



STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
800 BAY ROAD
P.O. Box 778
DOVER, DELAWARE 19903

JENNIFER COHAN
SECRETARY

March 28, 2019

OVERBROOK MEADOWS

Re: Overbrook Meadows Contribution to DE Route 1/Cave Neck Road Interchange Project

To Whom It May Concern:

This Memorandum of Agreement ("Agreement") shall set forth the terms and conditions between the Delaware Department of Transportation ("DelDOT") and Overbrook Real Estate Partners, LLC (OREP) d/b/a Overbrook ("DEVELOPER"), for contributions to DelDOT's project, SR 1 and Cave Neck Road Grade Separated Intersection ("PROJECT").

INTRODUCTION

WHEREAS, DelDOT acknowledges the Overbrook Project, which is located on the northeast side of Delaware Route 1, opposite Cave Neck Road (Tax Parcel: 235-23.00-1.00) with approximately 114.48 acres of AR-1 Zoned Property (Agricultural Residential) with a proposed 236 Single Family Home Development and has requested that DEVELOPER agree to and participate in the construction of the PROJECT.

WHEREAS, the DEVELOPER has agreed to modify its original development plan to accommodate DelDOT's alternative designs and agree to and participate in the construction of the PROJECT;

WHEREAS, both parties agree that DelDOT designing and constructing the PROJECT would be the best path forward to complete the PROJECT;

WHEREAS, DEVELOPER developed a Site Plan of the Overbrook Project based on an interchange design concept (Exhibit A) that is being considered as an alternative in the NEPA process of the PROJECT and also provided opportunities for the development of the Overbrook Project;

WHEREAS, significant modifications to the interchange design concept (Exhibit A) used in developing the Site Plan of the Overbrook Project that reduce the amount of development of the Overbrook Project will directly impact the level of contributions to the PROJECT.

WHEREAS, both parties agree that DelDOT has to follow the established DelDOT Project Development process including all aspects of the National Environmental Policy Act (NEPA) process. The process for determining the preferred alternative for the PROJECT will have varying effects on the DEVELOPER's project.



WHEREAS, both parties agree that the impacts to the DEVELOPER's project will vary based on the selected preferred alternative of the PROJECT and therefore the DEVELOPER's contributions to the PROJECT will vary based on their ability

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound herein, the parties hereby covenant and agree as follows:

1. DelDOT will not require any additional traffic studies for the Phase III or any modifications in housing type on Phase II. DelDOT will assess these traffic impacts as part of the development of the PROJECT.
2. Project Phasing:
 - a. Phase I – 135 Single Family Homes (Approved – Overbrook Meadows)
 - b. Phase II – 82 Single Family Homes (217 Single Family Homes Total) (Submitted – Overbrook West) or Multifamily
 - c. Phase III – Projected/Future Residential – 19 Single Family Homes (236 Single Family Homes Total) – If Rezoned – Projected/Future Commercial Pad Sites
3. Temporary Access:
 - a. DelDOT will allow a temporary access to the site to be located adjacent to the northern most property line. The cost of the temporary access will be the sole cost of the DEVELOPER
 - b. This temporary access can be utilized for up to 175 building permits.
 - c. No additional building permits beyond the 175 will be issued until the PROJECT can provide access to the development
 - d. Once the PROJECT is being used to access the site, the temporary entrance will be removed at the sole cost of the DEVELOPER.
4. Contribution scenarios:
 - a. Contributions under existing AR-1 Zoning with 236 Proposed Single Family Homes with a selected alternative for PROJECT that is consistent with Exhibit A:
 1. DEVELOPER will contribute the following towards the PROJECT.
 1. Phase I – \$1,140,000
 2. Phase II – \$700,000
 3. Phase III – \$160,000
 2. DEVELOPER will dedicate Right of Way in Fee to DelDOT along their frontage that would accommodate the PROJECT. Based on the recently submitted plans for Overbrook West, this dedication would be about 6.2 acres of land with a value of \$1,550,000 (\$250,000/acre). A separate record plan showing the dedication will be recorded in Sussex County upon selection of the low impact preferred alternative for the PROJECT

- b. Contributions under possible zoning changes with a selected alternative for PROJECT that is consistent with Exhibit A:
 - 1. DEVELOPER will contribute the following towards the PROJECT if the properties receive a rezoning through the local land use agency.
 - 1. Phase I – \$1,140,000
 - 2. Phase II – rezoned to multi-family \$840,000
 - 3. Phase III – rezoned to commercial \$480,000
 - 2. DEVELOPER will dedicate Right of Way in Fee to DelDOT along their frontage that would accommodate the PROJECT. Based on the recently submitted plans for Overbrook West, this dedication would be about 4.18 acres of land with a value of \$1,045,000 (\$250,000/acre). A separate record plan showing the dedication will be recorded in Sussex County upon selection of the low impact preferred alternative for the PROJECT
- c. Contributions under existing AR-1 Zoning with a selected alternative for PROJECT with no impact on Phase I or Phase II and limits the potential of Phase III (19 Single Family Homes or a Commercial Development) beyond what was contemplated under Exhibit A:
 - 1. DEVELOPER will contribute the following towards the PROJECT.
 - 1. Phase I – \$1,140,000
 - 2. Phase II – \$700,000
 - 3. Phase III – no contributions
 - 2. No dedication of right-of-way beyond what is required by the Development Coordination Manual will be made. Any right-of-way needed by the project, if known, will be indicated on the record plan as “reserved for future right-of-way”
- d. Contributions under existing AR-1 Zoning with a selected alternative for PROJECT with impacts to Phase I, Phase II, and Phase III (236 Single Family Homes):
 - 1. DEVELOPER will contribute the following towards the PROJECT
 - 1. Phase I – \$4,222 per unit
 - 2. Phase II – \$4,222 per unit
 - 3. Phase III – \$4,222 per unit
 - 2. No dedication of right-of-way beyond what is required by the Development Coordination Manual will be made. Any right-of-way needed by the project, if known, will be indicated on the record plan as “reserved for future right-of-way”

4. Payment Schedule:

- a. Phase I - 100% Phase I Payment Prior to the 33rd Single Family Home Building Permit or 90 days after the first construction contract award date of the Interchange (whichever is first)
- b. Phase II - 100% Phase II Payment Prior to the 20th Building Permit of Overbrook West or 50% of the Construction Completion of the Interchange (whichever is first)

- c. Phase III - 100% Phase III Payment Prior to the 1st Building Permit of Phase III or 75% Construction Completion of the Interchange (whichever is first)

This Agreement and the terms thereof shall be construed in accordance with the laws of the State of Delaware.

The terms and conditions of this Agreement are hereby mutually accepted upon the signing by an authorized agent of the DelDOT and the Developer. This Agreement constitutes the sole understanding by and between the DelDOT and the Developer, with respect to the improvements contained herein, and shall not be modified except in writing subscribed to by both parties.

For the avoidance of doubt, the DelDOT and the Developer may enter into subsequent Agreements for additional improvements not contained herein.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement in quadruplicate, under their respective seals, the day and year affixed below by the signature of the Department of Transportation's representative.

Dated: _____

Developer

SEALED, AND DELIVERED IN THE
presence of

Overbrook Real Estate Partners, LLC
Name of Developer

Attest: Edward Ahlswede

By: [Signature]
Authorized Signature

CORPORATE SEAL

Managing Member
Title

Dated: 6/5/19

Phone No.: 330-448-8220

E-mail: jjcafarro@jjcinvest.com

In the case of a corporation, firm, or partnership, this contract must be signed by the appropriate officials of such corporation, firm, or partnership and their corporate seal must be affixed hereto.

Delaware Department of Transportation

Attest: [Signature]
Charlanne Thornton, Director, Finance

By: [Signature]
Drew A. Boyce, Director, Planning

Dated: 6/18/19

Approved as to Form:

Annie C. Cordo /SH
Annie Cordo, Deputy Attorney General

