

## **JOINT DEVELOPMENT AGREEMENT**

THIS AGREEMENT, entered into this the \_\_\_\_ day of \_\_\_\_\_, 2021, by and between Clayton Properties Group, Inc., a Tennessee corporation, D/B/A GOODALL HOMES, (“Developer”), and the CITY OF SPRING HILL, TENNESSEE, a municipal corporation organized and existing under the laws of the State of Tennessee, hereinafter referred to as “City”.

### **WITNESSETH:**

**WHEREAS**, Developer owns certain real property located on Beechcroft Road in the City of Spring Hill, Maury County, Tennessee, and further identified as Parcel No. 060024 01000, as more particularly described on Exhibit “A” attached hereto and made a part hereof, which parcel includes approximately 239.73 acres (the “Property”); and

**WHEREAS**, Developer is seeking certain development entitlements and approvals from the City to develop Arbor Valley Phase 1, consisting of \_582\_ single family residential units ; and

**WHEREAS**, the Developer in connection with the future development of Arbor Valley Phase 2 , anticipates seeking to obtain development entitlements and approvals from the City and to provide water service to meet all state and local requirements; and

**WHEREAS**, Arbor Valley Phase 1, Arbor Valley Phase 2, and all future phases of said development are hereafter referred to collectively as the “Arbor Valley Project,” and

**WHEREAS**, Developer seeks to provide water service to the Arbor Valley Project to meet all state and local requirements; and

**WHEREAS**, in order to supply water service to the Arbor Valley Project and for the City’s future needs, Developer and the City have agreed to share in the estimated cost of a 1.5 million Gallon potable water storage tank facility (the “Storage Tank”) on the Property in order to provide the requisite water services to the Arbor Valley Project; and

**WHEREAS**, in order to satisfy anticipated future obligations for the development of the Arbor Valley Project and City’s future needs, Developer and the City have entered into this Agreement to allocate the costs of the Storage Tank among them, pursuant to the terms and conditions contained herein.

**NOW, THEREFORE**, in consideration of the mutual covenants and assurances set forth herein, the Developer and the City do hereby agree as follows:

### **1. Recitals**

The foregoing Recitals are incorporated into this Agreement and are made a part hereof.

### **2. Scope of Work**

In connection with the preparation of the site plan and building plans and specifications for the Arbor Valley Project, Developer shall construct on the Property, at its sole expense (subject to the Cost Share obligations of City in this Agreement) and in a location as agreed on by the City and Developer in compliance with construction requirements: (i) a 1.5 Million Gallon water storage facility at an overflow elevation of 903.00 (the "Storage Tank"); and (ii) a twelve ft. (12') wide access road from the public street across the Property to the site of the Storage Tank (the "Access Road"). The Storage Tank and Access Road shall be completed prior to the issuance of the first certificate of occupancy for a single-family residence located in Arbor Valley Phase 2. The Storage Tank shall be fully operational and connected to the City's municipal water supply for use in the Arbor Valley Project in Beechcroft Road.

### **3. Developer Responsibilities**

Within 30 days following FMDP approval by the City of Arbor Valley Phase 1, the Developer shall provide:

- 1) scope of work for Storage Tank and related improvement including Access Road;
- 2) preliminary plans for Storage Tank and related improvements including Access Road; and
- 3) preliminary estimate of probable cost for Storage Tank and related improvements including the Access Road
- 4) any additional items as applicable.

The FMDP documentation shall be reviewed by the City's consultant engineer to ensure the preliminary plan conforms with City requirements including elevation of the tank. The City will issue residential building permits for Arbor Valley Phase 1 following the submittal of the foregoing FMDP. Following review by City staff and the City's consultant engineer, the approval of said plans not being unreasonably withheld or delayed by the City or its consultant engineer, the Developer will proceed with preparing final construction plans and specifications for submittal to the City and the State of Tennessee.

The Developer shall submit for review and approval to the City and State of Tennessee construction plans, specifications, and other required supporting documentation for issuance of required permits for construction of the Storage Tank and Access Road. A final estimate of probable cost shall be prepared by the Developer and submitted to the City, upon securing the required permits. The Developer shall proceed with the construction of the Storage Tank and related improvements including the Access Road. The Developer shall be required to furnish to the City a Performance Bond in the amount of Forty percent (40%) of cost of Storage Tank, in a form acceptable to the City as provided in the Unified Development Code for the City of Spring Hill, as financial surety for the construction of the Storage Tank and Access Road. The Storage Tank and related improvements including the Access Road shall be constructed to City standards and other authorities having jurisdiction including the State of Tennessee.

Following completion of construction of the Storage Tank and Access Road, the Developer shall provide a Maintenance Bond in the amount of Forty percent (40%) of cost of Storage Tank project and all associated items including the Access Road constant with the approved construction drawing dated 10/27/2021, in a form acceptable to the City of Spring Hill as financial surety during the Warranty Period set out in Section 6 of this Agreement, as required by the Unified Development Code of the City of Spring Hill. In addition, the Developer shall provide a detailed final accounting of the actual cost of construction incurred in the construction of the Storage Tank and related improvements, including the Access Road.

#### **4. City Responsibilities/Cost Share of City**

The City shall promptly review and process each request for payment by Developer and process such payment with 45 days of an approved invoice of receipt of each invoice.

#### **5. Cost Share of Storage Tank**

Cost Share of Storage Tank is as follows: Sixty percent (60%) City responsibility and Forty percent (40%) Developer Responsibility for costs set out in Exhibit B to this Agreement, based upon a final estimate of probable costs provided by Developer, together with detailed breakdown and reimbursement schedule of costs by City.

#### **6. Dedication and Warranty of Storage Tank**

Upon completion of the Storage Tank project, the Storage Tank and any property identifying as required to service the Storage Tank shall be dedicated free and clear of encumbrances to the City, together with a permanent easement for the Access Road.

The Developer warrants the work performed by the Developer for a period of one year after the City's acceptance of the Storage Tank and related improvements (the "Warranty Period"). In the event the Storage Tank requires repairs or replacements during the Warranty Period, the Developer shall complete such repairs and replacements for the Storage Tank.

#### **7. Inspection during construction**

The City of Spring Hill or its designee shall have full access to the construction site and conduct on-going and regular on-site inspections of construction of the Access Road, the foundation, and the Storage Tank itself.

#### **8. Agents for City and Developer**

The agent of the City for the purposes of this Agreement is the City Administrator of Spring Hill, Tennessee, or his/ her designee. The agent for the Developer is Chris ONeal.

## **9. Further Assurances**

The Parties each hereby agree to execute and deliver all of the agreements and documents required to be executed and delivered by them in this Agreement and the instruments attached hereto, and to execute and deliver such additional instruments and documents and to take such additional actions as may be reasonably required from time to time in order to effectuate the transactions contemplated by this Agreement and the instruments attached hereto.

## **10. Notices and Communication**

Notice may, unless otherwise provided herein, be given or served: (i) by depositing the same in the United States mail, certified, with return receipt requested, addressed to the party to be notified and with all charges prepaid; or (ii) by depositing the same with Federal Express or another service guaranteeing "next day delivery", addressed to the party to be notified and with all charges prepaid; or (iii) by delivering the same to such party, or an agent of such party, by email and followed by telephone confirmation of receipt, or by hand delivery. Notice deposited in the United States mail in the manner herein above described shall be deemed effective from and after the earlier of the date of actual receipt or three (3) days after the date of such deposit. Notice given in any other manner shall be effective only if and when actually received at the address of the party to be notified. Notwithstanding the foregoing, if a Notice is delivered by hand or is received by email on a day which is not a Business Day, as hereinafter defined, or after 5:00 P.M. on any Business Day at the addressee's location, such notice or communication shall be deemed to be actually received by the recipient at 9:00 A.M. on the first Business Day thereafter. For the purposes of notice, the addresses of the parties shall, until changed as provided below, be as follows:

Office of City Administrator of Spring Hill, Tn.  
ATTN: Pamela Caskie  
199 Town Center Parkway  
Spring Hill, TN 37174  
Phone: 931-486-2252  
Email: pcaskie@springhilltn.org

The mailing address of Developer for the purposes of notification requirements of this Agreement shall be:

Clayton Properties Group, Inc. a Tn corporation, D/B/A GOODALL HOMES  
Attn: Chris ONeal  
393 Maple Street, Suite 100  
Gallatin, TN 37066  
Phone: 615-681-4335  
Email: coneal@goodallhomes.com

## **11. Non-Waiver**

None of the terms, covenants or conditions of this Agreement shall be deemed waived by any act of either Party unless same is specified in writing executed by all Parties hereto.

## **12. Liability**

The City shall have no liability except as specifically provided in this Agreement. All liability and obligations of Developer arising under this Agreement shall cease one (1) year after the expiration of the Warranty Period.

## **13. Governing Law**

This Agreement shall be construed under and enforced pursuant to the laws of the State of Tennessee.

## **14. Venue and Jurisdiction**

Exclusive venue and jurisdiction for any litigation brought pursuant to or with regard to this Agreement shall be in the Circuit Court for Maury County, Tennessee.

## **15. Severance**

Should any provision of this Agreement be declared invalid, illegal, or unenforceable by a court of competent jurisdiction, the invalidity, illegality, or unenforceability shall not affect other provisions of this Agreement, which shall remain in full force and effect.

## **16. Captions**

Captions of the sections of this Agreement are for convenience and reference only and shall in no way be held to explain, modify, amplify, or aid in the interpretations, construction, or meaning of the provisions of this Agreement.

## **17. Amendment**

This Agreement shall be amended only in writing executed by all Parties hereto.

## **18. Assignment**

This Agreement shall not be assigned by the Developer to a third party without timely prior written consent of the City, which shall not be unreasonably withheld.

## **19. Time is of the essence.**

All Parties hereto acknowledge that time is of the essence, and each party will commit to its timely compliance with this Agreement. The Parties agree that the City's and its consultant engineer's timely response to request for approvals, reimbursement of costs, and other requests of Developer in connection with this Agreement is crucial to the Developer's timely completion of the Storage Tank and related improvements, including the Access Road. City and City's consultant engineer shall respond to Developer's request for approvals in connection with this Agreement within seventy-two (72) hours of receipt of Developer's written request therefore. Developer agrees to comply with the Project Schedule to be provided to City not later than thirty (30) days after BOMA approval and other related improvements, including the Access Road. City agrees to comply with the detailed payment schedule for reimbursement of costs to Developer attached as part of the Cost Share Exhibit to this Agreement. The estimated date of completion of construction of the Storage Tank and other related improvements, including the Access Road is set out on the Schedule Exhibit attached hereto, subject to the provisions of Section 24 herein.

## **20. Binding Effect**

This Agreement shall be binding upon each of the parties hereto, their successors, heirs and assigns and that there are no understandings or agreements between them except as contained in this Agreement.

## **21. Entire Agreement**

This writing constitutes the entire agreement between the Parties and supersedes all previous agreements, if any. No Party to this Agreement makes any representation to the other Party, except as expressly set forth in this Agreement.

## **22. Execution**

This Agreement may be executed in one or more identical counterparts, each of which shall be deemed to be an original for all purposes, and all of which taken together shall constitute a single instrument.

## **23. Business Days/Weekends or Holidays.**

A "Business Day" is any day other than a Saturday, Sunday or legal holiday in Spring Hill, Tennessee. If any date or any period provided in this Agreement ends on a day other than a Business Day, the applicable period shall be extended to the first Business Day thereafter.

## **24. Force Majeure.**

In the event either party is unable to perform its obligations under the terms of this Agreement because of acts of God, strikes, equipment or transmission failure or damage reasonably beyond its control, failure to obtain materials and/or supplies delays resulting from the COVID-19 pandemic, or other causes reasonably beyond its control, such party shall not be liable for damages to the other for any damages resulting from such failure to perform or otherwise from such causes.

Within 24 hours of the occurrence of a Force Majeure Event, the affected party shall notify the other party of the occurrence by sending an e-mail message to the other party. In addition, the affected party shall provide to the other party within seven (7) days of determining the cause of the Force Majeure Event a written explanation concerning the circumstances that caused the Force Majeure Event, and a procedure to cure said failure to perform if cure is possible.

**25. Disputes; Non-binding Mediation, Binding Arbitration; Legal Fees.**

In the event that any dispute shall arise which shall not otherwise be resolved by the Parties, the following mediation and arbitration procedures shall apply:

A. Within twenty (20) days of delivery of written notice by either party that mediation shall be pursued as a potential remedy, either party may refer the dispute to the American Arbitration Association (AAA); AAA shall then appoint a mediator who shall conduct non-binding mediation. The cost of mediation shall be borne equally by the Parties, unless a party shall refuse to attend mediation, in which event the Party refusing attendance shall bear the cost and expenses of AAA and its mediator.

B. If the mediation process provided for above shall be unsuccessful in causing the parties to reach an agreement, or if a Party shall refuse to attend mediation, then upon twenty (20) days prior written notice by either Party, the dispute may be submitted to AAA, who shall then appoint one (1) arbitrator to hear the dispute. The Parties may be represented at arbitration by legal counsel if they desire. The decision of the arbitrator shall be final and binding on all Parties in all respects and shall not be appealed or appealable to any court. Further, on application of any Party, the decision of the Arbitrator may be converted to a judgment of the Chancery Court for the County in which the Property is situated, and the parties do hereby consent to entry of same. The Arbitrator may apportion fees and costs between the parties including reasonable attorney fees and cost of arbitration, based upon the merits of the Parties respective positions, as decided in the sole discretion of the arbitrator

**Approved by the City of Spring Hill Board of Mayor and Alderman on \_\_\_\_\_,  
2021.**

SO AGREED by the undersigned parties as of the date first given.

Clayton Properties Group, Inc., a TN corporation  
**D/B/A GOODALL HOMES**

**CITY OF SPRING HILL, TENNESSEE**

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

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

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

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

Exhibit A

[Arbor Valley Phase 1 and Phase 2]



Exhibit B  
Cost and City Reimbursement Schedule

Exhibit C  
Construction Schedule