

EXHIBIT A

SUBDIVIDER'S AGREEMENT

THIS AGREEMENT is entered into by and between **CARNEGIE RESIDENTIAL DEVELOPMENT CORP.**, an Ohio corporation, hereinafter referred to as "Subdivider", 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 designees, Lorain County, Ohio or the Engineer designated by City ordinance. The term "Development" shall refer to the land being developed as set out in the Preliminary Plat as approved by Planning Commission. The term "Subdivision" shall refer to the individual phase (such as "Phase 2") of the development which the Subdivider has chosen to construct herein.

WHEREAS, the Planning Commission has voted to recommend to City Council approval of the Final Plat for Red Tail Subdivision No. 14 consisting of Sixteen (16) sublots (hereinafter "Subdivision"); and

WHEREAS, said Subdivision requires the construction of improvements to be accepted by the City; and

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

WHEREAS, Subdivider desires to construct these improvements for this Subdivision under terms of this Subdivider's Agreement; and

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

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

1. Construction of Improvements.

The Subdivider is to construct and install according to specifications all improvements shown and set forth in the Final Plat. Subdivider's obligation to construct shall not be conditioned upon sale of lots in the Subdivision.

2. Engineer's Estimated Cost of Improvements.

The City Engineer has reviewed the estimated costs of construction of improvements as submitted by the Subdivider's Engineer and concurs with said estimated cost in the amount of Four Hundred Twenty-Two Thousand, Three Hundred Seventy Dollars (\$422,370.00).

3. Performance Bond Agreement.

Subdivider shall provide a financial guarantee of performance to the Finance Director of the City of Avon in the form of a Performance Bond or Letter of Credit, a copy of which is attached hereto as Exhibit A-1, in the amount of Four Hundred Sixty-Four Thousand Six Hundred Seven and 00/100 (\$464,607.00) Dollars which is One Hundred Ten (110%) percent of the total Engineer's estimate of costs. No construction of improvements shall commence until said financial guarantee of performance has been provided to the Finance Director. This financial guarantee shall be released to Subdivider upon completion of all improvements to be accepted by the City for this phase of the Development to the satisfaction of the City Engineer and upon passage of ordinance by Council accepting the improvements.

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

Prior to this Subdivider's Agreement being placed on Council's agenda for approval by ordinance, the Subdivider shall deposit the sum of Twenty-Five Thousand Three Hundred Forty-Two and 00/100 (\$25,342.00) Dollars with the Finance Director of the City of Avon to cover the

engineering fees commensurate with the work performed, including construction inspection and material testing fees. 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 of said Director's written request shall constitute and be considered cause for the City to suspend any further development work by the Subdivider until such time as the Subdivider is in full compliance with this Section. The City shall not accept improvements in any Subdivision until all engineering, construction inspection and material testing fees have been paid.

Any deposit over and above actual expenses for engineering in this Phase of the Subdivision shall be retained by the City and shall be released to the Subdivider only after the completion of all improvements for the entire Development to the satisfaction of the City Engineer.

5. Stabilization Deposit.

Prior to this Subdivider's Agreement being placed on Council's agenda for approval by ordinance, the Subdivider shall deposit the sum of Eight Hundred (\$800.00) Dollars with the Finance Director of the City of Avon for stabilization costs set forth in ACO §1050.191.

6. Stormwater Inspection.

Prior to this Subdivider's Agreement being placed on Council's agenda for approval by ordinance, the Subdivider 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 §1050.192.

7. Deposit for Legal Fees.

Prior to this Subdivider's Agreement being placed on Council's agenda for approval by ordinance, the Subdivider shall deposit the sum of Two Thousand Five Hundred and 00/100 (\$2,500.00) Dollars 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 of said Director's written request shall constitute and be considered cause for the City to suspend any further development work by the Subdivider until such time as the Subdivider is in full compliance with this Section. The City shall not accept improvements in any Subdivision until all legal fees have been paid.

Any deposit over and above actual legal expenses for this Phase of the Subdivision shall be retained by the City and shall be released to the Subdivider only after the completion of all improvements for the entire Development to the satisfaction of the City Engineer and the Law Director.

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 Subdivision, the Subdivider 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 improvements pertinent to the Subdivision 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 acceptance of the improvements in said Subdivision by ordinance.

9. Indemnification and Liability Insurance.

The Subdivider 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 Subdivision and improvements.

Prior to the commencement of any work on the Development site or construction Subdivider 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 development of the Subdivision and improvements. Subdivider shall not allow this insurance to expire earlier than the effective period of any maintenance bond, and shall provide a copy of the insurance policy to remain, at all times, with the Director of Finance of the City.

10. Title Insurance.

Prior to recording of the final Plat, the Subdivider shall furnish title insurance in the amount of One Hundred Thousand (\$100,000.00) Dollars, covering the lands to be dedicated to the City of Avon as indicated on the final Plat and showing the unencumbered, legal title to such dedicated lands in the name of the City when the final Plat is filed for record.

11. Maintenance Bond.

Prior to being placed on Council's agenda for acceptance of improvements in this Subdivision, Subdivider shall deposit with the Director of Finance a Three (3) year maintenance bond for streets, pavement, storm and sanitary sewers, water systems, street lighting systems and facilities appurtenant thereto in the amount of Forty-Two Thousand, Two Hundred Thirty-Seven (\$42,237.00) Dollars, which represents ten percent (10%) of the estimated cost of said improvements.

12. Sidewalk Deposit.

Subdivider's estimated cost for sidewalk is Twelve Thousand, Six Hundred Eighty-Eight (\$12,688.00) Dollars. Should sidewalks not be completed at the time of acceptance of improvements by City Council, the Subdivider shall deposit with the Office of the Director of Finance a cash deposit in the amount of Nineteen Thousand Thirty-Two Dollars and 00/100 (\$19,032.00), which is 150% of the Subdivider's estimate for construction of sidewalks. This deposit must be made prior to an ordinance to accept improvements pertinent to the Subdivision being placed on Council's agenda for action. The Subdivider will be entitled to incremental refunds of 25% of the total amount deposited upon installation of each quarter ($\frac{1}{4}$) of the total sidewalk to be installed and upon verification of same by the Service Director.

Subdivider must install sidewalks throughout the Subdivision within Thirty (30) months of the date in which the City passes an ordinance accepting improvements. In the event that sidewalks are not installed within this period, the sidewalk deposit shall be forfeited and the City shall install the sidewalks and charge to the Subdivider any additional costs incurred not covered by the sidewalk deposit.

13. Tree Deposit.

Prior to an ordinance being placed on Council's agenda for acceptance of improvements in this Subdivision, Subdivider will deposit with the Finance Director of the City of Avon the sum of Four Thousand Four Hundred (\$4,400.00) Dollars to assure compliance with the requirement of planting of One (1) tree per subplot (\$275 x 16) in the Subdivision. The deposit will be refunded by the Finance Director upon verification by the Service Director that trees have been planted in compliance with this Agreement and the Codified Ordinances of the City of Avon.

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

Prior to this Subdivider's Agreement being placed on Council's agenda for approval by ordinance, Subdivider shall deposit with the Director of Finance the amount of Eight Hundred and 00/100 (\$800.00) Dollars. This amount represents the number of sublots (16) multiplied by Fifty (\$50.00) Dollars. The deposit shall be held by the City for a Two (2) year period commencing with the passage of the ordinance accepting the improvements. In the event the Subdivider fails to comply as required herein, said sum shall be expended by the City exclusively for the costs of placement of street and traffic control signage and pavement markings as shall be determined by the Director of Public Safety, within the Subdivision. At the expiration of this Two (2) year period, any amount remaining on deposit with the City shall be refunded to the Subdivider with the approval of the Safety Director.

15. Deposit for Mechanical Traffic Control Devices.

The Subdivider is not installing any mechanical traffic control devices in this Subdivision. As such, Subdivider will not be required to post a deposit for mechanical traffic control devices.

16. Sublots Within Floodplain.

Subdivider agrees to obtain a conditional letter of map revision (CLOMR) for any land which is located within a special flood hazard area (SFHA) prior to the commencement of any work in said area. Said conditional letter of map revision (CLOMR) shall be granted by the Federal Emergency Management Agency (FEMA) and be supported by an appropriate hydrologic and hydraulic analysis. In any case, Subdivider agrees to obtain a letter of map revision (LOMR) from FEMA prior to an ordinance being placed on Council's agenda for acceptance of

improvements in this Subdivision. Any homes developed within a floodway or 100 year flood plain as shown on the latest FEMA-FIRM map must abide by ACO §1050.117.

17. Model Home.

The City of Avon hereby grants Subdivider an exception to the City's subdivision regulations and will allow a building permit for the construction of Two (2) model homes in the Subdivision prior to acceptance of dedication of improvements by City Council. However, prior to the issuance of said building permits, Subdivider must have constructed all utilities and a street in front of the model home(s). A sidewalk shall be constructed in front of the model home(s) immediately upon completion of the model home(s). No occupancy permit will be issued for the model home(s) until construction of all improvements in the Subdivision is completed, and an ordinance accepting the dedication of improvements in the Subdivision is passed by City Council.

18. Assessments.

Subdivider agrees to pay all outstanding assessments to the appropriate governmental entity. Conclusive proof that said assessments have been paid must be submitted to the Finance Director prior to an ordinance being placed on Council's agenda for acceptance of improvements in this Subdivision.

19. Payment or Satisfaction of Delinquent or Outstanding Obligations.

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

20. Miscellaneous Provisions.

Off-Site Improvements.

Where applicable, the Subdivider agrees to construct and install off-site improvements pursuant to plans and specifications approved by the City of Avon. The financial guarantees for said off-site improvements have been included in the Performance Bond and Maintenance Bond set forth in this Agreement.

Off-Site Storm Drainage.

Where applicable, the Subdivider agrees to comply with plans and off-site drainage approved by the City Engineer and shall perform the clearing and cleaning of ditches and land reasonably necessary at its expense. The City will provide the Subdivider with access to land owned and controlled by the City for this purpose and the Subdivider 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.

21. Time for Completion of Improvements.

All improvements are to be completed within a period of Twelve (12) months from Council's adoption of the ordinance approving this Subdivider's Agreement unless Council extends this period of time by legislative action. In the event that construction of improvements is not instituted within this Twelve (12) month period or within the period pursuant to an extension granted by the City, Subdivider shall, if requested by the City Engineer, provide new engineering estimates of cost of construction of improvements for the Subdivision 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 Engineer's estimate of cost.

22. Actual Costs of Improvements.

The Subdivider, prior to passage of ordinance accepting improvements, shall submit to the Finance Director of the City the actual costs of improvements 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.

Subdivider shall file with the City's Engineer as-built documents prior to an ordinance being placed on Council's agenda for acceptance of improvements in this Subdivision. The as-built documents shall be submitted in hard copy or, if generated by such means, in electronic form. Hard copy shall be on reproducible mylar. Electronic copy shall be submitted on the appropriate digital media in PDF and DXF/DWG format.

24. Stormwater Drainage Improvement Fund.

Prior to being placed on Council's agenda for acceptance of improvements in this Subdivision, Subdivider shall deposit with the Director of Finance the sum of Three Thousand Forty-Six and 75/100 (\$3,046.75) Dollars (\$650 x 4.6873 acres). This deposit shall be placed into City Fund No. 273 in accordance with ACO §1050.193.

25. Storm Water Detention and Fee.

Due to the location of this Subdivision, the City Engineer requires on-site storm water detention. The Subdivider has constructed storm water detention in prior phases sufficient to

include storm water from this phase. The Engineer's estimate of the cost of construction of on-site storm water detention, including the cost of the land, exceeds the storm water detention fee provided for in Ordinance 44-93. Therefore, pursuant to Ordinance No. 44-93, no storm water detention fee shall apply to this Subdivision.

26. Homeowners Association, Storm Water Detention Area, Common Areas and Easements.

Subdivider shall require the formation of a Homeowner's Association which shall assume responsibility for all maintenance, upkeep, repair, replacement and management of the storm water detention area or other common area. The rules of the Homeowner's Association shall prohibit the construction of any improvement or structure or the retention of any obstruction of any kind in the storm water detention area, common areas or easements. Said rules shall include the establishment of a special fund approved by the City Engineer and Law Director for the sole purpose of maintaining the storm water detention area and its pertinent easements.

Prior to an ordinance being placed on Council's agenda for acceptance of improvements in this Subdivision, the rules or bylaws of the Homeowner's Association shall be approved by the Director of Law of the City, and reference to the rules or bylaws of the Homeowner's Association shall be contained in the recorded Plat. All conveyances by the Subdivider shall contain deed restrictions referring to the requirement of membership in the Homeowner's Association. Should the Homeowner's Association fail to maintain the storm water detention area or other common areas, the City may enter upon the land and perform any necessary maintenance, repair or replacement, and shall charge all costs incurred by the City, including legal and engineering fees, to the Homeowner's Association and/or the individual property owners in the Subdivision. Easements for this purpose, acceptable to the City Engineer and Law Director, shall be provided by Subdivider. Compliance with this Section shall be a condition precedent to issuance of Building Permits.

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

The Homeowner's Association and/or individual property owners shall be responsible for the maintenance and repair of all storm sewers located within the Subdivision other than those located within the City right-of-way. In the event that the Homeowner's Association and/or property owners fail to keep in good repair and maintain said storm sewers, the City, upon notice to the Homeowner's Association and/or property owners, shall have the right to enter upon the Subdivision lands and perform any repairs deemed necessary to avoid or abate any conditions which obstruct the flow of storm water in order to assure proper drainage. All costs incurred by the City for repairs and maintenance of the storm sewers shall be charged against the Homeowner's Association and/or property owners.

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

Subdivider acknowledges and agrees that he 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 within the Subdivision and the City may withhold approval of any such subsequent development or improvements until such time as the Subdivider fulfills all the terms, conditions and requirements set out herein.

29. Inspection and Maintenance Agreement.

In accordance with ACO §1050.10 and §1050.105, an Inspection and Maintenance Agreement must be accepted by the City Engineer prior to the passage of an Ordinance authorizing the final plat and Subdivider's Agreement for this phase of the subdivision.

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

Subdivider herein agrees to grant to the City of Avon (i.e., Fire Department, Police Department, Service Department and the like), a license to enter upon any private streets,

driveways, or parking areas within the Subdivision for the purposes of carrying out patrolling and security and necessary governmental functions. While present on said private premises, public employees or agents for the various departments shall have those rights, privileges, defenses and immunities granted City employees set forth in Ohio Revised Code including but not limited to Chapter 2744.

31. Breach of Contract.

The Subdivider 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 Subdivider's failure to perform work at the Subdivision for a period of One Hundred Twenty (120) days, the Subdivider'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 Subdivision property, or its conveyance in lieu of foreclosure. The City agrees that in the event of a breach, it shall provide Subdivider with notice thereof in writing. Should Subdivider 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 Subdivider's guarantees for such purpose and require Subdivider to pay any additional amount required to complete the work.

32. Preservation and Restoration of Property.

Subdivider 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.

Subdivider 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 contractor, he shall restore, at his 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 he 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 and Law Director.

33. Ingress and Egress.

Subdivider 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 subdivision during construction of improvements shall be made through the designated construction entrance.

34. Cleaning Up.

During the construction, the Subdivider 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 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 Subdivider shall remove from the site of the work and adjacent premises all machinery, equipment, surplus materials, falsework, 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 Subdivider 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 portion of its work, or existing work, due to its operations.

In the event Subdivider fails to comply as set forth herein, the City shall perform the necessary work to accomplish the clean up set forth herein and shall charge the Subdivider 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 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 clean up is made and acceptable to the City Engineer and 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.

35. Warranty Against Defects.

Subdivider shall warrant all Subdivision improvements to be free from defects and shall make all necessary repairs or modification to the Subdivision for a period of Three (3) years from

acceptance of dedication of improvements of the final phase of the Subdivision by the City of Avon. If the Subdivider 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 to be reimbursed by the Subdivider or, if sufficient funds are available, to draw upon the financial guarantees provided in this Agreement.

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

Nothing in this Subdivider'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 and development of the Subdivision, and nothing contained in this Agreement, nor acceptance of dedication of improvements by the City, shall limit the effect of same, 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.

37. A.D.A. Compliance.

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

38. Severability Clause.

If any part, clause, provision or condition of this Subdivider'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.

39. Obligation to Notify.

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

40. 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 at Avon City Hall, 36080 Chester Road, Avon, Ohio 44011, and upon the Subdivider at 27540 Detroit Road, Suite 201, Westlake, Ohio, 44145.

41. Parties Bound.

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

42. Modification or Amendment.

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

IN WITNESS WHEREOF, this Subdivider's Agreement is executed at Avon, Ohio, this ____ day of _____, 2013.

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WITNESSES:

Printed Name

Printed Name

Printed Name

Approved as to Form

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

**CARNEGIE RESIDENTIAL
DEVELOPMENT CORP.**

By: _____
Rustom R. Khouri, President

Title: _____

CITY OF AVON

By: _____
James A. Smith, Mayor

By: _____
Daniel S. Zegarac, Council President