

EXHIBIT A

DEVELOPER'S AGREEMENT

THIS DEVELOPER'S AGREEMENT (this "Developer's Agreement" or this "Agreement") is entered into by and between **JAF ACQUISITIONS, LLC**, a Delaware limited liability company, and **CONCORD VILLAGE PHASE TWO, LLC**, an Ohio limited liability company, hereinafter jointly referred to as "Developer", 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 of the City of Avon or his designee hired to perform services on this project. The term "Development" shall refer to the construction of improvements, including public utilities, at Concord Village No. 2 to be located on a 13.696 acre parcel of land in the City, said utilities to consist of public water and sanitary sewer mains and all appurtenances thereto, pursuant to plans and specifications approved by Planning Commission on April 17, 2019 (collectively, the "Public Improvements") subject to final approval by the City Engineer.

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 the aforementioned date which are to be accepted by the City; and

WHEREAS, engineering estimates of the cost to construct the Public Improvements have been agreed upon between the Developer and the City Engineer; and

WHEREAS, Developer desires to construct the Public Improvements for the 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 the 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 contingently approved by Planning Commission on April 17, 2019 and finalized subsequently by the City Engineer. Such Public Improvements may be constructed in two phases (each, a “Phase”), one of which consists of those Public Improvements serving the units identified in the Final Development Plan as Unit Nos. 1 through 70 (the “Western Phase Public Improvements”) and the other of which consists of those Public Improvements serving the units identified in the Final Development Plan as Unit Nos. 71 through 97 (the “Eastern Phase Public Improvements”), provided, however, that nothing herein shall prevent the Western Phase Public Improvements and Eastern Phase Public Improvements from being constructed simultaneously.

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 Developer's Engineer and concurs with said estimated cost in the amount of Three Hundred Four Thousand Five Hundred Eighty Nine and 00/100 Dollars (\$304,589.00). The estimated cost of the Western Phase Public Improvements is Two Hundred Ten Thousand Eight Hundred Seventy Nine and 00/100 Dollars (\$210,879.00) and the estimated cost of Eastern Phase Public Improvements is Ninety Three Thousand Seven Hundred Ten and 00/100 (\$93,710.00) Dollars.

3. Performance Bond Agreement.

Developer is required to schedule pre-construction meetings prior to commencement of construction of the Western Phase Public Improvements and the Eastern Phase Public

Improvements. Forty-Eight (48) hours prior to each scheduled pre-construction meeting, Developer shall provide financial guarantees of performance for the Western Phase Public Improvements and the Eastern Phase Public Improvements, as applicable, to the Finance Director of the City in the form attached hereto as Exhibit "A-1 ". The amount of Two Hundred Thirty One Thousand Nine Hundred Sixty Six and 00/100 Dollars (\$231,966.00) is for the Western Phase Public Improvements and the amount of One Hundred Three Thousand Eighty One and 00/100 Dollars (\$103,081.00) is for the Eastern Phase Public Improvements. Both amounts represent One Hundred Ten (110%) percent of the total of Developer's Engineer's estimated cost of construction costs as approved by the City Engineer. In lieu of each such bond, Developer may provide (a) a letter of credit, drawn on a federally insured financial institution, which names the City as beneficiary, (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, or (e) such other security as is acceptable to the City. The financial guarantee for each Phase shall be released to Developer upon completion of all Public Improvements in such Phase to be accepted by the City for the Development to the satisfaction of the City Engineer and upon passage of ordinance by Council accepting such 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 Eighteen Thousand Two Hundred Seventy Five and 00/100 (\$18,275.00) Dollars with the Finance Director of the City to cover the engineering, construction inspection and material testing fees commensurate with the work performed in connection with the construction of all Public Improvements (both the Eastern and Western Phases). 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 three (3) 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 Developer until such time as the Developer 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 then outstanding 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 Developer only after the completion of all Public Improvements in the Development to the satisfaction of the City Engineer and acceptance of all of the Public Improvements by Council.

5. Stabilization Deposit.

Prior to this Developer's Agreement being placed on Council's agenda for approval by ordinance, the Developer shall deposit the sum of Three Thousand Four Hundred Twenty Four and 00/100 Dollars (\$3,424.00) with the Finance Director of the City for stabilization costs set forth in ACO §1052.11(b) (\$250 x 13.696 acres).

6. Stormwater Inspection.

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 Two Thousand Five Hundred and 00/100

Dollars (\$2,500.00) with the Finance Director of the City of Avon 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 three (3) 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 Developer until such time as the Developer 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 Developer 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.

In order to provide the City with adequate funds to cover miscellaneous costs incurred by the City relating to the Development, the Developer shall deposit the sum of Five Thousand and 00/100 Dollars (\$5,000.00) with the Finance Director of the City. 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 Finance Director for a period of three (3) years from the date of Council's acceptance of all the Public Improvements in the Development by ordinance.

9. Indemnification and Liability Insurance.

The Developer 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, Developer agrees to provide the City with proof of One Million and 00/100 Dollars (\$1,000,000.00) 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 the maintenance bond to be provided by Developer pursuant to Section 11 of this Developer's Agreement and a copy of the insurance policy shall be provided to and remain with, at all times, the Finance Director of the City.

10. Title Insurance. In lieu of providing title insurance, Developer warrants to the City that it (the Developer) 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.

Prior to being placed on Council's agenda for acceptance of the first of any portion of the Public Improvements in either Phase of the Development (each such portion, a "Subphase"), Developer shall deposit with the Finance Director a three (3) year (measured from the date on which the Public Improvements for such Subphase are accepted by the City) maintenance bond for the Public Improvements in such Subphase in an amount equal to ten percent (10%) of the actual costs of the Public Improvements submitted to the Finance Director of the City pursuant to Section 22 of this Developer's Agreement.

12. Sidewalk Deposit.

See Paragraph 19(a).

13. Tree Deposit.

Not applicable to this Development.

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

See Paragraph 19(a).

15. Deposit for Mechanical Traffic Control Devices.

Not applicable to this Development.

16. Areas Within Floodplain.

Developer, as per the approved construction plans, will not be disturbing any floodplain.

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

19. Miscellaneous Provisions.

(a) Eastbound Left Turn Lane On Chester Road.

As a condition of the approval of the Planning Commission on April 17, 2019, the Developer is required, and hereby agrees, to construct an eastbound left turn lane on Chester Road into the western entrance of the Development pursuant to plans and specifications approved by the City, to be constructed prior to issuance of the building permit for the twenty-eight (28th) residential unit to be constructed in the development. The rights, duties and financial guarantees for the construction of said lane will be set forth in a separate Developer's Agreement approved by vote of a majority of the members of City Council and executed by the parties hereto providing therefor.

(b) Off-Site Storm Drainage.

Where applicable, the Developer agrees to comply with plans and off-site storm drainage approved by the City Engineer and, 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 Developer with access to land owned and controlled by the City for this purpose and the Developer 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 §1050.11. See also ACO §1050.09(c)(3).

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, Developer shall, return to Planning Commission and provide new engineering estimates of cost of construction of Public Improvements for the Development and the City Engineer may require, if necessary, the Performance Bond, Maintenance Bond and engineering and legal fee deposits to be updated to reflect the revised City Engineer's estimate of cost.

b) Acceptance by City. Developer shall advise the City, in writing, when each Subphase of the Public Improvements has been completed (the "Developer's Completion Notice"). Within thirty (30) days following receipt of Developer's Completion Notice, the City Engineer and the City Director of Public Service (hereinafter, "Service Director") shall inspect such Subphase of the Public Improvements and advise Developer, in writing, of any elements or portions of thereof 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 Developer, the City Engineer and Service Director shall confer, and mutually agree, as to the work to be undertaken by Developer to cause such

Subphase of the Public Improvements to be completed (a "Public Improvements Punchlist Items"). Within fifteen (15) days following completion of a Public Improvements Punchlist Items to the satisfaction of the City Engineer and Service Director, the City Engineer shall issue to Developer a Certificate of Completion with respect to such Subphase of 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 such Subphase of the Public Improvements.

21. Developer's Right of Entry.

Not applicable to this Development.

22. Actual Costs of Public Improvements.

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

Developer 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 any Subphase of the Public Improvements in the

Development the City Engineer shall approve said As-Builts. 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 Fee.

Prior to being placed on Council's agenda for acceptance of any Public Improvements in the Development, Developer shall pay to the Director of Finance the sum of Ten Thousand Eight Hundred Sixty Two and 98/100 (\$10,862.00) Dollars. This fee shall be placed into City Fund No. 273 in accordance with ACO § 1050.193. (\$793.15 x 13.696 acres)

25. Storm Water Detention and Fee.

Due to the location of this Development, the City Engineer requires on-site storm water detention. The Developer's predecessor has constructed storm water detention in this Development in Phase I and claims a credit of \$121,934.42 (\$160,800.00 Engineer's estimated cost of construction MINUS \$38,865.58 (13.44 acres x \$2989.66). As such, the Engineer's estimated credit for the cost of construction of on-site storm water detention in the prior Phase One, including the cost of land, exceeds the storm water detention fee for this phase as provided for in Ordinance No. 44-93. Therefore, pursuant to Ordinance No. 44-93, no storm water detention fee shall apply to this Subdivision.

26. Storm Water Detention Area and Common Areas.

Developer shall comply with ACO §1050.11.

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

This Development will contain private streets and private storm sewers. As such it is/will be the property owner's or Property Owners' Association's responsibility for maintenance and repairs to same. Developer shall provide a copy of the Property Owners' Agreement to the Law Director within 150 days of acceptance of the first subphase.

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

Developer 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 Developer 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 Developer further agrees that any violation of or non-compliance with any of the provisions and stipulations of this Developer's 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 (subject to extension for delays caused by an event, or events, of force majeure), 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 City Engineer shall have the right to stop the work forthwith and use Developer's financial guarantees of performance provided under Paragraph 3 for such purpose, and require Developer to pay any additional amount required to complete the work.

31. Preservation and Restoration of Property.

Developer 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. 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 Developer's manner of method of executing said work satisfactorily, or due to Developer'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 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 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 Developer's 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. Developer 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 Developer 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 Developer 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 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 work to accomplish the clean up 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 notice from the City, all deposits and financial guarantees set forth in this Developer's 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 and 1052.

34. Warranty Against Defects.

Developer shall warrant each Subphase of the 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 such Subphase of the Public Improvements by the City. If the Developer 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 Developer or, if sufficient funds are available, to draw upon the financial guarantees provided in this Developer's Agreement.

35. 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 Developer's 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 Developer's Agreement, 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. Developer shall fully comply with all relevant requirements of the Americans with Disabilities Act (the "A.D.A") and all site improvements subject to the AD.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 Developer's 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 Developer's 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 Developer, 3401 Enterprise Pkwy, Suite 205, Beachwood, Ohio 44122, 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 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.

41. Modification or Amendment.

This Developer's Agreement shall not be modified or amended except by a written instrument signed by Developer or Developer'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.

42. Applicable Law and Venue. This Agreement shall be subject to and governed by the laws of the State of Ohio and any dispute between the parties shall be filed in Lorain County, Ohio.

IN WITNESS WHEREOF, the parties have affixed their signatures hereto this ____
day of _____, 2019

WITNESSES:

JAF ACQUISITIONS, LLC, a Delaware
limited liability company

By: _____
Jason A. Friedman, Member

**CONCORD VILLAGE PHASE TWO,
LLC**, an Ohio limited liability company

By: _____
Its: _____

CITY OF AVON

By: _____
Bryan K. Jensen, Mayor

Approved as to Form:

By: _____
Craig Witherspoon, Council President

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

EXHIBIT A-1

PERFORMANCE BOND AGREEMENT

THIS PERFORMANCE BOND AGREEMENT is entered into by and between **JAF ACQUISITIONS, LLC**, a Delaware limited liability company, **AND CONCORD VILLAGE PHASE TWO, LLC**, an Ohio limited liability company, hereinafter jointly referred to as "Developer", and the City of Avon, Lorain County, Ohio, hereinafter referred to as "City". "Council", as referred to herein, shall refer to the City Council of Avon, Lorain County, Ohio, and "City Engineer" shall refer to the City Engineer of the City of Avon, or his designee hired to perform services on this project. The term "Development" shall refer to the construction of improvements, including public utilities at Concord Village No. 2 to be located on a 13.696 acre parcel of land in the City, said utilities to include public water and sanitary sewer mains and all appurtenances thereto, pursuant to plans and specifications approved by Planning Commission on April 17, 2019 (collectively, the "Public Improvements") subject to final approval by the City Engineer. The term "Developer's Agreement" shall refer to the Developer's Agreement by and between Developer and the City executed by the parties thereto pursuant to City Ordinance No. 42-19.

WHEREAS, the Development involves the construction and dedication of Public Improvements, as set forth in the plans and specifications approved by Planning Commission on the aforementioned date, which are to be accepted by the City. Such Public Improvements may be constructed in two phases (each, a "Phase"), one of which consists of those Public Improvements serving the units identified in the Final Development Plan as Unit Nos. 1 through 70 (the "Western Phase Public Improvements") and the other of which consists of those Public Improvements serving the units identified in the Final Development Plan as Unit Nos. 71 through 97 (the "Eastern Phase Public Improvements"), provided, however, that nothing herein

shall prevent the Western Phase Public Improvements and Eastern Phase Public Improvements from being constructed simultaneously; and

WHEREAS, the Development Regulations of the City and the Developer's Agreement provide that the Developer shall furnish a Performance Bond, or a bond with substantially the same effect, letter of credit, cash, certificates of deposit or such other financial security as is acceptable to the City, in an amount equal to or exceeding 110% of the Developer's Engineer's estimated construction costs, engineering fees and inspection fees, as approved by the City Engineer; and;

WHEREAS, based upon the estimates of cost of construction of the Public Improvements in the Development by the Developer's Engineer, as approved by the City Engineer, Developer shall provide financial guarantees of performance for the Western Phase Public Improvements and the Eastern Phase Public Improvements, as applicable, to the Finance Director of the City in the form of a Performance Bond Agreement, in the form attached hereto as Exhibit "A-1 ", in the amount of Two Hundred Thirty One Thousand Nine Hundred Sixty Six and 00/100 Dollars (\$231,966.00) for the Western Phase Public Improvements and in the amount of One Hundred Three Thousand Eighty One and 00/100 Dollars (\$103,081.00) for the Eastern Phase Public Improvements, both of which is equal to One Hundred Ten (110%) percent of the total of Developer's Engineer's estimate of construction costs for each of these phases.

NOW, THEREFORE, in consideration of the foregoing promises and to ensure the faithful performance of the Developer's Agreement, the Developer has undertaken the following:

1. Developer will deliver to the Director of Finance of the City a Performance Bond, a copy of which is attached hereto as Exhibit A, or a bond with substantially the same

effect, in the amount of Two Hundred Thirty One Thousand Nine Hundred Sixty Six and 00/100 Dollars (\$231,966.00) for the Western Phase Public Improvements and in the amount of One Hundred Three Thousand Eighty One and 00/100 Dollars (\$103,081.00) for the Eastern Phase Public Improvements, both of which represents One Hundred Ten (110%) percent of the total of Developer's Engineer's estimate of construction costs for that phase.

2. The funds which can be drawn by Developer upon the guarantees of performance shall be used for the sole purpose of payment of the cost of construction of the relevant Phase Public Improvements in the Development and for engineering and/or legal fees related to said Development in the event these deposits are exceeded.

3. In the event the Developer deposits cash as permitted by Section (1)(b), before delivering checks in payment for the aforesaid invoices, the lending institution shall require the contractor, subcontractor or supplier to furnish an appropriate Affidavit stating that all subcontractors, labor, machinery, material and fuel have been paid for, and require copies of insurance, and lien waivers. All invoices must be accompanied by a letter from the City Engineer approving payment.

4. In the event the Developer deposits a letter of credit as permitted by Section 1(a), the lending institution's liability under the irrevocable letter of credit shall be reduced at the time payments are made and in the amount of such payments that are made for construction of the relevant Phase Public Improvements in the Development. Four (4%) percent of each invoice amount will be retained by the lending institution throughout the course of construction until the relevant Phase Public Improvements are completed.

5. The Developer and its lending institution shall at all times keep the records of said letter of credit open to inspection by the City Engineer or any other duly authorized agent of the City.

6. Upon completion of the relevant Phase Public Improvements in the Development to the satisfaction of the City Engineer and the City Director of Public Service, acceptance of dedication of the Public Improvements by the City, payment of all costs and expenses of said Phase Public Improvements, payment of all engineering and legal expenses of the City, compliance with all provisions of the Developer's Agreement and upon written instruction from the Director of Finance of the City, all guarantees of the Developer's performance shall be released in accordance with the Developer's Agreement and, in the event Developer has deposited a letter of credit pursuant to subclause (a) of Section 1 hereof, the financial institution which issued the letter of credit may release the remainder of the letter of credit, and cancel the letter of credit.

7. In the event of the Developer's default, as defined in the Developer's Agreement, beyond any applicable grace period, the City shall have the right to draw from the Developer's guarantee of performance to complete construction of that particular Phase Public Improvements at the Development, or any part thereof, and to pay any engineering or legal fees pertinent to the installation of all Phase Public Improvements for the Development over and above the Developer's deposits, and the lending institution, bonding company or other such surety, as may be applicable, is authorized to release the funds upon certification by the Director of Finance of the City that the funds will be used for completion of construction of the relevant Phase Public Improvements for the Development and any applicable fees.

8. The lending institution, bonding company or other such surety, as may be applicable, shall accept as full and complete evidence of default and of the resulting right of the City to complete said Phase Public Improvements or any portion thereof a copy of the Resolution or Ordinance from the City duly authenticated by the Clerk of Council declaring

said default and the intention of the City to proceed to complete the performance of said Public Improvement contracts or any portion thereof.

IN WITNESS WHEREOF, the parties have affixed their signatures hereto this ____ day of _____, 2019.

WITNESSES:

JAF ACQUISITIONS, LLC, a Delaware limited liability company

By: _____
Jason A. Friedman, Member

CONCORD VILLAGE PHASE TWO, LLC, an Ohio limited liability company

By: _____
Its: _____

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

**ACKNOWLEDGMENT AND ACCEPTANCE
BY LENDING INSTITUTION**

The lending institution for **JAF ACQUISITIONS, LLC**, a Delaware limited liability company, **AND CONCORD VILLAGE PHASE TWO, LLC**, an Ohio limited liability company, for Concord Village No. 2 does hereby acknowledge receipt of a copy of this Performance Bond Agreement and the Subdivider's Agreement, accepts same, is willing to be bound by these documents as additional escrow instructions for the financial guarantees therein provided.

Signature of Officer

Printed Name of Bank or Surety

Title of Officer

Date