

THE TOWN OF MOUNT AIRY

PUBLIC WORKS AGREEMENT

Lot 18A, Section Four, Twin Arch Business Park

This agreement made this ____ day of _____, 2020 (“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 2504 Back Acre, LLC, a Limited Liability Company organized under the laws of the State of Maryland, 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”. First United Bank & Trust joins in this Agreement solely for the purposes of subordinating its 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 a parcel of land located within the municipal limits of the Town described as Lot 18A on a plat entitled “*Amended Final Plat, Section Four, Lot 18A, TWIN ARCH BUSINESS PARK*” of record among the Plat Records of Carroll County in Plat Book No. ____, Pages _____, and being all the same lot or parcel described in a Deed to Owner dated February 4, 2020, and recorded among the Land Records of Carroll County in Liber 9561 at Folio 198, *etc.*, and being shown on the drawings referred to hereafter in Exhibit A (hereinafter collectively “the Property”), and

WHEREAS, First United Bank & Trust holds a Purchase Money Deed of Trust and Assignment of Rents dated February 4, 2020 securing the original principal amount

of \$360,000.00, and recorded among the Land Records of Carroll County in Liber 9561, Folios 203, *etc.* and 349, *etc.*, respectively; and

WHEREAS, Owner wishes to undertake development of the above mentioned property, together with the required public improvements and storm water management facilities for its benefit; 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

WHEREAS, the Town is willing to cooperate in the development of the Property (subject to all existing ordinances and laws) including the infrastructure as the Development Plan(s) require upon the terms and conditions hereafter set forth.

NOW, THEREFORE, in consideration of the mutual promises and undertakings hereafter set forth, the Parties do each agree with the other as follows:

1. Development Plan(s)

Those drawings identified on the attached Exhibit A, together with all details and notes shown thereon, and all specifications referred to therein (including all amendments and revisions to date as well as any amendments and revisions lawfully adopted hereafter), as approved by the Town as of the above date, are incorporated into this Agreement by reference and are sometimes collectively referred to hereafter as the “Development Plan(s)”.

With respect to the Development Plan(s), Owner agrees upon written request of the Town to furnish any supplemental information in connection therewith. Within ninety (90) days of the completion of the project, the Owner shall deliver “as built” drawings

with respect thereto to the Town. If not so delivered within ninety days, Owner shall pay to the Town a penalty of \$100.00 per day for each day beyond said period that the drawings are not delivered, the total amount of the penalty to be a charge against the security required by Paragraph 5 below and failure to pay said penalty within thirty (30) days of the date when the drawings are delivered shall constitute an act of default entitling the Town to exercise the remedies set forth in Paragraph 11 below.

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 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

Owner agrees 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.

Applicants for building permits shall pay to the Town connection charges and other fees, assessments and charges applicable to the development with respect to utilities at the rates prevailing at the time of issuance of any building permit.

(a). Water

If applicable to the development, Owner shall construct water mains as shown upon the Development Plan(s). Upon completion of same with fire hydrants, all appurtenances and after testing and acceptance by the Town Engineer, the Town shall accept the same and all appurtenances including water meters and water pits up to property lines into its system for ownership and maintenance.

(b). Sewer

If applicable to the development, Owner and/or Owner's successors in interest shall construct sanitary sewer lines as shown upon the Development Plan. Owner and/or Owner's successors in interest shall construct the same, manholes (if any) and all appurtenances in accordance with the Development Plan(s) and upon completion and testing by the contractor and the Town Engineer, the Town shall accept the same within the proposed right-of-way lines for ownership and maintenance.

(c). Storm Drains and Stormwater Management

If applicable to the development, Owner shall construct a storm drainage and stormwater management system in accordance with the Development Plan(s) and Town shall accept the same within the proposed right-of-way lines for ownership and maintenance.

(d). Roads, etc.

If applicable to the development, Owner shall dedicate rights-of-way for roads to the extent and as shown upon the Development Plan(s) as public roads. All 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.

If applicable to the development, Owner 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 shall be responsible for providing, at its sole expense, grading, sediment control and storm water management measures if and as provided for by the Development Plan(s).

4. Other Approvals

Owner is responsible for obtaining, at its 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 matters covered by this Agreement or by the Development Plan. Approval by the Town of the Development Plan(s) does not imply approval by any other authority and Owner is solely responsible for determining if any such other approvals are required.

5. Security

Prior to issuance of any building permit and prior to the commencement of any work called for by this Agreement or the Development Plan(s), Owner shall deposit with the Town the following sums which shall be used to guarantee the faithful performance of this Agreement and satisfactory completion of the following items of work:

A.	Water	\$6,444.00
B.	Sewer	\$27,100.00
C.	Storm Drainage and Stormwater Management	\$86,793.00
D.	Landscaping	\$5,175.00
E.	Sediment control	<u>\$17,732.50</u>

Total Contract Amount

\$143,244.50

To the Contract amount there shall be added the sum of Ten Percent (10%), totaling **\$14,324.40**, provided that Owner and/or Owner's successors in interest that cause to be incorporated in each contract for the construction of improvements required hereunder, the "Standard Contract Clause" set forth in Exhibit B hereto and furnished 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 fails 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 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 shall convey to the Town any and all easements thereon and, upon completion and acceptance by the Town Engineer, shall enter into any other conveyances necessary to dedicate and/or convey to the Town any public improvements to be constructed pursuant to this Agreement and the Development Plan(s) and which are to be dedicated and conveyed to the Town as per this Agreement and as reflected in the Development Plan(s), if any.

7. Inspection

(a). Prior to the commencement of any construction, Owner shall designate a qualified person as the Project Superintendent who shall be responsible for coordinating all work and who shall represent Owner in all dealings with the Town. The Town shall have the right to inspect all work, methods and materials in order to see that the same strictly comply with the Development Plan(s). Prior to release and recording of this Agreement and the recording of any subdivision plats, the Owner shall also pay to the Town an 8% inspection fee of **\$11,459.52**. Additionally, the Owner shall reimburse the Town for all reasonable costs (if any) required in connection with any conveyances mentioned in this Agreement.

(b). Construction shall not commence until the Town approves the contractor(s) and contracts, which right of approval shall extend to the nature, scope, designs and plans and specifications, as well as the approval of each contractor with due regard to competence, skill, ability and financial responsibility.

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 **\$3,312.50** for the Water Expansion Fund established pursuant to Section 109.19.6 of the Town Code.

9. Indemnity

Owner 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, its 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 fails 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 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 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.

11. Default

In the event that Owner fails to construct the required public improvements or fails to convey any rights-of-way, easements or utilities required hereunder or fail to take appropriate and effective corrective action within thirty (30) calendar days after receipt of written notice from the Town of non-compliance with any specified engineering

requirements, or other failure to perform or comply with the terms of this Agreement then, in any of said events, the Town in addition to all other remedies provided for by law shall have the following rights or remedies which are alternative and cumulative:

- a. To require indemnification from Owner as to all loss or expense incurred by the Town as a result.
- b. To refuse to accept or maintain the public improvements until fully completed by Owner to the satisfaction of the Town.
- c. To order that all work cease and/or to revoke any and all permits therefore issued.
- d. To demand of, and accept from, Owner and to record deeds for all rights of way and easements together with such areas immediately adjacent thereto as may be necessary for the purpose of completing the construction of the required improvements, all at the expense of Owner.
- e. To correct and/or complete Owner's and/or Owner's performance under this Agreement at the expense of Owner.
- f. To proceed against Owner 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 has 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 holds or then holds 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 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.

13. Assignment, etc.

Owner may not assign this Agreement without the prior written consent of the Town. The terms of this Agreement shall not be deemed to be merged in the execution and delivery by Owner to the Town of any deed required hereunder, rather the terms hereof shall survive and remain in full force and effect and the acceptance of any such deed shall not constitute a waiver by the Town of any rights which the Town may have against the Owner as provided for in this Agreement. Any assignment made with or without the consent of the Town, shall not relieve the Owner of any of the obligations of this Agreement but Owner shall be jointly and severally bound by all the terms hereof, unless otherwise consented to by the Town in writing.

14. Fees and Recording Costs

Owner shall reimburse the Town for all reasonable legal fees and consulting fees incurred by the Town in connection with the preparation of this Agreement, revision of plans and drawings, inspection, review of 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 acknowledges its 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.

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 in interest and assigns.

[Signatures on next page]

IN WITNESS WHEREOF the parties have caused the Agreement to be executed
the day and year first above written.

Witness:

THE TOWN OF MOUNT AIRY

By: _____ (SEAL)
Patrick T. Rockinberg, Mayor

Witness:

2504 BACK ACRE, LLC
a Maryland Limited Liability Company

By: _____ (SEAL)
John W. Cavell, Managing Member

Witness:

FIRST UNITED BANK & TRUST

By: _____ (SEAL)

Name and Title

Approved as to form and legal sufficiency,

Thomas V. McCarron, Town Attorney

STATE OF MARYLAND
COUNTY OF CARROLL

On this ____ day of _____, 2020 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 _____, 2020 before me, a Notary Public of the State of Maryland, in and for the County aforesaid, the undersigned officer personally appeared John W. Cavell, individually and who also acknowledged him/herself to be the Managing Member of 2504 BACK ACRE, LLC, 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:

STATE OF MARYLAND
COUNTY OF _____

On this _____ day of _____, 2020 before me, a Notary Public of the State of Maryland, in and for the County aforesaid, the undersigned officer personally appeared _____, who acknowledged him/herself to be the _____ of FIRST UNITED BANK & TRUST, 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

EXHIBIT "A" TO PUBLIC WORKS AGREEMENT BY AND BETWEEN THE TOWN OF MOUNT AIRY AND 225 BACK ACRE, LLC executed the ____ day of _____, 2020.

- (1) The Property as shown on a plat known as "*Amended Final Plat, Section Four, Lots 18A, TWIN ARCH BUSINESS PARK*" of record among the Plat Records of Carroll County in Plat Book No. __, Pages _____, prepared by _____ and approved by the Town of Mount Airy Planning Commission on the ____ day of _____, 20__.
- (2) Sheets One through _____ entitled "_____" prepared by _____ and approved by the Town of Mount Airy for construction on the ____ day of _____, 20__.

EXHIBIT “B” TO PUBLIC WORKS AGREEMENT BY AND BETWEEN THE TOWN OF MOUNT AIRY AND 225 BACK ACRE, LLC executed the ____ day of _____, 2020.

Standard Contract Clause

The parties agree that the enforcement of this Agreement is contingent upon final approval by the Town of Mount Airy (the “Town”) of the plats referred to in Exhibit A and the recordation of said plats among the Land Records of Carroll County, Maryland. In the event that said plats are not recorded within 100 days from the date of this Agreement, then this Agreement shall automatically terminate without the necessity of any notice from either party to the other.

This Agreement includes grading and/or the construction of certain improvements which form a basis of the approval of the above-mentioned plats by the Town and is the basis for a Public Works Agreement entered into or to be entered into by the Town and the Developer of the property shown on said plats. As a result, the parties hereto agree that the Town is a third party beneficiary of the terms of this Agreement which are co-extensive with the terms of its Public Works Agreement and that the Town shall have the right to enforce any and all of the terms of this Agreement, provided, however, that payment is made in accordance herewith; and further provided that the enforcement of the terms of this Agreement is made and pursuant to the rights of the Town provided for in said Public Works Agreement. This contract may not be terminated (except as specifically provided herein), enlarged, modified, altered, assigned or assumed, except in writing signed by all of the parties including the Town.