

EXHIBIT A

DEVELOPER'S AGREEMENT

THIS AGREEMENT, hereinafter referred to as “Agreement”, is entered into by and between **GEIS AT CHESTER, LLC**, an Ohio limited liability company, hereinafter 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 installation/construction of improvement(s) as set forth in the plans and specifications submitted to Planning Commission and approved on October 19, 2016 as part of the Final Development Plan. Said approval was contingent upon engineering approval, which approval took place on March 19, 2021.

WHEREAS, said Development requires the construction and dedication of certain “Public Improvements”, which shall mean the installation of a new mechanical traffic control device (traffic light) and new pavement markings on Chester Road, in the City of Avon, Ohio to be accepted by the City, as set forth in the plans and specifications approved by Planning Commission and City Engineer on the aforementioned date. “Project” shall refer to the project, which is known as the “Geis-Bendix Traffic Signalization/Pavement Markings Project” that is being performed by the Developer; and

WHEREAS, engineering estimates 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 Project 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 October 19, 2016, with the final approval by the City Engineer dated March 19, 2021 (collectively, the “Work”). Upon completion, the City agrees to accept the Public 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 Two Hundred Eighty Three Thousand Four Hundred Twenty One and 77/100 (\$283,421.77) Dollars.

3. Performance Bond Agreement.

Prior to commencement of construction of the Work, Developer or its general contractor, Geis Construction, Inc., 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 Three Hundred Eleven Thousand Seven Hundred Sixty Three and 95/100 (\$311,763.95) 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 Seventeen Thousand Five and 31/100 (\$17,005.31) 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 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 on the Project by the Developer until such time as the Developer is in full compliance with this Section. The City shall not accept Public Improvements 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 this Development shall be promptly released to the Developer only after the completion of all Public Improvements associated with this Development to the reasonable satisfaction of the City Engineer and acceptance of the Public Improvements by Council.

5. Stabilization Deposit.

Not applicable to this development.

6. Stormwater Inspection.

Not applicable to this development.

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 (\$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 on the Project by the Developer until such time as the Developer is in full compliance with this Section. The City shall not accept Public Improvements in this Development until all legal fees have been paid. Any deposit over and above actual legal expenses pertinent to this Development shall be promptly 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 the Public Improvements 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 Public Improvements by ordinance and after which time shall be promptly released to Developer.

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 Work. Prior to the commencement of the Work, Developer agrees to provide the City with proof of One Million (\$1,000,000.00) Dollars liability insurance related to the Work and shall name the City as an additional insured. 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.

10. Title Insurance.

This project will be conducted in existing City of Avon Right of Way. No title insurance will be required.

11. Maintenance Bond.

Prior to being placed on Council's agenda for acceptance of Public Improvements, Developer shall deposit with the Director of Finance a Three (3) year maintenance bond for the mechanical traffic signal and all facilities appurtenant thereto as part of the Work in the amount of Twenty-Eight Thousand Three Hundred Forty-Two and 18/100 (\$28,342.18) Dollars, which represents ten percent (10%) of the estimated cost of said Public Improvements.

12. Sidewalk Deposit.

Public sidewalks are existing, therefore this section is not applicable to this Project. Developer agrees to be responsible for any damage done to the existing sidewalks arising out of the Work, and agrees to repair/replace same at City's request.

13. Tree Deposit.

Not applicable to this Project.

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

No deposits outside of those required by this Agreement are required.

15. Deposit for Mechanical Traffic Control Devices.

No deposits outside of those required by this Agreement are required.

16. Areas Within Floodplain.

Not applicable to this Project.

17. Assessments.

Not applicable to this Project.

18. Payment or Satisfaction of Delinquent or Outstanding Obligations.

Unless otherwise specified in this Agreement, 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.

19. Miscellaneous Provisions.

Off-Site Public Improvements.

The Developer agrees to construct and install those certain off-site Public Improvements pursuant to plans and specifications approved by the City of Avon. The financial guarantees for said off-site Public Improvements have been included in the Performance Bond and Maintenance Bond set forth in this Agreement.

Off-Site Storm Drainage.

Not applicable to this Project.

20. Time for Completion of Public Improvements.

Commencement. The Work is 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 the Work is not instituted within this Twelve (12) month period or within the period pursuant to an extension granted by the City, which such consent shall not be unreasonably withheld, conditioned or delayed, Developer shall, if requested by the City Engineer, provide new engineering estimates of cost of construction of Public Improvements for the Project 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.

21. 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 (where applicable) 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, but not limited to, hydrants, valves, manholes, catch basins, etc., as necessary to construct the improvement.

22. 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. 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.

23. Stormwater Drainage Improvement Fund.

Not applicable to this Project.

24. Storm Water Detention and Fee.

Not applicable to this Project.

25. Storm Water Detention Area and Common Areas.

Not applicable to this Project.

26. Acceptance of Public Improvements.

Upon completion of the Public Improvements by Developer in accordance with this Agreement and confirmation by the City Engineer of the same, the City shall promptly take all necessary actions to accept ownership of the Public Improvements.

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

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

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

Not applicable to this development.

29. 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 continuously perform the Work at the Project for a continuous period of One Hundred Twenty (120) days (subject to weather delay or force majeure) once the Work has commenced, the Developer's insolvency, appointment of a receiver, filing of a voluntary or involuntary petition in bankruptcy. 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 reasonable satisfaction of the City, within thirty (30) days after receiving notice thereof from the City, or such longer period of time as may be reasonably required to cure such breach, provided the cure has begun within thirty (30) days after receiving written notice and the Developer is diligently pursuing its completion, 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 actually required to complete the Work.

30. Preservation and Restoration of Property.

Developer shall maintain the Work during construction and until final acceptance by the City in accordance with this Agreement. Developer shall be responsible for all damage or injury to property of any character, including roadbeds and road surfaces, arising out of the Work, resulting from any act, omission, neglect or misconduct in its manner of method of executing the Work, or due to its non-execution of the Work as required under this Agreement, 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 in accordance with this Agreement. When or where any direct 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, Developer 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, or it shall make good such damage or injury, in a reasonably acceptable manner.

In the event of any damage or injury to property as stated in this Section 30, 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.

31. Ingress and Egress.

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

32. Cleaning Up.

During the construction, the Developer shall keep the site of the Work 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 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 the Work.

The Developer shall clean off 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, after ten (10) business days' written notice to Developer perform the necessary clean up as set forth herein and shall charge the Developer for said work. If applicable, 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.

33. Warranty Against Defects.

Developer shall warrant the Public Improvements to be free from defects (the "Warranty") for a period of Three (3) years from acceptance of dedication of these Public Improvements by the City of Avon (the "Warranty Period"). The foregoing Warranty shall not include damage due to acts of third parties outside of the control of Developer or the City's negligence or failure to maintain. If, during the Warranty Period, any defect in the Work is found, City shall promptly notify Developer and the Developer shall correct the defective work at its own cost. The Warranty Period shall not be extended by corrective work performed by the Developer. If the Developer fails to meet the Warranty obligations in a timely manner, the City of Avon may, after written notice with reasonable opportunity for Developer to cure, contract with any other party for the necessary work or use its own employees to perform the

work and be reimbursed by the Developer for the actual costs thereof or, if sufficient funds are available, to draw upon the financial guarantees provided in this Agreement.

34. 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 Project. 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 and where 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.

35. A.D.A. Compliance.

Where applicable, Developer shall comply with all A.D.A. requirements as a condition of acceptance of the Public Improvements.

36. 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.

37. Obligation to Notify.

Not applicable to this Project.

38. 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, Geis at Chester, LLC., 10020 Aurora-Hudson Road, Streetsboro, Ohio 44241.

39. 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.

40. 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:

GEIS AT CHESTER, LLC.

By: _____
Gregory M. Geis, its Manager

CITY OF AVON

By: _____
Bryan K. Jensen, Mayor

By: _____
Brian Fischer, Council President

Approved as to Form

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