of the Effective Date may result in the approval of the Board of Mayor and Aldermen being withdrawn and the approvals of the Planning Commission and, as applicable, the Design Review Commission or the Historic District Commission similarly being withdrawn .

11. The Developer shall substantially complete the Subdivision on a timely schedule and in an expeditious manner, with the date of Substantial Completion to be not later than twenty-four (24) months from the Effective Date. The term "**Substantial Completion**" as used herein shall be when the Developer has completed all required Public Improvements to the Subdivision Site and all required Public Improvements off site relative to the Subdivision, including the final surface asphalt course as to off site Public Improvements, and same have been inspected, tested and approved by the Town, except for the final required surface asphalt course on the streets in the Subdivision. Sidewalks in the Subdivision and private improvements in the Subdivision required by the Town to be completed by the Developer may be completed after the date of Substantial Completion; and there is a required date of completion of certain sidewalks as provided in Section 15 below. Private improvements are to be completed as provided in Section 14 below.

(a) All Public Improvements within _____ (name of road) must be completed within _____ consecutive calendar days from the date construction begins on _____ (name of road).

The developer may, upon written approval from the Town Engineer, be permitted to suspend the calendar day time period for this portion of the Work to allow installation of the surface course of asphalt at a later date. In the event such time suspension is permitted, all manholes, valve boxes, and/or other items protruding from the surface of the base asphalt course shall be protected by asphalt patching or other means as approved by the Town Engineer.

Any calendar day for which the Work remains un-complete shall be subject to an amount of \$100.00 per calendar day not as a penalty, but as liquidated damages.

(b) The Developer agrees that if due to unforeseen circumstances it is unable to complete all work included in this Contract within the time specified herein, it will submit a written request for extension of the Contract period to the Town at least sixty (60) days prior to the expiration of the existing Contract period, specifying the reason for its failure to complete the work as agreed, and a prospective date for such completion.

(c) The Developer agrees that if the Security furnished to secure the obligations of the Developer under this Contract, due to inflation and/or rising costs, previous errors in estimation, or otherwise, is inadequate to secure such obligations at the time an extension of time is sought, it will provide additional security to bring the Security amount in line with current cost projections made by the Town Engineer.

(d) The Town will not unreasonably withhold approval of extensions of time where the Developer has complied with the requirements of notice to the Town and provided the required additional Security, if any is needed.

12. The Developer agrees that its failure to follow the extension of time procedure provided herein shall constitute a breach of this Contract. The Developer agrees that should it fail to complete any part of the work outlined in this Contract in a good and workmanlike manner, as approved by the Town Engineer, the Town shall reserve the right to withhold and withdraw all building permits and/or water and sewer service within the Subdivision until all items of this Contract have been fulfilled by the Developer.

13. (a) It is agreed that after the date of Initial Acceptance, as approved by the Board of Mayor and Aldermen, the Town will record the final plat (Mylar) of the Subdivision in the Register's Office of Shelby County, Tennessee after the Developer has submitted a final plat suitable for recording, provided the Security being held by the Town to guarantee the Developer's obligations under this Contract is sufficient to cover the cost of the remaining required Public Improvements and the private improvements as estimated by the Developer's engineer and approved by the Town Engineer. If the Security being held by the Town is not sufficient, the Developer shall increase same accordingly. Plat recording shall signify "**Initial Acceptance**" of the project.

(b) The final plat shall be retained by the Town as a permanent record. The Developer shall be responsible for paying the initial recording cost and any future re - recording costs.

(c) The Developer shall provide the Town with a copy of the Final Subdivision Plan document including sewer, water and drainage as - built drawings, using State Plane Coordinate System with NAD - 83 datum on disk or CD in DXF or DWG format (AutoCAD 2000 or earlier) prior to recording of the plat of the Subdivision. All MTEXT must be exploded. Explode all blocks.

Departure from the original plans and specifications shall not be permitted without the approval of the Town Engineer, the Town Planner, the Planning Commission and the Board of Mayor and Aldermen, as necessary.

(d) The Developer shall also furnish to the Town as - built drawings on a reproducible, stable media, which shall show all improvements, grading, streets, sanitary sewer system, storm drainage system, water system and all appurtenances that relate to each item within the Subdivision before the Town shall record the final plat of the Subdivision.

(e) The Developer shall also furnish, in writing, the itemized as-built construction cost of all public improvements in order to permit the Town to comply with financial reporting requirements.

(f) i. Prior to release of security, the applicant shall submit as-built landscaping plans signed and sealed by a registered Landscape Architect licensed to practice in the state of Tennessee, confirming that the installed landscaping is in compliance with the landscape plan approved by the Town.

ii. Should there be any contemplated or desired changes or substitutions of plant material, quantities, size, etc., during construction, the Developer shall notify the Planning Division in writing explaining why this is necessary, and the narrative is to be accompanied by a copy of the Design Review Commission (DRC) approved landscaping plan illustrating the location of any such desired changes. This shall be done before any changes are made in the field and only after written permission is granted by the Planning Division.

14. All required landscaping, irrigation, fencing and all other required private improvements shall be completed within one year of the date of the recording of the plat of the Subdivision, i.e. Initial Acceptance.

15. (a) Sidewalks. Notwithstanding any provision to the contrary herein, all required sidewalks along reverse frontage lots, common open space and parkland and all sidewalks, which do not front on lots shall be completed prior to recording the plat of the Subdivision. All sidewalks along individual lot frontages must be complete and without defect prior to the issuance of a Certificate of Occupancy ("C. O.") for the house constructed on the relevant lot. The Developer may pass this responsibility along to the builder or other buyer of each lot; however, in the event the builder and/or buyer fails to properly construct a sidewalk prior to issuance of the C. O., the Developer shall be responsible for construction of said sidewalks prior to the issuance of the C. O. The Developer shall be responsible for repairing any latent defects in the sidewalks and for installing all incomplete sidewalk sections prior to Final Acceptance of the Subdivision. (All references to sidewalks include required handicap ramps.)

(b.) Curbs and Gutters. All required curbs and gutters along individual lot frontages must be completed and without defect prior to the issuance of a C.O. for the house constructed on the relevant lot. The Developer may pass the responsibility to repair any curb and/or gutter which is damaged during the construction of the house on the relevant lot along to the builder or other buyer of each lot; however, in the event the builder and/or buyer fails to

properly repair the curb and gutter prior to issuance of the C. O., the Developer shall be responsible for repair of said curb and gutter. The Developer shall also be responsible for repairing any latent defects and/or failures in the curbs and gutters, which occur or first appear after the issuance of the relevant C. O. and prior to final surface asphalt installation and, as necessary, prior to Final Acceptance of the Subdivision.

16. The final surface asphalt course on streets within the Subdivision shall not be completed sooner than one year from the date of Initial Acceptance nor later than two years from the date of Initial Acceptance.

WARRANTY

17. (a) The Developer is required to complete the Public Improvements, which are ultimately to be accepted by the Town for perpetual maintenance, and all other improvements required by the Town relative to the Subdivision, in accordance with the terms of this Contract. Further, the Developer is to correct any defects or failures in all of such improvements that occur within one (1) year of the installation of the final asphalt surface course on the streets in the Subdivision. Any defect first appearing within the applicable one (1) year period shall be required to be corrected by the Developer; and thereafter the Developer shall correct any defect again occurring in or relating to what was previously corrected within a one (1) year period commencing from the date of approval by the Town Engineer of such correction. If the defect reoccurs within any one (1) year of its repair, the Developer shall remain obligated to correct it until the condition is satisfactory to the Town after one (1) year from the date of its last repair.

(b) No sooner than one year after the completion of the installation of the final surface asphalt course on the streets in the Subdivision, the Developer shall so notify the Town Engineer, and the Town Engineer, or his designee, shall inspect the streets, curbs and gutters, sidewalks, storm drain system, detention basin, landscaping, irrigation, fencing and all other required improvements to determine any defects or failures of the same. If no defects or failures are found, the Town Engineer shall report the same to the Board of Mayor and Aldermen at a regular or special meeting within thirty (30) days of the date of said inspection. The Board of Mayor and Aldermen, provided it agrees with the Town Engineer, shall approve the final release of the Security, which shall constitute **“Final Acceptance”** of the Subdivision. If defects or failures are found upon the aforesaid inspection, a written notification outlining deficiencies to be corrected shall be provided to the Developer along with the time period for corrections, not to exceed sixty (60) days. Within seven (7) days of notification by the Developer that such corrections have been made or the expiration of the time period, whichever occurs first, the Town Engineer shall re-inspect for correction of defects and failures. If all deficiencies have not been corrected, the Town Engineer shall provide an updated written notification of deficiencies and the Developer shall have thirty (30) days to make the remaining corrections. If all corrections are not made at this time, the Town may demand payment on the Security, and, upon collection, shall proceed to make the corrections. If and when the Developer or the Town, as the case may be, has corrected all failures and defects, and a period of one (1) year has expired from the date of such corrections without defects again appearing in the corrected work, the Town Engineer shall report the same to the Board of Mayor and Aldermen at a regular or special

meeting within thirty (30) days of the date of said re-inspection. The Board of Mayor and Aldermen, provided it agrees with the Town Engineer, shall approve the final release of the Security, which shall constitute Final Acceptance of the Subdivision.

(c) It is the intention of the parties hereto that any Public Improvement required of the Developer relative to the Subdivision which was found to be satisfactory by the Town Engineer upon inspection as provided in Section 17(b) shall thereafter be the obligation of the Town to maintain. However, any such improvement found to be unsatisfactory by the Town Engineer upon the initial inspection as provided in Section 17(b) or any later inspection made pursuant to Section 17(b) shall not be obligation of the Town to maintain until same remains satisfactory to the Town for a period of one (1) year from the date it was inspected and found to be satisfactory by the Town Engineer.

(d) At any time following one (1) year from the date of installation of the final surface asphalt on the streets in the Subdivision, the Town Engineer may recommend to the Board of Mayor and Aldermen that a portion of the Security be released based upon the Town Engineer's estimation of the needed Security to ensure that funds will be available to correct any then outstanding defects in the improvements or to correct any defects which have been corrected but may reoccur or to complete any uncompleted requirements such as sidewalks.

REQUIRED IMPROVEMENTS AND RELATED FEES

WATER

18. If the Developer intends to connect the water lines of this Subdivision to the Town water system, the Developer agrees to pay to the Town the sum of _____ **Dollars (\$ _____)**, which reflects the water development fee as required by the current resolution of the Board of Mayor and Aldermen.

19. (a) The Developer agrees to pay the cost of off-site and on-site water main and accessories, including fire hydrants, service lines, meters and such accessories from main to the meter center.

(b) Because the Developer will connect to the N/A inch water line in N/A (road name), which was installed by others in accordance with the Town's Water and Sewer Extension Policy as required by the current Resolution of the Board of Mayor and Aldermen, the Developer shall pay N/A Dollars (\$N/A) to the Town.

(c) The Developer acknowledges that the Town, through its Public Services Department, will assess water meter connection charges against the Subdivision in accordance with Town policy prevailing at the time building permits are acquired for each individual lot.

20. The Developer shall bear the cost of all engineering, inspection and laboratory costs procured by Developer incidental to the water service system in or to the Subdivision; and

if the Town deems it necessary to have additional work of such nature performed, the Developer shall bear such costs also.

21. Existing Water Mains. If any portion of the Subdivision is adjacent to both sides of an existing water main installed at the expense of the Town, the Developer shall pay the Town a sum equal to the original construction cost of that main and appurtenances, as such abuts the property of the Developer not to exceed the current replacement cost of an eight inch (8") diameter main and appurtenances. If a portion of the Subdivision fronts on only one side of an existing water main installed at the expense of the Town, the Developer will pay the equivalent of one-half of the construction cost of such main and appurtenances, as such abuts the property of the Developer, not to exceed one-half the current replacement cost of an eight inch (8") diameter main.

SANITARY SEWER

22. The Developer shall pay to the Town of Collierville, the sum of _____ **Dollars** (\$ _____), which reflects the sewer development fees as required by the current Resolution of the Board of Mayor and Aldermen.

23. The Developer shall bear the cost of a State approved outfall sewage system complete with necessary sewer mains, manholes, and service laterals to each Lot in the Subdivision and pump stations and force mains as approved by the Town Engineer upon approval of the plans and specifications for the Subdivision. Pump stations will not be allowed without specific approval from the Mayor and Board of Aldermen.

24. The Developer acknowledges that the Town will assess sewer connection privilege charges and water meter connection charges against the Subdivision in accordance with the Town policy prevailing at the time building permits are acquired for each individual lot.

25. The Developer agrees to bear the cost of all engineering, inspection and laboratory testing costs procured by the Developer incidental to the sewer service in or to the Development; and, if the Town deems it necessary to have additional work of such nature performed, the Developer will bear such costs.

STREETS/STREET LIGHTS

26. (a) The Developer agrees to dedicate and improve and/or construct, at no cost to the Town, all public and/or private streets located within or required by this project to comply with the road standards of the Town to the satisfaction and approval of the Town Engineer, subject, however, if applicable, to the provisions of subparagraph (b) immediately below.

(b) The Developer agrees to pay to the Town a payment in-lieu of construction in the amount of _____ **Dollars**, (\$ _____) for the required improvement to _____.

27. The Developer shall bear the cost of all engineering, inspection and laboratory costs procured by the Developer incidental to the construction of street(s) to be constructed or improved pursuant to this Contract, including, but not limited to, material and density testing; and, if the Town deems it necessary to have additional work of such nature performed, the Developer shall bear such costs also.

28. The Developer shall furnish and install asphalt base and a final asphalt surface course (wearing surface) on all streets, public and private, as required hereunder in accordance with the Town specifications.

29. The Developer shall make all necessary adjustments to manholes and valve boxes to meet finished surface grade and to repair subsurface or base repair, as required, in areas designated by the Town prior to the application of the final asphalt surface.

30. It is agreed and understood that if it is not necessary to change the existing grade, alignment or disturb the pavement of an existing street or road, the Developer shall only be required to construct drainage, sub – base, base and pavement to match the existing pavement and construct sidewalks, curb and gutter as required. If the existing grade and/or alignment is changed, the Developer shall be required to grade, prepare sub-base, base and pave the full width of said street or road.

31. (a) The Developer agrees to pay, upon the execution of this Contract, the estimated cost of installation of Street Lighting within the subdivision in the amount of _____ **Dollars (\$_____)**. When the actual cost as billed by the Light, Gas & Water Division of the City of Memphis is known, the Developer will pay same within thirty (30) days or, if the initial estimate exceeds the actual cost, the Town will pay the difference to the Developer within thirty (30) days.” **NOTE:** When using Beale Street lights, if the development is along both sides of the road, the Developer is required to pay the full cost for the Beale Street lights. If the development is along one side of the road, the Developer is required to pay one-half the cost of the Beale Street lights.

(b) Also, if applicable, the Developer shall be required to reimburse the Town their estimated cost of steel electric power distribution poles over the cost of wood poles for the Developer’s frontage along _____ in the amount of _____ Dollars (\$_____). When the actual cost as billed by the Light, Gas & Water Division of the City of Memphis is known, the Developer will pay same within thirty (30) days or, if the initial estimate exceeds the actual cost, the Town will pay the difference to the Developer within thirty (30) days.” **NOTE:** If the development is along both sides of the road, the Developer is required to pay the full cost for the green steel distribution poles. If the development is along one side of the road, the Developer is required to pay one-half the cost of the green steel distribution poles.

32. The Developer agrees to install permanent street signposts and markers at all street intersections in the Subdivision and to install traffic control devices, signage and striping relative to the Subdivision. The plans and specifications for public street signpost and lettering can be obtained from the Town at 500 Poplar View Parkway. Location of street and traffic control signs to be installed shall be approved by the Town Engineer. All traffic control devices, signage

and striping shall be installed as per the Manual on Uniform Traffic Control Devices and approved by the Town Engineer.

DRAINAGE

33. The Developer agrees that all drainage and related facilities, including, without limitation, ditch paving, bank protection and fencing adjacent to open ditches, made necessary by the development of the Subdivision are to be constructed by the Developer according to plans and specifications approved by the Town Engineer.

34. The Developer agrees that it will provide necessary erosion control, such as seeding for gentle slopes (4 to 1 or less), grass sod for steeper slopes, with special grading and terracing, to the specifications of the Town Engineer. All freshly excavated and embankment areas not covered with satisfactory vegetation shall be fertilized, mulched and seeded and/or sodded as required by the Town Engineer to prevent erosion. In the event the Town Engineer determines that necessary erosion control is not being provided by the Developer, the proper governing authority shall officially notify the Developer of the problem. If the Developer has not corrected the problem within 7 days after the notice, then the proper governing authority shall make the necessary improvement to eliminate the erosion problem, documenting all expenses incurred while performing the work. Prior to releasing any Security hereunder, all expenses incurred by the governing authority relative to the foregoing shall be paid in full by the Developer plus interest thereon at the rate of ten percent (10%) per annum.

35. Any and all unenclosed watercourses lying partially or wholly within the boundary of the Subdivision Site shall be constructed to an adequate cross section to provide design flow without threat of erosion or flooding of any property within the Subdivision Site or any adjoining property. Such watercourses shall be lined in a manner satisfactory to the Town Engineer and any other agencies which may have jurisdiction.

36. All drainage structures necessary for the road plans affecting any watercourse lying partially or wholly within the Subdivision Site are to be provided by the Developer.

37. The Developer agrees to provide and deliver the formal written opinion of a certified and licensed professional engineer, duly bonded, certifying as a professional engineer that he or she has reviewed the entire water shed within which the Subdivision Site is located and that upon full development at the greatest allowable use density under existing zoning of all land within that watershed, the proposed development of the Subdivision will not increase, alter or affect the flow of surface water, nor contribute to same, so as to damage, flood or adversely affect any property. Further, the Developer agrees to hold harmless and to defend the Town and the Town Engineer from any claim, cause of action or liability, alleged and/or proven, to have arisen directly or indirectly from alteration affecting the surface water by reason of the Developer's design, construction, installation or the development itself, in whole or part. The aforesaid indemnity agreement includes, without limitation, the reasonable expenses of the Town incurred in defending itself against any matter covered by such indemnity agreement, including attorney fees and expenses of litigation.

ADMINISTRATIVE FEES TO BE PAID PRIOR TO THE EXECUTION OF THIS CONTRACT

Plans Review Fees

38. The Developer agrees to pay to the Town the sum of _____ **Dollars** (\$_____), (\$300.00 base fee plus \$ 50.00 per lot), which represents the development plans review fee as required by Resolution 99-08, prior to the execution of this Contract. The Developer further agrees to pay a \$300.00 review fee for each review after the second review, payable within ten (10) days of receipt of invoice.

Development Inspection Fees

39. The Developer agrees to pay to the Town the sum of _____ **Dollars** (\$_____), (\$750.00 base fee plus \$250.00 per lot), which sum represents the development inspection fee, which shall be paid prior to the execution of this Contract. Neither observations by the Town Engineer and Construction Inspectors, nor inspections, tests or approvals by others shall relieve the Developer from its obligation to perform work in accordance with the terms of this Contract.

Water System Analysis Fee

40. The Developer agrees to pay to the Town the sum of _____ **Dollars** (\$_____), (\$300.00 base fee plus \$10.00 per lot), which sum represents the water system analysis fee, which shall be paid prior to the execution of this Contract.

Traffic Analysis Fee – 50 Lots or more

41. The Developer agrees to pay to the Town the sum of _____ **Dollars** (\$_____), which sum represents the traffic analysis fee, which shall be paid prior to the execution of this Contract.

Development Agreement Preparation Fee

42. The Developer agrees to pay to the Town the sum of **Five Hundred and no/100 Dollars (\$500.00)**, which sum represents the development agreement preparation fee, which shall be paid prior to the execution of this Contract.

Storm Water Analysis, Plans Review and Inspection Fee

43. The Developer agrees to pay to the Town the sum of _____ **Dollars** (\$_____), (\$150.00 per lot), which sum represents the storm water analysis, plans review and inspection fee, which shall be paid prior to the execution of this Contract.

OTHER ADMINISTRATIVE FEES TO BE PAID AS APPLICABLE

44. The Developer agrees to pay to the Town the sum of **Two Hundred Fifty and no/100 Dollars (\$250.00)**, which sum represents the fee for any modifications to this Contract, including, but not limited to, time extensions, addendums, amendments and the like; provided, however, that the Developer shall pay such fee only to the extent that the Developer requests that the Town modify this Contract and/or to the extent the Town, in its sole discretion, determines that a modification to this Contract is required. The Developer shall pay the Contract modification fee for each modification prior to the execution of any document prepared in connection with a modification to this Contract.

MISCELLANEOUS CONDITIONS

45. The Developer agrees that it will grant the necessary easements and rights-of-way across its property without expense to the Town of Collierville and will waive any claim for damages. Any off-site easements and/or right-of-way owned by others but required for the project must be obtained by Developer and recorded prior to Contract approval.

46. It is understood and agreed that the Town is not and could not be expected to oversee, supervise and/or direct the construction of all construction and improvements contemplated hereunder. Neither is the Town Engineer vested with the original design responsibility nor the means to formally survey elevations, capacity, structural integrity, type, adequacy or the locations of improvements at every stage of the construction process. The Town Engineer is vested with the right of periodic inspections, final approval and stop work order as a measure of secondary or subsequent enforcement. The Developer now has and shall retain the responsibility to properly anticipate, survey, design and construct the development improvements and give full assurance that same shall not adversely affect the flow of surface water from or upon any property. In providing technical assistance, plan and design review, the Town does not and shall not relieve the Developer from or accept any liability from the Developer. The Developer will provide his own Project Engineer whose duties and responsibilities are explained in the General Conditions of the Town of Collierville Construction Specifications.

47. In emergencies affecting the safety or protection of persons or the work or property at the Subdivision Site or adjacent thereto, the Developer, without special instruction or authorization from the Town, is obligated to act to prevent threatened damage, injury or loss. If the Town has to use its resources in an emergency affecting the Development, it is agreed that the Town will keep a record of costs associated therewith and will be reimbursed by Developer.

48. The Developer agrees that the Town shall have the right to enter the Subdivision Site and make emergency repairs to any improvements when the health and safety of the general public requires it. The Developer will reimburse the Town for the reasonable cost incurred by it in making such repairs.

49. The Developer agrees to secure all required permits for the demolition of structures on the subject property. The Developer further agrees that it will haul all scrap,

buildings, materials, debris, rubbish and other degradable materials to an authorized landfill and not bury such materials within the Subdivision Site or near thereto.

50. The Developer agrees that should it default in performing any of its obligations under this Contract and it becomes necessary to engage an attorney to file necessary legal action to enforce provisions of this Contract or sue for any sums of money due and owing or liability arising incidental to the Contract, Developer will pay to the Town reasonable attorney's fees and expenses of litigation.

51. Prior to Final Acceptance of the Subdivision by the Town, the Developer shall deliver to the Town an affidavit certifying that all subcontractors and material suppliers furnishing labor and/or material for the improvements required under this Contract have been paid in full. The Developer shall also provide a release of all liens, and of the right to claim liens, from all sub-contractors and material suppliers furnishing labor or materials for the development.

52. The Developer shall be responsible for the cost of any and all relocation, adjustment, modification, installation and/or removal of utilities, streets, curbs, gutters, sidewalks, drainage and all other improvements made necessary by the development of the Subdivision, both on and off site. All electrical utilities shall be installed underground unless expressly waived by the Board of Mayor and Aldermen upon written request to the Design Review Commission or Historic District Commission, as applicable, and after a recommendation by said Commission is submitted to the Board of Mayor and Aldermen.

53. The Developer agrees to pay a "Payment in-Lieu-of or Dedication for Parkland" as per Article III, Section 6 of the Town of Collierville Subdivision Regulations in the amount of _____ **Dollars (\$_____)**.

54. The Developer agrees to pay a "Building Development Privilege Tax" as per Ordinance 2003 – 04, in the amount of _____ **Dollars (\$_____)**.

55. Gas and Electric Service. The Developer shall install underground electric and natural gas service to the Subdivision in accordance with the electric and natural gas service policy specified by the agreement between the Town and the Memphis Light, Gas and Water Division of the City of Memphis and Town ordinances and/or policies in effect at the time of such installation.

56. Indemnity. The Developer will indemnify and hold the Town harmless against all claims that may arise out of or result from the Developer's performance under this Contract, whether such claims arise out of the actions of the Developer, any subcontractor of the Developer, or anyone directly or indirectly employed by either of them. This indemnity agreement includes, without limitation, all tort claims, both intentional and otherwise, and all claims based upon any right of recovery for property damage, personal injuries, death, damages caused by downstream deposits, sediment or debris from drainage, damages resulting from the Developer changing the volume or velocity of water leaving the Developer's property and entering upon the property of others, and claims under any statutes, Federal or state, relative to water, drainage and/or wetlands, and reasonable attorney's fees and costs incurred by the Town in defending itself as a result of the aforesaid and/or enforcing this Contract.

57. Safety. The Developer shall maintain barricades, fences, guards and flagmen as reasonably necessary to ensure the safety of all persons at or near the Subdivision Site during construction. All construction material, including, without limitation, mud, silt, dirt and gravel, shall be kept off existing streets at all times. In the event such mud, silt, dirt, gravel or other construction material is washed, blown or carried into an existing street, the Developer shall take immediate steps to remove such materials. If the Developer does not remove such materials after notification by the Town, and the Town deems it necessary to clean the affected streets, the Developer agrees to reimburse the Town for all such cleaning expenses.

58. Construction Activity. (a) The Developer will not carry on or permit construction activity under this Contract earlier than 7:00 a.m. nor later than 6:00 p.m., Monday through Saturday, and no construction activity shall occur on Sundays.

(b) The Developer agrees to include in all contracts between the Developer and the purchaser of any Lot in the Subdivision (“Lot Purchasers”) the following, unless otherwise authorized in writing by the Town Engineer:

(i) All streets shall be kept clear and free of dirt and debris.

(ii) All construction activity shall begin no earlier than 7:00 A. M. and end no later than 6:00 P. M., Monday through Saturday, and no construction activity shall be permitted on Sundays.

(c) The Developer and Lot Purchasers shall provide the Collierville Building Department with the name, address and phone number of person(s) to be contacted and responsible for correcting any of the above should the occasion arise to do so.

59. The use of the neuter pronoun herein shall include the neuter and both genders as the context shall require.

60. If litigation ensues with respect to this Contract and the Town prevails therein, the Town shall be entitled to recover from the Developer its reasonable attorney’s fees and the costs and expenses of such litigation, including same related to any appeal. The court(s) before which such litigation is pending shall determine whether the Town prevailed and the amount of such fees, costs, and expenses to be recovered by the Town as a result of prevailing; and, if the Town prevails in part, but not in whole, an equitable award of its attorney’s fees and expenses shall be made by the court(s). The same provision as immediately aforesaid shall be applicable to any litigation necessary to establish the Town’s right to recover under the Security. The Security shall cover all of the Developer’s obligations under this Contract, including, without limitation, the obligation of the Developer to pay the fees, costs and expenses of the Town as provided for in this Section of the Contract.

61. Interpretation and Severability. If any provision of this Contract is held to be unlawful, invalid or unenforceable under present or future laws effective during the terms hereof, such provisions shall be fully severable and this Contract shall be construed and enforced as if such unlawful, invalid or unenforceable provision was not a part of this contract. Furthermore, if

any provision of this Contract is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

62. Construction of Contract. Each party has received and had the opportunity to review this Contract, and each party has had the opportunity, whether exercised or not, to have each respective party's attorney review this Contract, and, accordingly, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Contract.

63. No Waiver. The failure of the Town to insist upon prompt and strict performance of any of the terms, conditions or undertakings of this Contract, or to exercise any right herein conferred, in any one or more instances, shall not be construed as a waiver of the same or any other term, condition, undertaking or right.

64. Amendments and Modification. This Contract shall not be modified in any manner, except by an instrument in writing executed by or on behalf of all parties.

65. Authority to Execute. Town and Developer each warrant and represent that the party signing this Contract on behalf of each has authority to enter into this Contract and to bind the Town and Developer, respectively, to the terms, covenants and conditions contained herein. Each party shall deliver to the other, upon request, all documents reasonably requested by the other evidencing such authority, including a copy of all resolutions, consents or minutes reflecting the authority of persons or parties to enter into agreements on behalf of such party.

66. Notices. All notices, demands and requests required or permitted by this Contract shall be in writing (including telecopy communications) and shall be sent by facsimile transmission, air or other courier, or hand delivery, as follows:

(i) To: TOWN
Town of Collierville
Attn: Town Engineer
500 Poplar View Parkway
Collierville, Tennessee 38017

Telephone: 901/457-2340
Telecopier: 901/457-2354

With Required Copy To:
Director of Development
At same address and telecopier number as above.

(ii) To: DEVELOPER

Telephone: _____
Telecopier: _____

(iii) To: OWNER

Telephone: _____
Telecopier: _____

Any notice, demand or request sent by facsimile transmission shall be deemed given for all purposes under this Contract when properly transmitted by telecommunication device. Any notice, demand or request which is hand delivered or sent by air or other courier shall be deemed given for all purposes under this Agreement when delivered to the intended address.

67. Any party to this Contract may change such party's address for the purpose of notices, demands and requests required or permitted under this Contract by providing written notice of such change of address to the other party, which change of address shall only be effective when notice of the change is actually received by the party who thereafter sends any notice, demand or request.

68. Choice of Law. This Contract is being executed and delivered and is intended to be performed in the State of Tennessee, and the laws (without regard to principles of conflicts of law) of the State of Tennessee shall govern the rights and duties of the parties hereto in the validity, construction, enforcement and interpretation hereof.

68. OVERALL FEE SUMMARY

(1)	Water Development Fee	\$ <u>0.00</u>
(2)	Water Fee per Current Resolution	\$ <u>0.00</u>
(3)	Fee Relative to Existing Water Main	\$ <u>0.00</u>
(4)	Sewer Development Fee	\$ <u>0.00</u>
(5)	Payment in Lieu of Construction for Roads	\$ <u>0.00</u>
(6)	Street Lighting Fee (estimated)	\$ <u>0.00</u>
(7)	Steel Power Distribution Pole Fee (estimated)	\$ <u>0.00</u>
(8)	Plans Review Fee	\$ <u>0.00</u>
(9)	Development Inspection Fee	\$ <u>0.00</u>
(10)	Water System Analysis Fee	\$ <u>0.00</u>
(11)	Traffic Analysis Fee	\$ <u>0.00</u>
(12)	Development Agreement Prep. Fee	\$ <u>0.00</u>
(13)	Storm Water Analysis, Plans Review & Insp. Fee	\$ <u>0.00</u>
(14)	Development Agreement Modifications Fee	\$ <u>0.00</u>
(15)	Building Development Privilege Tax	\$ <u>0.00</u>

(16)	Parkland Dedication Fee	\$ <u>0.00</u>
	Total	\$ <u>0.00</u>

69. **SUPPLEMENTAL CONDITIONS/ADDITIONAL REQUIREMENTS**

70. Joinder of Owner. In the event that the Developer is not the owner of the Subdivision Site, the owner joins in this Contract and by the Owner's execution of this Contract, the owner is jointly and severally liable for the representations, warranties, covenants, agreements and indemnities as expressly set forth in this Contract.

WITNESS the due execution hereof.

DEVELOPER

By: _____
Title: _____
Date³: _____

OWNER (if applicable):

By: _____
Title: _____
Date³: _____

TOWN OF COLLIERVILLE

By: _____
Mayor
Date³: _____

ATTEST: _____
Town Clerk

APPROVED AS TO FORM:

By: _____
Town Attorney

³ The Effective Date hereof shall be the date upon which the last to sign of the Mayor and Developer executes this Contract, which date shall be entered on the first page hereof.

Exhibit A

Conditions of approval established by the Planning Commission, and, as applicable, the Design Review Commission or the Historic District Commission and, as applicable, modified by the Board of Mayor and Aldermen are attached hereto.