

RESOLUTION NO. 38-2005

Offered by All of Council

A RESOLUTION AUTHORIZING THE MAYOR AND THE FINANCE DIRECTOR TO ENTER INTO A DEVELOPMENT AGREEMENT WITH C. J. ZAK, INC. FOR THE DEVELOPMENT OF THE OLDE ORCHARD ESTATES SUBDIVISION AND DECLARING AN EMERGENCY

BE IT RESOLVED by the Council of the Village of Richfield, Summit County, State of Ohio:

SECTION 1. That the Mayor and the Finance Director be, and they hereby are, authorized and directed to enter into a Development Agreement with C. J. Zak, Inc. for the development of the Olde Orchard Estates Subdivision, a copy of which Agreement is attached hereto as Exhibit "A" and incorporated herein fully as if by reference.

SECTION 2. This Resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public health, safety and welfare and for the further reason that it is immediately necessary in order to allow for the construction to proceed at the earliest possible time; wherefore, provided this Resolution receives the affirmative vote of two-thirds of the members of Council elected or appointed, it shall take effect immediately upon its passage and execution by the Mayor; otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

PASSED: 5/17/2005

[Signature]  
President of Council

[Signature]  
Mayor

Dated: 5/17/05

ATTEST:

[Signature]  
Clerk of Council

AGREEMENT

THIS AGREEMENT ("Agreement") made as of the \_\_\_\_\_ day of May, 2005, by and between C. J. ZAK, INC., an Ohio company (hereinafter "Developer") and the VILLAGE OF RICHFIELD, Ohio, a municipal corporation organized under the laws of the State of Ohio (HEREINAFTER, THE "Village").

WITNESSETH:

WHEREAS, Developer is desirous of developing certain lands situated in the Village and now known as Olde Orchard Estates;

WHEREAS, the improvement drawings for Old Orchard Estates have heretofore been filed with the Planning Commission of the Village (the "Planning Commission"), and the Planning Commission has approved the improvement drawings subject to C. J. Zak, Inc. providing adequate security for the construction and installation of the Improvements (hereinafter defined) to be made by Developer;

WHEREAS, Developer desires to comply with Ordinance No. 40-1994, as amended, known as the "Subdivision Ordinance of Richfield Village," so that Developer may proceed with the construction and installation of the Improvements;

WHEREAS, the Improvements (grading, storm sewers, sanitary sewers, paving and storm water management) shall be those improvements to Olde Orchard Estates as are shown on the improvement drawings and are more particularly described in the plans and specifications therefore dated April 18, 2005 prepared by Howard Selee & Associates, as directed by Stephen J. Schreiber, P.E. of Rebierhcs Incorporated ("Developer's" Engineer) and approved by the Planning Commission for the Village and the Engineer for the Village on \_\_\_\_\_ (the "Plans and Specifications"); and

WHEREAS, the Planning Commission has recommended that the Village enter into this Agreement.

NOW, THEREFORE, IT IS AGREED that:

1. Developer, at Developer's cost, shall complete the construction and installation of the Improvements within a period of eighteen (18) months from the date the Village approves the Performance Bond (the "Performance Bond") to be issued by a proper surety or bank, as the case may be, in customary form, and the Performance Bond is delivered to the Village. The Performance Bond is to be delivered to the Village to provide assurance for the proper and timely construction and installation of the Improvements and shall be in the amount of one hundred percent (100%) of the cost thereof, as determined by Developer's Engineer and approved by the Engineer for the Village.

2. The cost of the Improvements has been determined to be Three Hundred Twenty Three Thousand Nine Hundred Thirty Four Dollars (\$323,934.00) for Phase I and Developer has agreed to provide a Performance Bond in a like amount. The Engineer for the Developer has approved the amount of the Performance Bond. Delivery of the Performance Bond shall be a condition precedent to the filing of the plat for record.

3. The Improvements are to be constructed or installed in accordance with the Plans and Specifications and otherwise in compliance withal Village Codes and other applicable laws.

4. The Improvements shall be inspected from time to time by the Village, during the course of the construction and installation thereof at such intervals are determined to be reasonably appropriate by the Village, taking into consideration the phase of the construction being inspected. Each such inspection shall be made by an inspector appointed by the Service Director of the Village and shall be made at Developer's cost, which cost shall be the reasonable and customary cost for the type of inspections to be made. Prior to commencing the construction

and installation of the Improvements, Developer shall deposit with the Village the sum of \_\_\_\_\_ to cover the cost of all inspections to be made by the appointed inspector (the "Inspection Fee Fund"). The Inspection Fee Fund shall be used by the Village to pay for each required inspection as each such inspection is made; provided, however, if the cost of inspections remaining to be made is reasonably estimated by the Service Director for the Village, to be in excess of the then current balance of the Inspection Fee Fund, the Village shall have the right to demand that Developer make an additional deposit to the Inspection Fee Fund to bring such fund to an amount equal to the estimated cost of all remaining inspections. Such deposit shall be made within ten (10) days of the need therefore to Developer. If Developer fails to make the required additional deposit, the Village shall have the right to stop all work on the Improvements until such additional deposit is made. The Village at all times shall keep Developer apprised of the amount of each disbursement from the Inspection Fee Fund and the balance thereof. All sums remaining in the Inspection Fee Fund at the time the Improvements are completed and finally inspected shall be promptly returned to the Developer.

5. The Performance Bond shall remain in place until such time as the Improvements have been completed in accordance with the Plans and Specifications and approved by the Village Engineer, which approval shall not be unreasonably withheld, conditioned or delayed.

6. Upon completion of the Improvements and approval thereof by the Village Engineer, but before the Performance Bond is released by the Village, Developer shall submit to the Village a so-called "Maintenance Bond" in customary form and in an amount equal to ten percent (10%) of the final construction cost of the Improvements. The Maintenance Bond shall guarantee the workmanship and materials used in the construction and installation of the Improvements for a period of eighteen (18) months following the completion thereof.

7. In the event Developer fails to complete the Improvements within the time provided to Developer to do so or in the event Developer fails to construct or install the Improvements in accordance with the Plans and Specifications, the Village shall have the right to proceed as provided for in the Performance Bond and to enter upon the lands comprising Olde Orchard Estates for the purpose of completing the Improvements; provided, however, until such time as the provided Developer for constructing and installing the Improvements has expired, the Village make take no action other than to advise Developer that the Improvements are not in accordance with the Plans and Specifications unless the Village determines that Developer has ceased work on the Improvements and has no intention of proceeding therewith.

8. Prior to the commencement of construction of the Improvements, Developer shall file with the Village a Certificate of Insurance indicating that Developer has obtained Commercial General Liability Insurance for the construction and installation of the Improvements, with the Village named as additional insured, in a single limit amount of not less than \_\_\_\_\_ for personal injuries, including wrongful death due to injuries and damage to property. Such insurance shall be written by a company reasonable acceptable to the Village and authorized to do business in the State of Ohio and shall be maintained in force until the Improvements have been completed. In addition, Developer shall cause to be provided to the Village a so-called "Title Insurance", in customary form and otherwise reasonably acceptable to the Village and in the amount of One Thousand Dollars (\$1,000) covering the road, lands and improvements to be dedicated to public use and showing good title to said dedicated road, lands and improvements in the name of the Village.

9. Promptly following the completion of the construction and installation of the Improvements and the approval thereof by the Village Engineer, the Developer shall offer and

the Village shall accept the dedication of the Improvements as authorized by a Resolution of Council.

10. Upon completion of the Improvements, Developer shall furnish to the Village "as built" drawings of the Improvements on reproducible material and on magnetic computer storage media in a size and format reasonably approved by the Village.

11. Upon execution of this Agreement and the delivery or deposit of all items required to be delivered or deposited hereby, the Village shall issue building and/or zoning permits to Developer for the Improvements.

12. This Agreement shall be made a part of and incorporated in any and the Performance Bond that is to be issued in accordance herewith.

13. This Agreement may be executed in multiple counterparts, each of which shall constitute an original and when taken together, one and the same Agreement.

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IN WITNESS WHEREOF, the parties have set their hands and seals as of the day and year first written above.

C.J. ZAK COMPANY, INC.

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

C. J. Zak, Owner, Developer

VILLAGE OF RICHFIELD, OHIO

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

Mayor

And: \_\_\_\_\_

Finance Director

PLANNING COMMISSION

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

Chairman

APPROVED AS TO LEGAL FORM

\_\_\_\_\_  
Charles T. Riehl, Law Director