

ORDINANCE 2016-03

AN ORDINANCE AUTHORIZING AND DIRECTING THE VILLAGE ADMINISTRATOR AND/OR MAYOR OF THE VILLAGE OF COMMERCIAL POINT TO ENTER INTO A CONTRACT FOR A WATER INFRASTRUCTURE IMPROVEMENT, WATER TAP REIMBURSEMENT AND SEWER TAP PURCHASE AGREEMENT WITH WESTPORT HOMES.

WHEREAS, the parties agree that utility infrastructure improvement are needed to the proposed annexation properties; and

WHEREAS, the Village presently may need to improve water pressure, which may be necessary to carry out its intention to provide sewer and water services to the proposed annexed properties and/or future developable properties in the general area.

NOW THEREFORE BE IT ORDAINED by the Council of the Village of Commercial Point, Ohio that:

SECTION 1: The Council of the Village of Commercial Point does hereby grant approval of the agreement attached as Exhibit "A."

SECTION 2: The Village Mayor/Administrator hereby are directed to execute said contract document on behalf of the Village of Commercial Point.

SECTION 3: This Ordinance shall become effective upon the earliest date allowed by the laws of the State of Ohio.

Vote on Suspension of Readings:

Motion by: Mr. O'Neil 2nd Mr. Laxton

Roll Call:

Yes Mark Geiger
Yes David Sadler

Yes Ben Townsend
Yes Brad Laxton

Yes Scott O'Neil
 Nicole Evans

Vote on Passage of the Ordinance:

Motion by: Mr. O'Neil 2nd Mr. Sadler

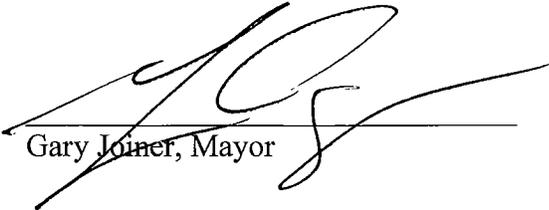
Roll Call:

Yes Mark Geiger
Yes David Sadler

Yes Ben Townsend
Yes Brad Laxton

Yes Scott O'Neil
 Nicole Evans

**PASSED AND ADOPTED BY THE COUNCIL OF THE VILLAGE OF COMMERCIAL
POINT ON THIS 8th DAY OF FEBRUARY, 2016.**

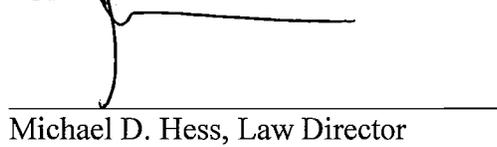


Gary Joiner, Mayor



Wendy Hastings, Fiscal Officer

Approved as to Form:



Michael D. Hess, Law Director

**WATER INFRASTRUCTURE IMPROVEMENT,
WATER TAP REIMBURSEMENT AND
SEWER TAP PURCHASE AGREEMENT**

This Agreement is made and entered into this 8th day of March, 2016 (the "Effective Date") by and between the Village of Commercial Point, an Ohio municipal corporation ("Commercial Point" or "Village"), and Westport Homes, Inc., an Indiana corporation, located at 507 Executive Campus Drive, Ste. 100, Westerville, OH, 43082, and its successors or assigns (the "Developer").

Background Information

A. Developer may cause to be developed certain tracts of land consisting of approximately 43.67+/- acres situated in the State of Ohio, County of Pickaway, and the Village of Commercial Point. Such tracts are described and depicted on Exhibit A attached hereto and incorporated by reference (herein after alternatively named the "Tracts for Development", or alternatively "Chestnut Commons" or "the Chestnut Commons PUD". Exhibit A is further described as the three exhibit sheets depicting the preliminary development plan approved by the Village Council along with the rezoning of Chestnut Commons PUD under Village Resolution Number 18-2015 dated December 14, 2015) and include 146 new single-family homes within Chestnut Commons and three (3) equivalent residential units on out-lots.

B. Commercial Point shall provide sewer and water services to the Tracts for Development to facilitate full build out, sales and occupancy of all one hundred forty six (146) new housing and three (3) out-lots with equivalent residential units thereon, but presently may need to improve water pressure, which may be necessary to carry out its intention to provide sewer and water services to the Tracts for Development and/or for future developable properties in the general area.

C. Subject to the terms and conditions of this Agreement, Developer, or its successors or assigns, is willing to install the off-site and on-site utility infrastructure improvements which will be connected to and become part of the sanitary systems and water system of The Village of Commercial Point in order to provide sanitary sewer and water services to the Tracts for Development, as well as other future development properties owned by third parties in the adjacent area.

D. In order for the Village to improve water pressure capacity for the Tracts for Development and other adjacent properties, which is currently not adequate to serve the region of the Village, the Developer and Village agree to enter this water infrastructure improvement, water tap reimbursement and sewer tap purchase agreement (the "Agreement") to: (1) Assist the Developer's installation of water pressure improvements, including a water tower and pressure booster station and related equipment and (2) Facilitate the Village's financing of those water pressure

improvements as needed to serve the Tracts of Development and other adjacent properties, both to improve existing water service and enhance future development properties in the region of the Village.

E. It is also recognized and agreed herein that there are two separate, distinct categories of improvements that are subject to this Agreement: (1) Typical subdivision development improvements that are to be installed by the Developer at its cost and governed by the Village's standard subdivision regulations, ordinances and procedures, that include but are not limited to sanitary sewers, storm water sewers and facilities, streets, curbs and gutters, water lines, meters, valves, fittings, equipment and other facilities (herein referred to as "standard development improvements"); and (2) the water tower and water booster improvements that are the subject of the economic terms and reimbursement provisions of this Agreement as specified below (herein referred to as "water tower and booster improvements").

Statement of Agreement

The parties hereto acknowledge the accuracy of the foregoing Background Information, defined terms and, in consideration of the foregoing and of the covenants and agreements hereafter set forth, hereby agree as follows:

1. Water Tower and Booster Installation by Developer. The Village and Developer agree that Developer shall construct and install the 150,000 gallon multi-leg elevated water storage tower and 500 gallons per minute water pressure booster improvements as identified in Exhibit B, (the "water tower and booster improvements") attached hereto and made a part of this Agreement, provided that the Developer is reimbursed for a portion of the costs of constructing the water tower and booster improvements. Construction of the water tower and booster improvements shall commence and be completed on a schedule that is prior to the final plat recording for the second phase of the Chestnut Commons PUD.

The Village and Developer acknowledge and agree that the water tower and booster improvements so identified in Exhibit B are more than the level necessary to serve the Tracts of Development and will serve other third party properties and a regional portion of the Village. Notwithstanding the foregoing, The Village shall reimburse the Developer for said construction of the water tower and booster improvements up to an amount of Five Hundred Ninety Six Thousand and no/100 (\$596,000.00) (149 taps x \$4,000.00 per tap) in the form of water tap fee credits and reimbursements and, an additional amount of Two Hundred Twelve Thousand Two Hundred Fifty and no/100 (\$212,250.00). The additional Two Hundred Twelve Thousand Two Hundred Fifty and no/100 (\$212,250.00) shall cover a portion of Developer's construction costs for the water tower and booster improvements that benefits the community, beyond what is necessary to serve only the Tracts for Development. The Village shall reimburse the Developer a total amount not to exceed Eight Hundred and Eight

Thousand, Two Hundred and Fifty Dollars even (\$808,250.00), (the "Reimbursement Amount" out of the total project cost estimate. The Developer shall be paid the total Reimbursement Amount as described above by the Village as follows:

- (A) At the time of the Developer's posting a bond for the improvements or the recording of the plat for the first development phase of Chestnut Commons, which shall encompass twenty seven (27) new lots and three (3) lots of adjacent property owners (Jenkins, Isaac's, and church property) as depicted on Exhibit A, Developer shall purchase thirty (30) water taps from the Village at Four Thousand and no/100 (\$4,000.00) per tap (the "Phase One Water Taps"). The Village shall reimburse Developer in cash for The Phase One Water Taps purchased in a total amount of One Hundred Twenty Thousand and no/100 (\$120,000.00) in a manner described in paragraph (C) below;
- (B) The Village shall credit and document to the Developer the customary water tap fee charges, (i.e.: the Village foregoing charging the Developer the cost of the Village's normal and customary charges for water tap fees), for up to one hundred nineteen (119) housing units remaining in Tracts for Development after the 30 units in Phase One (for a total of one hundred forty nine (149)) specified in paragraph (A) above, multiplied by the water tap cost of Four Thousand and no/100 (\$4,000.00) per tap, up to a total amount of Four Hundred Seventy Six Thousand and no/100 (\$476,000.00) ;
- (C) And the Village shall make cash payments to the Developer of (i); One Hundred Twenty Thousand and no/100 (\$120,000.00) to reimburse the Developer for the Phase One Water Taps purchased as described in paragraph A) above, and (ii); Two Hundred Twelve Thousand Two Hundred Fifty and no/100 (\$212,250.00) cash from the Village water fund, for a total cash payment of Three Hundred Thirty Two Thousand Two Hundred Fifty and no/100 (\$332,250.00).
- (D) Payments to the Developer in Section 1 (C) above are to be made on a draw schedule to be established between Developer and its contractor and approved by the Village Engineer. The draw schedule shall govern the installation of the water tower and booster improvements. Each draw payment shall be submitted to the Village Engineer for approval or denial within ten (10) days of receipt of proof that Developer paid its contractor and/or subcontractors. If Village Engineer denies a draw payment or payments, said denial shall be documented in writing and delivered to Developer within five (5) days. No draw payments shall be unreasonably withheld by the Village Engineer. Any draw payment denied shall be resolved between the parties within ten (10) days of the receipt of the Village Engineer's written denial notice, and/or thereafter by submission to binding

arbitration between the parties, or by any other resolution method agree to by the parties, if unresolved.

The parties agree that should the actual hard construction costs exceed the estimated cost of Seven Hundred Eighty Two Thousand Nine Hundred Twenty Five and no/100 (\$782,925.00) as identified and documented on Exhibit B, the Village agrees that it shall bear the entire risk of any extra costs or cost overruns above this amount, unless said cost overruns are the result of actions or inactions of the Developer or its contractor and/or subcontractor.

2. Excess Capacity and Design Improvements Beyond This Agreement. It is hereby acknowledged by the parties that the Developer's design, labor, construction management, engineering, land and other costs for water tower in Exhibit B is for a standard, multi-leg tank of a size limited to 150,000 gallons. It is further agreed that should Commercial Point determine to oversize the water tank, facilities, equipment or lines described above, or other standard development improvements, such as sanitary sewer lines, or design them in a different manner shown in Exhibit B and/or beyond that which is necessary to serve the Tracts for Development alone, the costs associated with such oversizing or design differences shall be the sole responsibility of Commercial Point. Should the Village desire the Developer to install any facilities or equipment beyond the 150,000 gallon elevated, multi-leg water storage tower and 500 gallons per minute water pressure booster improvements the Developer has contemplated as identified in Exhibit B under this Agreement, the Village acknowledges and agrees that such changes may alter the nature and scope of the design, engineering and construction of the project as originally contemplated herein and as such, the parties agree to revisit, amend, or supplement this Agreement to cover any additional costs to the Developer of managing such additional project scope and design, engineering and construction, or to otherwise terminate and/or reform this Agreement if substantial economic terms are changed and it is no longer applicable.

3. Easements and Right-of-Ways. Commercial Point hereby grants to Developer and its agents, contractors and employees, in connection with the construction of any improvements to the Tracts for Development the right to use such easements as are owned by Commercial Point for the purposes of installing any public improvements. In addition, Commercial Point agrees to provide Developer with reasonable assistance which may include, but may not be limited to, the possible reduction of tap fees that would otherwise be chargeable to those property owners who are granting the necessary easements in the acquisition of such private utility and other easements as may be necessary to construct any improvements to serve the Tracts for Development.

4. Construction Insurance and Legal Compliance. Developer shall cause its agents and the contractors and subcontractors engaged in the construction of any improvements to comply with the Workers' Compensation Law of the State

of Ohio, and all other legal requirements, and during the course of construction of the improvements shall indemnify and hold harmless Commercial Point from any and all claims, demands, actions or liabilities arising out of personal injury, death or property damage resulting from the construction work performed or caused to be performed by Developer pursuant to this Agreement. In addition, the Developer shall secure and maintain, and shall require that any contractor or subcontractor installing improvements secure and maintain at least the following minimum amounts of insurance:

General Public Liability Insurance, on an occurrence basis, in an amount not less than Five Hundred Thousand and no/100 (\$500,000.00) for injuries, including those resulting in death, to any one person, and an amount not less than One Million and no/100 (\$1,000,000.00) for damages on account of any one (1) accident or occurrence, and Property Damage Insurance on an occurrence basis in an amount not less than Five Hundred Thousand and no/100 (\$500,000.00) for damages on account of any one (1) accident or occurrence. All said insurance shall name the Village of Commercial Point as the named insured. Such insurance shall be maintained in full force and effect during the construction of improvements and shall protect the Village of Commercial Point, its officials, employees, agents, and representatives from claims for damages for personal injury and wrongful death and for damages to property arising in any manner from the negligence or wrongful acts, errors or omissions of the Developer or contractors and subcontractors, their employees, agents, representatives or persons working under their direction and control in the construction of any improvements. Certificates of insurance naming the Village as additional insured shall be obtained and filed with the Village prior to commencement of construction on the improvements. These certificates shall contain a provision that coverage afforded under the policies shall not be cancelled unless at least thirty (30) days prior actual written notice has been provided to the Village.

5. Water Tap Crediting and Issuance Schedule.

a. Beginning with the completion of construction by Developer of the water tower and booster improvements, and acceptance by the Village Engineer of such improvements under the procedures outline in Section 10 below, for a period not to exceed eight (8) years thereafter (the "Water Tap Crediting Period"), the Village shall credit the Developer with all one hundred nineteen (119) water taps necessary to serve the balance of Chestnut Commons, exclusive of and in addition to the first development phase. This credited water tap amount shall not exceed the sum of 119 water taps multiplied by Four Thousand and no/100 (\$4,000.00) per tap, or Four Hundred and Seventy Six Thousand and no/100, (\$476,000.00). The amount of each water tap to be credited is not subject to change from the 2015 charged rate under this Agreement. The Village shall issue a certificate to Developer representing the 119 water taps credited to document same.

The water tap credit certificate shall be due to Developer no later than thirty (30) days after the completion of water tower and booster improvements, and acceptance of same by the Village Engineer in order to coincide with commencement of development of phase two of the Chestnut Commons PUD.

b. During the Water Tap Credit Period, at its sole discretion, subject to all other applicable requirements, Developer shall have the right, but not obligation, to put in use all water taps necessary and required to service residential lots in Chestnut Commons to allow build out of all homes in a continuous and ongoing manner

6. Sewer Tap Takedown Schedule.

a. At the time of the Developer's posting a bond for the improvements or the recording of the first development phase, which for sewer tap purposes shall encompass twenty seven (27) lots as depicted on Exhibit A within Chestnut Commons, and two (2) residential equivalent out-lots, Developer shall purchase and be issued Twenty Nine (29) sewer taps at Five Thousand and no/100 (\$5,000.00) per tap (the "Phase One Sewer Taps"). The Phase One Sewer Taps shall be governed by Village Ordinances and procedures, but the Developer shall not be required to pay more than the 2015 sewer tap rate of Five Thousand and no/100 (\$5,000.00) to utilize such sewer taps.

b. Beginning with the completion of construction by Developer of the water tower and booster improvements, and acceptance by the Village Engineer of such improvements under the procedures outline in Section 10 below, for a period not to exceed eight (8) years thereafter (the "Scheduled Sewer Tap Takedown Period"), Developer shall purchase and be issued not less than 15 sanitary sewer taps at the sewer tap charge that shall not exceed Five Thousand Dollars even (\$5,000.00) per tap in eight (8) bulk purchase increments of said taps at twelve (12) month intervals (the "12 Month Sewer Tap Purchase Increments"). The documented sum of each twelve (12) month tap purchase increment shall be equal to the fifteen (15) sewer taps to be purchased and issued at each twelve (12) months takedown interval, and any other tap that has been issued within any twelve (12) month interval, multiplied by the 2015 sewer tap charge of Five Thousand no/100 (\$5,000.00) for each sewer tap. The total purchase of sewer taps by the Developer from the Village for all one hundred nineteen (119) sewer taps necessary to serve the development exclusive of the first development phase shall not exceed Five Hundred Ninety Five Thousand and no/100 (\$595,000.00) to complete this Agreement. The amount charged for each sewer tap to be purchased is not subject to change from the 2015 charged rate under this Agreement.

The first twelve (12) month sewer tap purchase payment increment and fifteen (15) tap takedown shall be due no later than a date thirty days after the completion of water tower and booster improvements, and acceptance of same

by the Village Engineer to coincide with commencement of development of Phase Two of the Chestnut Commons PUD. Subsequent bulk purchase increments and tap takedowns shall be due on the subsequent anniversary dates thereof at twelve (12) month intervals.

c. Option to Purchase More Sewer Taps. During the Scheduled Sewer Tap Takedown Period, Developer shall have the right, but not obligation, to request and purchase additional sewer taps above the number of fifteen (15) minimum taps required at each twelve (12) month interval to service residential lots in the Tracts for Development to allow build out in a continuous and ongoing manner. Any such prepaid taps requested to be issued earlier than required by this Agreement, shall be credited against Developer's requirement to purchase taps during the next twelve (12) month takedown interval. At the last twelve (12) month interval, Developer shall have the right to purchase and receive the number of sewer taps above or below fifteen (15) as needed to complete its subdivision development, after the conclusion of the eight (8) year tap takedown schedule.

7. Village's Obligation to Reserve Sanitary Sewer and Water Service Capacity and Application of Minimum Monthly Service Charges to Taps. Beginning with the completion and acceptance of water tower and booster improvements, the Village shall reserve the water and sewer plant and related facility capacity necessary to serve all one hundred forty eight (148) purchased sewer taps and one hundred forty nine (149) of credited water taps to serve the completed planned development and occupied homes with sanitary sewer and water services during the life of this agreement. Beginning with the completion of construction by Developer of the water tower and booster improvements, and acceptance by the Village Engineer of such improvements, and for a period of eight (8) years thereafter, and any additional applicable extension of the eight (8) year period based on the payment of minimum monthly services fees, the Village shall guarantee capacity to the Developer or its successor or assigns for 119 water taps and 119 sewer taps.

a. At the end of the eight (8) year period for all credited water taps that are documented, but not put in service, the Developer shall make an election to either, (i) pay the applicable monthly minimum services charges and thereby, continuously reserve water system capacity to utilize the water taps, or (ii) forfeit the ongoing and immediate reservation of water system capacity to service taps by choosing not to pay the monthly minimum service charges.

b. Should the Developer choose to elect option (a)(ii) above and forfeit the reservation of water system capacity to service water taps after the eight (8) year period, then after such forfeit, the Developer shall retain the rights to a credit for the amount of any tap issued or credited under this Agreement for any water tap the Developer shall put into service within three (3) years after such election. The credited water taps shall also be fully transferable and assignable along with

other vested development rights to the Developer's assignee under the same terms and conditions described herein during the three (3) year period. The use of credited water taps during the stated three (3) year period is subject to available sewer plant and water system capacity to service such taps when requested. Any inability of the Village to provide capacity to serve any taps at the time of service request shall be resolved and addressed by the Village as specified under Section 8 of this Agreement or otherwise resolved by the Village.

c. At the end of the eight (8) year period after all water taps are credited and issued by the Village, Developer shall provide the Village with a written election notice as required in 7 (a) above. The failure of Developer to provide written notice of its election shall be deemed a forfeiture under section 7 (a)(ii) above.

d. The parties to this Agreement recognize that the provisions of this Section (7) may differ from the Village's Codified Ordinances and Subdivision Regulations with regard to water tap crediting, and use and the length of time of same. Where the provisions of this Section (7) and the said Ordinances and Regulations are in conflict, this Section (7) and this Agreement shall take precedence and govern. Should the Village's Codified Ordinances and Subdivision Regulations need to be amended for the sole purpose of supporting this Section (7) and this Agreement as approved as a one-time exception to Village procedures, the Village Solicitor will review such possible action and make recommendations to Council for such consideration.

8. Sewer and Water Capacity. Commercial Point agrees to reserve sanitary sewer treatment and water system capacity for all one hundred forty six lots in Chestnut Commons and three (3) equivalent residential out-lots in the Tracts for Development on an ongoing and continuous basis for those taps purchased and credited during the Scheduled Takedown and Crediting Periods (8 years) and for additional water taps covered by monthly service charge payments, pursuant to Section (7) above as applicable. However, Commercial Point may be required to impose certain moratoriums on tapping either the water or sewer lines to be constructed, as Commercial Point expands its sewer plant or water service capacity. If a moratorium is imposed, Developer shall be given a one hundred twenty (120) day advance notice of Commercial Point's intent to impose such moratorium, and no moratorium shall exceed two (2) months in any given twelve (12) month time period, or four (4) months in any given twenty-four (24) month time period, except as same may be caused by agencies or events not within Commercial Point's control.

9. Engineering, Design, Construction Approvals and Security. The Developer shall construct or cause to be constructed any improvements in accordance with the approvals of the Village Engineer, Ohio EPA and other regulatory or governmental entities or agencies having jurisdiction. Any improvements shall be constructed based on detailed construction and engineering plans which are

first approved by the Village Engineer, Ohio EPA and other regulatory or governmental entities or agencies having jurisdiction. The Developer or its subcontractor shall provide to the Village all plans, specifications, and supporting data, including detailed engineering drawings, specifications and "as built" plans for all the public improvements to be constructed as part of the project. The Developer shall not commence construction on any improvements until:

a. The Village has approved a Final Development Plan for its Tracts of Development and the Final Engineering has been approved and bonded, and the annexation of the Tracts of Development has occurred and is final and unappealable in accordance with the executed Pre-Annexation Agreement. At its option, and subject to the balance of this Section (9), the Developer may commence construction prior to Final Plat recordation if the improvements are bonded;

b. The Village Engineer has approved all engineering and construction plans, all plan review and inspection fees are paid and all other regulatory and governmental agencies have granted their applicable approvals;

c. The Developer provides the Certificates of Insurance and is compliant with all applicable laws as required by Section 3 of this Agreement;

d. Developer provides to the Village Engineer adequate security in an amount equal to the estimated cost of construction of any improvements associated with the subdivision development on a per section or phase basis in accordance with Village Subdivision Regulations and Ordinances, including but not limited to the water tower and water pressure booster, and guaranteeing the completion thereof within one (1) year of the date of the Village's approval of the engineering and construction plan, or such extension of time that may be granted by the Village Council. As security, Developer may provide a Performance Bond, a Letter of Credit, a Certified Check or such other security as the Village Council deems acceptable. Such security shall be released or returned in full and/or reduced in part on an annual basis or with the completion of development phases upon acceptance by the Village of the public improvements, or as otherwise accomplished under Village rules and procedures, or as agreed to by the Developer, Village, and/or the manufacturer/installer;

e. Developer provides or causes to provide a written warranty agreement that shall cover all costs of repairing defects and maintenance for a one (1) year period after the acceptance of the public improvements by the Village.

Notwithstanding the foregoing, this Section (9) is intended to reflect and be consistent with the Village's Codified Ordinances and Subdivision Regulations. Where the provisions of this Section (9) and the said Ordinances and Regulations are in conflict, the Village's Codified Ordinances and Subdivision Regulations shall take precedence and govern.

10. Acceptance of Public Improvements, Maintenance Guarantee, Conveyance of Improvements.

a. Within thirty (30) days of receipt of the notification of completion from the Developer, the Village Engineer shall either provide the Village and Developer with a letter which certifies that construction of public improvements is in conformance with the construction plans and Village Ordinances and Regulations or give the Developer a written "punch list" of items to correct and/or complete. Any "punch list" items shall be promptly addressed and resolved by Developer to the Village Engineer's satisfaction and the Village Engineer shall immediately thereafter provide the Village and Developer with a letter certifying the completion of construction of public improvements to the Village standards. Once the Village Engineer has confirmed completion of the public improvements under its subdivision regulations, the Village may issue building permits, properly applied for and approved by the Village's building inspector, for any single family residences in any phase for which public improvements have been certified as complete by the Village Engineer, so long as the Developer provides guarantees that the improvements of each section or phase that will become public are protected from defects that are the responsibility of the Developer and its contractors or subcontractors and that such defects will be addressed and maintenance provided at no cost to the Village for one (1) year. Such guarantees may be in the form of a maintenance bond or letter of credit equal to twenty-five percent (25%) of the construction cost for the applicable public improvements per phase, or in another form of security acceptable to the Village.

Formal acceptance of the public improvements shall be placed upon Council's agenda for vote by Council at the next regularly scheduled Council meeting date following the date of the Engineer's letter certifying satisfactory completion of construction and receipt of the written warranty agreement under Section 9 above and the required maintenance guarantee. Such acceptance and procedures may be accomplished as the Developer completes sections or phases of the development and/or infrastructure, and as agreed to by the Village Engineer. Any security guaranteeing the completion of the improvements as specified under Section 9(d) herein shall be released to the Developer upon acceptance of the Improvements by the Village, or if a release is signed by the Village as to the Developer's obligations to make the public improvements. Such release by the Village certifies only that the construction was satisfactorily completed and such release does not relieve the Developer of the responsibility to meet the requirements of Village regulations, or the Village maintenance requirements as specified herein.

b. Prior to acceptance of public improvements by the Village, the Developer shall convey to the Village, without additional consideration from the Village, all of the mains, lines, meters, valves, fittings, equipment, easements, and all other improvements and such personal and real property rights not transferred in the approved plat which are reasonably required in order for the

Village to provide services within the Tracts for Development, except that Developer shall not convey any part of the service lines connecting the individual dwellings or buildings with mains or lines. All said personal and real property shall be conveyed by duly executed Bill of Sale conveying all rights, title, and interest therein to the Village and all easements and land rights-of-way shall be conveyed by duly executed Deed of Easement or recorded plat. Such conveyances of real and personal property shall grant to the Village good title to the easements, free and clear of all rights of dower and all liens, easements, restrictions, conditions, covenants, and encroachments, except for liens of real estate taxes and assessments and any easements, restrictions, conditions, covenants, and encroachments which would not inhibit or unreasonably interfere with the installation, operation, maintenance, and repair of water and sanitary sewer mains and lines, storm sewer lines and other improvement and those defects which the Village is willing to waive, or that are specifically identified herein. At the time of the conveyance described in this paragraph, Developer shall assign to the Village all obligations or warranties whether express or implied, created by law or by contract, by manufacturers, contractors, and vendors of the personal property comprising the improvements within the applicable phase of the Tracts for Development, to the extent the same may be assignable. Developer agrees that it will fully cooperate with the Village in enforcing any warranties given by or claimed against all manufacturers, contractors, and vendors of the personal property so conveyed, provided that any costs or expenses in connection therewith shall be borne by the Village. Developer will not knowingly waive any such warranties which it obtains.

11. Assignment. Developer may freely assign its rights and obligations under this Agreement to an affiliate business entity or related subsidiary that it controls, and in the event of such assignment, the assignee of Developer shall have all the rights, duties and obligations set forth herein and Developer shall be released of any and all obligations and liabilities contained herein. Any assignment to a third party or parties that are unrelated to the Developer shall be subject to review and approval by the Village under the following procedure and conditions. The Developer shall provide the Village notice of such a proposed assignment within a reasonable time in order to accommodate the Village's review. In no case shall such notice be less than thirty (30) days from the date of the proposed assignment. After receiving the notice of such a proposed assignment, the Village shall accept or reject the proposed assignment at its next regularly scheduled Council meeting, subject to the Village's approval not being unreasonably withheld where the proposed assignee will cause homes to be developed and built in a similar quality, price point and arrangement as the Developer.

12. Inspection Fees. Developer shall pay such inspection and plan review fees as required by Commercial Point based upon the fee schedule in force at the time of the execution of this Agreement.

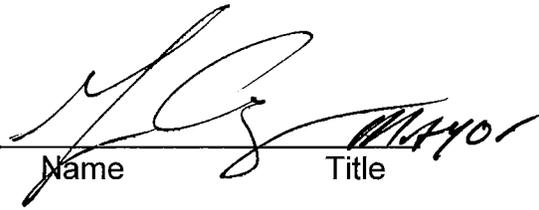
13. Contingency. This Agreement shall be contingent, unless waived by Developer in writing, upon: (a) the approval of the Village Council of Commercial Point and all other government entities having jurisdiction over the Tracts of Development of plans and completed construction in a manner consistent with the approved PUD zoning established for the Tracts for Development; (b) the approval of Developer of the Final Development Plan and the approved PUD zoning; (c) the receipt by Developer of adequate financing to complete any and all improvements and the development of the Tracts for Development; (d) the approval of this Agreement, the final unappealable annexation of the Tracts of Development and all other necessary approvals by the Village of Commercial Point Council and any other regulatory agency as applicable; and (e) obtaining any necessary easements for the construction and use of the Improvements from third parties.

14. Amendment to Pre-Annexation Agreement between Village and Developer. The Developer and the Village recognize and agree that they have previously entered and executed a "Pre-Annexation Agreement" (the "PAA") governing the annexation, zoning consideration and the potential for creation of Tax Increment Financing legislation ("TIF") to be enacted by the Village and applied to the Tracts for Development. (See PAA attached hereto as Exhibit "C".) The Village and Developer hereby amend Section 5 of the PAA to make clear the intent that any conveyance of the Tracts for Development, or lots or sections thereof, by the Developer to other third party developers or any other parties who are not consumers, end-users, or home owners/owner occupants, shall be subject to the Village's future enactment and application of TIF legislation, if any. This provision shall apply to all Tracts for Development, or development lots created therefrom, until such time as such Tracts or lots are conveyed to those who are consumers, end-users, or home owners/owner occupants, at which time if the Village has not adopted TIF legislation, future TIF legislation shall not apply to such lots unless agreed to by the then individual home owners/owner occupants.

15. Term. The Effective Date of this Agreement shall be when it is fully executed by the parties and adopted by the Village of Commercial Point Council and effective under Village Codified Ordinances and Regulations. Unless extended or terminated by the written Agreement of Developer, its successor or assigns, and Commercial Point, this Agreement shall automatically terminate under the terms herein and be of no further force or effect.

VILLAGE OF COMMERCIAL POINT

WESTPORT HOMES, INC.

By: 
Name Title

By: _____
Name Title

EXECUTION BY MEMBERS OF COUNCIL
OF VILLAGE OF COMMERCIAL POINT

