

**EXHIBIT A**  
**DEVELOPER'S AGREEMENT**

**THIS DEVELOPER'S AGREEMENT** (which hereinafter may be referred to as this "Agreement") is entered into by and between **THE AVON LOCAL SCHOOL DISTRICT BOARD OF EDUCATION**, a political subdivision of the State of Ohio, hereinafter referred to as "District", and the **CITY OF AVON**, Lorain County, Ohio, hereinafter referred to as "City". "Council" shall refer to the City Council of Avon, Lorain County, Ohio, and "City Engineer" shall refer to the City Engineer and/or to the Consulting Engineers for the City of Avon or designees hired to perform services on this project. The term "Development" shall refer to the construction of public improvements incident to the construction of a new Middle School on Long Road.

**WHEREAS**, the Development requires the construction and dedication of the Public Improvements as set forth in the plans and specifications approved by Planning Commission on January 21, 2015 which are to be accepted by the City; and

**WHEREAS**, these "Public Improvements", as set forth in the approved plans and specifications, consist of the installation of additional pavement, viz., a third lane of traffic, in the vicinity of 3445 Long Road, together with all appurtenances thereto; and

**WHEREAS**, engineering estimates to construct these public improvements have been agreed upon between the District and the City Engineer; and

**WHEREAS**, District desires to construct aforementioned public improvements for this Development under terms of this Developer's Agreement so as to facilitate acceptance of same by the City upon completion; and

**WHEREAS**, City is willing to agree to such provisions as are necessary for the construction of said public improvements as set forth herein;

**NOW, THEREFORE, THE FOLLOWING IS HEREBY AGREED TO BY AND BETWEEN THE DISTRICT AND THE CITY OF AVON, LORAIN COUNTY, OHIO:**

1. Construction of Public Improvements.

The District is to construct and install, according to plans and specifications submitted to Planning Commission, all Public Improvements shown and set forth in the Final Development Plan as approved by Planning Commission on January 21, 2015. Furthermore, said construction and installation shall be in accordance with the terms of this Developer's Agreement.

Compliance with the provisions herein shall be a prerequisite to obtaining an occupancy permit.

2. Engineer's Estimated Cost of Public Improvements.

The City Engineer has reviewed the estimated costs of construction of Public Improvements as submitted by the District's Engineer and concurs with said estimated cost in the amount of One Hundred Eighty Thousand, Forty and 00/100 (\$180,040.00) Dollars.

3. Performance Bond Agreement.

As both parties to this Developer's Agreement are political subdivisions of the State of Ohio, the City of Avon will not require a performance bond for the completion of the improvements contemplated herein.

4. Deposit for Engineering, Construction Inspection, and Material Testing Fees.

Prior to this Developer's Agreement being placed on Council's agenda for approval by ordinance, District will deposit the sum of Ten Thousand Eight Hundred Two and 00/100 (\$10,802.00) with the Finance Director of the City to cover the engineering, construction inspection and material testing fees commensurate with the work performed. Should actual

expenses exceed the required deposit, the City reserves the right, at any time, to demand additional funds be deposited under this Section to cover current or future engineering, construction inspection, and material testing fees. Failure to make the required deposits with the Finance Director within seven (7) business days following the Finance Director's written (including email) request shall constitute and be considered cause for the City to suspend any further development work by the District until such time as the District is in full compliance with this Section. The City shall not accept Public Improvements in the Development until all engineering, construction inspection and material testing fees have been paid.

Any deposit over and above actual expenses for engineering, construction and material testing pertinent to the Development shall be released to the District after the completion of all Public Improvements associated with the Development to the satisfaction of the City Engineer and acceptance of the Public Improvements by City Council.

5. Stabilization Deposit.

The City hereby agrees to waive the Stabilization Deposit.

6. Stormwater Inspection Deposit.

The City hereby agrees to waive the stormwater inspection deposit.

7. Deposit for Legal Fees.

Prior to this Developer's Agreement being placed on Council's agenda for approval by ordinance, the District shall deposit the sum of One Thousand, Five Hundred and 00/100 (\$1,500.00) Dollars with the Finance Director of the City to cover the legal expenses commensurate with the work performed. Should actual expenses exceed the required deposit, the City reserves the right, at any time, to demand additional funds be deposited under this Section to cover current or future legal fees. Failure to make the required deposits with the

Finance Director within seven (7) business days following the Finance Director's written request shall constitute and be considered cause for the City to suspend any further development work by the District until such time as the District is in full compliance with this Section. The City shall not accept Public Improvements in the Development until all legal fees have been paid.

Any deposit over and above actual legal expenses pertinent to the Development and shall be released to the District only after the completion of all Public Improvements in the Development to the satisfaction of the City Engineer and the City Law Director and acceptance of the Public Improvements by Council.

8. Deposit for Miscellaneous Costs.

The City hereby agrees to waive the deposit for miscellaneous costs.

9. Indemnification and Liability Insurance.

To the extent permitted by law, the District hereby agrees to hold the City, its officers, directors, agents and employees harmless and to indemnify them against all claims, expenses and liability as a result of loss or injury arising out of the clearing of land or construction of the Development and Public Improvements. Prior to the commencement of any work on the Development site or construction District agrees to provide the City with proof of One Million (\$1,000,000.00) Dollars liability insurance protecting the City from liability arising out of the construction of the Development and related Public Improvements. District shall not allow this insurance to expire earlier than the date of acceptance of improvements, and a copy of the insurance policy shall be provided to the Finance Director of the City.

10. Title Insurance.

In lieu of providing title insurance, District warrants to the City that it (the District) has good, sufficient and defensible title to the land on which the Public Improvements are to be constructed and which will be dedicated to the City.

11. Maintenance Bond.

The City hereby agrees to waive the maintenance bond.

12. Sidewalk Deposit.

Installation of sidewalks shall be a condition of acceptance. No deposit will be required.

13. Tree Deposit.

Not applicable to this Development.

14. Deposit for Street and Traffic Control Signage and Pavement Markings.

Installation of all traffic control signage and pavement markings shall be a condition of acceptance. No deposit will be required.

15. Deposit for Mechanical Traffic Control Devices.

Not applicable to this Development.

16. Areas Within Floodplain.

Not applicable to this Development.

17. Assessments.

Not applicable to this Development.

18. Payment or Satisfaction of Delinquent or Outstanding Obligations.

Unless otherwise specified in this document, prior to this Developer's Agreement being placed on Council's Agenda for approval by ordinance, any monies owed by the District to the City, as determined by the Finance Director of the City, and which remain unpaid, shall be paid by the District or approved as satisfied by the Finance Director.

19. Miscellaneous Provisions.

(a) Off-Site Public Improvements.

Where applicable, the District agrees to construct and install off-site Public Improvements pursuant to plans and specifications approved by the City. No financial guarantees for said off-site Public Improvements will be required. However, acceptance of all public improvements is conditioned upon installation.

(b) Off-Site Storm Drainage.

Where applicable, the District agrees to comply with plans and off-site storm drainage approved by the City Engineer and, where necessary, prior to the dedication of the Public Improvements to the City, shall perform the clearing and cleaning of ditches and land reasonably necessary at its expense. The City will provide the District with access to land owned and controlled by the City for this purpose and the District shall be responsible for obtaining licenses or easements on all private lands necessary to satisfy the drainage plans approved by the City Engineer. Any off-site storm drainage must comply with ACO §1050.111 and any other applicable sections of the Avon Codified Ordinances. Compliance will be a condition of acceptance.

20. Time for Commencement of Public Improvements; Acceptance by City.

(a) Commencement. The Public Improvements are to be commenced within a period of twelve (12) months from Council's adoption of the ordinance approving this Developer's Agreement unless Council extends this period of time by legislative action. In the event that construction of Public Improvements is not commenced within such twelve (12) month period or within the period pursuant to an extension granted by the City, District shall, if requested by the City Engineer, provide new engineering estimates of cost of construction of Public Improvements for the Development and the City Engineer may require, if necessary, the

engineering and legal fee deposits to be updated to reflect the revised City Engineer's estimate of cost.

(b) Acceptance by City. District shall advise the City, in writing, when the Public Improvements and any Additional Improvements have been completed (the "District's Completion Notice"). Within thirty (30) days following receipt of District's Completion Notice, the City Engineer and the City Director of Public Service (hereinafter, "Service Director") shall inspect the Public Improvements and advise District, in writing, of any elements or portions of the Public Improvements which, in the opinion of the City Engineer and the Service Director, have not been completed, in accordance with the plans and specifications approved by the Planning Commission, and promptly thereafter District, the City Engineer and Service Director shall confer, and mutually agree, as to the work to be undertaken by District to cause the Public Improvements to be completed (the "Public Improvements Punchlist Items"). Within fifteen (15) days following completion of the Public Improvements Punchlist Items to the satisfaction of the City Engineer and Service Director, the City Engineer shall issue to District a Certificate of Completion with respect to the Public Improvements. Within three (3) months following the date on which the City Engineer issues a Certificate of Completion, the City shall cause an ordinance to be placed on Council's agenda, for acceptance of the Public Improvements. As a condition to acceptance of the Public Improvements by the City, District and/or the City shall execute and file of record such documentation as shall be necessary and appropriate, and mutually acceptable to District and the City, in order to obligate District or its designees, successors and assigns to maintain the Additional Improvements (where and if applicable) following acceptance of the Public Improvements by the City, and grant to the City a right of self-help, in the event District or its designees, successors or assignees shall fail to maintain the Additional Improvements.

21. District's Right of Entry. Following the dedication of the Public Improvements to the City, District, its successors and assigns, shall have a right and license to enter the Development for the purpose of maintaining, modifying, removing and/or replacing the Additional Improvements, as deemed necessary and appropriate by District and its successors and assigns, and in accordance with applicable ordinances and regulations of the City. Upon the request of District, its successors and assigns, City shall grant to District, its successors and assigns, an easement to enter the Development for such purposes.

22. Actual Costs of Public Improvements.

The District, prior to passage of ordinance accepting the Public Improvements, shall submit to the Finance Director of the City the actual costs of the Public Improvements. Where applicable, these actual costs shall be itemized as to roadway (length, width, type, unit cost, street name), traffic control (signalization, location, cost), sanitary sewers (length by size, unit cost, street location), storm sewers (length by size, unit cost, street location) water distribution (length by size, unit cost, street location), park/bike trail(s) (if applicable, length, width, unit cost, location) and pump station(s) (if applicable, cost, location, description) that are to be accepted by the City. The costs for these items shall include all incidentals such as hydrants, valves, manholes, catch basins, etc., as necessary to construct the improvement.

23. Engineer's As-Built Documents.

District shall file with the City Planning Department as-built documents per City Construction Standards and City Planning Ordinances prior to an ordinance being placed on Council's agenda for acceptance of Public Improvements in the Development. The as-built documents shall be submitted in hard copy and electronic form. Electronic copy shall be submitted on the appropriate digital media in DWG and PDF formats.



24. Stormwater Drainage Improvement Fund.

Prior to being placed on Council's agenda for acceptance of Public Improvements in the Development, District shall pay to the Finance Director the sum of Seven Hundred Fifty Nine and 11/100 (\$759.11) Dollars. This fee shall be placed into City Fund No. 273 (the Stormwater Drainage Improvement Fund) in accordance with ACO §1050.193. (\$759.11 x 1 acres)

25. Storm Water Detention and Fee.

Not applicable to this Development.

26. Storm Water Detention Area and Common Areas.

Not applicable to this Development.

27. Maintenance and Repair of Storm Sewers Not Located Within The City Right-of-Way.

Not applicable to this Development.

28. Compliance by District as Condition Precedent to Subsequent Development or Phases.

District acknowledges and agrees that it will fully comply with all terms and conditions contained herein as a condition precedent for the commencement of any subsequent development or phase of development. The City may withhold approval of any such subsequent development or Public Improvements until such time as the District fulfills all the terms, conditions and requirements set out herein.

29. License to Enter Upon Private Streets, Driveways, and Parking Areas.

Not applicable to this Development.

30. Breach of Contract.

The District further agrees that any violation of or non-compliance with any of the provisions and stipulations of this Agreement shall constitute a breach of contract. A breach of contract shall also be deemed to have occurred in the event of the District's failure to perform work at the Development for a period of One Hundred Twenty (120) days (subject to extension

for delays caused by an event, or events, of force majeure), the District's insolvency, appointment of a receiver, filing of a voluntary or involuntary petition in bankruptcy, the commencement of a foreclosure proceeding of a lien against the Development property, or its conveyance in lieu of foreclosure. The City agrees that in the event of a breach, it shall provide District with notice thereof in writing. Should District fail to remedy the breach, to the satisfaction of the City, within thirty (30) days after receiving notice thereof from the City, the City Engineer shall have the right to stop the work. In addition, the City shall have the right to complete the work and charge the District for all costs associated with said completion.

31. Preservation and Restoration of Property.

District shall maintain the work during construction and until final acceptance by the City. This maintenance shall constitute continuous and effective work prosecuted as required with adequate equipment and forces to the end that the affected roadbeds, road surfaces and structures are kept in satisfactory condition at all times. District shall be responsible for all damage or injury to property of any character, including roadbeds and road surfaces, during the prosecution of the work, resulting from any act, omission, neglect or misconduct in District's manner of method of executing said work satisfactorily, or due to District's non-execution of said work, or at any time due to defective work or materials, and said responsibility shall not be released until the work shall have been completed, and accepted by the City. When or where any direct or indirect damage or injury is done to public or private property by or on account of any act, omission, neglect or misconduct in the execution of the work or in consequence of the non-execution thereof on the part of District, it shall restore, at its own expense, such property to a condition similar or equal to that existing before such damage or injury was done, by repairing, rebuilding, or otherwise restoring as may be directed by the City Engineer or Service Director, or it shall make good such damage or injury, in an acceptable manner.

In the event of any damage or injury to property as stated herein, all deposits and financial guarantees set forth in this Agreement shall be retained by the City and not released until such time as the appropriate repairs are made and acceptable to the City Engineer, Service Director and City Law Director

32. Ingress and Egress.

District shall restrict all movement of loads, vehicles and other equipment into and from site in strict accordance with a route approved by the Service Director. All ingress and egress into the Development during construction of the Public Improvements shall be made through the designated construction entrance(s).

33. Cleaning Up.

During construction, the District shall keep the site of the work and adjacent premises as free from material, debris and rubbish as is practicable and shall remove this waste entirely and at once, if, in the opinion of the Service Director, such material, debris or rubbish constitutes a nuisance, a safety hazard or is objectionable in any way to the public.

Upon completion and before final acceptance of the work, the District shall remove from the site of the work and adjacent premises all machinery, equipment, surplus materials, excavated and useless materials, rubbish, temporary buildings, barricades and signs, and shall restore the site to the same general conditions that existed immediately prior to the commencement of its operations.

The District shall clean off all cement streaks or drippings, paint smears or drippings, rust stains, oil, grease, dirt, and any other foreign materials deposited or accumulated on any public or private property caused by District.

In the event District fails to comply with its obligations as set forth herein, the City shall perform the necessary work to accomplish the clean up set forth herein and shall charge the

District for said work. Weekly erosion control inspections by a CESSWI or CPESC certified inspector must be completed in accordance with ACO §1050.151. Any issues arising out of these inspections or out of inspections conducted by City staff must be resolved pursuant to ACO §1050.21.

In the event of non-compliance and failure to cure after notice from the City, all deposits set forth in this Agreement shall be retained by the City and not released until such time as the appropriate clean up is made and acceptable to the City Engineer, Service Director and City Law Director. Nothing in this section shall preclude the City from seeking fines or other remedies associated with violations of any provisions of Chapter 1050.

34. Warranty Against Defects.

District shall warrant all Public Improvements to be free from defects and shall make all necessary repairs or modification to the Public Improvements for a period of three (3) years from acceptance of dedication of the Public Improvements by the City. If the District fails to meet the warranty obligations in a timely manner, the City may contract with any other party for the necessary work or use its own employees to perform the work and be reimbursed by the District or, if sufficient funds are available, to draw upon said funds to cover the costs associated with said work.

35. City Ordinance and Regulations, Survival of Agreement, Non-Waiver.

Unless specifically waived in this Developer's Agreement, nothing herein shall constitute a waiver of the rights of the Parties, including local government sovereign immunity. All City Ordinances and Regulations not waived by this Agreement shall remain in full force and effect, and shall be binding upon and control construction and development of the Development, and nothing contained in this Agreement (waivers aside), nor acceptance of dedication of Public Improvements by the City, shall limit the effect of same, including, but not limited to, if

applicable, design and construction, planting of trees, street lighting, conveyance of required easements, payment of storm drainage fees, park fees, sewer tap fees, and any other requirements of the Codified ordinances of the City.

36. A.D.A. Compliance.

District shall fully comply with all relevant requirements of the Americans with Disabilities Act (the "A.D.A.") and all site improvements subject to the A.D.A. must be approved prior to construction by the City of Avon A.D.A. Coordinator.

37. Severability Clause.

If any part, clause, provision or condition of this Developer's Agreement is held to be void, invalid, or inoperative, such party, clause, provision or condition will be severed and will not render invalid the remaining portions of this Agreement.

38. Obligation to Notify.

Not applicable to this Development.

39. Addresses of Parties for Purpose of Notice.

All notices and communications between parties pursuant to this Agreement shall be in writing and shall be made upon the City through the Office of the Mayor, Avon City Hall, 36080 Chester Road, Avon, Ohio 44011, and upon the District, Scott Radcliffe, 35573 Detroit Road, Avon, Ohio 44011, or to such alternate address as may be specified by either Party pursuant to a notice to the other Party.

40. Parties Bound.

This Agreement shall be binding upon and inure to the benefit of the District, its builders, contractors, subcontractors, its executors, administrators, agents and assigns and shall further be binding upon and inure to the City and its assigns.

41. Modification or Amendment.

This Developer's Agreement shall not be modified or amended except by a written instrument signed by District or District's assignee, if any, and the Mayor or other authorized agent of the City and approved by vote of a majority of the members of City Council.

**IN WITNESS WHEREOF**, this Developer's Agreement is executed this \_\_\_\_ day of

\_\_\_\_\_, \_\_\_\_\_.

WITNESSES:

**AVON LOCAL SCHOOL DISTRICT  
AVON BOARD OF EDUCATION**

\_\_\_\_\_

By: \_\_\_\_\_  
Scott Radcliffe, President

**CITY OF AVON**

\_\_\_\_\_

By: \_\_\_\_\_  
Bryan K. Jensen, Mayor

\_\_\_\_\_

By: \_\_\_\_\_  
Craig Witherspoon, Council President

Approved as to Form:

\_\_\_\_\_

John A. Gasior, Esq.  
Law Director  
City of Avon