

**ORDINANCE 2015-11**

**AN ORDINANCE AUTHORIZING AND DIRECTING THE VILLAGE ADMINISTRATOR AND/OR MAYOR OF THE VILLAGE OF COMMERCIAL POINT TO ENTER INTO A PRE-ANNEXATION AGREEMENT WITH WESTPORT HOMES OF OHIO, INC, TRUSTEE DEWIGHT A. IMLER, JAMES L. AND SHARON R. JENKINS AND SI OHIO PROPERTIES, LLC AND DECLARING AN EMERGENCY.**

**WHEREAS**, Dwight A. Imler, Trustee of the Imler Dwight A. & Vickie S. Trust, James L. and Sharon R. Jenkins and SI Ohio Properties, LLC (Hereinafter collectively referred to as "Landowners") owns approximately ±51.0 acres on Welch Road which is contiguous with the boundaries of the Village; and

**WHEREAS**, Westport Homes of Ohio, Inc. desires to purchase and develop the approximately ±51.0 acres owned by the Landowners; and

**WHEREAS**, the Village has negotiated a written Pre-Annexation Agreement with the Landowners and Westport Homes of Ohio, Inc. setting forth each party's respective rights and duties; and

**NOW THEREFORE**, be it resolved by the Council of the Village of Commercial Point, Pickaway County, Ohio, a majority or more of the members elected thereto concurring that:

**SECTION 1:** The Council of the Village of Commercial Point hereby authorizes and directs the Village Administrator and/or Mayor to enter into a Pre-Annexation Agreement in a form substantially similar to the Pre-Annexation Agreement hereto attached as Exhibit "A" and incorporated herein by reference, to provide for annexation of the approximately ±51.0 acre parcel owned by Landowner and to be purchased and developed by Westport Homes of Ohio, Inc.

**SECTION 2:** It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this resolution 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 resolution is hereby declared to be an emergency measure and shall take effect and be in force immediately from and after its passage. This emergency measure is necessary for the health, safety and welfare of the residents of Commercial Point, such emergency arising out of the imperative necessity to commence the annexation and zoning in compliance with the terms of the Pre-Annexation Agreement, Ohio Revised Code and Village Ordinances.

Vote on Suspension of Readings:

Motion by: Randy Shelton 2<sup>nd</sup> Mark Geiger

Roll Call:

Yes Randy Shelton  
Yes David Sadler

Yes Clarence Wissinger  
Yes Brad Laxton

Yes Mark Geiger  
     Nicole Evans

Vote on Passage of the Ordinance and Declaring an Emergency:

Motion by: Brad Laxton 2<sup>nd</sup> Randy Shelton

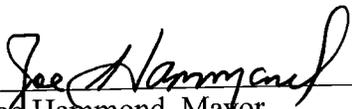
Roll Call:

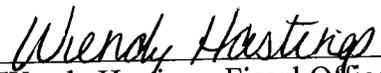
Yes Randy Shelton  
Yes David Sadler

Yes Clarence Wissinger  
Yes Brad Laxton

Yes Mark Geiger  
     Nicole Evans

Adopted this 14th day of September, 2015.

  
\_\_\_\_\_  
Joe Hammond, Mayor

  
\_\_\_\_\_  
Wendy Hastings, Fiscal Officer

Approved as to Form:

  
\_\_\_\_\_  
Michael D. Hess, Law Director

## PRE-ANNEXATION AGREEMENT

This Pre-Annexation Agreement (the "Agreement") is entered into, by and between The Village of Commercial Point, Ohio, an Ohio municipal corporation (hereinafter the "Village"), and Dwight A. Imler, Trustee of the Dwight A. Imler & Vickie S. Imler Trusts, Ohio trusts, James L. Jenkins and Sharon R. Jenkins and SI Ohio Properties, LLC an Ohio limited liability company (hereinafter referred to as "Landowners") and Westport Homes, Inc., an Indiana Corporation (hereinafter referred to as "Developer").

### PURPOSE

Landowners are the owner of certain tracts of land consisting of approximately 51.0 +/- acres located on Welch Road in Scioto Township, Pickaway County, Ohio, being a portion of PID L27-0-001-00-617-00, PID L27-0-001-00-617-02 and PID L27 -0-001-00-617-01 and being more particularly described in **Exhibit "A"** attached hereto and incorporated herein (the "Property"), which Property is contiguous with the boundaries of the Village of Commercial Point.

Landowners Imler and Jenkins have contracted with Developer for the sale of the Property in order for the Developer to develop and build a 147+/- unit single-family housing development, substantially similar to the neighboring Chestnut Estates subdivision, together with related improvements, including, but not limited to, streets, drainage facilities, entry features, open spaces, community amenities, model homes and signage (collectively, the "Improvements") on a 43.6+/- acres portion of the Property. Developer intends to file for approval of its proposed development plan

through a rezoning application with the Village. Landowner SI Ohio Properties, LLC, intends that it's 7.075 +/- acres be rezoned to an R-1 district under Village Ordinances, and via contract has named the Developer it's agent for the purpose of filing a separate rezoning and development plan application in order for the Village to consider same. In general, the 51 +/- acres Property would benefit from Village services including, but not limited to, sanitary sewer, water, police protection, refuse service and planning and zoning services. As described in more detail in the following sections of this Agreement, the Village can offer its municipal services to the Property if the Property is annexed to the Village. The mutual purposes of the Village, Developer and Landowners can be accomplished through the annexation of the Property to the Village, and appropriate rezoning and development under the Village's zoning ordinances.

Therefore, in order to gain mutual benefits, the Village and Landowners agree as follows:

1. Annexation Petition. The Landowners and Developer will prepare an annexation petition for the purpose of seeking annexation of the Property into the Village of Commercial Point. Landowners will sign the annexation petition agreeing to request annexation of the Property into the Village of Commercial Point pursuant to Ohio Revised Code Section 709.023 and appointing Thomas L. Hart, Esquire as the petitioners' agent in connection with the annexation petition. The annexation petition may be filed solely with the Property or may be filed as a joint annexation petition with other parcels so long as all other parcels so joined are supported by one hundred percent (100%) of the owners of each parcel and the joinder of any such additional parcels will in no way affect the agreements of the parties memorialized in this

Agreement. The petition will be filed with the Pickaway County Commissioners. The Landowners and Developer agree that all costs and expenses in petitioning for the annexation will be borne by themselves per their contractual agreement. Should Village desire for its own attorney to represent its interests with regard to the annexation petition, those costs will be borne by Village. Once this Agreement is signed and accepted by the Village, Landowners agree that they will not remove their names from the petition and will continue to support the annexation to the Village throughout the entire annexation process, including any appeal or court action, provided however, Landowners continued cooperation in the annexation of the Property shall be subject to and conditioned upon the Village's performance of its duties and obligations as memorialized in this Agreement. Landowners and Developer will provide statutorily required affidavits to the Village for presentation to the Pickaway County Board of County Commissioners in support of annexation of the Property and, if necessary, Landowners, Developer, or Village, and/or their respective agents or assigns, will testify at the request of each other regarding the merits of the annexation at a hearing held before the Pickaway County Board of Commissioners or subsequent court hearings.

2. Service Resolution. Pursuant to R.C. Section 709.03(D), the Village agrees to enact the appropriate Village Service Resolution stating the municipal services that will be provided to the area sought to be annexed, including the Property. The Village agrees to provide witnesses for the hearing before the County Commissioners and to provide affidavits in support of its Service Resolution.

3. Zoning. The Property is currently zoned under the Scioto Township zoning ordinance. Contemporaneously with the annexation petition, Landowners Imler

and Jenkins, and Developer will file an application to re-zone the aforementioned 43.6 +/- acres property to a Planned Unit Development (PUD) District, which PUD Zoning District will, among other things, permit the Developer's intended use as a single-family housing community and allow for related improvements to support such use on the Property as principal permitted uses and will permit installation on the Property of road access, streets, drainage facilities, model homes, signage and other improvements as depicted in **Exhibits "B" and "C"** (Developer's "Development Plan" and "PUD Zoning Text", respectively) attached hereto and incorporated herein. The parties recognize and agree that it is the Developer's intent to gain final zoning approval of the attached Development Plan that allows for the same or substantially similar net density (dwelling units per acre), amenities and housing types as the neighboring Chestnut Estates community and as depicted in the attached Development Plan and PUD Zoning Text. The Village agrees that it will expeditiously process the application to re-zone the 43.6 +/- acres property to a PUD Zoning District with single-family housing and related uses such that the Zoning Ordinance will be considered in tandem and contemporaneously with the Village's annexation acceptance ordinance.

In addition, Landowner SI Ohio Properties, LLC and/or Developer will file an application to re-zone the aforementioned 7.075 +/- acres property to a R-1 Zoning District, which Zoning District will, among other things, permit the SI Ohio Properties' intended use as a single-family housing site and allow for related improvements to support such use on the Property as principal permitted uses and will permit installation on the Property of road access, streets, drainage facilities, homes, and other improvements. (SI Ohio Properties' "Development Plan" and "R-1 Zoning Text", respectively.) The parties

recognize and agree that it is the SI Ohio Properties and/or Developer's intent is to gain final zoning approval of a Development Plan and Zoning Text that allows for the same or substantially similar net density (dwelling units per acre), amenities and housing types as allowed under the R-1 zoning districts standards under the Village's zoning ordinance. The Village agrees that it will expeditiously process the application to rezone the 7.075 +/- acres property to an R-1 Zoning District with single-family housing and related uses such that the Zoning Ordinance will be considered in tandem and contemporaneously with the Village's annexation acceptance ordinance, should SI Ohio Properties or Developer request such timing.

4. Acceptance of Annexation/Detachment of Property. The Village understands it will have between sixty (60) and one hundred twenty (120) days to accept the annexation after the annexation petition has been approved by the Commissioners and a copy of the record is filed with the Clerk of Village Council and laid before Council (ORC Section 709.04). At the request of Developer, the Village agrees to delay acceptance of the annexation until legislative approval of the rezoning can be accomplished contemporaneously with the acceptance of the annexation. If, for any reason, the rezoning ordinance, development plan, and/or development standards cannot be approved in a form or substance acceptable to Developer, in its sole discretion, and in a form substantially similar to the attached **Exhibits "B" and "C"**, the Village agrees, at the request of Developer, to permit Landowners Imler, Jenkins and SI Ohio Properties, LLC to withdraw their request for the Village to accept the annexation and annex the property to the Village and/or to forbear from acceptance of the

annexation by allowing the one hundred twenty (120) day period to expire, thus effectively rejecting the annexation of the Property.

If the annexation approval occurs prior to or other than concurrently with the legislative approval of the rezoning, development plan, and/or development standards, and the rezoning, development plan, and/or development standards are subsequently not approved to Developer's satisfaction and in accordance with **Exhibits "B" and "C"**, (or as it may be modified acceptably to Developer in Developer's sole discretion) or is referred to the electorate or a building or other moratorium or restriction is enacted which would limit Developer's use of the Property, Village agrees, at Developer's request: (1) to reconsider the ordinance accepting the annexation, and to rescind, repeal and reject the annexation approval within fourteen (14) days of the date of the disapproval of the rezoning, development, and/or development standards or referral to a vote of the electorate or the enactment of the building or other moratorium or restriction, at the request of Developer and/or Landowners; or (2) to cooperate with Developer and Landowners to have the property detached/de-annexed the Property from the Village, and to consent to and not oppose any Owner's petition to detach/de-annex its Property from the Village and take any other action provided by law to detach or de-annex the Property.

5. Off-Site Improvements. The parties agree that the Developer will perform a Traffic Impact Study to determine the proposed development's proportionate impact on off-site road infrastructure and existing traffic volume. The Village agrees that should the Traffic Impact Study support the requirement of additional turn lane(s) from Welch Road into the subdivision, the Village will work in good faith with the Developer to adjust

the site plan and entry location in a manner acceptable to the Developer that meets sound engineering and regulatory standards and insures safe public road access, while minimizing negative impacts on the site's development feasibility and costs. The Village acknowledges that existing off-site sanitary sewer infrastructure and treatment capacity are adequate to serve the Development Plan as proposed. The Village acknowledges that existing off-site water infrastructure and capacity are available to serve all lots in the proposed 43.6 +/- acres and 7.075 +/- acres developments but that potentially some additional on-site improvements may be necessary to extend service lines and water pressure. The parties agree to work cooperatively on the improvements and costs necessary to insure that all lots in the development can be fully served by the provision of Village water services. The parties acknowledge that the Village will explore the establishment of a Tax Increment Financing (TIF) District, under Ohio law, to help fund a portion of or all the off-site infrastructure costs related to development in the general area where the Property is located. Developer agrees that portions of the Property owned by the Developer that are not yet sold, closed and conveyed to third party buyers will be subject to and made part of the TIF District when and if it is established by the Village.

6. Standard of Conduct by The Village. In all matters related to the (i) adoption of the statutorily required Village Service Resolution, and (ii) the re-zoning of the Property to the PUD Zoning District and the R-1 Zoning District in accordance with the terms of Section 3 of this Agreement, the Village will act in good faith with all reasonable dispatch, concurrent with the timing and requirements of the annexation process.

7. Condition Precedent. Landowners, Developer and the Village acknowledge and agree that this Agreement is not effective until authorized to be executed by formal action of the Village Council and shall take effect upon such approval and execution. Landowners, Developer and the Village also acknowledge that any action on a rezoning or annexation matter must be finally approved by the Village Council to become effective.

8. Miscellaneous.

(a) **Intent of Parties.** This Agreement shall be binding upon the Parties hereto and their respective successors and/or assigns, and by execution hereof, all Parties represent that they are duly authorized to sign it. By passage of Ordinance No. \_\_\_\_\_ on \_\_\_\_\_, the Village authorized the execution of this Agreement.

(b) **Cancellation or Termination.** This Agreement may be cancelled or otherwise terminated by mutual written agreement of the Parties hereto or pursuant to the terms of this Agreement as to conflict in law, impracticality, and/or acts of God.

(c) **Remedies.** Except as otherwise limited by ORC Chapter 2744 as to action for or against the Village, the Parties hereto shall be afforded and do possess the right to seek every remedy available at law or in equity provided for under the laws of the State of Ohio as pertains to the terms and conditions, duties, obligations, privileges, and rights of this Agreement and the enforcement thereof.

(d) **Enforcement.** Unless this Agreement is cancelled or otherwise terminated, this Agreement will be enforceable against any Party hereto per the laws,

ordinances, resolutions, regulations or policies in effect at the time of the execution of this Agreement.

(e) **Assignment of Agreement.** By the execution of this Agreement, Landowners expressly consent to the assignment of the Agreement by the Developer, in its sole discretion. Developer shall not assign this Agreement, or any part thereof, or any duty, obligation, privilege or right granted under this Agreement to any other developer without the express written consent of the Village, which shall not be unreasonably withheld. The Parties agree that Developer may transfer all or any portion of the Property and assign this Agreement (as it relates to that portion of the property) to any individual, corporation, limited liability company, partnership, limited partnership, trust or any other person that is related to, owned by or affiliated in any way with Developer in Developer's discretion without the consent of the Village.

(f) **Addresses for Notices.** Notice to the Parties as required or provided for herein shall be in writing and shall be deemed if given or sent in typed memo or e-mail form to all Parties of this Agreement, or such other method as mutually agreeable:

If to Landowners: Mr. Dwight A. Imler, Trustee  
20526 River Road  
Circleville, Ohio 43113

Mr. James L. Jenkins  
10601 Welsh Road  
Orient, OH 43146

And

SI Ohio Properties, LLC  
C/O Steven R. Isaac  
1999 Borrer Road  
Grove City, Ohio 43123

If to Developer:

Mr. Jack Mautino, President  
Westport Homes, Inc.  
507 Executive Campus Dr., #100  
Westerville, Ohio 43082  
614-891-8545

and

Mr. Steven M. Dunn  
Westport Homes, Inc.  
9210 North Meridian Street  
Indianapolis, IN 46260  
317-844-0433

If to Village: Michael Hess, Village Solicitor  
10 West Scioto Street  
Commercial Point, Ohio 43116  
614-877-9248

(g) **Relative Rights.** The rights and obligations of the parties hereunder shall be subject to the terms and conditions hereof, and will inure to the benefit of, and be binding on, the respective successors and assigns.

(h) **Entire Agreement Merger Clause; Statement of Incorporation.** It is agreed that the Agreement merges all of the oral negotiations, representations, discussions and understandings between the Parties, their legal counsel, agents and representatives. This Agreement contains the entire Agreement of the Parties with respect to its subject matter. All documents related to this Agreement and/or attached hereto as exhibits or addendums shall be incorporated into this Agreement by reference as if fully set out at length herein.

(i) **Severability.** If any clause, sentence, paragraph or part of this Agreement shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Agreement and the remainder of said Agreement shall continue in full force or effect.

(j) **Cooperation.** The Village will cooperate with Landowner and/or Developer to obtain any required and/or necessary permit from any government or governmental agency not a party to this Agreement.

(k) **Modifications or Amendment of Agreement.** No modifications, amendments, alterations, or additions shall be made to this Agreement except in a writing signed by all Parties hereto.

(l) **Recitals.** The Parties acknowledge and agree that the facts and circumstances as described in the Recitals hereto are an integral part of this Agreement and as such are incorporated herein by reference.

(m) **Executed Counterparts.** This Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same Agreement. It shall not be necessary in proving this Agreement to produce or account for more than one of those counterparts.

(n) **Captions.** The captions and headings in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provisions or sections of this Agreement.

(o) **Survival of Representations and Warranties.** All representations and warranties of the Parties in this Agreement shall survive the execution and delivery of this Agreement.

(p) **Effective Date.** This Agreement shall be effective when signed by all the Parties hereto.

(q) **Time.** Time shall be of the essence in doing and performing all things to be done under the terms of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives on the date set forth below. This Agreement shall be effective on the date last executed.

Signed as of the 22 day of September, 2015.

**The Village of Commercial Point**

By: Joe Hammond  
Joseph Hammond, Mayor  
Joe

**Landowners:**

\_\_\_\_\_  
Mr. Dwight A. Imler, Trustee

\_\_\_\_\_  
James L. Jenkins

\_\_\_\_\_  
Sharon R. Jenkins

\_\_\_\_\_  
Steven R. Isaac  
For SI Ohio Properties, LLC

**Westport Homes, Inc.,  
an Indiana Corporation**

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT "A"**

(Description of the Property)

**EXHIBIT "B"**

(Development Plan and Related Improvements)

**EXHIBIT "C"**

(Zoning PUD Text)

2817310.2 : 06918 00022