

1. 2020.03.18 Agenda-PRELIM

Documents:

[2020.03.18 AGENDA.PDF](#)

2. 2019.38 Development Agreement MTB

Documents:

[2019.38 DEVELOPMENT AGREEMENT MTB.PDF](#)

2.I. MTB Development Agreement Exhibit A

Documents:

[MTB DEV AGMT - 03-12-2020 EXHIBIT A.PDF](#)

AGENDA OF BUSINESS  
REGULAR MEETING OF COUNCIL  
SUNBURY, OHIO  
March 18, 2020  
7:30 P.M.

SILENT PRAYER & PLEDGE OF ALLEGIANCE

ROLL CALL: Mr. Timothy Gose, Mr. Joe St. John, Mr. Martin Fisher, Mr. David Martin, Mr. Damin Cappel, Tommy Hatfield, Cindi Cooper

MINUTES:

March 4, 2020

VISITORS

**M. Renee Shumate – AEP**

COMMITTEE REPORTS:

POLICE REPORT:

ADMINISTRATOR'S REPORT:

ENGINEER'S REPORT:

**RESOLUTIONS:**

Third Readings

Second Readings

First Readings

**ORDINANCES:**

Third Readings

**ORDINANCE 2019.38**

**AN ORDINANCE AUTHORIZING EXECUTION OF A DEVELOPMENT AGREEMENT  
BETWEEN MTB FOURWINDS LLC, EMME HOLDINGS LLC AND THE VILLAGE OF  
SUNBURY**

Second Readings

First Readings

**UNFINISHED BUSINESS:**

Purchase Order # 33318 – Fyre Tec – Windows along fire escape - \$31,000.00

NEW BUSINESS:

Purchase Order # 33744 M.P. Dory – left turn arrow - \$12,000.00

Purchase Order # 33753 – Delaware County Regional Planning – 2020 Membership Dues \$4,632.00

Purchase Order # 33754 – MS Consultants – Engineering Services – Little Walnut Creek Trunk Sewer Line  
– P2000702- \$8,362.67.

ADJOURNMENT.

**ORDINANCE  
2019.38**

**AN ORDINANCE AUTHORIZING EXECUTION OF A DEVELOPMENT  
AGREEMENT BETWEEN MTB FOURWINDS LLC, EMME HOLDINGS LLC  
AND THE VILLAGE OF SUNBURY**

**WHEREAS**, the MTB Fourwinds LLC and Emme Holdings LLC are the joint owners of approximately 53.8+/- acres of property (Delaware County Parcel #417-230-010-170-00, 417- 230-010-170-01, 417-230-010-600-04 and 417-230-010-160-00) which they seek to develop, with the project being known as Fourwinds; and

**WHEREAS**, to provide funding for said public infrastructure improvements the Village expects to enact one or more tax increment financing ordinances (“TIF Ordinances”) pursuant to O.R.C. 5709.40 et seq. to create one or more tax increment financing areas and to provide for the collection of service payments in lieu of taxes, and which TIF Ordinances; and

**WHEREAS**, Council wishes to approve entering into the attached Development Agreement setting forth the various agreements between the Village and MTB Fourwinds LLC and Emme Holdings LLC regarding the enactment of the TIF Ordinances, the creation of the tax increment financing areas; and

**WHEREAS**, Council now wishes to approve said Development Agreement, a copy of which is attached hereto as exhibit “A”.

**NOW, THEREFORE, BE IT RESOLVED** by the Council for the Village of Sunbury, Ohio, Delaware County, State of Ohio as follows:

**SECTION I:** The Development Agreement with MTB Fourwinds LLC and Emme Holdings LLC for a project know as Fourwinds Drive is hereby approved. A copy of said agreement is attached hereto as Exhibit “A”.

**SECTION II:** The Mayor, the Solicitor and the Fiscal Officer are hereby authorized to execute the Development Agreement as required and any other related or necessary documents consistent with this legislation, provided that the Development Agreement shall be in substantially in the form presented to this Council, with such changes not inconsistent with this Ordinance as shall be agreed to by the Mayor, the Solicitor and the Fiscal Officer with the execution by the Mayor, the Solicitor and the Fiscal Officer constituting conclusive evidence of such approval.

**SECTION III:** It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance 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 meetings open to the public, and in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

**WHEREFORE**, this Ordinance shall be in effect from and after the earliest time permitted by law.

**VOTE ON ORDINANCE 2019.38**

**YEAS**

**NAYS**

**PASSED:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Tommy Hatfield, Mayor**

**ATTEST:**

\_\_\_\_\_  
**Kathy Belcher, Fiscal Officer**

**CERTIFICATION**

I hereby certify on this \_\_\_\_\_ day of \_\_\_\_\_, 2019, that the foregoing is a true and accurate copy of the Ordinance passed at the meeting held on \_\_\_\_\_, 2019, of the Village of Sunbury, County of Delaware, State of Ohio.

\_\_\_\_\_  
Fiscal Officer

## DEVELOPMENT AGREEMENT

This DEVELOPMENT AGREEMENT (this "Agreement") is made and entered into as of the last date of signature below (the "Effective Date") by and among the **VILLAGE OF SUNBURY**, an Ohio municipal corporation duly organized and validly existing under the Constitution and the laws of the State of Ohio ("Sunbury"), **MTB FOURWINDS LLC**, an Ohio limited liability company ("MTB"), and **EMME HOLDINGS LLC**, a Delaware limited liability company ("EH"). MTB and EH may be referred to hereinafter individually as a "Developer" and together as the "Developers", and Sunbury, MTB, EH, and any Phase 2 Successors (as such term is defined in Section 4(a)(ii)(A) below) may be referred to hereinafter individually as a "Party" and collectively as the "Parties".

### WITNESSETH:

WHEREAS, MTB and EH each own 50% of the ownership interests in certain real property consisting of 53.8+/- acres located generally to the southwest of the State Route 36/37 interchange at Interstate 71, which such real property is generally depicted in **Exhibit A** (attached hereto and incorporated herein by reference) and is known on the Effective Date as Delaware County Auditor Parcel Numbers 41723001017000, 41723001017001, 41723001016004, and 41723001016000 (collectively, the "Property"); and

WHEREAS, Sunbury, MTB, and EH's predecessor in interest with respect to its ownership interest in the Property (Dorcy Oil Company) are, along with other individuals and business entities, parties to that certain Annexation Agreement dated July 1, 2015 (the "Annexation Agreement"); and

WHEREAS, pursuant to the Annexation Agreement, the Property previously has been annexed to Sunbury so that it is located within Sunbury's municipal boundaries; and

WHEREAS, Section 3 of the Annexation Agreement provides that, following the annexation of the Property, Sunbury shall administer the zoning of the Property according to the zoning regulations which applied to the Property prior to such annexation, until such time as a rezoning of the Property into a Planned Commercial ("PC") District classification is approved by Sunbury in accordance with procedures prescribed in Sunbury's zoning ordinances (the "Sunbury Zoning Code") with provisions and requirements which are acceptable to Developers; and

WHEREAS, since the date when the annexation of the Property became effective, Sunbury and Developers have had numerous meetings and discussions concerning the rezoning of the Property, its future development, and the infrastructure which is necessary to be constructed to serve the development of the Property and/or the regional needs of the area surrounding the Property; and

WHEREAS, Sunbury and Developers desire to set forth their mutual understandings and agreements with respect to such matters by and through their execution of this Agreement;

NOW, THEREFORE, in consideration of the promises and covenants contained herein, the Parties agree to the foregoing and as follows:

AGREEMENT:

Section 1. **General Agreement and Term.** For the reasons set forth in the Recitals hereto, which Recitals are incorporated herein by reference as a statement of the public purposes of this Agreement and the intended arrangements between the Parties, the Parties shall cooperate in the manner described herein to facilitate the rezoning of the Property and the construction of the Public Improvements (as such term is defined in Section 5) and the Private Access Improvements (also as such term is defined in Section 6). This Agreement shall remain effective until such time as the Parties have satisfied all of their respective obligations as set forth in this Agreement, unless sooner terminated in accordance with the provisions set forth herein.

Section 2. **Representations and Warranties of the Parties.**

(a) Sunbury represents and warrants that as of the Effective Date:

(i) It is a municipal corporation duly organized and validly existing under the Constitution and the applicable laws of the State.

(ii) It has the power and authority to enter into and perform this Agreement.

(iii) This Agreement has been duly authorized, executed and delivered by Sunbury and constitutes the legal, valid and binding obligation of Sunbury enforceable in accordance with its terms.

(iv) Neither the entry into nor the performance of and compliance with this Agreement has resulted or will result in any violation of, or a conflict with or a default under, any judgment, decree, order, contract or agreement by which Sunbury is bound or any legal requirement applicable to Sunbury.

(v) No representation or warranty of Sunbury in this Agreement contains any untrue statement of material fact or omits a statement of a material fact necessary in order to make such representation or warranty not misleading in light of the circumstances under which it is made.

(vi) (vii) Ordinance No. \_\_\_\_\_, passed by Sunbury Council on \_\_\_\_\_, 2020, authorizing the execution and delivery of this Agreement, has been duly passed and is in full force and effect as of the Effective Date.

(b) Each of MTB and EH represents and warrants, on behalf of itself only, that as of the Effective Date:

(i) It (A) is a limited liability company duly organized, validly existing and in good standing under the laws in which it was organized and (B) has all requisite power and authority and to carry on its business in the State of Ohio as now being conducted and as presently proposed to be conducted.



(ii) This Agreement has been duly authorized, executed and delivered by the Developer and constitutes the legal, valid and binding obligation of the Developer enforceable in accordance with its terms.

Neither the entry into nor the performance of and compliance with this Agreement has resulted or will result in any violation of, or a conflict with or a default under, the organizational documents of the Developer, any judgment, decree, order, contract or agreement by which the Developer is bound, or any legal requirement applicable to the Developer

### Section 3. **Rezoning of the Property.**

(a) **Zoning Application.** Developers intend to file an application to rezone the Property to PC District as described in this Section 3 (the "**Zoning Application**"). Sunbury agrees that its staff and administration involved in planning and zoning supports the filing of said Zoning Application and shall process said application without undue delay. However, staff and administration reserve the right to provide comments on said application and the Parties acknowledge the final approval of said Zoning Application rests with the Sunbury Planning and Zoning Commission and Sunbury Village Council.

(b) **Phase 1 Zoning.** The Zoning Application will seek a rezoning of a limited portion of the Property consisting of 5+/- acres generally identified as "**Phase 1**" in **Exhibit A** to the PC District classification pursuant to the Sunbury Zoning Code. Developers have received interest from third parties that desire to develop and operate commercial uses thereon. The Zoning Application will seek a rezoning of Phase 1 to permit a range of commercial uses on up to three separate tax parcels.

(c) **Phase 2 Zoning.** Developers also intend to pursue a rezoning of the portions of the Property which are located outside of the boundaries of Phase 1 (such portions of the Property to be referred to herein as "**Phase 2**", as generally identified in **Exhibit A**) as part of the Zoning Application. With respect to Phase 2, the Zoning Application shall include a plan which generally conforms to that which is shown in **Exhibit A** (the "**Phase 2 Plan**"). The Parties acknowledge that the Phase 2 Plan does not, and it is unlikely that the Zoning Application will, include any specific plans for the private development of Phase 2 but instead will include a development standards/zoning text that defines the specific use and development rights, requirements, and parameters for Phase 2, which may include commercial, multi-family residential, office, or institutional uses, or some combination thereof. The Phase 2 Plan will provide the general framework for the locations and sizes of the Public Improvements, the Private Access Improvements, and for private development areas within Phase 2.

### Section 4. **Dedication of Rights-of-Way.**

(a) **Fourwinds Drive - Phase 1.** Developers agree that, following such time as the Zoning Application has been approved (with conditions that are acceptable to Developers, if

applicable) and is legally effective and the first final development plan has been approved (with conditions that are acceptable to Developers, if applicable) for development within Phase 1 so that it is legally effective, they shall transfer and convey right-of-way with a width of 80 feet to Sunbury within an area extending from the southern terminus of Fourwinds Drive as it exists on the Effective Date to the southern boundary of Phase 1 (the “Fourwinds Phase 1 ROW”, as generally identified in **Exhibit B**). Any conditions of approval of the Zoning Application and/or a final development plan application shall be deemed to be acceptable to Developers if they do not object to the same in writing prior to or at a hearing before Sunbury’s Planning & Zoning Commission or its Village Council after receiving written notice of such hearing or if they do not object to such conditions orally at such hearing. The final location of the Fourwinds Phase 1 ROW shall be reviewed and approved as part of the first final development plan application for Phase 1. It shall be a prerequisite to the issuance of the first building permit for development within Phase 1 that the Fourwinds Phase 1 ROW shall have been transferred and conveyed to Sunbury by and through the execution and recording of a deed or plat, the form of which shall be reasonably acceptable to Sunbury and Developers, with the Office of the Recorder of Delaware County, Ohio (the “Recorder”). The instrument which serves to complete the dedication of the Fourwinds Phase 1 ROW to Sunbury shall within the limits of its jurisdiction, if necessary, reserve in favor of the ODOT Parcel (as such term is defined below) a curb cut to allow the ODOT Access Easement (as such term is defined below) to connect with Fourwinds Drive as set forth on **Exhibit A** for purposes of providing the ODOT Parcel with vehicular access to Fourwinds Drive until such time as the ODOT Access Easement terminates. It is acknowledged that other governmental entities may also have to approve this curb cut as the northern portion of the ODOT Access Easement will connect to a portion of Fourwinds Drive which is located outside of Sunbury’s municipal boundary.

(b) Fourwinds Drive - Phase 2. Developers agree that, following such time as the Zoning Application has been approved (with conditions that are acceptable to Developers, if applicable) and is legally effective, they shall have a continuing obligation to transfer and convey right-of-way with a width of 80 feet to Sunbury within an area extending from the southern boundary of Phase 1 to the southern boundary of Phase 2 (the “Fourwinds Phase 2 ROW”, as generally identified in **Exhibit B**), subject to the provisions and requirements of this Section 4(b). The Fourwinds Phase 2 ROW shall be transferred and conveyed to Sunbury by and through the execution and recording of one or more deeds or plats with the Recorder, the form(s) of which shall be reasonably acceptable to Sunbury and Developers.

The Fourwinds Phase 2 ROW shall be transferred and conveyed to Sunbury in one of the following manners:

(i) Initiated By Sunbury. Sunbury may deliver written notice to Developers that it intends, by an application initiated (and paid for) by Sunbury, to file (within forty-five (45) days following the delivery of such notice) a combined preliminary/final plat application to plat the entirety of the extension of Fourwinds Drive to be located within the Fourwinds Phase 2 ROW. On or before the date that is ten (10) days following Developers' receipt of such notice, Developers (and their successors in interest with respect to ownership of relevant portions of Phase 2, to be referred to herein as "Phase 2 Successors") shall execute the application as the owners of the proposed Fourwinds Phase 2 ROW if the location of the Fourwinds Phase 2 ROW as shown in the proposed preliminary/final plats is (A) generally consistent with the location of the Fourwinds Phase 2 ROW or (B) if all of the Fourwinds Drive Phase 2 ROW is located within 15 feet of the Fourwinds Phase 2 ROW, and in each case, as it is shown in **Exhibit B**. If the proposed preliminary plat/final plat does not meet either of the foregoing requirements, then on or before the date that is ten (10) days following their receipt of the notice from Sunbury, the Developers (and, to the extent applicable, each Phase 2 Successor) shall either (Y) execute the application, which shall be conclusive evidence that the parties executing the application have no objection to the location of the Fourwinds Phase 2 ROW as proposed, or (Z) notify Sunbury in writing that they object to the location of the Fourwinds Phase 2 ROW. In the latter case, Developers, any Phase 2 Successor that makes such an objection, and Sunbury shall then have their representatives meet in person within ten (10) days following Sunbury's receipt of the notice in order to determine if the objections can be addressed in a manner that is acceptable to Developers and any Phase 2 Successor that makes such an objection. If the Parties are unable to resolve the objections to the satisfaction of Developers and such Phase 2 Successor(s), then Sunbury shall be required to modify the application in a manner that requires the signatures of Developers and Phase 2 Successors as contemplated in the second sentence of this paragraph. It is the intent of the Parties that Developers and its Phase 2 Successors shall be permitted to object to the proposed location of the Fourwinds Phase 2 ROW only to the extent that they determine that the location, as proposed, will materially and negatively impact the value of, or the ability to develop, any portion of Phase 2 that is under the objecting Party's ownership; or

(ii) Initiated By Developers. Developers shall be permitted to file a combined preliminary/final plat application that includes all or any portion of the Fourwinds Phase 2 ROW that is the subject of a final development plan application which has been filed concurrently with the preliminary/final plat application or has been previously approved by Sunbury. Sunbury agrees to actively support each application for a final development plan which includes all or any portion of the Fourwinds Phase 2 ROW if the location of the Fourwinds Phase 2 ROW is generally consistent with the location of the Fourwinds Phase 2 ROW as it is shown in **Exhibit B** or if all portions of the Fourwinds Drive Phase 2 ROW are located within 15 feet of the Fourwinds Phase 2 ROW as it is shown in **Exhibit B**; provided, however, Developers acknowledge and agree that notwithstanding any support which may be provided by Sunbury, the review and approval of any such application is subject to the procedures and requirements for platting as set forth in the

Sunbury Zoning Code and is not pre-approved by the execution of this Agreement. Sunbury may approve a final development plan which includes the Fourwinds Phase 2 ROW in a location that is inconsistent with that which is described in the immediately preceding sentence as it determines in its sole discretion in accordance with relevant review and approval procedures of the Sunbury Zoning Code; or

(iii) By Date Certain. If the entirety of the Fourwinds Phase 2 ROW has not been dedicated to Sunbury on or before the fourteenth (14<sup>th</sup>) anniversary of the Effective Date, then Sunbury shall prepare, at its sole cost and expense, a combined preliminary/final plat application to provide for the dedication of any remaining portions of the Fourwinds Phase 2 ROW which have not been dedicated to Sunbury as of that date and the Parties shall then proceed with the same review and approval procedures as are contemplated in Section 4(b)(i). All portions of the Fourwinds Phase 2 ROW shall be dedicated by Developers and Phase 2 Successors to Sunbury prior to the fifteenth (15<sup>th</sup>) anniversary of the Effective Date.

(c) East Public Street. Developers agree, for themselves and their Phase 2 Successors, to transfer and convey right-of-way with a width of up to 50 feet to Sunbury in an area extending eastward from the Fourwinds Drive Phase 2 ROW to a point necessary to provide for a vehicular route of ingress and egress to and from the North-South Access Easement (such term being defined in Section 6(b) below), as generally identified in **Exhibit B** (the “East Public Street ROW”). The East Public Street ROW shall be transferred and conveyed to Sunbury by and through the execution and recording of one or more deeds or plats with the Recorder, the form(s) of which shall be reasonably acceptable to Sunbury, Developers, and relevant Phase 2 Successors. In order to maintain flexibility with respect to development of the portions of Phase 2 in the vicinity of the East Public Street ROW, the transfer and conveyance of the East Public Street ROW to Sunbury shall not be required to occur until the earlier of the date that is 45 days following the date when (i) the first final development plan for any portion of Phase 2 that will require the use of the East Public Street ROW for public street vehicular access has been approved by Sunbury and is legally effective, or (ii) Sunbury delivers written notice to Developers that an application for a building permit for construction of a new building on the “Northstar Property” (as generally identified in **Exhibit B** and known on the Effective Date as Delaware County Auditor Parcel Number 41723001010001) has been approved by Sunbury.

(d) West Public Street. Developers agree, for themselves and their Phase 2 Successors, to transfer and convey right-of-way with a width of up to 60 feet to Sunbury in an area extending eastward from 3 Bs and K Road to a point necessary to provide for a vehicular route of ingress and egress to and from the Fourwinds Drive Phase 2 ROW, as generally identified in **Exhibit B** (the “West Public Street ROW”). The West Public Street ROW shall be transferred and conveyed to Sunbury by and through the execution and recording of one or more deeds or plats with the Recorder, the form(s) of which shall be reasonably acceptable to Sunbury, Developers, and relevant Phase 2 Successors. In order to maintain flexibility with respect to development of the portions of Phase 2 in the vicinity of the West Public Street ROW, the transfer and conveyance of the West Public Street ROW to Sunbury shall not be required to occur until 45 days following the earlier of the date (i) when the first final development plan for any portion of Phase 2 that will require the use of the West Public Street ROW for public street vehicular access has been approved by Sunbury and is legally effective or (ii) on which Sunbury

provides written notice to the Developer that it has determined that the West Public Street ROW is necessary to facilitate access from 3 Bs and K Road to Fourwinds Drive.

(e) Any party transferring and conveying Fourwinds Phase 1 ROW, Fourwinds Phase 2 ROW or West Public Street ROW (but not East Public Street ROW) to Sunbury pursuant to this Section 4 will be reimbursed for the cost thereof in accordance with Section 7.

Section 5. **Construction of Public Improvements.** Improvements within the Fourwinds Phase 1 ROW, the Fourwinds Phase 2 ROW, the East Public Street ROW and the West Public Street ROW (collectively, "Public Improvements") shall be constructed and installed as follows, with maintenance of the Public Improvements to be the responsibility of Sunbury after such construction and installation is complete:

(a) **Within Fourwinds Phase 1 ROW.** Sunbury agrees to construct a 3-lane extension of Fourwinds Drive (i.e., one lane for each direction of traffic and a turn lane) from its current terminus southward to the southern boundary of Phase 1 within the Fourwinds Phase 1 ROW (the "Fourwinds Phase 1 Initial Improvements"). Upon Sunbury's issuance of the first building permit for the construction of a structure within Phase 1, Developers shall provide Sunbury, in writing, with an estimated date by which construction pursuant to said building permit is anticipated to be completed. Sunbury agrees to commence and complete the construction of the Fourwinds Phase 1 Initial Improvements with all reasonable dispatch in order that such Fourwinds Phase 1 Initial Improvements shall be completed by the date that is fifteen (15) days prior to estimated date by which construction pursuant to said building permit will be complete; provided, however, Developers acknowledge and agree that approvals from certain other governmental authorities may be required to complete such Fourwinds Phase 1 Initial Improvements and any delay in procurement of those approvals may delay the completion of the Fourwinds Phase 1 Initial Improvements. The costs of construction of the Fourwinds Phase 1 Initial Improvements shall be paid by Sunbury, subject to the reimbursement provisions of Section 7. Sunbury may elect to construct the Fourwinds Phase 1 Initial Improvements at an earlier time than required under this paragraph if it determines it to be desirable or necessary in its sole discretion, provided that it first delivers thirty (30) days' prior written notice of this intent to Developers.

Sunbury or other governmental authorities shall be responsible for constructing any additional improvements within the Fourwinds Phase 1 ROW which Sunbury deems to be necessary or desirable to expand Fourwinds Drive to a width of up to 5 lanes (the "Fourwinds Phase 1 Deferred Improvements"). Such construction shall be performed by Sunbury only if and when it determines it to be appropriate and at no cost or expense to Developers or their successors or assigns in ownership of all or any portion of the Property, subject to the reimbursement provisions of Section 7.

(b) **Within Fourwinds Phase 2 ROW.**

(i) **Sunbury Responsibilities.** Except as provided in Section 5(b)(ii), Sunbury or other governmental authorities shall be solely responsible for constructing any improvements within the Fourwinds Phase 2 ROW which are deemed by Sunbury to be necessary or desirable (such improvements to be referred to herein as the "Fourwinds

Phase 2 Deferred Improvements”). Such improvements may include no less than 3 and no more than 5 lanes of pavement as well as associated improvements. Such construction shall be performed by Sunbury if and when Sunbury determines it to be appropriate and at no cost or expense to Developers or their Phase 2 Successors, subject to the reimbursement provisions of Section 7.

(ii) Limited Improvements by Developers. Developers and/or their Phase 2 Successors shall be permitted (but shall not be required) to construct all or any portion of an extension of Fourwinds Drive (which shall consist of 3 lanes - one lane for each direction of traffic and a turn lane) within that portion of the Fourwinds Phase 2 ROW extending from the terminus of the Fourwinds Phase 1 ROW on the north to the southern boundary of the East Public Street ROW on the south (any such portion of said extension to be referred to herein as the “Fourwinds Phase 2 Initial Improvements”). The costs of construction of the Fourwinds Phase 2 Initial Improvements shall be paid initially by the Party that undertakes such construction, subject to the reimbursement provisions of Section 7. In the event that Developers or any Phase 2 Successor desires to undertake such construction, it shall so notify Sunbury in writing and then submit all necessary plans, specifications, and materials as required by Sunbury as a prerequisite to the issuance of relevant permits to conduct such construction. Construction of all or a portion of the Fourwinds Phase 2 Initial Improvements may be performed by Sunbury if and when Sunbury determines it to be appropriate and at no cost or expense to Developers or Phase 2 Successors, subject to the reimbursement provisions of Section 7.

(c) Within East Public Street ROW. Any of Developers, their Phase 2 Successors, Sunbury or the owner or developer of the Northstar Property may elect (but shall not be required) to construct the East Public Street. In the event that Developers, any Phase 2 Successor or the owner or developer of the Northstar Property desires to undertake such construction, it shall so notify Sunbury in writing and then submit all necessary plans, specifications, and materials as required by Sunbury as a prerequisite to the issuance of relevant permits to conduct such construction. The Party which elects to construct the East Public Street Improvements shall complete the construction at the sole cost and expense, subject to the reimbursement provisions of Section 7.

(d) Within West Public Street ROW. Any of Developers, their Phase 2 Successors or Sunbury may elect (but shall not be required) to construct the West Public Street. In the event that Developers or any Phase 2 Successor desires to undertake such construction, it shall so notify Sunbury in writing and then submit all necessary plans, specifications, and materials as required by Sunbury as a prerequisite to the issuance of relevant permits to conduct such construction. The Party which elects to construct the West Public Street Improvements shall complete the construction at the sole cost and expense, subject to the reimbursement provisions of Section 7.

Section 6. Access Easements. The improvements described in this Section 6 shall be the “Private Access Improvements.”

(a) ODOT Easement. Developers agree to grant to the State of Ohio and/or the Ohio Department of Transportation, at no charge and on terms that are reasonably acceptable to

Developers, as the current owner(s) of Delaware County Auditor Parcel Number 41723001015000 (the “ODOT Parcel”, as generally identified in **Exhibit B**), as set forth in a written agreement (the “ODOT Access Easement Agreement”) that shall be recorded by the owner of the ODOT Parcel with the Recorder, a non-exclusive temporary 30-foot wide easement (the “ODOT Access Easement”) for purposes of vehicular ingress and egress between the ODOT Parcel and Fourwinds Drive. The ODOT Access Easement shall be located within a general area (the “ODOT Access Easement Area”) which is identified as the ODOT Access Easement Area in **Exhibit B**. The ODOT Access Easement Agreement shall provide:

(i) that the owner of the ODOT Parcel shall be solely responsible for constructing, maintaining, repairing, and replacing (at no cost or expense to Developers or Sunbury) any pavement or other necessary or desirable improvements within the ODOT Access Easement Area in order to provide for a means of vehicular ingress and egress;

(ii) that the ODOT Access Easement shall terminate automatically at such time as the ODOT Parcel is transferred or conveyed to a third-party private person or entity or at such time as both (A) a portion of Fourwinds Drive consisting of at least 2 driving lanes is constructed and open for public use within the Fourwinds Phase 2 ROW to a point that is adjacent to the eastern terminus of the West Public Street ROW, and (B) pavement and other necessary improvements to provide for a means of vehicular ingress and egress between such public street and the public street known as 3 Bs and K Road have been installed within the West Public Street ROW so that they are operational; and

(iii) such other reasonable or customary terms which are typically provided in such an agreement. The ODOT Access Easement Agreement shall further provide that upon its termination the owner of the ODOT Parcel shall be required to remove all improvements within the ODOT Access Easement Area and restore said real property to a grassed condition, free of all improvements and debris. The failure of Developers and the owner of the ODOT Parcel to execute and/or record the ODOT Access Easement Agreement shall not be deemed to be a default under or breach of this Agreement by Developers.

(b) North-South Access Easement. Developers agree to declare, in a written instrument (the “North-South Access Declaration”) that shall be recorded by Developers with the Recorder, a non-exclusive perpetual 50-foot wide easement (the “North-South Access Easement”) for purposes of (i) providing a means of vehicular ingress and egress between the Northstar Property and the East Public Street ROW, and (ii) a means of vehicular ingress and egress between relevant portions of the Property and the East Public ROW. The North-South Access Easement shall be located within an area (the “North-South Access Easement Area”) which is identified as the North-South Access Easement Area in **Exhibit B**. The North-South Access Easement Declaration shall provide that any use of the North-South Easement Area by one or more owners of the Northstar Property or their guests or designees shall be permitted only after the owner of the Northstar Parcel has paid to Developers, as consideration for the use of the North-South Access Easement Area by the owners and users of the Northstar Property, an amount equal to the product of (Y) \$130,000.00 (with such amount to increase 5% annually beginning on the 5<sup>th</sup> anniversary of the Effective Date) multiplied by (Z) the number of acres

contained within the North-South Access Easement Area (such product being the “Easement Land Cost”). Once such payment is received by Developers, it shall be memorialized by the prompt recording by Developers of an acknowledgement of such payment with the Recorder. The North-South Access Declaration also shall provide that the owner of the Northstar Property shall be solely responsible for constructing, maintaining, repairing, and replacing (at said owner’s sole cost and expense and at no cost or expense to Sunbury or Developers or their respective successors or assigns in interest to the Property) any pavement or other necessary or desirable improvements within the North-South Access Easement Area in order to provide for a means of vehicular ingress and egress, and shall provide such other reasonable or customary terms which are typically provided in such a declaration.

#### Section 7.

(a) General. Sunbury agrees that it shall be a condition precedent to Developers’ obligations to perform under this Agreement that Sunbury shall have created a tax increment financing (“TIF”) district covering Phase 1 (the “Phase 1 TIF District”) through the passage of necessary legislation necessary to approve a TIF district by Sunbury’s Village Council (“TIF Ordinance”) so that such legislation is legally effective no later than one hundred twenty (120) days following the Effective Date. The Phase 1 TIF District and each Phase 2 TIF District (as such term is later defined in this Agreement) shall be created pursuant to relevant provisions of the Ohio Revised Code (the “TIF Statutes”) and shall provide that at least seventy-five percent (75%) of the Improvement (as that term is defined in Ohio Revised Code Section 5709.40(A)(4)) to each parcel of real property contained in each TIF district shall be exempted from real property taxation (“TIF Exemption”) for a period of at least twenty (20) years.

Developers acknowledge that pursuant to the terms of the Annexation Agreement, they are obligated, subject to certain conditions set forth in Section 5 of that Annexation Agreement, to consent to the inclusion of the Property in the District (as defined in that Annexation Agreement and defined herein as the “Existing NCA District”). Developers further acknowledge that the Village and the Olentangy Local School District (the “School District”) heretofore executed a Compensation Agreement, dated June 13, 2019 (the “Compensation Agreement”), which generally provides that the Village may authorize a tax increment financing real property tax exemption of up to 75% for up to 20 years for certain real property (including the Property) provided that such real property is located within a new community authority (as described in Ohio Revised Code Chapter 349) and that the School District is receiving the payments provided for in that Compensation Agreement.

Developers agree that if, at the time the Property is to be added to the Existing NCA District and without application of Sections 5.a) and 5.b) of the Annexation Agreement, the community development charges to be levied against the Property by the Existing NCA District are consistent with Sections 5.c) through 5.h) of the Annexation Agreement, the Developers will take such actions as are reasonably necessary to add the Property to the Existing NCA District. Otherwise, the Developers will take such steps as are reasonably necessary to work with the Village to facilitate the creation of a new and distinct new community authority district which will include the Property (and other real property in the vicinity of the Property, if legally permissible and at the election of the Village) and will meet the relevant requirements under the Compensation Agreement to enable the Property to be eligible for the aforementioned tax



increment financing real property tax exemption. Developers and the Village agree to work cooperatively and in good faith to add the Property to the Existing NCA District or create the new and distinct new community authority district so that either action is legally effective and recognized prior to the issuance of a temporary or permanent certificate of occupancy for the first building constructed on the Property.

(b) Service Payments. Developers hereby agree, and will require Phase 2 Successors and successors in ownership of the portions of the property contained in Phase 1 to agree, to make service payments in lieu of taxes (“Service Payments”) attributable to their respective periods of ownership of such portion of the Property which is subject to a TIF Exemption. Service Payments will be made in accordance with the requirements of the TIF Statutes and the TIF Ordinance, and any subsequent amendments or supplements thereto, and will be in the same amount as the real property taxes that would have been charged and payable against the Improvements (after credit for any property tax rollback payments received) had the TIF Exemption not been granted, including any penalties and interest. Developers will not, under any circumstances, be required for any tax year to pay both real property taxes and Service Payments with respect to the Improvements, whether pursuant to the TIF Statutes, the TIF Ordinance, or this Agreement.

Service Payments will be made semiannually to the Delaware County Treasurer (or to such Treasurer's designated agent for collection of the Service Payments) on or before the date on which real property taxes would otherwise be due and payable for the Property. Any late payments will bear penalties and interest at the then current rate established under Ohio Revised Code Sections 323.121 and 5703.47 or any successor provisions thereto, as the same may be amended from time to time.

Service Payments received by Sunbury shall be deposited into the municipal public improvement tax increment equivalent fund(s) (“TIF Fund(s)”) which are created by the TIF Ordinance(s).

(c) Public Infrastructure Improvements. Developers and Sunbury acknowledge and agree that the TIF Ordinance(s) will specify certain public infrastructure improvements (which will include but shall not be limited to the Public Improvements) made, to be made or in the process of being made that directly benefit, or that once made will directly benefit, the Property, and the costs of which may be paid from Service Payments. Sunbury will use the Service Payments it receives with respect to the Property for any purpose authorized by the TIF Ordinance(s) and the TIF Statutes, but in all circumstances in accordance with the terms of this Agreement.

(d) Phase 2 TIF Districts; Efforts to Maximize Revenue. Sunbury shall create one or more TIF districts that encompass Phase 2 (the “Phase 2 TIF Districts”). Sunbury agrees that it shall work cooperatively and in good faith with Developers to identify and implement legally permissible mechanisms for maximizing the amount of time during the term of each Phase 2 TIF district during which Service Payments will be made and deposited into the relevant TIF Fund(s). Sunbury and Developers recognize that the Property will be developed in multiple phases over time based on market conditions, so creativity with respect to the starting point of the 20-year term of each of the Phase 2 TIF Districts presents an opportunity to align such

starting point(s) with the timing of development of each such phase. Unless otherwise agreed by Developers in writing, in order to maximize the amount of Service Payments collected from each Phase 2 TIF District, no Phase 2 TIF District shall be created until after such time as a final development plan has been approved for at least some portion of Phase 2 that will be located within the boundaries of that Phase 2 TIF District, and no Phase 2 TIF District shall include any portions of Phase 2 on which Developers estimate construction of private improvements will not commence on or before the third (3<sup>rd</sup>) anniversary of the date when the TIF Ordinance serving to create that Phase 2 TIF District becomes legally effective. Sunbury agrees that it shall engage the services of legal counsel at its sole cost and expense (but subject to the reimbursement provisions of Section 7) to advise Sunbury and inform Developers as to how revenues from Service Payments may be maximized.

(e) Priority for Use of Service Payments. Service Payments collected from the TIF district(s) which will cover the Property first may be disbursed to Sunbury to reimburse it for reasonable legal costs that it incurs to create the TIF district(s), and then shall be disbursed and paid as follows:

(i) Phase 1 TIF District. Service Payments deposited into the TIF Fund for the Phase 1 TIF District shall be disbursed in the following priority:

(A) **First**, such Service Payments shall be disbursed to Sunbury for reimbursement of the Cost (as such term is defined below) of constructing the Fourwinds Phase 1 Initial Improvements (the “Fourwinds Phase 1 Initial Improvements Cost”), plus accrued Interest thereon, until such Costs are reimbursed in full;

(B) **Second**, after full satisfaction of the reimbursement requirement in Section 7(e)(i)(A), then such Service Payments shall be used to reimburse Developers for the Cost of the right-of-way that is transferred to Sunbury within the Fourwinds Phase 1 ROW, which Cost shall be an amount equal to the product of (A) the quotient of 2 divided by 5 (representing the oversizing required to accommodate a 5-lane road instead of a 3-lane road) multiplied by (B) the amount of acreage contained within the Fourwinds Phase 1 ROW and multiplied by (C) \$80,000.00 (the “Fourwinds Phase 1 ROW Cost”), plus accrued Interest thereon; and

(C) **Third**, after full satisfaction of the reimbursement requirement in Section 7(e)(i)(B), then such Service Payments shall, at the election of Sunbury, be disbursed (1) to pay for the Cost of the Fourwinds Phase 1 Deferred Improvements (the “Fourwinds Phase 1 Deferred Improvements Cost”), and/or (2) in the same manner as required for monies from the TIF Funds for the Phase 2 TIF Districts (which may include, but not necessarily be limited to, the Cost of the proposed Sunbury Parkway and a proposed interchange at the intersection of the proposed Sunbury Parkway and I-71), plus accrued Interest thereon.

(ii) Phase 2 TIF Districts. Service Payments deposited into any TIF Fund for a Phase 2 TIF District shall be disbursed in the following priority:

(A) Until such time as all amounts described in Section 7(e)(ii)(A)(2) have been fully reimbursed,

(1) Twenty-five percent (25%) of such Service Payments shall be deposited into the relevant TIF Fund and shall be held there until it is disbursed from time-to-time solely to reimburse Sunbury for the Cost of any public infrastructure improvements permitted to be reimbursed as set forth in the TIF Ordinance which created the relevant Phase 2 TIF District (which may include, but not necessarily be limited to, the Cost of the proposed Sunbury Parkway and a proposed interchange at the intersection of the proposed Sunbury Parkway and I-71), consistent with the terms of this Agreement; and

(2) The remaining seventy-five percent (75%) of such Service Payments shall be disbursed in the following priorities and for the following purposes:

(a) **First**, to reimburse any Party for the Cost of any Public Improvements incurred prior to the fifteenth (15<sup>th</sup>) anniversary of the Effective Date, plus accrued Interest thereon, and

(b) **Second**, to reimburse any Party for the Cost of the right-of-way that is transferred to Sunbury prior to the fifteenth (15<sup>th</sup>) anniversary of the Effective Date and within the (I) Fourwinds Phase 2 ROW and (II) West Public Street ROW; provided that the Cost of any such right-of-way shall be an amount equal to the product of (Y) the amount of acreage contained within such right-of-way and multiplied by (Z) \$80,000.00 (the “Fourwinds Phase 2 ROW Cost” or the “West Public Street ROW Cost”, as the case may be), plus in all three cases, accrued Interest thereon.

The disbursements required under this Section 7(e)(ii)(A)(2) shall be made by Sunbury to the appropriate Parties based on the order in which those Certifications shall have theretofore been submitted to Sunbury, plus accrued Interest in each case; provided that disbursements required under Section 7(e)(ii)(A)(2)(a) shall take priority over disbursements required under Section 7(e)(ii)(A)(2)(b). The Cost evidenced by any Certification, plus accrued Interest on that amount, shall be reimbursed in full before reimbursement of the Cost evidenced by any successive Certification.

(B) After full satisfaction of the reimbursement requirements in Section 7(e)(ii)(A)(2), Service Payments shall be disbursed in the following priority:

(1) Fifty percent (50%) of such Service Payments shall be disbursed in the following priorities and for the following purposes:

(a) **First**, to reimburse any Party for the Cost of any Public Improvements incurred after the fifteenth (15<sup>th</sup>) anniversary of the Effective Date, plus accrued Interest thereon, and

(b) **Second**, to reimburse any Party for any Fourwinds Phase 2 ROW Cost or West Public Street ROW Cost that is transferred to Sunbury after the fifteenth (15<sup>th</sup>) anniversary of the Effective Date,

The disbursements required under this Section 7(e)(ii)(B)(1) shall be made to the appropriate Parties based on the order in which those Certifications shall have theretofore been submitted to Sunbury, plus accrued Interest in each case; provided that disbursements required under Section 7(e)(ii)(B)(1)(a) shall take priority over disbursements required under Section 7(e)(ii)(B)(1)(b). The Cost evidenced by any Certification, plus accrued Interest on that amount, shall be reimbursed in full before reimbursement of the Cost evidenced by any successive Certification.

(2) The remaining fifty percent (50%) of such Service Payments shall be deposited into the relevant TIF Fund(s) to be disbursed from time-to-time to reimburse Sunbury for the Cost of any public infrastructure improvements permitted to be reimbursed as set forth in the TIF Ordinance which created the relevant Phase 2 TIF District (which may include, but not necessarily be limited to, the Cost of the proposed Sunbury Parkway and a proposed interchange at the intersection of the proposed Sunbury Parkway and I-71), consistent with the terms of this Agreement. Each Fourwinds Phase 2 Initial Improvements Cost or East Public Street Improvements Cost incurred during this time period shall be reimbursed in the order in which it was incurred as evidenced by Certifications.

(f) Definition of Costs. For purposes of this Agreement, the cost of constructing a public street and any Related Improvements (as such term is defined in the next sentence) shall include those costs described in Ohio Revised Code Section 133.15(B) (“Cost” or “Costs”). The term “Related Improvements” shall be defined to mean “those public improvements which are typically constructed in conjunction with a public street, such as (but not limited to) public utility lines and appurtenances; traffic signals; signs serving a public purpose; storm water management infrastructure; street trees, grass, and other landscaping; and street lights.”

(g) Definition of Interest. For purposes of this Section 7, the term “Interest” shall mean “interest at the rate of 5.0% per annum on any Cost as detailed, which shall accrue for each such Cost on the date that a relevant Certification (as such term is defined below) is approved by Sunbury, and which shall no longer accrue on any such cost when it has been reimbursed in full as provided in this Agreement.”

(h) Certifications. Disbursements required to be made to Developers (or to Phase 2 Successors, as applicable) or to Sunbury from Service Payments that have been deposited into the TIF Fund(s) (“Disbursements”) shall be made in accordance with this subsection (h). Disbursements shall be made by Sunbury twice annually, with one payment to be disbursed no later than 45 days following the due date for the payments of first half real estate taxes in a particular calendar year as required by the Delaware County Treasurer (“Treasurer”) (such deadline as set by the Treasurer being the “First Half Due Date”), and the other payment to be disbursed no later than 45 days following the due date for the payments of second half real estate taxes in a particular calendar year as required by the Treasurer (such deadline as set by the Treasurer being the “Second Half Due Date”). No Disbursements shall be required to be made until Service Payments have been deposited into the one or more TIF Funds.

Before any Disbursements may be made with respect to the costs of any portion of the Public Improvements, the Fourwinds Phase 1 ROW, the Fourwinds Phase 2 ROW or the West Public Street ROW, the Party seeking reimbursement shall deliver a written certification (the “Certification”) to Sunbury (or Sunbury shall provide its own Certification) which shall (1) generally describe the Public Improvements which were made; (2) provide reasonably detailed invoices evidencing the costs of the relevant improvements and evidence of payment of the same, and (3) provide a representation that the construction of the relevant improvements have been completed substantially in accordance with all relevant governmental permits, that all costs then due and payable in connection therewith have been paid, and that there are no mechanics’ or materialmen’s liens which apply to the real property on which the improvements have been completed, or (4) in the case of any Fourwinds Phase 1 ROW, Fourwinds Phase 2 ROW or West Public Street ROW, evidence as to what portion(s) of the applicable ROW has been transferred and conveyed to Sunbury. A copy of all approved Certifications shall be provided by Sunbury to other interested parties upon request.

(i) Priority of Lien. The provisions of Ohio Revised Code Section 5709.91, which specify that Service Payments will be treated in the same manner as taxes for all purposes of the lien described in Ohio Revised Code Section 323.11, including, but not limited to, the priority of the lien and the collection of Service Payments, apply to this Agreement and to the Property. The provisions of Ohio Revised Code Section 5709.911 apply to exemption applications filed pursuant to the TIF Ordinance(s) and this Agreement.

(j) TIF Exemption Applications. In accordance with Ohio Revised Code Sections 5715.27 and 5709.911, Sunbury shall file or cause to be filed a completed application for an exemption from real property taxation (DTE Form 24 or its successor form) with the Delaware County Auditor (the “County Auditor”) for each parcel exempt pursuant to the TIF Ordinance(s). Sunbury and Developers agree to cooperate with each other for this purpose, including the execution of a DTE Form 24P and/or imposing a requirement on future transferees of the Property to similarly cooperate, and to cooperate with the County Auditor, the Ohio Department

of Taxation, and other public officials and governmental agencies in the performance by the public officials and governmental agencies of their duties in connection with the TIF Ordinance(s) and this Agreement.

(k) Appropriation and Limited Obligation. All of the Service Payments received or to be received by Sunbury and retained by Sunbury or disbursed to Developers or Phase 2 Successors hereunder will be deemed to be appropriated pursuant to the TIF Ordinance(s) to provide for the payment under this Section 7. Notwithstanding the foregoing, to the extent necessary, Sunbury agrees to appropriate those amounts to be received into the TIF Fund(s) constituting Service Payments for payments under this Section 7. Notwithstanding anything in this Agreement to the contrary, Sunbury's obligations under this Section 7 are limited special obligations of Sunbury payable solely from Service Payments. Those obligations are not secured by an obligation or pledge of any money raised by taxation and do not represent or constitute a debt or pledge of the faith and credit or taxing power of Sunbury, and neither Developers, Phase 2 Successors, nor any other person has any right to have taxes levied by Sunbury for the payments required under this Section 7.

Section 8. **Events of Default and Remedies.**

(a) Events of Default. Any one or more of the following constitutes an "Event of Default" under this Agreement:

- (i) Sunbury fails to pay any Service Payment within 60 days of the due date;
- (ii) Either of the Developers or Sunbury makes a representation or warranty in this Agreement that is materially false or misleading at the time it is made;
- (iii) Either of the Developers file a petition for the appointment of a receiver or a trustee with respect to it or any portion of the Property;
- (iv) Either of the Developers make a general assignment for the benefit of creditors;
- (v) Either of the Developers file an insolvency proceeding with respect to itself or any proceeding with respect to itself for compromise, adjustment or other relief under the laws of any country or state relating to the relief of debtors;
- (vi) Either of the Developers fails to perform or observe any other material obligation punctually and as due under this Agreement; or
- (vii) Sunbury fails to perform or observe any material obligation punctually and as due under this Agreement.

(b) General Right to Cure. In the event of the occurrence of an Event of Default described in Section 8(a) above, the defaulting Party will, upon written notice from the non-defaulting Party, proceed as soon as reasonably possible to cure or remedy such Event of Default and, in any event, within 30 days after receipt of such notice. In the event such Event of Default or breach is of such nature that it cannot be cured or remedied within said 30-day period, then the

defaulting Party shall immediately deliver written notice to the non-defaulting Party detailing the reasons therefor and proposing an alternative timeframe for completing such cure or remedy. If the defaulting Party and the non-defaulting Party are unable to agree in writing upon an extension of the time period for the defaulting Party to cure or remedy the Event of Default, then such cure or remedy shall be completed within the 30-day period following the defaulting Party's receipt of the written notice of an Event of Default from the non-defaulting Party.

(c) **Remedies.** Upon the occurrence and continuation of an Event of Default, the non-defaulting Party may institute such proceedings against the defaulting Party as may be necessary or desirable in its opinion to cure and remedy such default or breach. Such remedies include, but are not limited to: (i) terminating this Agreement, (ii) instituting proceedings to compel specific performance by the defaulting Party and (iii) any other rights and remedies available at law, in equity or otherwise to collect all amounts then becoming due or to enforce the performance of any obligation under this Agreement.

#### Section 9. **Miscellaneous.**

(a) **Assignment.** Except as expressly provided hereunder, this Agreement may not be assigned without the prior written consent of the non-assigning Parties. Notwithstanding the foregoing or any other provision of this Agreement:

(i) Each of the Developers shall be permitted to assign its rights and obligations under this Agreement to an affiliated business entity of the Developer; and

(ii) Each of the Developers shall be permitted to sell and convey all or a portion of the Property that is under its ownership to another person or entity, and the purchasing party shall be

(iii) required to assume, in a written instrument executed by Developers and the purchasing party and recorded with the Recorder, the obligations of the Developer under this Agreement as they relate to the portion of the Property being conveyed to the purchasing party, and

(iv) entitled to the rights of the Developers under this Agreement as they relate to the portion of the Property that is conveyed to the purchasing party.

Developers and their Phase 2 Successors shall deliver to Sunbury written notice of any assignment of its rights and obligations under this Agreement and, when applicable, written evidence of a purchasing party's assumptions of the rights and obligations with respect to any portion of the Property being purchased by the purchasing party, both within a reasonable amount of time after such assignment or purchase is completed.

(b) **Binding Effect.** The provisions of this Agreement shall be binding upon the successors and/or assigns of the Parties.

(c) **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.

(d) Day for Performance. Wherever herein there is a day or time period established for performance and such day or the expiration of such time period is a Saturday, Sunday or legal holiday, then such time for performance shall be automatically extended to the next business day.

(e) Entire Agreement. This Agreement constitutes the entire Agreement between the Parties on the subject matter hereof and supersedes all prior negotiations, agreements and understandings, both written and oral, between the Parties with respect to such subject matter. Notwithstanding the foregoing, this Agreement is not meant to and shall not supersede, replace, amend, or modify the Annexation Agreement. This Agreement may not be amended, waived or discharged except in an instrument in writing executed by the Parties.

(f) Executed Counterparts; Recording of Memorandum. This Agreement may be executed in several counterparts, each of which shall be deemed to constitute an original, but all of which together shall constitute but one and the same instrument. It shall not be necessary in proving this Agreement to produce or account for more than one of those counterparts. Signatures transmitted by facsimile or electronic means are deemed to be original signatures. Upon the full execution of this Agreement, the Parties also shall execute a memorandum of this Agreement (a "Memorandum of Agreement"), in a form which is mutually acceptable to the Parties, which shall be recorded by the Developers with the Recorder at their sole cost and expense. The Memorandum of Agreement shall serve the purpose of placing purchasers and future owners of the Property (or any portion thereof) on notice of the existence of this Agreement and its applicability to the Property and shall provide that a copy this Agreement may be reviewed by interested parties by making a public records request with Sunbury. The Memorandum of Agreement shall not disclose any of the substantive terms of this Agreement.

(g) Extent of Covenants; No Personal Liability. All covenants, obligations and agreements of the Parties contained in this Agreement shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any present or future member, owner, officer, agent or employee of Sunbury or Developers other than in his or her official capacity.

(h) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio without regard to its principles of conflicts of laws. All claims, counterclaims, disputes and other matters in question between Sunbury, its agents and employees, and Developers and their respective employees and agents, arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction within Delaware County, Ohio.

(i) Notices. Except as otherwise specifically set forth in this Agreement, all notices, demands, requests, consents or approvals given, required or permitted to be given hereunder shall be in writing and shall be deemed sufficiently given if actually received or if hand-delivered, sent by recognized, overnight delivery service or by certified mail, postage prepaid and return receipt requested, addressed to the other parties hereto at the addresses set forth in this Agreement, or to such other address as the recipient shall have previously notified the sender of in writing, and shall be deemed received upon actual receipt, unless sent by certified mail, in which event such notice shall be deemed to have been received when the return receipt is signed or refused. Notices may also be sent by e-mail but will be deemed effective only upon



acknowledgement by the recipient. For purposes of this Agreement, notices shall be addressed to:

To Sunbury at: Village of Sunbury  
9 East Granville Street  
Sunbury, Ohio 43074  
Attn: Mayor  
e-mail: \_\_\_\_\_

To the Developers at: MTB Fourwinds LLC  
c/o Dan Block  
\_\_\_\_\_  
\_\_\_\_\_  
e-mail: [dan@danautumn.com](mailto:dan@danautumn.com)

and

Emme Holdings LLC  
80 Berkeley Street  
Newton, MA 02465  
Attention: Tamara Shepard  
e-mail: [tamara.shepard@yahoo.com](mailto:tamara.shepard@yahoo.com)

The Parties, by notice given hereunder, may designate any further or different addresses to which subsequent notices; certificates, requests or other communications shall be sent. Notices to Phase 2 Successors shall be delivered to the addresses provided by them to the other Parties or, if no such address is provided, to the tax mailing addresses of the Phase 2 Successors as provided in the records of the Delaware County, Ohio Auditor.

(j) No Waiver. No right or remedy herein conferred upon or reserved to any Party is intended to be exclusive of any other right or remedy, and each and every right or remedy shall be cumulative and in addition to any other right or remedy given hereunder, or now or hereafter legally existing upon the occurrence of any event of default hereunder. The failure of any Party to insist at any time upon the strict observance or performance of any of the provisions of this Agreement or to exercise any right or remedy as provided in this Agreement shall not impair any such right or remedy or be construed as a waiver or relinquishment thereof. Every right and remedy given by this Agreement to the Parties hereto may be exercised from time to time and as often as may be deemed expedient by the Parties hereto, as the case may be.

(k) Severability. If any provision of this Agreement, or any covenant, obligation or agreement contained herein is determined by a court to be invalid or unenforceable, that determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if the invalid or unenforceable portion were not contained herein. That invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision, covenant, obligation or agreement shall be deemed

to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

**(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK – SIGNATURE PAGES FOLLOW)**

IN WITNESS WHEREOF, Sunbury and Developers have caused this Development Agreement to be executed by their duly authorized officers as of the dates set forth below.

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**EXHIBIT A**

**DEPICTION OF PROPERTY OWNERSHIP**

**EXHIBIT B**

**PHASE 2 PLAN**