

ORDINANCE NO. 02-45 AC CMS

AN ORDINANCE AUTHORIZING A CONSTRUCTION AGREEMENT WITH CLARK BROTHERS, INC., RELATING TO THE CONSTRUCTION OF CLARKWOOD SUBDIVISION III

WHEREAS, Clark Brothers, Inc., has submitted plans to the Oberlin Planning Commission and the City of Oberlin for the development of a proposed subdivision to be known as "Clarkwood Subdivision III", in the City of Oberlin; and

WHEREAS, the Oberlin Planning Commission has approved the final plat for said subdivision and the improvement plans for same; and

WHEREAS, the City of Oberlin, pursuant to Section 1317.02 of the Codified Ordinances, is required to enter into a construction agreement with the developer to ensure installation of all public improvements in the proposed development in accordance with the improvement plans.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Oberlin, County of Lorain, State of Ohio, a majority of all members elected thereto concurring:

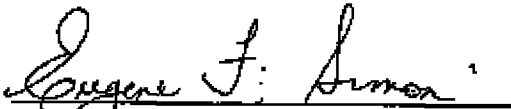
SECTION 1. That the proposed Construction Agreement between the City of Oberlin, Ohio, and Clark Brothers, Inc., for the construction and installation of public improvements in or adjacent to the proposed Clarkwood Subdivision III, a copy being attached hereto and incorporated herein by reference, is hereby approved, and the City Manager is hereby authorized and directed to execute same on behalf of the City.

SECTION 2. It is hereby found and determined that all formal actions of this Council concerning or relating to the adoption of this ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 3. That this ordinance shall take effect at the earliest date allowed by law.

PASSED: 1st Reading – April 15, 2002
 2nd Reading – May 6, 2002 (E)
 3rd Reading –

ATTEST:


CLERK OF COUNCIL


CHAIR OF COUNCIL

POSTED: May 7, 2002

EFFECTIVE DATE: May 7, 2002

a:/ORD02-45Clarkwood

City of Oberlin

Subdivision Construction Agreement

Section I. Identification of Financial Parties:

This Construction Agreement is made by and between the City of Oberlin, Ohio hereinafter referred to as the "City," and Clark Brothers, Inc., a corporation whose business address is 271 South Pleasant St., Oberlin, OH 44074, whose President is James A. Clark and James A. Clark an individual, with both the company and the individual collectively hereinafter referred to as the "SUBDIVIDER-DEVELOPER."

Section II. Successors and Assigns:

This Agreement shall be binding upon and shall inure to the City, its legal representatives, agents, elected and appointed officials, and the SUBDIVIDER-DEVELOPER, its legal representatives, successors and assigns. The SUBDIVIDER-DEVELOPER shall not assign, transfer or otherwise convey any right, title or interest in this agreement without first obtaining the written consent of the CITY, provided however, in no event shall the obligation, liability and responsibilities of the SUBDIVIDER-DEVELOPER be released without first obtaining the express written consent of the CITY.

Section III. Description of Property:

This Agreement shall cover the development of real estate owned by Clark Brothers, Inc. and known as the Clarkwood Subdivision No. 3. A copy of the final plat and improvement plans of said real estate prepared by F E Krocka & Associates, Inc. are dated December, 2001, and marked Exhibit "A" and are attached hereto for the purpose of identification of the real estate covered by this Agreement.

The SUBDIVIDER-DEVELOPER agrees to provide to the City Engineer one (1) copy of the final plat in AutoCad dwg file format.

Section IV. Required Improvements:

The SUBDIVIDER-DEVELOPER agrees to plan, manage, schedule, supervise, and to construct all required improvements within the Clarkwood Subdivision No. 3 and to construct additional required improvements that will be located outside the limits of the subdivision but which improvements are required to serve facilities which will be located within the subdivision as specified in this Agreement.

- A.) The required improvements to be installed or constructed within the Clarkwood Subdivision No. 3 are:
- 1.) Sanitary sewer system
 - 2.) Storm sewer system
 - 3.) Water main with fire hydrants, with laterals to the curb lawn right-of-way for each

- lot
 - 4.) Asphalt concrete street pavements with an underdrain system
 - 5.) Underground street lighting system
 - 6.) Underground primary and secondary electrical distribution system and interconnecting facilities
 - 7.) Monumentation
 - 8.) Grading and seeding of lots
 - 9.) Curb Lawn Trees
 - 10.) Any other improvements required by City Ordinances, by the City Planning Commission or by the City of Oberlin Public Works Standards and those required by the Oberlin Municipal Light and Power System and included in the final plat and the improvement plans.
- B.) The following required improvements to be installed or constructed within the Clarkwood Subdivision No. 3 shall be constructed at the time of the development of each individual lot. These are
- 1.) Concrete sidewalks
 - 2.) Storm sewer laterals to yard drains on each lot
- C.) The improvements that will be located outside the limits of the subdivision include the storm sewer, sanitary, water main, electrical service, sidewalk, and street pavement as needed to connect to the existing facilities in the Pyle S. Amherst Road and Beech Street rights-of-way.
- D.) The SUBDIVIDER-DEVELOPER shall be responsible for the entire cost of all the required improvements, including but not limited to
- 1.) Surveys, plat drawings, and as-built drawings
 - 2.) Monumentation
 - 3.) Construction and installation cost
 - 4.) Engineering design, supervision of construction and certification of the as-built drawings by the SUBDIVIDER-DEVELOPER's Engineer and Surveyor
 - 5.) Stormwater Management Plan to be implemented continuously during development and construction activities
 - 6.) City Review and Inspection costs
 - 7.) Materials Testing Costs
 - 8.) Construction layout surveys by Private Registered Surveyor
 - 9.) Bonds, insurance and title guarantees
 - 10.) Landscape plans, production and installation costs, including but not limited to curb lawn trees
 - 11.) All permit and tap-in fees
- E.) The SUBDIVIDER-DEVELOPER shall be responsible for the approved collection and conveyance or approved termination of all existing subsurface drainage systems affected by the proposed construction. Subsurface drainage systems of abutting properties shall not be adversely affected by the improvements of the SUBDIVIDER-DEVELOPER.

- F.) The SUBDIVIDER-DEVELOPER shall be responsible for appropriate monumentation as follows. Monument boxes shall be set in the center line of each street at every point at which said street changes direction. A 5/8" iron pin with stamped cap shall be properly set in each monument box. All corners of every lot shall be marked with a 5/8" iron pin with a stamped cap.
- G.) The SUBDIVIDER-DEVELOPER shall hold the CITY harmless from any and all costs, expenses, liabilities and claims arising therefrom.

Section V. Completion Time:

The SUBDIVIDER-DEVELOPER agrees to complete all required improvements in accordance with the provisions of Section IV within 365 consecutive days (1 Year) of the date of this Agreement, unless said completion is extended in writing for good cause by the Oberlin City Manager. Such extension or extensions shall not exceed 365 additional days.

Section VI. Compliance with Laws, Regulations and Codes:

The SUBDIVIDER-DEVELOPER shall be responsible for carrying out and completing all requirements in compliance with all applicable Federal, State and City laws, regulations and codes, including but not limited to the following.

- a.) Federal and State wetland regulations
- b.) State plan approval and permits for water main extensions
- c.) State plan approval and permits for the sanitary sewer extension
- d.) State NPDES permit for storm water discharge from construction area
- e.) City of Oberlin Public Works standards
- f.) Oberlin Municipal Light and Power System approved installation requirements

The SUBDIVIDER-DEVELOPER and not the CITY, shall have the obligation and responsibility to comply with any and all laws, rules and regulations relating to or regarding WETLANDS, including the obtaining of any necessary permits, exemptions or exceptions therefrom.

The SUBDIVIDER-DEVELOPER and not the CITY, shall have the obligation and responsibility to comply with the NPDES permit for storm water discharge from the construction area, including but not limited to,

- a.) Identifying potential pollutant sources
- b.) Using stabilization practices to control erosion and to prevent sediment from being discharged into the existing storm sewer, ditch, retention/detention basin, field tile or any natural drainage course.
- c.) Maintain all required records as required showing compliance with the storm water discharge permit.

To meet the requirements of this section, the SUBDIVIDER-DEVELOPER shall file with the City Engineer a copy of all permit applications and the permits issued for the permits listed in this section

Section VII. Improvement Plans and Specifications:

The SUBDIVIDER-DEVELOPER, in order to furnish the required plat and the required improvement plans and specifications for use in the construction of all improvements included in this Agreement, agrees that said subdivision plat shall be prepared by a registered Surveyor, and that said improvement plans and specifications shall be prepared by a registered Professional Engineer, both of whom shall be in good standing and duly registered with the Ohio Board of Registration for Professional Engineers and Surveyors, with authorization to practice in the State of Ohio. The Surveyor and Engineer may be the same person provided he or she holds both required registrations. Before construction of any improvements by the SUBDIVIDER-DEVELOPER on any land included in Exhibit "A", the improvement plans and specifications of the items to be constructed shall be subject to the City's review and approval. Said review shall be for compliance with City ordinances and construction standards and the requirements of this Agreement. All required improvements shall be constructed in accordance with the approved improvement plans and specifications.

Specifications shall be based upon the standard specifications of the City of Oberlin Public Works Standards and those required by the Oberlin Municipal Light and Power System. Said Standards shall be used in the development of the construction documents and produced and distributed by the SUBDIVIDER-DEVELOPER to the parties involved in the construction of the improvements. Reference to the said Standards shall not constitute compliance with this requirement.

The SUBDIVIDER-DEVELOPER shall provide to the City Engineer five (5) sets of the printed plans with one (1) AutoCad.dwg file accurately describing all of the improvements to be constructed. The printed and electronic versions must be identical. Five (5) sets of the printed plans with one (1) AutoCad.dwg file shall be submitted to the City Engineer of all approved revisions or additions to the improvement plans.

The approved Subdivision Grading Plan must be provided by the SUBDIVIDER-DEVELOPER to each BUILDER for each individual lot. Said Subdivision Grading plan shall become the basis for the site grading plan for all construction on each individual lot.

Section VIII. Pre-Construction Procedures

Before the SUBDIVIDER-DEVELOPER authorizes a contractor(s) to work on any of the required improvements identified in Section IV herein, or begins work on the required improvements with his own forces, he shall file with the Public Works Director, copy(s) of his Certificate of Liability Insurance with the City of Oberlin, Ohio, its elected and appointed officials and employees named as additional insured. The liability insurance shall remain in force until all work has been completed and Oberlin City Council accepts the improvements. The liability limits for the required coverages noted hereinabove shall be at least:

	<u>Each Occurrence</u>	<u>Aggregate</u>
Bodily Injury and Property Damage Combined	\$1,000,000.00	\$2,000,000.00
Vehicle Liability	\$1,000,000.00	\$1,000,000.00

Prior to receiving Authorization to Proceed, the SUBDIVIDER-DEVELOPER shall submit to the Public Works Director the required fees for inspection and testing services as delineated hereinafter in Section XI of this Agreement.

Once the SUBDIVIDER-DEVELOPER has met all Pre-Construction conditions, the City Manager shall issue written authorization to the SUBDIVIDER-DEVELOPER to proceed with the installation of the approved improvements. No work shall begin prior to the receipt of the written Authorization to Proceed.

Section IX. Performance Bond:

Before final plat approval by the City, the SUBDIVIDER-DEVELOPER agrees to post a performance bond in the amount of Six Hundred Sixty Thousand and Thirty Three Dollars and 00/100 (\$660,033.00) or an irrevocable letter of credit subject to approval as to the amount by the City Engineer and as to form by the City Solicitor, in accordance with Section 1317.03 of the City of Oberlin Zoning Code. The amount of the performance bond shall be based on an itemized estimate provided by the SUBDIVIDER-DEVELOPER to the City Engineer for the installed cost of all of the improvements detailed in the approved improvement plan.

The performance bond shall guarantee the completion of all improvements required hereunder. In the event that the required improvements are not completed by the SUBDIVIDER-DEVELOPER within the time period designated in this Agreement, the City Manager shall have the option, thirty (30) days after issuing written notice to the SUBDIVIDER-DEVELOPER, to complete the improvements and to collect and receive funds from the performance bond to be applied towards the costs of completing said improvements.

The SUBDIVIDER-DEVELOPER agrees the expenditure of funds by the SUBDIVIDER-DEVELOPER in completing part of the required improvements does not reduce the amount of the performance bond or letter of credit (as the case may be) for which the SUBDIVIDER-DEVELOPER is individually and collectively responsible.

The performance bond shall be guaranteed individually by the SUBDIVIDER-DEVELOPER's principals, general partners, shareholders, officers, or directors (as the case may be) as determined and approved by the City Solicitor. The letter of credit shall be in conformity with O.R.C. Chapter 1305 or such other requirements as determined by the City Solicitor.

Section X. Inspection of Improvements:

The installation of all required improvements shall be supervised by a Professional Engineer and Professional Surveyor employed by the SUBDIVIDER-DEVELOPER.

The City shall make inspections during the installation of improvements to ensure conformity with the

approved improvement plans and with this Agreement. The City may, at its sole discretion, contract for inspection services which fees shall be paid from the SUBDIVIDER-DEVELOPER's deposit.

The inspections of all construction by the City Engineer and other personnel employed by the CITY shall be done to ensure proper installation and construction of all improvements, provided however, that the presence of CITY personnel shall not make the City liable for the acts of the SUBDIVIDER-DEVELOPER or the SUBDIVIDER-DEVELOPER'S agents, and the SUBDIVIDER-DEVELOPER, its general partners, heirs, successors and assigns jointly, severally and personally agree to hold the CITY, its agents, representatives, elected and appointed officials and employees, harmless from any and all liability, claims, causes of action, damage to property or person arising out of or in connection with any acts, errors, omissions, or negligence arising out of or caused by the design or by the construction of any and all improvements by the SUBDIVIDER-DEVELOPER.

The City may have materials testing of the work performed during the installation of the improvements to ensure conformity with the approved improvement plans and this Agreement. Said testing shall be performed in accordance with the Public Works Standards.

The SUBDIVIDER-DEVELOPER shall provide minimum seventy-two (72) hour (exclusive of weekends and holidays) notification of start/stop of construction activity to the City. Construction shall not recommence prior to the expiration of the three (3) working day notification period. All inspection costs due to non-compliance with this clause shall be borne separately by the SUBDIVIDER-DEVELOPER.

Section XI. Inspection Costs incurred by City:

The SUBDIVIDER-DEVELOPER agrees to deposit with the CITY the amount of Thirty Three Thousand and One and 50/100 dollars (\$33,001.50) representing 5% of the approved estimate. Said funds shall be deposited in a dedicated construction account. Said funds may be drawn on by the City to pay for review and inspection charges and costs directly related to this subdivision as incurred by the City Engineer and the Public Works Director. The fees (if any) for contracted inspection services shall be paid from the SUBDIVIDER-DEVELOPER's deposit. Construction observation shall continue for the full duration of the improvements including remedial activities required to secure the City's acceptance of said improvements. In the event that the funds are insufficient, additional funds shall be deposited by the SUBDIVIDER-DEVELOPER in increments of not less than 1% of the aforementioned construction cost until such time as the City accepts said improvements. The City shall, with written notice, provide a full accounting of said deposit account to the SUBDIVIDER-DEVELOPER.

The SUBDIVIDER-DEVELOPER shall deposit with the CITY the amount of Six Thousand Six Hundred and 30/100 dollars (\$6,600.30) representing 1% of the approved estimate. Said funds shall be deposited in a dedicated construction account. Said funds may be drawn on by the City to pay the costs of materials testing and reporting by a materials testing firm based on the invoices of said firm. In the event that the funds are insufficient, additional funds shall be deposited by the SUBDIVIDER-DEVELOPER in increments of not less than 0.2% of the aforementioned construction cost until such time as the City accepts said improvements. The City shall, with written notice, provide a full accounting of said deposit account to the SUBDIVIDER-DEVELOPER.

Section XII. Modification of Improvement Plans:

If at any time before or during the construction of the required improvements, it is demonstrated to the satisfaction of the City Manager and the City Engineer that unforeseen conditions make it necessary or preferable to modify the location or design of such required improvements, the City Manager may authorize such modifications upon advance written request of the SUBDIVIDER-DEVELOPER, provided such modifications are within the spirit and intent of the Planning Commission's approval and do not amount to the waiver or substantial alteration of the function of any improvement required by the Commission. The City Manager shall issue such authorization in writing and shall transmit a copy to the Planning Commission.

Section XIII. Acceptance of Land and Improvements:

The SUBDIVIDER-DEVELOPER acknowledges that final plat approval does not constitute acceptance of the improvements. The improvements may be accepted by the CITY for public maintenance only by an action of the Oberlin City Council, through the passage of an ordinance accepting the improvements for public maintenance.

The SUBDIVIDER-DEVELOPER acknowledges his responsibility for all maintenance costs incurred (by him or by the CITY) before the date of passage of the ordinance accepting the improvements for public use and maintenance. Prior to acceptance, the SUBDIVIDER-DEVELOPER shall be responsible for the routine maintenance of all improvements, including but not limited to, snow removal, sweeping, cleaning of storm sewers and all other maintenance activities. The SUBDIVIDER-DEVELOPER shall repair all failures in the improvements as soon as these become apparent.

The SUBDIVIDER-DEVELOPER shall, prior to the acceptance of the improvements, provide waivers of lien executed by all suppliers, contractors, and subcontractors who have provided materials or performed work related to the construction of the improvements. The SUBDIVIDER-DEVELOPER shall, prior to the acceptance of the improvements, provide to the City at the SUBDIVIDER-DEVELOPER's expense, a title search in compliance with Section 1317.06 of the Codified Ordinances of the City of Oberlin.

The SUBDIVIDER-DEVELOPER's Professional Surveyor and the SUBDIVIDER-DEVELOPER's Professional Engineer who has supervised the installation of the improvements shall, after completion of the installation, jointly certify to the City Manager that all improvements have been constructed as required by this Agreement and as such requirements have been modified during the course of construction. The SUBDIVIDER-DEVELOPER shall provide to the City Engineer one set of AutoCad.dwg drawing files and one set of printed plans accurately describing all of the improvements as constructed.

After all the improvements have been completed and all of the conditions met, the SUBDIVIDER-DEVELOPER shall petition the City in writing for acceptance of the improvements. When the City Manager and the City Engineer determine that all improvements have been completed and all requirements and conditions have been complied with, they shall make a written recommendation to City Council to accept the improvements for ownership, operation, and maintenance. City Council shall accept the improvements by the adoption of an ordinance. The CITY agrees to use its best efforts to pass said ordinance within a reasonable time after the SUBDIVIDER-DEVELOPER files its petition as provided in this section.

Upon completion of all required inspections and testing, the City Engineer shall make a final and complete statement of the amount of the inspection and testing costs charged or to be charged against the SUBDIVIDER-DEVELOPER's deposit account. The City Engineer shall make a recommendation to the City Manager requiring final payment or making a refund to the SUBDIVIDER-DEVELOPER.

At the time of acceptance of the improvements, action shall be taken to release the Performance Bond and to establish the Maintenance Bond.

Section XIV. Maintenance Guarantee:

A maintenance bond shall be posted with the City Manager for ten percent (10%) of the costs of the improvements at the time the improvements are accepted by City Council. This bond shall be arranged for 12 months from the date of acceptance of improvements by the CITY. Said bond shall be in the form of either cash deposit or corporate surety bond in a form approved by the City Solicitor.

During the maintenance guarantee period, it shall be the SUBDIVIDER-DEVELOPER's responsibility to make any repairs required and shall repair all failures for any reason. The streets, public utilities, street trees, monuments, and all other improvements shall be in a condition acceptable to the City Manager at the end of the maintenance period. If subdivision maintenance is not satisfactory to the City Manager then the City Manager may claim a portion of the Maintenance Guarantee as is required to pay for the repairs to the improvements.

Section XV. Restoration Bond:

The City Manager may, where conditions warrant, require a restoration bond. The bond shall insure repair of any damage done to the existing public utilities including but not limited to curbs, gutters, sidewalks, driveways, street pavement, landscaping, or other items within the right-of-way adjacent to the subdivision or within areas or easements controlled by the City. The amount and the term of the bond shall be as determined by the City Manager based on his/her estimate of potential damage and shall be in a form approved by the City Solicitor. The restoration bond shall be released when all damaged facilities, if any, have been restored to the satisfaction of the City Manager.

Section XVI. Building Construction before Improvements are Complete:

Upon approval of the final plat for the Clarkwood Subdivision No. 3 by the Planning Commission and the approval of this Agreement by Oberlin City Council, the SUBDIVIDER-DEVELOPER or its assigns may, after obtaining the required permit(s) from the City Code Administrator, posting the required bonds, and complying with all other applicable portions of this Agreement, begin the construction of building(s) on any or all of the lots in said subdivision. SUBDIVIDER-DEVELOPER agrees that the Code Administrator shall not issue building permits for any subplot until the storm water system is functional, as determined solely by the City.

However, in no event shall any such building (s) be occupied before the City Code Administrator has issued an occupancy permit and before all of the sanitary sewers, storm sewers, water lines, fire hydrants, street

pavements, electrical service and street-lighting that will serve the specific lot have been constructed, tested and approved for use by the City of Oberlin and accepted by ordinance of the City Council

The Code Administrator shall require the completion of lot grading, yard drains, sidewalks, and any other improvements required in the subdivision by the Planning Commission in the final plat, under the terms of this Construction Agreement or required by any applicable code or regulation before issuing the occupancy permit

Section XVII. Environmental:

The SUBDIVIDER-DEVELOPER makes the representation to the CITY that to its knowledge it is not in violation of any federal, state, or local laws, rules or regulations concerning land use and the environment, and the real estate upon which the SUBDIVIDER-DEVELOPER proposes to subdivide the Clarkwood Subdivision No. 3 has not previously been used for a landfill, dump or disposal site for garbage, refuse, or construction demolition debris, and that the SUBDIVIDER-DEVELOPER nor any other person has caused or permitted hazardous materials to be placed, held, located, released or disposed of on, under or at said real estate, nor has any part of the real estate ever been used for activities involving directly or indirectly, the use, generation, treatment, storage or disposal of any hazardous materials, except for materials used in the growth and production of agricultural products

Section XVIII. Erosion Control:

Measures shall be taken to minimize erosion and its impacts during Subdivision Construction activities. Erosion control plans shall be designed to control erosion on-site with the object of eliminating or minimizing erosion and sedimentation impacts off-site. Detailed erosion control plans setting forth the techniques to be used temporarily (during construction of improvements, including housing) and permanently shall be submitted with the Improvement Plans. The erosion control plans shall include a schedule for the implementation or installation of said measures. All erosion control devices shall be in place at the start of construction and other measures implemented according to the approved schedule. The erosion control plan and its procedures shall remain in effect until the subdivision is built out or vegetated to control erosion in accordance with the storm water management plan basis of design.

Mud and soil from construction traffic shall remain on the construction site. Concrete trucks shall not clean and deposit unused concrete into the street or storm drainage system. All areas of disturbed soil shall be restored in an approved manner, including establishing the finished grade, seeding and planting. Any unpaved areas of rights-of-way or pedestrian ways shall be graded, seeded, and planted as described in the Improvement Plans.

Section XIX. Indemnification:

The SUBDIVIDER-DEVELOPER agrees to indemnify and save harmless the CITY OF OBERLIN, OHIO, and its elected and appointed officials, agents, representatives and employees from any and all causes of action, suits, claims and damages, losses and expenses, including but not limited to attorney fees, arising out of or resulting from or incurred in connection with any work, acts, or obligations carried out or

done or to be carried out or to be done under this Agreement by the SUBDIVIDER-DEVELOPER, or the omission of any work, acts or obligations to be carried out or to be done by the SUBDIVIDER-DEVELOPER under this Agreement, including but not limited to those as provided in Section VI and Section XVI of this Agreement.

The covenants, conditions and obligations contained herein constitute and become binding upon the SUBDIVIDER-DEVELOPER, its successors and assigns and run with the land which is the subject matter of this Agreement, said lands being further described as situated in the State of Ohio, County of Lorain, City of Oberlin, and more particularly described in Volume _____, Page _____ of Lorain County Deed Records in the Office of the Lorain County Recorder. Further, these covenants, conditions and obligations shall be deed restrictions binding upon each of the sublots contained herein.

Section XX. Attachments:

The following attachments are hereby incorporated by reference and made a material part of this Agreement

- Exhibit "A": Final Plat and approved Improvement Plans
- Exhibit "B": City of Oberlin Public Works Standards

Section XXI. Entire Agreement:

This Agreement constitutes the entire agreement between the CITY and the SUBDIVIDER-DEVELOPER with respect to the development of the Clarkwood Subdivision No. 3 to which it relates. The parties hereto agree that no representation or warranties shall be binding upon either part unless expressed in writing in this instrument.

Section XXII. Modifications:

No changes in, modifications to, extension of, supplement to or discharge of this Agreement shall be valid or enforceable unless it is in writing and duly executed on behalf of the CITY and the SUBDIVIDER-DEVELOPER and approved by ordinance by Oberlin City Council

Section XXIII. Governing Law:

This Agreement is to be interpreted and construed in accordance with the laws of the State of Ohio,

Section XXIV. Severability:

If any term or provision of this Agreement shall become or be declared by a court of law to be invalid or unenforceable, the remainder of this Agreement and the application of the remainder of this Agreement shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be

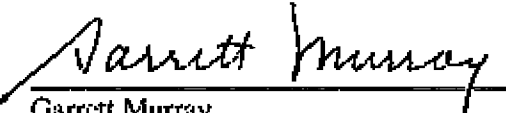
enforceable to the fullest extent permitted by law.

IN WITNESS WHEREOF, the parties have hereunto set their hands to this Agreement on this 5th
day of July, 2002.

APPROVED AS TO AMOUNT OF BOND:


Keith Johnson, P E
Oberlin City Engineer

APPROVED AS TO FORM


Garrett Murray
Attorney at Law

IN THE PRESENCE OF,




THE CITY OF OBERLIN, OHIO

BY 
Robert DiSpirito
City Manager

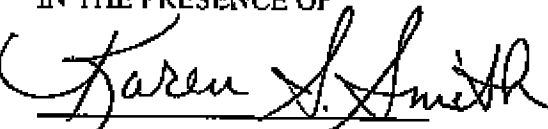
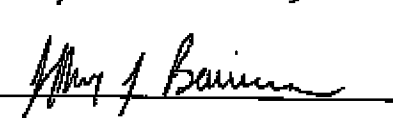
IN THE PRESENCE OF:




SUBDIVIDER/DEVELOPER

BY 
James A. Clark
President

IN THE PRESENCE OF

BY 
James A. Clark
Individually

State of Ohio

SS

Lorain County

Before me, a Notary Public in and for the County of Lorain, State of Ohio, personally appeared the above named CITY OF OBERLIN, OHIO by Robert DiSpinto, its City Manager, who acknowledged that he did execute and sign the foregoing instrument and that the same is his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto affixed my signature and seal at Oberlin, Ohio this 5th day of July, 2002.



WENDIE A. FLEMING
Notary Public, State of Ohio
My Commission Expires 4-22-2004

Wendie A. Fleming
Notary Public

SS

Lorain County

Before me, a Notary Public in and for the County of Lorain, State of Ohio personally appeared the above named Clark Brothers, Inc. by James A. Clark, its President, who acknowledged that he did execute and sign the foregoing instrument and that the same is his free act and deed as said President.

IN TESTIMONY WHEREOF, I have hereunto affixed my signature and seal at Oberlin, Ohio this 5th day of July, 2002

Karen S. Smith
Notary Public

State of Ohio

SS

Lorain County

Karen S. Smith
Notary Public, State of Ohio
My Commission Expires July 6, 2004

Before me, a Notary Public in and for the County of Lorain, State of Ohio, personally appeared James A. Clark, an individual, who acknowledged that he did execute and sign the foregoing instrument and that the same is his free act and deed, individually

IN TESTIMONY WHEREOF, I have hereunto affixed my signature and seal at Oberlin, Ohio this 5th day of July, 2002

Karen S. Smith
Notary Public

Karen S. Smith
Notary Public, State of Ohio
My Commission Expires July 6, 2004

For Council's information.
-Rob

City of Oberlin

85 South Main St. Oberlin, OH 44074.

Public Works Department

June 28, 2005

American Contracting Services, Inc.
Attn: Jackie Demeter
12333 Ridge Rd, Suite 1B
Cleveland, OH 44133

RE: Maintenance Bond No. 69641883
Clarkwood III Subdivision, Clark Brothers, Inc.

Dear Ms. Demeter,

This letter is to provide notice to American Contracting Services, Inc. that Clark Brothers, Inc. has fulfilled the terms and conditions of the 1 year maintenance guarantee provided to the City of Oberlin upon acceptance of the Clarkwood III Subdivision by Oberlin City Council. As a result, their Maintenance Bond No. 69641883 in the amount of \$69,036 may now be released.

If there are any questions, you may call me at 775-7204. Thank you for the assistance you have provided in bringing this project to its successful completion.

Sincerely,


Jeffrey J. Baumann
Public Works Director

Cc: Clark Brothers, Inc.
Rob DiSpirito, City Manager