

DEVELOPMENT AGREEMENT

This DEVELOPMENT AGREEMENT (the “Agreement”) is made and entered into this ____ day of ____, 2022 (the “Effective Date”), by and between AVON, OHIO an Ohio Municipal Corporation, having a mailing address of _____(the “City”) and CONCORD VILLAGE PHASE TWO, LLC, an Ohio limited liability company, having a mailing address of 3401 Enterprise Pkwy, Suite 205, Beachwood, Ohio 44122 (“Developer”).

RECITALS:

WHEREAS, Developer is the owner or authorized representative of property located off of Chester Road within the City of Avon, Lorain County, Ohio (the “Developer Property”), as more specifically set forth in the legal description or depiction attached hereto as Exhibit “A” and incorporated herein by reference; and known as Permanent Parcel 0400009000181; and

WHEREAS, the Developer Property is currently zoned both M-1 General Industrial (“M-1”) and R-3 Multi-Family (“R-3”); and

WHEREAS, Developer proposes to construct a housing development on a portion of the Developer Property (the “Development”) to be Concord Village Phase Three, in accordance with Chapter 1264 of the City of Avon Codified Ordinances (“Chapter 1264”), requiring rezoning of 7.89 acres of the Developer Property from M-1 and to R-3 for a total of 8.3 acres of the Developer Property to be zoned R-3 (the “Development Property”) and the remaining 4.20 acres to remain M-1; and

WHEREAS, Developer intends to donate the 4.20 acres of the Developer Property that will remain zoned M-1 (the “Donation Property”) to the City;

WHEREAS, the City has determined that legitimate public interests will be served in the proposed Development, as further conditioned by this Agreement, by: providing residences meeting the purposes and criteria of the zoning code; by improving the value and usage of presently underutilized property; through controlled development that achieves a balance between housing density and green space consistent with Avon land use and development policies; and

WHEREAS, the City desires to enter into this Agreement with Developer to ensure the public interest is protected and the Developer Property shall only be so used as set forth in this Agreement; and

WHEREAS, the parties desire to enter into this Agreement in order to set forth the respective rights, agreements and obligations of the parties as more fully provided herein.

WITNESSETH:

For and in consideration of the covenants herein contained, and upon the terms and conditions herein set forth, the City and Developer hereby agree as follows:

1. **Council Approval.** Each party shall take such steps that are necessary and advisable to place the Development and rezoning of the Development Property to R-3 and final development plans on the City Planning Commission and Council Agendas to permit the City Planning Commission and Council to act on all matters relating thereto as soon as their schedules of regularly scheduled meetings permit. The rezoning proposal and the amendment of the General Development Plan in accordance with the plans attached hereto as Exhibit “B” which are incorporated herein by reference (the “Plans”) shall be on the City Planning Commission Agenda and acted upon by the City Planning Commission by mid-March. If the approval and recommendation to the City Council of the rezoning of the Development Property to R-3, recommendation to the City Council of this Agreement, and the approval of the amendment of the General Development Plan in accordance with the Plans by the City Planning Commission are received by mid-March, the rezoning will proceed to be placed on the Council Agenda for the obligatory readings at each succeeding Council Meeting. Upon the final reading Council shall vote on the rezoning as well as this Agreement.
2. **Construction of Improvements.** Developer shall construct and install the Development in a good and workmanlike manner, according to all applicable City codes and specifications and in substantial conformance with the Plans. All required applications shall be submitted and fees paid in accordance with applicable laws, rules, regulations, codes and ordinances, in effect on the Effective Date. All permits necessary for the Development shall be issued by the City, subject to Developer’s qualifying therefor, as soon as practicable after submittal and in the usual course of business. This section is inclusive of any public improvements (ie. public water lines) which will also be subject to a separate developer agreement and ordinance to accept said public improvements upon completion.
3. **Timing of Improvement and Development.** Developer shall Commence Work upon the Development no later than twelve (12) months after rezoning of the Development Property to R-3 has become effective. In the event that Developer is unable at any time to meet the timing set forth above through no fault of its own, the parties shall meet to discuss an agreed upon extension of up to twelve (12) months, which shall not be unreasonably withheld from the City. Adverse economic conditions and the unavailability of materials or labor are deemed to be a valid basis to extend the time to Commence Work. For the purposes of this paragraph, “Commence Work” means Developer has completed all preconstruction engineering and design and has received all necessary licenses and/or permits and commenced physical preparations of the Development Property for the pouring of foundations of the Units.

4. **Donation Property.** Developer agrees to donate the Donation Property (depicted in Exhibit “C” hereto) to the City within thirty (30) days after the City accepts the dedication of the final phase of the water line which is subject to the separate developer agreement; provided that in the event construction of the dwelling units and other improvements to the Development Property is not complete at the time of such donation the City shall grant Developer a temporary easement across the Donation Property to permit access to the Development Property for such construction. A portion of the Donation Property may be dedicated by the City as a portion of the Freeman Drive.

5. Topcoat of Private Streets in Concord Village Phase Two. Developer shall ensure that the topcoat of the private streets in Concord Village Phase Two is installed within ninety (90) days from the date of passage on April 25, 2022; provided, however, that the City may extend such deadline by up to sixty (60) days in the event that installation of such topcoat is delayed due to weather, documented contractor issues outside the reasonable control of Developer, or any other circumstance constituting a Force Majeure Event. For purposes hereof, a “Force Majeure Event” is any event causing a failure or delay in fulfilling the obligations under this section of this Agreement due to any condition beyond the reasonable control of the Developer including, but not limited to, acts of God, strikes, war, riot, earthquake, tornado, hurricane, fire, civil disorder, explosion, flood, sabotage, pandemic, or governmental order relating to national defense requirements. If installation of the topcoat of the private streets in Concord Village Phase Two is not completed within the period set forth in this section (as it may be extended hereunder), no building permits for any of the Units (defined below) shall be issued until completion of installation of the topcoat of the private streets in Concord Village Phase Two.

5.6. Development Terms, Conditions, and Deed Restrictions.

- a. Except where specified otherwise in this Agreement, the Development shall conform to all development regulations set forth in the City of Avon Codified Ordinances.
- b. The Development shall be comprised of no more than seventy-two (72) residential units with first floor area of each unit (including ground level living area) exceeding 1,000 square feet (the “General Development Plan”) (the “Units”).
- c. The Development shall be governed by homeowner or condominium association bylaws and declarations, which shall be submitted to the City for review for conformity with this Agreement prior to being recorded.
- d. The Development shall include the following amenities, which shall be installed before 75% (54) of the residential units have been completed: at least 12,672 sq. ft. park space which shall include a patio, dog park, playground, playground equipment, and picnic shelter.

- e. Developer shall work with the City Engineer to ensure adequate drainage in the Development and so as to not disturb or decrease drainage in the surrounding areas.
- f. Developer shall install 5-foot-wide sidewalks throughout the Development substantially in accordance with Exhibit "B".
- g. The Development shall include landscaping and buffers along the west side of the Development to protect the Development from future M-1 uses to the west and to provide a harmonious transition between the Development and other property within Avon. This buffer area shall include natural mounding/ landscaping and a 6 foot high privacy fence.
- h. Developer shall construct the interior private streets of the Development.
- i. Developer shall include and install a "stub street" as set forth on Exhibit "D" to make available a future connection to an interior roadway through the adjacent R-3 property in order to enable access for future development to the west and to reduce the number of curb cuts onto Chester Road in the future.
- j. Developer shall include and install an emergency "stub street" located on the east side of the Development and aligned with the street contained within the development currently known as the Villages of Avon, as shown in Exhibit "B".
- k. The site plan shall be substantially similar to the Plans attached as Exhibit "B" and any material modifications to the Plans shall require approval of the City.
- l. Retention basins shall be designed and located to be safely accessible by equipment for servicing and shall be the responsibility of the homeowners or condominium owners association governing the Development. The location of said basins shall not be installed behind any units.

~~6.7.~~ This Agreement shall run with the land. Upon completion of the Development and acceptance thereof by the City and all other obligations of Developer hereunder or in the event of termination of this Agreement in connection with paragraph 7 below, the parties agree to execute, in recordable form if requested by either party, a statement confirming termination of this Agreement but then (in the case of completion of the Development) to file appropriate deed restrictions which shall run with the land providing for use of the Development Property in accordance with Section 5 of this Agreement. It is also explicitly understood and agreed that in the event the re-zoning of the Development Property to R-3 is not approved and effective by _____, this Agreement shall automatically terminate.

~~7.8.~~ Default. In the event that Developer fails to comply in any material respect with any term, condition and/or deed restriction contained herein, the City may declare a default and terminate this Agreement.

8.9. Entire Agreement. This Agreement and the exhibits attached hereto, set forth the complete understanding and agreement of the parties with respect to the Development. No oral statements, representations or agreements other than this Agreement shall have any force or effect and the City and Developer agree that they will not rely on any representations or agreements other than those contained in this Agreement.

9.10. Miscellaneous.

a. City Council. This Agreement and all terms and provisions hereof are subject to and conditioned upon the approval of the Avon City Council.

b. Approvals of the City. Provisions of this Agreement may require future approval of the City or evidence of satisfaction from the City regarding certain regulations or certifications by the City where the opinion of the City shall be interpreted as requiring action by the Mayor, Planning Commission, Zoning Board of appeals, or City Council. This may also include other applicable official(s) the Mayor may from time to time appoint or designate to act on behalf of the City.

c. Severability. If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provisions had not been contained herein.

d. Estoppel Certificate. Each party agrees that within thirty (30) days after receipt of written request from the other party, it will issue to such party, or its prospective mortgagee or successor, an estoppel certificate stating to the best of such party's knowledge that as of such date:

- i) whether it knows of any default under this Agreement by the requesting party, and if there are any known defaults, specifying the nature thereof;
- ii) whether this Agreement has been assigned, modified or amended in any way by it and if so, then stating the nature thereof;
- iii) whether this Agreement is in full force and effect; and
- iv) any other reasonable matters relating to this Agreement.

e. Waiver. The failure of either party to insist, in any one or more instances, upon a strict performance of any of the terms and conditions of this Agreement, or to exercise or fail to exercise any option or right contained herein, shall not be construed as a waiver or a relinquishment for the future of such right or option, but same shall continue and remain in full force and effect. The continued performance by either party of this Agreement with knowledge of the breach of any term or condition hereof shall not be deemed a waiver of such breach, and

no waiver by either party of any provision hereof, shall be deemed to have been made, or operate as estoppel, unless expressed in writing and signed by such party.

f. This Agreement shall be legally enforceable by the City and both parties to this Agreement consent to its enforceability. This Agreement shall also be binding on the future homeowners or condominium owners association governing the Development.

g. Notices. All notices herein authorized or required to be given to the Village shall be sent by certified mail, registered mail or overnight express, postage prepaid to:

Avon, Ohio
Attn: Mayor _____

with a copy to:
Anthony J. Coyne, Esq.
Mansour Gavin, LPA
North Pointe Tower
1001 Lakeside Ave., Suite 1400
Cleveland, Ohio 44114

or such other address as the Village may from time to time designate in accordance with this paragraph. All notices herein authorized or required to be given to Developer shall be sent by certified mail, registered mail or overnight express, postage prepaid, to:

Concord Village Phase Two, LLC
c/o JAF Acquisitions, LLC
3401 Enterprise Pkwy, Suite 205
Beachwood, Ohio 44122
Attn: Jason A. Friedman

with a copy to:
Berns Ockner and Greenberger LLC
3733 Park E Dr #200
Beachwood, Ohio 44122
Attn: Jordan Berns

h. Further Assurances. Either party, upon the request of the other party, shall execute and deliver such further documents or instruments as may be reasonable and appropriate to

carry out the terms and conditions of this Agreement, provided that such further documents and instruments are consistent with the terms and conditions of this Agreement.

i. Survival. All agreements, representations, warranties and indemnifications hereof shall be considered to have been relied upon and shall survive the execution and delivery of this Agreement and any conveyance which is the subject of this Agreement.

j. Assignment. No party may assign this Agreement or any of its rights, interests, or obligations hereunder. For the purposes of this Agreement, any change in ownership of Developer by merger, consolidation, sale of assets, or other means of transferring ownership and/or control of Developer and its business shall be deemed an assignment.

k. Headings. The headings in this Agreement are for the purposes of reference only and shall not affect or define the meanings hereof.

l. Exhibits. The Exhibits attached hereto are made a part of this Agreement.

m. Applicable Law and Binding Effect. This Agreement shall be construed and interpreted in accordance with the laws of the State of Ohio. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

n. Counterparts. This Agreement may be signed in multiple identical counterparts with the same effect as if the signatures thereof and hereto were upon the same instrument.

[Signature Page to Immediately Follow]

EXECUTED on the date first written above.

DEVELOPER:

Concord Village Phase Two, LLC, an Ohio limited liability company

Jason A. Friedman, Manager
Its:

CITY:
CITY OF AVON, an Ohio municipal corporation

By:

Approved as to Form:

Exhibits:

- Exhibit "A": Developer Property
- Exhibit "B": The Plans
- Exhibit "C": Donation Property
- Exhibit "D": Stub Street

EXHIBIT "A"

DEVELOPER PROPERTY

DRAFT

EXHIBIT "B"

THE PLANS

DRAFT

EXHIBIT "C"

DONATION PROPERTY

DRAFT

EXHIBIT "D"

STUB STREET

DRAFT