

SITE DEVELOPMENT AGREEMENT

THIS SITE DEVELOPMENT AGREEMENT is made and entered into on this _____ day of _____, by and between THE TOWN OF WHITE BLUFF, OF DICKSON COUNTY, TENNESSEE, A MUNICIPALITY incorporated under the laws of the State of Tennessee, with its office and principal place of business in DICKSON COUNTY, Tennessee, (hereinafter called the "TOWN"), and the DEVELOPER (hereinafter called the "DEVELOPER") named on the Addendum to this Agreement attached hereto and by this reference made a part hereof (hereinafter called the "ADDENDUM").

WITNESSETH:

WHEREAS, the DEVELOPER desires to develop the property described on the ADDENDUM (hereinafter called the "PROJECT"); and

WHEREAS, the site plan of the PROJECT has the approval of the White Bluff Municipal Planning Commission (hereinafter called the Planning Commission) on the _____ day of _____, pursuant to Tennessee Code Annotated, Section 13-7-201, et seq., and the Zoning Ordinance of White Bluff, Tennessee, (the Zoning Ordinance); and,

WHEREAS, the DEVELOPER is the owner of the PROJECT and has authority to engage in such development; and,

WHEREAS, in order to provide for the health, safety and welfare of those persons frequenting the PROJECT and the general public, it will be necessary for certain improvements to be constructed within and to serve the PROJECT. Said improvements may include, but not be limited to, sidewalks, storm water conveyance and detention systems, parking and vehicular access control features, landscaping buffers and the like; and

WHEREAS, in order for said improvements to be fully integrated with the public infrastructure of the TOWN and to function in a satisfactory manner, the DEVELOPER has agreed to construct in accordance with the approved site plan and other rules, regulations and ordinances of the TOWN improvements in said project, and

WHEREAS, failure of the DEVELOPER to adhere to the design embodied in the approved site plan creates unintended and potentially detrimental impacts upon the public infrastructure network of the TOWN.

NOW, THEREFORE, in consideration of the TOWN accommodating upon its network of infrastructure the vehicular traffic, storm water and other impacts generated by this PROJECT (subject to the applicant's compliance with all requirements in this agreement and applicable existing laws of the TOWN of White Bluff and the State of Tennessee), and

IN FURTHER CONSIDERATION of the premises and mutual covenants of the parties herein contained, it is agreed and understood as follows:

I. **GENERAL CONDITIONS**

A. **Construction Costs**

The DEVELOPER shall pay for all material and labor necessary to install and complete, sidewalks, drainage improvements, access control features and other facilities in accordance with this agreement.

B. Inspection

The TOWN shall have a continuous right to inspect the work and facilities to assure that the facilities are constructed in accordance with the approved construction plans.

C. Right of Entry

The TOWN shall have the right, in case a Letter-of-Credit is called for noncompliance, to enter upon any property of the DEVELOPER and take all necessary actions to stabilize and secure the development site so as to protect the health and welfare of the general population.

D. Fees Not Refundable

If the DEVELOPER fails to install the facilities in accordance with the terms of this Agreement, no portion of the review fees or other amounts paid to the TOWN shall be refundable to the DEVELOPER.

E. Town Ordinances, Rules and Regulations

All TOWN ordinances, rules and regulations and the Zoning Ordinance adopted by the Town Council are made a part of this agreement. In the event of a conflict between the terms of this agreement and a TOWN ordinance, the ordinance shall prevail. All work done under this agreement is to be performed in accordance with plans, and specifications approved by the Town and made a part, hereof.

F. Agreement Not Assignable

No third party shall obtain any benefits or rights under this agreement nor shall the rights or duties be assigned by either party.

G. Revocation and Interpretation

This agreement shall bind DEVELOPER when executed by DEVELOPER and may not be revoked by DEVELOPER without permission of the TOWN, even if the agreement has not been executed by the TOWN, or does not bind TOWN, for other reasons. This agreement shall be interpreted in accordance with Tennessee law and may only be enforced in the Chancery Court or Circuit Court or Court of competent jurisdiction of Dickson County, Tennessee, and Tennessee Appellate Courts.

H. No Oral Agreement

This agreement may not be orally amended and supersedes all prior negotiations, commitments or understandings. The White Bluff Town Council must approve any written modification to this agreement.

I. Severability

If any portion of this agreement is held to be unenforceable, the TOWN shall have the right to determine whether the remainder of the agreement shall remain in effect or whether the agreement shall be void and all rights of the DEVELOPER pursuant to this agreement terminated.

J. Transferability

The DEVELOPER and/or Owner agrees that he will not transfer the property on which this proposed development is to be located without first providing the TOWN with notice of when the transfer is to occur and who the proposed transferee is, along with appropriate address and telephone numbers. If it is the transferee's intention to develop this property in accordance with the agreement, the DEVELOPER agrees to provide the TOWN an Assumption Agreement whereby the transferee agrees to perform the improvements required under this agreement and to provide the security needed to assure such performance. Said agreement will be subject to the approval of the TOWN Attorney. The DEVELOPER and/or Owner understand that if he transfers said property without providing the notice of transfer and Assumption Agreement as required herein, he will be in breach of this agreement and that any surety held by the Town to secure the agreement may be called. The DEVELOPER further agrees that he shall remain liable under the terms of this agreement though a subsequent sale of all or part of said property occurs, unless an Assumption Agreement is entered into between the new owners and the TOWN and a new agreement is issued naming the new owners as principal.

II. DESIGN AND APPROVAL

A. Contents of Plans

The DEVELOPER shall cause to be prepared and submitted to the TOWN, plans (the "Plans") describing in reasonable detail all utility systems, all storm water management systems, all parking and access controls and all other improvements necessary to provide adequate services to the Project (hereinafter called the "IMPROVEMENTS"). The plans shall include all information required by the Zoning Ordinance and any other details as requested by the TOWN. In any instance where building construction is not proposed for a site but grading or filling activity is proposed that is sufficient to trigger the requirement for a grading plan such plan shall be prepared, submitted and approved in accordance with TOWN requirements.

B. Preparation of Plans

The Plans shall be prepared by individuals licensed by the State of Tennessee to design all systems and shall bear the seal, signature and license number of those persons preparing such Plans

C. Design Criteria

The design of water and sewer improvements shall follow the State of Tennessee design criteria. Storm water management and access controls shall be designed according to applicable municipal specifications and ordinances and sound engineering judgment. In all cases, the specifications and design details for the Improvements shall be those of the TOWN and those as approved by the

State of Tennessee Department of Environment and Conservation. In the event of a disagreement as to compliance with or interpretation of the Plans and the TOWN'S specifications, the decision of the TOWN shall be final and binding on the DEVELOPER.

III. COMMENCEMENT OF CONSTRUCTION

No site grading or construction of improvements shall begin until the following events have occurred:

- A. The Plans are approved by the TOWN, and all necessary facets of platting and construction plan approval, through the Planning Commission, have been completed.
- B. If required, the review fee described in Paragraph _____ (FEES), hereof, has been paid in full.
- C. The TOWN shall have received an appropriately executed Site Development Agreement.
- D. The pre-construction conference described in Paragraph IV, hereof, has been held.
- E. A bond in the appropriate amount has been posted.
- F. The DEVELOPER shall give the TOWN notice of commencement of construction, in writing at least five (5) days prior to commencement.

IV. CONSTRUCTION

A. General

The DEVELOPER agrees to construct and install all site features of the development site including utilities, parking areas, travelways and access control features, elements of storm water drainage systems, landscaping features and other site features in strict accordance with the approved construction plans.

B. Utilities

As a part of constructing the Improvements, the DEVELOPER shall install, in accordance with the Plans and TOWN specifications, all fire lines, sewer service, and all facilities, equipment and accessories relating, thereto, necessary to provide utility service to the Project. The DEVELOPER agrees to pay the cost of all engineering, inspection and laboratory testing costs incidental to the sewer service in or to the development site. The DEVELOPER shall be responsible for the cost of any and all relocation, adjustment, modification, installation and/or removal of utilities, both on and off site, brought about as a result of the development of the project.

C. Site Grading

- 1. The DEVELOPER, hereby, agrees to construct all site grading as shown on the Development plans to comply with the approved drawings,

including the approved Erosion Control Plan and to comply with all rules, regulations and ordinances of the TOWN.

2. The DEVELOPER, further agrees to complete the work in compliance with an approved Geotechnical report for the Development. Said Geotechnical report shall be submitted to the TOWN for review and approval and shall become a part of the construction documents for the Development. The approved Geotechnical report shall include the following:
 - a. Specifications for the preparation of the site prior to placing of compacted fill material.
 - b. Specifications for material to be used as compacted fill.
 - c. Test methods to be used to determine the maximum dry density and optimum moisture content of the material to be utilized as compacted fill.
 - d. Maximum allowable thickness of each lift of compacted fill material.
 - e. Field test method for determining the in-place dry density of the bearing capacity of the compacted fill.
 - f. Minimum acceptable in-place dry density expressed as a percentage of the maximum dry density determined in accordance with item "c".
 - g. Number and frequency of field tests required to determine compliance with Item "d".
 - h. Recommended paving design.
 - i. Recommended maximum safety slopes for fills and embankments.
 - j. Any special construction required to protect the public health and safety.
3. The DEVELOPER, hereby, agrees to retain the services of a geotechnical engineering firm to monitor site work as required to assure compliance with the geotechnical report.
4. The DEVELOPER, hereby, agrees that the Geotechnical report shall be submitted to the TOWN prior to the DEVELOPER receiving any permit for construction of footings on compacted fill material.
5. At the completion of construction, the Geotechnical engineer shall certify in writing that the work was witnessed by the Geotechnical engineer and performed in accordance with the Geotechnical report.

D. Storm Water Management

1. Erosion Control During Construction

To properly manage storm water runoff during the construction process the DEVELOPER shall provide necessary erosion control in accordance with the storm water management plan for the development as approved by the TOWN in conformance with the published design standards and specifications of the TOWN. All freshly excavated and embankment areas not covered with satisfactory vegetation shall be protected as required by the TOWN to prevent erosion. In the event the TOWN determines that necessary erosion control is not being provided by the DEVELOPER, the proper governing authority shall officially notify the DEVELOPER of the problem. If the DEVELOPER has not begun to provide satisfactory erosion control within fifteen (15) days after the notice then the proper governing authority shall make the necessary improvements to eliminate the erosion problems, documenting all expenses incurred performing the work.

2. Design to Manage Flow

Any and all water courses lying partially or wholly within the bounds of this development shall be constructed to adequate cross section to provide design flow without threat of erosion or flooding of any property within this development, or of any adjoining property.

3. Design of Flow Management Structures

All storm water management structures necessitated by the plans for this development that affect any water course lying partially or wholly within this development are to be provided by the DEVELOPER.

4. Detention and Retention Facilities

All detention and retention facilities situated upon a development site shall be designed, constructed and maintained in strict conformance with approved development plans. Once installed, no detention or retention element may be altered so as to reduce the storage capacity of such facility. All detention and retention facilities shall be maintained so as to insure proper operation and safety.

5. Responsibility and Liability

It is understood and agreed that the TOWN in its proprietary function is not and could not be expected to oversee, supervise, and/or direct the construction of all improvements, and the excavation incident thereto. Neither is the TOWN vested with the original design responsibility nor the means to formally survey elevations or the locations of improvements at every stage of the construction process. The TOWN is vested with the right of periodic inspections, stop work order and final approval as a measure of secondary or subsequent enforcement. The DEVELOPER has and shall retain the responsibility to properly anticipate, survey, design and construct the development and give full assurance that same shall not adversely affect any property. In providing technical assistance,

plan and design review, the TOWN does not and shall not relieve or accept any liability from the DEVELOPER.

E. Paving and Access Control Design

1. General

The DEVELOPER, hereby, agrees to design and construct all parking areas and traffic circulation facilities to meet the design standards set out in the Zoning Ordinance. Points of access shall be installed as shown on the approved development plan and no further alteration or modification shall be permitted unless an amended site plan is approved.

2. Paving

Vehicular parking and maneuvering areas shall be paved in accordance with approved development plans. The types of material, cross sectional area and other characteristics of paving design shall be as approved in the development plans.

3. Handicapped Access

All sites and structures shall be designed and constructed so as to comply fully with all applicable provisions of The American Disabilities Act. The number and design of handicapped parking spaces shall be in accordance with the requirements of the Zoning Ordinance.

VI. MODIFICATIONS DURING CONSTRUCTION

It is understood and agreed that all site construction and development activity shall proceed in strict compliance with the approved site plan. It is further understood that minor modifications in the terms and conditions of the approved site plan may be made from time to time if so approved by the Building Inspector/ Codes Administrator or the Town Engineer. It is further understood that any proposed modification that is not permitted under these provisions may be approved only as an amendment to the development plan. Finally, it is understood that any modification in site construction or development activity which exceeds those considered by the Building Inspector/ Codes Administrator or the Town Engineer as being minor modifications permitted in shall, unless approved as an amendment to the site plan, constitute a violation of this agreement and the Zoning Ordinance of the Town and is punishable as provided in Article IX.

VII. INSPECTION AND COMPLIANCE

It is understood and agreed that the DEVELOPER on at least three (3) occasions during the time construction or development activity is taking place upon any site, shall be required to certify the correspondence between actual conditions existing upon such site and the depiction of those conditions upon approved development plans. Failure to present these certifications in a timely manner will result in issuance of a "stop work" order by the Town. These certifications shall be performed and signed by a licensed surveyor employed by the DEVELOPER and shall be as follows:

- A. The first certification shall be presented when the building foundation is substantially complete. The surveyor shall certify the building location and the first floor elevation of the foundation.
- B. The second certification shall be presented when the site has been rough graded to the point where the drainage system has been installed and parking areas generally established. This certification shall indicate actual location and elevations upon the site of all buildings, parking areas and drainage facilities (specifically including the location and elevation of inlet and outlet structures). The extent of correspondence between actual conditions found upon the development site and those depicted on the approved site plan shall be indicated.
- C. The final certification shall be presented when construction upon the site is substantially complete and the building is ready for occupancy. This certification shall indicate actual conditions upon the development site. To be included are all aspects of the development project, to include, but not be limited to:
 - Location and dimensions of all buildings, parking areas, points of access to public streets and other site features.
 - Location and sizes of all utilities and storm drainage facilities as established on the site.
 - Location and material (to include plant names and size were specified) of all landscaping and site plantings.

VIII. EASEMENTS

Any development plan submitted which requires dedication of right-of-way or recording of any easements shall either be accompanied by a final plat of the property shown on said plan, or shall be accompanied by a legal instrument which is sufficient in form to record in the Register of Deeds Office. This document must be recorded in the Register of Deeds Office prior to issuance of a Certificate of Use and Occupancy.

IX. VIOLATIONS and REMIDIES

It is understood that this Development Agreement is adopted pursuant to authority granted to the Town by Title 13, Sections 13-7-201 – 13-7-211, Tennessee Code, to develop and administer zoning laws and that any violation of such agreement shall constitute a violation of the Zoning Ordinance of the Town. It is further understood that a violation of this Development Agreement is punishable as provided in Article IX of said Zoning Ordinance.

In the event of a default in the performance by either party of its obligation hereunder, the other party, in addition to any and all remedies set forth herein, shall be entitled to all remedies provided by law or in equity, including the remedy of specific performance or injunction.

The DEVELOPER shall pay all costs and expenses, including the TOWN'S attorneys' fees, of any legal proceedings brought by the TOWN against the DEVELOPER seeking remedies for the DEVELOPER's failure to perform any of its obligations hereunder, whether or not any proceedings are prosecuted to judgment.

X. BINDING EFFECT

The covenants and agreements herein contained shall bind and endure to the benefit of the parties hereto, their respective heirs, personal representatives, successors and assigns, as appropriate.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in multiple originals by persons properly authorized so to do on or as of the day and year first given.

OWNER

DEVELOPER

TITLE

TITLE

ATTEST:

ATTEST:

TITLE

TITLE

TOWN OF WHITE BLUFF
(COUNTY OF DICKSON), TENNESSEE

BY: _____
MAYOR (OR DESIGNEE)

DATE

APPROVED AS TO FORM:

BY: _____
TOWN ATTORNEY

DATE