**ODOT Agreement Number 31312**

**DEVELOPMENT AGREEMENT**

Dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2017

among

NorthGate Land Company I, LLC, Northgate NCA I, the State of Ohio, Department of Transportation, and the Village of Sunbury, Ohio

FOR THE IMPROVED INTERCHANGE AT I-71 & ROUTES 36/37 & PROPOSED SUNBURY PARKWAY

THIS DEVELOPMENT AGREEMENT (the “Agreement”) is made among NorthGate Land Company I, LLC (the “Developer”), the Northgate NCA I (the “Authority”), a new community authority established pursuant to Chapter 349 of the Ohio Revised Code, the State of Ohio, Department of Transportation (the “ODOT”), and the Village of Sunbury, Ohio (the “Village”) under the following circumstances:

RECITALS

A. In response to a feasibility study completed in August 2012, ODOT determined that a new interchange with associated connecting roads to the south of the existing interchange as I-71/US 36/SR 37 (the “Project”) would be the best option to reduce congestion in the area. On October 20, 2016, ODOT presented the recommended preferred alternative for the Project at a public meeting. This preferred alternative is attached to this Development Agreement as Exhibit A.

B. The Developer approached ODOT and has offered to fully fund costs associated with preliminary engineering and detailed design, provided that incentives are put in place that will provide for the reimbursement of the Developer for amounts expended by the Developer in constructing such public improvements, which are expected to be reimbursed to the Developer through revenues received, charged and collected by Authority or directly paid by the Authority, and from revenues received from tax increment financing (TIF) authorized by the Village and potentially other governmental entities in the area. The charge revenue, TIF revenues, and other contributions shall be known collectively as the “Incentives”. The Developer through the Authority has also offered to contribute to ODOT the right of way needed to complete the Project, which right of way costs will be paid or reimbursed by the Authority to the Developer.

C. The Developer and ODOT have cooperated to conceive a phasing, cost, and funding plan for the Project. A copy of that plan is attached as Exhibit B.

D. The Developer proposes to develop property within the area of the Authority, including but not limited to an approximately 275,000 square foot retail center (the “Development”), on the approximately 885.0379-acre site identified on Exhibit C(the “Development Site”).

E. This Agreement seeks to set forth to rights and responsibilities of each of the above-named parties as it relates to the funding of all phases of the Project.

NOW THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**1. Funding and Construction of Phase A**

Phase A shall be funded in accordance with the amounts set forth in Exhibit B. The Developer shall be entitled to reimbursement for the costs of preliminary engineering or detailed design from any source excluding ODOT.

1.1 Upon one year written notice from ODOT, the Developer or the Developer through the Authority shall provide the required right of way for Phase A to ODOT in accordance with Ohio Revised Code Sections 5501.31, 5501.33, 5501.331 and ODOT’s Office of Real Estate Manual Section 5310. The one year notice period may be modified to any amount of time if agreed to in writing by the parties.

1.2 Upon one year written notice from ODOT, the parties shall provide ODOT the funds listed in Exhibit B for Phase A. The one year notice period may be modified to any amount of time if agreed to in writing by all parties.

1.3 The parties anticipate future development will occur within the Authority and the Development. The Developer, the Authority and the Village shall cooperate to provide Charge revenues received from the Development, as necessary and approved by the Authority, and the Village shall authorize tax increment financing on the Development, as necessary and approved by the Village, to provide a portion of the funding needed to support the Project and other public infrastructure improvements designated by the Authority and the Village, respectively.

**2. ODOT Obligations**

ODOT commits to contributing the following to the Project per the various TRAC awards, existing agreements and future requests:

2.1 Within 30 days of the approval of the National Environmental Policy Act Environmental Document for the Project, ODOT shall, pursuant to Section 3 of the Development Agreement dated April 6, 2015 among Columbus Outlets, LLC, Berkshire Township, the Berkshire Landing New Community Authority, and Delaware County, Ohio relating to ODOT Agreement No. 18798 dated November 24, 2014 between the State of Ohio, Department of Transportation and the County of Delaware, Ohio, herein attached as Exhibit D, declare that certain Design Year Improvements shall not be completed because they are no longer necessary as described in the Feasibility Study referenced above.

2.2 ODOT shall use the additional revenue provided by the 2015 Development Agreement (Exhibit D), to provide $16.5 million dollars to the Project, in accordance with Exhibit B. This $16.5 million dollars is listed as “Columbus Outlets LLC” in Exhibit B. If the amount provided to ODOT by the 2015 Development Agreement is less than the full amount of $16.5 dollars, ODOT shall not be required to provide the remainder of funds.

2.3 If the $16.5 million dollars commitment under the 2015 Development Agreement is not provided then ODOT, the Developer and the Authority will not be required to meet their funding obligations under this Agreement until such time at the $16.5 million dollar commitment under the 2015 Development Agreement is met and if the Developer or the Authority fail to meet their funding obligations under this Agreement then ODOT and the $16.5 million dollar commitment under the 2015 Development Agreement will not be required to meet their funding obligations under this Agreement until such time.

2.4 ODOT has previously requested and received $5,000,000.00 for preliminary engineering that was awarded during the 2010 Transportation Review and Advisory Counsel (“TRAC”) cycle.

2.5 ODOT has received $5,000,000.00 for right of way awarded in the 2016 TRAC cycle.

2.6 ODOT plans to request an additional $10,000,000 toward Phase A costs of the costs of the Project in the 2017 TRAC cycle.

**3. Funding of Future Phases**

3.1 Upon one year written notice from ODOT, the parties agree to provide the funds committed to in Exhibit B for the Phase identified in the notice.

3.2 Upon one year written notice from ODOT, the Developer or the Developer through the Authority shall provide the required right of way for the Phase identified in the notice to ODOT in accordance with Ohio Revised Code Sections 5501.31, 5501.33, 5501.331 and ODOT’s Office of Real Estate Manual Section 5310.

3.3 All parties agree that with respect to the funding commitments listed in Exhibit B, each of the parties shall act in good faith and deal fairly with all other parties in case of alternation or amendments to this Agreement or any Exhibit.

**4. Developer Agreement to Purchase Bonds**

The Developer agrees that, as long as such Incentives as described herein are provided and the Charge is levied and collected by the authority, in the event that all or a portion of the Bonds to be issued by the Authority to fund payment for any Phase of the Project cannot be sold by a public offering, limited public offering or privately placed, it shall purchase such bonds or notes of the Authority to the extent necessary to provide funds to pay the committed amounts. The yield on such Bonds shall be no less than the yield received by any other buyer of such bonds or notes but shall not exceed that rate which is the lesser of (a) 175 basis points higher than the Bond Buyer Revenue Bond Index for instruments of like risk and like maturity on the date of their issuance or (b) the market rate that such obligations would bear if issued on the open market, as certified by the financial advisor to the Authority.

**5. Village Obligation to Cooperate**

The Village agrees to cooperate with the Developer, to the extent feasible and consistent with existing laws and regulations and accordance with any other separate agreement with the Developer, to provide necessary approvals, including tax increment financing on the Development, as soon as may be reasonably practicable and to promptly consider the requests of the Developer in connection with the Development and Project.

**6. Termination**

In the event the Developer provides written notice to the Village, the Authority and ODOT of its intent not to proceed with the Development such public parties may in their discretion, terminate or suspend the application of this Agreement pending the resolution of any issues. This Agreement shall not otherwise be terminable by the parties

**7 General Provisions**

7.1 Entire Agreement. This Agreement constitutes the entire and integrated agreement between the parties insofar as it relates to the funding of the Project. Any change to the provisions of the Agreement or any of the Exhibits shall be made by written amendment executed by all of the parties.

7.2 Notices. All notices to be given under this Agreement shall be in writing and mailed by certified mail to:

IF TO THE DEVELOPER:

Patrick J. Shivley Sr.  
NorthGate Land Company I, LLC  
150 E Mound St., Ste 103  
Columbus, Ohio 43215

IF TO THE AUTHORITY:

c/o

Patrick J. Shivley Sr.  
NorthGate Land Company I, LLC

150 E Mound St., Ste 103  
Columbus, Ohio 43215

Attn: Vice-Chair

IF TO ODOT:

ODOT District 6

400 E. William Street

Delaware, Ohio 43015

Attn: Steve Fellenger

IF TO THE VILLAGE:

PO Box 508  
9 East Granville Street  
Sunbury Oh 43074

Attn: Mayor

7.3 Governing Law. This Agreement will be construed and interpreted and the rights of the parties determined under the laws of the State of Ohio. Any litigation arising out of or relating in any way to this Agreement or the performance thereunder shall be brought only in the courts of Ohio, and all parties hereby irrevocably consent to such jurisdiction.

7.4 Any person executing this Agreement in a representative capacity warrants that he or she has been duly authorized by his or her party to execute this Agreement on such party’s behalf.

7.5 Enforceability. Each obligation of the Authority, ODOT, or the Village required to be undertaken pursuant to this Agreement is binding upon the Authority, ODOT, or the Village and upon each officer or employee thereof as may have from time to time the authority under law to take any action on behalf of the Authority, ODOT, or the Village which may be necessary to perform all or any part of that obligation, as a duty of the Authority, ODOT, or the Village and of each of those officers and employees resulting from an office, trust, or station within the meaning of Section 2731.01, Ohio Revised Code, providing for enforcement by writ of mandamus.

7.6 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which together shall constitute but one and the same instrument.

7.7 Neither this Agreement nor any rights, duties, or obligations described in it may be assigned by a party without the prior express written consent of all other parties.

**IN WITNESS WHEREOF**, the parties have entered into this Agreement as of the last date written below.

NorthGate Land Company I, LLC

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Northgate NCA I

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The State of Ohio, Department of Transportation

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The Village of Sunbury

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_