

AGREEMENT TO ISSUE BUILDING PERMIT FOR MODEL HOME

[_____]

This Agreement to Issue Building Permit for Model Home (“Agreement”) is made as of this ____ day of _____, 20____, by and among _____ (“Developer”), _____ (“Builder”) and Township of Macomb, a Michigan municipal corporation (“Township”).

R E C I T A L S:

- A. Developer is the owner of certain land located in Macomb Township, County of Macomb, State of Michigan, commonly known as _____, Tax Parcel ID No. _____ and more particularly described in Exhibit A attached hereto (“Land”).
- B. Developer desires to develop the Land into a residential development to be known as _____ (“Project”).
- C. Pursuant to [Section 17-134](#) of the Macomb Township Code of Ordinances, all public and other improvements must be installed and accepted by the Township prior to final plat approval for plats and prior to the issuance of building permits for site condominium subdivisions (“Site Development Improvements”).
- D. Developer and Builder have requested the Macomb Township Supervisor or their designee to waive this requirement under [Section 17-135](#) of the Macomb Township Code of Ordinances to allow Developer and/or Builder to construct a model home on Lot/Unit number ____ (“Model Home”) prior to all Site Development Improvements being installed and accepted by the Township.
- E. The Macomb Township Supervisor or their designee has considered the request and approves the issuance of the Model Home building permit prior to all Site Development Improvements being installed and accepted by the Township, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the covenants and premises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Developer or Builder may apply for and be issued a building permit for the Model Home in conformance with the Township Building Department's normal procedures, subject to the following requirements:

- a. Developer and/or Builder have submitted to the Township an application requesting to construct a model home.
- b. Developer and/or Builder have submitted to the Township a legal description for the Model Home prepared by a professional surveyor, licensed in the State of Michigan.
- c. Developer and/or Builder have deposited a cash bond to be held by the Township Treasurer in the amount of Seven Thousand, Five Hundred and 00/100 Dollars (\$7,500.00) for the Model Home requested ("Cash Bond").
- d. Developer and Builder agree to assume full responsibility for the final grading and drainage of the lot or unit that the Model Home is constructed upon if the Model Home is constructed prior to completion of the final mass grading of the Project.
- e. A final certificate of occupancy (for residential use) shall not be issued for the Model Home until all Site Development Improvements have been installed and accepted by the Township and the Cash Bond has been released. A temporary certificate of occupancy may be granted by the Building Department for the viewing of model homes.
- f. Developer and Builder agree to keep all roads free of mud, snow and obstructions at all times.
- g. Developer and has installed, and the Township have accepted for Model Home construction, the following improvements:
 - i. All water mains and services, fire hydrants, sanitary sewers and leads, storm drainage facilities and sump pump outlet connections associated with the Project.
 - ii. The Developer or Builder has prepared and submitted for review a set of preliminary "as built" plans for roads and utilities. As-built information has been found acceptable by the Township on a preliminary basis.
 - iii. All roads have been paved, with adequate cure time allowed, for the Model Home's construction and use by emergency vehicles.
 - iv. Permanent or temporary street signs have been installed.

- v. Any other improvement deemed necessary by the Township to ensure the health, safety and welfare of those constructing or using the Model Home prior to the completion of Project.

3. Developer and Builder agree that other than the building permits issued for no more than four (4) model homes for the Project pursuant to this Agreement and other like agreements, Developer or Builder will not be issued building permits on any other units or lots within the Project until all of the Site Development Improvements are complete and the Township has released the site development bond on file with the Township for this Project. Developer and Builder shall also indemnify and hold the Township harmless from and against any and all damages, liabilities, and expenses, including but not limited to attorney fees, incurred by the Township that arise out of any claim asserted against the Township by any third-party relating to the Model Home, this Agreement or Developer's and/or Builder's failure to perform any of its obligations under this Agreement.

4. In the event Developer or Builder fail to timely perform any of its obligations under this Agreement, Township shall serve written notice upon Developer and Builder setting forth in detail such failure to perform and demand that such non-performance be cured within sixty (60) days following Developer's and Builder's receipt of Township's notice (or such additional time as agreed to by Township if such failure cannot reasonably be cured within such 60-day period). If the deficiency set forth in the notice is not cured within the sixty (60) day period (or such other agreed upon time period), the notice shall set forth a date, time, and place for a hearing before the Township Board for the purpose of allowing Developer and Builder an opportunity to be heard as to the reasons for the deficiency, and what actions will be taken to correct the deficiency. At any such hearing, the time for curing and the hearing itself may be extended and/or continued to a date certain. If, following the hearing, the Township Board determines that the obligation has not been fulfilled or has not been corrected within the time specified in the notice, or if an emergency situation exists (i.e. an imminent threat to public health, safety and welfare), as determined by Township in its discretion, Township shall have the power and authority, but not the obligation, to take any or all of the following actions, in addition to any actions authorized under this Agreement, Zoning Ordinance or state law:

- a. Deem the Cash Bond forfeited in its entirety.
- b. Initiate legal action for the enforcement of any of the provisions set forth in this Agreement. In the event Township obtains any relief as a result of litigation against Developer and/or Building, Developer and/or Builder liable shall pay all actual court costs, expenses and attorney fees incurred by the Township in connection with such legal action.
- c. Issue a stop work order with cause as to any or all aspects of the Project affected by such failure/deficiency, and may suspend further inspections of any or all aspects of such construction pending a cure of any such non-performance.

- d. Terminate this Agreement. In the event this Agreement is terminated by Township, it may, at its option and within its sole discretion, suspend the approval of any permit for any incomplete Model Home.
 - e. Nothing contained in this Agreement shall limit or restrict the Township's remedies as provided by law or herein. The rights and remedies accorded Township pursuant to this Agreement, the Macomb Township Code of Ordinances, the Macomb Township Zoning Ordinance and/or other applicable law are cumulative and not exclusive, and may be exercised in any order, without precluding the right of Township to exercise any other right or remedy available at law. Any failure or delay by Township to enforce any provision contained in this Agreement shall in no event be deemed, construed, or relied on as a waiver or estoppel of the right to eventually do so in the future.
5. By executing this Agreement, Developer and Builder agree to be bound by each and every provision of this Agreement. Developer and Builder further agree that (a) the conditions contained herein are fair, reasonable and equitable; (b) this Agreement does not constitute a taking of property for any purpose and is not a violation of any of Developer's or Builder's constitutional rights; (c) the improvements and undertakings described in this Agreement are (i) necessary and roughly proportional to the burden imposed; (ii) necessary to ensure that public services and facilities will be capable of accommodating the Project and the increased service and facility loads caused by the Project; (iii) necessary to protect the natural environment and conserve natural resources; (iv) necessary to ensure compatibility with adjacent uses of land; (v) necessary to promote use of the Land in a socially and economically desirable manner; and (vi) necessary to achieve other legitimate objectives authorized by law. It is further agreed and acknowledged that all required improvements, both on-site and off-site, are clearly related to the burdens created by the Project, and all such improvements are clearly and substantially related to the Township's legitimate interests in protecting the public health, safety, and welfare.
6. This Agreement may not be altered, superseded, or otherwise modified except by a written modification or amendment instrument signed by all Parties hereto.
7. This Agreement shall be construed as a covenant running with the land, and binding upon and inure to the benefit of the respective parents, affiliates, successors, assigns, agents, representatives, and beneficiaries of the Parties hereto, and may be recorded on the title of the Land or the lot/unit where the Model Home is being constructed at the discretion of the Township. Notwithstanding the foregoing Developer and Builder will not be released of any default of this Agreement that occurs during Developer's ownership of any aspect of the Land, until the default is remedied to the satisfaction of the Township in its sole discretion or as determined by a Court of competent jurisdiction.
8. This Agreement embodies the entire agreement between the Parties with respect to the Model Home, and supersedes all negotiations, representations, promises, inducements, and understandings of any

kind or nature relating to the Model Home prior to the Effective Date of this Agreement as defined below. This Agreement supersedes and annuls any and all other former agreements, contracts, promises, or representations, whether written or oral, expressed, or implied, made by, for, or on behalf of the Parties relating to the Model Home only.

9. All notices, consents and other instruments given pursuant to this Agreement shall be deemed sufficient notice and validly delivered if such notice is in writing and will be deemed given (i) when personally delivered to the party to be given such notice or other communication, (ii) if by e-mail with confirmation of a “read” receipt, on the date sent (or the next business day after the date of transmission if the transmission day is not a business day), (iii) on the third business day following the date of deposit in the United States mail if such notice or other communication is sent by certified or registered mail with return receipt requested and postage thereon fully prepaid to the recipient (if any) and address below, or (iv) on the business day following the day such notice or other communication is sent by reputable overnight courier. Notices shall be delivered to the Parties at the following addresses and/or email addresses:

To Township:

Macomb Township
Attention: Frank J. Viviano, Township Supervisor
54111 Broughton Road
Macomb, Michigan 48042
Email: vivianof@macomb-mi.gov

To Developer:

To Builder:

The Parties may amend their notification information at any time by delivery of a written notice to the other Party setting forth their change of address or email address in the manner set forth above. If there is a newly elected Township Supervisor, then notice shall be sent to the successor Township Supervisor at the contact available on the Macomb Township website.

10. This Agreement shall be governed by, construed, and enforced in accordance with, the laws of the State of Michigan. Developer and Builder agree, consent, and submit to the personal jurisdiction of any competent court of jurisdiction in Macomb County, Michigan for any action brought against it arising out of this Agreement. Developer and Builder also agree that they will not commence an action against Township because of any matter arising out of, or relating to, the validity, construction, interpretation, or enforcement of this Agreement in any courts other than those in Macomb County, Michigan.
11. If any provision of this Agreement is declared invalid by any court, then such provision shall be deemed automatically adjusted to conform to the requirements for validity as declared at such time and, as so adjusted, shall be deemed a provision of this Agreement as though originally included herein. In the event that the provision invalidated is of such a nature that it cannot be so adjusted, the provision shall be deemed deleted from this Agreement as though the provision had never been included herein. In either case, the remaining provisions of this Agreement shall remain in full force and effect.
12. Township affirms that this Agreement has been duly authorized by the Township Supervisor pursuant to [Section 17-135](#) of the Macomb Township Code of Ordinances. By the execution of this Agreement, Developer and Builder warrant that this Agreement has been adopted and approved by a resolution of their necessary corporate managers, members, directors and/or shareholders, authorizing the signatory to this Agreement execute this Agreement, and bind Developer and Builder. Developer further affirms that it is not in default under the terms of any purchase agreement for the Land.

13. This Agreement may be executed in any number of counterparts and may be signed and/or transmitted by facsimile, electronic mail or a .pdf document, or electronic signature technology (e.g., via DocuSign or similar electronic signature technology), and each of which will be deemed to be an original, and all of which together will be deemed to be one and the same instrument. The Parties hereto further consent and agree that (a) to the extent a Party signs this Agreement using electronic signature technology, by clicking “SIGN” (or similar election).
14. The “Effective Date” of this Agreement will be the date on which the last of the Parties signs it.

[Signatures begin on the following page.]

The parties have caused their duly authorized representatives to execute this Agreement as of the date first above written.

DEVELOPER

By (Name): _____
Its (Title): _____

STATE OF MICHIGAN)
) ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20____,
by _____, the _____ of
_____, known
to me to be the person who executed the within instrument and who acknowledged the same to be their
free act and deed.

_____, Notary Public
State of Michigan, County of _____
My Commission Expires: _____
Acting in the County of _____

BUILDER

By (Name): _____
Its (Title): _____

STATE OF MICHIGAN)
) ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20____,
by _____, the _____ of
_____, known
to me to be the person who executed the within instrument and who acknowledged the same to be their
free act and deed.

_____, Notary Public
State of Michigan, County of _____
My Commission Expires: _____
Acting in the County of _____

TOWNSHIP:

Township of Macomb, a
Michigan municipal corporation

By: Frank J. Viviano

Its: Supervisor

STATE OF MICHIGAN)
) ss
COUNTY OF MACOMB)

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by Frank J. Viviano, Supervisor of Township of Macomb, a Michigan municipal corporation, known to me to be the person who executed the within instrument and who acknowledged the same to be his free act and deed.

_____, Notary Public
State of Michigan, County of _____
My Commission Expires: _____
Acting in the County of _____

Instrument drafted by: Benjamin J. Aloia, Esq. Aloia
Law
48 S. Main Street, Suite 3
Mount Clemens, MI 48043

When recorded, return to: Township Clerk
Macomb Township
54111 Broughton Road
Macomb Township, MI 48042

EXHIBIT A

LEGAL DESCRIPTION including Metes and Bounds for Model Unit

Commonly known as: _____

Tax Parcel ID No. _____