

THE TOWN OF MOUNT AIRY

PUBLIC WORKS AGREEMENT

Brittany Manor at Twin Arch Village, Section 5

This agreement made this _____ day of _____, 2019 (“Agreement”), by and between the Town of Mount Airy, a municipal corporation of the State of Maryland, party of the first part (hereafter the “Town”) and Emmett Full and Twin Arch Associates Family Limited Partnership, a Maryland limited liability partnership, and any and all of their heirs, assigns or successors in interest, parties of the second part (hereafter collectively referred to collectively as the “Owner”). Town and Owner shall be collectively referred to as “the Parties”. Sandy Spring National Bank of Maryland and Carroll County Bank and Trust Company join in this Agreement solely for the purposes of subordinating their rights to that of the Town pursuant to this Agreement, without undertaking any of the responsibilities and legal obligations of the Owner and/or Owner’s successors in interest under this Agreement.

WHEREAS, the Owner owns in fee simple two parcels of land located within the municipal limits of the Town more particularly described as: (1) approximately 40.0469 acres of land, more or less, being identified as Parcel 310 on Tax Map 75, Tax Account No. 13-022798 being a part of all the same lot or parcel described in a Deed of Emmett Full and Audrey E. Full unto Emmitt Full and Audrey M. Full, as tenants by the entireties, dated June 20, 1986, and recorded among the Land Records of Carroll County in Liber LWS 956, Folio 491, etc., the said Audrey M. Full having died on February 14, 2016 (Estate No. 353394) and the title thereupon vesting in Emmett Full in its entirety; and (2) approximately 37.5662 acres of land, more or less, being identified as Parcel 14

143, etc. and further by a Second Amendment to IDOT dated November 8, 2016 and recorded among the Land Records of Carroll County in Liber DBS 8545, Folio 24, etc.; and

WHEREAS, Carroll County Bank and Trust Company holds a lien on some or all of the Property pursuant to an IDOT of Twin Arch Associates Family Limited Liability Partnership, et al., dated April 9, 1999, securing the original principal amount of \$2,500,000.00 and recorded among the Land Records of Carroll County in Liber LWS 2187, Folio 951, etc.; and

WHEREAS, the Owner intends to transfer the Property at or near the date of this Agreement, or the recording thereof in the Land Records of Carroll County to K. Hovanian Homes of Maryland, LLC (“Developer”), which after transfer intends to undertake residential development of the Property, together with the required public improvements and storm water management facilities for its benefit, and

WHEREAS, it is anticipated that Developer will secure and put up the bonding or other security required below in a form acceptable to the Town; and

WHEREAS, it is further anticipated that upon transfer of the Property to Developer, Developer will execute and record among the Land Records of Carroll County an assumption of Owner’s responsibilities under this Agreement and a release of Owner from further responsibilities under the terms of this Agreement, and that the Town will agree in writing to said assumption and release; and

WHEREAS, the use of the Property as so improved will require certain public improvements as set forth herein and/or as depicted and described in the Development Plan(s) referred to herein, and

In the event of any conflict or inconsistency between one part of the Development Plan(s) and any other part of the Development Plan(s), or between said Development Plan(s) and any specifications, standard details, development guidelines of the Town of Mount Airy, the subdivision regulations, landscape manual and ordinances of the Town of Mount Airy, or between any of them and this Agreement, then, in that event, such conflict or inconsistency shall be interpreted in the light most favorable to the Town and, in the event of any dispute between the Parties concerning such interpretations, then the determination with respect to such dispute shall be made by the Town Engineer whose decision shall be final and conclusive upon the Parties.

Owner and/or Owner's successors in interest shall be bound by all of the applicable provisions of the zoning and subdivision regulations and all ordinances of the Town, whether or not mentioned herein.

2. Construction Generally

The Owner and/or Owner's successors in interest agree to construct all improvements as called for by the Development Plan(s) at its/their sole cost and expense. The Town shall have no responsibility for maintenance of any sidewalks, which shall be the responsibility of the Owner and its assigns. The Town at any time and from time to time shall have the right to utilize all areas between curbs and sidewalks (if any) for the installation, removal and/or maintenance of utilities.

All construction shall be subject to inspection by the Town Engineer, or other engineer retained by the Town, prior to any backfilling and with respect to utilities, if any, shall be subject to final testing and acceptance by the Town.

roads, drives, sidewalks, curbs, curb returns and connections to existing roads shall be constructed by the Owner and/or Owner's successors in interest in accordance with the Development Plan(s). Upon completion of all such construction the Town shall accept said public roads into its street system for maintenance for the width of paving but will not be responsible to maintain the balance of the rights-of-way.

Owner and/or Owner's successors in interest shall install all road crossings for underground utilities prior to the application of the surface course of any roads within the Development.

(e). Lights and Signs, etc.

Owner and/or Owner's successors in interest shall install street lights at such locations and of such design as may be approved by the Town and shall install street signs, parking signs and standard traffic control markings and devices as designated by the Town.

3. Sediment Control

Owner and/or Owner's successors in interest shall be responsible for providing, at its sole expense, grading, sediment control and storm water management measures as provided for by the Development Plan(s).

4. Other Approvals

Owner and/or Owner's successors in interest are responsible for obtaining, at its/their own expense, any and all approvals which may be required with respect to the improvements of the Property by the State of Maryland, the County Commissioners of Carroll County, the Soil Conservation District, their respective officials, boards, agencies and any other public authority which may have jurisdiction with respect to any of the

hereunder, the "Standard Contract Clause" set forth in Exhibit B hereto and furnishes fully executed copies of said contracts to the Town prior to the issuance of any building permits and prior to commencement of any work called for by this Agreement. If the Owner and/or Owner's successors in interest fail to incorporate said standard contract clause in all of said agreements, then to the contract price there shall be added the sum of Fifty Percent (50%) and the amount so determined shall be the required deposit hereunder.

In lieu of cash deposits, Owner and/or Owner's successors in interest may furnish to the Town a performance and payment bond for the required amount written by a corporate surety or bonding company authorized to do business in the State of Maryland, or other suitable security (including a letter of credit), subject to the approval of the Town Attorney which approval shall not be unreasonably withheld. The amount of the security may be reduced from time to time, in the discretion of the Town, in accordance with procedures established by the Town and, where appropriate, in accordance with applicable ordinances of Carroll County, Maryland.

Any letter of credit shall be irrevocable for an initial period of three (3) years from the date hereof. If all aspects of the Development are not completed to the Town's satisfaction within two and one-half (2 ½) years from the date hereof, the Owner and/or Owner's successors in interest shall immediately thereafter furnish a new security to the Town in amount(s), duration and form(s) satisfactory to the Town.

6. Conveyances

To the extent (if any) shown by the Development Plan(s), Owner and/or Owner's successors in interest shall convey to the Town any and all easements thereon and, upon

8. Water Expansion Fund

Prior to the issuance of any building permits, the Developer shall cause to be paid to the Town a sum equal to \$67,012.50 for the Water Expansion Fund established pursuant to Section 109.19.6 of the Town Code.

9. Indemnity

Owner and/or Owner's successors in interest shall indemnify and save harmless the Town of and from any and all claims arising either directly or indirectly out of the activities of the Owner and/or Owner's successors in interest, their contractors and agents with respect to the above mentioned Development Plan(s) and the construction of the public improvements required or authorized hereunder.

10. Time

In the event that the Owner and/or Owner's successors in interest fail to start construction within one year from the date of this Agreement or, having started construction, fail to pursue the same diligently, then in either of said events, the Town shall have the right to terminate this Agreement and to revoke all approvals granted by it to the Owner and/or Owner's successors in interest and to revoke any and all permits issued in connection with said Development. Termination under this paragraph shall not require a 30-day notice as set forth in Paragraph 11, but upon termination, Owner and/or Owner's successors in interest shall be deemed to be in default and the Town shall be entitled to invoke any and all of the remedies as set forth in Paragraph 11.

- e. To correct and/or complete Owner's and/or Owner's successor in interest's performance under this Agreement at the expense of Owner and/or Owner's successors in interest.
- f. To proceed against Owner and/or Owner's successors in interest by legal proceedings for specific performance of this Agreement or for damages or for both.
- g. To utilize or proceed against the bond or security furnished under Paragraph 5.

12. Title and Mortgages

Owner warrants that at the time of execution of this Agreement Owner holds fee simple title to the Property and that at execution of this Agreement and/or before building permits are issued, Owner and/or Owner's successors in interest have furnished, or shall furnish, the Town with a certificate of title signed by an attorney licensed to practice law in the State of Maryland certifying that Owner and/or Owner's successors in interest hold or then hold good and merchantable title. Said certificate shall also disclose the existence of all mortgages, judgment holders or lienors and if there are any, then Owner and/or Owner's successors in interest shall cause such mortgages, judgment holders or lienors to consent in writing to the provisions of this Agreement for the purpose of subordinating their rights to the rights of the Town hereunder, which consent shall in no way require any such party to perform the obligations or to assume any of the liabilities of Owner and/or Owner's successors in interest hereunder.

work hereunder and recording fees or charges for recording this Agreement and any plats required by the Town to be recorded.

15. Wetlands

If the property contains “Wetlands” as defined by applicable law, Owner and/or Owner’s successors in interest acknowledge their awareness that development of the Property may in that event require approval by the United States Corp of Engineers and/or the State of Maryland or others with respect to portions of the development which may constitute “wetlands” as defined in Federal and/or State Law and Regulations. Any compliance therewith which may be lawfully required is the sole obligation and responsibility of Owner and/or Owner’s successors in interest.

16. Landscaping

Issuance of permits is conditioned upon approval of a final landscape plan as set forth in the Town’s Landscape Manual.

17. Miscellaneous

Time shall be considered to be of the essence of this Agreement. This Agreement shall be construed in accordance with Maryland law and the invalidity or unenforceability of any term or provision hereof shall not affect the validity and enforceability of the remaining terms and provisions.

18. Binding Effect

This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

[Signatures on next page]

Approved as to form and legal sufficiency,

Thomas V. McCarron, Town Attorney

STATE OF MARYLAND
COUNTY OF CARROLL

On this ____ day of _____, 2019 before me, a Notary Public of the State of Maryland, in and for Carroll County aforesaid, the undersigned officer, personally appeared PATRICK T. ROCKINBERG, who acknowledged himself to be the Mayor of THE TOWN OF MOUNT AIRY, a municipal corporation, and that he, as such Mayor, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of said municipal corporation by himself as such Mayor.

In witness whereof I hereunto set my hand and Official Seal.

Notary Public

My commission expires:

STATE OF MARYLAND
COUNTY OF _____

On this ____ day of _____, 2019 before me, a Notary Public of the State of Maryland, in and for the County aforesaid, the undersigned officer personally appeared EMMETT FULL, individually and who also acknowledged him/herself to be the Managing Partner of TWIN ARCH ASSOCIATES FAMILY LIMITED LIABILITY PARTNERSHIP, a Maryland limited liability company, and that he/she, as such, being duly authorized to do, executed the foregoing instrument for the purposes therein contained, by signing the same.

In witness whereof I hereunto set my hand and Official Seal.

Notary Public

My commission expires:

EXHIBIT "A" TO PUBLIC WORKS AGREEMENT BY AND BETWEEN THE TOWN OF MOUNT AIRY AND EMMETT FULL AND TWIN ARCH ASSOCIATES FAMILY LIMITED LIABILITY PARTNERSHIP executed the ____ day of _____, 2019.

- (1) The Property as shown on a plat known as "BRITTANY MANOR AT TWIN ARCH VILLAGE, SECTION 5" and recorded among the Plat Records of Carroll County, Maryland in Plat Book __ at Plat _____, prepared by Van Mar Associates, Inc. and approved by the Town of Mount Airy Planning Commission on the ____ day of July, 20__.
- (2) Sheets 1 through 37 entitled "BRITTANY MANOR AT TWIN ARCH VILLAGE" prepared by Van Mar Associates, Inc., and approved by the Town of Mount Airy for construction on the ____ day of _____, 2019.