

DEVELOPMENT AGREEMENT

This Development Agreement (the “Agreement”) is by and between the City of Westfield, Indiana, (“Westfield”) and _____, an Indiana corporation, (“Developer”) and is executed on the dates corresponding to signatures below:

WITNESSETH:

WHEREAS, Developer wishes to develop a certain parcel of real estate located in the City of Westfield, which real estate is legally described in what is attached hereto and incorporated herein by reference as Exhibit A (the “Real Estate”); and

WHEREAS, Westfield traditionally requires developers to obtain performance bonds to provide security and payment for the completion of certain improvements and installations within developments; and

WHEREAS, Developer is unable to obtain a performance bond due to lack of availability of this insurance product in the marketplace; and

WHEREAS, development of the Real Estate requires the approval of a secondary plat for Section ___ of _____, which, as of the date of the execution of this Agreement, has not been approved, but is pending under Westfield Washington Township Plan Commission Docket Number _____ (the “Project”); and

WHEREAS, in consideration of the extension by Developer of the financial commitments contained herein, Westfield is willing to provide a reasonable alternative to Developer obtaining a performance bond;

NOW, THEREFORE, in consideration of the mutual promises, covenants, and agreements to be kept and performed hereunder, including the aforesaid recitals and definitions, all of which are incorporated herein by reference as though fully set forth herein, Westfield and Developer agree as follows:

Section 1. Agreement.

- a. On or before the Westfield Community Development Department Director signs the final plat for the Project, Developer shall pay to Westfield the sum of _____ Dollars (\$_____) (the “Payment), which constitutes three percent (5%) of the total cost of the improvements and installations on the Real Estate as listed in Exhibit B, attached hereto and incorporated herein (the “Improvements”) in exchange for Westfield agreeing to forego requiring Developer to obtain a performance bond for completion of the Improvements (as traditionally borne by a surety company providing a performance bond).
- b. The Payment shall be nonrefundable.

- c. This Agreement shall only apply to improvements and installations included in Exhibit B.
- d. Sureties for improvements and installations not included in Exhibit B may be governed by separate agreement or may be required in accordance with Westfield's traditional performance bond requirements.

Section 2. Assignment. Developer shall not have the right to assign this Agreement or any portion of this Agreement hereunder to another party without Westfield's prior written consent. This Agreement shall be binding upon Developer and, if assigned, any of its assigns and successors.

Section 3. Condition Precedent to Obligations. The obligations of Westfield and Developer contained in this Agreement are expressly conditioned upon the approval of the Project. Absent the occurrence of the foregoing, this Agreement shall be null and void.

Section 4. Venue for Disputes. The parties acknowledge and agree that all disputes between them in connection with this Agreement shall be filed in the state courts of Hamilton County, Indiana.

Section 5. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any and all prior agreements and understandings between the parties with respect to the subject matters provided herein. Neither Westfield, nor its members, officers, agents and employees shall be liable for any additional terms pertaining to this Agreement, unless such terms are agreed to in writing by the parties.

Section 6. Expenses. In any action at law or in equity to enforce any of the provisions or rights under this Agreement, the unsuccessful party to such proceeding shall pay the successful party all costs, expenses and reasonable attorneys' fees incurred by the successful party (including, without limitation, costs, expenses and fees on any appeals).

Section 7. Authority. Each undersigned person signing on behalf of any party that is a municipality or corporate entity certifies that: (a) he/she is fully empowered and duly authorized by any and all necessary action or consent to execute and deliver this Agreement for and on behalf of the party for which he/she signs; (b) that each party hereto has full capacity, power, and authority to carry out and enter into the obligations under this Agreement; and (c) that this Agreement has been duly authorized, executed, and delivered and constitutes a legal, valid, and binding obligation of each party.

“CITY OF WESTFIELD, INDIANA”

By: _____

Name: _____

Title: _____

Date: _____

“DEVELOPER”

“_____, INC.”

By: _____

Name: _____

Title: _____

Date: _____

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, a Notary Public in and for said County and State, personally appeared _____, and executed the foregoing Agreement on behalf of the City of Westfield, Indiana.

Witness my hand and Notarial Seal, this _____ day of _____, 20____.

Notary Public – Signature

Notary Public – Printed

My Commission Expires: _____ My County of Residence: _____

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, a Notary Public in and for said County and State, personally appeared [INSERT NAME], [INSERT TITLE] of Estridge Development Company, Inc., and executed the foregoing Agreement on behalf of the Estridge Development Company, Inc.

Witness my hand and Notarial Seal, this _____ day of _____, 20____.

Notary Public – Signature

Notary Public – Printed

My Commission Expires: _____ My County of Residence: _____