**PARTICIPATING BUILDER PROGRAM MASTER AGREEMENT**

THIS AGREEMENT is made as of the day of , 20 , by amongst NEW ALBANY COUNTRY CLUB COMMUNITY ASSOCIATION, INC., an Ohio non-profit corporation ("NACCCA"), THE NEW ALBANY COMPANY, LLC, a Delaware limited liability company ("NACO") and

a(n) ("Builder").

## **RECITALS**

1. NACO is the Developer of the master-planned community located in and around the City of New Albany, New Albany, Ohio, a portion of which is known as the New Albany Country Club Community ("Country Club Community").
2. NACCCA oversees the building of homes and the overall maintenance of the Country Club Community for the purpose of maintaining continuity and appreciation of all homes built throughout the community.
3. Builder is engaged in the business of constructing homes on lots owned by Builder for sale to others and/or constructing homes on lots owned by third parties.
4. NACCCA, NACO and Builder desire to encourage the sale of lots and the quality development of residences in the Country Club Community.
5. NACCCA, NACO and Builder have determined that the terms and provisions contained in this Agreement will encourage lot sales and maintain the quality and development of residences in the Country Club Community.

## **ARTICLE 1 - COUNTRY CLUB COMMUNITY AND BUILDER PROGRAM**

1. PARTICIPATING BUILDER PROGRAM

Upon execution of, and subject to continuing compliance with the terms of this Agreement by Builder, NACCCA and NACO hereby agree to designate and admit Builder to the Participating Builder Program for the Country Club Community (the "Builder Program"), entitling Builder: (a) to represent itself as a "Country Club Community Participating Builder," (b) to purchase lots in the Country Club Community on such terms and conditions as may be agreed upon in separate written Purchase and Sale Agreements between Builder and NACO ("Lot Contracts"); and (c) to construct residences on lots within the Country Club Community. Builder's continued eligibility for the Builder Program shall be subject to Builder's compliance with the terms and conditions of this Agreement and fulfillment of all of Builder's obligations under all Lot Contracts.

1. MASTER PLANNED COMMUNITY

Builder acknowledges that the Country Club Community is a master planned community created in part by the recordation of a Declaration of Covenants, Conditions, and Restrictions for The New Albany Communities Master Association, Inc. and a Declaration of Covenants Conditions Restrictions for The New Albany Country Club Community Association, Inc., as more specifically set forth in the Lot Contracts (collectively “Declarations”). Builder further acknowledges that all property within the Country Club Community will be subject to the covenants and restrictions contained in the Declarations, or associations that may be established from time to time, and that every owner of property within the Country Club Community will automatically be a member of The New Albany Communities Master Association, Inc. and The New Albany Country Club Community Association, Inc. (the "Associations"), and shall be obligated to pay assessments to the Associations pursuant to the Declarations. Builder acknowledges that the Declarations, and design guidelines promulgated pursuant to the terms thereof (the "Design Guidelines"), are important elements of lot and residence ownership within the Country Club Community. Builder agrees to furnish said documents to any purchaser of a lot or residence from Builder and to any lot owner for which Builder constructs a residence within the Country Club Community.

1. DESIGN REVIEW APPROVAL

Builder agrees to adhere to the established architectural guidelines for The New Albany Country Club Community and specifically, to adhere to the Design Guidelines as specified for each neighborhood within the Country Club Community. Further, in order to assure that residences constructed by Builder are compatible with the objectives of The New Albany Country Club Community, Builder agrees to submit to the Architectural Review Committee ("ARC") all design documents and modifications thereof shall be subject to the approval by the ARC in accordance with the Declarations and the Design Guidelines for The New Albany Country Club Community. Builder shall also submit such design documents to the ARC as may be required for exterior materials, landscape drawings, alterations, additions, and modifications. By execution of this Agreement, Builder acknowledges receipt of Design Review Submittal Requirements, Landscape Review Submittal Requirements, and Application for Certificate of Appropriateness form, and Exterior Materials Submission form.

1. SITE CONDITIONS; MAINTENANCE; SIGNAGE

Builder agrees to adhere to the site condition standards, maintenance standards and signage requirements as set forth in the New Albany Country Club Community Construction Site Agreement attached hereto, as such may be modified by the NACCCA from time to time, either in general or as applied to a specific neighborhood.. Should damage occur to the Builder sign during construction, the Builder agrees to replace the sign as soon as feasible. Builder agrees to cooperate with the ARC on all signage requirements, including, but not limited to, use of lot markers, approved marketing panel(s), proper Open House tent signs, and all other signage as specified by the ARC.

1. INSURANCE

Prior to or upon closing of the purchase of any lot in the Country Club Community by Builder or the commencement of construction by Builder on any lot not owned by Builder, Builder shall obtain a public liability insurance policy in the amount of at least One Million Dollars ($1,000,000.00) covering all losses, damages and claims arising out of Builder's occupation, use of, activities on and ownership of lots within the Country Club Community, including property damage, bodily injury and death. The policy shall name Builder as the insured party and NACO and NACCCA as additional insured’s. A certificate evidencing such insurance shall be provided to NACO at or prior to the earlier Builder’s closing on the lot or the commencement of construction, and such insurance shall be maintained in effect so long as Builder owns or is engaged in construction on any lot within the Country Club Community.

1. COMPLIANCE WITH DECLARATIONS

Builder acknowledges and accepts responsibility for ensuring compliance with the terms and conditions of this Agreement, the Declarations, the Design Guidelines and the Site Standards by Builder and Builder's agents, employees, and subcontractors. In the event of the violation of any of the terms or conditions of this Agreement, the Declarations or applicable Design Guidelines or Site Standards by Builder or any agents, employees, or subcontractors of Builder or any other person acting under Builder, NACCCA, NACO or the Associations (whichever is appropriate) shall have all rights and remedies provided in this Agreement, the Declarations and/or the Design Guidelines or Site Standards, including without limitation, the right to rectify such violation and assess the Builder and/or lot owner for any expenses and/or damages incurred in connection therewith. In the event any such assessment is not paid in a timely fashion, NACCCA, NACO and/or the Associations shall have such lien and other rights as are provided in this Agreement, the Declarations and/or the Design Guidelines or Site Standards. In furtherance of the above, NACCCA, NACO and Builder acknowledge and agree that in the event Builder causes or permits the specified violations set forth in the Construction Site Agreement to occur on any lot within the Country Club Community, the Association may correct such violations and assess Builder the specified amounts set forth in the Construction Site Agreement. In the event Builder fails or refuses to pay such assessment, NACO and/or the Associations shall have the right, without limiting any other right to remedy, to enforce the collection of such assessment through the exercise of any available lien rights under the Declarations.

1. USE OF "NEW ALBANY" AND RELATED NAMES

The names "New Albany" or "New Albany Company" and any related names and/or trademarks shall not be utilized by Builder without the prior written consent of NACO. It is intended that utilization of these names will rest solely with NACO and will be used in marketing the overall Country Club Community.

## **ARTICLE 2 - MISCELLANEOUS**

* 1. TERM

The term of this Agreement shall be for one year, unless sooner terminated pursuant to the provisions of Section 2.2 below. Further, this Agreement shall be deemed automatically renewed for each succeeding year unless a party gives notice of termination for the upcoming year to the other party at least thirty (30) days prior to the anniversary date of the Agreement.

* 1. DEFAULT AND REMEDIES

If Builder: (a) defaults in any of its obligations hereunder or breaches any covenant contained herein, either directly or through its agents, employees, or subcontractors; or (b) is otherwise determined by NACCCA or NACO, in its sole discretion, to be unacceptable for continued construction of residences within the Country Club Community, NACCCA and NACO shall be entitled to terminate this Agreement by written notice to Builder. In the event of termination of this Agreement by NACCCA and NACO as provided above, Builder shall be permitted to complete construction on and sell all lots which Builder then owns in the Country Club Community, with NACO having first right of refusal to purchase said lots at the original purchase price in accordance with the original Lot Contracts. If NACO defaults in any of its obligations hereunder or breaches any covenant contained herein, Builder may terminate this Agreement by written notice to NACO, in which event, the parties shall be relieved of any further obligations hereunder, provided that all terms and conditions of the Agreement shall continue to apply to any lots owned by Builder and any residences then under construction by Builder until such time as Builder sells the last of any lots owned by Builder and the completion of any residences under construction by Builder.

* 1. BUILDER REVIEW POLICY

All applications to the Participating Builder Program shall be reviewed by a committee. The Preferred Builder Committee (PBC) shall follow the guidelines for review as outlined in the Participating Builder Program Application. The standards by which the PBC shall determine if a Builder applying for admittance into the Participating Builder Program is approved are knowledge of Georgian architecture, the ability to build in the price range, maintain the quality of the Country Club Community, and financial stability. In the event a builder is not accepted into the Participating Builder Program, the Builder may re-apply at any time the Builder feels they meet the guidelines set as a basis for the Participating Builder Program.

* 1. SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon and insure to the benefit of the parties and their successors and assigns. Builder shall not assign this Agreement or any interest hereunder, in whole or in part, without the prior written consent of NACCCA and NACO, which consent may withheld for any reason or for no reason.

* 1. ACKNOWLEDGMENT BY BUYER OR LOT OWNER

In the event Builder either (a) enters into a contract to build a residence on a lot owned by a third party or (b) enters into a contract to sell a lot owned by Builder to a third party prior to the completion of construction (as defined by the issuance of a certificate of occupancy), Builder shall provide NACO and NACCCA with a written confirmation signed by the lot owner or purchaser, as the case may be, acknowledging that the lot owner or purchaser has been provided a copy of this Agreement, including the Construction Site Agreement.

* 1. NO JOINT VENTURE

It is hereby acknowledged by Builder and NACCCA and/or NACO that the relationship between them created hereby is not intended to be and shall not in any way be construed to be that of a partnership, joint venture, or principal and agent. Any approval granted by NACCCA and/or NACO pursuant to this Agreement is solely for NACCCA and/or NACO's benefit and no person or entity may rely upon NACCCA and/or NACO's approval for any other purpose.

IN WITNESS WHEREOF, the undersigned have set their hands and seals hereto as of the day and year indicated under their signature.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| The New Albany Country Club Community Association, Inc., an Ohio Non-profit Corporation | | | | |
|  | |  |  |
| Signature | |  | Date |
| Print Name: |  |  | |
| Title: |  |  | |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| The New Albany Company, LLC, a Delaware Limited Liability Company | | | | |
|  | |  |  |
| Signature | |  | Date |
| Print Name: |  |  | |
| Title: |  |  | |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| BUILDER: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a(n) | | | | |
|  | |  |  |
| Signature | |  | Date |
| Print Name: |  |  | |
| Title: |  |  | |