

SET ASIDE AND ESCROW AGREEMENT

THIS SET ASIDE AND ESCROW AGREEMENT (this "Agreement") is made and entered into as of the ____ day of _____, 2015, by and among THE CITY OF AVON, OHIO, an Ohio municipal corporation (the "City"), FRONTIER FAIRFIELD, LLC, an Ohio limited liability company (the "Developer") and _____ (the "Lender"). The City, the Developer and the Lender are sometimes collectively referred to as the "Parties".

RECITALS:

A. The Developer is in the process of developing a 26-lot subdivision known as Fairfield Estates Subdivision No. 3 located in the City of Avon, Ohio (the "Project").

B. The Lender has made available to the Developer a loan (the "Loan") for the purpose of financing the construction of the improvements related to the Project.

C. The Developer and the City have entered into a Subdivider's Agreement, dated as of _____, 2015 (the "Subdivider's Agreement") assuring to the City the proper installation of those infrastructure and street improvements to be installed by the Developer at the Project that are to be dedicated to, and accepted by, the City (the "Improvements").

D. In accordance with the terms of the Subdivider's Agreement, the Developer is required to provide security to the City in the amount of Six Hundred Fifty Thousand One Hundred Forty Six Dollars (\$650,146.00) (the "Set Aside Funds") to assure the City as to the timely completion of the installation of the Improvements.

E. The Parties are entering into this Agreement to set forth their agreements concerning the Set Aside Funds.

AGREEMENTS:

In consideration of the foregoing Recitals and the mutual covenants and agreements contained herein, the Parties agree as follows:

1. SET ASIDE. Contemporaneously with the execution of this Agreement, the Lender shall set aside the Set Aside Funds out of the Loan and reserve the same for the benefit of the City for the purposes set forth in the Subdivider's Agreement. The Lender agrees that the Set Aside Funds shall only be withdrawn for the payment of the Improvements when such withdrawal has been authorized by the City in writing. The City shall authorize such withdrawal by providing to the Lender a written authorization certifying that the Improvements have been installed in accordance with the Subdivider's Agreement. Both the Developer and the Lender agree that no withdrawal of Set Aside Funds shall be made without the authorization of the City.

2. ESCROW ACCOUNT.

(a) The Developer agrees that in the event that the Developer fails to complete or pay for the Improvements in accordance with the Subdivider's Agreement by _____, 2017, the City may notify the Lender in writing thereof and may direct the Lender to deposit the Set Aside Funds (or such portion thereof as may in the reasonable judgment of the City be necessary to complete and pay for the Improvements) in an escrow account established at the Lender for the benefit of the City (the "Escrow Account"); provided, however, that prior to directing the Lender to make such deposit, the City shall have notified the Developer in writing of its failure to complete or pay for the Improvements as required herein and shall have provided the Developer with no less than ninety (90) days to cure such failure. Thereafter, the City shall have the right to complete the Improvements and/or make payment therefor by appropriating all or any portion of the funds on deposit in the Escrow Account. The Lender hereby agrees that it shall comply with the written direction of the City pursuant to this Section 2 without the necessity of any notice to, or consent or approval of, the Developer.

(b) The Developer agrees that the deposit by the Lender of all or any portion of the Set Aside Funds in the Escrow Account as contemplated by this Section 2 shall be deemed to be an advance of the Loan as of the date of the deposit thereof in the Escrow Account. As between the Developer and the Lender, the advance shall be governed by the loan agreement and other loan documents executed by the Developer in connection with the Loan.

3. DUTIES AND OBLIGATIONS OF THE LENDER. The Lender, in its capacity as escrow agent in respect of the Escrow Account, shall, in the performance of its duties, be governed by the following provisions:

(a) No Additional Duties. The Lender shall have no responsibility except for the performance of its express duties as set forth in this Agreement and no additional duties shall be inferred or implied.

(b) Acts or Omissions. The Lender shall not be responsible or liable for any act or omission or for any claim, demand, loss, or damage made or suffered by any party to this Agreement, unless such act or omission constitutes willful misconduct, gross negligence, or fraud on the part of the Lender or its employees.

(c) Litigation. The Lender shall not be required to institute or defend any action involving any matters referred to in this Agreement or which affect it or its duties or liabilities in this Agreement; provided, however, in the event that the Lender determines to do so, the Developer agrees that it shall fully indemnify the Lender, against any and all claims, damages, liabilities, costs, and expenses, including reasonable attorneys' fees, in relation thereto.

(d) Reliance Upon Counsel or by Court. In the event of any dispute between or among the parties to this Agreement, the Lender (i) may act or refrain from acting in reliance upon and with the advice of counsel selected by it and shall be fully protected in so acting or refraining from acting on the advice of counsel; or (ii) may refrain from acting until required to do so by final adjudication by a court of competent jurisdiction; or (iii) may file an interpleader

action with the Court of Common Pleas of Portage County, Ohio. The cost of such counsel and the cost of such action, including reasonable attorneys' fees incurred by the Lender, shall be paid by the Developer, unless a court of competent jurisdiction orders otherwise.

4. INDEMNIFICATION. The Developer agrees to indemnify and hold the Lender and its employees and their heirs, personal representatives, successors, and assigns harmless from any claim, loss, liability, action, damage, or expense, including, without limitation, reasonable costs and expenses of litigation and appeal and attorneys' fees, resulting from or arising out of any act or omission of the Lender or its employees in connection with this Agreement. The Lender or its employees shall not, however, be entitled to be indemnified or held harmless due to, or arising from, either fraud, gross negligence, willful misconduct or bad faith.

5. NOTICES. All notices and other communications required or permitted under this Agreement shall be in writing and shall be delivered or sent to the parties at the addresses set forth below, or at such other address that a party shall designate to all other parties in accordance with this Section 5:

(a) If to the Lender: _____

Attn: _____

(b) If to the Developer Frontier Fairfield, LLC
26401 Emery Road, #104
Warrensville Heights, Ohio 44128
Attn: Mark Holz

(c) If to the City The City of Avon, Ohio
36080 Chester Road
Avon, Ohio 44011
Attn: John A. Gasior, Law Director

All notices and communications shall be deemed to have been received: (i) in the case of personal delivery, on the date of such delivery; (ii) in the case of overnight air courier, on the second business day following the day sent, with receipt confirmed by the courier; and (iii) in the case of mailing by first class certified or registered mail, postage prepaid, return receipt requested, on the date of delivery or first attempted delivery which was refused, as evidenced by the certified or registered mail receipt.

6. BINDING EFFECT. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, personal representatives, successors, and assigns.

7. APPLICABLE LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

8. TERMINATION. This Agreement shall terminate at such time as (i) the City has notified the Lender that all of the Improvements have been installed and paid for in accordance with the terms of the Subdivider's Agreement, or (ii) at such time as all of the proceeds in the Escrow Account have been withdrawn by the City as provided in Section 2, above.

9. COUNTERPARTS; FACSIMILE SIGNATURES. This Agreement may be executed in one or more counterparts, and the execution and delivery of those counterparts by each of the Parties shall have the same force and effect as if all of the Parties had signed the same counterpart. Any signature delivered by a Party by facsimile transmission shall be deemed an original signature hereto.

(signatures on following page)

IN WITNESS WHEREOF, the parties hereto have executed this Escrow Agreement on the dates set forth opposite their respective signatures below.

Dated: _____, 2015

By:_____

Its:_____

“Lender”

FRONTIER FAIRFIELD, LLC

Dated: _____, 2015

By:_____

Mark Holz, Member

“Developer”

CITY OF AVON, OHIO

Dated: _____, 2015

By:_____

Its:_____

“City”

Approved as to Legal Form:

John A. Gasior, Law Director