

Cross Reference: _____

SUBDIVISION INFRASTRUCTURE COMPLETION AGREEMENT

THIS SUBDIVISION INFRASTRUCTURE COMPLETION AGREEMENT (“Agreement”) is made on _____, 20__ (“Effective Date”) by and between the **ALLEN COUNTY PLAN COMMISSION** (“Plan Commission”) and _____ (“Developer”). The Plan Commission and the Developer are sometimes referred to herein individually as a “party” and collectively as the “parties.”

RECITALS

WHEREAS, the Plan Commission conditionally approved a Major Subdivision for _____ (“Subdivision”), which was submitted by Developer and which Plan Commission approval is attached hereto as **Exhibit A** and incorporated herein by reference; and

WHEREAS, the Developer has received a secondary approval for Section ____ of the Subdivision (“Phase”) for the real estate described on attached **Exhibit B**; and

WHEREAS, the Developer desires to record the plat for the Phase, but has not installed and completed the community and public works and facilities necessary to serve the residential homes in the Phase, including but not limited to those development design standards set forth in A.C.C. 3-4-4-2, including but not limited to, access, block layout, easements, floodplain, lot standards, natural site features, open space and recreation amenities, pedestrian circulation, sanitary sewer, signs, storm drainage, street lighting, vehicle circulation and streets, and water (“Subdivision Infrastructure”), as required by the Allen County Zoning Ordinance and the Plan Commission’s approval of the Subdivision; and

WHEREAS, the Developer has provided the Plan Commission with an engineer’s estimate and construction time line to complete all of the Subdivision Infrastructure necessary to serve the Phase, which

estimate and construction time line is attached hereto as **Exhibit C**, which is incorporated herein by reference as if fully set forth herein (“Infrastructure Completion Schedule”); and

WHEREAS, the Plan Commission desires to assure that the Developer will complete the Subdivision Infrastructure necessary to serve the Phase in a good and workmanlike manner, in accordance with the Infrastructure Completion Schedule and in accordance with the laws and regulations now in force and effect; and

WHEREAS, the Developer has obligated itself and hereby agrees to complete the construction and installation of all of the Subdivision Infrastructure necessary to serve the Phase in accordance with the attached **Exhibit A** and **Exhibit C**, which are hereby incorporated by reference as if fully set forth herein.

NOW, THEREFORE, in consideration of the approval and acceptance of the Plan Commission of this Agreement, the secondary approval of the Phase, the public health, safety, and welfare of the citizens of Allen County, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto mutually covenant and agree as follows:

1. **Requirement for Completion of Subdivision Infrastructure.** Except for a model home (as defined by the applicable zoning ordinance), prior to applying for any Improvement Location Permit (“ILP”) for any lot in the Phase (“Lot”), Developer shall, at its own cost and expense, provide all the required work, equipment, materials and labor necessary to complete all of the Subdivision Infrastructure necessary to serve that Lot, which is the subject of the ILP. The completion of the Subdivision Infrastructure for that Lot shall be to the satisfaction of the Plan Commission, the Department of Planning Services and the applicable reviewing agencies. If Developer has not completed the Subdivision Infrastructure necessary to serve that Lot, then Developer agrees not to apply for an ILP until after the Subdivision Infrastructure is completed and the Lot is served by the necessary Subdivision Infrastructure. Prior to the issuance of the ILP, Developer shall provide the Department of Planning Services with written verification that all Subdivision Infrastructure for that Lot has been installed. Upon completion of forty-five percent (45%) of the Subdivision Infrastructure, the Developer shall provide the Plan Commission with a revised engineer’s estimate and construction time line to complete all of the Subdivision Infrastructure necessary to serve the Phase.

2. **Fifty Percent Limit on Lot ILPs.** If the Developer has not completed all of the Subdivision Infrastructure for the entire Phase, as set forth in the Infrastructure Completion Schedule, as revised in accordance with Paragraph 1 above, then upon fifty-percent (50%) of the ILPs having been issued for the Lots in the Phase, Developer agrees that no further ILPs shall be issued for any other Lot in the Phase unless: (a) the Developer posts a Subdivision Improvement Bond in accordance with Paragraph 3 below; or (b) all of the required Subdivision Infrastructure for the Phase has been installed.

3. **Subdivision Improvement Bond.** If the Developer has not completed all the Subdivision Infrastructure for the Phase after 50% of the ILPs have been issued, then Developer agrees that no further ILPs shall be issued for the Phase until: (a) Developer guarantees its performance of this Agreement by furnishing to

the Plan Commission a Subdivision Improvement Bond, issued by a surety company acceptable to the Plan Commission and in an amount determined by the Plan Commission, all of which shall be in the Plan Commission's sole and absolute discretion; and (b) the Plan Commission approves the Subdivision Improvement Bond, which approval shall be in the Plan Commission's sole and absolute discretion; and (c) Developer files an original, fully executed and enforceable Subdivision Improvement Bond to the Plan Commission. The Subdivision Improvement Bond, which guarantees the Developer's performance of this Agreement, shall only be released upon the written approval of the Subdivision Infrastructure by the Plan Commission. Notwithstanding anything herein to the contrary, the obligations of the Developer under Paragraph 1 above shall still apply, even after the Developer has submitted the Subdivision Improvement Bond to the Plan Commission.

4. **Default.** Developer agrees that a breach of this Agreement by the Developer shall be deemed a violation of the zoning ordinance. If Developer fails to timely complete all of the installation of the Subdivision Infrastructure, in accordance with the Infrastructure Completion Schedule and this Agreement, or if Developer breaches any of its other obligations, agreements or covenants under this Agreement, then the Plan Commission can exercise all legal and equitable rights and remedies under Indiana law, including but not limited to: (a) seeking a mandatory injunction or and/or specific enforcement of Developer's obligations to complete the Subdivision Infrastructure; (b) exercising any remedy allowed by the zoning ordinance or I.C. § 36-7-4, *et seq.*; (c) executing under any Subdivision Improvement Bond provided by Developer under Paragraph 3 above and to have the applicable surety pay the full cost and expense of completing the Subdivision Infrastructure; and/or (d) to withhold any and all remaining ILPs for the Phase until all of the Subdivision Infrastructure is installed. In addition, Developer shall be liable for all costs and expenses, including reasonable attorney fee's incurred by the Plan Commission in securing performance of Developer's development obligations under this Agreement. The Plan Commission's remedies under this Agreement shall be cumulative, not exclusive.

5. **Liability for Performance, Injury or Damage.** Neither the Plan Commission nor any of its officers or agents shall be liable to Developer or its contractors for any error or omission arising out of or in connection with any work to be performed by Developer or its agents or contractors under this Agreement. Additionally, the Plan Commission shall not be liable to the Developer or to any other person, firm or corporation whatsoever, for any injury or damage that may result to any person or property by or from any cause whatsoever in, on, or about the Subdivision covered by this Agreement, or any Phase thereof.

6. **Indemnification and Release.** Developer hereby releases and agrees to indemnify and hold the Plan Commission harmless from and against any and all injuries to and deaths of persons and injuries to property, and all claims, demands, costs, loss, damage and liability resulting directly or indirectly from the performance or non-performance of any of or all work to be done in the Subdivision, or any Phase thereof, pursuant to this Agreement, and also from any and all injuries to and deaths of persons and injuries to property or other interests and all claims, demands, costs, loss, damage and liability either directly or indirectly made or suffered by the Developer, the Developer's agents, employees, and subcontractors while engaged in the performance of the work under this Agreement.

7. **Relationship of Contractors.** It is hereby mutually covenanted and agreed by the parties hereto that the Developer, and Developer's contractors and agents, are not agents of the Plan Commission.

8. **Verification of Satisfactory Completion of Infrastructure.** Upon the completion of the Subdivision Infrastructure by the Developer, the Developer shall verify in writing that all Subdivision Infrastructure has been satisfactorily installed, inspected, and approved. Upon written verification of completion of the Subdivision Infrastructure, the Plan Commission shall notify the Developer of satisfactory completion of the Subdivision Infrastructure and the parties shall execute and record a release of this Agreement from the Real Estate and the Phase.

9. **Assignment and Amendment.** This Agreement shall not be assignable by Developer without the prior written consent of the Plan Commission, which may be withheld in its sole and absolute discretion. This Agreement may not be amended except with the prior written consent of the Plan Commission, which consent may be withheld in its sole and absolute discretion.

10. **Runs with the Land; Successors and Assigns.** This Agreement shall run with the Real Estate and shall bind all successors, assigns or future owners of the Subdivision, and any Phase thereof.

11. **Authority to Enter into Agreement.** The signatories to this Agreement represent and warrant that they each have the authority to enter into this Agreement on behalf of the party for whom they are signing. Each of the parties represents and warrants that it has the legal capacity to enter into this Agreement.

12. **Severability.** Should any portion, word, clause, phrase, sentence or paragraph of this Agreement be declared or determined to be null, void, inoperative, illegal or invalid for any reason, the validity of the remaining parts, terms or provisions shall not be affected thereby and they shall retain their full force and effect, and the null, void, inoperative, illegal or invalid part, term, or provision shall be deemed not to be a part of this Agreement.

13. **No Waiver.** Failure by the Plan Commission to insist on compliance with any term, covenant or condition contained in this Agreement shall not be deemed a waiver of that term, covenant, or condition nor shall any waiver or relinquishment of any right or power contained in this Agreement at any one time or more times be deemed a waiver or relinquishment of any right or power at other time or times.

14. **Language Construed as a Whole.** As used in this Agreement, the singular or plural number shall be deemed to include the other whenever the context so indicates or requires. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the parties.

15. **Execution and Counterparts.** This Agreement may be executed in one or more counterparts and the counterparts signed in the aggregate shall constitute a single original instrument.

16. **Electronic Execution.** The parties agree that this Agreement may be transmitted by them for execution by electronic, portable document format (.pdf) or facsimile transmission. The parties intend that facsimile, .pdf, or electronic signatures on this Agreement shall be binding on them.

17. **Recordation.** This Agreement shall be recorded with the final plat and restrictive covenants for the Phase.

IN WITNESS WHEREOF, this Agreement has been duly executed by the Developer and reviewed and approved by the Plan Commission by their duly authorized representatives on the dates opposite their name.

[THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK]

[SIGNATURE PAGES FOLLOW]

“DEVELOPER”

Date:_____

By:_____

Print Name:_____

Title:_____

STATE OF INDIANA)
) SS:
COUNTY OF _____)

Before me, a Notary Public in and for said County of Allen and State of Indiana,
_____, as _____ of _____, behalf of the said company,
acknowledged the execution of the foregoing or attached Infrastructure Completion Agreement as his/her
voluntary act for the purposes stated therein.

Witness my hand and Notarial Seal this _____ day of _____, 20_____.

My Commission Expires:_____

Signature of Notary Public

Resident of:_____

Commission Number:_____

Printed Name of Notary Public

“PLAN COMMISSION”

ALLEN COUNTY PLAN COMMISSION

Date: _____

By: _____
_____, President

STATE OF INDIANA)
) SS:
COUNTY OF _____)

Before me, a Notary Public in and for said County of Allen and State of Indiana,
_____, as President of the Allen County Plan Commission, behalf of the said
commission, acknowledged the execution of the foregoing or attached Infrastructure Completion Agreement as
his/her voluntary act for the purposes stated therein.

Witness my hand and Notarial Seal this ____ day of _____, 20____.

My Commission Expires: _____

Signature of Notary Public

Resident of: _____

Commission Number: _____

Printed Name of Notary Public

This instrument prepared by Karen Couture. I affirm, under the penalties for perjury, that I have taken
reasonable care to redact each Social Security Number in this document, unless required by Law. /s/

Exhibit A

Plan Commission Secondary Plat Findings

Exhibit B

Legal Description of Real Estate

Exhibit C

Engineer's Estimate and Timeline for Completion of Subdivision Infrastructure