

**CITY OF MILLINGTON**  
**RESIDENTIAL SITE PLAN DEVELOPMENT AGREEMENT**

THIS RESIDENTIAL SITE PLAN DEVELOPMENT AGREEMENT (hereinafter the "Agreement"), is made and entered into this \_\_\_\_ day of \_\_\_\_ 2020, by and between the City of Millington, Shelby County, Tennessee, (hereinafter the "City"), and ECG Wilkinsville SLP, LLC (hereinafter the "Developer"):

**WITNESSETH**

WHEREAS, the Developer is the owner<sup>1</sup> of a tract of land zoned R-4, Multiple Family Residential which contains approximately 10.55 acres (the "Site Plan Site") and desires to improve and develop the Site Plan Site into an Apartment Project with 80 housing units and an office to be known as the Elmington Apartments (the "Site Plan"<sup>2</sup>); and;

WHEREAS, the Millington Planning Commission (hereinafter "Planning Commission") has approved the Site Plan of the Developer with respect to the Site Plan (the "Site Plan Plan") on November 16, 2020, pursuant to Tennessee Code Annotated, Section 13-4-301 et seq., and;

WHEREAS, the Developer is required to install with respect to the Site Plan, in conformance with the Site Plan Regulations and as provided herein, certain Public Improvements, which may include, but not limited to, water lines, fire hydrants, sanitary sewer lines, grading, stormwater drainage system, streets, curbs, gutters, sidewalks, street name signs, traffic control devices, street lights, electrical power and gas utilities in said project at its own cost, and;

WHEREAS, the Developer may be required, pursuant to its application and Planning Commission approval and, as applicable Design Review Committee approval, to install Private Improvements and amenities, including, but not limited to, private streets and alleys, fences, walls, lakes, swimming pools, tennis courts and other recreational facilities, common open space amenities, stormwater retention and/or detention basins, landscaping and related irrigation systems, relative to said Site Plan, none of which shall be accepted for maintenance by the City; and,

WHEREAS, the City is willing to enter into this Agreement with the Developer relative to the development of the Site Plan, and the City is willing to provide services to the Site Plan in accordance with the City's standard policies and applicable rates; and,

WHEREAS, the City is willing to approve the Site Plan subject to the applicant's compliance with applicable existing laws, ordinances, and regulations and the conditions set forth herein;

NOW, THEREFORE, in consideration for the mutual promises herein contained, and other consideration herein recited the parties do hereby agree as follows:

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<sup>1</sup> If the Developer is not the owner of the Site Plan Site but has permission from the owner to develop same, the owner will be required to join herein, and all obligations imposed upon the Developer hereunder shall be the joint and several obligations of the Developer and the owner.

<sup>2</sup> The project contemplated hereunder may be developed under the ordinances and regulations of the City relative to Planned Developments. In such event, terms used herein to refer to Site Plan shall be read so as to apply to such Planned Development.

## 1.0 DEFINITIONS

1.1 *Administrative Guidelines*: Collectively include the following codes and standards:

- (a) The standards of the American Society for Testing Materials (ASTM);
- (b) The requirements of the Occupational Safety and Health Administration (OSHA);
- (c) The requirements of the Federal Americans with Disabilities Act (ADA);
- (d) The Standard Specifications for Road and Bridge Construction of the Tennessee Department of Transportation; and
- (e) The Standards of the American National Standards Institute (ANSI);

References herein to the Codes are to those in effect on the Effective Date unless amendments are hereafter made which apply to all improvements or Site Plans regardless of their date of commencement and/or completion of construction.

*Codes*: Collectively include the following ordinance, regulations and standards:

- (a) Millington Zoning and Site Plan Regulations;
- (b) Standards and specifications contained in "Local Public Works Standard, and Specifications", as amended to include specific requirements for construction in Millington, TN;
- (c) the International Building Code (as adopted by Shelby County Code Enforcement);
- (d) the International Building Code Fire Code; and
- (e) any and all other applicable Ordinances of the City of Millington and Shelby County.

References herein to the Codes are to those in effect on the Effective Date unless amendments are hereafter made which apply to all improvements or Site Plans regardless of their date of commencement and/or completion of construction.

1.2 *Conditions of Approval* are those conditions imposed upon the Developer and/ or the Site Plan by the City of Millington by and through the Board of Mayor and Alderman, Planning Commission, Board of Zoning Appeals, Design Review Committee and or any other applicable Board, Committee or Commission of the City of Millington. These conditions are listed in Exhibit "A", attached hereto.

1.3 *Effective Date*: is the date that this agreement is entered into by and between the parties hereto as demonstrated by their execution of this Contract.

1.4 *Final Site Plan Acceptance*: shall occur after all required Public and Private improvements have been completed by the Developer, to the satisfaction of the City Engineer, City Planner, City Clerk, and the City Manager.

1.5 *Final Plat Approval*: The plat was approved by the Planning Commission on November 16, 2020.

1.6 *Initial Acceptance*: shall occur at the point in time when the Developer has completed all required Public Improvements and Private Improvements as required by the City and specified in Exhibit "A", to the Site Plan Site, and all required Public Improvements off site, relative to the Site Plan, including the final surface asphalt course of off site Public Improvements, but not the final required surface asphalt course on the internal Site Plan streets, and same have been inspected, tested and approved in writing by all of the following: City Engineer, City Planner, City Clerk, and the City Manager. No building permits shall be issued prior to Initial Acceptance. Initial Acceptance shall not occur until such time as as-built plans (as per Section 4.11) shall be submitted by the Developer and inspected by the City Engineer. Initial Acceptance shall not occur until such time as payment of street lighting pursuant to Section 4.4 has been made in full to the City.

1.7 *Lot*: A single fraction or part of the Site Plan as shown by the plat or survey of the Site Plan

Site.

- 1.8 *Payment-in-Lieu of Construction:* is a payment with the approval of the Planning Commission for future construction of those Public Improvements required of the Developer by the City and/or the Planning Commission. This payment shall be non-refundable to the Developer, its agents, or assigns, and there shall be no requirement of the City that said improvements shall be made in a specific period of time. The improvements shall be specified by the City Engineer and attached to this Agreement, if applicable, as an Exhibit "B."
- 1.9 *Private Improvements:* includes all specific improvements to be constructed, such as, but not limited to brick walls, landscaping, fencing, lighting, etc., as required by the City relative to the Site Plan, and which are not Public Improvements.
- 1.10 *Public Improvements:* those improvements to be constructed relative to the Site Plan that are to be dedicated to the City and accepted for perpetual maintenance by the City.
- 1.11 *Security:* a Bond or Letter of Credit issued by a bank or bonding company qualified to do business in the State of Tennessee, to the Developer, naming the City of Millington as beneficiary, and securing the completion of all Public Improvements and Private Improvements. Said bond or letter of credit shall have an expiration date of one (1) year from issuance but shall automatically renew for successive one (1) year periods and is callable upon a local branch (as per Section 7.8) of the issuing bank or bonding company. In accordance with Section 7.0 cash or Certified Check are adequate security acceptable to the City. All provisions of Section 7.0 are made by reference herein as if incorporated and recited here in full.
- 1.12 *Site Plan Site:* those parcels or tracts of land upon which the Developer intends to develop the Site Plan. The Site Plan Site shall include all portions of the parcels or tracts of land shown on the plat, whether any construction activities will take place upon the same or not.
- 1.13 *Site Plan Plans:* are those documents and plans submitted to the City in conjunction with an application for Site Plan approval.
- 1.14 *Warranty Period:* for each Site Plan shall run for one (1) year from the Final Site Plan Acceptance by the City. During the Warranty Period the Developer is responsible for the maintenance and repair of any and all defects and failures of those Public and Private Improvements constructed by the Developer or his agent. Prior to the expiration of the Warranty Period and before the Security will be released by the City, a punch list of items to be repaired or replaced will be given to the Developer by the City and those items shall be completed to the satisfaction of the City Engineer, City Planner, City Clerk, and the City Manager.

## 2.0 OWNERSHIP

- 2.1 The Developer agrees it shall have no claim, direct or implied, in the title or ownership of the improvements specified in this Agreement that are to be dedicated to the City by virtue of them being located in the recorded plat for the Site Plan and accepted for perpetual maintenance by the City, those being the Public Improvements. Upon final acceptance, the City will take full title to the Public Improvements. Maintenance responsibilities of the Developer prior to and after Final Site Plan Acceptance are provided for hereinafter.
- 2.2 Until Initial Acceptance, the Developer agrees that neither the Site Plan Site nor any portion thereof will be transferred without first providing the City with notice of when the proposed

transfer is to occur and who the proposed transferee is, along with the appropriate address and telephone number of the proposed transferee.

2.3 If it is the proposed transferee's intention to develop the Site Plan Site or any portion thereof in accordance with this Agreement, the Developer agrees to furnish the City with an assumption agreement by which the transferee agrees to perform the obligations required under this Agreement that are applicable to the property to be acquired by the transferee. Unless otherwise agreed by the City, the Developer will not be released from any of its obligations hereunder by virtue of such transfer and the Developer and the transferee both shall be jointly and severally liable to the City following such transfer for all obligations hereunder that are applicable to the property transferred. Said assumption agreement will be subject to the approval of the City Attorney.

2.4 If the Developer and the transferee intend to enter into an assumption agreement whereby the Developer is released from its obligations under this Agreement, the Developer must present the assumption agreement to the City for consideration and possible approval by the Board of Mayor and Aldermen. In the event of such approval, the transferee will be required to furnish new Security acceptable to the City.

### **3.0 GENERAL CONDITIONS**

3.1 Construction Standards: The Developer shall construct the Site Plan in accordance with the Site Plan, as approved by the Planning Commission, and if applicable, the requirements of the Design Review Committee, and in accordance with the requirements of (a) the Millington Site Plan Regulations; (b) standards and specifications contained in "Local Public Works Standard, and Specifications", as amended to include specific requirements for construction in Millington, TN; (c) the Building Code (as adopted by Shelby County); (d) the Fire Code (as adopted by Shelby County); (e) the Millington Zoning Ordinance; and (f) the applicable Ordinances of the City. Items (a) through (f) are hereby made a part of this Agreement by reference and are hereinafter referred to collectively as the "Codes". References herein to the Codes are to those in effect on the Effective Date unless amendments are hereafter made which apply to all improvements or Site Plans regardless of their date of commencement and/or completion of construction. The Conditions of Approval established by the Planning Commission, and, as applicable, the Design Review Committee (any or all of which as may have been modified by the Board of Mayor and Aldermen) are set forth in Exhibit "A" to this Agreement and are incorporated herein by reference and made a part hereof.

### **4.0 PUBLIC IMPROVEMENTS**

4.1 General Requirements

4.1.1 Construction of required Public Improvements shall meet standards and specifications contained in the "Local Government Public Works Standards, and Specifications," as amended to include specific requirements for construction in Millington Tennessee.

4.1.2 The construction of all required Public Improvements by the Developer, including, but not limited to, curbs and gutters, street subgrade preparation, temporary surface course, wearing surface, storm drainage, sidewalks as required, water service, utility service, sanitary sewer service, street lighting and other related items shall be undertaken and completed by the Developer in accordance with

Site Plan Regulations and other specifications of the City, all of which are incorporated by reference herein, said Public Improvements requiring approval and acceptance by the City.

- 4.1.3 All drainage, including but not limited to, detention ponds, ditch paving, bank protection, and fencing adjacent to open ditches made necessary by the development of this Site Plan is to be constructed by the Developer and at the Developer's sole expense, on a schedule and according to plans and specifications approved by the engineer appointed by the City to advise the City regarding the construction of the Site Plan (the "City Engineer"). (See Section 4.8).
- 4.1.4 The Developer shall provide necessary erosion control, including but not limited to, seeding for gentle slopes and grass sod for steeper slopes with special grading and terracing as necessary, to the specifications of the City Engineer.
- 4.1.5 All sidewalks and driveway aprons shall be handicap accessible in accordance with ADA requirements and applicable Codes.
- 4.1.6 The Developer and/or Owner is responsible for all public improvements and ADA requirements.

## 4.2 Streets

- 4.2.1 The Developer agrees to dedicate and improve and/or construct, at no cost to the City, all public and/or private streets located within or required by this project to comply with the road standards of the City to the satisfaction and approval of the City Engineer, subject, however, if applicable, to the provisions of subparagraph 4.2.2 immediately below.
- 4.2.2 Upon the application by the Developer to the Planning Commission, the Planning Commission has approved a Payment in-Lieu of Construction in the amount of N/A Dollars, (\$ N/A ) for those improvements set forth in Exhibit "B" attached hereto.
- 4.2.3 The Developer shall bear the cost of all engineering, inspection and laboratory costs procured by the Developer incidental to the construction of street(s) to be constructed or improved pursuant to this Agreement, including, but not limited to, material and density testing; and, if the City deems it necessary to have additional work of such nature performed, the Developer shall bear such costs also.
- 4.2.4 The Developer shall furnish and install asphalt base and a final asphalt surface course (wearing surface) on all streets, public and private, as required hereunder in accordance with the City specifications.
- 4.2.5 It is agreed and understood that if it is not necessary to change the existing grade, alignment or disturb the pavement of an existing street or road, the Developer shall only be required to construct drainage, sub-base, base and pavement to match the existing pavement and construct sidewalks, curb and gutter as required. If the existing grade and/or alignment is changed, the Developer shall be required to grade, prepare sub-base, base and pave the full width of said street or road. Both options must be in accordance with ADA

requirements and applicable Codes

4.2.6 Street Temporary Surface Course: The Developer shall be responsible for street subsurface preparation ("Temporary Surface Course") and, in addition to the detailed specifications, the following requirements, subject to approval by the City, shall apply:

TYPE OF TEMPORARY SURFACE COURSE (Residential Streets with 50' of Right of Way)

- (1) 8" Compacted Gravel Base..... 2" Black Base Asphalt
- (2) 8" Soil Cement Base as designed..... 2" Black Base Asphalt  
by an accepted soils laboratory  
testing firm and under direct  
approval by the City Engineer.

TYPE OF TEMPORARY SURFACE COURSE (All Other Streets with more than 50' of Right of Way)

- (1) 10" Compacted Gravel Base..... 3" Black Base Asphalt
- (2) 10" Soil Cement Base as designed..... 3" Black Base Asphalt  
by an accepted soils laboratory  
testing firm and under direct  
approval by the City Engineer.

Completion of the Temporary Surface Course in all phases shall be required prior acceptance of the Site Plan.

4.2.7 Street Wearing Surface: Developer shall furnish and install a final asphalt surface course (hereinafter "Wearing Surface") as indicated below in accordance with the City's Site Plan Regulations.

THICKNESS OF WEARING SURFACE (Residential Streets with 50' of Right of Way)

- (1) 1-½" Wearing Surface

THICKNESS OF WEARING SURFACE (All Other Streets with more than 50' of Right of Way)

- (1) 2" Wearing Surface

4.2.8 Wearing Surfaces shall not be completed earlier than one (1) calendar year after Initial Acceptance of the Site Plan, except as allowed under Paragraph 4.2.9 below. Wearing Surfaces shall not be installed as directed by the City Engineer. This provision can only be altered by formal written request to the Board of Mayor and Aldermen for the City.

4.2.9 The Developer may request administrative approval to install the Wearing Surface earlier than one (1) calendar year after Initial Acceptance, if 75% of the lots in the Site Plan are complete and occupied. Each such request must be specifically approved in writing by all of the following: City Engineer, City Planner,

City Clerk and the City Inspector.

- 4.2.10 The Developer shall adjust manholes and water valve boxes to meet proposed finished surface elevations prior to application of the Wearing Surface at the sole expense of the Developer.
- 4.2.11 The City specifically reserves the right to require the Developer to repair the Temporary Surface Course as necessary and in such areas that are recommended by the City Engineer or Public Works Department, prior to application of final Wearing Surface.
- 4.2.12 All construction on state routes must be approved and constructed in accordance with TDOT standards and specifications.

#### 4.3 Electricity

- 4.3.1 The Developer shall provide electrical service to each commercial Lot at his sole expense. All electrical lines from the service poles to the buildings are to be underground with transformer boxes located at the building line or rear property line.

The Developer shall provide a copy of the utility plans approved by Memphis Light Gas & Water to the City Engineer.

#### 4.4 Street Lighting

- 4.4.1 The Developer shall provide streetlights for the entire Site Plan at his sole expense. The type of lighting standard, pole spacing, and installation shall be per Memphis Light, Gas and Water standards. Memphis Light Gas and Water shall bill the City for installation of street lighting per its standards.
- 4.4.2 The Developer agrees to pay to the City the estimated cost of the installation street lighting within the Site Plan. The City shall thereafter bill Developer the actual amount charged to it by Memphis Light Gas and Water for the installation of the required street lighting. Developer shall make payment to City within 30 days of billing. City may withhold all other approvals and/or permits within the Site Plan until such payment is made by Developer.
- 4.4.3 There is a street light improvement cost of \$650.00 per lot added to the Bond. This will be removed once the streetlights are installed.

#### 4.5 Telephone and Cablevision

- 4.5.1 Telephone and Cablevision pedestals shall be located in rear yards only.

#### 4.6 Water Service

- 4.6.1 The Developer shall construct the water lines in and serving the Site Plan and pay the City for and to install all meters and make connection of Site Plan to City water system.
- 4.6.2 The Developer shall pay the cost of water main and accessories to serve the Site Plan from a point to be approved by the Planning Commission and the City

Engineer. The Developer will also pay for the water mains and accessories within the Site Plan, including service lines, accessories from the main to the meter and all meters.

- 4.6.3 The Developer shall pay the cost of all engineering, inspection and laboratory cost relating to the water service system in or to the Site Plan, including but not limited to inspection and approval by the Tennessee Department of Public Health. The Developer shall provide the City with copies of comments and certificates from said Department.
- 4.6.4 If required by the City, the Developer shall install fire hydrants in accordance with the type service appropriate, the type and location as approved by the Planning Commission with recommendation from the City's Fire Chief and the City Engineer.
- 4.6.5 Water development fee, \$200.00 per lot or dwelling unit.
- 4.6.6 Water connection fee, \$500.00 plus the cost of the meter.

#### 4.7 Sewer Service

- 4.7.1 The Developer (including any partnership of Developers), at its sole expense, shall develop and construct the sewer extensions, mains and laterals as necessary to service the new development(s) and the increased capacity resulting therefrom.
- 4.7.2 The Developer shall also be responsible and pay for the reasonable expense incurred by the City towards development of the developer's sewer extension and negotiations of this agreement including but not limited to attorney fees and condemnation cost and expenses.
- 4.7.3 The design, route and specifications of said extensions, mains and laterals shall be approved in writing by the City Engineer.
- 4.7.4 The Developer shall not attach said sewer extension and/or main to the City's interceptor sewer system, (including pump stations and/or sewage plant) without the written authority or permission of the Public Works Department to do so. This agreement shall not be construed or interpreted in any way whatsoever as the granting of the authority or permission to attach to, "tie in" and/or "hook on" to the City's interceptor sewer system without the express written authorization of the Public Works Department to do so.
- 4.7.5 The sewage system improvements required for the Site Plan, complete with necessary pump stations, force mains and manholes, shall be approved by the State of Tennessee Department of Environment and Conservation.
- 4.7.6 The Developer shall provide all sewer mains and manholes as provided for in the Site Plan Plans and specifications.
- 4.7.7 The Developer shall provide all sewer laterals from the sewer main to the front property line of each Lot as approved by the City Engineer and provided for in the Site Plan Plans and specifications, including, but not limited to connection to the main and service pipe with plug. The utility trench created across any existing streets shall be backfilled full depth with flowable concrete fill along with asphalt

service equal to the existing pavement section, or as directed by the Public Works Department.

- 4.7.8 The Developer shall pay the cost of all engineering, inspection and laboratory testing incidental to the sewer service in or to the Site Plan.
- 4.7.9 The building permits for the Site Plan shall be withheld until the above stipulations are met in their entirety.
- 4.7.10 Sewer development fee, per lot or dwelling unit is \$500.

Sewer connections made to the main sewer line or any lateral lines whether for residential, industrial, multi-dwelling or commercial use, the sewer development charge shall be the greater of \$1,250.00 per acre or \$500.00 per lot or dwelling unit.

#### 4.8 Drainage Design

- 4.8.1 The Developer shall provide a drainage system which will not increase, alter or affect the flow of surface waters, nor contribute to same, so as to damage, flood or adversely affect any property, either upstream or downstream of the Site Plan. The Developer shall also provide to the City the formal written opinion of a certified and licensed professional engineer certifying, as a professional engineer, that he has reviewed the entire watershed within which the Site Plan is located and that upon full development at the greatest allowable use density, under existing zoning of all land within the watershed, the Site Plan will not increase, alter or affect the flow of surface waters, nor contribute to same, so as to damage, flood or adversely affect any property, either upstream or downstream of the Site Plan. Further, the Developer agrees to hold harmless and to defend the City and the City Engineer from any claim, cause of action or liability, alleged and/or proven, to have arisen directly or indirectly from alteration affecting the surface water by reason of the Developer's design, construction, installation or the development itself, in whole or part. The aforesaid indemnity agreement includes, without limitation, the reasonable expenses of the City incurred in defending itself against any matter covered by such indemnity agreement, including attorney fees and expenses of litigation.
- 4.8.2 The Developer agrees that it will provide necessary erosion control, such as seeding for gentle slopes (4 to 1 or less), grass sod for steeper slopes, with special grading and terracing, to the specifications of the City Engineer. All freshly excavated and embankment areas not covered with satisfactory vegetation shall be fertilized, mulched and seeded and/or sodded as required by the City Engineer to prevent erosion. In the event the City Engineer determines that necessary erosion control is not being provided by the Developer, the proper governing authority shall officially notify the Developer of the problem. If the Developer has not corrected the problem within 7 days after the notice, then the proper governing authority shall make the necessary improvement to eliminate the erosion problem, documenting all expenses incurred while performing the work. Prior to releasing any Security hereunder, all expenses incurred by the governing authority relative to the foregoing shall be paid in full by the Developer plus interest thereon at the rate of ten percent (10%) per annum.
- 4.8.3 Any and all unenclosed watercourses lying partially or wholly within the boundary of the Site Plan Site shall be constructed to an adequate cross section to provide

design flow without threat of erosion or flooding of any property within the Site Plan Site or any adjoining property. Such watercourses shall be lined in a manner satisfactory to the City Engineer and any other agencies which may have jurisdiction.

- 4.8.4 All buildings in the Site Plan will be constructed so as to be safe from flooding in the event of a 100 year flood. As a minimum, the finished floor elevation of all buildings shall be 1' above the 100-year flood elevation as established by the Federal Emergency Management Agency for the City of Millington.
- 4.8.5 The Developer understands and agrees that neither the City in its proprietary function nor the City Engineer in the performance of his professional responsibilities are vested with the original design responsibility or the means to formally survey elevations or the locations of drainage improvements at every state of the construction process, and that, therefore, the ultimate responsibility for compliance with all Site Plan Regulations, approved plans and specifications and Agreement provisions rests with the Developer.
- 4.8.6 The Developer shall pay the cost of all engineering, inspection, and laboratory testing incident to the drainage system of the Site Plan.

#### 4.9 Preconstruction Conference

- 4.9.1 The Developer is required to meet with the City Staff prior to commencing construction for a pre-construction conference. At that conference the execution of the work, specifications, terms and conditions of the Agreement will be discussed.
- 4.9.2 At the time of the Pre-Construction Conference, all development fees must be paid, construction plans must be signed by the City Engineer, the sewer approval has been granted by the State, the Stormwater Pollution Prevention Plan and Notice of Intent must be filed with the State of Tennessee, and the required bond must be posted.

#### 4.10 Street Signage

- 4.10.1 The Developer agrees to install permanent street signposts and markers at all street intersections in the Site Plan and to install traffic control devices, signage and striping relative to the Site Plan. The standards and specifications for public street signposts and lettering can be obtained from the City Planner.
- 4.10.2 Location of street and traffic control signs to be installed shall be approved by the City Engineer. All traffic control devices, signage and striping shall be installed as per the Manual on Uniform Traffic Control Devices and approved by the City Engineer.

#### 4.11 Release of Public Improvements

- 4.11.1 The Developer shall furnish to the City, as-built plans, on a reproducible, stable media, immediately following the completion of the construction. The as-built plans shall be endorsed by a Tennessee Registered Professional Engineer and or a Registered Land Surveyor. The certification in Exhibit "D" shall be added to all sheets of the plans. The as-built plans shall be submitted to the City before the Initial Acceptance by the City. All aspects of the project that have been

affected by construction should be verified and appear on the as-built plans. This would include, but is not limited to, the following items:

- 4.11.1.1 All property lines and easements.
- 4.11.1.2 Elevations (rim & invert) of storm drainage structures.
- 4.11.1.3 Elevations (rim & invert) of sanitary sewer manholes.
- 4.11.1.4 Horizontal location of all storm drains and sanitary sewer structures with station and offsets tied to street centerlines.
- 4.11.1.5 For any streets with less than 1% longitudinal slope, provide as-built gutter elevations at 25' intervals.
- 4.11.1.6 For areas of a Site Plan which were filled to raise the property above the 100-year flood elevation, an as-built topographic survey shall be provided.
- 4.11.1.7 For all detention basins, an as-built topographic survey shall be provided.

4.11.2 The Developer shall provide the City with a copy of the Final Site Plan documents including sewer, water and drainage as - built drawings, using State Plane Coordinate System with NAD – 83 datum on DVD in DXF or DWG format (AutoCAD 2010 or earlier).

4.11.3 The Developer shall have no claim, direct, indirect or implied, to title or ownership of the Public Improvements described in this Agreement from and after Initial Acceptance.

4.11.4 The City, upon Initial Acceptance, shall take full and complete title to the Public Improvements, provided however, the Developer shall be responsible for maintenance, construction failures and defects in all Public and Private Improvements of the Site Plan through the Warranty Period. The Developer shall, at his sole expense, correct and cure such defects and failures in the manner prescribed by and to the satisfaction of the City or the City Engineer.

4.11.5 There is an Inspection Fee Per Lot of the greater of \$300.00 or 3% of the estimated site construction cost. A Recording Fee (first sheet) \$50.00 and Each additional sheet there is an additional fee of \$15.00. The maximum size of a sheet is 18" x 24".

## 5.0 PRIVATE IMPROVEMENTS

- 5.1 All Private Improvements to be completed by the Developer shall be included on either the Site Plan and/or the Conditions of Approval as set forth in Exhibit "A" attached hereto. All Private Improvements shall be completed prior to Final Site Plan Acceptance or as otherwise stated in Exhibit "A".
- 5.2 All Private Improvements and their maintenance thereafter shall be the responsibility of the Developer or his assigns. The Private Improvements shall only be made on property that will **NOT** be dedicated to nor accepted by the City, but instead shall be owned by the Developer, a lot owner and/or a Property Owner's Association.
- 5.3 The Developer shall post Security for a value of the construction of the Private Improvements. The City Engineer shall establish that amount of the Security.

## 6.0 FEES TO BE PAID

- 6.1 In connection with the development of the Elmington Apartments Site Plan, the Developer

shall pay to the City fees, in such amounts and at such times, as set forth below:

I.	Water Development Fee: \$200.00 per 80 units plus the Leasing office. 81 x \$200.00	\$ 16,200.00
	Water Connection Fee \$500.00 (*) plus actual cost of Installation by City at time of construction. 81 x \$500	\$ 40,500.00 (*)
II.	Buildings with sprinkler system. 5 x \$500.00	\$ 2,500.00
III.	Sewer Development Fee: \$500.00 per 80 units plus the leasing office. 81 x \$500.00	\$ 40,500.00
IV.	Sewer Connection Fee \$500.00 per 80 units plus the Leasing office. 81 x \$500.00	\$ 40,500.00
V.	Inspection Fee, Greater of \$300.00 per lot or 3% of the estimated site cost, (168,781.41* .03)=	\$ <u>5,063.44</u>
	<b>TOTAL DUE:</b>	<b>\$ 145,263.44</b>

\*NOTE: SEPARATE CHECKS ARE REQUIRED FOR EACH FEE.

If Site Plan construction is not completed within one (1) year from the date of execution of this Agreement and the fee structure of the City has been amended, the Developer shall be responsible for the payment of fees pursuant to the amended fee structure of the City.

## 7.0 SECURITY REQUIREMENTS

- 7.1 Prior to commencement of work on the site plan, the Developer shall furnish to the City, Security in the form of a Site Plan bond in the amount of the total value and cost of installation of the Public and Private Improvements to be made, plus one year's inflation, until the Site Plan construction has been completed and the Warranty Period has expired. The amount and terms of the bond shall be determined by the City Engineer and approved by the Planning Commission.
- 7.2 The City, in its sole discretion, may, in lieu of a Site Plan bond, accept a Certified Check made payable to the City for the total amount of the total value and cost of installation of the Public and Private Improvements. If the Developer submits a Certified Check in lieu of a bond, he must execute an "Escrow Agreement" with the City in form and substance acceptable to the City and its attorneys, which shall become a part of this Agreement. In the event that the required improvements are built and installed in accordance with the foregoing standards and requirements as approved by the City Engineer, the deposit made in lieu of bond and in accordance with the Escrow Agreement will be returned to the Developer at the end of the Warranty Period. In the event that the construction and installation are not completed or approved by the City, the deposit, or so much thereof as may be necessary, shall be expended as provided in the Escrow Agreement.
- 7.3 The City, in its sole discretion, may, in lieu of a Site Plan bond, accept an irrevocable standby letter of credit exclusively in favor of the City, from an institution approved by the

City, for the total value and cost of installation of the Public and Private Improvements. Said letter of credit shall be upon terms acceptable to the City and the City shall have the right to demand payment of the letter of credit, or so much thereof as may be necessary, in the event that the construction and installation are not completed or approved by the City.

- 7.4 Upon completion of the major improvements, specifically including but not limited to, all Temporary Surface Courses, utility service, water service, sewer service, street lighting, and drainage systems, and upon final inspection and acceptance by the City Engineer, the Developer may request, and the City shall approve upon submission of appropriate documentation as to the cost of completion of the remaining Public and Private Improvements, a reduction in the amount of the Site Plan bond, cashier's check, or letter of credit, to an amount equal to 150% of the cost of completion of the remaining Public and Private Improvements. Provided, however, in no event shall the amount of the Site Plan bond, cashier's check, or letter of credit be reduced to an amount which would be less than the amount recommended by the City Engineer and approved by the Planning Commission to secure the Developer's obligations and with respect to Developer's Warranty Period. The Site Plan bond, cashier's check, or letter of credit, and the amount required by the preceding sentence, shall remain in full force and effect until the expiration of said Warranty Period.
- 7.5 The City reserves the right in its sole discretion to refuse to accept any Site Plan Bond or Letter of Credit from any institution, surety or bank. The City reserves the right in its sole discretion to limit the amount any single institution, surety or bank may guarantee to the City whether under a single development agreement or as a total amount guaranteeing several development agreements from multiple developers.
- 7.6 The City requires that regardless of any other requirement or language to the contrary, that a provision be added in every Site Plan bond or letter of credit that prior to the final expiration date of the Site Plan bond or letter of credit, the institution, surety or bank shall provide to the City of Millington a written statement no earlier than 150 days and no later than 120 days prior to the final expiration date, that the Site Plan bond or letter of credit shall expire and will not be renewed as of that final expiration date.
- 7.7 The City requires that regardless of language to the contrary anywhere in the Site Plan bond or letter of credit, that the Site Plan bond or letter of credit shall specifically state in plain language that should any litigation arise in relation to the Site Plan bond or letter of credit, the proper jurisdiction and venue of such litigation shall be in the appropriate court in Shelby County, Tennessee.
- 7.8 No Site Plan bond or letter of credit will be accepted by the City unless the institution, surety or bank issuing same is authorized and registered to do business within the State of Tennessee and has a local branch (meaning within 100 miles of Millington, TN) for which presentment of a draw is required.
- 7.9 No Site Plan bond or letter of credit will be accepted by the City until such time as it has been reviewed to the satisfaction of the City Engineer, City Planner, City Clerk, City Inspector and the City Attorney.
- 7.10 Calculation of Security. The amount of the Security described above shall be:

**\$ 178,908.29**

Based on an Engineer's Estimate of the cost of Public Improvements the following costs and reduction schedule is calculated for.

Cost of Public Improvements: Streets, Sidewalks, driveways=      \$ 168,781.41

1 Year inflation @ 6%	=	\$ 10,126.88
<b>Total</b>	=	<b>\$ 178,908.29</b>

\* THE SECURITY ABOVE INCLUDES THE PUBLIC IMPROVEMENTS COST REQUIRED FOR THE DEVELOPMENT OF THE Elmington Apartments Site Plan.

\* Cost of gas system, electric system and service is not included, it is managed by contract with MLG&W. Telephone services are managed by local telephone company and likewise cable services.

## 8.0 MISCELLANEOUS

### 8.1 Developer's Responsibility

8.1.1 It is understood and agreed that the City is not and could not be expected to oversee, supervise and/or direct the construction of all improvements contemplated hereunder. Neither is the City Engineer vested with the original design responsibility nor the means to formally survey elevations, capacity, structural integrity, type, adequacy or the locations of improvements at every stage of the construction process. The City Engineer is vested with the right of periodic inspections, final approval and stop work order as a measure of secondary or subsequent enforcement. The Developer now has and shall retain the responsibility to properly anticipate, survey, design and construct the development improvements and give full assurance that same shall not adversely affect the flow of surface water from or upon any property. In providing technical assistance, plan and design review, the City does not and shall not relieve the Developer from or accept any liability from the Developer. The Developer will provide his own Project Engineer whose duty shall be to design improvements that comply with all applicable Federal, State and local codes and ordinances.

### 8.2 Site Plan Plans and Specifications

8.2.1 The Site Plan Plans and specifications presented to the Planning Commission for its approval shall be prepared by a licensed civil engineer, approved by the City, and shall be subject to the review and recommendations of the City Engineer.

### 8.3 Jeopardy of Building Permits

8.3.1 Should the Developer fail to complete any part of the Site Plan in a good and workmanlike manner as determined by the City Engineer, or shall the Developer fail to comply with the contractual obligations of this Agreement then the City shall have the right to withhold and withdraw all building permits, water and sewer service within or to the Site Plan until the Developer has fulfilled all terms of this Agreement, the Site Plan Regulations, and the plans and specifications approved by the City.

### 8.4 Easements

8.4.1 The Developer shall obtain and shall furnish to the City all necessary easements

to serve the Site Plan, said easements to be in form, type, size and character as required by the Site Plan Regulations and/or as approved by the City Engineer and acceptable to the City.

#### 8.5 Compliance with Laws

- 8.5.1 The Developer shall comply with all applicable federal, state and local laws and regulations and shall upon the City's request, furnish proof of compliance.

#### 8.6 Engineering Costs Over and Above Fee Schedule

- 8.6.1 The Developer shall pay one hundred percent (100%) of any and all engineering costs incurred by the City, in addition to those fees specifically set forth in Section 4, 5 and 6 of this Agreement, for review and oversight of the Site Plan. Payment is due within 30 days from the date that the City issues a bill.

#### 8.7 Attorney's Fees/Site Plan Review

- 8.7.1 The Developer shall pay any and all attorney's fees incurred by the City in addition to those fees specifically set forth in Sections 4, 5 and 6 of this Agreement for review of documents, agreements, contracts, proposals and related materials involved in Site Plan. Payment is due within 30 days from the date that the City issues a bill.

#### 8.8 Attorney's Fees/Code Amendments

- 8.8.1 In addition to those fees specifically set forth in Sections 4, 5, 6, 8.7 and 8.9 of this Agreement, the Developer shall pay one hundred percent (100%) of the legal costs, including, but not limited to attorney's fees, associated with any and all amendments to the Millington Municipal Code related to the development of the Site Plan. Payment is due within 30 days from the date that the City issues a bill.

#### 8.9 Attorney's Fees/Enforcement

- 8.9.1 Should the Developer default in any part of this Agreement and it becomes necessary to engage an attorney to obtain compliance with this Agreement and/or file necessary legal action to enforce provisions of the Agreement or sue for any sums of money due and owing or liability arising incident to this Agreement, the Developer agrees to pay to the City its reasonable Attorney's fees associated with such action.

#### 8.10 Effect of Agreement

- 8.10.1 This Agreement is supplemental and in addition to all federal, state, county and local laws, regulations and requirements regarding the development of a Site Plan and is intended to augment, explain, expand and clarify said laws, regulations and requirements. This Agreement may be changed, amended, or terminated only by similar written instrument executed by all parties to be bound thereby.

#### 8.11 Parties Bound

- 8.11.1 All of the terms and provisions of this Agreement shall be binding upon, shall inure to the benefit of, and be enforceable by and against, the parties hereto and

their respective heirs, executors, administrators, successors, and assigns.

#### 8.12 Assignment Limited

8.12.1 The Developer may not assign or delegate its rights or duties under this Agreement without the prior written consent of the City in each instance.

#### 8.13 Severability

8.13.1 If any provision of this Agreement is held to be unlawful, invalid or unenforceable under any present or future laws, such provisions shall be fully severable; and this Agreement shall then be construed and enforced as if such unlawful, invalid, or unenforceable provisions had not been a part hereof. The remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by such unlawful, invalid, or unenforceable provision or by its severance herefrom. Furthermore, in lieu of such unlawful, invalid, or unenforceable provision, there shall be added automatically as a part of this Agreement a provision as similar in terms to such unlawful, invalid, or unenforceable provision as may be possible, and be legal, valid, and enforceable.

#### 8.14 Headings Not Part of Agreement

8.14.1 The heading preceding each paragraph (if any) are inserted merely as a matter of convenience and shall not be deemed to be a part of the Agreement terms.

#### 8.15 Notices

8.15.1 All notices, demands and requests required or permitted by this Contract shall be in writing (including telecopy communications) and shall be sent by facsimile transmission, air or other courier, or hand delivery, as follows:

To: CITY  
City of Millington  
Attn: Karen Findley, City Clerk  
7930 Nelson Street  
Millington, Tennessee 38053

Telephone: 901/873-5740  
Facsimile: 901/461-8595  
E-Mail: k.findley@millingtontn.gov

Any notice, demand or request sent by facsimile transmission shall be deemed given for all purposes under this Agreement when properly transmitted by telecommunication device. Any notice, demand or request which is hand delivered or sent by air or other courier shall be deemed given for all purposes under this Agreement when delivered to the intended address.

#### 8.16 Joinder of Owner

8.16.1 In the event that the Developer is not the owner of the Site Plan Site, the owner joins in this Agreement and by the Owner's execution of this Agreement, the owner is jointly and severally liable for the representations, warranties, covenants, agreements and indemnities as expressly set forth in this Agreement.

8.17 Disclosure of Ownership Interest

8.17.1 The Developer, at the filing of its initial application, completed a Disclosure of Ownership Interest form with the City. The Developer hereby states, certifies and confirms to the City that the information on that form is still true and correct as of the Effective Date, if not then the form shall be revised if necessary. The Disclosure of Ownership Interest form shall be attached as Exhibit "C" to this Agreement and is incorporated herein by reference and made a part hereof.

8.18 Recording

8.18.1 At the option of either party to this Agreement, this document and all Exhibits hereto may be recorded with the Shelby County Register's Office.

IN WITNESS WHEREOF, the parties hereto have affixed their hands and seals at Millington, Tennessee, this the \_\_\_\_\_ day of \_\_\_\_\_, 2020

**REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK**

**DEVELOPER/OWNER**

Elmington Capital Group

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date<sup>3</sup>: \_\_\_\_\_

STATE OF TENNESSEE  
COUNTY OF SHELBY

Before me, the undersigned Notary Public in the State and County aforesaid, personally appeared \_\_\_\_\_, with whom I am personally acquainted, and who, upon oath, acknowledged \_\_\_\_\_ to be the \_\_\_\_\_ for \_\_\_\_\_, the within named bargainer, and that he, as such \_\_\_\_\_, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as such \_\_\_\_\_.

WITNESS my hand and Notarial Seal at office this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires:

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<sup>3</sup> The Effective Date hereof shall be the date upon which the last to sign of the Mayor and Developer executes this Agreement, which date shall be entered on the first page hereof.

**OWNER** (if applicable): \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date<sup>3</sup>: \_\_\_\_\_

STATE OF TENNESSEE  
COUNTY OF SHELBY

Before me, the undersigned Notary Public in the State and County aforesaid, personally appeared \_\_\_\_\_, with whom I am personally acquainted, and who, upon oath, acknowledged \_\_\_\_\_ to be the \_\_\_\_\_ for \_\_\_\_\_, the within named bargainor, and that he, as such \_\_\_\_\_, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as such \_\_\_\_\_.

WITNESS my hand and Notarial Seal at office this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires:

**CITY OF MILLINGTON**

By: \_\_\_\_\_

Mayor

Date<sup>3</sup>: \_\_\_\_\_

ATTEST: \_\_\_\_\_

City Clerk

STATE OF TENNESSEE  
COUNTY OF SHELBY

Before me, the undersigned Notary Public in the State and County aforesaid, personally appeared \_\_\_\_\_, with whom I am personally acquainted, and who, upon oath, acknowledged \_\_\_\_\_ to be the \_\_\_\_\_ for \_\_\_\_\_, the within named bargainer, and that he, as such \_\_\_\_\_, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as such \_\_\_\_\_.

WITNESS my hand and Notarial Seal at office this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires:

APPROVED BY CITY ATTORNEY:

Exhibit "A"

Conditions of Approval

**Planning Commission**

The Planning Commission approved the Site Plan at their meeting on November 16, 2020. The Planning Conditions of Approval are shown below:

1. Replace or repair the sidewalk along Raleigh Millington as needed to repair broken concrete and to bring it into conformance with ADA requirements.
2. Provide a 6' wood fence along the north property line and extend the landscaping to the west property line in this area.
3. Reduce the site lighting to a maximum of 5 FC.
4. The buildings shall be developed with the alternative elevations with white paint on the siding and trim and brown brick as presented by the owner.
5. Add erosion control at the discharge of the storm drain on the South side that carries off-site water, note, this line is a private drain line.
6. Review the spread analysis for storm drainage to inlets on the South end of the parking lot to determine if an additional inlet is needed.
7. The public improvements bond shall be set at \$168,781.41.

Exhibit "B"

Payment-in-lieu of construction – Improvements

(If Applicable)

*Not Applicable*

Exhibit "C"

**DISCLOSURE OF OWNERSHIP INTERESTS**

In order to assist staff and appointed and elected officials of the City of Millington in complying with Ordinances of the City relating to conflicts of interest, the following information is required to be furnished:

1. For Profit Entities. If the applicant submitting this Application ("Applicant") is a for-profit, i.e., general partnership, limited partnership, corporation, limited liability company, R.E.L.T., a trust, or any other form of for-profit business entity, the authorized representative of the Applicant must list below the respective names and business or home addresses of all persons or entities which own 10% or more of the ownership interests in the Applicant. (If another business entity owns 10% or more of the ownership interests in the Applicant, all persons owning a 10% or more interest in such last mentioned entity must be identified by name and business or home address.) (If a trust owns a 10% or more interest in the Applicant, all beneficiaries of 10% or more of the trust assets must be identified by name and business or home address.) The amount of ownership interest does not have to be disclosed.

Applicant: \_\_\_\_\_

Persons or Entities Owning 10% or More of the Ownership Interests of the Applicant:

Name	Business <u>or</u> Home Address
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

2. For Profit Entities. If the owner and any lessee of the land which is the subject of this Application ("Owner and Lessee") is a for-profit entity, i.e., general partnership, limited partnership, corporation, limited liability company, R.E.L.T., a trust, or any other form of for-profit business entity, the authorized representative of the Owner and Lessee must list below the respective names and business or home addresses of all persons or entities which own 10% or more of the ownership interests in the Owner and Lessee. (If another business entity owns 10% or more of the ownership interests in the Owners and Lessee, all persons owning a 10% or more interest in such last mentioned entity must be identified by name and business or home address.) (If a trust owns a 10% or more interest in the Owner and Lessee, all beneficiaries of 10% or more of the trust assets must be identified by name and business or home address.) The amount of ownership interest does not have to be disclosed.

Owner and Lessee: \_\_\_\_\_

Persons or Entities Owning 10% or More of the Ownership Interests of the Owner and Lessee:

Name	Business <u>or</u> Home Address
_____	_____
_____	_____
_____	_____
_____	_____

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3. Not for Profit Entities. If the applicant submitting the Application ("Applicant") is a not for profit entity, the authorized representative of the Applicant must list below the name and business or home address of the President (or equivalent chief executive officer) and the members of its board of directors:

Applicant: \_\_\_\_\_

President or Equivalent

Chief Executive Officer: \_\_\_\_\_

Members of the Board of Directors of the Applicant:

Name	Business <u>or</u> Home Address
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

4. Not for Profit Entities. If the owner and lessee of the land which is the subject of this Application ("Owner and Lessee") is a not for profit entity, the authorized representative of the Owner and Lessee must list below the name and business or home address of the President (or equivalent chief executive officer) and the members of its board of directors:

Owner and Lessee: \_\_\_\_\_

President or Equivalent

Chief Executive Officer: \_\_\_\_\_

Members of the Board of Directors of the Owner and Lessee:

Name	Business <u>or</u> Home Address
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Exhibit "D"

As-built plans are required to be endorsed by a Tennessee Registered Professional Engineer and or a Registered Land Surveyor. The following certification shall be added to all sheets of the plans.

**AS-BUILT CERTIFICATION**

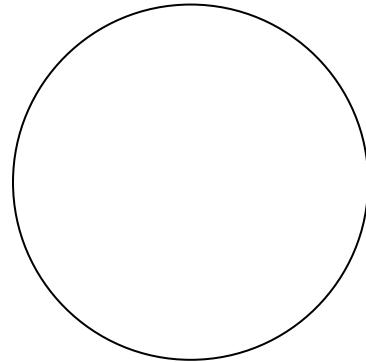
I, \_\_\_\_\_, hereby certify that the As-Built information shown on this drawing is an accurate and complete representation of data established by a field survey performed under my direction on \_\_\_\_\_ (date), and that the improvements were constructed according to the approved plans, except as otherwise noted hereon.

---

Name

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Date



SEAL