

EXHIBIT A

SUBDIVIDER'S AGREEMENT

THIS AGREEMENT ("Subdivider's Agreement") is entered into by and between **LDC MASS ESTATES, LLC**, an Ohio Limited Liability Company, hereinafter referred to as "Subdivider", and the **CITY OF AVON**, Lorain County, Ohio, hereinafter referred to as "City". "Council" as referred to herein, shall be the City Council of Avon, Lorain County, Ohio, and "City Engineer" shall refer to the City Engineer or the City's Consulting Engineer hired to perform services on this project. The term "Subdivision" shall refer to the land being developed as set out in the Final Plat as approved by Planning Commission.

WHEREAS, said Subdivision requires the construction of public improvements i.e., those improvements required to be installed in the existing right of way or in right of way to be dedicated to and accepted by the City at the completion of construction of the public improvements in easements acquired by the Subdivider, or in easements or rights of way to be acquired by the City; and

WHEREAS, on September 16, 2020, the Planning Commission granted contingent approval of the Final Plat for The Reserve at Mass Estates Subdivision consisting of Thirty-Seven (37) sublots (hereinafter "Subdivision") by a vote of Five (5) to Zero (0). Final approval occurred on December 14, 2020; and

WHEREAS, engineering estimates to construct these public improvements have been agreed upon between the Subdivider and the City Engineer; and

WHEREAS, Subdivider desires to construct these public improvements for this Subdivision under terms of this Subdivider's Agreement; and

WHEREAS, the City and Subdivider have agreed to undertake the repaving and

widening of Williams Ct. under the terms of this Subdivider's Agreement; and

WHEREAS, the City is willing to agree to such provisions as are necessary for the construction of these public improvements in two (2) phases as set forth herein.

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

1. Construction of Public Improvements.

The Subdivider and the City, but only to the extent the City has agreed to repave and widen Williams Ct., agree to construct and install all public improvements shown and set forth on the Final Development Plans for The Reserve at Mass Estates Subdivision ("Final Plat") according to the plans and specifications contained therein, which were submitted to the City, presented to the Planning Commission, contingently approved on September 16, 2020, finalized on December 14, 2020 and are on file with the City's Planning Commission and incorporated herein by reference (the "Final Development Plans"). The work shall be completed in two (2) phases as set forth in the Final Development Plans:

- (a) The parties acknowledge and agree that Subdivider has acquired all easements it is required to obtain under the Final Development Plans hereunder, submitted proof of its acquisition of the easements to the City and has no further obligation to secure any additional easements.
- (b) Subdivider shall be responsible for the construction and installation of all Phase 1 Public Improvements in accordance with the Final Development Plans.
- (c) As shown on the Final Development Plans, the Subdivider's Phase 2 Public Improvements shall consist of the (i) Williams Ct. storm sewers on the east side of Williams Ct., sanitary and water laterals, linear grading, curb and gutter, stone base course and trench repair with asphalt cap and (ii) the 362 lineal feet of

sanitary sewer extension south of sanitary manhole #5. Open cut trenches repaired with seven inches (7") asphalt base course shall be allowed across Williams Ct. in advance of City paving or enclosing ditches. Trench repairs shall not be required if the City decides to rebuild rather than resurface Williams Ct.

- (d) Subdivider shall complete the construction and installation of the Phase 1 Public Improvements for Schwartz Road and Williams Ct. as a prerequisite to obtaining acceptance of public improvements in Phase 1. It is understood and agreed that Subdivider is not required to wait for the completion of the Phase 2 Public Improvements before the City passes legislation accepting the Final Plat for The Reserve at Mass Estates Subdivision. Once the Subdivider files the Final Plat, Lots 1-28, 36, and 37 will be eligible to be sold.
- (e) Subdivider shall complete the construction and installation of the Phase 2 Public Improvements prior to the City beginning to repave or enclose ditches on the west side of Williams Ct.
- (f) Absent an event of force majeure materially impacting the City's ability to complete the work on time, the City shall complete the repaving and widening of Williams Ct. by November 1, 2022. Subdivider's completion of Phase 2 public improvements and acceptance thereof by the City and the City's completion of repaving of Williams Ct. will be prerequisites to the Subdivider's sale of any or all of Lots 29-35.
- (g) The City acknowledges and agrees that its failure to complete the repaving and widening of Williams Ct. as provided in subsection (f) above will cause damage to Subdivider. Should the City fail to perform its obligation to complete the repaving and widening of Williams Ct. within the time set forth in subsection (f),

above, Subdivider shall have the right to elect either or both of the following remedies:

- i. Subdivider shall have the right to sell any or all Lots 29-35 without waiting for the completion and acceptance of the Phase 2 Improvements; and
 - ii. Subdivider shall have the right to do the work itself and the City shall compensate Subdivider all its actual costs and expenses consistent with the terms of this Subdivider's Agreement. If the City had not been successful in securing all property rights necessary for the widening of Williams Ct. to the west side in accordance with the timeline set forth in Subsection 1(f) above, Subdivider may choose to only do the work up to the currently existing right of way.
- (h) The City Engineer shall make all inspections and determinations needed for the acceptance of the Phase 1 and Phase 2 Improvements in a reasonable and prompt manner, and the City shall not unreasonably withhold or delay the acceptance of the Phase 1 and Phase 2 Improvements.

2. Engineer's Estimated Cost of Public Improvements.

The City Engineer has reviewed the estimated costs of construction of public improvements as submitted by the Subdivider's Engineer and concurs with said estimated cost in the aggregate amount of One Million Six Hundred Twenty-Nine Thousand Nine Hundred Forty-Four and 60/100 (\$1,629,944.60) Dollars, of which One Million Two Hundred Sixty-Six Thousand Seven Hundred Seventy and 10/100 (\$1,266,770.10) Dollars is for Phase 1 Improvements and Three Hundred Sixty-Three Thousand One Hundred Seventy-Four and

00/100 (\$363,174.00) Dollars is for Phase 2 Improvements.

3. Performance Bond Agreement.

After Council approves an ordinance authorizing this Subdivider's Agreement but prior to the commencement of construction of public improvements, Subdivider shall request a preconstruction meeting. Forty-Eight (48) hours prior to the preconstruction meeting, the Subdivider shall provide a financial guarantee of performance to the Finance Director of the City of Avon in the form of a Performance Bond, a copy of which is attached hereto as Exhibit A-1, in the amount of One Million, Seven Hundred Ninety-Two Thousand Nine Hundred Thirty-Eight and 40/100 (\$1,792,938.40) which is One Hundred Ten (110%) percent of the total Engineer's estimate of costs. In lieu of a bond, (a) a letter of credit, drawn on a federally insured financial institution, payable to the City, (b) cash, (c) certificates of deposit conditionally assigned to the City made by a federally insured financial institution or (d) a combination of these items, in that total amount, may be delivered to the City. No construction of public improvements shall commence until said financial guarantee of performance has been provided to, and approved by, the Finance Director. This financial guarantee shall be released to Subdivider upon completion of all public improvements to be accepted by the City for this Subdivision to the satisfaction of the City Engineer and upon passage of an ordinance by Council accepting the final phase of construction of the public improvements.

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

Prior to this Subdivider's Agreement being placed on Council's agenda for approval by Ordinance, the Subdivider shall deposit the sum of Ninety-Seven Thousand Seven Hundred Ninety-Six and 64/100 (\$97,796.64) Dollars with the Finance Director of the City of Avon to cover the engineering fees commensurate with the work performed, including construction inspection and material testing fees. 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 current or future engineering, construction inspection, and material testing fees. Failure to make the required deposits with the Finance Director within three (3) business days of said Director's written request shall constitute and be considered cause for the City to suspend any further development work by the Subdivider until such time as the Subdivider is in full compliance with this Section. The City shall not accept public improvements in any Subdivision until all engineering, construction inspection and material testing fees have been paid in full.

Any deposit over and above actual expenses for engineering, construction inspection, and material testing shall be released to the Subdivider after the completion of all public improvements for the Subdivision to the satisfaction of the City Engineer.

5. Stabilization Deposit.

Prior to this Subdivider's Agreement being placed on Council's agenda for approval by Ordinance, the Subdivider shall deposit the sum of One Thousand Eight Hundred Fifty and 00/100 (\$1,850.00) Dollars (\$50 x 37 sublots) with the Finance Director of the City of Avon for stabilization costs set forth in ACO §1052.11(b). The deposit will be refunded by the Finance Director upon verification by the Service Director that the site has been stabilized in compliance with the Codified Ordinances of the City of Avon.

6. Stormwater Inspection Fee.

Prior to this Subdivider's Agreement being placed on Council's agenda for approval by Ordinance Contemporaneous with its submission of the application for the initial building permit, the Subdivider shall remit the sum of One Thousand Five Hundred (\$1,500.00) Dollars to the Finance Director of the City of Avon for the stormwater inspection fee required under ACO §1052.11(c).

7. Deposit for Legal Fees.

Prior to this Subdivider's Agreement being placed on Council's agenda for approval by ordinance, the Subdivider shall deposit the sum of Five Thousand and 00/100 (\$5,000.00) Dollars with the Finance Director of the City of Avon to cover the legal expenses commensurate with the work performed. 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 current or future legal fees. Failure to make the required deposits with the Finance Director within three (3) business days of said Director's written request shall constitute and be considered cause for the City to suspend any further development work by the Subdivider until such time as the Subdivider is in full compliance with this Section. The City shall not accept public improvements in any Subdivision until all legal fees have been paid in full.

Any deposit over and above actual legal expenses shall be released to the Subdivider after the completion of all public improvements for the Subdivision to the satisfaction of the City Engineer and the Law Director.

8. Deposit for Miscellaneous Costs.

In order to provide the City with adequate funds to cover miscellaneous costs incurred by the City relating to this Subdivision, the Subdivider shall deposit the sum of Five Thousand and 00/100 (\$5,000.00) Dollars with the Director of Finance of the City of Avon. This deposit shall be made prior to an ordinance to accept the Final Plat and Phase 1 public improvements being placed on Council's agenda for action. This deposit shall be held by the Director of Finance for a period of three (3) years from the date of Council's acceptance of all public improvements in said Subdivision by ordinance.

9. Indemnification and Liability Insurance.

The Subdivider hereby agrees to hold the City of Avon, 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 Subdivision and public improvements that are performed by Subdivider.

Prior to the commencement of any construction on the Subdivision site, Subdivider 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 development of the Subdivision and all public improvements performed by Subdivider. Subdivider shall not allow this insurance to expire earlier than the effective period of any maintenance bond, and shall provide a copy of the insurance policy to remain, at all times, with the Director of Finance of the City.

10. Title Insurance.

Prior to recording of the final Plat, the Subdivider shall furnish title insurance in the amount of One Hundred Thousand (\$100,000.00) Dollars, covering the lands to be dedicated to the City of Avon as indicated on the final Plat and showing the unencumbered legal title to such dedicated lands in the name of the City when the final Plat is filed for record.

11. Maintenance Bond.

Prior to an ordinance being placed on Council's agenda for acceptance of the public improvements in Phase 1 of the Subdivision and acceptance of the Final Plat for recording, Subdivider shall deposit with the Director of Finance a Three (3) year maintenance bond for the public improvements performed by Subdivider in Phase 1 in the amount of One Hundred Twenty-Six Thousand Six Hundred Seventy-Seven and 00/100 (\$126,677.00) Dollars, which represents ten percent (10%) of the estimated cost of said public improvements. (The actual bond amount will be ten percent (10%) of the Actual Cost of Public Improvements as described in Section 22 below). Prior to an ordinance being placed on Council's agenda for acceptance of the public improvements in Phase 2 of the Subdivision, Subdivider shall deposit with the Director of Finance a Three (3) year maintenance bond for the public improvements performed

by Subdivider in Phase 1 in the amount of approximately Thirty-Six Thousand Three Hundred Seventeen and 00/100 (\$36,317.00) Dollars, which represents ten percent (10%) of the estimated cost of said public improvements. (The actual bond amount will be ten percent (10%) of the Actual Cost of Public Improvements as described in Section 22 below).

12. Sidewalk Deposit.

Subdivider's estimated cost for sidewalks in Phase 1 and Two is One Hundred Fifty-Two Thousand Seven Hundred and 00/100 (\$152,700.00) Dollars. Should sidewalks not be completed at the time of acceptance of public improvements in either Phase by City Council, the Subdivider shall deposit with the Office of the Director of Finance a cash deposit in the amount of Two Hundred Twenty-Nine Thousand Fifty Dollars and 00/100 (\$229,050.00) Dollars, which represents 150% of the Subdivider's estimate for construction of sidewalks. This deposit must be made prior to Council placing an ordinance on its agenda to accept public improvements and the Final Plat in Phase 1 of the Subdivision. The Subdivider will be entitled to incremental refunds of 25% of the total amount deposited upon installation of each quarter ($\frac{1}{4}$) of the total sidewalk to be installed and upon verification of same by the Service Director.

Subdivider must install sidewalks throughout the Subdivision within Thirty (30) months of the date on which the City passes an ordinance accepting all public improvements. In the event that sidewalks are not installed within this period, the sidewalk deposit may be forfeited and the City may install the sidewalks and charge to the Subdivider any additional costs incurred not covered by the sidewalk deposit.

13. Tree Deposit.

Prior to an ordinance being placed on Council's agenda for acceptance of public improvements in Phase 1 and the Final Plat of this subdivision, Subdivider will deposit with the Finance Director of the City of Avon the sum of Five Thousand Five Hundred and 00/100

(\$5,500.00) Dollars (\$150 x 37) for the planting of One (1) tree per subplot, as set forth in ACO §1244.12(e)(1)(B). The deposit will be refunded by the Finance Director upon completion and acceptance of Phase 2 and verification by the Service Director that trees have been planted in compliance with this Agreement and the Codified Ordinances of the City of Avon.

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

Prior to an ordinance being placed on Council's agenda for acceptance of public improvements in Phase 1 and the Final Plat of this subdivision, Subdivider shall deposit with the Director of Finance the amount of One Thousand Eight Hundred Fifty and 00/100 (\$1,850.00) Dollars (37 lots x \$50.00 per lot) for the placement of traffic control devices as set forth in ACO §1244.12(e)(7). The deposit shall be held by the City for a two (2) year period commencing with the passage of the ordinance accepting all of the public improvements related to this Subdivision. This sum shall be expended by the City exclusively for the costs of placement of street and traffic control signage and pavement markings as shall be determined by the Director of Public Safety, within the Subdivision and shall be based on current City Standards. At the expiration of this Two (2) year period, any amount remaining on deposit with the City shall be refunded to the Subdivider with the approval of the Safety Director.

15. Deposit for Mechanical Traffic Control Devices.

The Subdivider is not installing any mechanical traffic control devices in this Subdivision. As such, Subdivider will not be required to post a deposit for mechanical traffic control devices.

16. Sublots Within Floodplain.

The Subdivider has received a Conditional Letter of Map Revision (CLOMR) from the Federal Emergency Management Agency (FEMA) dated October 28, 2019 (Case No. 19-05-4299R) for the Subdivision indicating that if the project is constructed as proposed, the effective

Flood Insurance Study (FIS) report and Flood Insurance Rate Map (FIRM) could be revised and the proposed sublots will not be within a Special Flood Hazard Area (SFHA). The Subdivider agrees to submit the required data and request a Letter of Map Revision (LOMR) from FEMA prior to an ordinance being placed on Council's agenda for acceptance of the Final Plat and public improvements in Phase 1 of this Subdivision. The Subdivider must comply with all design standards set forth in Chapters 1050, 1051 and 1464 of the Avon Codified Ordinances.

17. Model Homes.

The City of Avon hereby grants Subdivider an exception to the City's subdivision regulations and will allow a building permit for the construction of Three (3) model homes in Phase 1 of the Subdivision prior to acceptance of dedication of public improvements by City Council in said phase. However, prior to the issuance of said building permits, Subdivider must have completed mass grading of the subplot of the model home(s). A sidewalk shall be constructed in front of the model home(s) immediately upon completion of the model home(s). No occupancy permit will be issued for the model home(s) until construction of all public improvements in that Phase of the Subdivision are completed, and an ordinance accepting the dedication of public improvements in the Subdivision is passed by City Council.

18. Payment or Satisfaction of Delinquent or Outstanding Obligations.

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

19. Time for Commencement of Public Improvements

The Public Improvements are to be commenced within a period of twelve (12) months from Council's adoption of the ordinance approving this Subdivider'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, the City may consider this agreement terminated. However, Subdivider 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.

20. Acceptance by City. Subdivider shall advise the City, in writing, when the Public Improvements performed by Subdivider have been completed (the " Subdivider's Completion Notice") in Phase 1 and in Phase 2. Within thirty (30) days following receipt of Subdivider's Completion Notice of either phase, the City Engineer and the City Director of Public Service (hereinafter, "Service Director") shall inspect the Public Improvements performed by Subdivider and advise Subdivider, 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 Subdivider 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 Subdivider a Certificate of Completion with respect to the Public Improvements to be performed by Subdivider. 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.

21. Actual Costs of Public Improvements.

The Subdivider, prior to passage of an ordinance accepting public improvements in either Phase 1 or Phase 2, shall submit to the Finance Director of the City the actual costs of public improvements performed by Subdivider in that Phase itemized as to roadway (length, width, type, unit cost, street name), traffic control (unit cost, street location), 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), 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 public improvements.

22. Engineer's As-Built Documents.

Subdivider 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 either phase of this Subdivision. The as-built documents shall be submitted in hard copy and in electronic form. Electronic copy shall be submitted on the appropriate digital media in DWG and PDF formats.

23. Stormwater Drainage Improvement Fund.

Contemporaneous with its submission of the application for the initial building permit, Subdivider shall remit to the Director of Finance the sum of Twenty-Four Thousand Nine Hundred Twenty-Seven and 69/100 (\$24,927.69) Dollars (\$979.35 x 25.4533 acres). This payment shall be placed into City Fund No. 273 in accordance with ACO §1050.17(b).

24. Stormwater Detention Fee.

The City's stormwater detention fee for this Subdivision is calculated to be \$116,530.53. (proposed subplot and right of way area of 24.8395 acres x \$4,691.34 per acre.) Due to the

location of this Subdivision, the City Engineer requires construction of various on-site stormwater control measures (SCMs) and Subdivider agrees to install and construct said SCMs pursuant to plans and specifications approved by the City of Avon. The City Engineer has reviewed the estimated cost of the SCMs as submitted by the Subdivider's Engineer and concurs with said estimated cost at \$154,399.75, which cost is in excess of the Stormwater Detention Fee (\$154,399.75 – \$116,530.53 = -\$37,869.21). As such, the Engineer's estimated for the cost of construction of on-site storm SCMs, including the cost of land, exceeds the storm water detention fee for this Subdivision. Therefore, pursuant to Ordinance No. 133-16, no storm water detention fee shall apply.

25. Homeowner's Association, Stormwater Management Easements and Sign Easements.

Subdivider shall form a Homeowner's Association (HOA) for The Reserve at Mass Estates Subdivision. Prior to an ordinance being placed on Council's agenda for acceptance of the Final Plat and public improvements in Phase 1 of this Subdivision, the rules or bylaws of the HOA shall be approved by the Director of Law of the City, and reference to the rules or bylaws of the HOA shall be contained in the recorded Plat. Conveyance of sublots shall contain deed restrictions referring to the requirement of membership in the HOA. Recording of the HOA rules or bylaws shall be a condition precedent to issuance of Building Permits.

The Final Plat for The Reserve at Mass Estates Subdivision identifies Stormwater Management Easements over Block A and Block B. The Subdivider shall convey Block A and Block B to the HOA, which shall enter into an Inspection and Maintenance Agreement ("Inspection Agreement") for SCMs with the City of Avon in accordance with ACO §1050.08(5)(10) and shall be responsible for inspection and maintenance activities within the Stormwater Management Easements, including the establishment of a special fund approved by the City Engineer and Law Director for such purposes, as defined in the Inspection Agreement.

The Final Plat for The Reserve at Mass Estates Subdivision identifies Sign Easements within Sublot 1 and Sublot 17 for the purposes of erecting subdivision identification signage and related lighting and landscaping. After initial construction, the HOA shall be responsible for the maintenance of said signage, lighting, and landscaping within the Sign Easements in accordance ACO §1290.14.

26. Storm Sewer Easements

The Final Plans for The Reserve at Mass Estates Subdivision identifies Storm Sewer Easements not located within the City right-of-way along the common property line of Sublots 1 through 12, 21 and 22, and the common property line of Sublots 25 and 26. The HOA shall be responsible for the maintenance and repair of the storm sewers located within these Storm Sewer Easements and, upon notice to the respective property owners, shall have the right to enter upon the Subdivision lands and perform any repairs deemed necessary to avoid or abate any conditions which obstruct the flow of storm water in order to assure proper drainage. Property owners may install landscaping within the Storm Sewer Easements but shall keep free and clear of fences, structures, or other improvements. If the City is required to act under the provisions set forth herein or in the HOA, the City shall only be responsible for restoring lawns within the Storm Sewer Easement.

27. Breach of Contract.

The Subdivider further agrees that any violation of or non-compliance with any of the provisions and stipulations of this Subdivider's Agreement shall constitute a breach of contract. A breach of contract shall also be deemed to have occurred in the event of the Subdivider's failure to perform work at the Subdivision for a continuous period of One Hundred Twenty (120) days, the Subdivider's insolvency, appointment of a receiver, filing of a voluntary or involuntary petition in bankruptcy, the commencement of a foreclosure proceeding on a lien against the

Subdivision property, or its conveyance in lieu of foreclosure. The City agrees that in the event of a breach, it shall provide Subdivider with notice thereof in writing. Should Subdivider 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, should the City desire to do so, use Subdivider's guarantees of performance for the purpose of completing the work and require Subdivider to pay any additional amount required to do so. The City shall also have the right to terminate the project.

28. Preservation and Restoration of Property.

Subdivider shall maintain the work during construction and until final acceptance. This maintenance shall constitute continuous and effective work prosecuted as required with adequate equipment and forces to the end that the roadbeds, road surfaces and structures are kept in satisfactory condition at all times. Subdivider's failure to perform work at the Subdivision for a continuous period of One Hundred Twenty (120) days shall constitute a breach of contract pursuant to Section 27.

Subdivider 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 its manner or method of executing said work satisfactorily, or due to its 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. 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 Subdivider, Subdivider 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,

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 Subdivider's 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 and Law Director.

29. Ingress and Egress.

Subdivider shall restrict all movement of loads, vehicles and other equipment into and from the site in strict accordance with a route approved by the City Service Director.

30. Cleaning Up.

During the construction, the Subdivider 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 City, 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 Subdivider shall remove from the site of the work and adjacent premises all machinery, equipment, surplus materials, falsework, excavated and useless materials, rubbish, temporary buildings, barricades and signs, and shall restore the site to the same general conditions that existed prior to the commencement of its operations.

The Subdivider 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 portion of its work, or existing work, due to its operations.

In the event Subdivider fails to comply as set forth herein, the City may perform the necessary work to accomplish the clean up set forth herein and shall charge the Subdivider, the Subdivider's Bond or take other action deemed necessary for the recovery of such funds

expended by the City for said work.

In the event of non-compliance as stated herein, all deposits and financial guarantees set forth in this Subdivider's 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 and Law Director.

31. Warranty Against Defects.

Subdivider shall warrant all Subdivision public improvements performed by Subdivider to be free from defects and shall make all necessary repairs or modification to the Subdivision for a period of Three (3) years from acceptance of dedication of public improvements of the final phase of the Subdivision by the City of Avon. If the Subdivider fails to meet the warranty obligations in a timely manner, the City of Avon may contract with any other party for the necessary work or use its own employees to perform the work and to be reimbursed by the Subdivider or, if sufficient funds are available, to draw upon the financial guarantees provided in this Agreement.

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

Nothing in this Subdivider'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 Subdivider's Agreement shall remain in full force and effect, and shall be binding upon and control construction and development of the Subdivision, and nothing contained in this Subdivider's Agreement, nor acceptance of dedication of public improvements by the City, shall limit the effect of same, including, but not limited to, 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.

33. A.D.A. Compliance.

Subdivider shall fully comply with all relevant requirements of the Americans with Disabilities Act and all site public improvements subject to this law must be approved prior to construction by the City of Avon A.D.A. Coordinator.

34. Severability Clause.

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

35. Obligation to Notify.

Subdivider shall notify, in writing, any transferee of the Subdivision or any lot located in the Subdivision of the existence, terms and conditions contained in this Subdivider's Agreement and any easements or restrictions required hereunder. The Subdivider shall provide the City with a copy of said written notification immediately thereafter.

36. Addresses of Parties for Purpose of Notice.

All notices and communications between parties pursuant to this Agreement shall be made upon the City through the Office of the Mayor at Avon City Hall, 36080 Chester Road, Avon, Ohio 44011, and upon the Subdivider at 28045 Ranney Parkway, Suite E, Westlake, Ohio 44145.

37. Parties Bound.

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

38. Modification or Amendment.

This Subdivider's Agreement shall not be modified, amended or assigned except by a written instrument signed by Subdivider, the Subdivider's Assignee, and the Mayor or other

authorized agent of the City of Avon and approved by vote of a majority of the members of City Council.

39. Applicable Law and Venue. This Subdivider's Agreement shall be subject to and governed by the laws of the State of Ohio and any dispute between the parties shall be filed in Lorain County, Ohio.

40. Counterparts. This Subdivider's Agreement may be executed in any number of counterparts as may be convenient or necessary, and it shall not be necessary that the signatures of both parties hereto be contained on any one counterpart hereof. Additionally, the parties hereto agree that for purposes of facilitating the execution of this Subdivider's Agreement, (a) the signature pages taken from the separate individually executed counterparts of this Agreement may be combined to form multiple fully executed counterparts and (b) signatures provided by facsimile or in Adobe Portable Document Format (PDF) sent by electronic mail shall be deemed to be original signatures for all purposes. All executed counterparts of this Subdivider's Agreement shall be deemed to be originals, but all such counterparts taken together or collectively, as the case may be, shall constitute one and the same agreement.

41. Calculation of Time. To calculate any time period set forth in this Subdivider's Agreement that is stated in days or a longer unit of time: (a) exclude the day of the event that triggers the period (for instance, if a time period is 14 days from an approval, exclude the day of the approval); (b) count every day, including intermediate Saturdays, Sundays, and legal holidays; and (c) include the last day of the period, but if the last day is a Saturday, Sunday, or a Legal Holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or Legal Holiday. This methodology shall apply to such time-period calculations under this Subdivider's Agreement no matter how the period is stated. For instance, a time period that is stated to run 14 days of an event shall be equivalent to a time period that is stated as 14 days

after an event.

IN WITNESS WHEREOF, this Subdivider’s Agreement is executed at Avon, Ohio, this _____ day of _____, 2020.

WITNESSES:

LDC MASS ESTATES, LLC

By: _____
Thomas J. Kuluris, Manager

CITY OF AVON

By: _____
Bryan K. Jensen, Mayor

By: _____
Brian Fischer, Council President

Approved as to Form

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

Fiscal Officer’s Certificate

This is to certify that the amounts needed to meet the obligations of the City of Avon, Ohio, under this Agreement have been lawfully appropriated for such purposes and are in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances.

By: _____
Bill Logan, Finance Director