

RESOLUTION NO. 12 - 2017

Offered by All of Council

A RESOLUTION AUTHORIZING THE MAYOR AND THE FINANCE DIRECTOR TO ENTER INTO A DEVELOPMENT AGREEMENT WITH PETROS DEVELOPMENT GROUP, LTD. FOR THE DEVELOPMENT OF THE ASHTON VILLAGE SUBDIVISION AND DECLARING AN EMERGENCY

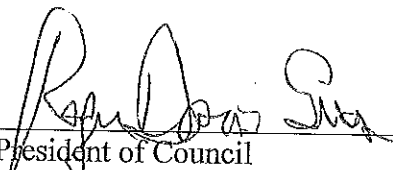
WHEREAS, the Planning Commission has approved the preliminary plan for the proposed Ashton Village Subdivision.

NOW, THEREFORE, BE IT RESOLVED by the Council of the Village of Richfield, Summit County, State of Ohio:

SECTION 1. That the Mayor and the Finance Director be, and they hereby are, authorized and directed to enter into a Development Agreement with Petros Development Group, Ltd. for the development of the Ashton Village Subdivision, a copy of which Agreement is attached hereto as Exhibit "A" and incorporated herein fully as if by reference.

SECTION 2. This Resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public health, safety and welfare and for the further reason that it is immediately necessary in order to secure the installation of necessary public improvements at the earliest possible time; wherefore, provided this Resolution receives the affirmative vote of two-thirds of the members of Council elected or appointed, it shall take effect immediately upon its passage and execution by the Mayor; otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

PASSED: 3-7-17




President of Council



Mayor

Dated: 3-7-17

ATTEST:



Clerk of Council

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DEVELOPMENT AGREEMENT

THIS AGREEMENT (“Agreement”) made as of the _____ day of _____, 2017, by and between PETROS DEVELOPMENT GROUP, LTD., an Ohio limited liability company (hereinafter “Developer”) and the VILLAGE OF RICHFIELD, Ohio, a municipal corporation organized under the laws of the State of Ohio (hereinafter, the “Village”).

WITNESSETH:

WHEREAS, Developer is desirous of developing certain lands situated in the Village and now known as the Ashton Village, an eighteen (18) lot residential subdivision (hereinafter the “Subdivision”);

WHEREAS, the final plat for the Subdivision (hereinafter the “Plat”) has been filed with the Village of Richfield Planning Commission (the “Planning Commission”) and the Village’s Subdivision Rules and Regulations require the Developer to provide adequate security for the construction and installation of the Improvements (hereinafter defined) to be made by Developer;

WHEREAS, Developer desires to comply with the Village of Richfield Subdivision Rules and Regulations and all other applicable Village ordinances and regulations, so that Developer may proceed with the construction and installation of the Improvements;

WHEREAS, the Improvements shall be those improvements to the Subdivision as are shown on the Plat and are more particularly described in the plans and specifications dated _____, 2017, prepared by _____, P.E. (“Developer’s Engineer”) (the “Improvement Plans”), subject to the final approval of the Planning Commission and the Village Engineer; and

WHEREAS, this Agreement is required by Section 4.13 of the Village of Richfield Subdivision Regulations prior to final plat approval and must be approved by Village Council.

NOW, THEREFORE, IT IS AGREED that:

1. Village Planning and Zoning Procedures.

This project requires certain approvals from the Planning Commission and Council and the parties agree that such approvals shall occur in the order set forth below. The following sequence of events is predicated on the need for Village Council to take final action on the rezoning before the Planning Commission takes final action on the Final Plat. Also, because the Developer has agreed to limit the Subdivision to 18 lots, the parties agree that this Development Agreement containing such restriction shall be approved by Council, executed, and recorded with the Summit County Fiscal Officer prior to the Planning Commission taking final action on the Final Plat.

- A. Preliminary Plan Submittal. The Developer has submitted a preliminary plan to the Planning Commission in accordance with the requirements of Article IV of the Village's Subdivision Regulations. The Planning Commission shall take final action on the preliminary plan while the rezoning application is pending.
- B. Rezoning Application Submittal. The Developer has submitted an application to rezone the Subdivision property pursuant to Chapter 1109 of the Village's Planning and Zoning Code.
- C. Rezoning Resolution. Pursuant to the Developer's rezoning application, Village Council has introduced Resolution No. 86-2016 and referred the matter to the Planning Commission for a public hearing and recommendation in accordance with Chapter 1109 of the Village's Planning and Zoning Code.

- D. Planning Commission Rezoning Hearing. The Planning Commission will hold a public hearing on the rezoning application and make a recommendation to Council.
- E. Council Rezoning Public Hearing. After receiving the Planning Commission's recommendation, Village Council will hold a public hearing and take final action on the rezoning resolution.
- F. Final Plat. Developer may file the Final Plat with the Planning Commission while the rezoning application is pending, but the Planning Commission shall not take final action on the Final Plat until after Village Council approves, executes and records the Development Agreement and takes final action on the rezoning application.

2. Demolition.

The parties acknowledge that two former school buildings and other related structures exist on the Subdivision property and such buildings and structures are in a dilapidated condition and constitute a nuisance. The Developer agrees to demolish the buildings and structures no later than one hundred and eighty (180) days after the date of the Planning Commission's approval of the Plat.

The Village desires to provide for an opportunity for the removal of certain items from the former school buildings prior to demolition, specifically items considered by the Village to have historic value or significance (the "Salvage Items"). Prior to demolishing the buildings, Petros shall give reasonable notice to the Village of the date of demolition and the parties shall schedule a mutually agreeable time at which the Village may remove such items from the buildings at no charge to the Village. Any delay in demolition related to the Village's

identification and/or removal of the Salvage Items will extend the time for Petros to complete demolition of the buildings and structures as agreed upon by the Village and Developer.

3. Rezoning.

The Subdivision property is currently zoned R-2 - Single-Family Residential District which would permit a maximum density of eight (8) lots. The Developer desires to subdivide the Subdivision property into not more than eighteen (18) lots. This density is not permitted under the current R-2 zoning classification. The parties agree to use all reasonable means to rezone the Subdivision property from R-2 - Single-Family Residential District to R-3 - Cluster Residential District pursuant to the rezoning procedures set forth in the Village of Richfield Planning and Zoning Code, specifically Chapter 1109.

While the R-3 - Cluster Residential District zoning classification would permit a density of greater than eighteen (18) lots, the Developer agrees to subdivide the Subdivision property into not more than eighteen (18) lots.

4. Construction of Improvements/Performance Guarantee.

Developer, at Developer's cost, shall complete the construction and installation of the Improvements within a period of eighteen (18) months from the date of approval of the Improvement Plans by the Village. Developer shall deliver or cause to be delivered to the Village a Performance Guarantee (the "Performance Guarantee") to be issued by a proper surety or bank, as the case may be, in the form of a cash security or escrow, corporate surety bond or set aside agreement, and approved by the Law Director. The purpose of the Performance Guarantee is to provide assurance for the proper and timely construction and installation of the Improvements and shall be in an amount equal to one hundred percent (100%) of the Village Engineer's estimated cost of the Improvements not yet approved and remaining to be completed

at the time Petros wants approval to file the Plat for record. An improvement is deemed completed only if it is fully constructed and approved by the Village Engineer. As such, partially completed improvements will not be considered completed for purposes of calculating the amount of the Performance Guarantee. The Village will have the sole authority in determining what is accepted for dedication. Before improvements are accepted for dedication, all identified deficiencies must be corrected to the satisfaction of the Village Engineer.

Delivery of the Performance Guarantee shall be a condition precedent to the filing of Plat for record.

The Improvements are to be constructed or installed in accordance with the Improvement Plans and otherwise in compliance with all Village Codes and other applicable laws.

All public improvements shall be inspected throughout construction by a qualified inspector appointed by the Village, and from time to time by the Village Engineer, at his/her discretion. Inspections shall be made at the Developer's cost, based on current rates for the Village Engineer, which are on file with the Planning and Zoning Director. Inspection of any private utilities shall be performed by each respective company (e.g. the City of Cleveland Division of Water, First Energy, AT&T, Dominion East Ohio Gas, etc.) and shall fall outside the purview of Village scrutiny, except backfill.

Prior to commencing the construction and installation of the Improvement, Developer shall deposit with the Village the sum of _____ Dollars (\$_____.00) to cover the cost of all inspections to be made by the appointed inspector (the "Inspection Fee Fund"). The Inspection Fee Fund shall be used by the Village to pay for required inspections as each such inspection is made; provided, however, if the cost of inspections remaining to be made is reasonably estimated by the Village Engineer to be in excess of the then current balance of the

Inspection Fee Fund, the Village shall have the right to demand that Developer make an additional deposit to the Inspection Fee Fund to bring such fund to an amount equal to the estimated costs of all remaining inspections. Such deposit shall be made within ten (10) days of written demand therefore to Developer. If Developer fails to make the required additional deposit, the Village shall have the right to stop all work on the Improvements until such additional deposit is made. The Village at all times shall keep Developer apprised of the amount of each disbursement from the Inspection Fee Fund and the balance thereof. All sums remaining in the Inspection Fee Fund at the time the Improvements are completed and finally inspected and approved shall be promptly returned to Developer.

The Performance Guarantee for all public improvements shall remain in place until such time as the Improvements have been completed and approved by the Village Engineer and the Improvements have been accepted for dedication by Village Council.

In the event Developer fails to complete the Improvements within the time provided to Developer to do so or in the event Developer fails to construct or install the Improvements in accordance with the Improvement Plans, the Village shall have the right to proceed as provided for in the Performance Guarantee and to enter upon the Subdivision property for the purpose of completing the Improvements; provided, however, that the Village must first provide thirty (30) days written notice to Developer with a reasonably detailed itemization of any alleged defects in Developer's performance before taking such action during which thirty (30) day period Developer has the right to cure any defects in its performance under this Agreement. (See Subdivision Rules & Regulations Section 4.15.3)

5. Restoration Guarantee.

At the time that the Performance Guarantee is submitted to the Village, the Developer shall also submit or cause to be submitted a Restoration Guarantee in the form of a cash bond or letter of credit approved by the Law Director and in the amount of \$_____ as determined by the Village Engineer based on his estimate of potential damage, as described hereinafter.

The restoration guarantee shall insure the repair of any damage done to existing curbs, gutters, sidewalks, driveways, street pavement, landscaping, or other items within the right-of-way adjacent to the Subdivision or with areas or easements controlled by the Village.

The restoration guarantee shall be released to the Developer when all damaged facilities, if any, have been restored to the reasonable satisfaction of the Village Engineer prior to acceptance of the Improvements for dedication by Village Council. (See Subdivision Rules & Regulations Section 4.13.5)

6. Maintenance Guarantee.

At the time that the Performance Guarantee is submitted to the Village, the Developer shall also submit or cause to be submitted a Maintenance Guarantee in the form of a cash maintenance bond or letter of credit approved by the Law Director and in an amount equal to ten percent (10%) of the construction cost of the Improvements. The Maintenance Guarantee shall be for a period of eighteen (18) months following the acceptance of the Improvements by Village Council, or for a period up to and including the completion of fifty percent (50%) or nine (9) of the dwellings, whichever is greater.

The Developer shall be responsible for routine maintenance of all Improvements and shall repair all failures as soon as they become apparent. The Developer shall also make repairs

due to erosion, abuse by utility companies, or builders (including their subcontractors), and shall repair all failures for all other reasons during the Maintenance Guarantee period. If the Developer fails to perform said maintenance to the reasonable satisfaction of the Village, the Village shall have the right to proceed as provided for in the Maintenance Guarantee and make the necessary repairs. (See Section 4.13.7 of the Subdivision Rules & Regulations)

7. Design Standards.

Developer agrees to comply with the design standards set forth in Section 1181.29, "Historic District Overlay," a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference, subject to the following:

- a. The dwellings built on Sublot 1 and Sublot 18 which abut State Route 303 shall have faux front façades facing State Route 303 so as to be consistent with the orientation and appearance of the facades of the existing adjacent dwellings on State Route 303.
- b. Developer agrees to build a mix of ranch style and two-story dwellings. Dwellings next to or directly across from each other shall not look alike. Dwellings which are the same type must differ from one another in two of the following ways: (i) wall material; (ii) architectural style; (iii) major features such as porches or turrets; (iv) organization and number of bays; (v) wing configuration; or (v) roof shape.
- c. Developer is permitted to build attached garages which face the Subdivision's new public street.
- d. For each dwelling, Developer shall submit an application for a zoning certificate to the Planning and Zoning Director as required by Chapter

1105 of the Village's Codified Ordinances. Each application shall be reviewed and approved by a licensed architect hired by the Village to ensure that the dwelling design complies with design standards set forth in Section 1181.29, "Historic District Overlay". In addition to other applicable fees, Developer shall pay an administrative fee of Three Hundred Dollars (\$300.00) with each application for a zoning certificate to cover the Village's consulting architect costs.

8. Landscaping.

Developer shall provide a Landscaping Plan that complies with the Village's standards and, more specifically, includes the following:

- i. Developer shall install a landscape mound and landscaping along the State Route 303 frontage of the Subdivision. The landscape mound and landscaping shall be in keeping with the existing landscaping on other residential properties in the vicinity of the Subdivision, but shall not be of a height or concentration that will fully screen the Subdivision from view from State Route 303 or interfere with the safe movement of vehicular or pedestrian traffic.
- ii. The Landscaping Plan shall include a sufficient landscaped buffer along the adjacent property to the east of the Subdivision and sufficient landscaping around the Subdivision's stormwater management basin.

9. Liability Insurance/Title Guarantee.

Prior to the commencement of construction of the Improvements, Developer shall file with the Village a Certificate of Insurance approved by the Law Director and indicating the

Developer has obtained Commercial General Liability Insurance for the construction and installation of the Improvements in a single limit amount of not less than Two Million Dollars (\$2,000,000.00) for personal injuries, including wrongful death due to injuries and damage to property. The Village shall be named as an additional insured on the policy. Such insurance shall be written by a company reasonably acceptable to the Village and authorized to do business in the State of Ohio and shall be maintained in force through the effective period of the Maintenance Guarantee. (See Section 4.13.9 of the Subdivision Rules & Regulations)

In addition, Developer shall cause to be provided to the Village a so-called "Title Guarantee", in customary form and otherwise reasonable acceptable to the Village and approved by the Law Director, from a title company reasonably acceptable to the Village and in the amount of One Thousand Dollars (\$1,000.00) covering the road, lands and improvements to be dedicated to public use and showing good title to said dedicated road, lands and improvements in the name of the Village. A certification that current taxes are paid shall also be submitted. (See Section 4.13.11 of the Subdivision Rules & Regulations)

10. Dedication.

Promptly following the completion of the construction and installation of the improvements and the approval thereof by the Village Engineer, the Village shall accept the dedication of the Improvements as authorized by a Resolution of Council. (See Section 4.9.7 of the Subdivision Rules & Regulations)

11. As-Built Drawings.

Within sixty (60) days after completion of the Improvements and prior to final inspection by the Village Engineer, Developer shall furnish to the Village "as built" drawings of the

Improvements in a form and quantity as required by the Village Engineer. (See Section 5.11 of the Subdivision Rules & Regulations)

The As-Built Drawings shall depict the actual location, dimensions, and elevations of the Improvements, site grading, and erosion and sediment control practices and indicate that the foregoing are in substantial conformance with the Improvement Plans and any approved amendments thereof. Developer's Engineer shall certify that the construction was completed in conformance with the plans and specifications as originally submitted, or as approved for amendment.

12. The Village shall issue building and/or zoning permits to Developer for the Improvements after the execution and recording of this Agreement and upon the delivery or deposit of all items required to be delivered or deposited hereby.

13. This Agreement shall be made a part of and incorporated into any Performance Guarantee that is to be issued in accordance herewith.

14. This Agreement shall be filed for record with the Summit County Fiscal Officer and shall run with the land and shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

15. This Agreement may be amended only by a writing executed by the Village and by any other party hereto whose rights or obligations are affected by such amendment.

16. This Agreement may be executed in multiple counterparts, each of which shall constitute an original and when taken together, one and the same Agreement.

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INTENDING TO BE LEGALLY BOUND, the parties have set their hands and seals as of the day and year first written above.

PETROS DEVELOPMENT GROUP, LTD., an Ohio limited liability company

By: _____
Sam Petros, President

VILLAGE OF RICHFIELD, OHIO
Approved by Ordinance No. _____ passed
_____, 201_____

By: _____
Bobbie Beshara, Mayor

By: _____
Sandy Turk, Finance Director

PLANNING COMMISSION

By: _____
Chairman

APPROVED AS TO LEGAL FORM

William R. Hanna, Law Director