

RESOLUTION NO. 37-2007

Offered by All of Council

A RESOLUTION AUTHORIZING THE MAYOR AND THE FINANCE DIRECTOR TO ENTER INTO A DEVELOPMENT AGREEMENT WITH LIFESTYLE NEIGHBORHOODS COMPANY FOR THE DEVELOPMENT OF THE APPLE ORCHARD SUBDIVISION AND DECLARING AN EMERGENCY

WHEREAS, the Planning Commission has approved the improvement plans and proposed subdivision for the Apple Orchard 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 Lifestyle Neighborhoods Company for the development of the Apple Orchard 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: 7-17-07

  
\_\_\_\_\_  
President of Council

  
\_\_\_\_\_  
Mayor

Dated: 7/17/07

ATTEST:  
  
\_\_\_\_\_  
Clerk of Council

AGREEMENT

THIS AGREEMENT (“Agreement”) made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2007, by and between LIFESTYLE NEIGHBORHOODS COMPANY, an Ohio corporation (hereinafter “Developer”) and the VILLAGE OF RICHFIELD, Ohio, a municipal corporation organized under the laws of the State of Ohio (hereinafter, the “Village”).

WITNESSITH:

WHEREAS, Developer is desirous of developing certain lands situated in the Village and now known as the Apple Orchard Subdivision (“Apple Orchard”);

WHEREAS, the plat for Apple Orchard (the “Plat”) has heretofore been filed with the Planning Commission of the Village) the “Planning Commission”), and the Planning Commission has approved the Plat subject to Apple Orchard providing adequate security for the construction and installation of the Improvements (hereinafter defined) to be made to the Apple Orchard by Developer;

WHEREAS, Developer desires to comply with Ordinance No. 40-1994, as amended, known as the “Subdivision Ordinance of Richfield Village,” so that Developer may proceed with the construction and installation of the Improvement;

WHEREAS, the Improvements shall be those improvement to the Apple Orchard as are shown on the Plat and are more particularly described in the plans and specifications therefore dated January 2007, prepared by Roger Newberry, P.E. of Michael Benza and Associates, Inc. (“Developer’s Engineer”) and approved by the Planning Commission for the Village and the Engineer for the Village on \_\_\_\_\_, (the “Plans and Specifications”); and

WHEREAS, the Planning Commission has recommended that the Village enter into this Agreement.

NOW, THEREFORE, IT IS AGREED that:

1. Developer, at Developer's cost, shall complete the construction and installation of the Improvements within a period of eighteen (18) months from the date the Village approves the Performance Bond (the "Performance Bond") to be issued by a proper surety or bank, as the case may be, in customary form, and the Performance Bond is delivered to the Village. The Performance Bond is to be delivered to the Village to provide assurance for the proper and timely construction and installation of the Improvements and shall be in the amount of one hundred percent (100%) of the cost thereof, as determined by Developer's Engineer and approved by the Engineer for the Village.
2. The cost of the Improvements has been determined to be One Million Two Hundred Ninety One Thousand Four Hundred Sixteen Dollars (\$1,291,416.00) and Developer has agreed to provide a Performance Bond in a like amount. The Engineer for the Village has approved the amount of the Performance Bond. Delivery of the Performance Bond shall be a condition precedent to the filing of Plat for record.
3. The Improvements are to be constructed or installed in accordance with the Plans and Specifications and otherwise in compliance with all Village Codes and other applicable laws.
4. The Improvements shall be inspected for time to time by the Village, during the course of the construction and installation thereof at sure intervals as are determined to be reasonable appropriate by the Village, taking into consideration the phase of the construction being inspected. Each such inspection shall be made by an inspector appointed by the Service Director of the Village and shall be made at Developer's cost, which cost shall be the reasonable and customary cost for the type of inspections to be made. Prior to commencing the construction and installation of the Improvement, Developer shall deposit with the Village the sum of Twenty

Thousand Dollars (\$20,000.00) 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 each required inspection as each such inspection is made; provided, however, if the cost of inspections remaining to be made is reasonable estimated by the Service Director for the Village, 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 notice of the need 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 shall be promptly returned to Developer.

5. The Performance Bond shall remain in place until such time as the Improvement have been completed in accordance with the Plans and Specifications and approved by the Village Engineer, which approval shall not be unreasonable withheld, conditioned or delayed.

6. Upon completion of the Improvements and approval thereof by the Village Engineer, but before the Performance Bond is released by the Village, Developer shall submit to the Village a so-called “Maintenance Bond” in customary form and in an amount equal to ten percent (10%) of the final construction cost of the Improvements. The Maintenance Bond shall guarantee the workmanship and materials used in the construction and installation of the Improvements for a period of eighteen (18) months following the completion thereof.

7. 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 Plans and Specifications, the Village shall have the right to proceed as provided for in the Performance Bond and to enter upon the lands comprising the Apple Orchard for the purpose of completing the Improvement; provided, however, until such time as the time provided Developer for construction and installing the Improvement has expired, the Village may take no action other than to advise Developer that the Improvements are not in accordance with the Plans and Specifications unless the Village determines that Developer has ceased work on the Improvements and has no intention of preceding therewith.

8. Prior to the commencement of construction of the Improvement, Developer shall file with the Village a Certificate of Insurance 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. 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 until the Improvement have been completed. 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, from a title company reasonable 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.

9. 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.

10. Upon completion of the Improvements, Developer shall furnish to the Village “as built” drawings of the Improvements on reproducible material and on magnetic computer storage media in a size and format reasonably approved by the Village.

11. Upon execution of this Agreement and the delivery of deposit of all items required to be delivered or deposited hereby, the Village shall issue building and/or zoning permits to Developer for the Improvements.

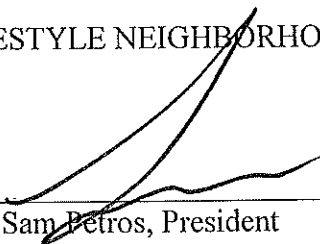
12. This Agreement shall be made a part of and incorporated in any and the Performance Bond that is to be issued in accordance herewith.

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

(THE BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the parties have set their hands and seals as of the day and year first written above.

LIFESTYLE NEIGHBORHOODS, CO.

By:   
\_\_\_\_\_  
Sam Petros, President

VILLAGE OF RICHFIELD, OHIO

By: \_\_\_\_\_  
Its Mayor

By: \_\_\_\_\_  
Its Finance Director

PLANNING COMMISSION

By: \_\_\_\_\_  
Chairman

APPROVED AS TO LEGAL FORM

\_\_\_\_\_  
Charles T. Riehl, Law Director

<b>ACORD CERTIFICATE OF LIABILITY INSURANCE</b>		OP ID PC PETRO-1	DATE (MM/DD/YYYY) 06/20/07
PRODUCER The Fedeli Group P.O. Box 318003 5005 Rockside Road Independence OH 44131-8003 Phone: 216-328-8080 Fax: 216-328-8081		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
INSURED  Heywood Properties c/o Petros Homes Inc 10474 Broadview Road Broadview Heights OH 44147		INSURERS AFFORDING COVERAGE	NAIC #
		INSURER A: Cincinnati Insurance Company	10677
		INSURER B:	
		INSURER C:	
		INSURER D:	
		INSURER E:	

**COVERAGES**

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR	ADD'L LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A		GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC	CAP5324891	10/31/06	10/31/07	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
A		AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	CAP5324891	10/31/06	10/31/07	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
A		EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE  <input type="checkbox"/> DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$ -0-	CAP5324891	10/31/06	10/31/07	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$ \$ \$
A		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below OTHER	CAP5324891  OHIO EMPLOYERS LIABILITY	10/31/06	10/31/07	WC STATUTORY LIMITS OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS**

Re: vacant land located Broadview & Hawkins Roads, incl intersection of Rts 271 & 21 located in Village of Richfield, Ohio

**CERTIFICATE HOLDER**

**CANCELLATION**

VILL-RI

Village of Richfield  
 4410 West Streetsboro Rd  
 Richfield OH 44286

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

*Pat Cowan*



Agreement

Whereas, Lifestyle Neighborhoods Co. (Developer) proposes to develop under the name of Apple Orchard Subdivision (Subdivision) in the Village of Richfield, and Whereas, Liberty Bank (Lending Institution) has issued an irrevocable commitment in the sum of \$1,291,416.00, which is to be used exclusively for the aforesaid development according to said plans and specifications, said funds being segregated into a special account solely for said purpose.

NOW THEREFORE, in lieu of a performance bond, it is agreed by the parties thereto as follows:

1. Lifestyle Neighborhoods Co. (Developer) shall complete the aforesaid development in accordance with the approved plans and specifications on or before July 1, 2008. In event of default the Village of Richfield shall have the right to complete said development or any portion thereof and Liberty Bank (Lending Institution) shall disburse said deposit to the Village of Richfield for payment thereof.
2. Liberty Bank (Lending Institution) shall accept as full and complete evidence of default and of the resulting right of the Village of Richfield to complete said project or any portion thereof, a copy of a resolution from said Village of Richfield duly authenticated by the Clerk thereof, declaring said default and the intention of the Village of Richfield to proceed to complete the performance of said development or any portion thereof on its own initiative.

It is further agreed that Lifestyle Neighborhoods Co. (Developer) hereby releases Liberty Bank (Lending Institution) from any and all responsibility, claims or liability of any kind whatsoever which may arise out of application of funds paid to the Village of Richfield upon default, as provided therein.

3. Liberty Bank (Lending Institution) shall hold said funds exclusively for the development of said allotment and shall disburse said funds only for said purpose and then only after approval of the Engineer of the Village of Richfield. Funds shall be paid out as work progresses upon the written approval on the Engineer of the Village of Richfield, Ohio.

Dated at \_\_\_\_\_, Ohio, this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

VILLAGE OF RICHFIELD

DEVELOPER: \_\_\_\_\_

CITY ENGINEER: \_\_\_\_\_

LENDING INSTITUTION: \_\_\_\_\_

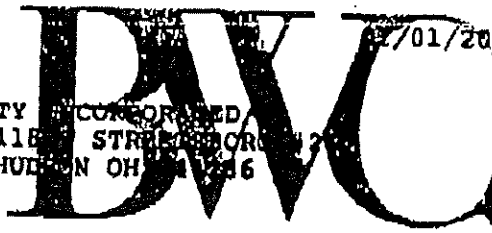
BY: \_\_\_\_\_

**STATE OF OHIO**  
**BUREAU OF WORKERS' COMPENSATION**  
 COLUMBUS, OHIO 43216-2256  
**CERTIFICATE OF PREMIUM PAYMENT**

This certifies that the employer listed below has paid into the State Insurance Fund as required by law. Therefore, the employer is entitled to the rights and benefits of the fund for the period specified. For more information call 1-800-OHIOBWC.

**THIS CERTIFICATE MUST BE CONSPICUOUSLY POSTED.**

POLICY NO. AND EMPLOYER	PERIOD SPECIFIED BELOW
622514	07/01/2007 THRU 08/31/2007

  
 BUREAU OF WORKERS' COMPENSATION  
 118 WEST STREET, COLUMBUS, OHIO 43216

www.ohiobwc.com *J. Make*  
ADMINISTRATOR/CEO

THIS CERTIFICATE MAY BE REPRODUCED AS NEEDED

**OHIO BUREAU OF WORKERS' COMPENSATION**  
**REQUIRED POSTING**

Effective October 13, 2004, Section 4123.54 of the Ohio Revised Code requires notice of rebuttable presumption. Rebuttable presumption means that an employee may be presumed to be injured by a presumption (or belief) that alcohol or a controlled substance not prescribed by the employee's physician is the proximate cause of the work-related injury.

The burden of proof is on the employee to prove that the presence of alcohol or a controlled substance was not the proximate cause of the work-related injury. An employee who tests positive or refuses to submit to chemical testing may be disqualified for compensation and benefits under the Workers' Compensation Act.

THIS LANGUAGE MUST BE POSTED WITH THE CERTIFICATE OF COVERAGE

FE.I.N - 34 - 1575064