

ORDINANCE 2018-08

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.

WHEREAS, the Scioto Holding Company, Inc. owns approximately 62.2 acres on in Scioto Township which is contiguous with the boundaries of the Village; and

WHEREAS, Westport Homes of Ohio, Inc. desires to purchase and develop the approximately 62.2 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 62.2 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.

Vote on Suspension of Readings:

Motion by: _____ 2nd _____

Roll Call:

____ Jason Thompson
____ Aaron Grassel

____ Ben Townsend
____ Bruce Moore

____ Laura Wolfe
____ Scott O'Neil

Vote on Passage of the Ordinance:

Motion by: _____ Scott O'Neil _____ 2nd _____ Jason Thompson _____

Roll Call:

Yes Jason Thompson
Yes Aaron Grassel

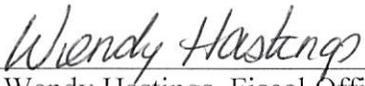
Yes Ben Townsend
 Bruce Moore

Yes Laura Wolfe
Yes Scott O'Neil

Adopted this 17th day of September, 2018.

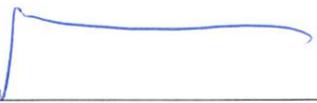


Gary Joiner, Mayor



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 among The Village of Commercial Point, Ohio, an Ohio municipal corporation (hereinafter the "Village"), and Scioto Holding Company, Inc., an Ohio corporation (hereinafter referred to as "Landowner") and Westport Homes, Inc., an Indiana Corporation (hereinafter referred to as "Developer").

PURPOSE

Landowner is the owner of certain tracts of land consisting of approximately 62.2 +/- acres located in Scioto Township, Pickaway County, Ohio, consisting of four (4) parcels known as: Pickaway County Auditor Tax Parcel Id. No.'s: L2700010054400 (2.21 +/- acres), L2700010054500 (0.781 +/- acres), and L2700010055706 (58.4319 +/- acres), and a part of L2700010053900 (0.865 +/- acres), and more fully described in **Exhibit "A"** attached hereto and incorporated herein (the "Property"), which Property is contiguous with the boundaries of the Village of Commercial Point.

Landowner has contracted with Developer for the sale of the Property in order for the Developer to develop and build a 190 +/- unit single-family housing development, 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 the Property. Developer intends to file for approval of its proposed development plan through a re-zoning application with the Village. Developer and Landowner intend that the Property be rezoned to a PUD Zoning District, as defined herein, under Village zoning ordinances, and via contract Landowner has

named the Developer its agent for the purpose of filing a separate re-zoning and development plan application in order for the Village to consider same. In general, the 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 Landowner can be accomplished through the annexation of the Property to the Village, and appropriate re-zoning and development under the Village's zoning ordinances.

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

1. Annexation Petitions. The Landowner and Developer will prepare two annexation petitions for the purpose of seeking annexation of the Property into the Village of Commercial Point. Upon the completion and acceptance of the first petition for annexation ("first annexation"), Landowner will sign and Developer will file the second petition for annexation ("second annexation"). Landowner will sign both annexation petitions agreeing to request annexation of the Property into the Village of Commercial Point pursuant to Ohio Revised Code Section 709.023 and appointing Molly R. Gwin, Esquire as the petitioners' agent in connection with the annexation petitions. The annexation petitions may be filed only for 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 petitions will be filed with the Pickaway County Commissioners ("Commissioners"). The Landowner and Developer agree that all costs and expenses in petitioning for the annexation of both the first annexation and the second annexation will be borne by Developer. Should Village desire for its own attorney to represent its interests with regard to the annexation petitions, those costs will be borne by Village. Once this Agreement is signed and accepted by the Village, Landowner agrees that it will not remove its name(s) from the petitions and will continue to support the annexation to the Village throughout the entire annexation process of both the first annexation and the second annexation, including any appeal or court action; provided however, Landowner's 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. Landowner and Developer will provide statutorily required affidavits to the Village for presentation to the Commissioners in support of annexation of the Property and, if necessary, Landowner, 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 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 Resolutions for each annexation 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 Commissioners and to provide affidavits in support of its Service Resolution, if necessary.

3. Zoning. The Property is currently zoned Planned Unit Residential Development (PURD) District under the Scioto Township Zoning Resolution. Contemporaneously with, or shortly after, the filing of the annexation petition, ~~Landowner and Developer will file an application with the Village to re-zone the Property to a zoning substantially similar to the current township zoning on the Property~~the parties agree that the Property will annex into the Village with a similar zoning, specifically, a Planned Unit Development (PUD) District ("PUD Zoning 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 Exhibit "B" (the "Zoning Text") 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 Zoning Text that allows for the same or substantially similar net density (dwelling units per acre), amenities and housing types as the Chestnut Commons community and as depicted in the attached Development Plan and PUD Zoning Text. The Village Administration agrees that it will expeditiously process the application to re-zone the Property to a PUD Zoning District.

4. Acceptance of Annexation/Detachment of Property. The Village understands it will have 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 ("Council") and laid before Council for a waiting period of a minimum of sixty (60) days (ORC Section 709.04). At the request of

Developer, the Village Administration agrees to delay acceptance of the annexation until legislative approval of the re-zoning can be accomplished contemporaneously with the acceptance of the annexation. If, for any reason, the re-zoning 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 **Exhibit "B"** the Village Administration agrees, at the request of Developer and/or Landowner, to permit Landowner to withdraw its request for Council to accept the annexations 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 re-zoning, Development Plan, and/or development standards, and the re-zoning, Development Plan, and/or development standards are subsequently not approved to Developer's satisfaction and in accordance with **Exhibit "B"** (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 or unacceptable action on the re-zoning, Development Plan, 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 Landowner; or (2) to cooperate with Developer and Landowner to have the property detached/de-annexed

the Property from the Village, and to consent to and not oppose any Landowner'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 Village acknowledges that existing off-site sanitary sewer and water infrastructure and treatment capacity are not adequate to serve the Property as proposed by the Development Plan, but that utility improvements planned to be in operation by spring of 2021 will provide capacity for full development on this site. It is further acknowledged that the developer will provide an upgrade to the Southern Point sanitary lift station to include a stationary backup pump and related control devices, an eight inch water line on Durrett Rd. to run from the water main line at State Route 104 to the development site, and all on site improvements that will be necessary to serve the developed lots. The parties agree to work cooperatively on the improvements and costs necessary to insure that all lots in the development can be fully served with Village sanitary sewer and water services. Developer agrees to pay an additional fee of \$1,000 per lot at the time the plat for the applicable section is recorded. Such fee will be paid to the Village of Commercial Point, in addition to the then current utility tap fees. It is also understood that the Village commits utility services on a first-paid, first serviced basis. Developer also agrees to make necessary improvements at the intersection of Durrett road as dictated by a traffic study.

6. Standard of Conduct by The Village. In all matters related to the (i) adoption of the statutorily required Village Service Resolution, (ii) the acceptance of the Property into the corporate boundaries of the Village, and (iii) the re-zoning of the Property to the PUD 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. Landowner, Developer and the Village acknowledge and agree that this Agreement is not effective until authorized to be executed by formal action of Council and shall take effect upon such approval and execution. Landowner, Developer and the Village also acknowledge that any action on a re-zoning or annexation matter must be finally approved by 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.

(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, Landowner expressly consents 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 or Landowner.

(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 Landowner: Scioto Holding Company, Inc.
442 East Northwood Avenue
Columbus, Ohio 43201
Attn: Carol A. Talbott

With a copy to: Donald T. Plank
Rebecca J. Mott
Plank Law Firm, L.P.A.
411 East Town Street, Floor 2
Columbus, Ohio 43215

If to Developer: Mr. Jack Mautino, Vice-President
Mr. Terry E. Andrews, Director of Land Acquisition and
Development
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 Developer and the Village, 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 Administration agrees to cooperate and work expeditiously and in good faith with the Developer to obtain any required and/or

necessary permit from any government or governmental agency not a party to this agreement upon Council's approval of the re-zoning and development plans.

(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.

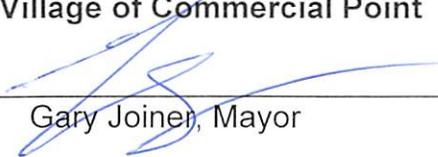
(p) **Effective Date.** This Agreement shall be effective when signed by all the parties hereto.

(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 17th day of September, 2018

The Village of Commercial Point

By: 
Gary Joiner, Mayor

Per authority granted in Ordinance No.:
2018-08 passed
by Village Council on the 17th of
September, 2018.

Landowner:

Scioto Holding Company, Inc.
By: _____
Its: _____

Developer:

Westport Homes, Inc.
By: _____
Steven M. Dunn, President Westport Homes,

Inc.

(Description of the Property)

EXHIBIT "A"

(Zoning Text)

EXHIBIT "B"

SCIOTO CROSSING PLANNED UNIT ZONING TEXT

62.2 acres Durrett Road, Scioto Township, Pickaway County, OH

Developer: Westport Homes of Ohio, Inc.

The property is made up of parcels L2700010054400 (2.21 +/- acres), L2700010054500 (0.781 +/- acres), and L2700010055706 (58.4319 +/- acres), and a part of L2700010053900 (0.865 +/- acres) of the newly annexed territory to the Village of Commercial Point (the "Village") and contains 62.2 +/- acres which is more particularly described on the attached Exhibit A, incorporated herein by reference. The property is hereby designated as the Scioto Crossing Planned Unit Development ("PUD") consisting of a single-family subdivision pursuant to this PUD text and the Village's zoning ordinances:

1. Permitted Uses: Permitted uses shall be limited to 190 single-family dwelling units, storm water facilities and ponds, landscaped entry features, open spaces, natural areas and other community amenities consistent with single-family residences and as permitted in the Village zoning ordinance for R-34 districts. Accessory uses and structures shall be allowed as provided in the zoning ordinance for R-34 residential districts, subject also to the limitations contained in private deed restrictions and enforced by a homeowners' association established by the developer.
2. Development Standards
 - a) Height Limit: No building shall be erected or enlarged to exceed two and one-half (2-1/2) stories or thirty-five (35) feet.
 - b) Lot Area, Width and Depth: Every lot for a single-family dwelling shall have a minimum width of sixty-three (63) feet measured at the building line and a minimum depth of one-hundred and twenty (120) feet, with all lots meeting a minimum area of seventy-nine hundred square feet (7,900). Lot depths are typically one-hundred and twenty six (126) feet, or as otherwise depicted on the Preliminary Development Plan. All lot measurements shall be exclusive of road right-of-way, and shall be in addition to any easement of record.
 - c) Front yard, side yard and rear yard: There shall be a front yard of not less than thirty (30) feet. There shall be a side yard of not less than five (5) feet on each side. There shall be a rear yard of not less than twenty-five (25) feet.

- d) Dwelling Bulk: 100% of the single-family dwellings shall have a minimum area of twelve hundred (1,200) square feet. All two story and one and one-half story homes must have greater than 1600 sq. ft. as noted in the Zoning Text for Chestnut Commons. All dwelling bulk requirements are to be determined from outside dimensions, exclusive of porches, garages, cellars, and basements.
- e) Parking Requirements: Parking requirements shall be as regulated in Article IX of the Zoning Ordinance of the Village of Commercial Point, Pickaway County (the "Zoning Code"), provided, however, that each single-family residence shall have a two-car garage and paved driveway for a minimum of two cars.
- f) Open Space: A minimum of approximately 9.8 acres (15.7%) shall be reserved for common open space pursuant to the requirements of the Zoning Code. The location of the open space shall be as identified on the Preliminary Development Plan and other exhibits. The open space shall be maintained by the developer/owner until such time as responsibility for maintenance is transferred to the homeowners' association. In transferring the maintenance responsibility from the developer to the homeowners' association, the developer acknowledges that there are public health, safety, and welfare concerns associated with such development that may be the responsibility of the Village. Developer agrees to notify the Village, upon such time as the responsibility for maintenance is transferred to the homeowners, and the Village shall consent and approve such transfer, provided however, that such consent shall not be unreasonably withheld.
- g) Signs: Signs shall be as regulated in the Zoning Code.
- h) Utilities: All utilities shall be placed underground. Appurtenances to these systems shall, to the extent permitted by the affected utility companies, be screened by plantings, hedges, fences, or walls each of which would enclose any such structure on all sides unless access is frequently required from a side.
- i) Buffer: In order to discourage access to neighboring properties with ongoing agricultural operations, three-rail perimeter fencing backed with a mesh screen will be installed along the rear property line of lots 27-38 and 167-180 prior to these lots being transferred to homebuyers. It is recognized that the developer cannot monitor or ultimately control the access to neighboring

properties, but such fence placement is designed to identify the property lines and discourage such access and the known, inherent and obvious dangers of ongoing farming activity. The developer shall maintain such fencing during the development period, with the homeowner's association being responsible for maintenance upon the turnover as provided in the HOA governing documents.

- j) Density: The maximum density per acre shall be 3.07 dwelling units per gross acre (190 homes and inclusive of open space).
- k) Access: Access for ingress and egress shall be via a boulevard entrance from Durrett Road and via stub street connections into the existing Southern Point community at Mahogany Lane and Arledge Drive as depicted on the Preliminary Development Plan.
- l) Ponds: All detention/retention ponds must be fenced with fencing materials to be determined and set forth in the final development plan.