



RESOLUTION 02 - 2022

OF THE VILLAGE OF ASHVILLE



A RESOLUTION AUTHORIZING AND DIRECTING THE VILLAGE ADMINISTRATOR AND FISCAL OFFICER TO EXECUTE ANOTHER SEWER SERVICE DEVELOPMENT AGREEMENT WITH D. R. HORTON AND DECLARING AN EMERGENCY

WHEREAS, with Resolution 16-2021, adopted on December 7, 2021, Council for the Village of Ashville authorized the Village Administrator and Fiscal Officer to execute a Sewer Service Development Agreement with D.R. Horton – Indiana, LLC; and

WHEREAS, after Council adopted Resolution 16-2021 and signed the Agreement, D.R. Horton approached the Village and asked if the language concerning the Reimbursement Amount could be modified to better reflect and more accurately account for the total of the Reimbursement Amount. In particular, the Reimbursement Amount will be based upon actual invoices submitted by D.R. Horton, (and then paid in the form of sewer tap fees). However, the current language caps this amount at \$618,196.45, and

WHEREAS, D.R. Horton and Village acknowledge the Reimbursement Amount is only an estimate. The final as-built cost may be more or less than \$618,196.45; and

WHEREAS, D.R. Horton estimates there will be 224 taps available to credit when this project is complete. As such, there should be enough available tap fee credits to cover the entire Reimbursement Amount; and

WHEREAS, rather than sign the original Agreement and then amend it, D.R. Horton does not want to sign the original. As such, the Council for the Village of Ashville now needs to approve another Sewer Service Development Agreement.

NOW, THEREFORE, be it resolved by the Village of Ashville Council

SECTION ONE

Council for the Village of Ashville hereby authorizes and directs the Village Administrator and Fiscal Officer to execute (another) Sewer Services Development Agreement in substantially the same form and content as the Agreement attached hereto as Exhibit A and incorporated herein by reference, with D.R. Horton – Indiana, LLC.

SECTION TWO

All prior legislation, or any parts thereof, which is/are inconsistent with this Resolution is/are hereby repealed as to the inconsistent parts thereof.

Prepared: 12/28/2021
Revised Date:
Review Date:

CERTIFICATE OF RECORDING OFFICER

I, the undersigned, hereby certify, that the foregoing is a true and correct copy of the resolution adopted by the Village of Ashville Council held on 24th day of January 2022, and that I am duly authorized to execute this certificate.



(Original signature of April D. Grube) Clerk-Fiscal Officer
(TITLE)

SECTION THREE

It is hereby found and determined that all formal actions of this Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Council, and that any and all deliberations of this Council and any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements of the laws of the State of Ohio.

SECTION FOUR

Council declares this to be an emergency measure immediately necessary for the preservation of the public peace, health, and safety of the Village and the further reason that the Village needs to execute this agreement as soon as possible so as to not delay this project (and the amended language simply better explains the Parties understanding of the original agreement). Wherefore, provided this Resolution receives the required affirmative votes of Council, this Resolution shall take effect and be in force immediately upon passage by Council.

Offered by:

Seconded to the Motion Offered by:

Nelson R. Embrey

Upon roll call on the adoption of the resolution, the vote was as follow: Roger L. Clark

Council Member Yes No Council Member Yes No Council Member Yes No Council Member Yes No Council Member Yes No Council Member Yes No
Roger L. Clark Nelson R. Embrey Randy S. Loveless R. David Rainey Matt Scholl Steve Welsh

THIS 3RD DAY OF JANUARY, 2022.

ATTEST:



April D. Grube, Clerk-Fiscal Officer

DATE: 1/28/2022

APPROVED:



Charles K. Wise, Mayor

DATE: 28 JAN 2022

SEWER SERVICE DEVELOPMENT AGREEMENT

This Agreement is made by and between the Village of Ashville, an Ohio municipal corporation (hereinafter "Ashville" or the "Village"), and D.R. Horton – Indiana, LLC, a Delaware limited liability company and its successors or assigns (hereinafter the "Developer"). Developer and Ashville are hereinafter referred to collectively as "Parties" or singularly as a "Party."

Background Information

A. Developer may cause to be developed certain tracts of land consisting of approximately 76.642+/- acres presently situated in the Village of Ashville, Pickaway County, Ohio, consisting of one parcel known as Pickaway County Auditor Tax Parcel Id. No. D1200020011300 and more fully described in Exhibit A attached hereto and incorporated herein (the "Property"), which Property is contiguous with the boundaries of the Village.

B. Ashville shall provide sanitary sewer service to the Property to facilitate full build out, sales and occupancy of two hundred twenty-five (225) new housing units. Ashville shall provide sanitary sewer to two (2) existing parcels presently located within the Village and through which the Developer needs to procure a sanitary sewer easement to extend sanitary sewer to the Property for a total of two hundred and twenty-seven (227) sanitary sewer taps. However, the Village acknowledges that the existing sanitary sewer infrastructure is currently insufficient, both to serve the anticipated needs of the Property and to accommodate future developments in the Village.

C. Subject to the terms and conditions of this Agreement, Developer, or its successors or assigns, is willing to install the off-site and on-site utility infrastructure improvements which will be connected to and become part of the sanitary systems of the Village.

Developer shall construct a new gravity sanitary sewer and force main to provide sanitary services to the Property and to future growth areas in the Village. The gravity sewer that will be extended through the proposed development will be oversized for future growth, and Developer shall be reimbursed for oversizing costs for on- and off-site infrastructure subject to the agreement below. The nature of the proposed improvements subject to this Agreement are more fully described in Exhibits B, C, and D attached hereto.

Statement of Agreement

The parties hereto acknowledge the accuracy of the foregoing Background Information, defined terms, and, in consideration of the foregoing and of the covenants and agreements hereafter set forth, hereby agree as follows:

1. Sewer Installation by Developer. The Village and Developer agree that Developer shall construct and install the sewer enhancements and extensions identified in Exhibits

B (the “east side sanitary sewer on-site improvements”) and C (the “west side sanitary sewer on-site improvements”) and Exhibit D (the “off-site sewer improvements”), attached hereto and made a part of this Agreement, provided that the Developer is reimbursed for a portion of the costs of upsizing and constructing the sewer improvements. Construction of the sewer improvements shall commence upon approval of final engineering plans.

The Village and Developer acknowledge and agree the sewer improvements identified in Exhibits B, C, D, and E have a greater capacity than is necessary to serve the Property and will serve other third-party properties and a regional portion of the Village. Notwithstanding the foregoing, the Village shall reimburse the Developer for said construction of the sewer improvements in an amount approximately equal to \$618,196.45 (the “Reimbursement Amount”). The Reimbursement Amount shall be paid based upon actual invoices submitted to, and approved by, the Village and shall be paid in the form of sewer tap fee credits. This amount shall cover Developer’s construction costs for the sewer improvements that benefit the community beyond what is necessary to serve only the Property. This figure is calculated as a sum of the estimated offsite sewer cost difference \$297,879.25 plus the estimated onsite sewer cost difference \$445,188.25 minus the original Oversizing Cost paid by the Village, identified in Exhibit E (\$124,871.05). Onsite and offsite construction cost differences are arrived at from the three construction cost estimates in Exhibits B, C, and D attached hereto, based on the additional cost of the added capacity for the rest of the Village.

The parties agree that should the actual hard construction costs exceed those identified and documented on Exhibits B, C, and D referenced above, the Village agrees that it shall bear the entire risk of any extra costs or cost overruns above this amount, if those additional costs are caused by the acts or omission of the Village of Ashville.

2. Excess Capacity and Design Improvements Beyond This Agreement. It is hereby acknowledged by the parties that the Developer’s design, labor, construction management, engineering, land, and other costs for the sewer improvements are as described in Exhibits B, C, and D. It is further agreed that should Ashville determine to expand the sewer capacity beyond that agreed upon here, or to pursue other standard development improvements, or to design them in a different manner to that shown in Exhibits B, C, and D and/or beyond that which is necessary to serve the Property alone, the costs associated with such oversizing or design differences shall be the sole responsibility of Ashville. Should the Village desire the Developer to install any facilities or equipment beyond those identified in Exhibits B, C, and D under this Agreement, the Village acknowledges and agrees that such changes may alter the nature and scope of the design, engineering and construction of the project as originally contemplated herein and as such, the Parties agree to revisit, amend, or supplement this Agreement to cover any additional costs to the Developer of managing such additional project scope and design, engineering, and construction, or to otherwise terminate and/or reform this Agreement if economic terms are changed and it is no longer applicable.

3. Easements and Rights of Way. Ashville hereby grants to Developer and its agents, contractors, and employees, in connection with the construction of any

improvements to the Property the right to use such easements as are owned by Ashville for the purposes of installing any public improvements. In addition, Ashville agrees to provide Developer with reasonable assistance which may include, but may not be limited to, the possible reduction of tap fees that would otherwise be chargeable to those property owners who are granting the necessary easements in the acquisition of such private utility and other easements as may be necessary to construct any improvements to serve the Property.

4. Construction Insurance and Legal Compliance. Developer shall cause its agents and the contractors and subcontractors engaged in the construction of any improvements to comply with the Workers' Compensation Law of the State of Ohio, and all other legal requirements, and during the course of construction of the improvements shall indemnify and hold harmless Ashville from any and all claims, demands, actions or liabilities arising out of personal injury, death or property damage resulting from the construction work performed or caused to be performed by Developer in the Village of Ashville easement areas including but not limited to right-of-way easement areas pursuant to this Agreement. In addition, the Developer shall secure and maintain, and shall require that any contractor or subcontractor installing improvements secure and maintain at least the following minimum amounts of insurance:

General Public Liability Insurance, on an occurrence basis, in an amount not less than Five Hundred Thousand and no/100 (\$500,000.00) for injuries, including those resulting in death, to any one person, and an amount not less than One Million and no/100 (\$1,000,000.00) for damages on account of any one (1) accident or occurrence, and Property Damage Insurance on an occurrence basis in an amount not less than Five Hundred Thousand and no/100 (\$500,000.00) for damages on account of any one (1) accident or occurrence. All said insurance shall name the Village of Ashville as the named insured. Such insurance shall be maintained in full force and effect during the construction of improvements and shall protect the Village of Ashville, its officials, employees, agents, and representatives from claims for damages for personal injury and wrongful death and for damages to property arising in any manner from the negligence or wrongful acts, errors or omissions of the Developer or contractors and subcontractors, their employees, agents, representatives or persons working under their direction and control in the construction of any improvements. Certificates of insurance naming the Village as additional insured shall be obtained and filed with the Village prior to commencement of construction on the improvements. These certificates shall contain a provision that coverage afforded under the policies shall not be cancelled unless at least thirty (30) days prior actual written notice has been provided to the Village.

5. Village's Obligation to Reserve Sanitary Sewer Capacity. Upon execution of this Agreement, the Village shall reserve the necessary sanitary sewer capacity at the sewer plant and related facility capacity necessary to serve all two hundred twenty-seven (227)

purchased sewer taps to serve the completed planned development and occupied homes with sanitary sewer services during the life of this agreement.

a. The parties to this Agreement recognize that the provisions of this Section 5 may differ from the Village's Codified Ordinances and Subdivision Regulations regarding tap crediting and use and the length of time of same. Where the provisions of this Section 5 and the said Ordinances and Regulations are in conflict, this Section 5 and this Agreement shall take precedence and govern. Should the Village's Codified Ordinances and Subdivision Regulations need to be amended for the sole purpose of supporting this Section 5 and this Agreement as approved as a one-time exception to Village procedures, the Village Solicitor will review such possible action and make recommendations to Council for such consideration.

6. Sewer Capacity. Ashville agrees to reserve sanitary sewer treatment capacity for all two hundred twenty-seven (227) lots in the Property on an ongoing and continuous basis for those taps purchased and credited for a ten-year period and for additional water taps covered by monthly service charge payments, pursuant to Section 5 above as applicable. However, Ashville may be required to impose certain moratoriums on tapping the sewer lines to be constructed, as Ashville expands its sewer plant service capacity. If a moratorium is imposed, Developer shall be given a one hundred twenty (120) day advance notice of Ashville's intent to impose such moratorium, and no moratorium shall exceed six (6) months in any given twelve (12) month time period, or twelve (12) months in any given twenty-four (24) month time period, except as same may be caused by agencies or events not within Ashville's control.

7. Engineering, Design, Construction Approvals and Security. The Developer shall construct or cause to be constructed any improvements in accordance with the approvals of the Village Engineer, Ohio EPA, and other regulatory or governmental entities or agencies having jurisdiction. Any improvements shall be constructed based on detailed construction and engineering plans which are first approved by the Village Engineer, Ohio EPA, and other regulatory or governmental entities or agencies having jurisdiction. The Developer or its subcontractor shall provide to the Village all plans, specifications, and supporting data, including detailed engineering drawings, specifications and "as built" plans for all the public improvements to be constructed as part of the project. The Developer shall not commence construction on any improvements until:

a. The Village has approved a Final Development Plan for the Property and the Final Engineering has been approved and bonded; and

b. The Village Engineer has approved all engineering and construction plans, all plan review and inspection fees are paid and all other regulatory and governmental agencies have granted their applicable approvals; and

c. The Developer is compliant with all applicable laws as required by Section 4 of this Agreement;

8. Acceptance of Public Improvements. Maintenance Guarantee. Conveyance of Improvements.

a. Within thirty (30) days of receipt of the notification of completion from the Developer, the Village Engineer shall either provide the Village and Developer with a letter which certifies that construction of public improvements is in conformance with the construction plans and Village Ordinances and Regulations or give the Developer a written "punch list" of items to correct and/or complete. Any "punch list" items shall be promptly addressed and resolved by Developer to the Village Engineer's sole satisfaction and the Village Engineer shall immediately thereafter provide the Village and Developer with a letter certifying the completion of construction of public improvements to the Village standards. Once the Village Engineer has confirmed completion of the public improvements under its subdivision regulations, the Village may issue building permits, properly applied for and approved by the Village's building inspector, for any single family residences in any phase for which public improvements have been certified as complete by the Village Engineer, so long as the Developer provides guarantees that the improvements of each section or phase that will become public are protected from defects that are the responsibility of the Developer and its contractors or subcontractors and that such defects will be addressed and maintenance provided at no cost to the Village for one (1) year. Such guarantees may be in the form of a maintenance bond or letter of credit equal to ten percent (10%) of the construction cost for the applicable public improvements per phase, or in another form of security acceptable to the Village.

If a Council vote is required, formal acceptance of the public improvements shall be placed upon Council's agenda by Council at the next regularly scheduled Council meeting date following the date of the Engineer's letter certifying satisfactory completion of construction and receipt of the written warranty agreement and the required maintenance guarantee. Such acceptance and procedures may be accomplished as the Developer completes sections or phases of the development and/or infrastructure, and as agreed to by the Village Engineer. Any security guaranteeing the completion of the improvements as specified herein shall be released to the Developer upon acceptance of the improvements by the Village, or if a release is signed by the Village as to the Developer's obligations to make the public improvements. Such release by the Village certifies only that the construction was satisfactorily completed, and such release does not relieve the Developer of the responsibility to meet the requirements of Village regulations, or the Village maintenance requirements as specified herein.

b. Prior to acceptance of public improvements by the Village, the Developer shall convey to the Village, without additional consideration from the Village, all of the manholes, mains, lines, meters, valves, fittings, equipment, easements, appurtenant thereto, and all other improvements and such personal and real property rights not transferred in the approved plat which are reasonably required in order for the Village to provide services within and around the Property, except that Developer shall not convey any part of the service lines connecting the individual dwellings or buildings with mains or lines. All said personal and real property shall be conveyed by duly executed Bill of Sale conveying all rights, title, and interest therein to the Village and all easements and land

rights-of-way shall be conveyed by duly executed Deed of Easement, assignment of Easements, or recorded plat, conveyances of real and personal property shall grant to the Village good title to the easements, free and clear of all rights of dower and all liens, easements, restrictions, conditions, covenants, and encroachments, except for liens of real estate taxes and assessments and any easements, restrictions, conditions, covenants, and encroachments which would not inhibit or unreasonably interfere with the installation, operation, maintenance, and repair of water and sanitary sewer mains and lines, storm sewer lines and other improvement and those defects which the Village is willing to waive, or that are specifically identified herein. At the time of the conveyance described in this paragraph, Developer shall assign to the Village all obligations or warranties whether express or implied, created by law or by contract, by manufacturers, contractors, and vendors of the personal property comprising the improvements to the extent the same may be assignable. Developer agrees that it will fully cooperate with the Village in enforcing any warranties given by or claimed against all manufacturers, contractors, and vendors of the personal property so conveyed, provided that any costs or expenses in connection therewith shall be borne by the Village. Developer will not knowingly waive any such warranties which it obtains.

9. Assignment. Developer may freely assign its rights and obligations under this Agreement to an affiliate business entity or related subsidiary that it controls, and in the event of such assignment, the assignee of Developer shall have all the rights, duties and obligations set forth herein and Developer shall be released of any and all obligations and liabilities contained herein. Any assignment to a third party or parties that are unrelated to the Developer shall be subject to review and approval by the Village under the following procedure and conditions. The Developer shall provide the Village notice of such a proposed assignment within a reasonable time in order to accommodate the Village's review. In no case shall such notice be less than thirty (30) days from the date of the proposed assignment. After receiving the notice of such a proposed assignment, the Village shall accept or reject the proposed assignment within thirty (30) days of receiving such notice, subject to the Village's approval not being unreasonably withheld where the proposed assignee will cause homes to be developed and built in a similar quality, price point and arrangement as the Developer.

10. Inspection Fees. Developer shall pay such inspection and plan review fees as required by Ashville based upon the fee schedule in force at the time of the execution of this Agreement or as amended thereafter.

11. Contingency. This Agreement shall be contingent, unless waived by Developer in writing, upon: (a) the approval of the Village and all other government entities having jurisdiction over the Property of plans and completed construction in a manner consistent with the approved PUD zoning established for the Property; (b) the approval of the Village of the Final Development Plan and the approved PUD zoning; (c) the receipt by Developer of adequate financing to complete any and all improvements and the development of the Property; (d) the approval of this Agreement, and (e) obtaining any necessary easements for the construction and use of the Improvements from third parties.

12. Term. The Effective Date of this Agreement shall be when it is fully executed by the parties and adopted/approved by Council for the Village of Ashville. Unless extended or terminated by the written Agreement of Developer, its successor or assigns, and the Village, this Agreement shall automatically terminate under the terms herein and be of no further force or effect.

13. Counterparts. The Parties agree this Agreement may be executed in multiple counterparts by the Parties, and the counterparts shall collectively constitute a single, original, document, notwithstanding the fact that the signatures may not appear on the same page. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or electronic transmission shall be as effective as delivery of a manually executed counterpart of this Agreement.

[Signatures Appear on the Following Page]

VILLAGE OF ASHVILLE

D.R. HORTON – INDIANA, LLC

By: 
Franklin Christman

Its: Village Administrator

Date: January 25, 2022

By: _____
Name

Its: _____

Date: _____

By: _____
April Grube

Its: Fiscal Officer

Date: _____

APPROVED AS TO FORM BY VILLAGE SOLICITOR

By: 
Name Title

SEWER SERVICE DEVELOPMENT AGREEMENT

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C. Subject to the terms and conditions of this Agreement, Developer, or its successors or assigns, is willing to install the off-site and on-site utility infrastructure improvements which will be connected to and become part of the sanitary systems of the Village.

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2. Excess Capacity and Design Improvements Beyond This Agreement. It is hereby acknowledged by the parties that the Developer's design, labor, construction management, engineering, land, and other costs for the sewer improvements are as described in Exhibits B, C, and D. It is further agreed that should Ashville determine to expand the sewer capacity beyond that agreed upon here, or to pursue other standard development improvements, or to design them in a different manner to that shown in Exhibits B, C, and D and/or beyond that which is necessary to serve the Property alone, the costs associated with such oversizing or design differences shall be the sole responsibility of Ashville. Should the Village desire the Developer to install any facilities or equipment beyond those identified in Exhibits B, C, and D under this Agreement, the Village acknowledges and agrees that such changes may alter the nature and scope of the design, engineering and construction of the project as originally contemplated herein and as such, the Parties agree to revisit, amend, or supplement this Agreement to cover any additional costs to the Developer of managing such additional project scope and design, engineering, and construction, or to otherwise terminate and/or reform this Agreement if economic terms are changed and it is no longer applicable.

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improvements to the Property the right to use such easements as are owned by Ashville for the purposes of installing any public improvements. In addition, Ashville agrees to provide Developer with reasonable assistance which may include, but may not be limited to, the possible reduction of tap fees that would otherwise be chargeable to those property owners who are granting the necessary easements in the acquisition of such private utility and other easements as may be necessary to construct any improvements to serve the Property.

4. Construction Insurance and Legal Compliance. Developer shall cause its agents and the contractors and subcontractors engaged in the construction of any improvements to comply with the Workers' Compensation Law of the State of Ohio, and all other legal requirements, and during the course of construction of the improvements shall indemnify and hold harmless Ashville from any and all claims, demands, actions or liabilities arising out of personal injury, death or property damage resulting from the construction work performed or caused to be performed by Developer in the Village of Ashville easement areas including but not limited to right-of-way easement areas pursuant to this Agreement. In addition, the Developer shall secure and maintain, and shall require that any contractor or subcontractor installing improvements secure and maintain at least the following minimum amounts of insurance:

General Public Liability Insurance, on an occurrence basis, in an amount not less than Five Hundred Thousand and no/100 (\$500,000.00) for injuries, including those resulting in death, to any one person, and an amount not less than One Million and no/100 (\$1,000,000.00) for damages on account of any one (1) accident or occurrence, and Property Damage Insurance on an occurrence basis in an amount not less than Five Hundred Thousand and no/100 (\$500,000.00) for damages on account of any one (1) accident or occurrence. All said insurance shall name the Village of Ashville as the named insured. Such insurance shall be maintained in full force and effect during the construction of improvements and shall protect the Village of Ashville, its officials, employees, agents, and representatives from claims for damages for personal injury and wrongful death and for damages to property arising in any manner from the negligence or wrongful acts, errors or omissions of the Developer or contractors and subcontractors, their employees, agents, representatives or persons working under their direction and control in the construction of any improvements. Certificates of insurance naming the Village as additional insured shall be obtained and filed with the Village prior to commencement of construction on the improvements. These certificates shall contain a provision that coverage afforded under the policies shall not be cancelled unless at least thirty (30) days prior actual written notice has been provided to the Village.

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purchased sewer taps to serve the completed planned development and occupied homes with sanitary sewer services during the life of this agreement.

a. The parties to this Agreement recognize that the provisions of this Section 5 may differ from the Village's Codified Ordinances and Subdivision Regulations regarding tap crediting and use and the length of time of same. Where the provisions of this Section 5 and the said Ordinances and Regulations are in conflict, this Section 5 and this Agreement shall take precedence and govern. Should the Village's Codified Ordinances and Subdivision Regulations need to be amended for the sole purpose of supporting this Section 5 and this Agreement as approved as a one-time exception to Village procedures, the Village Solicitor will review such possible action and make recommendations to Council for such consideration.

6. Sewer Capacity. Ashville agrees to reserve sanitary sewer treatment capacity for all two hundred twenty-seven (227) lots in the Property on an ongoing and continuous basis for those taps purchased and credited for a ten-year period and for additional water taps covered by monthly service charge payments, pursuant to Section 5 above as applicable. However, Ashville may be required to impose certain moratoriums on tapping the sewer lines to be constructed, as Ashville expands its sewer plant service capacity. If a moratorium is imposed, Developer shall be given a one hundred twenty (120) day advance notice of Ashville's intent to impose such moratorium, and no moratorium shall exceed six (6) months in any given twelve (12) month time period, or twelve (12) months in any given twenty-four (24) month time period, except as same may be caused by agencies or events not within Ashville's control.

7. Engineering, Design, Construction Approvals and Security. The Developer shall construct or cause to be constructed any improvements in accordance with the approvals of the Village Engineer, Ohio EPA, and other regulatory or governmental entities or agencies having jurisdiction. Any improvements shall be constructed based on detailed construction and engineering plans which are first approved by the Village Engineer, Ohio EPA, and other regulatory or governmental entities or agencies having jurisdiction. The Developer or its subcontractor shall provide to the Village all plans, specifications, and supporting data, including detailed engineering drawings, specifications and "as built" plans for all the public improvements to be constructed as part of the project. The Developer shall not commence construction on any improvements until:

a. The Village has approved a Final Development Plan for the Property and the Final Engineering has been approved and bonded; and

b. The Village Engineer has approved all engineering and construction plans, all plan review and inspection fees are paid and all other regulatory and governmental agencies have granted their applicable approvals; and

c. The Developer is compliant with all applicable laws as required by Section 4 of this Agreement;

8. Acceptance of Public Improvements. Maintenance Guarantee. Conveyance of Improvements.

a. Within thirty (30) days of receipt of the notification of completion from the Developer, the Village Engineer shall either provide the Village and Developer with a letter which certifies that construction of public improvements is in conformance with the construction plans and Village Ordinances and Regulations or give the Developer a written "punch list" of items to correct and/or complete. Any "punch list" items shall be promptly addressed and resolved by Developer to the Village Engineer's sole satisfaction and the Village Engineer shall immediately thereafter provide the Village and Developer with a letter certifying the completion of construction of public improvements to the Village standards. Once the Village Engineer has confirmed completion of the public improvements under its subdivision regulations, the Village may issue building permits, properly applied for and approved by the Village's building inspector, for any single family residences in any phase for which public improvements have been certified as complete by the Village Engineer, so long as the Developer provides guarantees that the improvements of each section or phase that will become public are protected from defects that are the responsibility of the Developer and its contractors or subcontractors and that such defects will be addressed and maintenance provided at no cost to the Village for one (1) year. Such guarantees may be in the form of a maintenance bond or letter of credit equal to ten percent (10%) of the construction cost for the applicable public improvements per phase, or in another form of security acceptable to the Village.

If a Council vote is required, formal acceptance of the public improvements shall be placed upon Council's agenda by Council at the next regularly scheduled Council meeting date following the date of the Engineer's letter certifying satisfactory completion of construction and receipt of the written warranty agreement and the required maintenance guarantee. Such acceptance and procedures may be accomplished as the Developer completes sections or phases of the development and/or infrastructure, and as agreed to by the Village Engineer. Any security guaranteeing the completion of the improvements as specified herein shall be released to the Developer upon acceptance of the improvements by the Village, or if a release is signed by the Village as to the Developer's obligations to make the public improvements. Such release by the Village certifies only that the construction was satisfactorily completed, and such release does not relieve the Developer of the responsibility to meet the requirements of Village regulations, or the Village maintenance requirements as specified herein.

b. Prior to acceptance of public improvements by the Village, the Developer shall convey to the Village, without additional consideration from the Village, all of the manholes, mains, lines, meters, valves, fittings, equipment, easements, appurtenant thereto, and all other improvements and such personal and real property rights not transferred in the approved plat which are reasonably required in order for the Village to provide services within and around the Property, except that Developer shall not convey any part of the service lines connecting the individual dwellings or buildings with mains or lines. All said personal and real property shall be conveyed by duly executed Bill of Sale conveying all rights, title, and interest therein to the Village and all easements and land

rights-of-way shall be conveyed by duly executed Deed of Easement, assignment of Easements, or recorded plat, conveyances of real and personal property shall grant to the Village good title to the easements, free and clear of all rights of dower and all liens, easements, restrictions, conditions, covenants, and encroachments, except for liens of real estate taxes and assessments and any easements, restrictions, conditions, covenants, and encroachments which would not inhibit or unreasonably interfere with the installation, operation, maintenance, and repair of water and sanitary sewer mains and lines, storm sewer lines and other improvement and those defects which the Village is willing to waive, or that are specifically identified herein. At the time of the conveyance described in this paragraph, Developer shall assign to the Village all obligations or warranties whether express or implied, created by law or by contract, by manufacturers, contractors, and vendors of the personal property comprising the improvements to the extent the same may be assignable. Developer agrees that it will fully cooperate with the Village in enforcing any warranties given by or claimed against all manufacturers, contractors, and vendors of the personal property so conveyed, provided that any costs or expenses in connection therewith shall be borne by the Village. Developer will not knowingly waive any such warranties which it obtains.

9. Assignment. Developer may freely assign its rights and obligations under this Agreement to an affiliate business entity or related subsidiary that it controls, and in the event of such assignment, the assignee of Developer shall have all the rights, duties and obligations set forth herein and Developer shall be released of any and all obligations and liabilities contained herein. Any assignment to a third party or parties that are unrelated to the Developer shall be subject to review and approval by the Village under the following procedure and conditions. The Developer shall provide the Village notice of such a proposed assignment within a reasonable time in order to accommodate the Village's review. In no case shall such notice be less than thirty (30) days from the date of the proposed assignment. After receiving the notice of such a proposed assignment, the Village shall accept or reject the proposed assignment within thirty (30) days of receiving such notice, subject to the Village's approval not being unreasonably withheld where the proposed assignee will cause homes to be developed and built in a similar quality, price point and arrangement as the Developer.

10. Inspection Fees. Developer shall pay such inspection and plan review fees as required by Ashville based upon the fee schedule in force at the time of the execution of this Agreement or as amended thereafter.

11. Contingency. This Agreement shall be contingent, unless waived by Developer in writing, upon: (a) the approval of the Village and all other government entities having jurisdiction over the Property of plans and completed construction in a manner consistent with the approved PUD zoning established for the Property; (b) the approval of the Village of the Final Development Plan and the approved PUD zoning; (c) the receipt by Developer of adequate financing to complete any and all improvements and the development of the Property; (d) the approval of this Agreement, and (e) obtaining any necessary easements for the construction and use of the Improvements from third parties.

12. Term. The Effective Date of this Agreement shall be when it is fully executed by the parties and adopted/approved by Council for the Village of Ashville. Unless extended or terminated by the written Agreement of Developer, its successor or assigns, and the Village, this Agreement shall automatically terminate under the terms herein and be of no further force or effect.

13. Counterparts. The Parties agree this Agreement may be executed in multiple counterparts by the Parties, and the counterparts shall collectively constitute a single, original, document, notwithstanding the fact that the signatures may not appear on the same page. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or electronic transmission shall be as effective as delivery of a manually executed counterpart of this Agreement.

[Signatures Appear on the Following Page]


VILLAGE OF ASHVILLE

D.R. HORTON – INDIANA, LLC

By: 
Franklin Christman

Its: Village Administrator

Date: January 25, 2022

By: 
April Grube

Its: Fiscal Officer

Date: 1/28/2022

By: _____
Name

Its: _____

Date: _____

APPROVED AS TO FORM BY VILLAGE SOLICITOR

By: 
Name Title