

TOWN OF COLLIERVILLE

NON-RESIDENTIAL, MIXED USE, & MULTI-FAMILY
DEVELOPMENT AGREEMENT
DD # _____



THIS NON-RESIDENTIAL, MIXED USE, & MULTI-FAMILY DEVELOPMENT AGREEMENT, hereinafter called Agreement, is made effective this the _____ day of _____, hereinafter called the Effective Date, by and between _____, located at _____, hereinafter called “**Developer/Owner**”; and the Town of Collierville, a municipality organized and existing under the laws of the State of Tennessee, hereinafter called Town.

I. PURPOSE OF THE AGREEMENT

1. The Developer has the legal authority to develop real property in the Town of Collierville located in Shelby County, Tennessee, and identified as Shelby County tax parcel _____, which contains approximately _____ acres, hereinafter called the Project Site. The Project Site is currently zoned _____.
2. The Developer desires to improve and develop the Project Site or a portion of the Project Site into a development to be known as _____, hereinafter called the Project, under the regulations of the Town current on the Effective Date. The Town has assigned the Development Department tracking number **DD #** _____ to the Project.
3. Final Project Documents for the Project, including detailed construction plans and specifications, have been approved subject to Certain Conditions in accordance with Town regulations, and are attached to this Agreement as Exhibit A.
4. The Developer agrees to install public improvements, as applicable and as shown on the Final Project Documents, including, but not limited to, water lines, fire hydrants, sanitary sewer lines, grading, stormwater management system, streets, curbs, gutters, sidewalks, street name signs, traffic control devices, street lights and underground electrical power and gas utilities, in said Project at no cost to the Town.
5. The Developer agrees to install and maintain private improvements and amenities, as applicable and as shown on the Final Project Documents, including, but not limited to, private streets and alleys, fences, walls, lakes, common open space, site lighting, stormwater management systems, retention and/or detention basins, storm sewers, inlets etc., landscaping and related irrigation systems, relative to said Project, none of which shall be accepted for maintenance by the Town.
6. The Town agrees to approve the Project subject to the Developer’s compliance with applicable Town Regulations and the conditions set forth herein in Exhibit B, and the Town agrees to provide customary services to the Project in accordance with the Town’s Regulations after Final Acceptance.

II. DEFINITIONS

Developer’s Initials _____

1. BMA - The Mayor and the Board of Aldermen of the Town of Collierville, Tennessee.
2. Certificate of Occupancy (CO) - a document issued by the Town certifying that the Project has been completed in accordance with Town Regulations and the Final Project Documents, and is ready for use and human occupancy.
3. Conditions of Approval – Conditions established by the Planning Commission (PC), and, as applicable, the Design Review Commission (DRC), the Historic District Commission (HDC), or the Departmental Review Team (DRT) (any or all of which as may have been modified by the BMA) are set forth in Exhibit B to this Agreement and are incorporated herein by reference and made a part hereof.
4. Construction - The permanent fastening and positioning of construction materials and/or clearing and/or grading, including demolishing or removing existing structures necessary for the development of the Project.
5. Commencement of Construction - The point in time at which the earth is disturbed for the construction of a development or structure.
6. Conflicts - In the event of a conflict among referenced ordinances, standards, regulations and laws, the Development Director or his designee shall determine the applicable regulation.
7. Departmental Review Team (DRT) - Designated representatives from the Development Services Department (Building Codes, Engineering, Planning), Fire Department, Police Department, Parks and Recreation and Public Services. The purpose of the DRT is to provide multi-departmental review of proposed projects to ensure that they conform to the desired general character of the Town.
8. Design Professional – A person licensed by the State of Tennessee to practice Land Surveying, Engineering, Architecture, or Landscape Architecture.
9. Design Review Commission (DRC) - An independent citizen board appointed by the BMA to review the design and construction procedures for proposed new developments and structures to ensure that they conform to the desired general character of the Town.
10. Developer - The individual, entity, or organization that is proposing to develop real estate within the corporate limits of the Town under the terms and conditions of this Agreement.
11. Developer’s Construction Cost Estimate - The Developer shall furnish to the Town an estimate of the total Project Construction Cost subdivided into costs associated with Public Improvements and Private Improvements.

12. Effective Date - The date upon which the Mayor executes this Agreement shall be the Effective Date and shall be entered on the first page hereof.
13. Final Acceptance - Release of the Maintenance Security by the BMA shall signify the Final Acceptance of Public Improvements by the Town for maintenance.
14. Final Project Documents - Design drawings and specifications prepared by a Design Professional, including but not limited to the final plans for site layout, tree survey and protection, grading and drainage, erosion control, sanitary sewer, water, paving, civil details, landscape and irrigation, lighting, and architectural plans. Final Project Documents shall be approved in accordance with Town Regulations, and shall be dated to coincide with the Effective Date. All existing and proposed utilities shall be reflected on the Final Project Documents.
15. Historic District Commission (HDC) - An independent citizen board appointed by the BMA to review the design and construction procedures for new developments and structures in the Town Historic District to ensure that they conform to the historic character of the Town.
16. Initial Acceptance – Approval by the BMA to accept the Project as constructed and establishes the Maintenance Security to begin the one-year Warranty Period.
17. Maintenance Security - The Maintenance Security is required upon the reduction of the Performance Security and at the start of the Warranty Period. The Maintenance Security guarantees the completed work against any latent defects during the Warranty Period.
18. Notice of Completion - A document issued by the Town certifying that the Project has been completed in accordance with Town Regulations and the Final Project Documents, and is ready for review and approval by the BMA and the establishment of the Maintenance Security.
19. Owner - The individual, entity, or organization that holds legal title to real estate that is being proposed for development within the corporate limits of the Town under the terms and conditions of this Agreement.
20. Performance Security - The Performance Security guarantees the Developer's completion of the Project in accordance with Town Regulations and the Final Project Documents. The Performance Security and the Maintenance Security may collectively be referred to herein as the Security.
21. Planning Commission – An independent citizen board appointed by the BMA to review and establish land uses and zoning regulations to assure the orderly development of the Town, and to approve new developments and structures to ensure that they conform to the desired general character of the Town.

22. Preconstruction Meeting – A meeting scheduled by the Town prior to commencement of construction at which time the approved Final Project Documents are reviewed and the Developer is authorized to commence construction. All fees and required Performance Security and Certificate of Insurance must be received fourteen (14) calendar days prior to the Preconstruction Meeting.
23. Preliminary Approval – After review and approval by Town staff and all appropriate Town Boards and Commissions, and subject to any and all conditions imposed by the various bodies, the Project will be presented to the BMA for Preliminary Approval. Construction can commence after Preliminary Approval by the BMA, payment of all required fees and Security, providing proof of insurance coverage, and participation in the pre-construction meeting.
24. Private Improvements - Improvements as shown on the Final Project Documents, including, but not limited to, private streets and alleys, fences, walls, lakes, common open space, stormwater management systems, retention and/or detention basins, storm sewers, inlets, water and sanitary sewer systems, landscaping and related irrigation systems, relative to said Project.
 - a. Private Improvements are not accepted for maintenance by the Town, but are required to have legally binding agreements for maintenance with a homeowner’s association or other legal entity possessing the capability of maintaining the private improvements in perpetuity.
25. Public Improvements - Improvements shown on the Final Project Documents, including, but not limited to, water systems, fire hydrants, sanitary sewer systems, grading, greenbelt infrastructure, stormwater management system, streets, curbs, gutters, sidewalks, street name signs, and traffic control devices, including but not limited to traffic signals and pavement markings, street lights and electrical power distribution poles within Public Rights-of-Way or easements.
 - a. Required improvements for the Project shall be installed at Developer’s sole cost and expense, which improvements (except for sidewalks, streetlights, power distribution poles, and electric and gas utilities) will ultimately be accepted by the Town for perpetual maintenance.
26. Regulations - For the purposes of this Agreement, the following ordinances, standards, regulations and laws are hereby made a part of this Agreement by reference and shall hereafter collectively be referred to as Town Regulations:
 - a. The Collierville Subdivision Regulations;
 - b. The Collierville Standard Construction Specifications;
 - c. The applicable Resolutions and Ordinances of the Town;
 - d. Policies adopted by the various Departments related to development;

- e. The standards of the American Society for Testing Materials (ASTM) and the American National Standards Institute (ANSI);
 - f. The requirements of the Occupational Safety and Health Administration (OSHA) and the Federal Americans with Disabilities Act (ADA);
 - g. The Standard Specifications for Road and Bridge Construction of the Tennessee Department of Transportation (TDOT) and the requirements of the Tennessee Department of Environment and Conservation (TDEC).
 - h. The Manual of Uniform Traffic Control Devices (MUTCD), current edition.
27. Stormwater Pollution Prevention Plan - A written plan that includes site map(s), an identification of construction/contractor activities that could cause pollutants in the stormwater, and a description of measures or practices to control these pollutants. The SWPPP should be prepared in accordance with the Tennessee Erosion and Sediment Control Handbook.
28. Substantial Completion - The point in time when the Developer has completed all required Public and Private Improvements to the Project Site and all required Public Improvements off-site relative to the Project in accordance with the Final Project Documents and conditions, and the improvements same have been inspected, tested and approved by the Town Engineer or his designee.
29. Warranty Period - A twelve (12) month Warranty Period beginning after Initial Acceptance.

III. GENERAL CONDITIONS

- 1. Affidavit of Payment - Prior to Final Acceptance, the Developer shall deliver to the Town an affidavit certifying that all subcontractors and material suppliers furnishing labor and/or material for the Public Improvements required under this Agreement have been paid in full. The Developer shall also provide a release of all liens, and of the right to claim liens, from all subcontractors and material suppliers furnishing labor or materials for the Public Improvements.
- 2. Approval of the Final Project Documents - The Final Project Documents, which are attached hereto as Exhibit A and incorporated herein by reference, shall be stamped as approved by the Town. All construction relating to the Project shall be subject to inspection and approval by the Town until Final Acceptance and shall be subject to any conditions set forth on Exhibit B.
- 3. Construction Activity Periods - The Developer will not carry on or permit construction activity under this Agreement earlier than 7:00 a.m. and not later than 6:00 p.m., Monday through Saturday, and no construction activity shall occur on Sundays. Hours may be modified by written approval of the Town Engineer under certain conditions. Construction hours shall be enforced by the Town Building Codes Division.

4. Construction Standards - The Developer shall construct the Project as shown on the approved Final Project Documents in accordance with requirements of the Town Regulations.
5. Demolition - The Developer agrees to secure all required permits for the demolition of structures on the Project Site. The Developer further agrees that it will haul all scrap, buildings, materials, debris, rubbish and other degradable materials to an authorized landfill and not bury such materials within the Project Site.
6. Deposition of materials in street prohibited - All construction material, including, without limitation, mud, silt, dirt and gravel, shall be kept off existing streets at all times. In the event such mud, silt, dirt, gravel or other construction material is washed, blown or carried into an existing street, the Developer shall take immediate steps to remove such materials.
 - a. If the Developer does not remove such materials after notification by the Town, and the Town deems it necessary to clean the affected streets, the Developer agrees to reimburse the Town for all such cleaning expenses, plus 25% for administrative expenses.
7. Development Agreement Modification Fees - The Developer agrees to pay the fee for any modifications to this Agreement in accordance with the Town Schedule of Fees current at the time of submittal of a written request for a modification by the Developer, including, but not limited to, time extensions, addendums, or amendments.
8. Developer's Default - The Developer agrees that should it default in performing any of its obligations under this Agreement and it becomes necessary to engage an attorney to file necessary legal action to enforce provisions of this Agreement or sue for any sums of money due and owing or liability arising incidental to the Agreement, Developer will pay to the Town reasonable attorney's fees and expenses of litigation.
9. Developer's Liability - It is expressly understood and agreed that the Town is not and could not be expected to oversee, supervise and/or direct the implementation of all construction and improvements contemplated in this Agreement. The Town is not vested with the original design responsibility or the means to formally survey elevations, capacity, structural integrity, type, adequacy or the locations of improvements at every stage of the construction process.
 - a. The Development Director or his designee may make periodic inspections and has the right to enforce the provisions of this Agreement and Town Regulations.
 - b. The Developer now has and shall retain the responsibility to properly anticipate, survey, design and construct the Project improvements and give full assurance that same shall not adversely affect the flow of surface water from or upon any property.
 - c. In providing technical assistance, plan and design review, the Town does not and shall not relieve the Developer from liability, and the Town does not accept any liability from the Developer.

- d. The Developer will provide his own Project Engineer whose duties and responsibilities are stated in the General Conditions of the Town Standard Construction Specifications.
 - e. Neither observations by the Town, nor inspections, tests or approvals by others shall relieve the Developer from its obligation to perform work in accordance with Town Regulations and the terms of this Agreement.
10. Duration of Obligations - The obligations of the Developer hereunder shall run with the Project Site until the Developer's obligations have been fully met. Any party taking title to the Project Site, or any part thereof, prior to Final Acceptance shall take said real property subject to such obligations.
11. Easements - The Developer agrees that it will grant the necessary easements and rights-of-way across its property necessary to satisfy the requirements of this Agreement without expense to the Town and will waive any claim for damages. Any off-site easements and/or right-of-way owned by others but required for the project must be obtained by Developer, recorded prior to approval of the Agreement, and noted on the Final Project Documents.
12. Emergency Response - In emergencies affecting the safety or protection of persons or the work or property at the Project Site or adjacent thereto, the Developer, without special instruction or authorization from the Town, is obligated to act to prevent threatened damage, injury or loss.
13. Indemnity - the Developer will indemnify and hold the Town harmless and agrees to defend the Town and the Town employees against any and all claims that may arise out of or result from the Developer's performance or lack of performance under this Agreement, whether such claims arise out of the actions or inactions of the Developer, any subcontractor of the Developer, or anyone directly or indirectly employed by, or otherwise directly or indirectly involved with the Project at the direction of either of them.
- a. This indemnity agreement includes, without limitation, all tort claims, both intentional and otherwise, and all claims based upon any right of recovery for property damage, personal injuries, death, damages caused by downstream deposits, sediment or debris from drainage, damages resulting from the Developer changing the volume or velocity of water leaving the Developer's property and entering upon the property of others, stormwater that is allegedly impounded on another property and claims under any statutes, Federal or state, relative to water, drainage and/or wetlands, and reasonable attorney's fees and costs incurred by the Town in defending itself or its employees as a result of the aforesaid and/or enforcing this Agreement.
14. Notice of Violation - The Development Director and/or Town Engineer may issue a Notice of Violation (NOV) when violations of Town, State or Federal regulations are observed.
- a. If the Developer has not corrected the violation identified in the NOV, then the Development Director or his designee may make arrangements for the necessary work

- to eliminate the violation, documenting all expenses incurred in performing the work and adding 25% for administrative costs.
- b. Prior to releasing any Security hereunder, all expenses incurred by the Town relative to the foregoing shall be paid in full by the Developer.
 - c. The Town reserves the right to issue a Stop Work Order if the Developer does not promptly correct any deficiency or violation identified in the NOV.
15. Ownership of Public Improvements - The Developer agrees it shall have no claim, direct or implied, in the title or ownership of the Public Improvements. The Town shall have no obligation to maintain any sidewalk constructed by Developer, nor any streetlights or electric or gas utilities, regardless of the location of any of same. The Town, upon Final Acceptance, will take full title to the Public Improvements as may be applicable.
16. Permit Availability - A copy of all required permits and Final Project Documents must be kept on the Project Site at all times. If a NPDES Stormwater Construction Permit is required by TDEC, a copy of the Notice of Intent and the Notice of Coverage shall be provided to the Town Engineering Division prior to commencement of construction for the Project.
17. Relocation of Existing Improvements - The Developer shall be responsible for the cost of any and all relocation, adjustment, modification, installation and/or removal of utilities, streets, curbs, gutters, sidewalks, drainage and all other improvements made necessary by the development of the Project, both on and off site.
18. Right of Entry - The Developer agrees that the Town shall have the right to enter the Project Site and make emergency repairs to any improvements when the health and safety of the general public requires it. The Developer will reimburse the Town for the direct costs incurred by it in making such repairs, plus 25% for administrative and management fees.
19. Safety - The Developer shall maintain barricades, fences, guards and flagmen as reasonably necessary to ensure the safety of all persons at or near the Project Site at all times.
20. Stop Work Orders - The Development Director or his designee may issue Stop Work Orders as a measure of secondary or subsequent enforcement of this Development Agreement.
21. Termination of Agreement – This Agreement may be terminated by the BMA if the Developer fails to comply fully with the terms and conditions of this Development Agreement.
- a. The Town will give the Developer sixty (60) days written notice of the intent of the Town to terminate the Development Agreement, stating the reasons for termination, and giving the Developer a reasonable time to correct any failures in compliance.

- b. If after receiving a Notice of Termination of the Development Agreement by the Town, the Developer corrects the non-compliance within the time specified in the Notice of Termination, the Development Agreement will remain in effect.
 - c. Failure by the Developer to correct the non-compliance will result in termination of the Development Agreement and collection of the Security by the Town.
22. Transfers of Project Ownership - Until all obligations of the Developer under this Agreement have been fully met, the Developer agrees that neither the Project Site nor any portion thereof will be transferred to another party without first providing the Town with a fifteen (15) calendar day written notice of when the proposed transfer is to occur and the identity of the proposed transferee, along with the appropriate address and telephone number of the proposed transferee.
- a. If it is the proposed transferee's intention to develop the Project Site or any portion thereof in accordance with this Agreement, the Developer agrees to furnish the Town with an assumption agreement by which the transferee agrees to perform the obligations required under this Agreement that are applicable to the property to be acquired by the transferee. Said assumption agreement will be subject to the approval of the BMA.
 - b. Unless otherwise agreed by the Town, the Developer will not be released from any of its obligations hereunder by virtue of such transfer and the Developer and the transferee both shall be jointly and severally liable to the Town following such transfer for all obligations hereunder that are applicable to the property transferred.
 - c. In the event BMA approval of the transfer agreement, the transferee will be required to furnish new Performance Security and Maintenance Security acceptable to the Town.
 - d. If it is not the proposed transferee's intention to develop the Project Site or any portion thereof in accordance with this Agreement, the transferee must satisfy all applicable requirements of the Town, including payment of any and all outstanding fees, and must receive BMA approval to void this Agreement.
 - e. The Developer agrees that if it transfers said property without providing the notice of transfer and assumption agreement as required herein, it will be in breach of this Agreement and the Town may require that all work be stopped relative to the Project and may require payment of the Performance and Maintenance Security to assure the completion of the Project.
23. Underground Utilities - All electrical utilities shall be installed underground unless the requirement expressly waived by the BMA.

IV. REQUIRED IMPROVEMENTS

The Developer agrees to pay the full cost of all the improvements listed below if applicable to the Project.

- 1. Water System - The Developer agrees to pay the cost of a State of Tennessee approved potable water system, including without limitation, water mains, fire hydrants, valves,

service lines, and accessories, located within the Project, and water mains, fire hydrants, valves, service lines, and accessories, located outside the Project but required to serve the Project.

- a. The Developer acknowledges that the Town will assess water meter connection charges against the Project in accordance with Town policy prevailing at the time building permits are acquired.
 - b. The Developer agrees to bear the cost of all engineering, inspection and laboratory costs incurred by Developer incidental to the water service system in or to the Project, and if the Development Director or his designee deems it necessary, to have additional work of such nature performed as directed without cost to the Town.
2. Sanitary Sewer System - The Developer agrees to pay the cost of a State of Tennessee approved sanitary sewer system complete with necessary sewer mains, manholes, pump stations, force mains and service laterals in the Project, along with all necessary sewer mains, manholes, pump stations, force mains and service laterals outside the Project but required to provide sanitary sewer service to the Project.
- a. Pump stations will not be allowed without specific written approval from the BMA.
 - b. The Developer acknowledges that the Town will assess sewer connection charges against the Project in accordance with the Town policy prevailing at the time building permits are acquired.
 - c. The Developer agrees to bear the cost of all engineering, inspection and laboratory testing costs incurred by the Developer incidental to the sewer system in or to the Project, and if the Development Director or his designee deems it necessary, to have additional work of such nature performed as directed without cost to the Town.
3. Streets - The Developer agrees to dedicate and improve and/or construct, at no cost to the Town, all public and/or private streets, including curbs, gutters and sidewalks, located within or required by this Project to comply with the standards of the Town in accordance with the Final Project Documents.
- a. In some circumstances, the Town may require the payment of an in-lieu of construction fee as an alternate to the construction of the required improvements by the Developer. The amount of any in-lieu construction fee will be 125% of the estimated construction cost of the improvements.
 - b. The Developer shall furnish and install base asphalt and a final wearing surface asphalt course on all streets, public and private, in accordance with the Town Regulations and the Final Project Documents. The final wearing surface on both public and private streets shall be installed no later than twenty four (24) months after installation of the base asphalt course. The Developer shall make all necessary adjustments to manholes, valve boxes, and other appurtenances as required to meet finished surface grade and to repair any areas designated by the Town, as required prior to the installation of the final surface asphalt.

- c. The Developer agrees to install permanent street signposts and markers at all street intersections in the Project and to install traffic control devices, signage and striping relative to the Project. All traffic control devices, signage and striping shall be installed as per the latest edition of the Manual on Uniform Traffic Control Devices (MUTCD) and approved by the Town Engineer.
 - d. The Developer agrees to pay the cost of all engineering, inspection and laboratory costs incurred by the Developer incidental to the construction of street(s) to be constructed or improved pursuant to this Agreement, including, but not limited to, material and density testing, and if the Development Director or his designee deems it necessary, to have additional work of such nature performed as directed without cost to the Town.
4. Streetlights - The Developer agrees to pay the cost of installation of Street Lighting along all public roadways improved as part of the Project. The Developer will make an initial payment based on the construction cost estimate prepared by MLGW. When the actual cost as billed by MLGW is determined, the Developer will pay any difference between the estimated cost and the actual cost within thirty (30) days after receiving the invoice from the Town. In the event that the initial estimate exceeds the actual cost, the Town will refund the difference to the Developer within thirty (30) days.
 - a. When using specialty lighting such as Beale Street lights, the Developer agrees to pay the full cost for the specialty lights if the Project is along both sides of the road. If the Project is only along one side of the road, the Developer agrees to pay one-half the cost of the specialty lights.
5. Power Distribution Poles – The Developer agrees to pay the full cost for steel electric power distribution poles for the Project frontage, if applicable.
 - a. If the Project frontage is along both sides of the public road, the Developer agrees to pay the full cost for steel electric power distribution poles. If the Project is only along one side of the public road, the Developer agrees to pay one-half the cost of steel electric power distribution poles for the Project frontage.
6. Gas and Electric Service - The Developer shall install underground electric and natural gas service to the Project in accordance with the electric and natural gas service policy specified by the agreement between the Town and MLGW and Town ordinances and/or policies in effect at the time of such installation.
7. Stormwater Management System - The Developer agrees that all stormwater management systems and related facilities, including, without limitation, permanent post-construction stormwater runoff management best management practices, ditch paving, bank protection and fencing adjacent to open ditches, made necessary by the development of the Project are to be constructed and maintained by the Developer, who must execute the Stormwater Maintenance Agreement attached as Exhibit F.

8. Stormwater Pollution Prevention Plan - The Developer agrees that it will prepare, implement, and maintain a Stormwater Pollution Prevention Plan for the Project in accordance with all Town, State, or Federal regulations, and as approved in the Final Project Documents.
9. Best Management Practices - The Developer agrees that it will provide all necessary best management practices (BMPs) for erosion and sediment control. BMPs to control erosion and sediment during construction, include, but are not limited to, temporary vegetation, construction exit, inlet protection, and silt fence.
 - a. All freshly excavated and embankment areas not covered with satisfactory vegetation shall be fertilized, mulched, seeded and/or sodded, or otherwise protected as required by the Town Engineer to prevent erosion.
 - b. In the event the Town Engineer determines that necessary erosion and sediment control is not being provided by the Developer, the Town Engineer may issue a Notice of Violation (NOV) to the Developer.
10. Engineer's Certification - The Developer shall provide the written opinion of a professional engineer currently licensed to practice in Tennessee attesting that the entire watershed where the Project Site is located has been reviewed, and that upon full development at the greatest allowable use density under existing zoning of all land within that watershed, the proposed development of the Project will not increase, alter or affect the flow of surface runoff water, nor contribute to same, so as to damage, flood or adversely affect any downstream property.
11. Stream Buffers - The Developer agrees to provide stream buffers along all regulated watercourses in accordance with Town Regulations and the TDEC General Construction Permit.
12. Changes and Substitutions - Should the Developer determine that changes or substitutions to the Approved Final Project Documents may be necessary or desirable; the Developer shall notify the Town Engineer in writing requesting approval of the desired changes or substitutions, explaining the necessity or desirability of the proposed changes or substitutions. The request by the Developer must be accompanied by sufficient documentation, including drawings, calculations, specifications, or other materials necessary for the Town to evaluate the request. No changes are to be made in the field until written permission is granted by the Town Engineer.

V. PROJECT SCHEDULE

1. Approved Final Project Documents - The Developer shall provide to the Town electronic copies (PDF scans) of the Approved Final Project Documents (Attachment A) fourteen (14) calendar days prior to the Preconstruction Meeting.

2. Demolition Permits - If demolition of any improvement on the Project Site is anticipated, a demolition permit from the Town must be obtained fourteen (14) days prior to the preconstruction meeting.
3. Certificate of Insurance – 14 days prior to the Preconstruction Meeting, the Developer will furnish to the Town a certificate of insurance evidencing the required coverage and listing the Town as additional insured. The furnishing of the aforesaid insurance shall not relieve the Developer of its obligation to indemnify the Town in accordance with the provisions of this Agreement.
4. Preconstruction Meeting - The Developer must pay all fees, furnish the Performance Security, and provide the required certificate of insurance fourteen (14) calendar days prior to the Preconstruction Meeting for the Project, all in accordance with the applicable provisions of this Agreement. The Preconstruction Meeting will be scheduled by the Development Director or his designee.
5. Commencement of Construction - The Developer agrees to commence Construction within twenty four (24) calendar months from the Effective Date. The failure of the Developer to commence Construction within twenty four (24) months of the Effective Date will be considered an expiration of the Agreement, which will render null and void all approvals from the BMA, PC, DRT, and as applicable, the DRC or the HDC, unless the Developer is granted a time extension by the BMA.
6. Project Duration - The Developer shall substantially complete the Project on a timely schedule and in an expeditious manner, with the date of Substantial Completion to be not later than _____ (_____) **months** from when the Developer commences construction of the Project.
7. Request for Extension - The Developer agrees that if due to unforeseen circumstances it is unable to Substantially Complete all work included in this Agreement on or before the Substantial Completion Date specified above, it will submit a written request for extension of the Substantial Completion Date to the Town at least sixty (60) days prior to the specified date, stating the reason for its failure to complete the work as agreed, and a revised Substantial Completion Date.
 - a. The time period of any extensions will be determined by the BMA in its sole and absolute discretion. It is the policy of the BMA that extensions do not exceed one year in length.
 - b. The Town will not unreasonably withhold approval of extensions of time where the Developer has complied with the requirements of notice to the Town and provided any required additional Security.
8. Breach of Agreement for Time Extension - The Developer agrees that its failure to follow the extension of time procedure provided herein shall constitute a breach of this Agreement

and will render null and void all approvals from the BMA, PC, DRT, and as applicable, the DRC or the HDC.

9. Withholding or Withdrawal of Service - The Developer agrees that should it fail to complete any part of the work outlined in this Agreement in a good and workmanlike manner, the Town shall reserve the right to withhold and/or withdraw all building permits and/or water and sewer service within the Project until all items of this Agreement have been fulfilled by the Developer, or as an alternative draw upon the Security to complete the work.

10. Temporary Certificate of Occupancy - If the Developer has failed to complete all work for the Project by the Substantial Completion Date, but the Project can be used while minor work is being completed or minor deficiencies are being corrected, the Development Director or his designee may recommend that the Building Official issue a Temporary Certificate of Occupancy (TCO) for the Project, subject to the conditions stated by the Development Director or his designee at the time, which would allow the occupancy and beneficial use of the Project until such time that the Permanent Certificate of Occupancy (CO) could be released.
 - a. The TCO shall remain in place until such time as the Town issues a permanent Certificate of Occupancy for the Project, provided, that during the period of the TCO, the Developer shall maintain the Performance Security and the Maintenance Security; and provided further that no CO shall be issued for the Project until the Developer has fully satisfied all remaining conditions of approval associated with the Project, including, but not limited to, landscaping, lighting, planting trees and/or shrubs, or installing fencing.
 - b. The Developer agrees to pay the monthly fee as required by the current fee schedule for the TCO while completing outstanding items.
 - c. A listing of items that must be completed by the Developer before a CO will be issued along with a deadline for their completion will be provided to the Developer with the issuance of the TCO.
 - d. Failure of the Developer to complete such items by the specified deadline shall constitute a default hereunder, permitting the Town to revoke the TCO and otherwise exercise all of the remedies available to it due to such default hereunder and at law and in equity including, without limitation, drawing upon the Security. All such remedies shall be cumulative.

VI. PROJECT CLOSEOUT

1. As-Built Drawings - Prior to Final Acceptance, the Developer shall submit as-built plans of the improvements installed as part of the Project, including but not limited to, the potable water system, the sanitary sewer system, the stormwater management system, landscaping, irrigations system, photometric plan, and streets including curbs and gutters and sidewalks, signed and sealed by a Design Professional, confirming that the installed improvements are in compliance with Town regulations and the approved Final Project Documents.

Developer's Initials _____

2. CO or Notice of Substantial Completion - The issuance of a CO or Notice of Substantial Completion shall signify that the Project is ready to be considered for Initial Acceptance by the BMA. Issuance of the CO or Notice of Substantial Completion does not constitute Final Acceptance of the Project by the Town. Until Final Acceptance, any part of the Project is subject to correction.
3. Curbs and Gutters - All required curbs and gutters must be completed and without defect prior to Final Acceptance of the Project. The Developer shall be responsible for repairing any latent defects and/or failures in the curbs and gutters which may occur after Initial Acceptance and prior to Final Acceptance of the Project.
4. Final Construction Cost - The Developer shall furnish in writing the itemized as-built construction cost of all public improvements prior to issuance of a CO or Notice of Substantial Completion for the Project in order to permit the Town to comply with financial reporting requirements.
5. Tree Mitigation - Prior to the issuance of a CO or Notice of Substantial Completion, the Developer shall submit an as-built landscaping plan that reflects the required tree mitigation and all revisions to the mitigation plan as approved by the Planning Division. Tree mitigation shall be reviewed through the Planning Division as directed in the current Tree Mitigation Policy.
6. Sidewalks - All required sidewalks shall be completed and without defect prior to Final Acceptance of the Project. The Developer shall be responsible for repairing any latent defects in the sidewalks prior to Final Acceptance of the Project. All references to sidewalks include required handicap ramps.

VII. SECURITY

1. Cost Estimates - The Developer has furnished to the Town estimates as to quantity and cost of all Public and Private improvements relative to the Project, with the exception of electrical power and gas utilities, such estimate being set forth on Exhibit C attached hereto and incorporated herein by reference. These estimates will be used to establish the amount of Security required for the Project.
2. Security for Project Improvements - The Developer shall provide to the Town a Performance Security instrument in the amount of _____ Dollars (\$___), which sum represents 100% of the estimated cost of all approved public improvements. The Developer shall provide to the Town a Performance Security instrument in the amount of _____ Dollars (\$_____), which sum represents 25% of all approved private improvements, with a minimum amount of \$10,000. A single Performance Security instrument in an amount equal to the total of both public and private improvements is preferred by the Town, but the Developer may provide separate instruments for public and private Security.

3. The Performance and Maintenance Security shall have an expiration date of one (1) year after the Effective Date, but shall automatically renew for successive one (1) year periods without effort by the Town until the Security is released by the BMA at the time of Final Acceptance.
4. Form of Security - The form and substance of any Security shall be subject to the approval of the Town Attorney. A copy of the Performance Security is attached to this Agreement as Exhibit D and made a part hereof guaranteeing, to the extent of the Security, the faithful performance of this Agreement by the Developer. The Security, if a Letter of Credit, shall provide that the physical presence of a representative of the Town shall not be required for presentation and that litigation regarding same shall be held in a court in Shelby County, Tennessee.
5. Notification of Non-Renewal - Should the Issuer or Developer elect to not renew the Performance Security, written notice must be received by the Town no later than ninety (90) days prior to its expiration date, at which time the Town can draw up to the full face value of the Performance Security.
6. Maintenance Security - Upon Initial Acceptance by the BMA, the amount of the Performance Security may be reduced to a reasonable sum as determined by the Town Engineer to cover Developer's warranty obligations hereunder, thus establishing a Maintenance Security. The Maintenance Security shall remain in place until the Security is released by the BMA at the time of Final Acceptance.
7. Full Financial Responsibility - It is understood and agreed by the Developer that the Performance Security and the Maintenance Security, subject to their limits, are to furnish Security for the Developer's obligations hereunder, but that such obligations are not limited by the amount of such Security. The Security shall remain in force until the Security is released by the BMA, although the same may be reduced from time to time as provided herein. All collection expenses, court costs, attorney's fees, and administration costs incurred by the Town in connection with collection under the Security shall be paid by the Developer and such obligations are included in the amount of the Security.
8. Right of Town to Performance Security - The Town reserves the right to draw upon the Performance Security, in an amount deemed necessary by the Town in its sole discretion, upon failure of the Developer to comply with any obligations of Developer contained in this Agreement which arise prior, or as a condition to, Initial Acceptance.
9. Right of Town to Maintenance Security - The Town reserves the right to draw upon the Maintenance Security, in an amount deemed necessary by the Town in its sole discretion, upon failure of the Developer to comply with any obligations of Developer contained in this Agreement which arise prior to Final Acceptance.
10. Current Project Cost – The Developer agrees that if the Security furnished to secure the obligations of the Developer under this Agreement, due to inflation and/or rising costs,

previous errors in estimation, or any other reason, is inadequate to secure such obligations at the time an extension of time is sought, the Developer will provide additional Security to bring the Security amount in line with current cost projections made by the Town Engineer.

VIII. WARRANTY

1. **Warranty Period** - The Developer is required to complete the Public Improvements and all other improvements relative to the Project, in accordance with the terms of this Agreement. Further, the Developer is to correct any defects or failures as directed by the Development Director or his designee that occur to any such improvements within one (1) year following Initial Acceptance.
2. **Scheduled Inspections** - Prior to the expiration of the Warranty Period, Town staff shall inspect the streets, curbs and gutters, sidewalks, stormwater management system, detention basin, landscaping, lighting, irrigation, fencing and all other required improvements to determine any defects or failures of the same.
 - a. Prior to the end of the Warranty Period, the Town will perform an inspection and prepare a list of defects and/or other work that maybe required for the Town to accept the improvements for permanent maintenance. The list of defects and/or other required work will be furnished to the Developer no later than forty-five (45) days from the end of the Warranty Period.
 - b. If no defects or failures are found by the Town at such inspection, or if a defect is found by the Town but same is cured prior to the end of the Warranty Period, the Development Director or his designee shall recommend that the BMA accept the improvements for permanent maintenance and any remaining Maintenance Security may be released.
3. **Re-Inspection** - If all deficiencies noted in the inspection have not been corrected by the Developer prior to the expiration of the Warranty Period, Town staff shall re-inspect the Project and provide an updated list of deficiencies. The Developer shall have a specified number of days to make the remaining corrections, and the Warranty Period will be extended to allow the deficiencies to be corrected.
 - a. If all corrections are not made by the Developer by the end of the time extension, the Town may demand payment on the Security, and, upon collection, shall proceed to make the corrections. If and when the Developer or the Town, as the case may be, has corrected all failures and defects, the Development Director or his designee shall recommend Final Acceptance by the BMA and any remaining Maintenance Security may be released.
4. **Final Acceptance** – Upon recommendation of the Development Director or his designee, the BMA may approve Final Acceptance of the Project, including the release of the Maintenance Security, and assume full ownership and maintenance responsibility for all public improvements associated with the Project.

IX. INSURANCE

1. Comprehensive General Liability Insurance - The Developer shall purchase and maintain comprehensive general liability and other insurance that shall insure against claims arising out of the Developer's performance under this Agreement, whether such claims arise out of the actions or lack of action of the Developer, any subcontractor of the Developer, their employees, agents or independent contractors or anyone for whose actions or lack of action any of them may be liable, including, without limitation:
 - a. Claims for the personal injury, occupational illness or death of the Developer's employees, if any;
 - b. Claims for the personal injury, illness or death of any person other than the Developer's employees or agents;
 - c. Claims for injury to or destruction of tangible property, including loss of use resulting therefrom;
 - d. Claims for property damage or personal injury or death of any person arising out of the ownership, maintenance or use of any motor vehicle; and,
 - e. Claims by third parties for personal injury and property damage arising out of the Developer's failure to comply with the Developer's obligations under this Agreement.
 - f. Claims brought under worker's compensation; provided, however, if Developer has no employees who are eligible to be covered under worker's compensation insurance, the Developer shall not be required to furnish insurance against worker's compensation but shall require the party(s) contracting with Developer to perform work on the Project Site to furnish evidence of such insurance for the employees of same.

2. Coverage Required - The insurance coverage required by this Agreement shall include the coverage specified above with policy limits of not less than \$1,000,000 Combined Single Limit general liability and \$500,000 Combined Single Limit automobile liability per occurrence.
 - a. The comprehensive general liability insurance coverage shall include completed operations insurance coverage and liability insurance applicable to the Developer's obligations under this Agreement.
 - b. Each insurance policy shall contain a provision stating that the insurer will give the Town thirty (30) days prior written notice of its intent to cancel or materially change the policy. All such insurance shall remain in effect until the BMA approves Final Acceptance and release of Security of the completed Project.
 - c. In addition, the Developer shall maintain completed operations insurance for at least one (1) year after the BMA approves the Final Acceptance and release of Security.
 - d. The Developer shall furnish the Town with evidence of the continuation of all such insurance at the time of issuance of the notice of Final Acceptance and release of Security.

X. FEES

Developer's Initials _____

1. The following fees are established by the Town Fee Schedule in effect on the Effective Date as shown on Exhibit E.

2. Administrative Fees
 - a. Development Agreement Preparation Fees - The Developer agrees to pay to the Town the Development Agreement preparation fee in the sum of **Five Hundred Dollars (\$500.00)**.
 - b. Development Agreement Amendment Fees – The Developer agrees to pay to the Town the Development Agreement amendment fee in the sum of **Two Hundred Fifty Dollars (\$250.00)** for each and every amendment to the Agreement including, but not limited to, time extensions, addendums, or amendments that are required after the Effective Date.

3. Development Fees
 - a. Water Development fees - The Developer agrees to pay to the Town the water development fee in the sum of _____ Dollars (\$_____).
 - b. Water Line Extension Fee - In the event that the Developer connects to a water line which was installed by others, the Developer shall pay a water line extension fee in the amount of _____ Dollars (\$_____).
 - c. Sewer Development Fees - The Developer agrees to pay to the Town the sewer development fees in the sum of _____ Dollars (\$_____).
 - d. Sewer Line Extension Fee - In the event that the Developer connects to a sewer line which was installed by others, the Developer shall pay a sewer line extension fee in the amount of _____ Dollars (\$_____).
 - e. Payment In Lieu of Construction Fees – Signalization - The Developer agrees to pay to the Town, if applicable, a payment in-lieu of construction in the amount of _____ Dollars (\$_____).
 - f. Street Light Fees - The Developer agrees to pay the estimated cost of installation of Street Lighting along public rights-of-way required by the Project in the amount of _____ Dollars (\$_____).
 - g. Power Distribution Pole Fees - The Developer agrees to reimburse the Town the cost of steel electric power distribution poles for the Developer’s frontage along _____ Dollars (\$_____).
 - h. Parkland Fees - The Developer agrees to pay a “Payment in-Lieu-of or Dedication for Parkland” fee in accordance with Ordinance 2002-20 in the amount of _____ Dollars (\$_____).
 - i. Privilege Tax Fees - The Developer agrees to pay a “Building Development Privilege Tax” fee in accordance with Ordinance 2003 – 04, in the amount of _____ Dollars (\$_____).
 - j. Construction Inspection Fees - The Developer agrees to pay the construction inspection fee in the sum of _____ Dollars (\$_____).

4. Analysis Fees

Developer’s Initials _____

- a. Water System Analysis Fees - The Developer agrees to pay the water system analysis fee in the sum of _____ **Dollars (\$_____)**.
 - b. Traffic Analysis Fee - The Developer agrees to pay the traffic analysis fee, if applicable, in the sum of _____ **Dollars (\$_____)**.
 - c. Storm Water Review and Inspection Fee - The Developer agrees to pay the storm water analysis, plans review and inspection fee in the sum of _____ **Dollars (\$_____)**.
5. In lieu of a requirement to construct certain infrastructure, the Town will utilize a cost sharing procedure to assess development projects to offset the cost for the future traffic signals at: 1) Houston Levee Road and Shea Road; and 2) Winchester Boulevard and Shea Road. The traffic signals will be required in the future to ensure acceptable service levels are maintained on the roadway system to accommodate the new trips generated by each development. A pro-rata share of the costs of those improvements will be assessed to each individual development project, based on the amount of new trips projected as shown in Exhibit C. The costs assigned to each phase of development will be calculated at the time of Final Site Plan Approval or Construction Drawing Approval for a Subdivision, and included in the Development Contract to be collected as a Development Agreement Fee, and accounted for as a “Fee-in-lieu-of-construction”.
- a. The Developer agrees to pay a “Fee-in-lieu of construction” in the amount of _____ **Dollars (\$_____)** for the ninety-nine (99) Units (Assisted Living/Memory Care) under said cost sharing procedure that is deemed to satisfy the requirements stated above. This money shall be held by the Town in a non-interest bearing account.
 - a. This fee amount is the pro-rata share for half the cost of future signals at: 1) Shea Road and Winchester Boulevard; and 2) Shea Road and Houston Levee Road. The pro-rata percentage was determined by dividing the estimated number of average daily trips (ADT) that will be generated by the proposed use into the total ADT for existing and projected uses along the lots and parcels with frontage along Shea Road bounded to the north by Winchester Boulevard and the south by Houston Levee Road.
 - b. The Institute of Transportation Engineers (ITE) Trip Generation manual (7th edition) is the source of ADT for existing and projected uses. The signal cost was estimated at \$300,000 each, thus it is determined that these developments shall be responsible for \$150,000 for each of the two signals listed above.
 - c. It is the Town’s intent to utilize a cost sharing procedure and apply it to other projects with frontage along Shea Road bounded to the north by Winchester Boulevard and the south by Houston Levee Road. The procedure shall be maintained and will need to be periodically updated by the Town’s Development Department.
 - d. It is the Town’s intent to utilize a cost sharing procedure and apply it to other projects to be completed north of Winchester Road at the Shea Road intersection and south of Houston Levee Road at the Shea Road intersection to collect for the other half of the cost for each of these signals.
 - e. The Developer acknowledges that the signal will not be installed until it is warranted and that there is not a time certain by which this improvement will be made.

- f. At a time when conditions warrant (in the sole discretion of the Town), said funds may be used to finance (or reimburse) the costs associated with design and installation of the signal and associated off-site road and intersection improvements.

XI. OVERALL FEE SUMMARY

Development Agreement Preparation. Fee	\$0.00
Water Development Fee	\$0.00
Sewer Development Fee	\$0.00
Payment In Lieu of Construction Fees	\$0.00
Street Light Fee (estimated)	\$0.00
Steel Power Distribution Pole Fee (estimated)	\$0.00
Parkland Dedication Fee	\$0.00
Building Development Privilege Tax	\$0.00
Construction Inspection Fee	\$0.00
Water System Analysis Fee	\$0.00
Traffic Analysis Fee	\$0.00
Storm Water Review and Inspection fee	\$0.00
Total	\$0.00

XII. MISCELLANEOUS PROVISIONS

1. Notices - All notices, demands and requests required or permitted by this Agreement shall be in writing (including telecopy communications) and shall be sent by facsimile transmission, air or other courier, or hand delivery. Any notice, demand or request sent by facsimile transmission shall be deemed given for all purposes under this Agreement when properly transmitted by telecommunication device. Any notice, demand or request which is hand delivered or sent by air or other courier shall be deemed given for all purposes under this Agreement when delivered to the intended address.

TOWN

Town of Collierville
 500 Poplar View Parkway
 Collierville, Tennessee 38017
 Phone: 901-457-2340 Fax: 901-457-2354

DEVELOPER

2. Change of Address - Any party to this Agreement may change such party's address for the purpose of notices, demands and requests required or permitted under this Agreement by providing written notice of such change of address to the other party, which change of address shall only be effective when notice of the change is actually received by the party who thereafter sends any notice, demand or request.

Developer's Initials _____

3. Choice of Law - This Agreement is being executed and delivered and is intended to be performed in the State of Tennessee, and the laws (without regard to principles of conflicts of law) of the State of Tennessee shall govern the rights and duties of the parties hereto in the validity, construction, enforcement and interpretation hereof.
4. Joinder of Owner - In the event that the Developer is not the Owner of the Project Site, the Owner joins in this Agreement and by the Owner's execution of this Agreement the Owner is jointly and severally liable for the representations, warranties, covenants, agreements and indemnities as expressly set forth in this Agreement.
5. Word Tense - Words used in the singular shall include the plural, and the plural shall include the singular; words used in the present tense shall include the future tense. The word "shall" is mandatory and not discretionary. The word "may" is permissive.
6. Undefined Words - Words not defined in this Agreement shall be construed to have the meaning given by common and ordinary use as defined in the latest edition of Webster's Dictionary.
7. Gender - The use of the neuter pronoun herein shall include the neuter and both genders as the context shall require.
8. Interpretation and Severability - If any provision of this Agreement is held to be unlawful, invalid, or unenforceable under present or future laws effective during the terms hereof, such provisions shall be fully severable and this Agreement shall be construed and enforced as if such unlawful, invalid, or unenforceable provision was not a part of this Agreement. Furthermore, if any provision of this Agreement is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.
9. Construction of Agreement - Each party has received and had the opportunity to review this Agreement, and each party has had the opportunity, whether exercised or not, to have each respective party's attorney review this Agreement, and, accordingly, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.
10. No Waiver - The failure of the Town to insist upon prompt and strict performance of any of the terms, conditions or undertakings of this Agreement, or to exercise any right herein conferred, in any one or more instances, shall not be construed as a waiver of the same or any other term, condition, undertaking or right.
11. Amendments and Modification - This Agreement shall not be modified in any manner, except by an instrument in writing executed by or on behalf of all parties. All legal fees, costs and expenses incurred with agreement modifications shall be at the sole expense of the Developer.

12. Authority to Execute - Town and Developer each warrant and represent that the party signing this Agreement on behalf of each has authority to enter into this Agreement and to bind the Town and Developer, respectively, to the terms, covenants and conditions contained herein. Each party shall deliver to the other, upon request, all documents reasonably requested by the other evidencing such authority, including a copy of all resolutions, consents or minutes reflecting the authority of persons or parties to enter into agreements on behalf of such party.

13. Binding Agreement - This Agreement is the full and complete agreement between the Town and the Developer and/or Owner(s), and supersedes any and all other previous agreements or representations between the parties, either written or oral, and the parties agree that the terms and provisions of this agreement shall be binding upon all parties to the Agreement and their respective heirs, successors, or assigns until the terms of the Agreement are fully met.

WITNESS the due execution hereof:

DEVELOPER: _____

By: _____ Title: _____

Signature: _____ Date: _____

OWNER: _____

By: _____ Title: _____

Signature: _____ Date: _____

TOWN OF COLLIERVILLE:

By: STAN JOYNER Title: Mayor

Signature: _____ Date: _____

ATTEST: _____ Date: _____

Town Clerk/Recorder

APPROVED AS TO FORM:

By: _____
Town Attorney

Exhibit A

Approved Final Project Documents, including full construction and landscape plan sets, for construction of public and private improvements shall be attached hereto and made part of this Agreement in its executed form.

Exhibit B

Conditions of approval established by the BMA or the Departmental Review Team (DRT) are attached hereto.

Exhibit C

Approved itemized calculations for all public and private improvements, as well as pro-rata share of future signalization for project, are attached hereto.

Exhibit D

Copy of Performance and Maintenance Security documents is attached hereto.

**TO BE PROVIDED 14 DAYS PRIOR TO
PRE-CONSTRUCTION MEETING**

Exhibit E

Town of Collierville Fee Schedule in effect on Effective Date is attached hereto.

Exhibit F

A Stormwater Facilities Maintenance Agreement required by the Town of Collierville is attached hereto.