

This Instrument Prepared By and Return To:
City of Germantown
Department of Development
1920 South Germantown Road
Germantown, TN 38138

PROJECT DEVELOPMENT CONTRACT
NO. _____

THIS PROJECT DEVELOPMENT CONTRACT (“Contract”) is made this ____ day of _____, _____, by and between the CITY OF GERMANTOWN, a municipality organized and existing under the laws of the State of Tennessee (“City”) and _____, the address of which is _____ (“Developer”).

WITNESSETH:

WHEREAS, the Developer is the owner of a tract of land, zoned “___” _____, which contains approximately ____ -acres (the “Project Site”)¹, and desires to improve and develop the Project Site into _____ (the “Project”);

WHEREAS, the Germantown Planning Commission and/or the Germantown Design Review Commission has approved the Site plan of the Developer with respect to the Project (the “Site Plan”); and

WHEREAS, the City is willing to enter into this Contract with the Developer relative to the development of the Project Site and the City is willing to provide services to the Project in accordance with the City’s standard policies and applicable rates;

NOW, THEREFORE, IT IS MUTUALLY AGREED, as follows:

1. Contracting. The Developer shall develop the Project according to the provisions of this contract. For all activities that constitute “Contracting,” as defined by the Tennessee Contractors Licensing Act (“Licensing Act”), the Developer shall engage a contractor licensed in accordance with the Licensing Act.
2. Date of Completion. The Developer shall complete the Project on a timely schedule and in an expeditious manner, with the date of final completion to be not later than twenty-four (24) months from the date of this Contract. Upon written request by the Developer, the Economic and Community Development Director, for good cause shown, may extend the date for final completion, after the City Engineer agrees in writing that the cause is justified. The Developer shall also pay a contract extension fee as approved by the Board of Mayor and Aldermen if such contract extension is requested.
3. Construction Standards.

¹ *If the Developer is not the owner of the Project Site, the owner of the Project Site is required to join in this Contract and the obligations expressed herein as being those of the Developer shall be the joint and several obligations of the Developer and the Owner.*

- A. The Project shall be constructed in accordance with the Site Plan, as approved by the Germantown Planning Commission and/or the Germantown Design Review Commission, and in accordance with the requirements of:
- (a) the Germantown Standard Construction Specifications;
 - (b) the International Building Code (as adopted and amended by the City of Memphis and Shelby County);
 - (c) the National Electrical Code (as adopted and amended by the City of Memphis and Shelby County);
 - (d) the International Plumbing Code, (as adopted and amended by the City of Memphis and Shelby County);
 - (e) the International Fire Code 2015 edition and all appendixes, recommended supplemental administrative provisions, subject to the modifications thereof or additions thereto by the City in its Code of Ordinances; and
 - (f) the applicable Ordinances of the City.

Items (a) through (f) are hereby made a part of this Contract by reference and are hereinafter referred to collectively as the “Codes.” References herein to said Codes are to those in effect on the date of this Contract unless amendments are hereinafter made which apply to all improvements or Projects regardless of their date of commencement and/or completion of construction.

- B. The Project shall also be constructed in accordance with, but not limited to, the following, which are also made a part of this Contract by reference, to the extent that same exceed the requirements of the Codes and/or the specifications of the Site Plan:
- (a) the City of Memphis Standard Specifications, subject to modifications thereof or additions thereto by the City;
 - (b) the standards of the American Society for Testing Materials (ASTM);
 - (c) the requirements of the Office of Safety and Health Administration (OSHA);
 - (d) the requirements of the Federal Americans with Disabilities Act (ADA);
 - (e) the Standard Specifications for Road and Bridge Construction of the Tennessee Department of Transportation;
 - (f) the Standards of the American National Standards Institute (ANSI); and
 - (g) the City of Germantown Fire Prevention Bureau Fire Protection Development Standards.

as all are in effect on the date of this Contract unless amendments are hereinafter made which apply to all improvements or Projects regardless of their date of commencement and/or completion of construction.

4. Approval of the Site Plans. The Developer shall obtain the approval of the City Engineer for the Site Plan, including the public water and fire protection systems of the Project. All construction on the Project shall be subject to inspection and approval by the City until Final Acceptance, as defined in paragraph 7.
5. Easements. Prior to the recording of the plat, the Developer shall have all necessary easements which are to be used for a public purpose obtained and conveyed to the City without cost to the City.
6. Fees. The Developer shall pay to the City, prior to execution of this Contract,
 - (a) a lump sum water plant expansion fee in the amount of ONE THOUSAND DOLLARS (\$,1000.00) per lot;
 - (b) a fee of ONE THOUSAND DOLLARS (\$1,000.00) to partially defray the City's cost for preparation of the Development Agreement. The cost for contract modifications is THREE HUNDRED DOLLARS (\$300.00);
 - (c) a fee of SEVEN HUNDRED DOLLARS (\$700.00) to partially defray the City's cost for its review of the Site Plan and the Project Construction Plans, which includes the cost of the initial plans review and one (1) additional review. The cost for each subsequent review is SEVEN HUNDRED DOLLARS (\$700.00);
 - (d) a fee of ONE THOUSAND DOLLARS (\$1,000.00) plus ONE HUNDRED DOLLARS (\$100.00) per acre to partially defray the City's cost for inspection of all phases of the construction of the Project. The Developer will contract for and pay all other engineering, safety, construction, and testing costs of third parties deemed necessary by the Developer or the City for the design and construction of the Project in compliance with this Contract and the specifications of the Project Plan and to determine such compliance. All fees paid to the City pursuant to the terms of this Contract are nonrefundable. Even if the Developer does not commence the Project, it shall not be entitled to a refund of any portion of the fees paid to the City hereunder. Furthermore, if the Developer is required to make a payment hereunder to the City in lieu of performing certain construction (payment in lieu of improvements), such payment shall not be refundable, as the timing of such construction by the City is often difficult to determine;
 - (e) a fee of ONE THOUSAND ONE HUNDRED DOLLARS (\$1,100.00) plus FIVE HUNDRED FIFTY DOLLARS (\$550.00) per acre to partially defray the Stormwater Plans Analysis Review and Inspection (NPDES Phase II);
 - (g) a fee of SEVEN HUNDRED DOLLARS (\$700.00) per intersection for the Traffic Signal Plans review, if required;
 - (h) a fee of ONE HUNDRED SEVENTY FIVE DOLLARS (\$175.00) per acre for the Traffic Impact Analysis; and

- (i) a fee of XXXXXXXXX (\$XXX.XX) for Payment In-Lieu of Tree Mitigation.

7. Initial Acceptance/Final Acceptance and Release of Security.

- (a) Upon the completion of the Project in compliance with this Contract, the Economic and Community Development Director shall issue the City's standard Initial Acceptance Letter to the Developer, dated appropriately, which date shall be the date of Initial Acceptance ("Initial Acceptance") and the beginning of the warranty period referred to in paragraph 8. The Project Plat will not be recorded until the City determines that the work has been fully performed and initially accepted pursuant to this Contract and the Economic and Community Development Director has issued the City's Initial Acceptance Letter.
- (b) As a condition to the granting of Initial Acceptance, if, pursuant to this Contract, Public Improvements, as hereinafter defined, are to be constructed on areas to be dedicated to the City by virtue of the official recordation of the Plat for the Project Site, the Developer shall deliver to the City an affidavit certifying the names of all contractors, subcontractors, and material suppliers who have furnished labor and/or material for the Project and certifying that these contractors, subcontractors, and material suppliers have been paid in full, together with appropriate waivers of liens from such parties. Only if Public Improvements are to be constructed on areas that are to be dedicated to the City pursuant to this Contract will said affidavit and lien waivers be required by the City. If Public Improvements are to be dedicated, the City must have assurance through an appropriate affidavit and lien waivers that no lien arising prior to the dedication will be asserted against the dedicated property after the City acquires title.
- (c) Upon the recording of the Project Plat, such shall evidence and constitute acceptance by the City of those areas and easements, and improvements therein, stated on the Project Plat as being dedicated to the City.
- (d) All survey data shall be tied to Tennessee State Plane Coordinates, and the City of Germantown monumented survey control. Standard corner monuments shall be placed at all corners of the subdivided property.
- (e) As a condition to the granting of Initial Acceptance, the Developer or his representative shall furnish to the City the original plat, on electronic media in AutoCad Drawing (DWG) format and on four (4) mm or greater mylar, suitable for recording. At the expense of the Developer, the original plat shall be recorded by the City at the Shelby County Register's Office. The City shall retain the original recorded plat in their files.
- (f) As a condition to the granting of Initial Acceptance, the Developer or his representative shall furnish to the City as-built plans (water, sanitary sewer, drainage, and a "basic" architectural floor plan) on electronic media in DWG format.
- (g) As a condition to the granting of Initial Acceptance, the Developer or his representative shall furnish to the City two (2) copies of all construction plans on

electronic media in Tagged Image File Format (TIFF) format, scanned at a resolution of four hundred (400) dots per inch.

- (h) At the end of the warranty period the Developer must request a Letter of Final Acceptance and Release of Security. Provided that the Developer meets its obligations under the twelve (12) month warranty period, final acceptance (“Final Acceptance”) of the Project by the City shall occur and the City will issue a Letter of Final Acceptance and Release of Security.

8. Warranty Period.

- (a) If any of the Public Improvements (hereinafter defined) and if any of the other improvements installed by the Developer on the Project Site as specified in paragraph 33 hereof require repair or maintenance during the twelve (12) month period immediately following the date of Initial Acceptance (the “Warranty Period”), the Developer shall, at its expense, perform such repairs. The Developer’s warranty responsibility with respect to the aforementioned improvements includes repair due to any construction failures and latent defects that arise prior to the expiration of the Warranty Period and damage caused by the Developer or third parties or acts of God. With respect to any item requiring repair during the Warranty Period, the Economic and Community Development Director, with the City Engineer’s written justification for the warranty extension, shall give written notice thereof to the Developer (which notice shall stay the expiration of the Warranty Period as to the particular items requiring repairs); and the Warranty Period shall be extended for an additional period of twelve (12) months from the date such repairs are certified as acceptable by the Economic and Community Development Director. The Warranty Period shall likewise be further extended for another twelve (12) months if further repairs are required after repairs previously made.
- (b) If the Developer fails to repair such construction failures and/or defects and/or damaged items that arise prior to the expiration of the Warranty Period, the Developer shall be obligated to reimburse the City for any costs incurred by the City in making such repairs. The City agrees to make a reasonable attempt to contact the Developer prior to making any such repairs unless those repairs are deemed by the City to be of an emergency nature requiring immediate attention.
- (c) If, due to the necessity of repairs to certain items in the Project during the initial twelve (12) month Warranty Period, with the resulting extension of the Warranty Period for another twelve (12) months as to such repaired items, Final Acceptance of the Project cannot be granted at the end of the initial twelve (12) month Warranty Period, the Developer may request to the Economic and Community Development Director that the Security be reduced to an amount, as estimated by the City Engineer, equal to the cost of repair of items still under the warranty of the Developer; and, the Security shall be appropriately reduced and the remaining Security shall be held by the City until Final Acceptance is granted by the City as to all components of the Project.

9. Security.

- (a) For the purpose of ensuring the prompt payment and performance of all of Developer's obligations pursuant to this Contract, prior to executing this Contract, the Developer shall provide either an automatically renewable irrevocable letter of credit satisfactory to the City, a certificate of deposit from a federally insured financial institution with an office or branch in Shelby County, Tennessee, properly assigned to the City, or cash (which cash shall be held by the City with no obligation to pay interest thereon) (hereinafter alternatively referred to as the "Security"). The amount of the Security shall be equal to one hundred percent (100%) of the water system improvements, and forty percent (40%) of the total estimated cost of the remaining Public Improvements, excluding clearing, grubbing, and grading of the land, plus one hundred percent (100%) of the cost of those improvements which are required by the Planning Commission and the Design Review Commission that are not Public Improvements and which are described in paragraph 33 hereof, or FIFTY THOUSAND DOLLARS (\$50,000), whichever amount is larger. Although the amount of the Security shall be less than the total cost of compliance by Developer with all of Developer's obligations hereunder, it is understood and agreed that the Security, subject to its limit, is to furnish security for the performance of all of the Developer's obligations hereunder. The Security shall remain in force throughout the period of construction and the Warranty Period, as such Warranty Period may be extended pursuant to the terms of this Contract, subject to the provisions of Section 8(c) above.
- (b) If the Developer fails to repair the construction failures and defects identified in a written notice from the City Engineer within thirty (30) days of the effective date of such notice, the City may exercise its right, which is granted hereunder, to cause the Security to be converted to funds immediately available to the City so that same may be used to remedy Developer's defaults; provided, however, that if the repair specified in such notice is of a nature which is not reasonably susceptible of completion within said thirty (30) day period, the City will not make demand for payment under the Security if the Developer commences said repairs within said thirty (30) day period for so long as the Developer diligently pursues the completion thereof. All collection expenses, court costs, and attorney's fees incurred by the City in connection with collection under the Security shall be paid by the Developer and/or charged under the Security. Further, if the City should perform or cause to be performed any of the obligations of the Developer hereunder due to default by Developer and expend funds that are not derived from the Security, the City shall be entitled to recover not only such sum but also interest thereon at the rate of ten percent (10%) per annum, which sums shall be chargeable under the Security.
10. Public Improvements. The Developer shall grant to the City the ownership and title to all improvements located on the Project Site that are located on areas dedicated to the City by virtue of the official recordation of the Plat for the Project Site ("Public Improvements"), and the City shall assume routine maintenance responsibility for such Public Improvements with the exception of sidewalks after Final Acceptance. Public Improvements include, but are not limited to, curbs, gutters, streets, storm and sanitary sewers, water and fire protection services and other associated appurtenances. Developer shall pay for the total construction cost of all Public Improvements and all other improvements located within the Project Site.

11. Public Streets. The Developer shall be responsible for the total construction cost of all public streets located within the Subdivision Site as well as any required off-site improvements, including the cost of preparing for and placing the final asphalt surface, and any right-of-way or easement(s) necessary to construct off-site improvements.
 - (a) Major/Collector Public Streets. The cross section for designated major or collector public streets, as defined by the Official City Major Road Plan (the "Road Plan"), located within the Subdivision shall be three and one-half inches (3.5") of asphaltic concrete on eight inches (8.0") of cement-aggregate base on a subgrade scarified and compacted to ninety-five percent (95%) of maximum standard proctor density.
 - (b) Other Public Streets. The normal cross section thickness and composition of the base and pavement of all public streets located within the Subdivision Site, except those designated as major or collector by the Road Plan, shall be three and one-half inches (3.5") of asphalt on six inches (6.0") of soil cement or cement aggregate base compacted to ninety-five percent (95%) of maximum standard proctor density on a subgrade scarified and compacted to ninety-five percent (95%) of maximum standard proctor density.
 - (c) Alternative Specifications. The Developer may use alternative base, pavement, and subgrade cross sections and composition on any streets located within the Subdivision Site, subject to the written approval of the City Engineer. The approval of the City Engineer will be based on the tests, analysis, and recommendation of an independent, local soils testing laboratory, utilizing standard pavement design procedures. The Developer shall be directly responsible for the employment and payment of such a laboratory if Developer chooses to utilize an alternative pavement design.
 - (d) Private Streets. If streets are to be developed in the Subdivision which are not to be public streets, same shall be required to be constructed in the manner set forth in subparagraphs (b) or (c) above relative to public streets which are not major or collector streets and to the standards set forth in the Private Streets Standards Policy of the City.
12. Tree Removal. The Developer shall comply with Chapter 22, "Tree Planting, Protection and Grading", of the Germantown Code of Ordinances.
13. Sewer and Water Meter Connections. The Developer acknowledges that the City will assess sewer connection privilege charges and water meter connection charges against the Project in accordance with the City policy prevailing at the time building permits are acquired for each individual parcel of land in the Project. The Developer is to install, at its own expense, any outside-the-Project sewer improvements that are necessary for the Development, including, but not limited to, sanitary trunk lines, lift stations, or force mains, unless otherwise specified in a separate contract between the parties hereto and the City of Memphis. The Developer is also to install, at its own expense, any outside-the-Project water improvements that are necessary for the Development.
14. Water and Fire Protection Systems. Prior to Initial Acceptance, the Developer shall install water and fire protection systems in accordance with plans approved by the City Engineer, the Public Works Director and the Germantown Fire Marshal.

15. Water Mains.

- (a) Existing Water Mains. If any portion of the Project is adjacent to both sides of an existing water main installed at the expense of the City, the Developer shall pay the City a sum equal to the original construction cost of that main and appurtenances, not to exceed the current replacement cost of an eight inch (8.0") diameter main and appurtenances. If a portion of the Project fronts on only one side of an existing water main installed at the expense of the City, the Developer will pay the equivalent of one-half the construction cost of such main and appurtenances, not to exceed one-half the current replacement cost of an eight inch (8.0") diameter main. The Developer must pay either amount, if applicable, to the City prior to the execution of this contract.
- (b) Oversize Water Mains. If the Developer must install, at its own cost, water mains and appurtenances in excess of eight inches (8.0") in diameter because such water mains must serve developments other than the Project, the City will pay to Developer, upon Final Acceptance hereunder the following:

Diameter Main	Sum per Linear Foot
10.0"	\$4.00
12.0"	\$7.00
16.0"	\$24.00
20.0"	\$40.00

If water mains and appurtenances in excess of eight inches (8.0") diameter are necessary to provide adequate water and fire flow for the Project alone, the Developer will pay the entire cost of the installation.

16. Sidewalks. The Developer shall install sidewalks as required by the Planning Commission of the City.
17. Gas and Electric Service. The Developer shall install underground electric and natural gas service to the Project in accordance with the electric and natural gas service policy specified by the agreement between the City and Memphis Light, Gas and Water and City ordinances in effect at the time of such installation.
18. Indemnity. The Developer will indemnify and hold the City harmless against all claims that may arise out of or result from the Developer's performance under this Contract, whether such claims arise out of the actions of the Developer, any subcontractor of the Developer, or anyone directly or indirectly employed by either of them. This indemnity includes, without limitation, all tort claims, both intentional and otherwise, and all claims based upon any right of recovery for property damage, personal injuries, death, damages caused by downstream deposits, sediment, or debris from drainage, damages resulting from the Developer changing the volume or velocity of water leaving the Developer's property and entering upon the property of others, and claims under any statutes, federal or state, relative to water, drainage, and/or wetlands, and reasonable attorneys fees and costs incurred by the City in defending itself as a result of the aforesaid and/or enforcing this Contract.

19. Safety. The Developer shall maintain barricades, fences, guards, and flagmen as reasonably necessary to ensure the safety of all persons at or near the Project Site during construction. All construction material, including, without limitation, mud, silt, dirt, and gravel, shall be kept off existing streets at all times. In the event such mud, silt, dirt, gravel, or other construction material is washed, blown, or carried into an existing street, the Developer shall take immediate steps to remove such materials. If the Developer does not remove such materials after notification by the City, and the City deems it necessary to clean the affected streets, the Developer shall reimburse the City for all such cleaning expenses.

20. Insurance.

- (a) The Developer shall purchase and maintain comprehensive general liability and other insurance that shall insure against claims arising out of the Developer's performance under the contract, whether such claims arise out of the actions of the Developer, any subcontractor of the Developer, their employees, agents, or independent contractors, or anyone for whose acts any of them may be liable, including, without limitation:
- (1) Claims brought under worker's compensation; provided, however, if Developer has no employees who are eligible to be covered under worker's compensation insurance, the Developer shall not be required to furnish insurance against worker's compensation but shall require the party(s) contracting with Developer to perform work on the Project Site to furnish evidence of such insurance for the employees of same;
 - (2) Claims for the personal injury, occupational illness, or death of the Developer's employees, if any;
 - (3) Claims for the personal injury, illness, or death of any person other than the Developer's employees or agents;
 - (4) Claims for injury to or destruction of tangible property, including loss of use resulting therefrom;
 - (5) Claims for property damage or the personal injury or death of any person arising out of the ownership, maintenance, or use of any motor vehicle; and
 - (6) Claims by third parties for personal injury and property damage arising out of the Developer's failure to comply with the Developer's obligations under this contract.
- (b) The insurance coverage required by this paragraph shall name the City of Germantown as an additional insured and shall include the coverage specified above with policy limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) Combined Single Limit general liability and FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) Combined Single Limit automobile liability per occurrence. The comprehensive general liability insurance coverage shall include completed operations insurance coverage and liability insurance applicable to the Developer's obligations under this Contract. Each insurance

policy shall contain a provision stating that the insurer will give the City thirty (30) days prior written notice of its intent to cancel or materially change the policy. A provision in the policy to the effect that the insurer will endeavor to give the City prior notice of cancellation or material change to the policy will not be satisfactory to the City. All such insurance shall remain in effect until the City issues its Letter of Final Acceptance and Release of Security of the completed Project. In addition, the Developer shall maintain completed operations insurance for at least two (2) years after the City issues its Letter of Final Acceptance and Release of Security. The Developer shall furnish the City with evidence of the continuation of all such insurance at the time of Initial Acceptance and at the time of issuance of the Letter of Final Acceptance and Release of Security as defined in paragraph 7.

- (c) Prior to commencing any work on the Project, the Developer will furnish to the City a certificate of insurance evidencing the required coverages.
- (d) The furnishing of the aforesaid insurance shall not relieve the Developer of its obligation to indemnify the City in accordance with the provisions of this Contract.

21. Engineer's Certificate. The Developer agrees to obtain and deliver to the City a signed, dated, and sealed certificate from a Tennessee certified and licensed professional engineer to attach to the grading and drainage plans, which certificate shall read as follows:

I, _____, a duly licensed professional engineer in the State of Tennessee, hereby certify that I have designed the drainage system of this Project in accordance with the Design Standards of the City of Germantown and have considered upstream and downstream conditions that affect drainage including topography, present and planned land use, existing zoning, and location of natural water courses.

22. Construction Activity. The Developer agrees to include in all contracts between the Developer and the purchaser of any part of the Project upon which a building has not been constructed (Lot Purchasers) the following, unless otherwise authorized in writing by the City Engineer:

- (a) All streets shall be kept clear and free of dirt and debris;
- (b) All construction activity shall begin no earlier than 7:00 a.m. and end no later than 6:00 p.m., Monday through Saturday, and no construction activity shall be permitted on Sundays and Federal Holidays; and
- (c) The Developer and Lot Purchasers shall provide the Engineering Department with the name, address and phone number of person(s) to be contacted and responsible for correcting any of the above should the occasion arise to do so.

23. Interpretation and Severability. If any provision of this Contract is held to be unlawful, invalid or unenforceable under present or future laws effective during the terms hereof, such provisions shall be fully severable and this Contract shall be construed and enforced as if such unlawful, invalid, or unenforceable provision was not a part of this Contract.

Furthermore, if any provision of this Contract is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

24. Duration of Obligations. The obligations of the Developer hereunder shall run with the Project Site until the Developer's obligations have been fully met. Any party taking title to the Project Site, or any part thereof, prior to Initial Acceptance shall take said real property subject to such obligations. The Developer shall notify the City of any change in ownership of the Project Site taking place prior to Initial Acceptance within ten (10) days of said change. Failure to notify the City of a change in ownership shall be considered a breach of this contract. The Developer's bankruptcy or sale of the Project Site in a foreclosure sale shall also be considered a breach of this contract. Once a change in ownership has occurred, the new owner shall submit Security and Insurance to the City in its name not later than thirty (30) days following such change of ownership. Failure to provide the City said Security and Insurance shall be considered a breach of this contract. Under any breach of this paragraph, the City may exercise its right, which is granted herein, to cause the Security to be converted to funds immediately available to the City so that same may be used to remedy Developer's defaults.
25. Approval Period. This development Contract shall be executed by the Developer within one hundred eighty (180) days from the date of approval of this Contract by the Board of Mayor and Aldermen. Failure to execute this Contract within the said one hundred eighty (180) days will result in the approval of the Board of Mayor and Aldermen being automatically withdrawn.
26. Licensed Contractor. For all activities that constitute "Contracting," as defined by the Licensing Act, the Developer shall engage a contractor licensed in accordance with the Licensing Act. Unless the Developer is licensed in accordance with said Act, the Developer shall not perform any activities under this Contract that constitute "Contracting," and shall engage a licensed contractor to build and oversee the construction of the Project according to the provisions of this Contract, including hiring subcontractors to construct the Project.
27. Construction of Contract. Each party has received and had the opportunity to review this Contract, and each party has had the opportunity, whether exercised or not, to have each respective party's attorney review this Contract, and, accordingly, the normal rule of construction to the effect that any ambiguities are resolved against the drafting party shall not be employed in the interpretation of this Contract.
28. No Waiver. The failure of the City to insist upon prompt and strict performance of any of the terms, conditions or undertakings of this Contract, or to exercise any right herein conferred, in any one or more instances, shall not be construed as a waiver of the same or any other term, condition, undertaking or right.
29. Amendment and Modification. This Contract shall not be modified in any manner, except by an instrument in writing executed by all parties. The developer shall pay a fee as established by the Board of Mayor and Aldermen for any modification to this Contract.
30. Numbers and Gender. All of the terms and words used in this Contract, regardless of the number and gender in which they were used, shall be deemed and construed to include

any other number (singular and plural), and any other gender (masculine, feminine or neuter), as the context or sense of this Contract or any paragraph or clause hereof may require, the same as if the words had been fully and properly written in the number and gender.

31. Authority to Execute. City and Developer each warrant and represent that the party signing this Contract on behalf of each has authority to enter into this Contract and to bind the City and Developer, respectively, to the terms, covenants and conditions contained herein. Each party shall deliver to the other, upon request, all documents reasonably requested by the other evidencing such authority, including a copy of all resolutions, consents or minutes reflecting the authority of persons or parties to enter into agreements on behalf of such party.

32. Notices. All notices, demands, and requests required or permitted by this Contract shall be in writing (including telecopy communications) and shall be sent by facsimile transmission, air or other courier (such as FedEx), or hand delivery as follows:

(i) To: CITY
City of Germantown
Attn: Economic and Community Development Director
1920 S. Germantown Road
Germantown, TN 38138-2815
Telephone: (901) 757-7281
Facsimile: (901) 751-7526

With Required Copy to:

City Engineer
at same address and facsimile number as above.

(ii) To: DEVELOPER
Attn: _____
Address: _____
City, State ZIP: _____
Telephone: () - _____
Facsimile: () - _____

Any notice, demand, or request sent by facsimile transmission shall be deemed given for all purposes under this Contract when properly transmitted by telecommunication device. Any notice, demand, or request which is hand delivered or sent by air or other courier shall be deemed given for all purposes under this Contract when received.

Any party to this Contract may change such party's address for the purpose of notices, demands, and requests required or permitted under this Contract by providing written notice of such change of address to the other party, which change of address shall only be effective when notice of the change is actually received by the party who thereafter sends any notice, demand, or request.

33. Additional Requirements. The following special provisions apply to this Contract:

A. Fees payable under certain provisions of this contract shall include:

Fee Table	Fee Amount	Type	Paragraph Reference
1.		Water Plant Expansion Fee	6a
2.		Contract Preparation Fee	6b
3.		Plans Review Fee	6c
4.		Inspection Fee	6d
5.		Stormwater Management Fee	6e
6.		Traffic Signal Plans Review Fee	6f
7.		Traffic Impact Analysis Fee	6h
8.		Payment in Lieu of Tree Mitigation	6i
9.		Existing Water Line Charges	15a
TOTAL			

- B. The City of Germantown Fire Protection Standards require that there be a fire hydrant within three hundred feet (300’), as the hose is laid, from the most remote corner of any lot. All final engineering and construction plans shall be subject to the approval of the City Engineer. All plans shall be consistent with the Planning Commission’s and/or Design Review Commission’s approval and the development regulations for the City of Germantown.
- C. All necessary easements shall be identified on the plat; including a five foot (5’) utility easement along all property lines. The five foot (5’) utility easement should be adjacent to (and not within) any other easements on the property. When utility easements are located adjacent to other easements, the utility easement shall be the easement nearest the buildable area of the lot.
- D. Public Improvements shall include, but are not limited to: _____.
- E. The Developer shall forward the water and sanitary sewer construction plans to the State of Tennessee, Department of Environment and Conservation and shall provide documentation that the agency has reviewed and approved those plans.
- F. Prior to any construction and/or issuance of a building permit, final engineering, grading and drainage, construction and landscape plans shall be approved by the Economic and Community Development and the Engineering Departments. All plans shall be consistent with the Planning Commission’s and Design Review Commissions’ approval and the Development Regulations for the City of Germantown.
- G. No owner, developer, or tenant of property within the Project shall commit an act, or allow a condition to exist on property within the Project, which act or condition endangers life or health, violates the laws of decency, or obstructs or interferes with the reasonable and comfortable use of other property in the vicinity.
- H. All survey data shall be tied to Tennessee State Plane Coordinates and the City of Germantown monumented survey control for Final Plat approval. The Final Plat, construction drawings and “as built” plans shall be submitted on electronic media

in a format acceptable to the City. Monuments shall be placed at all corners of the development in accordance with good engineering practices.

- I. Prior to Initial Acceptance of the Project, the developer shall provide a mylar copy of the Site Plan suitable for recording.
- J. The Developer shall ensure that all neighboring public and private streets are kept in good condition throughout the construction phase of the project. The developer is responsible for maintenance of existing roadways identified as the haul route for the project.
- K. _____

34. Delinquent Taxes. Prior to the execution and delivery of this Contract, the Developer shall pay to Shelby County and to the City all real estate taxes assessed to the Project Site that are then delinquent, together with all interest and penalties thereon.

35. Liquidated Damages. It is hereby understood and mutually agreed by and between the City and the Developer that the work embraced in this Contract shall be completed within twenty-four (24) months from the date of this contract. The Developer agrees that said work shall be processed regularly, diligently and uninterruptedly at such rate of progress as will ensure full completion thereof within the twenty-four (24) months, unless extended by the Economic and Community Development Director, after receiving determination by the City Engineer for good cause shown. Upon written request by the Developer, the Economic and Community Development Director, for good cause shown, may extend the date for final completion. The Developer shall also pay a contract extension fee as approved by the Board of Mayor and Aldermen if such contract extension is requested. It is expressly understood and agreed, by and between the Developer and the City, that the time for the completion of the work described herein is a reasonable time for the completion of the same, taking into consideration the average climatic range and usual conditions prevailing in this locality. If the said Developer shall neglect, fail or refuse to complete the work within the time herein specified, or any proper extension thereof granted by the City, then the Developer does hereby agree to pay the City the amount of \$250.00 per day, not as a penalty, but as liquidated damages for such breach of contract for each and every calendar day that the Developer shall be in default after the time stipulated in this contract for completing the work.

The said amount is fixed and agreed upon by and between the Developer and the City because both parties recognize that the City, and its citizens will suffer actual damages if the Developer fails to complete the work within the time specified herein, but such damages are indeterminable and difficult to measure at the time of contracting. In making their agreement regarding liquidated damages, the parties have considered among other things, (a) the construction of the improvements to be made by the developer will be in an area in the near vicinity of existing occupied homes or businesses, the occupants of which will be exposed to the noise, dirt, dust and activities that are part of a construction Project and are a nuisance to surrounding property owners and (b) the City staff will be required to monitor the Developer throughout the pendency of construction and the longer that construction takes the longer the City will be required to devote the services of its personnel and, in some instances, employ the services of its consultants, all at additional expense to the City, and (c) delay in completion of the Project will cause delay in the Project in its completed condition being added to the tax base of the City.

The Developer recognizes the foregoing, and agrees that the amount of liquidated damages fixed and agreed upon herein is a reasonable estimate, made at the inception of this Contract, and agrees that such is not a penalty.

- 36. Time. Time is of the essence with respect to all obligations imposed by this Contract.
- 37. Choice of Law. This Contract is being executed and delivered and is intended to be performed in the State of Tennessee, and the laws (without regard to principles of conflicts of law) of the State of Tennessee shall govern the rights and duties of the parties hereto in the validity, construction, enforcement, and interpretation hereof.

Signature Page to Follow

IN WITNESS WHEREOF, the parties hereto, or persons duly authorized to act for them, have caused this Contract to be duly executed and delivered on the dates hereinafter indicated.

[DEVELOPER NAME TYPED]:

By: _____

Its: _____

Date: _____

[OWNER NAME TYPED]:

By: _____

Its: _____

Date: _____

CITY OF GERMANTOWN:

By: _____
Mike Palazzolo, Mayor

Date: _____

ATTEST:

City Clerk/Recorder

Date: _____

Approved as to Form:

By: _____
City Attorney

Date: _____

Approved as to Form and Content:

By: _____
Economic and Community Development Director/
Assistant Director

Date: _____

Approved as to Form and Content:

By: _____
City Engineer

Date: _____