

ORDINANCE NO. 40-23

**AN ORDINANCE TO AUTHORIZE THE FINAL PLAT AND SUBDIVIDER'S
AGREEMENT FOR AUTUMN GROVE SUBDIVISION
AND DECLARING AN EMERGENCY**

WHEREAS, on December 21, 2022, the Planning Commission voted to recommend approval of the Final Plat for Autumn Grove Subdivision by a vote of Five (5) to Zero (0); and

WHEREAS, Council has had the opportunity to review the Final Plat and Subdivider's Agreement for Autumn Grove Subdivision, and has provided the Subdivider the opportunity to discuss same along with plans for Autumn Grove Subdivision; and

WHEREAS, after discussion, review and further consideration, Council has deemed the Final Plat acceptable and appropriate and agrees to enter into a written Subdivider's Agreement to provide for construction of all public improvements in Autumn Grove Subdivision.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF
AVON, LORAIN COUNTY, OHIO:**

Section 1 - The City of Avon hereby accepts the Final Plat for Autumn Grove Subdivision subject to the provisions of the Subdivider's Agreement which is hereby entered into for the completion of all improvements in said Subdivision, a copy of which is attached hereto, and marked Exhibit A, and incorporated herein by reference.

Section 2 - The Mayor and President of Council are hereby authorized to sign the Subdivider's Agreement on behalf of the City.

Section 3 - That it is found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal actions were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 4 - That this Ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, health, safety and welfare of the citizens of the City of Avon, the immediate emergency being the necessity to authorize a Subdivider's Agreement for the completion of improvements in Autumn Grove Subdivision and to enable completion within the current construction period; therefore, this Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

PASSED: March 13, 2023 DATE SIGNED: March 13, 2023

By: Brian Fischer
Brian Fischer, Council President

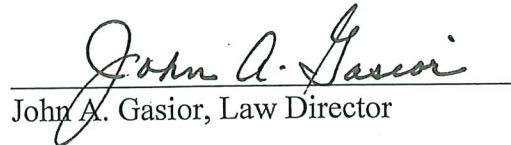
Ordinance No. 40-23 (Con't.)

DATE APPROVED BY THE MAYOR: March 14, 2023



Bryan K. Jensen, Mayor

APPROVED AS TO FORM:


John A. Gasior, Law Director

ATTEST:


Barbara Brooks, Clerk of Council

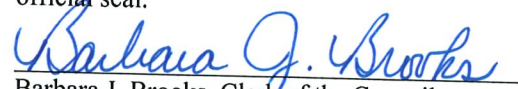
Posted: March 15, 2023
Electronically and at City Hall as
Provided by Council

Prepared By:

John A. Gasior, Esq.
Law Director

I, Barbara J. Brooks, Clerk of the Council of the City of Avon, Ohio, hereby certify this document to be a true and exact copy of Ordinance No. 40-23, passed by the Council of said City on March 13, 2023.

IN WITNESS WHEREOF, I have on this 14th day of March, 2023, affixed my signature and official seal.


Barbara J. Brooks, Clerk of the Council
of the City of Avon, Ohio

SUBDIVIDER'S AGREEMENT

THIS AGREEMENT is entered into by and between **GARLAND NEW HOMES, INC.**, 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 be the City Council of Avon, Lorain County, Ohio, and "City Engineer" shall refer to the City Engineer or the City's Consulting Engineer hired to perform services on this project. 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 collection of lots created in the development (be it in a single or multiple phases) along with the public improvements constructed therein.

WHEREAS, on December 21, 2022, the Planning Commission recommended approval of the Final Plat for the Autumn Grove Subdivision consisting of Twenty (20) sublots by a vote of Five (5) to Zero (0); and

WHEREAS, engineering estimates to construct the public improvements within the Autumn Grove Subdivision have been agreed upon between the Subdivider and the City Engineer; and

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

WHEREAS, the City is willing to agree to such provisions as are necessary for the construction of these public 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 Public improvements.

The Subdivider is to construct and install according to plans and specifications, all public improvements shown and set forth on the Final Plat for Autumn Grove Subdivision as presented to Planning Commission on December 21, 2022. Said construction and installation shall be a prerequisite to obtaining any occupancy permits. Subdivider's obligation to construct said public improvements shall not be conditioned upon sale of lots in this Subdivision.

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 Subdivider's Engineer and concurs with said estimated cost in the amount of One Million Ninety Thousand Eight Hundred Fifty-Six Dollars and 40/100 Cents (\$1,090,856.40).

3. Performance Bond Agreement.

Prior to the commencement of construction of public improvements, Subdivider shall request a preconstruction meeting. Forty-Eight (48) hours prior to the preconstruction meeting, the Subdivider shall provide a financial guarantee of performance to the Finance Director of the City of Avon in the form of a Performance Bond, a copy of which is attached hereto as Exhibit A-1, or a bond with substantially the same effect, in the amount of One Million One Hundred Ninety-Nine Thousand Nine Hundred Forty-Two Dollars and 04/100 Cents (\$1,199,942.04), which amount 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 or (d) a combination of these items, in that total amount, may be delivered to the City. No construction of public improvements shall commence until said financial guarantee of performance has been provided to, and approved by, the Finance

Director. This financial guarantee shall be released to Subdivider upon completion of all public improvements to be accepted by the City for this phase of the Development to the 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 Subdivider's Agreement being placed on Council's agenda for approval by ordinance, the Subdivider shall deposit the sum of Sixty-Five Thousand Four Hundred Fifty-One Dollars and 38/100 Cents (\$65,451.38) 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 public 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 public 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 One Thousand and 00/100 (\$1,000.00) Dollars (\$50 x 20 sublots) with the Finance Director of the City of Avon for stabilization costs set forth

in ACO '1052.11(b).

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 and 00/100 (\$1,500.00) Dollars with the Finance Director of the City of Avon for the stormwater inspection fee required under ACO '1052.11(c).

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 Three Thousand Five Hundred and 00/100 (\$3,500.00) 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 public 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 public 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 public 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 public 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 public improvements.

Prior to the commencement of any construction on the Subdivision site, 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 public 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 public 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 One Hundred Nine Thousand Eighty-Five Dollars and 64/100 Cents (\$109,085.64), which represents ten percent (10%) of the estimated cost of said public improvements.

12. Sidewalk Deposit.

Subdivider's estimated cost for sidewalk is Seventy-Two Thousand Five Hundred Seventy and 00/100 (\$72,570.00) Dollars. Should sidewalks not be completed at the time of acceptance of public improvements by City Council, the Subdivider shall deposit with the Office of the Director of Finance a cash deposit in the amount of One Hundred Eight Thousand Eight Hundred Fifty-Five and 00/100 (\$108,855.00) Dollars, which is 150% of the Subdivider's estimate for construction of sidewalks. This deposit must be made prior to Council placing an ordinance to accept public improvements pertinent to the Subdivision on its agenda. The Subdivider will be entitled to incremental refunds of 25% of the total amount deposited upon installation of each quarter (3) 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 public 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 public improvements in this subdivision, Subdivider will deposit with the Finance Director of the City of Avon the sum of Five Thousand Five Hundred and 00/100 (\$5,500.00) Dollars to assure compliance with the requirement of planting of One (1) tree per subplot (\$275 x 20) in the

Subdivision (contact the City Arborist to determine which species of tree to plant). 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 an ordinance being placed on Council's agenda for acceptance of public improvements in this subdivision, Subdivider shall deposit with the Director of Finance the amount of One Thousand and 00/100 (\$1,000.00) Dollars. The deposit shall be held by the City for a two (2) year period commencing with the passage of the ordinance accepting the public 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 and shall be based on current City Standards. 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.

If applicable, 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 public improvements in this Subdivision. The Subdivider must comply with all design standards set forth in Chapters 1050, 1051 and 1464 of the Avon Codified Ordinances.

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 public 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 public improvements in the Subdivision is completed, and an ordinance accepting the dedication of public improvements in the Subdivision is passed by City Council.

18. Assessments.

If such assessments exist, 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 public 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 Public improvements.

Where applicable, the Subdivider agrees to construct and install 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.

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.

21. Time for Completion of Public improvements.

All public improvements are to be completed within a period of Twenty-Four (24) 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 public 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 public 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 Public Improvements.

The Subdivider, prior to passage of ordinance accepting public improvements, shall submit to the Finance Director of the City the actual costs of public 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 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 Subdivision. The as-built documents shall be submitted in hard copy and in 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 improvements in this Subdivision, Subdivider shall remit to the Director of Finance the sum of Sixteen Thousand Forty-Two and 67/100 (\$16,042.67) Dollars (\$890.27 x 18.02 acres). This fee shall be deposited into City Fund No. 273 in accordance with ACO '1050.17(b).

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 this Subdivision, Phase 1 of

the Autumn Grove Subdivision at a cost of \$102,818.00. The City's storm water detention fee applicable to this phase of the Development is calculated to be Ninety-Four Thousand Three Hundred Eighty-Seven and 32/100 (\$94,387.32) Dollars. (Developed Area (18.02 Acres x \$5,237.92/Acre.) As such, the Engineers estimated cost of construction of on-site storm water detention, 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.

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 public 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 public 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 '1050.08(d), 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 Engineer of the City 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 Service Director.

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, false work, 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.

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.

35. Warranty Against Defects.

Subdivider shall warrant all Subdivision public 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 public 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 public 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 public 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 905-C Canterbury Road, 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 vote of a majority of the members of City Council.

43. 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, this Subdivider's Agreement is executed at Avon, Ohio, this 15th day of March, 2023.

WITNESSES:

Barbara Brooks

Barbara Brooks

Barbara Brooks

GARLAND NEW HOMES, INC.

By:

Matthew Garland
Matthew Garland, President

CITY OF AVON

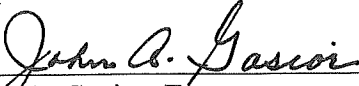
By:

Bryan K. Jensen
Bryan K. Jensen, Mayor

By:

Brian Fischer
Brian Fischer, Council President

Approved as to Form



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

PERFORMANCE BOND AGREEMENT

THIS AGREEMENT is entered into by and between **GARLAND NEW HOMES INC.**, 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 or the City's Consulting Engineer hired to perform services on this project.

WHEREAS, the Subdivider has agreed to construct the public improvements in Autumn Grove Subdivision (hereinafter "Subdivision") in accordance with the Subdivision Regulations of the City of Avon, and in accordance with a Subdivider's Agreement entered into between Subdivider and the City of Avon; and

WHEREAS, the Subdivision Regulations of the City of Avon contained in Avon Codified Ordinance §1244.10(d) and the Subdivider's Agreement provide that the Subdivider shall furnish financial guarantees of performance in an amount equal to 110% of the estimated construction costs, engineering and inspection fees in a form, manner of execution and surety approved by the Finance Director and the Law Director of the City of Avon; and

WHEREAS, based upon the estimates of cost of construction of the public improvements in the Subdivision by the Subdivider's Engineer, approved by the City Engineer, Subdivider is required to provide a financial guarantee of performance to the Finance Director of the City of Avon in the amount of One Million One Hundred Ninety-Nine Thousand Nine Hundred Forty-Two Dollars and 04/100 Cents (\$1,199,942.04)

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

1. Subdivider will post a surety bond with the City Finance Director in a form, manner of execution and surety acceptable to the City of Avon in the sum of One Million One Hundred Ninety-Nine Thousand Nine Hundred Forty-Two Dollars and 04/100 Cents (\$1,199,942.04).

2. The Subdivider and its surety shall, at all times, keep the records of said Performance Bond open to inspection by the Engineer of the City or any other duly authorized agent of the City.

3. Upon completion of all public improvements in the Subdivision to the satisfaction of the City Engineer, acceptance of dedication of said public improvements, payment of all engineering and legal expenses of the City of Avon, and compliance with all provisions of the Subdivider's Agreement upon written instruction from the Director of Finance of the City of Avon, the surety shall be released from its obligations hereunder.

4. In the event of Subdivider's default, as defined in the Subdivider's Agreement, the City shall have the right to execute on the Performance Bond herein posted and to complete construction of public improvements at the Subdivision, or any part thereof, and to pay any engineering or legal fees for the Subdivision over and above the Subdivider's deposit, and the surety is authorized and required to release the funds upon certification by the Director of Finance of the City of Avon that the funds will be used for completion of construction of public improvements for the Subdivision and any applicable fees.

5. The surety shall accept as full and complete evidence of default and of the resulting right of the City of Avon to complete said project or any portion thereof a copy of the resolution from the City of Avon duly authenticated by the Clerk of Council declaring said default and the intention of the City of Avon to proceed to complete the performance of said public improvements or any portion thereof.

IN WITNESS WHEREOF, the parties have affixed their signature hereto this 15th
day of March, 2023.

WITNESSES:

GARLAND NEW HOMES, INC.

Barbara Brooks

By: [Signature]
Matthew Garland, President

Barbara Brooks

CITY OF AVON

By: [Signature]
Bryan K. Jensen, Mayor

Barbara Brooks

By: [Signature]
Brian Fischer, Council President

Approved as to Form

[Signature]
John A. Gasior, Esq.
Law Director
City of Avon

**ACKNOWLEDGMENT AND ACCEPTANCE
BY LENDING INSTITUTION**

The lending institution for **GARLAND NEW HOMES, INC.**, for Autumn Grove Subdivision 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