

**Brimfield Township Board of Trustees  
Regular Meeting  
Wednesday June 1, 2022**

The Brimfield Township Board of Trustees met in a regular meeting at the Brimfield Community Center on the above date. Present were Trustees Mike Kostensky, Sue Fields, and Fiscal Officer John Dalziel. Absent was Trustee Nicholas Coia.

The meeting was called to order at 8:00 AM by Mike Kostensky.

**MOTION #2022-151**

Sue Fields moved to approve minutes from 5/18/2022 regular meeting. Mike Kostensky second.

Mike Kostensky	- yea	Sue Fields - yea
Nicholas Coia	- absent	Motion Pass

**MOTION #2022-152**

Mike Kostensky moved to approve the amended agenda to include:  
Sue Fields second.

Cemetery– 2b.) Workshop

Mike Kostensky	- yea	Sue Fields - yea
Nicholas Coia	- absent	Motion Pass

**MOTION #2022-153**

Mike Kostensky moved to approve Purchase Orders. Sue Fields second.

Mike Kostensky	- yea	Sue Fields - yea
Nicholas Coia	- absent	Motion Pass

**MOTION #2022-154**

Mike Kostensky moved to approve warrants. Sue Fields second.

Mike Kostensky	- yea	Sue Fields - yea
Nicholas Coia	- absent	Motion Pass

**Public Comments:** David Handman 3848 Morley Drive – complaints about house across the street.

**Police:** No Action

**Fire:**

**MOTION #2022-155**

Sue Fields moved to approve the Brimfield Township collective bargaining agreement for 2023-2025, effective 1/1/2023. Mike Kostensky second.

Mike Kostensky	- yea	Sue Fields - yea
Nicholas Coia	- absent	Motion Pass

**MOTION #2022-156**

Sue Fields moved to approve the hire of David Purcell, full-time Firefighter/EMS. Mike Kostensky second.

Mike Kostensky - yea Sue Fields - yea  
Nicholas Coia - absent Motion Pass

**Admin:** No Action

**Zoning:**

MOTION #2022-157

Mike Kostensky moved to waive the sign fee for the Butternut Ridge allotment sign. Sue Fields second.

Mike Kostensky - yea Sue Fields - yea  
Nicholas Coia - absent Motion Pass

MOTION #2022-158

Sue Fields moved to approve the authorizing advertisement and public bid notice for the Maplecrest Road project. Mike Kostensky second.

Mike Kostensky - yea Sue Fields - yea  
Nicholas Coia - absent Motion Pass

MOTION #2022-159

Sue Fields moved to amend the agenda to include:  
Mike Kostensky second.

Zoning 2e.) Development management agreement.

Mike Kostensky - yea Sue Fields - yea  
Nicholas Coia - absent Motion Pass

MOTION #2022-160

Mike Kostensky moved to approve the following agreement:

**DEVELOPMENT MANAGER AGREEMENT**

This DEVELOPMENT MANAGER AGREEMENT dated as of June 1, 2022 (the “Agreement”) between **MAPLECREST, LLC**, an Ohio limited liability company (the “Development Manager”), and the **BRIMFIELD TOWNSHIP, PORTAGE COUNTY, OHIO**, a body politic and corporate duly organized and validly existing under the laws of the State (the “Township” and the “Owner”), with Joinder of GBC DESIGN, INC., an Ohio corporation, under the circumstances summarized in the following recitals (capitalized words and terms not otherwise defined elsewhere in this Agreement having the meanings assigned to them in Article I hereof).

**RECITALS:**

A. The Township and the Development Manager desire to enter into this Agreement pursuant to which the Development Manager will advance funds necessary to pay for the construction of certain “Project Improvements”, as described herein, on behalf of the Township, to enable the Township to be reimbursed under the Grant Agreements, as described below, and such that the Township shall be able to reimburse Owner for the advanced funds in accordance with the terms of this Agreement for Maplecrest Industrial Park in the Township.

B. Brimfield Township has entered into a Grant Agreement dated December 17, 2021 (date of last signature) with the Ohio Development Services Agency – Grant Control No. SBIG20220793 in the amount \$550,000.00, for the completion of public road work improvements on and in Maplecrest Industrial Park, in support of the Martin Wheel Project as more fully set forth therein and in Exhibit I attached hereto; and the Township has entered into a

Jobs and Commerce Economic Development Agreement dated June 16, 2021 (date of last signature), with the State of Ohio, Department of Transportation ODOT JCED Funds – SAC 4JC7 Agreement No. 36517, in the amount of \$150,000.00 also for the completion of public road work improvements on and in Maplecrest Industrial Park on which industrial development will occur within the Township (the “Grant Agreements”). The funds to be reimbursed under the Grant Agreements in the aggregate amount of \$700,000.00 shall be referred to hereinafter as the “Grant Funds”.

C. The Grant Agreements provide that the funds available thereunder shall be reimbursed to the Township upon submission of requests for reimbursement detailing approved expenditures as set forth under the terms of the Grant Agreements.

D. The Township has or anticipates entering into a contract for public improvement construction work with a qualified contractor (the “Project Contract”) under the applicable plans and specifications for the same (the “Project Improvements”), which Project Contract will be in an amount that will be known when competitive bids are opened (the “Project Cost”).

E. Development Manager shall deposit with the Township from its own funds (the “Deposit”) an amount equal to \$459,689.88 (the “Project Fund”), which will be disbursed by the Township under the terms of this Agreement for the purpose of paying the Project Cost. Development Manager shall, on a monthly basis as needed, deposit into the Project Fund such amounts so that sufficient funds are available to pay any amounts to be, or anticipated to be, paid over the proceeding thirty (30) day period, up to the Project Cost.

F. The Township will submit requests for reimbursement detailing approved expenditures paid from the Project Funds as set forth under the terms of the Grant Agreements, and upon receipt of said reimbursements, the Township shall then reimburse Development Manager in the same amounts. Reimbursement of any Tax Increment Financing (“TIF”) will be governed by the agreement between Development Manager and the Township regarding such TIF dated February 3, 2022.

G. Development Manager can be authorized to receive reimbursement for public infrastructure that it constructs or contracts for construction at Maplecrest Industrial Park from aforesaid reimbursement funds and from funds received thereafter by the Township pursuant to the Grant Agreements, and

H. In order to construct the Project, the Township, the Development Manager, and GBC Design, Inc. (“GBC”) who has and will perform some of the duties hereunder on behalf of the Development Manager, have determined to enter into this Agreement.

I. The Township hereby agrees to work with the Development Manager with respect to the Project at Maplecrest Industrial Park and authorizes the Township Board of Trustees and/or Fiscal Officer to enter into this Agreement and such contracts with Development Manager, as deemed reasonably necessary to construct such Project public infrastructure improvements as required to facilitate industrial development and job creation at Maplecrest Industrial Park, with the form of any such contracts to be approved by the Township attorney and/or assistant county prosecutor assigned to Brimfield Township, provided that Township Board of Trustees shall have the authority to review all such contracts at the time of their being entered into.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Development Manager and the Township covenant and agree as follows:

## **ARTICLE I**

### **DEFINITIONS**

Section 1.1. Use of Defined Terms. Each capitalized word or term used as a defined term in this Agreement as defined in Section 1.2 hereof or otherwise herein shall have the meaning assigned to it below. Those definitions shall be equally applicable to both the singular and plural forms of any of the words and terms herein.

Section 1.2. Definitions. As used herein:

“Allowable Costs” means, with respect to the Project:

- (i) costs incurred directly or indirectly for or in connection with the Project Contract;
- (ii) premiums attributable to any surety bonds and insurance required to be taken out and maintained during the Project Contract period;
- (iii) costs incurred directly or indirectly in seeking to enforce any remedy against any contractor or subcontractor in respect of any actual or claimed default under any contract; and
- (iv) any other costs, expenses, fees and charges properly chargeable to the cost of the acquisition, construction, installation, equipment or improvement.

“Approved Construction Documents” means, collectively, the Project Cost and the Plans and Specifications.

“Authorized Development Manager Representative” means the GBC.

“Completion Certificate” means the certificate described in Section 3.1(c) of this Agreement.

“Construction Period” means the period commencing on the date of issuance of the Project Contract and ending on the Substantial Completion Date.

“Disbursement” means a request made by the Development Manager on a Disbursement Request Form for a disbursement from the Project Fund to pay Project Costs pursuant to this Agreement and the Disbursement Agreement.

“Governmental Authority” means any federal, state, county or municipal government, or political subdivision thereof, any governmental or quasi-governmental agency, authority, board, bureau, commission, department, instrumentality, or public body, or any court, administrative tribunal, or public utility.

“Material Delay” means any event or condition (or related series of events or conditions) that causes or results in a delay (or total stoppage) in the progress of the Project Improvements of more than 30 days.

“Net Proceeds”, when used with respect to any insurance proceeds or condemnation award, means the gross proceeds or award less the payment of all expenses, including reasonable attorneys’ fees, incurred in connection with the collection of such proceeds.

“Plans and Specifications” means the plans, specifications and profiles of the Project Improvements provided for in this Development Manager Agreement.

“Project Cost” means the written budget setting forth the Allowable Costs for the construction, installation, equipping, and improvement of the Project Improvements, prepared in cost breakdown form, certified as to accuracy by the Development Manager and delivered by the Development Manager to the Township and approved by the Township, with such changes and modifications from time to time that are approved in accordance with Section 3.5 of this Agreement.

“Substantial Completion Date” means the date on which the Project Improvements are substantially complete, as certified in the Public Improvement Completion Certificate.

“Work” means the entire completed construction, or the various separately identifiable parts thereof required to be furnished under the Project Contract, or other contract authorized hereunder, with respect to the Project Improvements.

Section 1.3. Interpretation. Any reference herein to the Township, to the Legislative Authority or to any member or officer of either includes entities or officials succeeding to their respective functions, duties or responsibilities pursuant to or by operation of law or lawfully performing their functions.

Any reference to a section or provision of the Constitution of the State or the Act, or to a section, provision or chapter of the Ohio Revised Code or to any statute of the United States of America, includes that section, provision or chapter as amended, modified, revised, supplemented or

superseded from time to time; provided that, no amendment, modification, revision, supplement or superseding section, provision or chapter shall be applicable solely by reason of this provision, if it constitutes in any way a limitation, restriction or impairment of the rights or obligations of the Township or the Development Manager under this Agreement.

Unless the context indicates otherwise, words importing the singular number include the plural number, and vice versa; the terms “hereof,” “hereby,” “herein,” “hereto,” “hereunder” and similar terms refer to this Agreement; and the term “hereafter” means after, and the term “heretofore” means before, the date of execution and delivery of this Agreement. Words of any gender include the correlative words of the other genders, unless the sense indicates otherwise.

Reference to a numbered or lettered Article, Exhibit, Section or subsection means that Article, Exhibit, Section or subsection of or to this Agreement, unless the context indicates a different meaning or intent.

Section 1.4. Captions and Headings. The captions and headings in this Agreement are solely for convenience of reference and in no way define, limit or describe the scope or intent of any Articles, Sections, subsections, paragraphs, subparagraphs or clauses hereof.

## **ARTICLE II**

### **DEPOSIT OF PROJECT FUNDS, PAYMENT OF PROJECT COST AND REIMBURSEMENT OF GRANT FUNDS**

Section 2.1. Deposit. Development Manager shall deposit the Deposit to the Township upon complete execution hereof.

Section 2.2. Payment of Project Cost. The Township shall pay the Project Cost under the Project Contract from the Project Fund as required thereunder and under the terms hereof.

Section 2.3. Funding of the Project Fund. In addition to the Deposit, the Development Manager shall, on a monthly basis as needed, deposit into the Project Fund such amounts so that sufficient funds are available to pay any amount to be, or anticipated to be, paid over the proceeding thirty (30) day period, up to the Project.

Section 2.4. Reimbursement Under the Grant Agreements. The Township shall seek reimbursement of the Grant Funds for the Project Cost paid pursuant to the Project Contract under the terms of the Grant Agreements and shall pay to Development Manager the reimbursed Grant Funds paid to the Township upon the Township’s receipt thereof upon written application of Development Manager and approval by the Township, with any application for \$50,000 or more to be approved by Township Board of Trustees resolution, such approval not to be unreasonably withheld.

## **ARTICLE III**

### **APPOINTMENT OF THE DEVELOPMENT MANAGER**

Section 3.1. Appointment. Subject to the terms and conditions hereof, the Township hereby irrevocably designates and appoints the Development Manager as its exclusive manager in connection with the design, public bidding, inspection, approval, review of payment applications and payment of the Project Improvements in accordance with the Plans and Specifications and Project Cost and pursuant to the terms of this Agreement. The Development Manager shall have sole possession, other than the general contractor constructing the Project Improvements, of the Project Improvements during the Construction Period and shall in cooperation with the general contractor and GBC exercise control of the Project for the purposes of performing its obligations hereunder.

Section 3.2. Acceptance and Undertaking. The Development Manager hereby unconditionally accepts the appointment provided for herein as an independent contractor with and manager of the Township and undertakes, for the benefit of the Township, to act as the Township’s manager for the purpose of the design, public bidding, inspection, approval, review of payment applications and payment of the Project Improvements during the Construction Period in accordance with the Plans and Specifications and pursuant to the terms of this Agreement.

Section 3.3. Term. The Development Manager's duties under this Agreement shall commence on the effective date of this Agreement and terminate upon the earliest to occur of (i) the Substantial Completion Date or (ii) termination of the Development Manager's authority pursuant to Section 7.2 hereof.

Notwithstanding any implication to the contrary herein, the duties, obligations requirements and liabilities of the Township under this Agreement are payable solely from the monies on deposit in the Project Fund. The Township is not obligated to use any money or assets, other than the Project Fund, in connection with the payment of Project Costs or the fulfillment of any duty, obligation, requirement or undertaking of the Township relating to this Agreement or the provision of the Project.

Section 3.4. Scope of Authority and Duties of Development Manager. Subject to the terms of this Agreement, the Township hereby expressly authorizes the Development Manager, or any agent or contractor of the Development Manager, and the Development Manager unconditionally agrees, for the benefit of and as the manager for the Township, to take all action necessary or desirable for the design, public bidding, inspection, approval, review of payment applications and payment of the Project Improvements on behalf of the Township and on its behalf and as its manager pursuant to and in accordance with the Plans and Specifications and the other operative documents, and for the performance and satisfaction of any and all of the Development Manager's or of the Township's obligations under any construction contract and to fulfill all of the obligations of the Development Manager hereunder and under the other operative documents, including the design, public bidding, inspection, approval, review of payment applications and payment of the construction of the Project.

Section 3.5. Delegation of Duties. The Development Manager may execute any of its duties under this Agreement by or through the Authorized Development Manager Representative and/or any other agents, contractors, employees or attorneys-in-fact; provided, however, that, no such delegation shall limit or reduce in any way the Development Manager's duties and obligations under this Agreement. The parties agree that the general contractor constructing the Project will have broad discretion in the manner, means, and methods of constructing the Project, in accordance with the Plans and Specifications, and will primarily act in a supervisory and managerial role over the Project except for those duties delegated to the Development Manager.

## **ARTICLE IV**

### **AGENCY**

Section 4.1. Allowable Costs and Disbursements from the Project Fund.

(a) Allowable Costs. Disbursements from the Project Fund may be made, but only to reimburse or pay the Development Manager or any person designated by the Township, for the Allowable Costs of the Project Improvements. Each disbursement from the Project Fund shall be made to the Township only upon a Disbursement Request Form submitted by the Authorized Development Manager Representative, or Development Manager, and approved by the Authorized Township Representative in accordance with this Agreement, with any application for \$50,000 or more to be approved by the Township Board of Trustees resolution, such approval not to be unreasonably withheld, provided that adequate funds for such disbursement are on deposit with the Township as provided in Section 2.3 hereof. All Disbursement Request Forms shall be numbered and accompanied by invoices or other appropriate documentation supporting the payments or reimbursements requested.

The Township does not assume, and is hereby expressly released and discharged by the Development Manager from, any and all liability or responsibility whatsoever that might or could arise out of the approval of disbursements from the Project Fund or as to the method, manner, or application of such disbursements in accordance with the operative documents, or as to any liens whatsoever that might attach to or be filed against the Project or the Project Fund other than as it relates to the Township's willful misconduct or grossly negligent acts.

(b) Construction Draws. Prior to disbursements from the Project Fund ("Construction Draws"), the Development Manager shall deliver to the Township an account of the disbursement that shall be in the form of AIA Documents G702 and G703 (or such other form or

forms as may be approved by the Township in writing), properly completed (specifying the person or persons for whom payment is requested and including copies of all bills submitted to the Development Manager, and the Township for the Work), and evidence that all bills for labor and material for which proceeds in the Project Fund had previously been disbursed have been paid in full. Each Disbursement Request Form submitted in connection with a Construction Draw shall also be accompanied by certification from the Development Manager that all such installation has been satisfactorily completed in accordance with the applicable Plans and Specifications. Each Construction Draw shall be disbursed only upon receipt by the Township of such lien waivers, affidavits and statements as the Township requires and may from time to time reasonably request.

Construction Draw requests from the Project Fund shall be made by the Development Manager only once each calendar month.

(c) Project Improvements Completion; Final Disbursement. The Project Improvements shall be deemed completed when the Development Manager shall have provided to the Township, and the Township shall have approved, a completed Disbursement Request Form for such amount complying with Section 4.1(b) hereof, and a certificate (the "Public Improvement Completion Certificate") prepared and signed by the Development Manager which certificate shall:

(i) describe all items of personal property, if any, acquired, constructed, equipped, installed or otherwise improved with respect to the Project;

(ii) state the total costs of acquiring, constructing installing, equipping and otherwise improving the Project; and

(iii) state the following additional information:

(A) the date of completion of the Project Improvements and that all other facilities necessary for the proper functioning of the Project Improvements have been acquired, constructed, installed, equipped and otherwise improved, including all punch-list items;

(B) that the Project Improvements have been completed substantially in accordance with the Plans and Specifications, and that, except for items payable from amounts retained by the Township in the Project Fund as provided below, all costs then due and payable in connection therewith have been paid, and all obligations, costs and expenses in connection with such project and then payable out of the Project Fund have been paid or discharged;

(C) that all other facilities necessary for the proper functioning of the Project Improvements have been provided and all costs and expenses incurred in connection with such facilities have been paid or discharged, including all punch-list items and associated retainages;

(D) that the Project Improvements have been accomplished in a manner that conforms to all applicable regulations of each Governmental Authority having jurisdiction over the Project Improvements;

(E) that all licenses and approvals for the use and operation of the Project Improvements by any Governmental Authority have been obtained; and

(F) that the acquisition, construction, installation, equipping and improvement of the Project Improvements has been accomplished in a manner that permits the use and operation of the Project for the applicable project purposes pursuant to this Agreement.

(d) Development Manager Required to Pay Costs. If the Development Manager incurs costs or expenses for Allowable Costs prior to the deposit by the Development Manager of the Deposit with the Township, or if the Deposit is not made for any reason, any Allowable Costs advanced by the Development Manager shall be at the sole expense of the Development Manager without reimbursement from the Township. The Development Manager shall not be entitled to reimbursement for any Project Costs or issuance costs from the Township, other than as a disbursement consistent with Section 4.1 hereof.

(e) No Disbursement During Event of Default. No Disbursements shall be made while an Event of Default by or the Development Manager exists and is continuing under this Agreement or any of the other operative documents, unless otherwise agreed by the Township.

Section 4.2. Performance of and Payment for Costs of the Project Improvements. The Development Manager shall undertake the duties set forth herein for the Project Improvements on the Township's behalf, in accordance with, and subject to, the terms and provisions of this Agreement and the other operative documents, shall pay all amounts required in accordance with the Plans and Specifications and the Project Cost. Pursuant to Article V hereof, the Development Manager shall pay for Allowable Costs using amounts made available under this Agreement, subject in each case to the limitations set forth in the operative documents. The Township shall not be liable to the Development Manager for failure or delay in any aspect of the performance of the Work. Each request by the Development Manager for a Disbursement shall be deemed to be (i) a conclusive acknowledgment and admission by the Development Manager that such aspect of the Work with respect to which such request relates, and all prior aspects of the Work, are fully and completely acceptable to the Development Manager for all purposes; and (ii) a representation and warranty by the Development Manager that the Work covered thereby and by all other prior requisitions has been done and completed in all material respects in accordance with the operative documents.

Section 4.3. Reports. No later than the 20th day of each month after the Closing Date and prior to the Substantial Completion Date, the Development Manager shall provide a written report to the Township setting forth in reasonable detail (x) all expenditures made or incurred during the previous month, (y) the total Allowable Costs as of the last day of the previous month, and (z) a construction status report, to include a written description of all material changes to the Work by the Development Manager. Additionally, the Development Manager shall provide to the Township such additional reports and information as the Township may reasonably request from time to time relating to the transactions contemplated hereby. The Development Manager shall also certify to the Township the aggregate total of all Allowable Costs incurred through the Substantial Completion Date within 180 days after the Substantial Completion Date.

Section 4.4. Approved Construction Documents. The Approved Construction Documents for the Project Improvements have been developed and completed by the Development Manager prior to the commencement of construction of the Project Improvements and have been approved by the Township. Upon the Township's approval of the Approved Construction Documents no further material changes shall be made except in accordance with Section 4.5 hereof.

Section 4.5. Limits on Change in Approved Construction Documents or Project Cost; Changes to Plans and Specifications; Contracts. The Development Manager may change the Approved Construction Documents for the Project Improvements from time to time, provided that no revision shall be made which would (a) change the Project Improvements in any material respect without the prior written consent of the Township or (b) materially increase the cost of the Project Improvements without evidence reasonably satisfactory to the Township that moneys are available to meet such increased costs, and without prior written consent of the Township.

## **ARTICLE V**

### **CONSTRUCTION OBLIGATIONS AND COVENANTS**

Section 5.1. Covenants of the Development Manager. During the Construction Period (and, where indicated, thereafter), the Development Manager shall:

(a) At all times subsequent to the initial Construction Draw (i) pay, or cause to be paid, all assessments, charges and taxes, if any, payable in connection with the construction, installation, equipping, and improvement of the Project to be paid as and when due, whether claim shall be made for payment thereof during or after the Construction Period, subject to the right of the Development Manager to contest, in good faith, any such assessment change or tax so long as, by nonpayment of any such items, neither the Project Improvements nor any property of the Township shall be subject to imminent loss or forfeiture, and in the contest of which, the Township hereby agrees to cooperate, at the cost and expense of the Development Manager, (ii) not permit liens to be filed or maintained respecting the Project Improvements, provided that



mechanics' liens may be bonded and contested as provided herein, and (iii) deliver to the Township true, correct and complete progress reports as required by Section 4.3 hereof regarding the acquisition, construction, installation, equipping and improvement of the Project Improvements and adequacy of funding for the Project Improvements in relationship to the then current Project Cost.

(b) Make available for inspection at the Development Manager's office by a duly authorized representative of the Township during normal business hours, any of the Development Manager's books and records insofar as they relate solely to the Project at such times as reasonably requested by the Township when requested to do so.

(c) Reimburse the Township from the proceeds of Construction Draws pursuant to the operative documents for all costs of the Project paid by the Township, in accordance with the operative documents, including but not limited to the reasonable fees of counsel for services rendered and out-of-pocket expenses for which the Township, is entitled to be reimbursed pursuant to the operative documents, all of which the Township is hereby directed to deduct from the proceeds of any Construction Draws and pay over directly to the Township.

(d) Allow the Township, and its respective representatives and agents, at all times (i) during normal business hours, the right of entry and free access to the Project Site to inspect all work done, labor performed and materials furnished in and about the Project, and (ii) to require to be replaced or otherwise corrected (at the Development Manager's sole cost, or that of its contractors, subcontractors or material suppliers if the need for replacement or correction is the result of the breach of duty by or the intentional, wrongful or negligent act or failure to act of any such person, its agents or employees), any material or work that materially fails to comply with the respective Plans and Specifications therefor, provided that the Township shall provide 30 days' notice of its election to exercise such right and reasonable opportunity for the Development Manager to cure such failure of compliance, and (iii) to prevent any person other than the Township, the Development Manager and their respective agents, employees, licensees and invitees, a contractor or a subcontractor or agents, employees or invitees of the Development Manager, a contractor or a subcontractor, from entering upon the Project.

(e) Notify the Township in writing within 3 days of the occurrence of any default or Event of Default hereunder as to which the Development Manager has knowledge.

Section 5.2. Force Majeure. The Development Manager shall give the Township prompt written notice of the occurrence of any Force Majeure event with respect to the Project that has caused or is reasonably likely to cause a Material Delay. Following an occurrence that constitutes a Force Majeure event, the Development Manager shall prepare, as promptly as practicable, a written estimate of any resulting or reasonably expected Material Delay and shall deliver such estimate to the Township. If the extent any Material Delay will not prevent completion of provision of the Project within the Project Cost, the Development Manager shall proceed to cause the construction, installation, equipping, and improvement of the Project to be completed and the completion conditions to be satisfied as expeditiously as possible (taking into account the effects of such Force Majeure event) in a commercially reasonable manner under the circumstances pursuant to Article II and the other operative documents.

Section 5.3. Insurance; Restoration. During the Construction Period for the Project Improvements, the Development Manager shall obtain, or cause each contractor to obtain and maintain, on behalf of the Township and submit to each of them for their respective review, evidence of the following insurance coverages:

(a) comprehensive general liability insurance, including auto, \$500,000 for property damage and at least \$500,000 per person/\$1,000,000 per occurrence for personal injury or death, with limits of liability of, which may be provided by umbrella or excess liability policies, and worker's compensation insurance (including employer's liability insurance), for all employees, if any, of the Development Manager and for all employees, if any, of the Development Manager's contractor(s) and subcontractor(s) engaged on or with respect to the Project Improvements or the construction, installation, equipping and improvement of the Project Improvements, in such amounts as are established by law; provided that, the Development Manager may satisfy the requirements of this subparagraph with respect to employees of the Development Manager's

agents, and the contractors and subcontractors, through separate policies provided by each agent or contractor; and

(b) all risk property insurance in the amount of the full replacement cost of the Project Improvements.

All insurance policies shall name the Development Manager as a named insured and the Township as an additional insured and shall, unless otherwise agreed by the Township in writing, be issued by carriers with a Best's Insurance Reports policyholder's rating, to the extent commercially reasonable, of "A" (but in any event, not less than "A-") financial size category of "X" or better.

The Development Manager shall deliver to the Township prior to the Closing Date, copies of all such policies, together with endorsements and original certificates therefor. Copies of all renewal policies (including endorsements) and original certificates therefor shall be deposited with the Township as evidence of such insurance. All policies shall contain provisions for 30 days' written notice to the Township prior to expiration or cancellation. Each insurer under any policies shall be required to waive any defenses the insurer may have to payment as a consequence of acts or omissions of any party.

## **ARTICLE VI**

### **CASUALTY AND ENVIRONMENTAL EVENTS**

#### **Section 6.1. Construction Event of Loss or Casualty.**

(a) The Development Manager shall give the Township, written notice of the occurrence of any casualty with respect to the Project during the Construction Period promptly following the occurrence thereof. As promptly as practicable, the Development Manager shall prepare an estimate of the cost of restoring, rebuilding and repairing the related damage and shall deliver such estimate to the Township. If the Township, after consultation with the Development Manager, in its good faith judgment determines that a Project Funding Shortfall will exist, after settlement with the applicable insurance carriers, to pay for the cost of restoring, rebuilding and repairing the related damage, upon written notice from the Township, the Development Manager shall promptly deposit or cause to be deposited in the Construction Account an amount sufficient to pay for the cost of restoring, rebuilding and repairing the related damage and completing the Project Improvements or shall provide evidence not unsatisfactory to the Township that such funds are available to the Development Manager to cause such restoration, rebuilding or repair upon demand of the Development Manager.

(b) If a casualty shall occur with respect to the Project Improvements during the Construction Period, unless the cost of restoring, rebuilding and repairing the resultant damage is less than \$100,000 (in which case the proceeds of the insurance may be paid directly to the Development Manager, who shall receive the same in trust for application to the costs of the restoration, rebuilding and repairing of the affected property), the Net Proceeds of the resulting insurance award shall be paid over to the Township, deposited in the Project Fund and disbursed by the Township to the Development Manager in advances pursuant to Disbursement Request Forms substantially in accordance with the provisions hereof. The Development Manager shall apply the insurance proceeds so advanced to pay for the cost of rebuilding, restoring and repairing the resulting damage. Thereafter, the Development Manager shall apply the proceeds of Construction Draws available for such purpose under the operative documents to complete the Project Improvements.

#### **Section 6.2. Hazardous Materials.**

(a) If, in the course of the construction of the Project the Development Manager discovers Hazardous Materials or underground storage tanks that are not included in the Work pursuant to the Plans and Specifications, and which are not maintained in accordance with all applicable Environmental Laws, the Development Manager shall notify the Township promptly and, if directed by the Township, or if commercially reasonable under the circumstances, shall stop and cause all contractors and subcontractors to stop the Work. If stopped, such Work shall be commenced only after consultation with and consent of the Township. All Hazardous

Materials that may be discovered shall be maintained, removed, transported and disposed of by qualified contractors in accordance with all applicable state and federal Environmental Laws.

(b) The Development Manager shall not knowingly permit a violation of any Environmental Laws to exist with respect to the Project. The Development Manager shall not use or permit to be used all or any portion of the Project for the storage, treatment, use or disposal of any substance for which a license or permit is required by state, federal or local Environmental Laws and for which no such license or permit has been obtained. Without limitation express or implied, unless caused by the negligence or willful misconduct of the Township or of any employee or agent of the Township (other than the Development Manager), the Development Manager shall pay all sums and take all such actions as may be required to avoid or discharge the imposition of any lien on the Project Improvements under any Environmental Law, and the Development Manager shall indemnify and save harmless Township from any and all loss, claims, liabilities and expenses (including attorney's and expert fees) incurred or suffered by Township by virtue of the provisions of any Environmental Law now or hereinafter in effect or by virtue of the failure of the Development Manager to comply or cause compliance with any Environmental Law now or hereinafter in effect or by virtue of the failure of the Development Manager to comply with any Environmental Law in connection with the presence of any Hazardous Materials in violation of such Environmental Laws.

## **ARTICLE VII**

### **EVENTS OF DEFAULT**

Section 7.1. Events of Default. If any one or more of the following events (each a "Event of Default") shall occur:

(a) the Development Manager fails to apply the proceeds of any Construction Draw or any funds paid to the Development Manager by or on behalf of the Township or the Township, as the case may be, within 10 days after the receipt of the same in a manner consistent with the requirements of the operative documents and as specified in any applicable Disbursement Request Form;

(b) the Development Manager shall commit or perform any act constituting fraud, misapplication of funds, intentionally illegal acts, or willful misconduct in connection with the performance of its obligations under this Agreement or any other Operative Document to which it is a party;

(c) the filing by Development Manager of any petition for dissolution or liquidation of Development Manager, or the commencement by the Development Manager of a voluntary case under any applicable bankruptcy, insolvency or other similar law for the relief of debtors, foreign or domestic, now or hereafter in effect, or Development Manager shall have consented to the entry of an order for relief in an involuntary case under any such law, or the appointment of or taking possession by a receiver, custodian or trustee (or other similar official) for the Development Manager or any substantial part of its property, or a general assignment by the Development Manager for the benefit of its creditors, or the Development Manager shall have taken any corporate action in furtherance of any of the foregoing; or the filing against the Development Manager of an involuntary petition in bankruptcy that results in an order for relief being entered or, notwithstanding that an order for relief has not been entered, the petition is not dismissed or stayed within 90 days of the date of the filing of the petition, or the filing under any law relating to bankruptcy, insolvency or relief of debtors of any petition against the Development Manager that either (i) results in a finding or adjudication of insolvency of the Development Manager or (ii) is not dismissed or stayed within 90 days of the date of the filing of such petition;

(d) the Development Manager shall fail to maintain insurance as required by this Agreement and such failure continues for 10 days following written notice from the insurance carrier or the Township; or

(e) the Development Manager shall breach in any material respect any of its representations or warranties under this Agreement or any other Operative Document to which it is a party or shall fail to observe or perform any material term, covenant or condition of this

Agreement or any other Operative Document to which it is a party (other than as described in subsections (a) through (f) of this Section 7.1) and the Township shall give notice to the Development Manager of the Event of Default;

provided, in the case of a failure or breach described in subsections (d) or (f), such failure or breach, shall not constitute an Event of Default so long as the Development Manager gives notice to the Township within 30 days of its intention to cure such failure or breach; and if such failure is other than payment of money and is of such a nature that it cannot be corrected within such 30 day period, institutes curative action within such 30 day period, diligently pursues such action to completion and cures such failure within a reasonable period, not to exceed 120 days, after such 30 day period. The Development Manager shall pay all reasonable costs and expenses incurred by or on behalf of the Township including without limitation reasonable fees and expenses of counsel, as a result of any Event of Default. The Development Manager acknowledges that its obligations to make such payments shall be absolute and unconditional under any and all circumstances and shall be paid and performed, as the case may be, without notice or demand and without any abatement, reduction, diminution, set-off, defense, counterclaim or recoupment whatsoever is provided.

Section 7.2. Remedies; Remedies Cumulative. If an Event of Default shall have occurred and be continuing, the Township shall have all other rights available at law, in equity or otherwise, including without limitation, the right to (i) remove and replace the Development Manager or (ii) require the Development Manager to complete, or cause to be completed, all or any part of the Project Improvements, and to hold the Township harmless from any damages or additional costs arising from the Event of Default.

No failure to exercise and no delay in exercising, on the part of the Township, any right, remedy, power or privilege under this Agreement or under the other operative documents shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege under this Agreement preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges provided in this Agreement are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

Section 7.3. Costs of Enforcement. If an action shall be brought by the Township for the enforcement of any provision of this Agreement, the Development Manager shall pay to the Township all costs and other expenses that may become payable as a result thereof, including, without limitation, reasonable attorneys' fees and expenses and any fees for the Township's Extraordinary Services and any of its Extraordinary Expenses. If the Township, or any agent of any of them shall be made a party defendant to any litigation commenced against the Development Manager, the Township or any such agent arising out of any of the transactions contemplated by this Agreement or the operative documents, the Development Manager shall pay all costs and reasonable attorneys' fees and expenses incurred or paid by the Township or their agents in connection with such litigation. The obligations of the Development Manager under this Section shall survive the termination of this Agreement.

## **ARTICLE VIII**

### **CERTAIN RIGHTS**

Section 8.1. Cure of the Development Manager's Defaults. The Township, without waiving or releasing any obligation or Event of Default by the Development Manager, may, but shall be under no obligation to, remedy any Event of Default by the Development Manager for the account of and at the sole cost and expense of the Development Manager after reasonable written notice to the Development Manager with respect thereto and reasonable opportunity afforded to the Development Manager to do and perform the same. All reasonable out-of-pocket costs and expenses so incurred (including without limitation fees and expenses of counsel), together with interest thereon from the date on which such sums or expenses are paid by the Township, shall be paid by the Development Manager to the Township within five days after written demand therefor. Notwithstanding the foregoing, if any costs or expenses incurred by the Township in furtherance of this Section 8.1 are Project Costs properly payable from the Project Fund and sufficient amounts to pay such costs and expenses are then on deposit in the Project Fund, then

the Township shall first request payment for such costs and expenses from a disbursement from the Project Fund and then, if amounts in the Project Fund are insufficient, from the Development Manager in accordance with this Section 8.1

## ARTICLE IX

### MISCELLANEOUS

Section 9.1. Notices. All notices, certificates, requests or other communications hereunder shall be in writing and by first-class mail, postage prepaid, or by courier service, delivery charges prepaid, addressed to the appropriate Notice Address and deemed effective on receipt, with a duplicate copy of such notice to be provided to the Township and the Development Manager, as the case may be. The Development Manager and the Township, and any other person to receive notices as provided below may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent.

(a) Notices to The Township:

**Brimfield Township**

**Attention:** Michael Hlad, Zoning Director

1333 Tallmadge Road

Brimfield, Ohio 44240

**E-mail:** mhlad@brimfielddohio.gov

**Telephone:** (330) 678-0739

**Telephone:** (330) 678-0319

(b) Notices to Development Manager:

**Maplecrest, LLC**

**Attention:** Daniel J. DeHoff

821 S. Main Street

North Canton, Ohio 44720

**E-mail:** ddehoff@dehoff.com

**Telephone:** (330) 499-8153

**Facsimile:** (330) 305-5222

with a copy to

Brett Bencze, Township Attorney

241 South Chestnut Street

Ravenna, Ohio 44266

**E-mail:** bbencze@portageco.com

**Telephone:** (330) 297-3850

**Facsimile:** (330) 297-4594

with a copy to

Eric T. Francis, Esq.

825 South Main Street

North Canton, Ohio 44720

**E-mail:** efrancis@wr-law.com

**Telephone:** (330) 433-6700

Section 9.2. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Township, the Development Manager and their respective successors and the assigns.

Section 9.3. Governing Law. This Agreement and the rights and obligations of the parties under this Agreement shall be governed by, and construed and interpreted in accordance with, the law of the State without regard to conflict of laws principles.

Section 9.4. Amendments and Waivers. This Agreement shall not be amended, supplemented or modified except by an instrument in writing executed by the Township and the Development Manager.

Section 9.5. Counterparts. This Agreement may be executed in any number of counterparts as may be convenient or necessary, and it shall not be necessary that the signatures of both parties hereto be contained on any one counterpart hereof. Additionally, the parties hereto agree that for purposes of facilitating the execution of this Agreement, (a) the signature pages taken from the separate individually executed counterparts of this Agreement may be combined to form multiple fully executed counterparts and (b) a facsimile transmission shall be deemed to be an original

signature for all purposes. All executed counterparts of this Agreement shall be deemed to be originals, but all such counterparts taken together or collectively, as the case may be, shall constitute one and the same agreement.

Section 9.6. Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 9.7. Headings and Table of Contents. The headings and table of contents contained in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their proper and duly authorized representatives as of the date first written above.

Sue Fields second.

**THE TOWNSHIP OF BRIMFIELD, OHIO**

Nicholas Coia -	absent	_____
Mike Kostensky -	yea	_____
Sue Fields -	yea	_____

Date: June 1, 2022

**FISCAL OFFICER'S CERTIFICATE**

The undersigned, Fiscal Officer of the Township, hereby certifies that the moneys required to meet the obligations of the Township during the year 2022 under the Agreement have been lawfully appropriated by the Legislative Authority of the Township for such purposes and are in the treasury of the Township or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

\_\_\_\_\_  
John Dalziel, Fiscal Officer

Dated: June 1, 2022

**MOTION #2022-161**

Sue Fields moved to approve the judgement entry and order for 1863 Old Forge Road. Mike Kostensky second.

Mike Kostensky	- yea	Sue Fields - yea
Nicholas Coia	- absent	Motion Pass

**Road:**

**MOTION #2022-162**

Mike Kostensky moved to approve the Portage County Engineer to prepare a bid book for the 2022 Butternut Ridge resurfacing project. Sue Fields second.

Mike Kostensky	- yea	Sue Fields - yea
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Nicholas Coia - absent Motion Pass

MOTION #2022-163

Mike Kostensky moved to advertise the Butternut Ridge resurfacing project in the Record Courier on 6/10/2022 and 6/17/2022. Sue Fields second.

Mike Kostensky - yea Sue Fields - yea  
Nicholas Coia - absent Motion Pass

MOTION #2022-164

Mike Kostensky moved to approve Butternut Ridge bid opening date for 6/29/2022 at 7:45 AM at the Brimfield Community Center. Sue Fields second.

Mike Kostensky - yea Sue Fields - yea  
Nicholas Coia - absent Motion Pass

MOTION #2022-165

Mike Kostensky moved to approve OPWC 37 Cline Road culvert replacement per Portage County. Sue Fields second.

Mike Kostensky - yea Sue Fields - yea  
Nicholas Coia - absent Motion Pass

**Parks:** No Action

**Cemetery:**

MOTION #2022-166

Mike Kostensky moved to approve Sue Field's attendance at the Rootstown Cemetery Workshop. Sue Fields second.

Mike Kostensky - yea Sue Fields - yea  
Nicholas Coia - absent Motion Pass

**Fiscal Office:**

MOTION #2022-167

Sue Fields moved to request the second half 2022 advances from Portage County Auditors. Mike Kostensky second.

Mike Kostensky - yea Sue Fields - yea  
Nicholas Coia - absent Motion Pass

MOTION #2022-168

Mike Kostensky moved to amend the agenda to include:  
Sue Fields second.

- 2b.) Cranberry Creek dirt dumping
- 2b.) "No dumping" signs

Mike Kostensky - yea Sue Fields - yea  
Nicholas Coia - absent Motion Pass

MOTION #2022-169

Mike Kostensky moved to have Chad Murdock send another letter to Wojno Development Company stating to remove dirt at Cranberry Creek and reseed. Sue Fields second.

Mike Kostensky	- yea	Sue Fields - yea
Nicholas Coia	- absent	Motion Pass

MOTION #2022-170

Mike Kostensky moved to request the road department to place "No Dumping" signs at all parks throughout Brimfield Township. Sue Fields second.

Mike Kostensky	- yea	Sue Fields - yea
Nicholas Coia	- absent	Motion Pass

There being no further business to come before this meeting of the Brimfield Township Board of Trustees Mike Kostensky moved at 9:02 AM to adjourn. Motion seconded by Sue Fields. Upon a roll call vote passed unanimously.

We, the Trustees of Brimfield Township, do hereby set out hands as approval of the foregoing minutes as a true and accurate record of the proceedings.

\_\_\_\_\_  
Chairman

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