



Office of the City Manager

PO Box 490, Station 6
Gainesville, FL 32602-0490
(352) 334-5010
(352) 334-3119 (fax)
www.cityofgainesville.org

July 14, 2010
Certified Mail – Return Receipt

Mr. Mitchell Brouman
Beazer East, Inc.
One Oxford Center
Suite 3000
Pittsburg, PA 15219

Subject: Fencing and Signage along NW 4th Terrace, Gainesville, Fl.
(West of Koppers Site)

Dear Mr. Brouman,

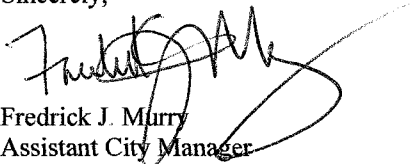
The Alachua County Health Department (“ACHD”) reports that on a recent visit to the NW 4th Terrace Easement, ACHD found that the temporary security measures are not preventing access to the contaminated areas and that some warning signs are missing. The ACHD is recommending installation of a permanent fence and signage (see attachment dated July 8, 2010). This permanent fencing proposal has been a work in progress by Beazer East, Inc. (“BEI”) since June 2009 and, as of today, it has not yet been completed.

The City of Gainesville (“City”) approved the enclosed draft Site Access Agreement on August 24, 2009, and contacted you numerous times regarding execution of the Site Access Agreement. As you may recall, the proposed Site Access Agreement would provide BEI authorization to complete the fencing and signage required by the ACHD. To date, the City has not yet received from BEI, nor approved Exhibit “B” referencing the work BEI intends to perform. The City must review and approve Exhibit “B” prior to finalizing the Site Access Agreement.

Please accept this letter as final notice to BEI that, unless BEI obtains City approval and installs the appropriate signage and fencing within thirty days of the date of this letter, the City intends to install the fencing and signage required by the ACHD. Furthermore, the City will submit to BEI for payment the invoice for materials, labor, and all administrative and project management costs. To avoid City intervention, please submit within fifteen days of the date of this letter: (1) Exhibit “B” to the Site Access Agreement describing the work BEI intends to perform, (2) a letter indicating your willingness to execute a finalized Site Access Agreement, and (3) your agreement to complete the work within thirty days of the date of this letter.

Should you have any questions please call me at 352-334-5010.

Sincerely,



Fredrick J. Murry
Assistant City Manager

CC Anthony Dennis, ACHD
Kelsey Helton, FDEP
Russ Blackburn, City Manager
Marion Radson, City Attorney
Don Hambidge, Assistant Public Works Director
Rick Hutton, GRU Supervising Utility Engineer

John Mousa, ACEPD
Scott Miller, US EPA Region 4
Robert Hunzinger, General Manager for Utilities
Teresa Scott, Public Works Director
Stu Pearson, City of Gainesville
Dean Williamson, CH2M Hill Constructors, Inc.



Charlie Crist
Governor

Ana M. Viamonte Ros, M.D., M.P.H.
State Surgeon General

Thursday, July 08, 2010

Fred Murry
Asst. City Manager, Gainesville
PO BOX 490, Station 6
Gainesville, FL 32602-0490

Mr. Mitchell Brouman
Environmental Manager
Beazer East Incorporated
One Oxford Centre, Suite 3000
Pittsburgh, PA 15219

RE: City of Gainesville Easement Fencing and Signage

Dear Mr. Murry and Mr. Brouman:

In February 2009, consultants for Beazer tested soil in the City of Gainesville easement just west of the Koppers hazardous waste site. The Florida Department of Health (FDOH) reviewed the results and determined that incidental ingestion (swallowing) for more than a year of very small amounts of dioxin contaminated surface soil could possibly harm children's health (July 17, 2009 DOH/ATSDR Health Consultation Report). The Alachua County Health Department (ACHD) issued a health advisory warning parents to keep their children out of this easement. The ACHD and FDOH met onsite with you, City of Gainesville Attorney Marion Radson, and representatives from EPA including Mr. Scott Miller. At that time we recommended a secure fence be installed with warning signs along the perimeter of the easement. Consultants for Beazer erected a temporary plastic web fence along some sections of the easement and posted some plastic warning signs.

The ACHD recently visited the easement and found the gate unlocked and warning signs missing. Residents report that children routinely use the easement as a short-cut between streets. It appears the temporary barriers are not effective in preventing trespass on this easement.

The FDOH and ACHD recommend that the City of Gainesville and/or Beazer replace these temporary barriers with more effective barriers such as a 6-foot chain link fence with attached metal warning signs installed along the entire perimeter of the easement. In the interim, while a more effective barrier is considered, ACHD would like permission to install metal warning signs along the perimeter of the easement.

Sincerely,

A handwritten signature in black ink, appearing to read "Anthony Dennis".

Anthony Dennis
Environmental Health Director
Alachua County Health Department
Florida Department of Health

Cc:
Scott Miller, US EPA Region 4
Kelsey Helton, FDEP
Randy Merchant, FDOH

D R A F T
SITE ACCESS AGREEMENT

This Site Access Agreement (the "Agreement") is made as of this ___ day of _____, 2009, by and between **CITY OF GAINESVILLE, FLORIDA** ("City"), a municipal corporation of the State of Florida, and **BEAZER EAST, INC.** ("Beazer"), with principal offices c/o Three Rivers Management, Inc. at One Oxford Centre, Suite 3000, Pittsburgh, PA 15219-6401, (collectively, City and Beazer are hereafter referred to as "Parties"), with reference to the following recitals:

RECITALS

WHEREAS, City is the current owner of certain real property comprising public rights of way, as more particularly described on Exhibit "A" attached hereto, known as the (the "Site");

WHEREAS, Beazer has requested access to the Site for the purpose of installing fencing around portions of the Site and the placement of signs as otherwise provided herein; and

WHEREAS, City is willing to allow Beazer limited access to the Site on specific condition that Beazer execute and deliver this Agreement to the City.

NOW, THEREFORE, based solely and expressly on the foregoing recitals, it is agreed that:

1. **The Recitals** above are incorporated herein and made a part of this Agreement.
2. **Access for Site Work.** Beazer and its agents, employees, invitees and/or contractors/subcontractors, shall be allowed limited access to enter the Site for the purpose of performing that certain work as set forth with specificity in the scope of work attached hereto as Exhibit "B" (the "Work"). City does not warrant its title to the Site; however, City does warrant that it has the power and authority to grant the access provided herein and that it shall exercise such power and authority to the extent necessary to effectuate the access contemplated herein to permit Beazer to perform the Work on such schedule as Beazer requires. Beazer takes this Agreement subject to the restriction and conditions of record, both public and private. City does not represent the suitability of the Site for the Work and Beazer hereby represents that it has not relied on City's representations, statements, information, or otherwise and accepts the Site "as is" and with all defects patent or latent.

The Project Manager for the City under this Agreement is _____.
The Project Manager for Beazer under this Agreement is Mitchell Brouman. These persons shall be the principle points of contact between the parties under this Agreement, except as provided in Paragraph 10 below.

3. **Obligations of Beazer.**

D R A F T

(a) Beazer shall, at no cost or expense to City, be responsible for, and shall conduct and complete the Work.

(b) Beazer shall notify its contractors and subcontractors of the presence of any soil or groundwater impacts known by Beazer to be present on the Site or in the general vicinity of the Site and Beazer shall be responsible for ensuring that its contractors and subcontractors perform the Work in a manner that does not exacerbate such conditions or expose its contractors and subcontractors, or the public at large, including but not limited to nearby residents, to any increased risk, if any, from existing conditions at the Site.

(c) Beazer shall be responsible for maintaining the Site in a clean and orderly condition, in good repair, and in a secured condition at those locations on the Site where Beazer has activities.

(d) Beazer shall keep the Site free of any third-party claims resulting from performance of the Work.

(e) Beazer shall ensure that its contractors and subcontractors maintain commercial general liability and property damage insurance with combined single limit coverage reasonably acceptable to City, which names City as an additional insured for performance of the Work.

(f) Neither Beazer, nor its agents, employees, invitees and/or contractors/subcontractors, shall perform any repair or maintenance to any vehicles situated on the Site, nor use the Site for any type of storage except as specifically approved by City.

(g) With the exception of the Work, neither Beazer, nor its agents, employees, invitees and/or contractors/subcontractors shall erect, place, maintain over or under the surface of the Site any buildings, structures or physical obstructions of any kind, nor shall they disturb the topography of the Site unless expressly agreed to in writing by City.

(h) Beazer shall, at its sole cost and expense and upon completion of the Work, repair any damage it may have caused to the Site and restore the Site to its Original Condition and leave it in a clean, orderly condition as reasonably required by City. Original Condition shall be defined as the condition of the Site prior to entry and commencement of the Work.

4. Compliance with Applicable Law

(a) Beazer shall, at no cost to City, comply with any and all applicable laws, rules, regulations, orders, ordinances, permits or zoning requirements of any Federal, State or municipal body or agency ("Applicable Law"), for the use of the Site for performance of the Work.

D R A F T

(b) Beazer shall, at no cost to City, obtain all necessary permits, approvals and consents from all necessary and appropriate third parties and governmental authorities which have jurisdiction over the Work.

5. **Term of Agreement.** The term of this Agreement shall commence on the day and year first above written and shall continue from month to month, unless one Party provides to the other Party a notice of intent to terminate at least 15 days prior to the end of any monthly period. The rights granted herein shall not be construed as an easement but as a license revocable for cause by City. Upon termination of this Agreement, Beazer shall remove at its sole cost and expense the fence and any related improvements, unless express written permission is granted by the city prior to the termination of this Agreement to allow said improvements to remain. In this event, said fence and improvements shall become the property of the City.

6. **Indemnity.** Beazer shall indemnify, defend and hold harmless City, and its mayor, commissioners, employees, representatives, agents and assigns ("Indemnatee"), from and against all loss, liability, costs, claims, demands, damages, injuries, actions, fines, causes of action, suits and expenses (including reasonable attorneys' and paralegals' fees) of any kind or nature asserted against Indemnatee to the extent arising out of, related to or caused by any activities conducted by or on behalf of Beazer or its agents, employees, invitees and/or contractors/subcontractors, in connection with the Work or resulting from Beazer's failure to perform its obligations under this Agreement.

7. **Binding Effect.** This Agreement shall inure to the benefit of, and shall be binding upon the Parties and their respective successors and assigns. This Agreement cannot be assigned by Beazer without the prior written consent of City. No such assignment shall operate to relieve Beazer from the indemnity set forth in Paragraph 6.

8. **Governing Law and Venue.** This Agreement shall be governed by the laws of the State of Florida. Any action at law, suit in equity, or judicial proceeding for the enforcement of this Agreement or any provision hereof shall be instituted and maintained only in the federal or state courts of the State of Florida, County of Alachua.

9. **Disputes.** In connection with any legal proceeding to enforce the terms and conditions of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party, all costs, expenses, and reasonable attorneys' fees incurred by said prevailing party in such proceeding, including all costs, expenses, and reasonable attorneys' and paralegals' fees incurred by said prevailing party in all appeals, administrative proceedings, or alternative dispute resolution proceedings.

10. **Notice.** All notices required to be delivered to Beazer or City shall be delivered via U.S. mail or facsimile to the respective parties at the addresses provided below:

D R A F T

If to City: Marion J. Radson, Esquire
Office of the City Attorney
200 E. University Ave.
Suite 425
Gainesville, FL 32601
Telephone: (352) 334-5011

If to Beazer _____

Telephone: () ____ - _____

11. **Survival.** The terms and conditions of Paragraph 3 (Obligations of Beazer), Paragraph 6 (Indemnity), Paragraph 8 (Governing Law; Venue), and Paragraph 9 (Disputes) shall survive the expiration or termination of this Agreement.

12. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and which shall constitute the same instrument.

13. **Waiver.** No delay or omission by either party in the exercise of any right under this Agreement shall impair any such right or shall be taken, construed or considered as a waiver or relinquishment thereof, but any such right may be exercised from time to time and as often as may be deemed expedient. If any agreement or covenant herein shall be breached by either party and thereafter waived by either party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

14. **Power.** This Agreement does not constitute a waiver of City's regulatory and police powers and is entered into pursuant to its proprietary powers only.

15. **Article Headings.** The article headings and other titles used in this Agreement are for convenience only and shall not affect the construction of any terms or conditions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on their behalf by their respective representatives, each such representative having been first duly authorized so to act as of the effective date herein above written.

BEAZER EAST, INC.

DRAFT

By: _____
Name: _____
Title: _____

CITY OF GAINESVILLE, FLORIDA

APPROVED AS TO FORM AND LEGALITY

By: _____
Name: _____
Title: _____

By: _____
Marion J. Radson, City Attorney
City of Gainesville, Florida