

DEVELOPMENT AGREEMENT

14-045

THIS DEVELOPMENT AGREEMENT (“Agreement”) is made and entered into as of the ____ day of _____, 2014, by and between **ALBRECHT, INCORPORATED**, an Ohio corporation with its principal business address at 17 S. Main St., Suite 401, Akron, Ohio 44308 (“Albrecht”), **J&E DEVELOPMENT CORPORATION** (“J&E”), an Ohio corporation with its principal business address at 4665 Allen Road, Stow, Ohio 44224, and the **COUNTY OF SUMMIT, OHIO**, an Ohio political subdivision (“County”) with its principal address at 175 S. Main St., 8th Floor, Akron, Ohio 44308. As used herein, Albrecht, J&E, and the County may be referred to individually as a “Party”, and collectively, as the “Parties”.

RECITALS:

A. Albrecht is the developer of a commercial real estate project on Campus Drive in the City of Stow known as the Hudson Drive Business Campus (“Albrecht Project”).

B. J&E is the developer of a commercial real estate project located on Allen Road in the City of Stow (“J&E Project”).

C. The County owns and operates a sanitary sewer system pursuant to Ohio Revised Code Chapter 6117, of which part runs along Seasons Road in the Cities of Stow and Hudson near the proposed Albrecht and J&E Projects.

D. Albrecht has caused plans to be prepared to extend sanitary sewer to serve the Albrecht Project and subsequently to also serve the J&E Project (which sanitary sewer extension project shall be called the “SSE”) from County’s sewer lines on Seasons Road. The SSE consists of three subprojects defined in Section 2(B) below: the Base Bid, Alternate #1, and Alternate #2.

E. A partial grant pursuant a U.S. State and Tribal Assistance Grant (“STAG”) has been awarded to the County to finance the extension of its sanitary sewer line to serve the Albrecht Project and the J&E Project with sanitary sewer service, but the STAG requires the County to construct the SSE.

F. As a material inducement of County constructing the SSE, Albrecht and J&E have agreed to finance the cost of the SSE not covered by the STAG as set forth in this Agreement (“Local Funding”).

NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

Section 1. Receipt of STAG funds and Acceptable Bid as Conditions Precedent for Other Obligations

(A) The County has been awarded a STAG in the maximum amount of \$485,000.00 to be used to help finance the SSE. STAG funds shall be used to fund construction costs of the Base Bid. In the event STAG funds remain after payment of the construction costs of the Base Bid, STAG funds shall be used to fund construction costs of Alternate #1, and in the event STAG funds remain after the payment of the construction costs of the Base Bid and Alternate #1, they shall be used to fund construction costs of Alternate #2.

(B) All Parties shall cooperate and assist each other in good faith in obtaining, maintaining and utilizing the STAG to help finance the SSE.

(C) The obligations of each of the Parties set forth in this Agreement are contingent upon the County’s receipt of the STAG funds.

(D) If the bids for the Base Bid received by the County pursuant to Section 2(B) below are ten percent (10%) or more higher than the engineer’s estimate of cost for the Base Bid

(defined below) of the SSE, the County shall reject all bids, and all obligations under this Agreement shall be null and void unless all Parties agree otherwise in writing.

Section 2. Construction/Installation of the Sanitary Sewer Improvements.

(A) Upon execution of this Agreement, Albrecht shall submit to the County, and County shall review, plans for the SSE. The County, in exercise of sound professional construction and engineering practices and in compliance with County Department of Environmental Services (“DOES”) standards, may make non-material changes to the design specifications for the SSE as needed. Any material revision or any revision that diminishes the sewer service to be provided to the Albrecht Project or the J&E Project shall require the approval of Albrecht and J&E. All Parties must agree to the design plans and specifications approved by the County prior to submitting the SSE to public bids below.

(B) No later than the later of: i) March 1, 2014, or ii) within 30 days of receipt of a STAG grant agreement, County shall solicit public bids and award a contract (“Construction Contract”) to construct the SSE in accordance with County Ordinances. The SSE shall be bid with a base bid consisting of extending sanitary sewer from the County’s sewer infrastructure on Seasons Road approximately 730 lineal feet along Allen Road to a proposed manhole at the intersection of McCauley and Allen Road, then extending approximately 2,764 lineal feet to a proposed manhole at the intersection of McCauley Road and Campus Drive (“Base Bid”). As part of the bid solicitation, a first alternate bid shall be solicited for extending sanitary sewer from a proposed manhole at the intersection of McCauley Road and Campus Drive for approximately 1,611 lineal feet along Campus Drive (“Alternate #1”). A second alternate bid shall be solicited for extending sanitary sewer from a proposed manhole at the intersection of

Allen Road and McCauley Road approximately 1,541 lineal feet along Allen Road (“Alternate #2”).

(C) Unless the Parties agree otherwise, Alternate #1 shall be constructed only if the winning total Base Bid cost plus Alternate #1 cost is equal to or less than \$881,818.00, which is the anticipated total projected STAG grant (55%) plus the Local Funding (45%).

(D) Unless the Parties agree otherwise, Alternate #2 shall be constructed only if the winning total Base Bid cost, plus the cost of Alternate #1 and the cost of Alternate #2 is equal to or less than \$881,818.00, which is the total anticipated projected STAG grant (55%) plus the Local Funding (45%).

(E) Albrecht and J & E shall obtain all necessary easements for the Base Bid of the SSE prior to bidding, and all necessary easements for Alternate #1 and Alternate #2 prior to the award of the Construction Contract. All easements or agreements required from Metro Regional Transit Authority to do the SSE, including but not limited to a Pipeline Occupancy Agreement, shall be obtained by the County.

(F) The SSE shall be constructed in accordance with sound professional construction and engineering practices and in compliance with DOES standards. The County shall not approve change orders under the Construction Contract without the prior written consent of Albrecht and J&E.

(G) The SSE may include, at the County’s discretion, the construction of laterals that service individual buildings on any property within the public right-of-way. All costs for such laterals shall be borne by the County in the manner described in Section 3(F) below. County shall have no obligation to assist with the finance, construction, operation, maintenance or repair of private sanitary sewer laterals.

(H) As part of the consideration hereunder, the County shall at all times in the future permit Albrecht and J&E, their successors and assigns, the right to tie into the newly constructed SSE without any further cost or tie in fee.

(I) Notwithstanding anything herein to the contrary, prior to the award of the Construction Contract by the County, Albrecht shall have the right to construct or cause to be constructed Alternate #1 outside of the purview of this Agreement, and J&E shall have the right to construct or cause to be constructed Alternate #2 outside of the purview of this Agreement.

(J) Construction shall commence no later than May 1, 2014 or within 90 days of receipt of the STAG grant agreement, whichever comes later. Construction shall be substantially completed no later than November 1, 2014, or within 6 months of commencement of construction, whichever comes later. The constructed improvements shall be accepted by the County no later than December 1, 2014 or 1 month from substantial completion, whichever comes later. The County will not be considered in breach of this provision if the reason for delay is beyond its control, or due to breach by its contractor.

Section 3. Financing the Costs of the SSE

(A) Albrecht and J&E, within thirty (30) days after the County issues its Tentative Award of Contract for the SSE, shall obtain and maintain at all times during construction, for the benefit of the County, irrevocable letter(s) of credit or other security no less than the amount of the Local Funding of the SSE plus ten percent (10%) for contingencies. Using the bid of the contractor to which the Tentative Award of Contract is issued (“Winning Bid”), the Parties shall calculate the amounts of the letters of credit or other security as follows: Albrecht’s irrevocable letter(s) of credit or other security shall be the amount of its proportion of the Local Funding of the Base Bid and Alternate #1 as described in (B), (C) and (D) below, plus ten percent (10%) for

contingencies; J&E's irrevocable letter(s) of credit or other security shall be the amount of its proportion of the Local Funding of the Base Bid, and Alternate #2 as described in (B) and (E) below, plus ten percent (10%) for contingencies. In lieu of providing letters of credit, Albrecht and J&E can escrow funds, or provide some other form of proof of funds or security acceptable to the County.

(B) Albrecht agrees to pay fifty percent (50%) of the Local Funding and J&E agrees to pay fifty percent (50%) of the Local Funding of the portion of the Base Bid of the Construction Contract starting from the County's sanitary sewer facilities on Seasons Road to the proposed manhole located at the intersection of Allen and McCauley Roads ("the Split Portion"). Such amount shall be approved in advance by Albrecht and J&E. Notwithstanding anything herein to the contrary, the County shall pay the portion of the Local Funding of the Base Bid attributable to the upcharge for increasing the size of the sewer in the Split Portion from eight (8) inches, based upon the difference in material costs and additional costs for design (if any). County shall submit to Albrecht and J&E a statement showing the difference in cost between the quantities of eight (8)-inch sewer in the Split Portion and the cost of the pipe at the increased size at the time of construction. This oversizing cost shall be deducted from the invoices sent pursuant Section 3(G) below. Additionally, unless STAG funds can be used for all or part of any change order costs, Albrecht and J&E shall each pay fifty percent (50%) of any additional amounts arising from any validly approved change orders under the Split Portion of the Base Bid of the Construction Contract. For purposes of this Section, the cost of the Split Portion shall be calculated in the following manner: The Split Portion represents 730 lineal feet of the total Base Bid, which is 3,494 lineal feet. The cost of the Split Portion shall therefore be 20.89% of the Base Bid.

(C) Albrecht agrees to pay one hundred percent (100%) of the Local Funding portion of the remainder of the Base Bid that is not the Split Portion. Unless STAG funds can be used for all or part, Albrecht shall pay one hundred percent (100%) of any additional amounts arising from any validly approved change orders for the remainder of the Base Bid that is not the Split Portion.

(D) If Alternate #1 is constructed, Albrecht agrees to pay 100% of the Local Funding portion of Alternate #1. Unless STAG funds can be used for all or part, Albrecht shall pay one hundred percent (100%) of any additional amounts arising from any validly approved change orders under Alternate #1 of the Construction Contract.

(E) If Alternate #2 is constructed, J&E agrees to pay one hundred percent (100%) of the Local Funding portion of Alternate #2. Additionally, unless STAG funds can be used for all or part, J&E shall pay one hundred percent (100%) of any additional amounts arising from any validly approved change orders under Alternate #2 of the Construction Contract.

(F) If the County, at any point in the SSE, elects to construct any lateral in the right-of-way to service an individual building or property, all costs attributable to the design (if any) and installation of such laterals shall be borne only by the County, not out of STAG funds, Albrecht or J &E. The costs shall be calculated based upon the additional material costs and additional costs for design (if any). County shall submit to Albrecht and J&E a statement showing the additional costs for material and labor for the installation of the laterals. These costs shall be excluded from the invoices sent pursuant Section 3(G) below.

(G) The County shall invoice Albrecht and J&E for their shares of the Local Funding described above as the payments for construction of the SSE become due in accordance with the Construction Contract. Albrecht and J&E each agree that they shall pay their respective amounts

due within thirty (30) days of receipt of an undisputed invoice. The County agrees to cooperate with Albrecht and J&E to release any letter of credit or other security immediately upon final payment of the Construction Contract.

(H) If any breach of Section 3(G) is not cured within fourteen (14) days of written notice by County to the breaching party, the County, at its option, may draw on the irrevocable letter(s) of credit or other security that was provided by the breaching party under Section 3(A) for payment. Such action does not relieve a breaching party from obligations exceeding the amount recovered.

Section 4. Notices. All notices, demands and requests required or permitted to be given under this Agreement (collectively, the “Notices”) must be in writing and must be delivered personally or by nationally recognized overnight courier or sent by United States certified mail, return receipt requested, postage prepaid and addressed to the Parties at their respective addresses set forth below, and the same shall be effective upon receipt if delivered personally, or on the next business day if sent by overnight courier, or three (3) business days after deposit in the mail if mailed. The initial addresses of the Parties shall be:

If to Albrecht:

ALBRECHT, INCORPORATED
17 S. Main St., Suite 401
Akron, Ohio 44309
Attention: John S. Juron, VP

If to J&E:

J&E DEVELOPMENT CORPORATION
4665 Allen Road
Stow, Ohio 44224
Attention: Joseph Urbanic

If to County:

**COUNTY OF SUMMIT
2525 State Road
Cuyahoga Falls, Ohio 44223
Attn: Director of the Department of
Environmental Services**

Invoices prepared pursuant to Section 3 above may be mailed by ordinary U.S. first class mail.

Upon at least ten (10) days' prior written notice, each party shall have the right to change its address to any other address within the United States of America. Informal communication made between the County and Albrecht or J&E during the completion of construction activities performed under this Agreement may be made by their respective representatives, project managers and inspectors as designated from time to time.

Section 5. Relationship of Parties. Nothing contained in this Agreement shall be deemed or construed, either by the Parties hereto or by any third party, to create the relationship of principal and agent or to create any partnership, joint venture or other association between the Parties.

Section 6. Intentionally Deleted.

Section 7. Assignment. No Party may assign rights or delegate any obligations created by this Agreement without the prior written consent of the other two (2) Parties, which consent must not be unreasonably withheld. This Agreement may be assigned without consent of any Party in the event all or part of the real property owned by Albrecht or J&E is sold or transferred to a third party, and such third-party transferee assumes the obligations of this Agreement. Any assignment in violation of this Agreement is void. This Agreement is binding upon the heirs, legal representatives, successors and permitted assigns of the Parties.

Section 8. Exhibits Incorporated. Each exhibit attached to and referred to in this Agreement is hereby incorporated by reference as though set forth in full where referred to herein.

Section 9. Counterparts. This Agreement may be signed in counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one instrument.

Section 10. Time Periods. Whenever under the terms of this Agreement the time for performance of a covenant or condition falls on a Saturday, Sunday or national or state holiday, such time for performance shall be extended to the next business day. Otherwise all references herein to “days” shall mean calendar days and all references herein to “business days” shall mean any day other than Saturday, Sunday and days that the financial institution in which the escrow funds are held is closed for business.

Section 11. Ohio Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Ohio.

Section 12. Integration and Entire Agreement. This Agreement, including all bids, drawings, and exhibits referred to herein or attached hereto, states the complete, final, and exclusive agreement of the Parties concerning the subject hereof and supersedes all prior oral or written agreements, representations, promises, negotiations, and other communications between the Parties.

Section 13. Severability. If any provision of this Agreement is found invalid or unenforceable by an arbitration panel or a court of competent jurisdiction, the remainder of this Agreement must continue in full force and effect.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives effective as of the day and year first above written.

ALBRECT, INCORPORATED

COUNTY OF SUMMIT, OHIO

By: _____

By: _____

Name: James P. Nilsen

Name: _____

Title: President & Treasurer

Title: _____

Date of Execution:

Date of Execution:

Approved as to form and correctness:

Deborah S. Matz, Director of the
Department of Law, Insurance and Risk
Management

J&E DEVELOPMENT CORPORATION

By: _____

Name: Joseph Urbanic

Title: _____

Date of Execution:
