

EXHIBIT A

DEVELOPER'S AGREEMENT

THIS AGREEMENT is entered into by and between **MERIDIAN CONSTRUCTION & DESIGN, INC.**, an Ohio corporation, 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 extension of the storm sewer being installed at 31880 Mills Road as set forth in the plans and specifications submitted to Planning Commission and approved on May 19, 2021 as part of the Final Development Plan.

WHEREAS, said Developer seeks to construct improvements, namely extension of a storm sewer and appurtenances thereto, in the right of way across the frontage at 31880 Mills Road, in the City of Avon, Ohio as set forth in the plans and specifications approved by Planning Commission and City Engineer; and

WHEREAS, said Developer, upon completion, will seek to dedicate said storm sewer and appurtenances thereto to the City of Avon; 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 the 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 improvements 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 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 May 19, 2021. Upon completion, the City agrees to accept improvements subject to the terms of this agreement.

2. Engineer's Estimated Cost of 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 Twenty Thousand Five Hundred and 00/100 (\$20,500.00) Dollars.

3. Performance Bond Agreement.

A financial guarantee of performance is required under §1244.12(e)(1). Given the nature of this project, Council agrees to waive the requirement of a performance bond for this development.

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 One Thousand Two Hundred Thirty and 00/100 (\$1,230.00) 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 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.

Prior to this Developer's Agreement being placed on Council's agenda for approval by Ordinance, the Developer shall deposit the sum of Two Hundred Fifty and 00/100 (\$250.00) Dollars with the Finance Director of the City of Avon for stabilization costs set forth in ACO §1052.11(b). The deposit will be refunded by the Finance Director upon verification by the Service Director that the site has been stabilized in compliance with the Codified Ordinances of the City of Avon.

6. Stormwater Inspection.

Stormwater Inspection does not apply 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 One Thousand and 00/100 (\$1,000.00) 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 Hundred and 00/100 (\$500.00) 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 of 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, at all times, with 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.

Title Insurance is not required. The work is being done in the public right of way.

11. Maintenance Bond.

Prior to being placed on Council's agenda for Acceptance of Public Improvements in this Development, Developer shall deposit with the Director of Finance a Three (3) year maintenance bond for (all or any of which is applicable) streets, pavement, storm and sanitary sewers, water systems, street lighting systems and facilities appurtenant thereto in the amount of Two Thousand Fifty and 00/100 (\$2,050.00) Dollars, which represents ten percent (10%) of the estimated cost of said Public Improvements.

12. Sidewalk Deposit.

Developer is not required to install sidewalks as part of this improvement project. Sidewalk will be the responsibility of the property owner.

13. Tree Deposit.

Developer is not required to plant trees as part of this improvement project.

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

Developer is not required to install street and traffic control signage and pavement markings as part of this improvement project.

15. Areas Within Floodplain.

If applicable, Developer 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, Developer 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 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 Improvements.

All improvements are to be completed 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 improvements is not instituted within this Twelve (12) month period or within the period pursuant to an extension granted by the City, Developer shall, if requested by the City Engineer, provide new engineering estimates of cost of construction of 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 Engineer's estimate of cost.

19. Actual Costs of Improvements.

The Developer, prior to passage of ordinance accepting 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 or electronic form. Electronic copy shall be submitted on the appropriate digital media in DXF or 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 Eighty (180) 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. Once work has been stopped, the developer understands that the City may elect to complete the project with public funds and assess all unpaid costs to the abutting property benefitted by the improvement.

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.

Where applicable, 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 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 Developer 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 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 portion of its work, or existing work, due to its operations.

In the event Developer 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 Developer for said work.

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.

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 improvements, 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.

31. A.D.A. Compliance.

Where applicable, 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. Contribution from the City.

The City recognizes that its policy for many years has been to install storm sewer and enclose open ditches in front of homes (residential properties) throughout the City. The property owner agrees to pay for the pipe and the City's Service Department does the installation. Given the scope and magnitude of this project, such an arrangement is not feasible. Nevertheless, the City desires to contribute financially to the enclosure of this ditch in an effort to be fair to all residents. That financial contribution shall be Eight Thousand, Three Hundred, Sixty Dollars and 00/100 Cents (\$8,360.00) This sum represents the cost of oversizing the pipe. After Council passes an Ordinance accepting the improvement, the Finance Director is authorized to issue a check to the Developer for said amount from the Stormwater Utility Fund No. 633. this project is and Developer have agreed that due to the size of the project,

33. 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.

34. 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.

35. 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, Douglas Reynolds, Meridian Construction & Design, Inc. at 31880 Mills Road, Avon, OH 44011.

36. 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.

37. 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:

**MERIDIAN CONSTRUCTION
& DESIGN, INC.**

By: _____
Douglas Reynolds

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