

DEVELOPMENT AGREEMENT FOR SIDEWALK IMPROVEMENT OBLIGATIONS
RELATING TO THE PLAT
HEARNE'S ADDITON, LOTS 18A, 18B, AND 18C DEVELOPMENT

THIS AGREEMENT (“**Agreement**”) is made this ____ day of April, 2018, by and between Dymon Wood, (the “**Developer**”), and the City of Lee’s Summit, Missouri, a municipal corporation (“**City**”).

WHEREAS, on January 25, 2018, the Application #PL2018-016 was submitted, for minor plat, of approximately 0.94 acres of land generally lying at the southwest corner of NE Main Street and NW Orchard Street, on property legally described in **Exhibit A** (“**Property**”), owned by the Developer, which will be developed as the “Hearne’s Addition, Lots 18A, 18B, and 18C” (“**Development**”) as shown in **Exhibit B**, the proposed plat;

WHEREAS, The City’s Unified Development Ordinance and Design and Construction Manual stipulates the Responsibility for Construction of a sidewalk is required adjacent to a buildable lot, sidewalks shall be constructed by the builder prior to occupancy of any structure on that lot;

WHEREAS, the City and the Developer acknowledge that the Sidewalk Improvements have not been completed as defined in Section 1.D below, and the City and Developer wish to enter into this Agreement to satisfy certain provisions of Unified Development Ordinance and Design and Construction Manual as to allow Developer to make a payment in lieu of constructing the required sidewalk improvements;

WHEREAS, the City and the Developer acknowledge that the Sidewalk Improvements are premature for this area, considered extraordinary for the unimproved road conditions, and conceivably will be removed by a future undetermined Capital Improvement Project in which any constructed sidewalk would be replaced by said Capital project in conjunction with other infrastructure improvements;

WHEREAS, the Developer agrees to make payment in lieu of said public sidewalk improvements for an estimated cost of construction. This City will allocate these funds for public sidewalk improvements. Payment by the Developer will fulfill the intent of the sidewalk obligations for this Development;

WHEREAS, the parties agree that the obligations assumed by the Developer pursuant to this Agreement are reasonably related to the impact that will be caused by the Development on the public services provided by the City and other public jurisdictions and on facilities that are constructed and maintained by the City and other public jurisdictions; and

WHEREAS, the parties have freely negotiated in good faith and this Agreement reflects the desires of the parties.

NOW, THEREFORE, in consideration of the mutual terms, covenants and conditions contained herein, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Definitions.** Words or terms not defined elsewhere in this Agreement shall have the following definitions:
 - A. **“Certificate of Occupancy”** as defined in Chapter 7, Lee’s Summit Building Code, as adopted by the City of Lee’s Summit.
 - B. **“City Engineer”** shall mean the City Engineer or their designated representative.
 - C. **“Developer”** shall mean Dymon Wood, or its successors and assigns in the Property.
 - D. **“Improvements”** shall mean the following improvements that are to be financed, designed, engineered, and constructed by the Developer in the manner set forth in this Agreement:
 - (1) A five (5) foot wide sidewalk along the north property line of the plat (proposed Lot 18A) and applicable right-of-way for a total linear distance of approximately 205 feet.
 - (2) Two (2) sidewalk accessible (ADA) ramps for the crossing of NE Main Street.
 - E. **“Staff”** shall mean employees of the City of Lee’s Summit.
 - F. **“Temporary Certificate of Occupancy”** as defined in Chapter 7, Lee’s Summit Building Code, as adopted by the City of Lee’s Summit.
2. **Timing of Issuance of Certificates of Occupancy.**
 - A. A Temporary Certificate of Occupancy will not be issued until payment in lieu of the construction of sidewalk and ADA ramps (Section 1.D above) in an amount equal to the average bid amount for linear feet of sidewalk and ADA ramps of the City during the calendar years of 2016 and 2017 is paid.
 - B. A Certificate of Occupancy will not be issued until payment in lieu of the construction of sidewalk and ADA ramps (Section 1.D above) in an amount equal to the average bid amount for linear feet of sidewalk and ADA ramps of the City during the calendar years of 2016 and 2017 is paid.
3. **Indemnification.**
 - A. **General Indemnity.** The Developer shall indemnify, release, defend, be responsible for and forever hold harmless the City, its officers, agents, employees, elected officials, and attorneys, each in their official and individual capacities, from and

against all lawsuits, suits, actions, costs, claims, demands, damages, disability, losses, expenses, including reasonable attorney's fees and other defense costs or liabilities of any character and from any cause whatsoever, brought because of bodily injury or death received or sustained, or loss or damage received or sustained, by any person, persons, or property arising out of or resulting from any act, error, or omission of the Developer or its officers, agents, employees, or subcontractors, to the extent such loss or injury arises out of or is related to the performance of this Agreement; provided, however, that the Developer need not save harmless the City from claims, demands, losses and expenses arising out or to the extent caused by the sole negligence of the City, its employees or agents. This indemnification obligation shall survive the termination or expiration of this Agreement.

- B. No Limitations or Waiver. The indemnity required hereunder shall not be limited by reason of the specification of any particular insurance coverage in this Agreement, or by a limitation of the amount or type of damages or compensation payable by or for the Developer under Workers' Compensation, disability or other employee benefit acts, acceptance of insurance certificates required under this Agreement, or the terms, applicability or limitation of any insurance held by the Developer. The City does not, and shall not, waive any rights against the Developer which it may have by reason of this indemnification, because of the acceptance by the City, or the deposit with the City by the Developer, of any of the insurance policies described in this Agreement. In addition, the parties agree that this indemnification by the Developer shall not be limited by reason of whether or not such insurance policies shall have been determined to be applicable to any such damages or claims for damages.
 - C. Notification of Claims. With respect to any claims which are subject to indemnity hereunder, the Developer shall immediately notify the City of any and all claims filed against the Developer or the Developer and the City jointly, and shall provide the City with a copy of the same. Such notice shall be given in the manner prescribed by Section 26, "Notice" of the Agreement.
 - D. Use of Independent Contractors. The fact that the Developer carries out any activities under this Agreement through independent contractors shall not constitute an avoidance of, or defense to, the Developer's duty of defense and indemnification under this section.
- 4. **Remedies.** Each party to this Agreement agrees that if it fails to perform when due any act required by this Agreement to be performed, then, in addition to whatever other remedies are available to the non-defaulting parties hereto, the non-defaulting party shall have the right to enforce specific performance of this Agreement against the defaulting party, and such non-defaulting party shall, to the extent permitted by law, be entitled to its reasonable costs, attorneys' fees and court costs in connection with such enforcement.
 - 5. **Rights and Remedies Non-Exclusive.** No right or remedy conferred upon or reserved to any party in this Agreement is intended to be exclusive of any rights or remedies, and each

and every right and remedy shall be cumulative and shall be in addition to every right and remedy given now or hereafter existing at law or in equity.

6. **Non-Waiver**. No waiver of any condition or covenant contained in this Agreement or of any breach thereof, shall be taken to constitute a waiver of any subsequent condition, covenant or breach.
7. **Applicable Law**. This Agreement shall be governed by and construed according to the laws of the State of Missouri.
8. **Venue**. In the event this Agreement is litigated, venue shall be proper only in the Circuit Court of Jackson County, and the parties expressly waive any rights to venue inconsistent therewith.
9. **Recording and Binding Effect**. No building permits shall be issued for any structure in the development until the agreement has been fully executed. The City shall file a copy of this Agreement or a memorandum of this Agreement in the office of the Recorder of Deeds for Jackson County, Missouri ("Office"). This Agreement shall run with the land and be binding on and inure to the benefit of the parties and their respective legal representatives, successors in interest, successors and assigns. Upon certification by the City Engineer of the completion of the Developer's obligations under this Agreement, the City Manager, in his sole discretion, may execute, on behalf of the City, a document suitable for recording in the Office, in such form as is approved by the City Attorney that acknowledges the completion of the Developer's obligations under the Agreement.
10. **Time of Essence**. Time is of the essence with respect to the duties and obligations set forth herein.
11. **Estoppel Letter**. Upon request by Developer made from time to time, the City shall prepare and deliver to Developer an estoppel letter confirming for the benefit of any purchaser or lender whether the Developer is or is not in default under this Agreement and verifying the status of Developer's performance of its obligations under this Agreement.
12. **Representations**. The Developer represents that it owns the property described in **Exhibit A** on the date that this Agreement is executed. Each party represents and warrants that it (a) has made due and diligent inquiry into the facts and matters which are the subject matter of this Agreement; (b) fully understands the legal effect of this Agreement; (c) is duly authorized and empowered to execute, deliver and perform this Agreement according to its terms and conditions; and (d) has not assigned or transferred any claim against the other party that is the subject of this Agreement. The parties agree that the obligations assumed by the Developer pursuant to this Agreement are reasonably related to the impact that will be caused by the Development on the public services provided by the City and other public jurisdictions and on facilities that are constructed and maintained by the City and other public jurisdictions.
13. **No Waiver of Breach**. No waiver of any condition or covenant contained in this Agreement or any breach thereof shall be taken to constitute a waiver of any subsequent condition, covenant or breach.

14. **Rules of Construction.** Each party to this Agreement has received independent legal advice from its attorneys of choice with respect to entering this Agreement and the advisability of agreeing to the provisions herein. Because each party has had its respective legal counsel review the terms of this Agreement, the normal rules of construction to the effect that any ambiguities in its terms be resolved against the drafting party shall not be employed with regard to issues of its validity, interpretation, performance or enforcement.
15. **Assignment.** The Agreement may not be assigned or transferred, in whole or part, to any other person, firm, corporation, or entity without the prior, express, written consent of the other parties, which consent shall not be unreasonably withheld. The Developer shall request the assignment of the Agreement, with the consent of the City, to any person, firm, corporation, or entity to which any ownership interest in the Property is transferred after the date of execution of this Agreement.
16. **Entire Agreement.** This Agreement and the acts provided for herein is the entire agreement between the parties with respect to the subject matter hereof, the terms and provisions of this Agreement are contractual and not mere recitals and no alterations, amendment, modification, or interpretation hereof shall be binding unless in writing and signed by all parties.
17. **Exhibits.** All Exhibits referenced in this Agreement are incorporated into this Agreement by such reference as if set forth in full in the text of this Agreement.
18. **Headings.** The paragraph headings contained herein are for convenience in reference and are not intended to modify, expand or limit the scope of any provision of the Agreement.
19. **Severability.** Any provision of this Agreement which is not enforceable according to law will be severed herefrom, and the remaining provisions shall be enforced to the fullest extent permitted by law.
20. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which together shall be deemed to be one and the same instrument.
21. **Alternate Compliance.** In the event the Developer constructs the Improvements to the satisfaction of the City, then this agreement shall be deemed fulfilled.
22. **Notice.** Any notice required by this Agreement shall be deemed to be given if it is mailed by United States registered mail, postage prepaid, and addressed as hereinafter specified.

Any notice to the City shall be addressed to:

City Manager
City Hall
220 SE Green Street
Lee's Summit, Missouri 64063

With a copy to:

City Attorney
City Hall
220 SE Green Street
Lee's Summit, Missouri 64063

Notices to Developer shall be addressed to:

Dymon Wood
732 SW Wintergarden Dr
Lee's Summit, MO 64081

With a copy to:

(Not applicable)

Each party shall have the right to specify that notice be addressed to any other address by giving to the other party ten (10) days written notice thereof.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto on the date first above written.

CITY OF LEE'S SUMMIT, MISSOURI

By: _____
Stephen A. Arbo, *City Manager*

Attest:

Trisha Fowler Arcuri, *City Clerk*

Approved as to form:

Nancy Yendes, *Chief Counsel of Infrastructure and Planning*

_____ **(DEVELOPER)**

By: _____
Its: _____

Notary for City of Lee's Summit

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

BE IT REMEMBERED, that on this ____ day of April, 2018, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Stephen A. Arbo, the City Manager of the City of Lee's Summit, Missouri, a City duly incorporated and existing under and by virtue of the laws of the State of Missouri, who are personally known to me to be the same person who executed, as such official, the within instrument on behalf of and with the authority of said City, and such persons duly acknowledged the execution of the same to be the act and deed of said City.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

NOTARY PUBLIC

My Commission Expires:

[SEAL]

Notary for Dymon Wood

STATE OF _____)
) ss.
COUNTY OF _____)

BE IT REMEMBERED, that on this ____ day of April, 2018, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Dymon Wood, the _____ of _____, who is personally known to me to be the same person who executed the within instrument on behalf of _____, and such person duly acknowledged the execution of the same to be the act and deed of _____.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

NOTARY PUBLIC

My Commission Expires:

[SEAL]

END OF DOCUMENT

EXHIBIT A

LEGAL DESCRIPTION FOR PROPERTY

Hearne's Addition, Lot 18

