

ORDINANCE NO. 18-049

AN ORDINANCE TO AUTHORIZE THE MAYOR TO ENTER INTO A SETTLEMENT AGREEMENT WITH ROCKFORD HOMES, INC AND DECLARING AN EMERGENCY

WHEREAS, City Council finds and determines that it is in the best interest of the City of Canal Winchester to enter into a settlement agreement with Rockford Homes, Inc to settle and forever resolve the claims of Rockford and the City; and

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CANAL WINCHESTER, STATE OF OHIO:

SECTION 1. That the Mayor be and hereby is, authorized to enter into a Settlement Agreement, herein attached as Exhibit A, on behalf of the City of Canal Winchester with Rockford Homes, Inc.

SECTION 2. That this ordinance is hereby declared to be an emergency measure, necessary for the preservation of public health, safety, and welfare, such emergency arising from the need to meet deadlines as dictated by court mediation; wherefore, this ordinance shall take effect and be in force from and after its passage.

DATE PASSED: 12/3/18

ATTEST: Amanda M Jackson

[Signature]
PRESIDENT OF COUNCIL

[Signature]
MAYOR

12-4-18
DATE APPROVED

APPROVED AS TO FORM:

[Signature]
LEGAL COUNSEL

I hereby certify that the ordinance as set forth above was published for a period of not less than fifteen days after passage by Council, by posting a copy thereof in not less than three (3) public places in the municipal corporation, as determined by Council and as set forth in the Canal Winchester Charter.

Amanda M Jackson
Clerk of Council/Finance Director

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the “Agreement”) is made and entered into by and between Rockford Homes, Inc. (“Rockford”) and the City of Canal Winchester and its Planning & Zoning Commission (hereinafter collectively referred to as “Canal”), collectively, the “Parties” and is effective as of the date of the last authorized signature below (“Effective Date”).

RECITALS

A. Rockford is the owner of approximately 9± acres in the City of Canal Winchester adjacent to and south of Groveport Road, adjacent to and north of Cormorant Drive and east of Thrush Drive, being Franklin County Auditor’s Parcel No. 184-002267-00 (the “Property”). The Property is located in a ‘planned unit development’ zoning district known as the Villages at Westchester PUD (the “PUD”). The PUD and approved preliminary development plan permit Rockford’s property to be used for multi-family residential purposes, which use includes apartment and/or condominiums.

B. The codified ordinances of the City of Canal Winchester require Rockford to prepare and submit a Development Plan to the Canal Winchester Planning & Zoning Commission (P&Z) and receive approval of the plan prior to its development of its Property for multi-family residential purposes. The administrative decision of P&Z is subject to appeal to City Council. Any Development Plan approval by P&Z or City Council is valid for a period of two years from the date of approval.

C. Rockford has proposed Development Plans for a multi-family use on its Property that have been subject to appeals to City Council and court litigation with Canal since 2009 in various cases including Franklin County Municipal Court Environmental Division (“Environmental Court”) Case No. 2009 EVA 60050, appealed to the Tenth District Court of Appeals (“Court of Appeals”) in Case No. 09AP-827; Environmental Court Case No. 2013 EVA 60081, appealed to the Court of Appeals in Case No. 14AP-89, which was remanded to and re-determined by the Environmental Court in Case No. 2013 EVA 60081. That case is currently on appeal for a third time in the Court of Appeals in Case No. 18AP-247 styled *Rockford Homes, Inc. v. City of Canal Winchester Council, et al.* and referred to herein as the “Lawsuit.”

D. The Parties have each made various claims throughout the litigation, and Lawsuit the Parties desire by this Agreement to avoid further costs of litigation, resolve all claims that were brought in the Lawsuit and provide for the approval of a Development Plan for the development of the Property for a multi-family use on the terms set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual promises contained herein and for other good and valuable consideration, the adequacy of which is hereby acknowledged by the Parties, the Parties agree as follows:

1. **Development.** Rockford shall submit a Development Plan to P&Z for the development of 48 multi-family dwelling units with a layout as generally shown on the Conceptual Plan attached as Exhibit A. The Property will be developed as condominiums that

are initially owned by Rockford. The development shall use materials that are compatible with the PUD and other development within the PUD, including the adjacent Eagle Ridge condominium development, and the surrounding area. Materials may include precast stone and vinyl siding with a minimum gauge of .046 as conceptually shown on Exhibit B or any other compatible materials approved by Canal. Public sidewalks shall be constructed on Cormorant Drive and Groveport Road and permanent signs and entry features identifying the development are permitted on both Cormorant Drive and Groveport Road as they have been throughout the PUD. Entry signs shall meet the sign standards of the PUD and/or applicable City codified ordinances. No parking screening is required.

2. **Stream Corridor Protection Zone/O.P. Chaney Ditch.** Rockford may develop within the Stream Corridor Protection Zone provided that all necessary state and federal permits are obtained. The O.P. Chaney Ditch on the Property may be enclosed, piped and crossed and developed so long as the continuous flow of water from or through the Ditch is provided for and all required permits are obtained.

3. **Cormorant Drive.** Rockford shall dedicate or convey the 425± linear feet of Cormorant Drive adjacent to and east of the Property to Canal as a public road. Canal Council agrees to accept the dedication or conveyance of the Cormorant Drive in its current condition (as is where is) and Rockford shall not be required to make any other improvements to or maintain Cormorant Drive.

4. **Development Plan.** The Parties recognize that the Villages at Westchester PUD was established in 1990 and that since that time there has been one modification of the PUD directly affecting the use of the Property and many amendments to the codified ordinances and regulations of the City of Canal Winchester. The parties agree that the multi-family development provided in this Agreement is a use permitted by the PUD with a significant reduction in the number of dwelling units the PUD permits on the Property, is in conformance with or consistent with the intent of the PUD and the regulations and codified ordinances of Canal and to the extent that the Development Plan may not be in strict compliance with any specific standard, (PUD, code or regulation), the Parties agree that any necessary modification or variance required for the Development Plan attached as Exhibit A is consistent with the intent of the zoning district, Codified Ordinances, City regulations and this Agreement, would constitute a minor modification of any approved Preliminary Development Plan and is consistent with the criteria for approval of a variance. Nothing in this Agreement shall be construed to alter Section 1173.06(c) of the Codified Ordinances of the City of Canal Winchester now in effect that requires development be in conformance with the approved Development Plan and commenced within two years of final approval of the Development Plan by P&Z or Council. In the event that Rockford fails to commence construction before the expiration of the Development Plan as provided in Section 1173.06(c), then this Agreement shall be null and void and a new Development Plan must be obtained for any future development in conformance with the then applicable zoning and ordinances of Canal.

5. **Stay of Appeal and Dismissal.** The Parties acknowledge and agree that Canal ordinances require Rockford to file a new application for Development Plan approval with P&Z that will require the preparation of site plans that include, engineering, landscaping, signage and graphics, lighting and other plans as provided in this Agreement to be prepared by consultants of

Rockford. Canal ordinances also require such application be reviewed and determined by P&Z, subject to appeal to Canal Council. The Parties further agree that such plans may take some time to prepare and proceed through the Canal approval process and the parties desire to stay the Lawsuit pending final determination and approval of Rockford's Development Plan implementing this Agreement beyond any right of appeal, and thereafter jointly dismiss the Lawsuit. The Parties recognize and agree that they have a continuing obligation in the Lawsuit to report to the Court of Appeals the progress of the Development Plan proceedings and any final approval by Canal until the Lawsuit is dismissed as provided herein and that they will cooperate in informing the Court of the administrative proceedings in Canal.

6. **Necessary Acts.** The Parties agree to perform any further acts and provide and execute any documents that may be reasonably necessary to carry out the provisions of this Agreement, including ensuring that a Development Plan for development and construction of 48 multi-family dwelling units is approved for the development of the Property and Cormorant Drive is dedicated to and accepted by Canal.

7. **No Admission.** The Parties agree that they are compromising and settling disputed claims and that this Agreement does not constitute, and shall not be construed as constituting, an admission by any Party relating to any of the claims in the Lawsuit or any failure of the Development Plan to meet or any violation of any PUD or other zoning standard, ordinance or other regulation of Canal. Neither the terms nor fact of this Agreement shall be deemed or construed as an admission of any Party with respect to the Property, its use or Development Plan.

8. **Enforceability.** The Parties acknowledge that the terms contained in this Agreement are reasonable. However, should any provision be determined invalid, illegal or otherwise unenforceable then the validity, legality and enforceability of the other provisions shall not be affected.

9. **Entire Agreement, Modification & Costs.** This Agreement constitutes the entire agreement between and among the Parties relating to the subject matter herein. This Agreement may not be changed nor altered except in writing signed by all the Parties. The Parties agree to bear their own respective costs, expenses and attorneys' fees.

10. **Governing Law and Enforceability.** This Agreement shall be interpreted in accordance with the laws of the State of Ohio. The Parties agree that any suit, action, or legal proceeding arising from or relating to the enforcement of this Agreement shall be brought in a court with jurisdiction in Franklin County, Ohio including the Environmental Court of Court of Appeals.

11. **General Terms.** This Agreement shall be construed according to its fair meaning, and not strictly for or against any of the parties. Should any provision of this Agreement be declared or determined by any court to be illegal, invalid, or unenforceable, the validity of the remaining parts, terms or provisions shall not be affected thereby and the illegal or invalid part, term or provision shall be deemed not to be a part of the Agreement. The captions or headings in this Agreement are for convenience, are not terms of the Agreement and shall not expand, modify, limit, explain, enlarge, restrict or define the text of this Agreement. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

Each Party represents that each of the undersigned, where indicated, has been duly authorized to execute this Agreement on behalf of the Party where indicated and that each has executed this Agreement on the date indicated by their respective signatures below.


Rockford Homes, Inc.

Date signed: _____

By: Robert E. Yoakam
It's Secretary

City of Canal Winchester

Date signed: 12-4-18

By: 
It's: MAYOR

As authorized by City of Canal Winchester
Resolution No. 18-049
Ordinance

APPROVED AS TO FORM:

Date signed: 12-4-2018

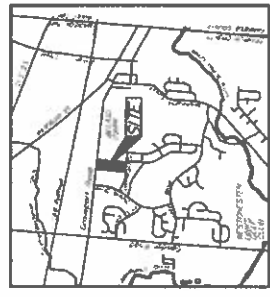
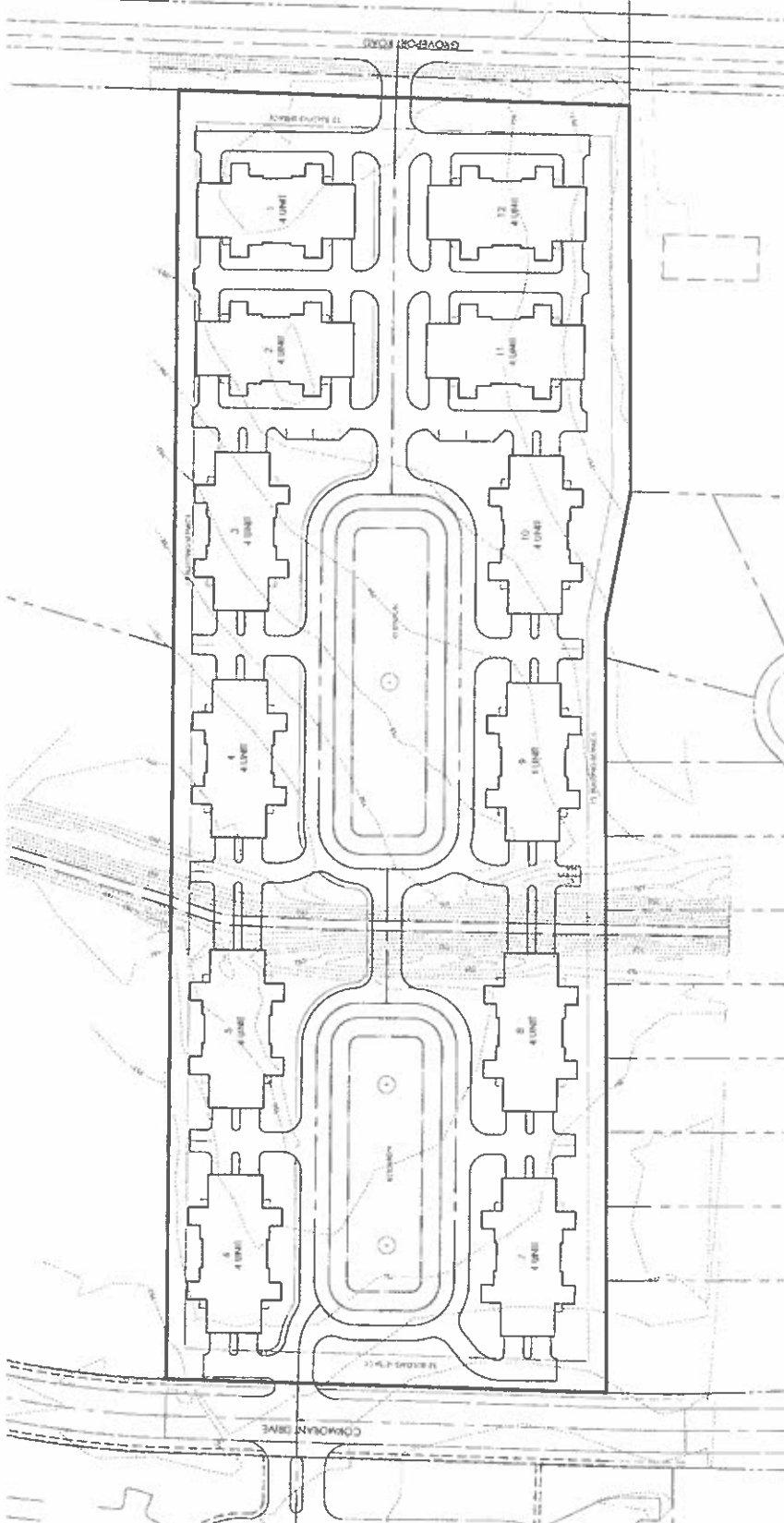

Eugene Hollins
Law Director

City of Concl Winchester, Franklin County, Ohio
**THREE FOUNTAINS /
 CANAL CROSSING**

CONCEPTUAL
 SITE PLAN



| | |
|-----|----------------------|
| NO. | PROPERTY NO. |
| 1 | 10000000000000000000 |
| 2 | 10000000000000000000 |
| 3 | 10000000000000000000 |
| 4 | 10000000000000000000 |
| 5 | 10000000000000000000 |
| 6 | 10000000000000000000 |
| 7 | 10000000000000000000 |
| 8 | 10000000000000000000 |
| 9 | 10000000000000000000 |
| 10 | 10000000000000000000 |
| 11 | 10000000000000000000 |
| 12 | 10000000000000000000 |



SITE STATISTICS:
 TOTAL AREA: 100,000 SQ. FT.
 TOTAL BUILDING AREA: 100,000 SQ. FT.
 TOTAL PARKING: 100,000 SQ. FT.



LOCATION MAP
 10/20/14

EXHIBIT A

Not to be used for any other purpose than that for which it was prepared.

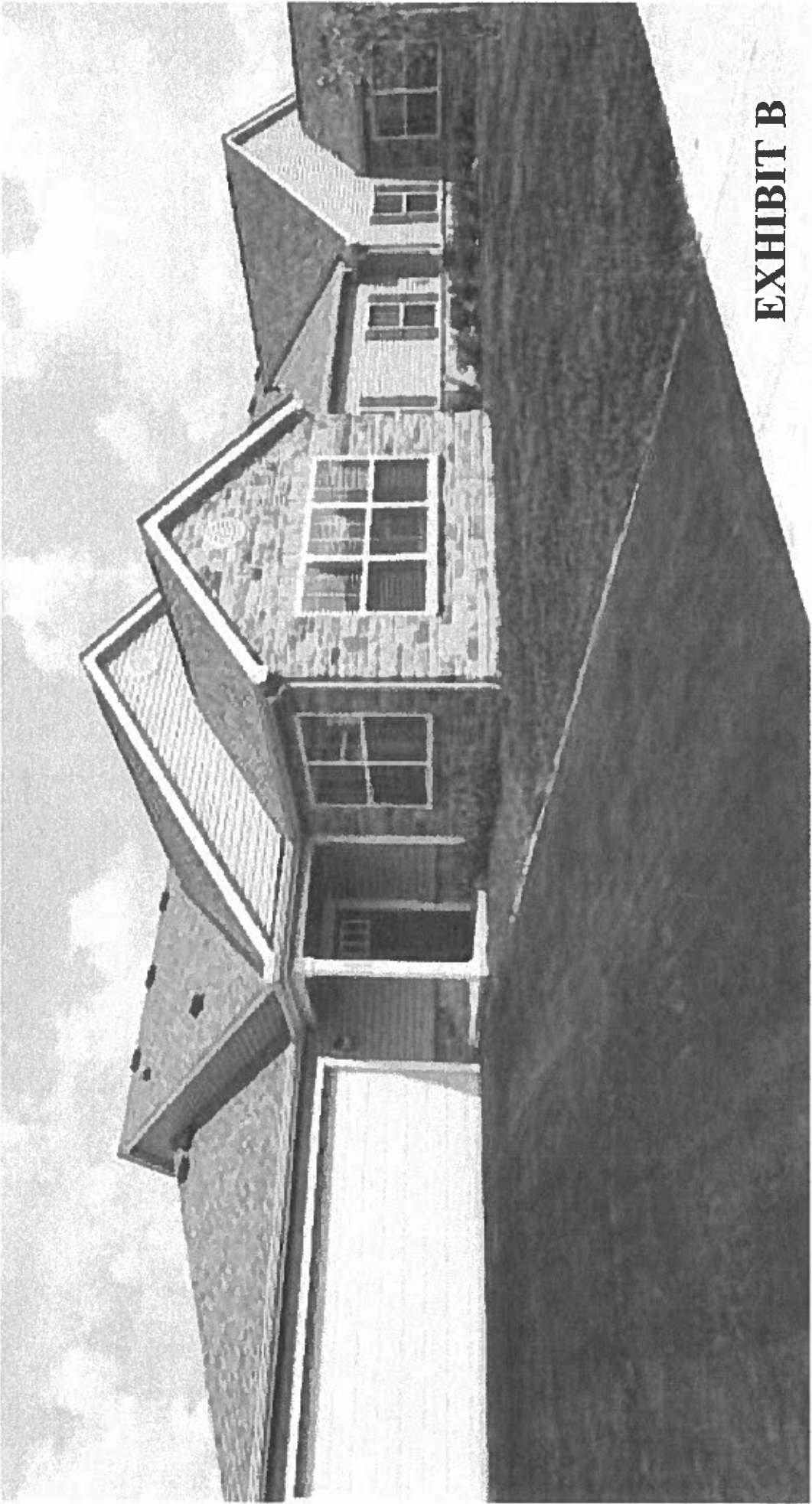


EXHIBIT B