

## Appendix B: Subdivision Development Agreement

This DEVELOPMENT AGREEMENT is made and entered into on this

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, ,  
between THE CITY OF COLUMBIA, TENNESSEE, (hereinafter the "CITY"), and

\_\_\_\_\_, the DEVELOPER (hereinafter the  
"DEVELOPER") named on the Addendum to this Agreement attached hereto and by this reference made  
a part hereof (hereinafter the "ADDENDUM").

WITNESSETH:

WHEREAS, the DEVELOPER desires to develop the property described on the ADDENDUM (hereinafter  
the "PROJECT"); and,

WHEREAS, the Development Plan of the PROJECT has been approved by the Columbia Municipal  
Planning Commission (hereinafter the "CMPC") on the

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, ,  
pursuant to Tennessee Code Annotated Title 13, Chapter 4, and the Subdivision Regulations of  
Columbia, Tennessee (hereinafter the "SUBDIVISION REGULATIONS"); and,

WHEREAS, the DEVELOPER is the owner of the PROJECT and has authority to engage in such  
development; and,

WHEREAS, the DEVELOPER desires to develop and improve said PROJECT; and,

WHEREAS, in order to provide for the health, safety, and welfare of future residents of the PROJECT, it  
will be necessary for certain improvements to the CITY'S utility systems, public infrastructure, and  
common areas to be constructed within and to serve the PROJECT including but not be limited to roads,  
bridges, sidewalks, pedestrian facilities, stormwater facilities, street signs, markings, signals, street  
lighting, recreation and park facilities, landscaping, and the like (hereinafter the "IMPROVEMENTS");  
and,

WHEREAS, in order for the IMPROVEMENTS to be fully integrated with the utility systems and public  
infrastructure of the CITY and to function in a satisfactory manner, the DEVELOPER has agreed to  
construct, in accordance with the Subdivision Regulations and other rules, regulations, and ordinances  
of the CITY, the IMPROVEMENTS in said PROJECT and extend utilities to the PROJECT at their own cost;  
and,

WHEREAS, the CITY is willing to accept the dedication of the streets, utilities, and other improvements  
as determined in the Development Plan of the PROJECT, subject to the City of Columbia City Council  
approval by resolution, and subject to the applicant's compliance with all requirements in this  
agreement and applicable existing laws of the CITY of Columbia and the State of Tennessee,

NOW, THEREFORE, it is agreed and understood as follows:

## **B1 General Conditions**

### **B1.1 Construction Costs**

The DEVELOPER shall pay for all material and labor necessary to install and complete the roads, sidewalks, sewers, utilities, and other facilities in accordance with this agreement.

### **B1.2 City Ordinances, Rules and Regulations**

All currently existing CITY ordinances, rules and regulations, and the Subdivision Regulations adopted by the CMPC are made a part of this agreement. In the event of a conflict between the terms of this agreement and a CITY ordinance, the ordinance shall prevail. In the event of a conflict between the terms of this agreement and the Subdivision Regulations, the Subdivision Regulations shall prevail. All work done under this agreement is to be performed in accordance with plans and specifications approved by the City and made a part, hereof.

### **B1.3 Fees**

Review fees, inspection fees, and other amounts established by the CITY shall be paid prior to any review of the plans. If the DEVELOPER fails to install the facilities in accordance with the terms of this Agreement, no portion of the review fees, inspection fees, or other amounts paid to the CITY shall be refundable to the DEVELOPER.

### **B1.4 Inspection**

The CITY shall have a continuous right to inspect the work and facilities to assure that the work and facilities are in accordance with the Subdivision Regulations, approved Construction Plans, and other rules, regulations, and ordinances of the CITY.

### **B1.5 Right of Entry**

The CITY shall have the right, in case of breach of the Performance Agreement, to enter upon any property of the DEVELOPER and take all necessary actions to complete the work and obligations not completed.

### **B1.6 Easements**

The DEVELOPER shall obtain and dedicate to the CITY or cause to be dedicated to the CITY, either by dedication on the plat or by easement deed, in either case in a form acceptable to the CITY, permanent easements of such widths as required by the CITY and noted on the Plans. The DEVELOPER further agrees to grant the necessary easements and rights-of-way across the DEVELOPER's properties without expense to the CITY and waive any claim for damages.

### **B1.7 Stormwater Maintenance Agreement**

If the PROJECT includes any detention or retention ponds, common drainage ditches, water quality facilities, or stormwater facilities outside of the CITY rights-of-way, the DEVELOPER will submit a Stormwater Maintenance Agreement, to be filed with and recorded with the Final Plat.

### **B1.8 Attorney Fees and Other Expenses**

The DEVELOPER shall pay all reasonable costs and expenses incurred by the CITY in enforcing or completing this agreement. The DEVELOPER shall pay all costs and expenses, including the CITY'S attorney fees, of any legal proceedings brought by the CITY against the DEVELOPER seeking remedies for the DEVELOPER'S failure to perform any of its obligations hereunder, whether or not any proceedings are prosecuted to judgment.

### **B1.9 Agreement Not Assignable**

No third party shall obtain any benefits or rights under this agreement nor shall the rights or duties be assigned by either party.

### **B1.10 Revocation and Interpretation**

This agreement shall bind the DEVELOPER when executed by the DEVELOPER and may not be revoked by the DEVELOPER without permission of the CITY, even if the agreement has not been executed by the CITY, or does not bind CITY, for other reasons. This agreement shall be interpreted in accordance with Tennessee law and may only be enforced in the Chancery Court or Circuit Court or Court of competent jurisdiction of Maury County, Tennessee, and Tennessee Appellate Courts.

### **B1.11 No Oral Agreement**

This agreement may not be orally amended and supersedes all prior negotiations, commitments, or understandings.

### **B1.12 Separability**

If any portion of this agreement is held to be unenforceable, the CITY shall have the right to determine whether the remainder of the agreement shall remain in effect, or whether the agreement shall be void and all rights of the DEVELOPER pursuant to this agreement terminated.

### **B 1.13 Transferability**

The DEVELOPER agrees to not transfer the property on which this PROJECT is to be located without first providing the CITY with written notice. The transferee shall provide the CITY an Assumption Agreement of this Agreement, whereby the transferee agrees to perform the IMPROVEMENTS required under this agreement and to provide a performance surety. The DEVELOPER understands that if the DEVELOPER transfers said property without providing the notice of transfer and Assumption Agreement as required herein, they will be in breach of this agreement and in violation of the Subdivision Regulations.

### **B1.14 Indemnity**

The DEVELOPER shall indemnify and hold the CITY harmless from all loss, costs, expenses, liability, money damages, penalties, or claims arising out of any work covered by this agreement, including any attorney fees incurred by the CITY in connection therewith. Inspection of the IMPROVEMENTS by an authorized representative of the CITY shall not constitute a waiver by the CITY of any defect or of any of the DEVELOPER'S obligations hereunder.

### **B1.15 Binding Effect**

This agreement shall be binding upon the DEVELOPER and the DEVELOPER's heirs, administrators, executors, assigns, and any other successors in interest.

### **B1.16 Entire Agreement**

This document contains the entire agreement between the parties, and there are no collateral understandings or agreements between them. No variations or alterations of the terms of this agreement shall be binding upon either of the parties, unless the same be reduced to writing and made an amendment to this agreement.

### **B1.17 Headings**

Paragraph titles and headings contained herein are inserted for convenience only and shall not be deemed a part of the agreement and in no way shall define, limit, extend, or describe the scope or intent of any provision, hereof.

## **B2 Performance Surety**

At the time of execution of this agreement, the DEVELOPER shall provide the CITY a performance surety, in an amount determined by the City Engineer for the IMPROVEMENTS and other items specified by the Construction Plans, plats, and plans approved by the CMPC. This performance surety shall secure performance of all obligations of the DEVELOPER under this agreement. The performance surety shall meet all requirements established in Chapter 4: Performance Agreement of the Subdivision Regulations and secure full compliance with all terms and conditions of this agreement. The performance surety may be called for failure to comply with the provisions of this agreement in whole or in part according to the terms of the performance surety. The performance surety will not be released, except and until there has been full compliance with this agreement.

## **B3 Construction**

### **B3.1 Construction Plans**

The DEVELOPER shall submit to the CITY, Construction Plans describing in reasonable detail all utility systems, all storm water management systems, all street systems, pedestrian facilities, and all IMPROVEMENTS. The Construction Plans shall be designed according to the Engineering Standards and Specifications, all other codes and ordinances enforced by the City, and sound engineering judgment. The design of all utility systems shall follow the State of Tennessee and utility provider design criteria and specifications. In the event of a disagreement as to compliance with or interpretation of the Construction Plans and the CITY'S specifications, the decision of the CITY shall be final and binding on the DEVELOPER. The Construction Plans shall be prepared by a design professional licensed by the State of Tennessee to design all systems and shall bear the seal, signature, date, and license number of the professional preparing the Construction Plans.

### **B3.2 Commencement of Construction**

Construction of IMPROVEMENTS may not begin until the following events have occurred:

- A. The Preliminary Plat has been approved by the CMPC;
- B. The Construction Plans are approved by the CITY;
- C. The Tennessee Department of Environment and Conservation has approved the applicable portions of the Plans and has confirmed its approval to the CITY and/or DEVELOPER in writing;
- D. The CITY shall have received an appropriately executed Development Agreement; and
- E. The DEVELOPER shall give the CITY notice of commencement of construction, in writing at least one (1) working day prior to commencement.

### **B3.3 Site Grading**

The DEVELOPER, hereby, agrees to construct all site grading to comply with the approved Construction Plans, including the approved Erosion Control Plan for the PROJECT and to comply with the Engineering Standards and Specifications, Stormwater Ordinance, and all other codes and ordinances enforced by the CITY.

### **B3.4 Storm Water Management Systems**

The DEVELOPER shall be responsible for all storm water management work made necessary by the development of this PROJECT. It is understood and agreed that the CITY in its proprietary function is not and could not be expected to oversee, supervise, or direct the construction of all drainage improvements, and the excavation incident thereto. Neither is the CITY vested with the original design responsibility nor the means to formally survey elevations or the locations of improvements at every stage of the construction process. The CITY is vested with the right of periodic inspections, stop work order, and final approval as a measure of secondary or subsequent enforcement. The DEVELOPER has and shall retain the responsibility to properly anticipate, survey, design and construct the subdivision storm water improvements and give full assurance that same shall not adversely affect the flow or quality of surface water from or upon any property. In providing technical assistance, plan and design review, the CITY does not and shall not relieve or accept any liability from the DEVELOPER.

### **B3.5 Street Construction**

The DEVELOPER, hereby, agrees to construct and improve the streets shown on the Construction Plans to comply with the CITY's specifications and to the satisfaction and approval of the City Engineer by grading, draining, subgrade preparation, base preparation, curbing, signage, striping, signalization, sidewalk installation, and paving with the required preparation, amounts, and types of material. The DEVELOPER further agrees to pay the cost of all engineering, inspection and laboratory cost incidental to the construction of subdivision streets including but not limited to material and density testing. The DEVELOPER further agrees to make all necessary adjustments to manholes and valve boxes to meet finished surface grade and to repair subsurface or base material, as required, in areas directed by the CITY Engineer, prior to application of final surface.

### **B3.6 Time Period for Construction**

The DEVELOPER agrees to be bound to complete, within three (3) years of commencement of construction, all IMPROVEMENTS shown on the plat and plans and all things required by this agreement.

The DEVELOPER further agrees that if due to unforeseen circumstances, he is unable to complete all work included in this agreement within the time specified above, but desires to complete said agreement to the satisfaction of the CITY, the DEVELOPER shall submit a written request for extension of the agreement period to the CITY at least sixty (60) days prior to the expiration of the existing agreement period, specifying the reason for the DEVELOPER's failure to complete the work as agreed and a prospective date for such completion. The DEVELOPER further agrees that if the performance surety executed to secure the value of the work to be performed under this agreement, due to inflation or rising costs, is determined to be inadequate by the City Engineer to secure the cost of said IMPROVEMENTS at the time an extension is sought, the DEVELOPER will provide the additional security to bring the performance surety amount in line with current cost projections as made by the CITY. The DEVELOPER understands that the DEVELOPER's failure to follow the extension procedure constitutes a breach of this agreement and places the DEVELOPER in violation of the Subdivision Regulations. The DEVELOPER further understands, that should the DEVELOPER fail to complete any part of the work outlined in this agreement in a good and workmanlike manner as approved, the CITY shall reserve the right to withhold and withdraw all building permits within the PROJECT until all items of this Agreement have been fulfilled by the DEVELOPER.

### **B3.7 Off-Site Improvements**

The DEVELOPER shall construct any and all off-site facilities that may be required to serve the PROJECT. Unless specifically noted in the Construction Plans and made a part of separate agreement with the CITY, the CITY shall not be required to reimburse the DEVELOPER for construction of off-site improvements.

### **B3.9 Inspection and Compliance**

After construction begins, the CITY shall provide on-site construction inspection as the CITY deems necessary to ensure that all work is performed and completed in accordance with the Construction Plans, CITY specifications, and the contents of this agreement. In the event of a disagreement as to compliance with or interpretation of the Construction Plans and the CITY'S specifications, the decision of the CITY shall be final and binding on the DEVELOPER. If the DEVELOPER fails to construct in accordance with the approved Construction Plans or to comply with the CITY'S specifications, the CITY may issue a stop-work order and DEVELOPER, hereby, agrees to be bound by such order.

### **B3.10 Testing**

The DEVELOPER agrees to pay the cost of all engineering, inspection, and laboratory cost incidental to construction of the streets, sidewalks, utilities, sewers, compacted fill material, and other facilities included within this agreement. Such testing includes, but is not limited to, material and density testing.

### **B3.11 Scrap Removal**

The DEVELOPER agrees to comply with all local, state, and federal rules and regulations regarding waste material and debris disposal.

### **B3.12 Traffic Control**

The DEVELOPER, hereby, agrees to prepare a traffic control/detour plan where required and shall submit said plan to the CITY for review and approval. All traffic control and safety devices, including

signs, lane markings, and barriers necessitated by construction activity undertaken pursuant to this agreement shall be installed and maintained by the DEVELOPER. All traffic control devices shall meet the standards and be installed in accordance with the latest edition of the Manual on Uniform Traffic Control Devices for Streets and Highways, published by the United States Department of Transportation.

### **B3.13 Temporary Facilities**

The DEVELOPER shall provide all temporary facilities including but not limited to utilities and roadways, that are determined by the CITY to be required in connection with or as a result of interruption of service or access that occurs as a consequence of construction activity associated with the work covered by this agreement. Such temporary services shall in all regards and at all points in time be adequate to assure emergency access and adequate fire flows.

## **B4 Acceptance of Improvements**

### **B4.1 Completion of Improvements**

At such time as the improvements have been constructed and installed, in accordance with the Constructions Plans and specifications, required testing and inspections completed and found satisfactory, and all clean-up and cover-up has been done to the satisfaction the City Engineer, a letter requesting preliminary acceptance of the PROJECT will be provided by the DEVELOPER. Formal acceptance shall follow the procedure established in the Subdivision Regulations.

The DEVELOPER agrees the DEVELOPER shall have no claim, direct or implied, in the title or ownership of the IMPROVEMENTS specified in this agreement when the IMPROVEMENTS are complete and thereafter accepted by the CITY. The DEVELOPER will be responsible for construction failures and defects in PROJECT prior to final acceptance. During this period, it shall remain the responsibility of the DEVELOPER to correct and cure these defects and failures.

### **B4.2 As-Built Drawings and Post-Completion Items**

The DEVELOPER agrees to furnish to the CITY as-built plans, on a reproducible, stable media, of the sanitary sewer, storm water management, water mains and service system, and streets within the subdivision before the CITY shall accept the subdivision.

### **B4.3 Acceptance of Facilities**

Upon final acceptance of all or part of the IMPROVEMENTS in the PROJECT, then those IMPROVEMENTS shall become the property of the CITY free from all claims from any person or entity without the necessity of any further writing, agreement, or deed. The DEVELOPER further agrees that any facilities placed within a public or platted right-of-way or dedicated public easement are irrevocably dedicated to the public use without any right of reimbursement or compensation of any kind.

### **B4.4 Failure to Install**

In the event the DEVELOPER fails to install the facilities in accordance with the terms of this agreement, the CITY may, in its sole discretion, elect to accept all or a portion of the IMPROVEMENTS in the PROJECT. Should the CITY choose to accept all or a portion of these IMPROVEMENTS, the CITY shall become the sole owner of these facilities. The CITY may give notice of acceptance by writing delivered to the DEVELOPER or recorded in the Register's Office of Maury County, Tennessee. No further writing or deed shall be required.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in multiple originals by persons properly authorized so, to do on or as of the day and year first given.

_____ PROJECT	
<i>Completed by the Developer</i>	<i>Completed by the City</i>
_____ DEVELOPER NAME	_____ CITY ENGINEER
_____ AUTHORIZED AGENT NAME	_____ SIGNATURE
_____ SIGNATURE	_____ DATE
_____ DATE	
_____ STREET	
_____ CITY, STATE, ZIP	
_____ PHONE	
_____ EMAIL	
<i>Attest</i>	<i>Attest</i>
_____ ATTEST NAME	_____ ATTEST NAME
_____ ATTEST SIGNATURE	_____ ATTEST SIGNATURE
_____ DATE	_____ DATE