

DEVELOPER AGREEMENT FOR PUBLIC SANITARY AND STORM SEWER SYSTEMS

This Developer Agreement for Sanitary and Storm Sewer Systems (“**Agreement**”) is made and entered into this _____ day of _____, 20____ (“**Effective Date**”), by and between SANITATION DISTRICT NO. 1 OF NORTHERN KENTUCKY (“**District**”) and _____ (“**Developer**”).

WHEREAS, the District supplies sanitary and storm water services to Kenton, Campbell and Boone Counties in Northern Kentucky; and

WHEREAS, the Developer is desirous of constructing and/or extending certain public sanitary and storm sewers and related facilities and appurtenances thereto located at the development known as _____ (“**Project**”) for the benefit of the Developer’s development; and

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Developer and the District agree as follows:

1. **PLANS.** Prior to the start of construction, the Developer, at its sole cost and expense, shall provide the District with detailed plans, drawings, and specifications stamped by an engineer licensed in the Commonwealth of Kentucky (“**Plans**”) for the construction, modification, relocation, and/or extension of all of those certain public sanitary and storm sewers and all related facilities and appurtenances thereto as set forth in the Plans (“**Work**”). Construction on the Work shall not commence until the Plans for the Work are approved in writing by the District, and the Kentucky Division of Water if applicable. If the District, or the Kentucky Division of Water if applicable, disapproves the Plans or any part thereof, the District shall notify the Developer of the reasons for such disapproval, and the Developer shall revise the Plans as necessary to cure the reasons for such disapproval, and Developer shall resubmit the Plans as revised until such time as the District, and the Kentucky Division of Water if applicable, shall approve the Plans. Once approved, the Developer shall not deviate in any manner from the Plans unless the District has expressly approved the deviation in writing or, if not initially in writing, has confirmed promptly thereafter in writing (including e-mail). The Plans, as finally approved by the District, are hereby incorporated into this Agreement as if set forth fully herein.

2. **PERFORMANCE STANDARDS.** Unless otherwise agreed, the Work shall be performed at the sole cost and expense of the Developer, and the Developer shall be responsible for obtaining all necessary governmental approvals, permits, or licenses. All of the Work shall be performed by Developer, and the Developer’s employees, contractors, subcontractors and agents, strictly in a safe, good and workmanlike manner and in compliance with the Plans, Specifications, the Rules and Regulations (defined in Section 15), all standards adopted by the District in affect at the time of Plan approval, all federal, state, and local laws, ordinances, and codes, regulations, and all governmental approvals, permits, or licenses issued (collectively, the “**Standards**”).

3. **NO LIABILITY.** Neither the District, its employees or agents, nor any member of its Board of Directors, shall be liable for any claim, demand, damage, loss, cost, or liability whatsoever suffered or claimed to be suffered by any person or entity on account of (a) the construction or performance of any Work, whether or not pursuant to the Standards; or (b) any physical inspection by the District of the Work, whether in-process or as-built. The review and approval of the Plans or any physical inspection of the Work by the District under this Agreement is solely for the benefit of the District, and shall not create any liability on behalf of the District in any manner whatsoever. The approval of the Plans or the inspection of the Work by the District shall not in any manner constitute a warranty, representation, certification, promise, or guarantee on the part of the District that the Plans, or any of the Work performed pursuant thereto, are or will be in compliance with any of the Standards, and the Developer shall be exclusively and solely responsible to ensure that the Plans and all Work performed thereto comply in all respects with the Standards. The District shall, however, be liable to the Developer to replace or, at the District's election, to pay the reasonable cost to repair any physical damage to the Work that is negligently or intentionally caused by the District's employees or agents during their review and inspection of the Work prior to the Acceptance Date.

4. **CONTRACTORS.** Nothing contained in this Agreement or in the Plans shall be construed to create any contractual relationship of any kind between the District and any contractor, subcontractor, sub-subcontractor, materialmen, supplier, or laborer of Developer. Provided however, Developer hereby agrees that, without creating any liabilities or obligations on the part of the District, the District is an intended third-party beneficiary of all warranties that may be provided by Developer's contractors and related to the performance of the Work. Developer shall incorporate such third-party beneficiary language into any contracts entered into with its contractors for the performance of the Work, and Developer hereby assigns to the District, and the District shall have the right (but not the obligation) to enforce, any such warranties as a third-party beneficiary. Any such contracts entered into by Developer shall be consistent with the terms and provisions of this Agreement.

5. **SUPERVISION.** The Developer shall supervise and direct the Work, and shall be solely responsible for all construction means, methods, techniques, sequences, procedures, and coordinating all portions of the Work.

6. **ONE YEAR WARRANTY.** The warranty period for any applicable portion of the Work shall be for a period of one (1) year following the Acceptance Date (as defined in Section 11), such date to be established in accordance with the records of the District (the "**Warranty Period**"). During the Warranty Period, the Developer and its contractor(s) performing the Work shall warrant that (a) all of the Work has been performed in a good and workmanlike manner, free from all defective materials and workmanship, and (b) all of the Work has been constructed and installed in strict compliance with all of the Standards and the Plans, and (c) all material and equipment installed, constructed, or supplied by Developer is new and of good quality, and suitable for its intended purpose. During the Warranty Period, the Developer and its contractor(s) shall be responsible for correcting all deficiencies in the Work, and performing all repair of the sanitary and storm sewers and related facilities and appurtenances required to correct such deficiencies. The District shall notify the Developer of any warranty repair items as soon as practicable, but in

no event later than the expiration of the Warranty Period. Deficiencies in the Work shall be corrected by Developer or its contractor(s) not later than sixty (60) calendar days following the date that any deficiency is discovered or upon notification by the District, except in the event of an emergency as determined in the District's sole discretion, in which case the Developer and its contractor(s) shall correct the deficiency as soon as possible. The Warranty Period for identified deficiencies will be extended an additional period at least equal to the length of time required for correction or, for major repairs that impact performance (e.g. repairs done to correct line and grade, over deflection and or sags to pipes, visible infiltration and inflow, etc.), for one year following completion of repairs for the repaired items.

Developer hereby agrees that if the Developer fails to correct any deficiency within sixty (60) calendar days (or as otherwise approved in writing by SD1), or to properly maintain and repair the sanitary and storm sewers and related facilities and appurtenances constructed during the Warranty Period, the District shall have the right to deny sanitary service connections to the Project. If necessary the District may, but is not obligated to, correct the deficiencies or make such repairs and maintenance at the Developer's sole cost and expense. The Developer shall reimburse the District for all costs and expenses incurred in correcting deficiencies or making such repairs and maintenance within thirty (30) calendar days of receipt of an invoice from the District, which invoice shall summarize materials and hours charged to this job. Developer hereby agrees that the District may require Developer provide surety sufficient to District to meet the estimated costs of repair which Developer may provide by Letter of Credit, Performance or Warranty Bond (naming the District as beneficiary or obligee), or payment by cash, or certified funds to be held in escrow. Developer's and any contractor(s)' warranty hereunder shall specifically include the correction of any deficiencies that are caused by future ground or soil movement if caused by the Developer's or its contractor(s)' workmanship and if within the Warranty Period or extended Warranty Period. Developer shall not be responsible for damage to the Work determined by the District to be caused by unrelated third parties and not caused as part of development and construction activities within the Project.

The obligations contained in this Section 6 shall survive the completion of the Work and termination of this Agreement to the fullest extent permitted under Kentucky laws.

7. **REPRESENTATIONS AND WARRANTIES.** Developer hereby represents and warrants to the District as follows:

a. Developer has full power and capacity to enter into this Agreement and carry out Developer's obligations under this Agreement, and any document to be delivered hereunder when duly executed and delivered will be a valid, legal and binding obligation of Developer;

b. Developer will hire contractor(s) performing the Work that are professionally and fully qualified to act as the contractor under this Agreement;

c. Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will violate or be in conflict with (i) any applicable provision of law; (ii) any

order of any court or governmental agency having jurisdiction over Developer, or (iii) any agreement or instrument to which Developer is a party or under which Developer is bound;

d. Except when the Work will be constructed, located, or installed in a dedicated, public right-of-way with the necessary approval and permission, the Developer, or its authorized agent with written authority deemed acceptable to the District, is the fee simple owner of or has the requisite property rights of all real property over, under, or upon which any part or portion of the Work will be constructed, located, or installed under this Agreement, and Developer has full power and authority to grant easements in, upon, or under such real property to the District;

e. Developer has inspected the site where the Work will be performed (or will provide a report from geotechnical engineer, including recommendations) concluding that the land and the soil in which the Work will be constructed are stable and constitute suitable conditions in which the Work may be performed and completed;

f. Developer assumes full responsibility to the District for any and all acts or omissions of the Developer's subcontractors, sub-subcontractors, materialmen, suppliers, and laborers subject to the terms of the warranty.

8. **UNFORESEEN CONDITIONS.** If Developer encounters or discovers any unforeseen or concealed condition, or any other condition which is a variance with or not anticipated by the Plans, Developer shall suspend the Work and immediately notify the District. Developer shall comply with the District's instructions, which, upon request by Developer, will be confirmed in a writing (including e-mail), as to resolving the unforeseen or concealed condition prior to re-commencing the Work. In instances where soil or ground stability is in question the Developer shall be responsible to provide all necessary geotechnical and engineering reports and analyses. If during construction of the Work it is discovered that the area of the Work is not safe or suitable the Developer, its geotechnical engineers and its Design Engineer shall consult with SD1 to determine a mutually agreed upon action plan, which could result in alternate means and methods, alternate materials, and/or alternate location of the facilities.

9. **INSURANCE.** Developer or its contractor(s) (if Developer is not performing the Work directly), at its sole cost and expense, shall maintain throughout the performance of the Work commercial general liability insurance covering the legal liability of Developer and its contractor(s) against claims for bodily injury, death and/or property damage arising out of the performance of the Work, in such amounts not less than \$1,000,000 combined single limit for bodily injury or death and/or property damage in any one occurrence. A combination of primary and excess/umbrella policies may be utilized to meet the \$1,000,000 limit. Developer shall provide the District certificates of insurance evidencing the coverages required under this Agreement prior to commencement of the Work and at such later times during the performance of the Work as the District may request.

10. **TERMINATION.** If Developer (i) defaults under this Agreement and does not cure the default within sixty (60) calendar days after written notice from the District, or (ii)

becomes a debtor in any bankruptcy or other insolvency proceedings, makes a general assignment for the benefit of creditors, or has a receiver appointed for any of its assets, then the District shall have the right but not obligation to terminate this Agreement upon delivering written notice to the Developer.

11. **ACCEPTANCE.** The District will accept ownership of the sanitary and storm sewers and related facilities and appurtenances thereto upon satisfaction of all of the following conditions:

- a. Developer shall not then be in default under this Agreement;
- b. The District shall have inspected the Work and determined the Work to be finally completed in accordance with the terms of this Agreement, such inspections to be to the District's satisfaction in its sole and absolute discretion;
- c. The District shall have been granted all required easements pursuant to Section 13 of this Agreement or issued written approval of the platt;
- d. The Developer shall have delivered to the District the Record Drawings in accordance with the Rules and Regulations (defined in Section 15).
- e. The District shall have provided to Developer a written acceptance of the sanitary and storm sewers, the date of which letter shall be deemed the **Acceptance Date** within ten (10) business days after the above conditions have been met.

Prior to the successful completion of required mandrel testing of the planned and approved public sanitary sewer system identified by this Developer's Agreement, the Developer may request approval to connect a portion of the planned sanitary sewer connections in the Project. Developer must submit a written request for such connection, and the District shall provide a written response stating that:

- a. For a Project with 10 or more planned sanitary sewer connections, Developer may request connection of up to 10% of the planned sanitary sewer connections; or
- b. For a Project with less than 10 planned sanitary sewer connections, Developer may request connection of up to 1 sanitary sewer connection.

Developer hereby agrees to execute any written instrument or agreement to transfer title to the sanitary and storm sewers and related facilities and appurtenances thereto as shall be reasonably requested by the District.

12. **INDEMNIFICATION.** The Developer hereby agrees to defend, indemnify, and hold harmless the District, its employees, agents and members of the Board of Directors, against any liability, loss, damage, demand, action, cause of action or expense of whatever nature (including, but not limited to, court costs and reasonable attorneys' fees) which may result from

(a) any loss, injury, death, or property damage sustained by any person, corporation, or other entity which arises out of or is caused by the negligence of the Developer, its agents, employees, contractor or subcontractors, or (b) any breach of or default under this Agreement by Developer, its agents, employees, contractors or subcontractors. The Developer's obligations under this indemnity shall terminate on the date five (5) years from the Acceptance Date as defined in paragraph 11(e) hereof, of the subject sanitary and storm sewers and related facilities.

13. **EASEMENTS.** Except when the Work will be constructed, located, or installed in a dedicated, public right-of-way with the necessary approval and permission, the Developer, at its sole cost and expense, shall grant to the District, perpetual and irrevocable easements, in form acceptable to the District, covering all sanitary and storm sewers and related facilities and appurtenances constructed pursuant to the Plans. Such easements shall be recorded in the Record Plat or Dedication Plat or by separate easement in recordable form, , and shall otherwise be subject to the review and approval of the District's legal counsel. If any easement must be obtained from any third party, the Developer shall be responsible for obtaining such easements at its sole cost and expense. Should the Developer and the District mutually agree it is necessary for the District to obtain any easement pursuant to its power of condemnation, the Developer shall pay all costs and expenses of the condemnation action.

14. **RECORDS AND DOCUMENTS.** At any time upon request of the District, Developer shall provide the District with a copy of documents, instruments, and other written materials which in any way relate to the Work but only to the extent same are reasonably necessary for the District's adequate review of the submitted Plans or completion of the Work in accordance with this Agreement, including but not limited to, surveys and plats, easements, plans, drawings, specifications, equipment manuals, and engineering and other technical reports (including geotechnical investigations and inspection reports, which may be required by the District depending where the Work will be performed).

15. **DISTRICT RULES AND REGULATIONS.** The Developer hereby acknowledges that this Agreement is subject to the terms of the District's Sanitary and Storm Water Rules and Regulations ("**Rules and Regulations**"). The Rules and Regulations in place at the time this Agreement is signed are hereby incorporated herein by reference as if fully set forth herein. If any term or provision of this Agreement is in conflict with any term or provision of the Rules and Regulations, the terms and provisions of the Rules and Regulations shall control.

16. **TIME.** Time is of the essence of this Agreement.

17. **SUCCESSORS AND ASSIGNS.** This Agreement and all of the Developer's liabilities and obligations hereunder are binding upon Developer, its agents, successors and assigns.

18. **WAIVER.** The failure of the District to insist upon strict observance by the Developer of any of the terms, provisions, or conditions of this Agreement shall not be deemed a

waiver of the District's right to insist upon strict observance thereafter, or to declare a default under this Agreement.

19. **AMENDMENTS.** No change, amendment, or modification of this Agreement shall be valid unless in writing and signed by the parties hereto or their respective successors and assigns.

20. **NOTICES.** All notices, demands and requests given or required to be given by either party hereto to the other party shall be in writing and shall be deemed to have been properly given if personally delivered, or sent by U.S. registered or certified mail, postage prepaid, return receipt requested, or by overnight delivery service, or by facsimile transmission, addressed as follows:

To District: Sanitation District No. 1
Attn: Plan Review Manager
1045 Eaton Drive
Ft. Wright, Kentucky 41017
Phone: (859) 578-6880
E-mail: aaman@sd1.org

To Developer: _____
Attn: _____

Phone: _____
E-mail: _____

or to such other address as the Developer or the District may from time to time designate by written notice.

21. **ENTIRE AGREEMENT.** This Agreement contains the entire and complete agreement of the parties hereto and supersedes all previous understandings, whether oral or written, relating to the subject matter hereof.

22. **COUNTERPARTS.** This Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument. This Agreement shall be signed in duplicate, with each party receiving a full executed copy.

23. **SEVERABILITY.** The provisions of this Agreement are severable. If any term, covenant or condition of this Agreement shall be held to be invalid, illegal or unenforceable in any

respect, the remainder of this Agreement shall not be invalidated thereby, and this Agreement shall be construed without such provision.

24. **GOVERNING LAW.** This Agreement for all purposes shall be construed and enforced in accordance with the domestic laws of the Commonwealth of Kentucky.

25. **DRAFTER RULE.** No provisions of this Agreement shall be construed by the parties hereto, or any court or other judicial authority, against any party hereto by reason of such party's being deemed to have drafted or structured such provisions.

26. **RELATIONSHIP.** Nothing contained in this Agreement shall be deemed to create an employment relationship, joint venture, partnership, or any other legal or business relationship between the Developer and the District.

27. **ASSIGNMENT.** This Agreement is not assignable by the Developer to any third party without the written consent of the District, which consent will not be unreasonably withheld.

28. **RISK OF LOSS.** All risk of loss, damage, or injury to the sanitary and storm sewers and related facilities and appurtenances thereto shall remain with the Developer until such time as the District shall have accepted ownership in accordance with the provisions of Section 11 of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement.

DEVELOPER:

[NAME OF DEVELOPER]

BY: _____

Title: _____

DISTRICT:

SANITATION DISTRICT NO. 1

BY: _____
Executive Director