



## **DEVELOPMENT AGREEMENT**

THIS CONTRACT AND AGREEMENT, made and entered into on this the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by and between THE TOWN OF SMYRNA, Tennessee, a municipal Corporation, located in Rutherford County, Tennessee, hereinafter referred to as "TOWN", and \_\_\_\_\_, with its principal place of business at \_\_\_\_\_, Town/City of State of \_\_\_\_\_, hereinafter referred to as "DEVELOPER".

### **WITNESSETH:**

FOR AND IN CONSIDERATION of the mutual benefits accruing to each party hereinafter set forth, and ONE DOLLAR (\$1.00) cash in hand paid, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Upon request of Developer, the Town, will consider plans for the installation of water and/or sanitary sewer, roads, and storm water facilities to serve \_\_\_\_\_, hereinafter "Development".

2. The Developer will be responsible for the hiring of a qualified civil engineering consultant licensed in the State of Tennessee for the purpose of designing all improvements. Plans and specifications conforming to the subdivision regulations,

storm water ordinance, and the latest editions of the Smyrna Municipal Code (as applicable), the Smyrna Municipal Zoning Ordinance, Town of Smyrna Water & Sewer Specifications, State of Tennessee Community Public Water Systems Design Criteria and Design Criteria for Sewage Works, as well as any other adopted policies related to development in the Town of Smyrna or with any applicable federal, state, county and local laws, regulations and/or guidelines, shall be prepared by the Developer's consultants. The scope of work shall include the design of said improvements. Design shall include engineering reports, preliminary surveys, roadway, storm water drainage, water and/or sewer line plans, sewer line profiles, detail sheets, project specifications, hydraulic calculations, preparation of cost estimates, and any required support data. The Developer shall coordinate all design with the Town, and submit the design for review and approval to the Town allowing at least two weeks review time for approval. For water and sewer improvements, the Developer shall, upon final approval of the Utilities Department, submit to the Utilities Department with all applicable fees payable to the State of Tennessee, five sets of plans each for water and sewer improvements which the Utilities Department shall forward to the appropriate State Agency for approval. All permits from other governmental agencies and utilities are the responsibility of the Developer.

Actual construction costs, as submitted to the developer from his contractor, and any Town cost shall be used to establish the construction cost portion of the letter of credit or cash required by the Subdivision Regulations or Smyrna Municipal Code. In the event the improvements have not been completed in the period of time beyond the original twelve (12) month letter of credit or cash bond, the Developer understands and

acquiesces that construction costs for labor and materials may increase over time and the Town may require an increase of value within the bond or letter of credit. The developer acknowledges and accepts the Town's right to recalculate the amount of financial surety required after the initial 12 month period has expired and to provide the additional surety if required. Furthermore, in the event the Developer fails to install improvements, either to completion or satisfactorily, the Town shall be reimbursed by the Developer for the costs to the Town, over and above the letter of credit, cash bond or other surety for completing the public improvements. The Town will competitively bid the unfinished, incomplete or faulty public improvements and the Developer shall be responsible for the difference between the letter of credit, cash bond or other surety and the competitively bid price to the Town.

The Town reserves the right to designate, for the purpose of dedication to the Town, roadway, storm water drainage components, water and/or sewer lines as public for operation and maintenance by the Town. In the event that the project is within the boundaries of Consolidated Utility District, hereinafter "CUD", the Developer shall coordinate all water line design and installation with CUD. If the project is within the limits of CUD, the Developer must submit to the Town acceptable water line designs on an approved scale, with State of Tennessee approvals, prior to the Town approving any sewer line designs.

The obtaining of bids and award of contract will be the responsibility of the Developer.

The Developer shall comply with the Town of Smyrna's Storm Water Ordinance, Water and Sewer Development Policy and the Town of Smyrna's Engineering

Guidelines for Water and Sewer Design. The Developer's engineering consultant shall provide survey layout of the roadway, storm water drainage components, water and/or sewer lines which includes the field location of an appropriate benchmark(s), location of roadway layouts, drainage structures, sewer manholes, preparation of sewer line cut sheets and water line location alignments. The Utilities Department shall approve the water and sewer plans, sewer cut sheets and line locations prior to construction beginning; the Public Works Department and Engineer of Record shall approve the roadway plans and storm water drainage plans and calculations prior to beginning construction.

Resident inspection shall be provided by the Town for water, sewer, roadway and drainage components to ensure compliance with the final plans and specifications and the verification of the quantity of materials installed. Compensation for resident inspection shall be based on actual footage of water and/or sewer lines installed at a unit charge as established in fee schedule adopted in accordance with the annual budget ordinance for the Town of Smyrna. Preparation, verification, approval and payment of periodic payment requests by the Contractor shall be the sole responsibility of the Developer or representative.

The Developer shall provide the Town detailed site plans, road plans and profiles, storm drains, sediment control measures and detention plans, including dry detention, and other utilities including water and sewer. The Developer shall obtain approval from the applicable Town Department prior to any changes to the plans after submittal for water, sewer, roadway and storm water design, and any field changes which would affect the approved design. The Developer shall coordinate site plans, road plans and

profiles, storm drains, sediment control measures and detention plans, including dry detention with water and sewer mains and laterals to avoid conflicts during construction.

There may be a need for the preparation of easement descriptions for public improvements. This will be accomplished by the Developer providing the Town with legal descriptions for easement documents or providing the Town appropriate easement via the plat.

The final easement documents shall be prepared by the Developer from easement descriptions provided by the Developer and shall be approved as to form by the Town Attorney.

3. The Town will charge the Developer for the installation of the water service lines to be installed by the Town in accordance with standard charges for similar work customarily charged Developers.

4. All connections of the new construction with existing water and sanitary sewer lines may be performed by the Town at the option of the Town.

5. The Developer shall be responsible for construction of water and sanitary sewer lines in conformity with plans and specifications submitted to and approved by the Town and TDEC Water Pollution Control. The Town will not accept or connect storm water, water and sewer lines which do not meet all requirements. The Town may require the developer to televise and record the internal portion of the line which may be suspected of not meeting the installation requirements and standards. This work shall be performed by the developer at his expense. Developers are responsible for installing water and sewer services from the respective mains to the property line. Developers are also responsible for setting any water meter boxes in accordance with the most

recently adopted Town of Smyrna Water & Sewer Standard Specifications.

After all roadway, storm water drainage, water and sewer components have been tested and approved by the Town, but before water taps are to be set, the developer shall supply roadway, storm water, water and sewer “record drawings”, also known as “as-built” drawings. Any water “record drawings” shall include at least two measurements to all line valves, domestic taps and meters, and fire tap locations. Any sewer “record drawings” drawings shall locate all sewer service, which service shall be measured from the first downstream manhole and include the length of service laterals and the depth of the end of the service lateral. All Record Drawings shall be submitted with one paper copy and one electronic copy to the Town. The electronic copy shall be submitted to the Town in “shape” file format and be created using the XY Coordinate System, NAD\_1983\_StatePlane\_Tennessee\_FIPS\_4100\_Feet. The submission of electronic copies shall be in accordance with the Town’s policy related to such electronic copies. The Town shall be responsible for setting water meter assemblies after water mains are tested, approved, and “record drawings” are received by the Town.

6. The Developer and the Town agree that the total estimated cost of construction is \$ \_\_\_\_\_, which represents the total estimated costs of constructions for required water, sewer, road and storm water improvements on said development. If the Developer wishes the final plat executed prior to the completion of all public improvements for said development, in order to secure the performance of the Developer’s obligations under this agreement and the ordinances, codes, Subdivision Regulations, Storm Water Ordinance, Water and Sewer Standard Specifications, and other regulations of the Town, Developer shall provide security in the form of an

irrevocable letter of credit or cash deposit to the Town. The amount of the said security provided by the Developer shall be based on the percentage of the public improvements remaining to be completed, tested and accepted by the Town in accordance with the inspector's project quantity records. The security shall remain in force through the completion of the work and shall extend for a period of twelve (12) months after the completion of the work and preliminary acceptance by the respective Departments, except that the Town may release a portion of the letter of credit or cash deposit during the twelve (12) month maintenance warranty period which shall commence at the time the Town gives **written acceptance** by the director of the appropriate department of the Town of the improvements as being complete according to the plans and in conformity with the ordinance, codes, Subdivision Regulations, Storm Water Ordinance, Standard Water and Sewer Specifications, and other regulations of the Town; provided however, that the security retained for such warranty period shall in no event be less than twenty-five percent (25%) of the total cost of construction of the proposed improvements for the development, or \$10,000.00, whichever is higher. The Town Planner is authorized to reduce the amount of the Letter of Credit or cash deposit below the aforementioned minimum in his/her sole discretion on items of little value.

7. The Developer shall be responsible for maintenance and upkeep of the public improvements constructed for a period of one (1) full year following the date of written acceptance, said maintenance and warranty to include, but not be limited to, adjustment of storm water drainage grates, repair and establishment of grass growth of detention and retention areas, repair of storm water drainage components, repair of roadways and concrete curbs, manhole frames and covers, fire hydrants, valve boxes,

and all infrastructure repairs required to maintain an operable system. In the event of a problem requiring correction during the warranty period, or any extension thereof, the Developer's warranty period for the correction may be extended for one year from re-inspection approval by the Town following correction.

8. The Town shall require prepayment of estimated costs for labor and materials performed by the Town.

9. The Developer understands that charges and expenses set forth herein do not include charges for permits and fees required by the Town code.

10. The Developer agrees to provide liability insurance or require the Contractor to provide liability insurance in the minimum amount of \$1,000,000 single limits, which names the Developer, Town and Contractor as insureds. In addition, the Developer agrees to hold the Town harmless and indemnify the Town for all claims of loss associated with construction by the Developer. The insurance policy shall require a minimum of thirty (30) days written notice to the Town prior to cancellation.

The Developer shall deliver proof of insurance prior to any construction. In the event the Developer fails to do so, the Town may, following fifteen (15) days prior written notice to Developer, purchase the necessary insurance and charge same to the Developer together with an interest rate/service charge fee of 20% per annum.

11. In the event of default by Developer, Developer agrees to pay reasonable attorney's fees and court costs associated with enforcement of this agreement. Failure to comply with this agreement or any aspect of this agreement will result in a Stop Work Order being issued by the Town. Additionally, no permits or certificates of occupancy will be issued for any construction or building within the development until all violations

are corrected. Violation of a Stop Work Order will be punished and enforced as applicable under Tennessee law. Violation of a Stop Work Order is a violation of this Agreement and in accordance with the Smyrna Municipal Code may subject the violator to a fine. Furthermore, all provisions of Title 14 Chapter 8 of the Smyrna Municipal Code are incorporated into this agreement; including, but not limited to, provisions codified under Title 14 Chapter 8 Section 807 (Violation and Penalty).

12. Upon completion of construction and prior to acceptance, the Town may require the Developer to submit a sworn statement of actual costs of labor and materials required for construction excluding sums previously billed through the Town. The Town will supply the Developer with a form for this purpose.

13. In the event any construction is to be performed within existing public right-of-way of the Town, Developer agrees to notify the Town at least fourteen (14) days prior to the commencement of said work in the public right-of-way, and to obtain all necessary approvals and permits from all Town departments.

Developer further agrees to properly mark the construction area with barriers, barricades, fences, guards and flagmen as required by the Manual on Uniform Traffic Control Devices, Part 6 ("MUTCD"), in order to minimize the danger to the public. Developer agrees that in streets which are not barricaded to block all traffic, to place and maintain a drum type barricade as described in MUTCD, stabilized with sand bags on each manhole cover and/or casting which extends more than two (2) inches above the existing street surface. Without limiting Developer's obligation to conform to all provisions of MUTCD, Developer agrees to place and maintain signs as provided in subsection 6B.

14. Developer further agrees that prior to any grading activity or any building construction to properly install and maintain erosion control measures and to take other steps to prevent the erosion and tracking of materials from the site onto adjoining parcels, streams, public right-of-way, and roadways, including the shoulders of the road, all in accordance with the Town's National Pollution Discharge Elimination System General Permit for Municipal Separate Storm Sewer System Guidelines and Regulations. Developer further agrees that prior to any building construction any required detention basins must be installed and operable. Developer further agrees that any and all drainage ditches or drainage components, which are in existence and may be affected by the construction or grading, or which are to be created as part of the storm water control measures, shall be constructed and completed prior to beginning any building activity. The developer shall be required to submit a post construction plan for maintaining detention and retention basins as set forth by TDEC and the Town's storm water drainage ordinance.

15. In the event Developer fails to properly construct the improvements required by the plans incorporated herein and approved by the Department, during the warranty period Developer shall continue to be responsible for corrective work, notwithstanding the Town overlooked such defects prior to its acceptance of the development.

16. The Developer is required to provide at least fourteen (14) days notice prior to any closure of street or disruption of any utility. Prior to any street closure or disruption of any utility the Developer shall obtain written approval from the director of the appropriate department of the Town of Smyrna. The Developer agrees to pay for and reimburse the Town for any and all costs associated with the street closure,

including costs associated with the re-opening of the street, and/or the disruption of any utility, including costs associated with the re-institution or re-connection of any utility. The Town shall submit an invoice not later than thirty (30) days for any such costs. Such invoice for costs shall be paid not later than 15 (fifteen) business days from the date of invoice.

17. The Developer further agrees to be bound to the following terms, unique to the Development the subject of this Agreement:

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18. Any notification required under this agreement shall be directed as follows:

Kevin Rigsby, Town Planner  
315 South Lowry Street  
Smyrna, TN 37167  
Phone: 615/355-5711  
Fax: 615/355-5799

Developer:

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19. The applicable ordinances, codes, policies, Standard Street Specifications, Water and Sewer Standard Specifications, Storm Water Ordinance, Subdivision

Regulations, Smyrna Municipal Zoning Ordinance, and other regulations of the Town of Smyrna are incorporated herein by reference, and Developer agrees to abide by same.

20. This instrument constitutes the entire agreement of the parties, and it shall not be amended except in writing acknowledged by authorized agents or representatives of each of the parties.

21. This agreement shall be binding upon the parties hereto, their heirs, successors and assigns. The laws of Tennessee shall be applicable and venue shall be Rutherford County, Tennessee for any disputes.

This agreement made and entered into in duplicate on the day and date first above written.

TOWN OF SMYRNA

BY: \_\_\_\_\_

David Santucci  
Town Manager

DEVELOPER

BY: \_\_\_\_\_

Authorized Representative of

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