

RESOLUTION NO. 38 -1995

Offered by Mr. Davis & Mayor
Waszak

A RESOLUTION AUTHORIZING THE MAYOR AND FINANCE DIRECTOR TO ENTER INTO A DEVELOPER'S AGREEMENT WITH KINROSS LAKES, INC.

BE IT RESOLVED by the Council of the Village of Richfield, State of Ohio:

SECTION 1. That the Mayor and Finance Director be, and they hereby are, authorized and directed to enter into an agreement with Kinross Lakes, Inc. for development of the Kinross Lakes Development, Phase 1, a copy of which agreement is attached hereto as Exhibit "A" and incorporated herein fully as if by reference.

SECTION 2. This Resolution shall take effect and be in force from and after the earliest period allowed by law.

Passed: May 16, 1995

Patricia Healey
President of Council

[Signature]
Mayor

Dated: 5/16/95

ATTEST:

Connie Moore
Clerk of Council

AGREEMENT

THIS AGREEMENT, made at Richfield, Ohio, this 13 day of MAY, 1995, by and between KINROSS LAKES, INC. (hereinafter referred to as "Developer") and the VILLAGE OF RICHFIELD, Ohio, a municipal corporation organized under the laws of the State of Ohio (hereinafter referred to as "Village").

WITNESSETH:

WHEREAS, Developer is desirous of developing certain lands situated in the Village, known as Kinross Lakes Development, Phase 1 ("Kinross Lakes Development"); and

WHEREAS, a plat for said Phase 1 Kinross Lakes Development has heretofore been filed with the Planning Commission of the Village, and said Planning Commission has approved the plat; and

WHEREAS, Developer desires to comply with Ordinance No. 40-1994, as amended, known as the "Subdivision Ordinance of Richfield Village," so that it may proceed with the improvements for Kinross Lakes Development; and

WHEREAS, the Planning Commission recommends the execution of this Agreement between the Village and Developer.

NOW, THEREFORE, IT IS AGREED THAT:

1. The Developer will complete the improvements for Phase 1 of the Kinross Lakes Development within a period of two (2) years from the date of approval by the Village of the Performance Bond(s), an irrevocable letter(s) of credit, or any other security acceptable to the Village, for the various portions of construction with proper surety in the amount of One Hundred Percent (100%) of such cost as a condition of the approval of the Planning Commission, and as a guarantee that such work will be completed. Such cost has been determined by the Engineer for the Village in the amount of \$2,046,000. All improvements are

to be done in accordance with the plans and specifications for such improvement in compliance with all Village Codes and as approved by the Planning Commission and Village Engineer which by reference hereto are made a part hereof and are dated February 14, 1995.

2. All such improvements shall be inspected during the course of construction and improvement by an inspector appointed by the Mayor, the costs for which and other costs shall be paid by Developer. Developer shall be informed at a current basis of the cost of inspection. The estimated cost of inspection in the amount of \$28,000 shall be deposited with the Village prior to construction commencing, provided, however, that in the event the cost of inspection exceeds the amount on deposit at any time, the Village shall have the right to demand a sum of money to bring the deposit equal to the actual cost of inspection within ten (10) days of written notice upon the Developer. Failure to comply with the written demand to bring the inspection deposit current shall be cause to stop all work upon the improvement until such demand is complied within.

3. The Performance Bond(s), an irrevocable letter(s) of credit, or any other security acceptable to the City, shall be conditioned upon completion of the improvements as shown on the improvement plans or as amended upon approval by the Village and conditioned that the Developer will construct and install all of said improvements at its own expense within two (2) years from the date hereof.

4. Upon completion of the improvements and receipt of the approval of the Village Engineer and before the Performance Bond(s), irrevocable letter(s) of credit or other security is released by the Village, the Developer shall submit a Maintenance Bond in an amount equal to Ten Percent (10%) of the final construction cost to guarantee the workmanship and material for a period of eighteen (18) months following the completion of the improvements.

5. In the event the Developer defaults on its obligations hereunder to construct the improvements in accordance with the Village specifications and approval, the Village shall have the right to collect the proceeds of the financial guarantee and to enter upon the property of the Developer to make the appropriate improvements.

6. Developer shall also, prior to commencement of construction, file with the Village a Certificate of Public Liability Insurance in an amount not less than One Million Dollars (\$1,000,000) for personal injuries, including wrongful death due to injuries and subject to the same limit for each person, and an amount of not less than Three Million Dollars (\$3,000,000) on account of any one accident, and property damage insurance with limits of One Hundred Thousand Dollars (\$100,000). This insurance shall be written with an acceptable company authorized to do business in the State of Ohio; shall be taken out before any operations of Developer are commenced; and shall be kept in effect until all operations shall be satisfactorily completed; and title guarantee in the amount of One Thousand Dollars (\$1,000) meeting the approval of the Village Law Director, covering the streets, lands and public improvements to be dedicated to public use, showing the good title to said dedicated streets, lands and public improvements in the name of the Village of Richfield, Ohio.

7. Upon completion of construction of the improvements and approval by the Village Engineer, Developer shall dedicate to the Village all streets, lands and public improvements set forth in the final plat and the Village shall accept such dedication as authorized by a Resolution of Council.

8. Upon completion of the work, Developer shall furnish to the Village "as built" drawings on reproducible material and on magnetic computer storage media in a size and format approved by the Village.

9. Upon execution of the Agreement and the deposit of all the items provided herein, the Village will issue building and/or zoning permits provided that the applicants for said permits have met the necessary requirements for the issuance of said permits.

10. This Agreement shall be made a part of and incorporated in any and all bonds that may be issued pursuant hereto.

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

WITNESSES:



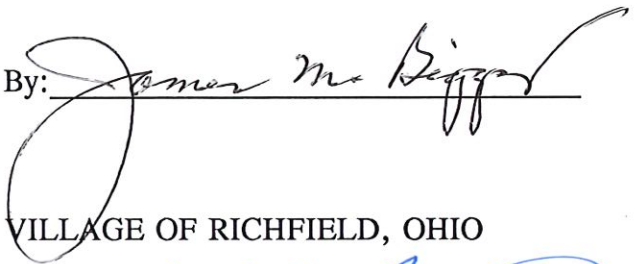
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PLANNING COMMISSION

By: 

Chairman

KINROSS LAKES, INC., "DEVELOPER"

By: 

VILLAGE OF RICHFIELD, OHIO

By: 

Its Mayor

And: 

Its Finance Director

APPROVED AS TO LEGAL FORM:



Charles T. Riehl, Law Director

GUARANTY

This GUARANTY dated May 13, 1995, is made by KINROSS LAKES, INC., a corporation organized and existing under the laws of the State of Ohio (the "Guarantor"), in favor of the VILLAGE OF RICHFIELD, Ohio, a municipal corporation organized under the laws of the State of Ohio (hereinafter referred to as "Village").

PRELIMINARY STATEMENT. This Guaranty is security for the performance of the obligations of the Guarantor under the Agreement of even date herewith between the Guarantor and the Village (the "Developer's Agreement") relating to the development of certain lands situated in the Village, known as Kinross Lakes Development, Phase 1 ("Kinross Lakes Development").

NOW, THEREFORE, in consideration of the premises and in order to induce the Village to enter into the Developer's Agreement, the Guarantor hereby agrees as follows:

SECTION 1. Guaranty. The Guarantor hereby unconditionally guarantees that it will complete the improvements constituting Phase I of the Kinross Lakes Development within two (2) years of the effective date of the Developer's Agreement (such obligations being the "Obligations").

SECTION 2. Guaranty Absolute. The Guarantor guarantees that the Obligations will be performed strictly in accordance with the terms of the Developer's Agreement, regardless of any law, regulation or order now or hereafter in effect in any jurisdiction affecting any of such terms. The liability of the Guarantor under this Guaranty shall be absolute and unconditional irrespective of:

(i) any lack of validity or enforceability of the Developer's Agreement;

(ii) any other circumstance which might otherwise constitute a defense available to, or a discharge of, the Guarantor.

SECTION 3. Payment of Taxes. The Guarantor agrees to pay any present or future stamp or documentary taxes, or any other excise or property taxes, charges or similar levies which arise from any performance made hereunder or from the execution, delivery or registration, of, or otherwise with respect to, this Guaranty.

SECTION 4. Representations and Warranties. The Guarantor hereby represents and warrants as follows:

(a) The Guarantor is a corporation duly incorporated, validly existing and in good standing under the laws of Ohio.

(b) The execution, delivery and performance by the Guarantor of this Guaranty are within the Guarantor's corporate powers, have been duly authorized by all necessary corporate action, and do not contravene (i) the Guarantor's charter or Code

of Regulations or (ii) law or any contractual restriction binding on or affecting the Guarantor.

(c) No authorization or approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for the due execution, delivery and performance by the Guarantor of this Guaranty.

(d) This Guaranty is the legal, valid and binding obligation of the Guarantor.

(e) There is no pending or, to the best of the Guarantor's knowledge, threatened action or proceeding affecting the Guarantor before any court, governmental agency or arbitrator, which may materially adversely affect the financial condition or operations of the Guarantor.

SECTION 5. Compliance with Covenants. The Guarantor covenants and agrees that, so long as any part of the Obligations shall remain performed, the Guarantor will comply with each provision contained in the Developer's Agreement.

SECTION 6. Amendments, Etc. No amendment or waiver of any provision of this Guaranty nor consent to any departure by the Guarantor therefrom shall in any event be effective unless the same shall be in writing and signed by the Village, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

SECTION 7. No Waiver; Remedies. No failure on the part of the Village to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof of the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

SECTION 8. Governing Law. This Guaranty shall be governed by, and construed in accordance with, the laws of the State of Ohio.

IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be duly executed and delivered by its officer thereunto duly authorized as of the date first above written.

KINROSS LAKES, INC.

By: 
JAMES M. BIGGAR

Title: President