

EXHIBIT A

DEVELOPER'S AGREEMENT

THIS AGREEMENT is entered into by and between **SPEEDWAY LLC**, a Delaware Limited Liability Company, hereinafter referred to as "Developer", and the **CITY OF AVON**, Lorain County, Ohio, hereinafter referred to as "City". Collectively, Developer and the City shall be referred to as the "Parties." "Council" shall refer to the City Council of Avon, Lorain County, Ohio, and "City Engineer" shall refer to Ryan Cummins, P.E. and Chagrin Valley Engineering (CVE) or their designee(s) hired to perform services on this project. The term "Development" shall refer to the construction of improvements as set forth in the plans and specifications submitted to Planning Commission and approved on December 5, 2018 as part of the Final Development Plan.

WHEREAS, said Development requires Speedway to construct and dedicate Public Improvements, viz., remove existing pavement, construct new roadway and appurtenances thereto, upgrade existing mechanical traffic control devices and install new pavement markings on portions of Recreation Lane and State Route 611 (Colorado Road), in the City of Avon, Ohio as set forth in the plans and specifications approved by Planning Commission and City Engineer; and

WHEREAS, the Developer's estimated cost to construct these Public Improvements have been agreed upon between the Developer and the City Engineer; and

WHEREAS, Developer desires to construct the 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 these Public Improvements and acceptance as set forth herein;

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

1. Construction of Public Improvements.

The Developer 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 December 5, 2018. Upon completion, the City agrees to accept said improvements subject to the terms of this agreement.

2. Engineer's Estimated Cost of Public Improvements.

The City Engineer has reviewed the estimated costs of construction of the Public Improvements as submitted by the Developer's Engineer and concurs with said estimated cost in the amount of Five Hundred Ninety-Five Thousand Three Hundred Ninety-Six and 00/100 (\$595,396.00) Dollars.

3. Performance Bond Agreement.

Contingent upon the City's approval of Speedway's Roadway Improvement Plans by March 25, 2019, and Developer's ability to begin construction work on April 1, 2019, the Parties agree, subject to *force majeure*, that work related to the roadway and appurtenances, including temporary traffic control systems (specifically excluding mast arms), must be completed by June 24, 2019 (see Paragraph 14). Notwithstanding the foregoing, Developer agrees that it will make all reasonable efforts to complete work related to the roadway and appurtenances by May 10, 2019, at the request of the City. No breach shall occur and no penalties shall apply if the roadway work is not completed by May 10. The City's Final Acceptance of the Public Improvements will occur after the mast arms are installed. Time is of the essence. Prior to commencement of construction of Public Improvements to be accepted by the City, Developer shall provide a financial guarantee of performance to the Finance Director of the City of Avon in

the form of a Performance Bond, or a bond with substantially the same effect, a copy of which is attached hereto as Exhibit "A", in the amount of Six Hundred Fifty Four Thousand Nine Hundred Thirty Five and 50/100 (\$654,935.00) Dollars which is One Hundred Ten (110%) percent of the total Engineer's estimate of costs. In lieu of a bond, (a) a letter of credit, drawn on a federally insured financial institution, payable to the City, (b) cash, (c) certificates of deposit conditionally assigned to the City made by a federally insured financial institution (d) a combination of these items, in that total amount, may be delivered to the City, or (e) such other security acceptable to the City. This financial guarantee shall be released to Developer upon completion of all Public Improvements to be accepted by the City for this Development to the reasonable satisfaction of the City Engineer and upon passage of an ordinance by Council accepting the Public Improvements.

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, Developer will deposit the sum of Thirty Five Thousand Seven Hundred Twenty Three and 00/100 (\$35,723.00) Dollars with the Finance Director of the City of Avon 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 in a reasonable amount to cover current or future engineering, construction inspection, and material testing fees and shall provide proof for the additional funds requested. The City agrees to make Developer aware of such an impending request for additional funds five (5) business days before such an official request is made so Developer can review the request. Failure to make the required deposits with the Finance Director within three (3) business days of said Director's written (includes email) request and proof of such request shall constitute and be considered cause for the City to suspend

any further development work by the Developer until such time as the Developer is in full compliance with this Section. The City shall not accept Public Improvements in any Development until all reasonable 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 this Development shall be released to the Developer only after the completion of all Public Improvements in the Development to the reasonable satisfaction of the City Engineer and acceptance of the Public Improvements by Council.

5. Stabilization Deposit.

Stabilization Deposit does not apply to this Development.

6. Stormwater Inspection.

If applicable, prior to this Developer's Agreement being placed on Council's agenda for approval by ordinance, the Developer shall deposit the sum of One Thousand Five Hundred (\$1,500.00) Dollars with the Finance Director of the City of Avon for the stormwater inspection fee required under ACO §1052.11(a) & ACO §210.01(f)(4)(B)(6).

7. Deposit for Legal Fees.

Prior to this Developer's Agreement being placed on Council's agenda for approval by ordinance, the Developer shall deposit the sum of Five Thousand and 00/100 (\$5,000.00) Dollars with the Finance Director of the City of Avon to cover the legal expenses commensurate with the work performed. Any deposit over and above actual legal expenses pertinent to this Development shall be released to the Developer only after the completion of all Public Improvements in the Development to the reasonable satisfaction of the City Engineer and the Law Director and acceptance of the Public Improvements by Council.

8. Deposit for Miscellaneous Costs.

In order to provide the City with adequate funds to cover miscellaneous costs incurred by the City relating to this Development, the Developer shall deposit the sum of Five Thousand and 00/100 (\$5,000.00) Dollars with the Director of Finance of the City of Avon. This deposit shall be made prior to an ordinance to accept Public Improvements pertinent to the Development being placed on Council's agenda for action. This deposit shall be held by the Director of Finance for a period of three (3) years from the date of Council's Final Acceptance of the Public Improvements in said Development by ordinance.

9. Indemnification and Liability Insurance.

The Developer hereby agrees to hold the City of Avon, 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 Developer 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. Developer shall not allow this insurance to expire earlier than the effective period of any maintenance bond, and a copy of the insurance policy shall be provided to and remain with, at all times, the City's Finance Director. Notwithstanding the foregoing, Developer shall have the right to self-insure for all limits/coverages required hereunder.

10. Title Insurance.

All improvements are in the existing City Right of Way. No title insurance is required.

11. Maintenance Bond.

Prior to being placed on Council's agenda for Final Acceptance of Public Improvements in this Development, Developer shall deposit with the Director of Finance a Three (3) year

maintenance bond for the sanitary sewer and facilities appurtenant thereto in the amount of Fifty-Nine Thousand Five Hundred Thirty-Nine and 00/100 (\$59,539.00) Dollars, which represents ten percent (10%) of the estimated cost of said Public Improvements. The Parties agree that one year after completion of the Public Improvements roadway work, the parties to this agreement will do a performance walk of the roadway.

12. Sidewalk.

Public sidewalks are required. Developer agrees to be responsible for the installation of new sidewalk and/or the replacement of existing sidewalk and agrees to repair any damage done to the existing sidewalks during said construction of these improvements at City's request. Developer also agrees to provide and record with the Lorain County Recorder's Office a Right-of-Way Easement approximately 22 ft. in width and 250 feet in length along the south side of Recreation Lane for the public access to a multi-purpose path as well as the placement of public and/or private utilities.

13. Tree Deposit.

Not applicable to this development.

14. Deposit for Mechanical Traffic Control Devices, Signage and Pavement Markings.

The Engineer's estimated cost for installation and/or reconfiguration of traffic control devices such as, but not limited to, road striping, pedestrian/cross walk signalization, traffic lights (strung temporary lighting if mast arms have yet to be installed), loop detectors, etc., are included in the total engineer's estimated costs and are approximately Ninety-Nine Thousand, Five Hundred and Ninety One Dollars and No Cents (\$99,591.00). These improvements must be installed on or before June 24, 2019, subject to *force majeure*, or the City will incur the expense of, e.g., having to use its safety forces to direct traffic, etc. In addition, this roadway provides access to the City's baseball stadium and a YMCA. EMS units need rapid ingress and egress from these facilities in

the event of a serious injury or medical condition. Speedway agrees to pay for any expenses so incurred by the City to direct traffic, install temporary signage, engineer alternate plans, etc. They also agree to post a Twenty-Five Thousand (\$25,000) Dollar cash bond for this purpose. The City agrees that the cash bond will be refunded in full when work related to the roadway and appurtenances, including temporary traffic control systems (specifically excluding mast arms), is completed and the roadway is opened. Time is of the essence.

15. Areas Within Floodplain.

Not applicable to this development.

16. Assessments.

Not applicable to this development.

17. 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 Developer to the City of Avon, as determined by the City Finance Director, and which remain unpaid, shall be paid by the Developer or approved as satisfied by the City Finance Director.

18. Time for Completion of Public Improvements.

As stated in Paragraph 3, time is of the essence for the completion of this project. Therefore, work on the Public Improvements will commence within two (2) weeks of Council passing the ordinance authorizing this Developer's Agreement. In the event that construction of Public Improvements and the opening of Recreation Lane with temporarily strung lighting (assuming mast arms are not in) is not completed by June 24, 2019 (subject to *force majeure*), see Paragraphs 3 and 14, supra. The project, with mast arms, will be completed by April 1, 2020.

19. Actual Costs of Public Improvements.

The Developer, prior to passage of ordinance accepting Public Improvements, shall submit to the Finance Director of the City the actual costs of 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.

20. Engineer's As-Built Documents.

Developer shall file with the City's 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 this 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.

21. Stormwater Drainage Improvement Fund.

Not applicable to this development.

22. Storm Water Detention and Fee.

Not applicable to this project.

23. Storm Water Detention Area and Common Areas.

Not applicable to this development.

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

Not applicable to this development.

25. Breach of Contract.

The Developer 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 Developer's failure to perform work at the Development for a period of One Hundred Twenty (120) days, the Developer'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 Developer with notice thereof in writing. Should Developer fail to remedy the breach, to the satisfaction of the City, within thirty (30) days after receiving notice thereof from the City, the Engineer of the City shall have the right to stop the work forthwith and use Developer's financial guarantees of performance (See Paragraph 3) for such purpose and require Developer to pay any additional amount required to complete the work.

26. Preservation and Restoration of Property.

Developer shall maintain the work during construction and until final acceptance. This maintenance shall constitute continuous and effective work prosecuted as required with adequate equipment and forces to the end that the roadbeds, road surfaces and structures are kept in satisfactory condition at all times. Developer 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 his manner of method of executing said work satisfactorily, or due to his 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. 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 Developer, 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, 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 reasonably acceptable to the City Engineer and Law Director.

27. Ingress and Egress.

Developer shall restrict all movement of loads, vehicles and other equipment into and from site in strict accordance with a route approved by the City Engineer. All ingress and egress into the development during construction of improvements shall be made through the designated construction entrance.

28. Cleaning Up.

During the construction, the Developer shall keep the site of the work and adjacent premises free from material, debris and rubbish as is reasonably practicable and shall remove this waste entirely and at once, if, in the reasonable opinion of the City, 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 Developer shall remove from the site 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 prior to the commencement of its operations.

The Developer 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 Developer.

In the event Developer fails to comply with its obligations as set forth herein, the City shall perform the necessary clean up as set forth herein and shall charge the Developer for said work. Weekly erosion control inspections by a CESSWI or CPESC certified inspector must be completed in accordance with ACO §1052.10(c)(11). Any issues arising out of these inspections or out of inspections conducted by City staff must be resolved pursuant to ACO Chapter §1052.

In the event of non-compliance and failure to cure after the receipt of advanced written notice from the City, 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 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 Chapters 1050 and 1052.

29. Warranty Against Defects.

Developer shall warrant all of this Development's Public Improvements to be free from defects and shall make all necessary repairs or modification to the Development for a period of Three (3) years from Final Acceptance of these Public Improvements by the City of Avon. If the Developer fails to meet the warranty obligations in a timely manner, the City of Avon may contract with any other party for the necessary work or use its own employees to perform the work and be reimbursed by the Developer or, if sufficient funds are available, to draw upon the financial guarantees provided in this Agreement.

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

Nothing in this Developer's Agreement shall constitute a waiver of the rights of the Parties, including local government sovereign immunity. All City Ordinances and Regulations not inconsistent with this Agreement shall remain in full force and effect, and shall be binding upon and control construction of the Development. Nothing contained in this Agreement, nor

acceptance of the Public Improvements by the City, shall limit the effect of these Ordinances and Regulations, including, but not limited to, 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.

31. A.D.A. Compliance.

Developer agrees to comply with all ADA (Americans with Disabilities Act) requirements for this project regardless of whether or not these are set forth in the final plans and specifications. In the event of a conflict between the ADA and such plans/specifications, the provisions of the ADA will prevail, and such plans/specifications shall be revised accordingly.

32. 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.

33. Obligation to Notify.

Developer shall notify, in writing, any transferee of the Development or any lot located in the Development of the existence, terms and conditions contained in this Agreement and any easements or restrictions required hereunder. The Developer shall provide the City with a copy of said written notification immediately thereafter.

34. Addresses of Parties for Purpose of Notice.

All notices and communications between parties pursuant to this Agreement shall be made upon the City through the Office of the Mayor, Avon City Hall, 36080 Chester Road, Avon, Ohio 44011, and upon the Developer, Speedway LLC., 500 Speedway Drive, Enon, OH 45323, ATTN: Sr Dir. Construction & Engineering.

35. Parties Bound.

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

36. Modification or Amendment.

This Developer's Agreement shall not be modified, amended or assigned except by a written instrument signed by Developer, the Developer's assignee, and the Mayor or other authorized agent of the City of Avon and approved by City Council.

IN WITNESS WHEREOF, this Developer's Agreement is executed at Avon, Ohio, this _____ day of _____, 20_____.

WITNESSES:

SPEEDWAY LLC

By: _____
Nelson E. Almond
Sr. VP. Engineering & Corp.

CITY OF AVON

By: _____
Bryan K. Jensen, Mayor

By: _____
Craig L. Witherspoon, Council President

Approved as to Form

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