

THE TOWN OF MOUNT AIRY

PUBLIC WORKS AGREEMENT

**Lot 17, Section Four, Twin Arch Business Park
(King Sports Construction)**

This agreement made this ____ day of _____, 2020, 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 Twin Arch Associates Family Limited Liability Partnership, party of the second part (hereafter collectively referred to as the “Developer”). Sandy Spring Bank joins in this Agreement for the sole purpose of subordinating its rights to that of the Town pursuant to this Agreement, without undertaking any of the responsibilities and legal obligations of the Developer under this Agreement.

WHEREAS, the Developer owns in fee simple a tract of land located within the municipal limits of the Town more particularly described as Lot 17 as shown on a plat known as “Section Four, Lots 9 thru 14, 16 & 17, TWIN ARCH BUSINESS PARK”, as per plats thereof recorded among the Plat Records of Carroll County, Maryland in Plat Book 54 at Plat 205, being a portion of the same property conveyed to Twin Arch Associates Family Limited Liability Partnership by Twin Arch Associates by confirmatory deed dated November 1, 1999 and recorded on November 1, 1999 among the Land Records of Carroll County, Maryland in Liber 2274 at Folio 260 and as shown on the drawings referred to hereafter in Exhibit A (hereinafter “the Property”), and

WHEREAS, a Deed of Trust dated June 13, 2003, and recorded on July 7, 2003 among the Land Records of Carroll County, Maryland in Liber 3511, Folio 679 from

Twin Arch Associates Family Limited Liability Partnership securing Sandy Spring Bank for the repayment of a Note which encumbers the Property; and

WHEREAS, the Developer desires 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 Developer's property as so improved will require an extension of the Town's water and sewer systems, among other possible infrastructure, and

WHEREAS, the Town is willing to cooperate in the development of said property (subject to all existing ordinances and laws) including the extension of its water and sewer systems and other infrastructure as the Development Plans 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

Those drawings identified on the attached Exhibit A prepared by Vanmar Associates, Inc., 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) 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, the Developer agrees upon request of the Town to furnish any supplemental information in connection therewith. Within ninety

(90) days of the completion of the construction of each underground facility and testing thereof to the Town's satisfaction the Developer shall deliver "as built" drawings with respect thereto to the Town. If not delivered within ninety days the Developer 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 bond required by paragraph 5 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.

In the event of any conflict or inconsistency between one part of the Development Plan and any other part of the Development Plan or between said Development Plan 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.

Developer 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 Developer agrees to construct all improvements as called for by the Development Plan at its sole cost and expense. The Town shall have no responsibility for maintenance of any sidewalks, which shall be the responsibility of the Developer 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 prior to any backfilling and with respect to utilities shall be subject to final testing and acceptance by the Town.

The 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, Developer shall construct water mains as shown upon the Development Plan. 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, Developer shall construct sanitary sewer lines as shown upon the Development Plan. Developer shall construct the same, manholes (if any) and all appurtenances in accordance with the Development Plan 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

If applicable to the development, Developer shall construct a storm drainage system in accordance with the Development Plan 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, Developer shall dedicate rights-of-way for roads to the extent and as shown upon the Development Plan as public roads. All roads, drives, sidewalks, curbs, curb returns and connections to existing roads shall be constructed by the Developer in accordance with the Development Plan. 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.

The Developer 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, Developer 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

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

4. Other Approvals

The Developer is responsible for obtaining, at its own expense, any and all approvals which may be required with respect to the improvements of its above mentioned 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 does not imply approval by any other authority and Developer 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, the Developer 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 connection	\$ 1,440.00
B.	Sanitary sewer connection	3,400.00
C.	Landscaping	4,760.00
D.	Stormwater Management	17,038.00
E.	Sediment Control	<u>8,025.00</u>
	Contract Amount	\$34,663.00

To the Contract amount there shall be added the sum of Ten Percent (10%), totaling \$3,466.30, provided that the Developer causes to be incorporated in each contract

for the construction of improvements required 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 Developer 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, the Developer 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 Developer 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, the Developer 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 and which are to be dedicated and conveyed to the Town as per this Agreement and as reflected in the Development Plan, if any.

7. Inspection, etc.

(a). Prior to the commencement of any construction, Developer shall designate a qualified person as its project superintendent who shall be responsible for coordinating all work and who shall represent the Developer 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. Prior to release and recording of this Agreement and the recording of any subdivision plats, the Developer shall also pay to the Town an 8% inspection fee of \$2,773.04. Additionally, the Developer 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 \$1,251.59 (1.5947 acres x \$1,250) for the Water Expansion Fund established pursuant to Section 109.19.6 of the Town Code.

9. Indemnity

The Developer 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 Developer, its contractors and agents with respect to the above mentioned Development Plan and the construction of the public improvements required or authorized hereunder.

10. Time

In the event that the Developer fails to start construction within one year from the date of this Agreement or, having started construction, fails 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 Developer 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, the Developer 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 the Developer fails to construct the required public improvements or fails to convey any rights-of-way, easements or utilities required hereunder or fails to take appropriate and effective corrective action within thirty (30) calendar days after 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 the Developer 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 the Developer 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 the Developer 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 the Developer.
- e. To correct and/or complete the same at the expense of the Developer.
- f. To proceed against the Developer 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

Developer warrants that at the time of execution of this Agreement it holds fee simple title to the property shown on the development plan and agrees that prior to the

issuance of any building permit it shall furnish the Town with a certificate of title signed by an attorney licensed to practice law in the State of Maryland certifying that the Developer 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 Developer 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 the Developer hereunder.

13. Assignment, etc.

The Developer 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 the Developer to the Town of any deed required hereunder but 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 Developer as provided for in this Agreement. Any assignment made with or without the consent of the Town, shall not relieve the Developer of any of the obligations of this Agreement but the Developer and all assignees shall be jointly and severally bound by all the terms hereof.

14. Fees and Recording Costs

Developer 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

The Developer acknowledges its awareness that development of the property covered hereby may 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 the Developer.

16. Landscaping

No permits shall be issued relating to this development until 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.

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

[Signatures on next page]

Witness:

THE TOWN OF MOUNT AIRY

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

Witness:

TWIN ARCH ASSOCIATES FAMILY
LIMITED LIABILITY PARTNERSHIP

By: _____ (SEAL)

Witness:

SANDY SPRING BANK

By: _____ (SEAL)

Approved as to form and legal sufficiency,

Thomas V. McCarron, Town Attorney

[Notaries on next page.]

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 CARROLL

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 Emmett Full, who acknowledged himself to be the General Partner of Twin Arch Associates Family Limited Liability Partnership, 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 himself to be the _____ of Sandy Spring Bank, 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 TWIN ARCH ASSOCIATES FAMILY LIMITED LIABILITY PARTNERSHIP, executed the _____ day of _____, 2020.

- (1) Lot 17 as shown on a plat known as “Section Four, Lots 9 thru 14, 16 & 17, TWIN ARCH BUSINESS PARK”, as per plats thereof recorded among the Plat Records of Carroll County, Maryland in Plat Book 54 at Plat 205, prepared by Vanmar Associates, Inc., and approved by the Town of Mount Airy Planning Commission on the 3rd day of June, 2016.

- (2) Sheets 1 through 8 entitled “SITE DEVELOPMENT PLAN LOT 17, SECTION 4, KINGS SPORTS CONSTRUCTION, 2502 BACK ACRE CIRCLE, TWIN ARCH BUSINESS PARK” prepared by VanMar Associates, Inc., and approved by the Town of Mount Airy Planning Commission on the 18th day of May, 2020.

EXHIBIT “B” TO PUBLIC WORKS AGREEMENT BY AND BETWEEN THE TOWN OF MOUNT AIRY AND TWIN ARCH ASSOCIATES FAMILY LIMITED LIABILITY PARTNERSHIP 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.