

EXHIBIT A

DEVELOPER'S AGREEMENT

THIS DEVELOPER'S AGREEMENT (this "Developer's Agreement" or this "Agreement") is entered into by and between **NWQ JAYCOX I-90, LLC**, an Ohio limited liability company, hereinafter referred to as "Developer", and the **CITY OF AVON**, Lorain County, Ohio, hereinafter referred to as "City". "Council" shall refer to the City Council of Avon, Lorain County, Ohio, and "City Engineer" shall refer to the City Engineer of the City of Avon or his designee hired to perform services on this project. The term "Development" shall refer to the widening of approximately 600' of Chester Road east of 35765 Chester Road to five (5) travel lanes, (collectively, the "Public Improvements"), as set forth in the plans and specifications submitted and approved by the Planning Commission on June 17, 2015 as part of the Final Development Plan, subject to final approval by the City Engineer.

WHEREAS, the Developer has agreed to construct all of the proposed improvements subject to the City reimbursing it for a portion of the costs associated with the 4th and 5th lanes, viz., the northern and southern travel lanes; and

WHEREAS, the Development requires the construction and acceptance (dedication) of the Public Improvements as set forth in the Final Development Plans approved by Planning Commission on the aforementioned date and subsequently finalized by the City's Engineer; and

WHEREAS, engineering estimates of the cost to construct both the Developer's and the City's respective portions of this Public Improvement have been agreed upon between the Developer and the City Engineer; and

WHEREAS, Developer desires to construct the Public Improvements for the Development under terms of this Developer's Agreement so as to facilitate acceptance of same by the City upon completion; and

WHEREAS, City is willing to agree to such provisions as are necessary for the construction of the Public Improvements and acceptance as set forth herein;

NOW, THEREFORE, THE FOLLOWING IS HEREBY AGREED TO BY AND BETWEEN THE DEVELOPER AND THE CITY OF AVON, LORAIN COUNTY, OHIO:

1. Construction of Public Improvements.

The Developer is to construct and install, according to Final Development Plans, all Public Improvements shown and set forth in the Final Development Plan.

2. Engineer's Estimated Cost of Public Improvements.

The City Engineer has reviewed the estimated costs of construction of Public Improvements (Pavement) as submitted by the Developer's Engineer and concurs with said estimated cost in the aggregate amount of One Million Nineteen Thousand Forty-Four and 50/100 Dollars (\$1,019,044.50), of which amount of Three Hundred Seventy-Four Thousand Seven Hundred Seventeen and 27/100 Dollars (\$374,717.27) shall be the sole responsibility of the City and shall be paid by the City to Developer as provided in this Agreement (the "City Contribution").

3. Performance Bond Agreements.

Prior to commencement of construction of Public Improvements to be accepted by the City, Developer shall provide a financial guarantee of performance to the Finance Director of the City in the form of a Performance Bond Agreement, a copy of which is attached hereto as Exhibit "A-1", in the amount of Six Hundred Forty-Four Thousand Three Hundred Twenty Seven and 23/100 Dollars (\$644,327.23), which is One Hundred Ten (110%) percent of the total of Developer's Engineer's estimate of construction costs, as approved by the City Engineer, less the City Contribution. In lieu of a bond, Developer may provide (a) a letter of credit, drawn on a federally insured financial institution, which names the City as beneficiary, (b) cash, (c)

certificates of deposit conditionally assigned to the City made by a federally insured financial institution (d) a combination of these items, in that total amount, or (e) such other security as is acceptable to the City. This financial guarantee shall be released to Developer upon completion of all Public Improvements to be accepted by the City for the Development to the satisfaction of the City Engineer and upon passage of ordinance by Council accepting the Public Improvements.

4. Deposit for Engineering, Construction Inspection, and Material Testing Fees.

Prior to this Developer's Agreement being placed on Council's agenda for approval by ordinance, Developer will deposit the sum of Sixty-One Thousand One Hundred Forty Two and 67/100 Dollars (\$61,142.67) with the Finance Director of the City to cover Developers Pro Rata Share (as defined below) of the engineering, construction inspection and material testing fees (collectively, the "Inspection Fees") commensurate with the work performed. "Developer's Pro Rata Share" shall be a fraction, the numerator of which is the total project costs less the City Contribution and the denominator of which is the total project cost for the Development. The balance of the Inspection Fees shall be paid or otherwise abated by the City. Should actual expenses exceed the required deposit, the City reserves the right, at any time, to demand additional funds be deposited under this Section to cover Developer's Pro Rata Share of current or future engineering, construction inspection, and material testing fees. Failure to make the required deposit with the Finance Director within seven (7) business days following the Finance Director's written (including email) request shall constitute and be considered cause for the City to suspend any further development work by the Developer until such time as the Developer is in full compliance with this Section. The City shall not accept Public Improvements in the Development until Developer's Pro Rata Share of all engineering, construction inspection and material testing fees as set forth above have been paid.

Any deposit over and above, Developer's Pro Rata Share of the actual expenses for engineering, construction and material testing pertinent to the Development shall be released to the Developer only after the completion of all Public Improvements in the Development to the satisfaction of the City Engineer and acceptance of the Public Improvements by Council.

5. Stabilization Deposit.

The Developer shall not be required to make any deposit with the Finance Director of the City for stabilization costs set forth in ACO §1052.11(b).

6. Stormwater Inspection.

Deferred to future site development

7. Deposit for Legal Fees.

Prior to this Developer's Agreement being placed on Council's agenda for approval by ordinance, the Developer shall deposit the sum of Two Thousand Five Hundred and 00/100 (\$2,500.00) Dollars with the Finance Director of the City to cover Developer's Pro Rata Share of the legal expenses commensurate with the work performed. The balance of legal expenses shall be paid or otherwise abated by the City. Should Developer's share of actual expenses exceed the required deposit, the City reserves the right, at any time, to demand additional funds be deposited under this Section to cover Developer's Pro Rata Share of current or future legal fees. Failure to make the required deposits with the Finance Director within seven (7) business days following the Finance Director's written request shall constitute and be considered cause for the City to suspend any further development work by the Developer until such time as the Developer is in full compliance with this Section. The City shall not accept Public Improvements in the Development until all legal fees have been paid.

Any deposit over and above Developer's Pro Rata Share of the actual legal expenses pertinent to the Development and shall be released to the Developer only after the completion of

all Public Improvements in the Development to the satisfaction of the City Engineer and the City Law Director and acceptance of the Public Improvements by Council.

8. Deposit for Miscellaneous Costs.

In order to provide the City with adequate funds to cover miscellaneous costs incurred by the City relating to the Development, the Developer shall deposit the sum of One Thousand, Five Hundred and 00/100 (\$1,500.00) Dollars with the Finance Director of the City. This deposit shall be made prior to an ordinance to accept Public Improvements pertinent to the Development being placed on Council's agenda for action. This deposit shall be held by the Finance Director for a period of three (3) years from the date of Council's acceptance of the Public Improvements in the Development by ordinance.

9. Indemnification and Liability Insurance.

The Developer hereby agrees to hold the City, its officers, directors, agents and employees harmless and to indemnify them against all claims, expenses and liability as a result of loss or injury arising out of the clearing of land or construction of the Development and Public Improvements. Prior to the commencement of any work on the Development site or construction Developer agrees to provide the City with proof of One Million (\$1,000,000.00) Dollars liability insurance protecting the City from liability arising out of the construction of the Development and related Public Improvements. Developer shall not allow this insurance to expire earlier than the effective period of the maintenance bond to be provided by Developer pursuant to Section 11 of this Agreement, and a copy of the insurance policy shall be provided to and remain with, at all times, the Finance Director of the City.

10. Title Insurance.

In lieu of providing title insurance, Developer warrants to the City that it (the Developer) has good, sufficient and defensible title to the land on which the Public Improvements are to be constructed, and which will be dedicated to the City.

11. Maintenance Bond.

Prior to being placed on Council's agenda for acceptance of Public Improvements in the Development, Developer shall deposit with the Finance Director a three (3) year (measured from the date on which the Public Improvements are accepted by the City) maintenance bond for the Public Improvements in the amount of One Hundred Forty One Thousand Four Hundred Fourteen and 19/100 Dollars (\$141,414.19) Dollars, which represents ten percent (10%) of Developer's Pro Rata Share of the estimated cost of said Public Improvements.

12. Sidewalk Deposit.

To be deposited prior to being placed on Council's agenda for acceptance.

13. Tree Deposit.

Not applicable to this Development.

14. Deposit for Street and Traffic Control Signage and Pavement Markings.

To be deposited prior to being placed on Council's agenda for acceptance.

15. Deposit for Mechanical Traffic Control Devices.

Not applicable to this Development.

16. Areas Within Floodplain.

Not applicable to this Development.

17. Assessments.

Not applicable to this Development.

18. Payment or Satisfaction of Delinquent or Outstanding Obligations.

Unless otherwise specified in this document, prior to this Developer's Agreement being placed on Council's Agenda for approval by ordinance, any monies owed by the Developer to the City, as determined by the Finance Director of the City, and which remain unpaid, shall be paid by the Developer or approved as satisfied by the Finance Director.

19. Miscellaneous Provisions.

(a) Off-Site Public Improvements.

Where applicable, the Developer agrees to construct and install off-site Public Improvements pursuant to plans and specifications approved by the City. The financial guarantees for said off-site Public Improvements have been included in the Performance Bond and Maintenance Bond set forth in this Agreement.

(b) Off-Site Storm Drainage.

Where applicable, the Developer agrees to comply with plans and off-site storm drainage approved by the City Engineer and, prior to the dedication of the Public Improvements to the City, shall perform the clearing and cleaning of ditches and land reasonably necessary at its expense. The City will provide the Developer with access to land owned and controlled by the City for this purpose and the Developer shall be responsible for obtaining licenses or easements on all private lands necessary to satisfy the drainage plans approved by the City Engineer. Any off-site storm drainage must comply with ACO §1050.09(c)(3) and any other applicable sections of the Avon Codified Ordinances.

20. Time for Commencement of Public Improvements; Acceptance by City; and Payment of City Contribution.

(a) Commencement. The Public Improvements are to be commenced within a period of twelve (12) months from Council's adoption of the ordinance approving this Developer's Agreement unless Council extends this period of time by legislative action. In the event that

construction of Public Improvements is not commenced within such twelve (12) month period or within the period pursuant to an extension granted by the City, Developer shall, if requested by the City Engineer, provide new engineering estimates of cost of construction of Public Improvements for the Development and the City Engineer may require, if necessary, the Performance Bond, Maintenance Bond and engineering and legal fee deposits to be updated to reflect the revised City Engineer's estimate of cost.

(b) Acceptance by City. Developer shall advise the City, in writing, when the Public Improvements have been completed (the "Developer's Completion Notice"). Within thirty (30) days following receipt of Developer's Completion Notice, the City Engineer and the City Director of Public Service (hereinafter, "Service Director") shall inspect the Public Improvements and advise Developer, in writing, of any elements or portions of the Public Improvements which, in the opinion of the City Engineer and the Service Director, have not been completed, in accordance with the plans and specifications approved by the Planning Commission, and promptly thereafter Developer, the City Engineer and Service Director shall confer, and mutually agree, as to the work to be undertaken by Developer to cause the Public Improvements to be completed (the "Public Improvements Punchlist Items"). Within fifteen (15) days following completion of the Public Improvements Punchlist Items to the satisfaction of the City Engineer and Service Director, the City Engineer shall issue to Developer a Certificate of Completion with respect to the Public Improvements. Within one (1) month following the date on which the City Engineer issues a Certificate of Completion, the City shall cause an ordinance to be placed on Council's agenda, for acceptance of the Public Improvements.

(c) Payment of City Contribution. Within ten (10) days of receipt of an application for payment as certified by the Developer and confirmed by the City Engineer, the City shall pay to Developer by check or federal wire funds transfer, the portion of the City Contribution sought

by Developer for the portion of the Public Improvements then complete. Within ten (10) days following completion of the Public Improvements and the acceptance of same by the City in accordance with Paragraph 20(b) above, the City shall pay to Developer, by check or federal wire funds transfer the remaining balance of the City Contribution.

If the City fails to pay the amounts due Developer within the applicable ten (10) day periods set forth above, such amounts shall bear interest at the per annum rate of three percent (3%) over the Prime Rate as announced from time-to-time in the financial pages of The Wall Street Journal, from the expiration of the applicable ten (10) day period until such amounts and all accrued interest have been fully paid.

21. Developer's Right of Entry.

Not applicable to this Development.

22. Actual Costs of Public Improvements.

The Developer, prior to passage of ordinance accepting the Public Improvements, shall submit to the Finance Director of the City the actual costs of the Public Improvements. Where applicable, these actual costs shall be itemized as to roadway (length, width, type, unit cost, street name), traffic control (signalization, location, cost), sanitary sewers (length by size, unit cost, street location), storm sewers (length by size, unit cost, street location) water distribution (length by size, unit cost, street location), park/bike trail(s) (if applicable, length, width, unit cost, location) and pump station(s) (if applicable, cost, location, description) that are to be accepted by the City. The costs for these items shall include all incidentals such as hydrants, valves, manholes, catch basins, etc., as necessary to construct the improvement.

23. Engineer's As-Built Documents.

Developer shall file with the City Planning Department as-built documents per City Construction Standards and City Planning Ordinances prior to an ordinance being placed on

Council's agenda for acceptance of Public Improvements in the Development. The as-built documents shall be submitted in hard copy and electronic form. Electronic copy shall be submitted on the appropriate digital media in DWG and PDF formats.

24. Stormwater Drainage Improvement Fund.

Not applicable to this Development.

25. Storm Water Detention and Fee.

Not applicable to this Development.

26. Storm Water Detention Area and Common Areas.

Not applicable to this Development.

27. Maintenance and Repair of Storm Sewers Not Located Within The City Right-of-Way.

Not applicable to this Development.

28. Compliance by Developer as Condition Precedent to Subsequent Development or Phases.

Developer acknowledges and agrees that it will fully comply with all terms and conditions contained herein as a condition precedent for the commencement of any subsequent development or phase of development. The City may withhold approval of any such subsequent development or Public Improvements until such time as the Developer fulfills all the terms, conditions and requirements set out herein.

29. License to Enter Upon Private Streets, Driveways, and Parking Areas.

Not applicable to this Development.

30. Breach of Contract.

The Developer further agrees that any violation of or non-compliance with any of the provisions and stipulations of this Agreement shall constitute a breach of contract. A breach of contract shall also be deemed to have occurred in the event of the Developer's failure to perform

work at the Development for a period of One Hundred Twenty (120) days (subject to extension for delays caused by an event, or events, of force majeure), the Developer's insolvency, appointment of a receiver, filing of a voluntary or involuntary petition in bankruptcy, the commencement of a foreclosure proceeding of a lien against the Development property, or its conveyance in lieu of foreclosure. The City agrees that in the event of a breach, it shall provide Developer with notice thereof in writing. Should Developer fail to remedy the breach, to the satisfaction of the City, within thirty (30) days after receiving notice thereof from the City, the City Engineer shall have the right to stop the work forthwith and use Developer's financial guarantees of performance provided under Paragraph 3 for such purpose, and require Developer to pay any additional amount required to complete the work, provided, however, that if Menard, Inc., a Wisconsin corporation ("Menard") assumes control over the work pursuant to that certain Roadway Improvement Agreement by and between Developer and Menard, the City agrees to refrain from exercising its rights under this Section 30 unless and until Menard commits an act that would be a default under this Agreement if such act were committed by Developer.

31. Preservation and Restoration of Property.

Developer shall maintain the work during construction and until final acceptance by the City. This maintenance shall constitute continuous and effective work prosecuted as required with adequate equipment and forces to the end that the affected roadbeds, road surfaces and structures are kept in satisfactory condition at all times. Developer shall be responsible for all damage or injury to property of any character, including roadbeds and road surfaces, during the prosecution of the work, resulting from any act, omission, neglect or misconduct in Developer's manner of method of executing said work satisfactorily, or due to Developer's non-execution of said work, or at any time due to defective work or materials, and said responsibility shall not be released until the work shall have been completed, and accepted by the City. When or where any

direct or indirect damage or injury is done to public or private property by or on account of any act, omission, neglect or misconduct in the execution of the work or in consequence of the non-execution thereof on the part of Developer, it shall restore, at its own expense, such property to a condition similar or equal to that existing before such damage or injury was done, by repairing, rebuilding, or otherwise restoring as may be directed by the City Engineer or Service Director, or it shall make good such damage or injury, in an acceptable manner.

In the event of any damage or injury to property as stated herein, all deposits and financial guarantees set forth in this Agreement shall be retained by the City and not released until such time as the appropriate repairs are made and acceptable to the City Engineer, Service Director and City Law Director.

32. Ingress and Egress.

Developer shall restrict all movement of loads, vehicles and other equipment into and from site in strict accordance with a route approved by the Service Director. All ingress and egress into the Development during construction of the Public Improvements shall be made through the designated construction entrance(s).

33. Cleaning Up.

During construction, the Developer shall keep the site of the work and adjacent premises as free from material, debris and rubbish as is practicable and shall remove this waste entirely and at once, if, in the opinion of the Service Director, such material, debris or rubbish constitutes a nuisance, a safety hazard or is objectionable in any way to the public.

Upon completion and before final acceptance of the work, the Developer shall remove from the site of the work and adjacent premises all machinery, equipment, surplus materials, excavated and useless materials, rubbish, temporary buildings, barricades and signs, and shall

restore the site to the same general conditions that existed immediately prior to the commencement of its operations.

The Developer shall clean off all cement streaks or drippings, paint smears or drippings, rust stains, oil, grease, dirt, and any other foreign materials deposited or accumulated on any public or private property caused by Developer.

In the event Developer fails to comply with its obligations as set forth herein, the City shall perform the necessary work to accomplish the clean up set forth herein and shall charge the Developer for said work. Weekly erosion control inspections by a CESSWI or CPESC certified inspector must be completed in accordance with ACO §1050.151. Any issues arising out of these inspections or out of inspections conducted by City staff must be resolved pursuant to ACO §1050.21.

In the event of non-compliance and failure to cure after notice from the City, all deposits and financial guarantees set forth in this Agreement shall be retained by the City and not released until such time as the appropriate clean up is made and acceptable to the City Engineer, Service Director and City Law Director. Nothing in this section shall preclude the City from seeking fines or other remedies associated with violations of any provisions of Chapter 1050.

34. Warranty Against Defects.

Developer shall warrant all Public Improvements to be free from defects and shall be responsible for Developer's Pro Rata Share of the cost of all necessary repairs or modification to the Public Improvements for a period of three (3) years from acceptance of dedication of the Public Improvements by the City. If the Developer fails to meet the warranty obligations in a timely manner, the City may contract with any other party for the necessary work or use its own employees to perform the work and be reimbursed by the Developer or, if sufficient funds are available, to draw upon the financial guarantees provided in this Agreement.

35. City Ordinance and Regulations, Survival of Agreement, Non-Waiver.

Nothing in this Developer's Agreement shall constitute a waiver of the rights of the Parties, including local government sovereign immunity. All City Ordinances and Regulations not inconsistent with this Agreement shall remain in full force and effect, and shall be binding upon and control construction and development of the Development, and nothing contained in this Agreement, nor acceptance of dedication of Public Improvements by the City, shall limit the effect of same, including, but not limited to, if applicable, design and construction, planting of trees, street lighting, conveyance of required easements, payment of storm drainage fees, park fees, sewer tap fees, and any other requirements of the Codified ordinances of the City.

36. A.D.A. Compliance.

Developer shall fully comply with all relevant requirements of the Americans with Disabilities Act (the "A.D.A.") and all site improvements subject to the A.D.A. must be approved prior to construction by the City of Avon A.D.A. Coordinator.

37. Severability Clause.

If any part, clause, provision or condition of this Developer's Agreement is held to be void, invalid, or inoperative, such party, clause, provision or condition will be severed and will not render invalid the remaining portions of this Agreement.

38. Obligation to Notify.

Not applicable to this Development.

39. Addresses of Parties for Purpose of Notice.

All notices and communications between parties pursuant to this Agreement shall be in writing and shall be made upon the City through the Office of the Mayor, Avon City Hall, 36080 Chester Road, Avon, Ohio 44011, and upon the Developer, NWQ Jaycox I-90 LLC, 25425

Center Ridge Road, Cleveland, Ohio 44145-4122 (Attention: Carl Frey), or to such alternate address as may be specified by either Party pursuant to a notice to the other Party.

40. Parties Bound.

This Agreement shall be binding upon and inure to the benefit of the Developer, its builders, contractors, subcontractors, its executors, administrators, agents and assigns and shall further be binding upon and inure to the City and its assigns.

41. Modification or Amendment.

This Developer's Agreement shall not be modified or amended except by a written instrument signed by Developer or Developer's assignee, if any, and the Mayor or other authorized agent of the City and approved by vote of a majority of the members of City Council.

IN WITNESS WHEREOF, this Developer's Agreement is executed this ____ day of _____, 2015.

WITNESSES:

NWQ JAYCOX I-90 LLC,
an Ohio limited liability company

By: REJ Realty LLC, its Manager

By: _____
Kristine M. McGivney,
its Treasurer

CITY OF AVON

By: _____
Bryan K. Jensen, Mayor

By: _____
Craig Witherspoon, Council President

Approved as to Form:

John A. Gasior, Esq.
Law Director
City of Avon