

## DEVELOPMENT AGREEMENT

This Development Agreement (this “Agreement”) is executed this \_\_\_\_ day of \_\_\_\_\_, 2025, by and between Drees Premier Homes, Inc., an Ohio corporation (“Drees”), its successors and assigns, and the Town of McCordsville (“Town”), an Indiana political subdivision. Collectively, the parties hereby state as follows:

### Recitals

WHEREAS, Drees intends to develop and construct a new residential subdivision in the Town commonly called the Creekside Planned-Unit Development (“Project Site”);

WHEREAS, the Project Site is proposed to include approximately 164 single-family dwelling units;

WHEREAS, in an effort to accommodate the Project Site, the parties believe it is in the best interests of the community to widen and slightly realign County Road 750 North (“Project”), which runs adjacent to the Project Site;

WHEREAS, the Project is expected to provide economic development and redevelopment activity in the Town and to assist in further additional development and redevelopment in the Town; and

WHEREAS, the parties desire to enter into this Agreement;

NOW, THEREFORE, in consideration of the mutual promises made and benefits conferred herein, the Town and Drees agree as follows:

1. Responsibilities of Drees. Drees shall perform the following commitments (the “Commitments”) in connection with the development of the Project:

- (a) Within sixty (60) days of the latter of (i) Primary Plat approval or (ii) approval by the town engineer of the preliminary configuration of the Project, Drees agrees to design the plans for the Project and give to the Town for review;
- (b) Drees agrees to make modifications to the design plans within thirty (30) days if so requested by the Town following an internal review;

- (c) Drees agrees to dedicate necessary right of way to the Town for the Project in accordance with the Town's Thoroughfare Plan prior to initiation of the development of phase 1 of the subdivision;
- (d) Drees agrees to remit payment to the Town for the cost of construction as costs are incurred ("Cost"). Payment shall be made only for those expenses that have been documented and verified as having been incurred in the course of construction. Cost shall include all reasonable and necessary expenses directly associated with the development of the Project, including but not limited to site preparation, materials, labor, contractor fees, permits, fees, and other related costs for the construction and completion of the Project. Payment shall be remitted within ten (10) business days of Town providing an invoice from any contractor who was awarded a bid for the Project.

2. Responsibilities of Town. Town shall perform the following duties in connection with the Project:

- (a) Within thirty (30) days of receiving the proposed plans from Drees, Town agrees to review the plans for compliance with the Town's Thoroughfare Plan;
- (b) If the plans are not in compliance or the Town wants to see modifications made to the plans, it will submit a timely request to Drees, which Drees shall reasonably accommodate.
- (c) Once the plans are accepted by the Town, the Town agrees to follow the Indiana public bidding process for the Project;
- (d) Town further agrees to oversee the construction and diligently pursue successful completion of the Project; however, Town is not obligated to initiate construction of the Project prior to Drees' closing on the initial takedown of the Property.

3. Termination Right. In the event that Drees has not closed on the initial takedown of the Property within twelve (12) months following the full execution of this Agreement, Drees shall have the right, in its sole and absolute discretion, to terminate this Agreement upon written notice to Town. Upon such termination, neither Party shall have any further obligations or liabilities to the other under this Agreement, except for those obligations which expressly survive termination.

4. Section 2 Plat Approval Not Conditioned on Completion of Project. Notwithstanding any provision to the contrary in this Agreement or the PUD Ordinance, if Drees submits a request for approval of the Section 2 Plat, and Drees is not in default

of any material term of this Agreement as of the date of such request, then Town shall not withhold, delay, or condition its approval of the Section 2 Plat on the completion of any construction, improvements, or obligations required to be performed by Town. Town shall proceed with approval of the Section 2 Plat in the ordinary course, subject only to compliance with applicable legal and procedural requirements not related to the Town's own outstanding construction obligations on the Project.

5. Breach. If Drees does not fulfill its Commitments, this Agreement shall be null and void and Drees will be fully responsible for the costs and construction of the Project, unless the Agreement has been assigned to a third party in accordance with the terms of this Agreement and the third party has assumed all of Drees' obligations under this Agreement, in which case the third party shall be responsible for fulfilling the Commitments.

6. Insurance. During construction of the Project, Town will ensure the selected contractor and all of its sub-contractors maintain all necessary and acceptable policies of general liability insurance and casualty insurance during construction.

7. Default.

(a) Events of Default. It shall be an "Event of Default" if one of the following occurs:

(i) Drees fails to timely satisfy its Commitments and its failure to complete is due to the fault of Drees and not due to the acts or omissions of the Town or any Third Party; or

(ii) if either party fails to perform or observe any term or condition of this Agreement to be performed or observed by it within thirty (30) days after a party failing to perform or observe any term or condition of this Agreement receives notice specifying the nature of the failure; provided that, if the failure is of such a nature that it cannot be remedied within thirty (30) days, despite reasonably diligent efforts, then the thirty (30) day period shall be extended as reasonably may be necessary for the defaulting party to remedy the failure, so long as the defaulting party: (a) commences to remedy the failure within the thirty (30) day period; and (b) diligently pursues such remedy to completion.

(b) General Remedies. Whenever an Event of Default occurs, the non-defaulting party may take whatever actions at law or in equity are

necessary or appropriate to: (i) protect the rights granted to the non-defaulting party under this Agreement; (ii) enforce the performance or observance by the defaulting party of any term or condition of this Agreement (including, without limitation, the right to specifically enforce any such term or condition); or (iii) cure, for the account of the defaulting party, any failure of the defaulting party to perform or observe a material term or condition of this Agreement to be performed or observed by it. If the non-defaulting party incurs any costs or expenses in connection with exercising its rights and remedies under, or enforcing, this Agreement, then the defaulting party shall reimburse the non-defaulting party for all such costs and expenses, together with interest at the rate of 8% per annum, including attorney's fees.

(c) No Remedy Exclusive. No right or remedy herein conferred upon, or reserved to, a non-defaulting party is intended to be exclusive of any other available right or remedy, unless otherwise expressly stated; instead, each and every such right or remedy shall be cumulative and in addition to every other right or remedy existing at law or in equity. No delay or omission by a non-defaulting party to exercise any right or remedy upon any Event of Default shall impair any such right or remedy, or be construed to be a waiver thereof, and any such right or remedy may be exercised from time to time, and as often as may be deemed to be expedient. To entitle a non-defaulting party to exercise any of its rights or remedies, it shall not be necessary for the non-defaulting party to give notice to the defaulting party, other than such notice as may be required by this Section or by the Laws.

8. Indemnification. Town shall indemnify and hold harmless Drees from and against any and all claims arising from, or in connection with: (i) the negligence or willful misconduct of Town or its employees or contractors; (ii) mechanic's liens filed against the Project to that extent such liens relate to the performance of any work on the Project by Town or its contractors; (iii) the breach by Town of any term or condition of this Agreement; (vi) any Release or threat of Release of any Hazardous Substances on, in, under or affecting all or any portion of the Project or any surrounding areas occurring prior to the execution of this Agreement; and (vii) any violation of any laws relating to or affecting the Project or operations at the Project occurring prior to the execution of this Agreement and not caused or contributed to by Drees.

The terms and conditions of this Section shall survive the termination of this Agreement.

9. Assignment. Drees shall not sell, transfer, mortgage, or lease any portion of the Project in which Drees has an interest without the prior written approval of Town, except that Drees may execute and deliver any necessary Project Loan Documents and as provided in (c) below. Neither Town nor Drees shall assign this Agreement without the prior written approval of the other party; provided that: (a) without the prior written approval of Drees, Town may assign this Agreement to another agency, board, commission, department and/or instrumentality; and (b) without the prior written approval of Town, Drees may collaterally assign this Agreement to the Project lender; and (c) without the prior written approval of Town, Drees shall have the absolute right to assign its interest in this Agreement to a third party if Drees enters into an agreement with a third party to purchase finished lots. Notwithstanding any assignment permitted under this Section, Town or Drees, as the case may be, shall remain liable to perform all of the terms and conditions to be performed by it under this Agreement, and the approval by the other party of any assignment shall not release Town or Drees, as the case may be, from such performance unless the third party assumes all of Drees' obligations hereunder.

10. Notice. Any notice required or permitted to be given by either party to this Agreement shall be in writing, and shall be deemed to have been given when: (a) delivered in person to the other party; or (b) sent by national overnight delivery service, with confirmation of receipt, addressed as follows: to Town at 6280 Vail Road, McCordsville, IN 46055, Attn. Town Manager; with a courtesy copy to Copeland Law LLC, 11560 Olio Road, Suite 1000-184, Fishers, IN 46037, and to Drees at 900 E. 96<sup>th</sup> St., Suite 100, Indianapolis, IN 46240, Attn. Keith Lash, with a courtesy copy to Keating Muething & Klekamp, PLL, One East Fourth Street, Suite 1400, Cincinnati, OH 45202, Attn. Carey K. Steffen, Esq. Any party may change its address for notice from time to time by delivering notice to the other party as provided above.

11. Authority. Each undersigned person executing this Agreement on behalf of Town and Drees represents and certifies that: (a) he or she has been empowered and authorized by all necessary action of Town and Drees, respectively, to execute and deliver this Agreement; (b) he or she has full capacity, power, and authority to enter into and carry out this Agreement; and (c) the execution, delivery, and performance of this Agreement duly have been authorized by Town and Drees, respectively.

12. Force Majeure. Notwithstanding anything to the contrary set forth herein, if any party is delayed in, or prevented from, observing or performing any of its obligations under, or satisfying any term or condition of, this Agreement as a result of Force Majeure; then: (a) the party asserting Force Majeure shall deliver written notice to the other party; (b) such observation, performance, or satisfaction shall be excused for the

period of days that such observation, performance, or satisfaction is delayed or prevented; and (c) the deadlines for observation, performance, and satisfaction, as applicable, shall be extended for the same period.

13. Miscellaneous. Subject to Section 7, this Agreement shall inure to the benefit of, and be binding upon, Town and Drees, and their respective successors and assigns. This Agreement constitutes the entire agreement between Town and Drees with respect to the subject matter hereof, and may be modified only by a written agreement signed by Town and Drees. The invalidity, illegality, or unenforceability of any one or more of the terms and conditions of this Agreement shall not affect the validity, legality, or enforceability of the remaining terms and conditions hereof. Whenever in this Agreement a singular word is used, it also shall include the plural wherever required by the context and vice versa. This Agreement shall be governed by, and construed in accordance with, the laws of the State of the Indiana. All Exhibits to this Agreement are attached hereto and incorporated herein by reference. Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent, or of partnership, or of joint venture, between the parties hereto. Town and Drees agree that all disputes arising, directly or indirectly, out of or relating to this Agreement, and all actions to enforce this Agreement, shall be dealt with and adjudicated in the state courts of the State of Indiana, County of Hancock and for that purpose each party hereby expressly and irrevocably submits itself to the jurisdiction of such courts. Except as otherwise specifically provided herein, nothing expressed or implied in this Agreement is intended, or shall be construed, to confer upon or give any person, firm or corporation, other than Drees and Town, any rights or remedies under or by reason of this Agreement.

[Signature page to follow.]

IN WITNESS WHEREOF, Town and Drees have caused the execution of this Agreement as of the day, month and year first above written.

**"TOWN"**

**Town of McCordsville**

By: \_\_\_\_\_  
Greg Brewer, President

**"DREES"**

**Drees Premier Homes, Inc.**

By: \_\_\_\_\_  
Keith Lash, Division President

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law: *Beth A. Copeland*

This instrument was prepared by Copeland Law LLC, 11650 Olivo Road, Fishers, IN 46037. *Beth A. Copeland*