

## **SETTLEMENT AGREEMENT**

This Settlement Agreement (“Settlement Agreement”) is made and entered into this \_\_\_\_ day of September, 2022, by and between Easton Farm Partners, LLC (“Easton Farm Partners”), Rebecca A. Hall and Ted D. Hall (“Hall Trustees”), Co-Trustees of The Ted and Rebecca Hall Living Trust dated April 8, 1999, and Ruth E. Cook, Trustee of The Cook Realty Trust dated July 22, 2004 (together, the “Trustees” and collectively with Easton Farm Partners, “Plaintiffs”) and the City of Springboro (“City”), under the following circumstances:

- A. Easton Farm Partners is a limited liability company with its principal place of business located at 155 West Central Avenue, Springboro, Ohio 45066.
- B. The Trustees are the current owners of the Property and have been its owners since 2006.
- C. The City is a municipal corporation.
- D. The property historically known as “Easton Farm” is comprised of a 103-acre tract located on State Route 741 and has been operated as a farm by the Easton family for more than 150 years (“Property”).
- E. The Property is currently zoned as an R-1 Estate-Type Residential District (“R-1 District”).
- F. On May 21, 2021, Easton Farm Partners, on behalf of itself and the Trustees, filed an application (“Application”) to rezone the Property from an R-1 District to a Planned Unit Development District-Mixed Use (“PUD-MU”) with the City’s Planning Commission (“Planning Commission”).
- G. On June 9, 2021, the City Staff recommended the Application for approval.
- H. On June 9, 2021, the Planning Commission unanimously recommended to approve the rezoning and the preliminary development plan submitted by Plaintiffs.
- I. On October 7, 2021, the City Council voted to deny the Application.
- J. On November 2, 2021, Plaintiffs filed their complaint against the City (the “Complaint”) alleging, among other things, that the City’s rejection of the Application was unconstitutional and constituted a taking of the Property. The Complaint sought declaratory and injunctive relief, monetary damages, and attorney fees.
- K. On January 14, 2022, the City filed a Motion to Dismiss the Complaint.
- L. On April 18, 2022, the Court denied the City’s Motion to Dismiss in its entirety.

M. Following the Court's Order, the Parties engaged in mediation before Robert E. Portune, a lawyer specializing in municipal law and former counsel for the City of Moraine. The mediation involved multiple meetings over several days.

N. Following the mediation, Plaintiffs and the City jointly drafted this Settlement Agreement to fully and finally resolve all differences between them.

O. As part of the proposed settlement, Plaintiffs submitted a general preliminary development plan to the City (the "Plan"), a copy of which is attached as "Exhibit 1."

P. Springboro City Staff has reviewed the Plan and has found that it, along with prior submittals, complies with Springboro Municipal Code Chapter 1266.

Q. As part of the proposed settlement, the Springboro City Council will authorize the execution of the Settlement Agreement by enacting Ordinance No. \_\_\_\_ which will be passed as an emergency measure ("Ordinance"), a proposed copy of which is attached as "Exhibit 2."

NOW, THEREFORE, in consideration of the above Recitals and the mutual promises contained in this Settlement Agreement, and other good and valuable considerations, the receipt and sufficiency of all of which the Parties each hereby acknowledge, it is agreed as follows:

1. City's Obligations. Assuming City Council adopts the Ordinance, the City hereby agrees to the following:

- a. If City Council adopts the Ordinance, the City shall authorize its Manager to execute this Settlement Agreement.
- b. If City Council adopts the Ordinance, the City shall authorize its counsel in the Lawsuit to execute and file the proposed Judgment Entry, a copy of which is attached as "Exhibit 3."
- c. If the Court adopts the Judgment Entry, the Property shall be zoned as PUD-MU, Planned Unit Development-Mixed Use, and the City shall amend its zoning map to reflect this zoning as required by the Judgment Entry.
- d. If City Council adopts the Ordinance, the City further agrees to conduct and approve all required processes, procedures, applications and actions necessary to fully effectuate and implement the Application and Plan, including approval of the final development plan, so long as the final development plan substantially conforms to the approved Plan and complies with all City rules and requirements existing on the date that this Settlement Agreement is executed and which generally apply to all mixed use developments, and either remains the same as the Plan or, if different, does not substantially alter the use or character of the approved Plan.

2. Plaintiffs' Obligations. Assuming City Council adopts the Ordinance, Plaintiffs hereby agree to the following:

- a. Plaintiffs agree with the provisions of and shall execute the proposed Judgment Entry.
- b. The Plan provides for a 130,905 square foot (approximately 3 acre) common area (“Crockett Park”). Upon (i) approval of the Final Development Plan that includes Crockett Park and (ii) completion of any improvements on or adjoining the park that are Plaintiffs’ responsibility under the Final Development Plan or the Development Agreement (defined below), Plaintiffs shall donate the land for Crockett Park to the City for use as a public park. The Parties shall agree to reasonable limitations of use of that park.

3. Development Agreement. The Parties shall use reasonable efforts to negotiate a development agreement for the Property (“Development Agreement”). The Parties presently anticipate that the Development Agreement shall include, among other things, the following provisions:

- a. *Assessments for public improvements.* The Parties anticipate the Plan for the Property will include public roadways, sidewalks, water, sewer, and stormwater utility infrastructure, excluding any retention/detention ponds, and landscaping along the public right of way and public parks. Easton Farm Partners will seek and the City will consider City-issued special assessment bonds for qualified expenses in compliance with the statutory requirements of ORC Chapter 727. The City’s bond counsel will oversee cost allocations between commercial and residential properties.
  - i. Property owners will pay through a fixed amount assessment per lot in residential areas. The basis for calculation is determined by Easton Farm Partners’ desired millage rate goal as converted to a fixed charge determined by anticipated home values to be constructed. Commercial properties will receive a pre-1994 15-year 100% property tax abatement but be burdened with a special assessment charge. Details of the assessment calculations must be determined and approved by City Council.
    - ii. There shall be up to a 3-year capitalized interest period before special assessments are payable, as permitted or limited by ORC Chapter 727.
    - iii. Easton Farm Partners and the Parties understand and agree that should there be any shortfall in the assessment financing, the City will not be obligated to make up or contribute to any such shortfall.
  - b. *Ohio grant.* The City will seek out and apply for State of Ohio grant funding for the multi-use path in the Plan (which may or may not be Clean Ohio Funds). However, it is understood that receipt of the grant funding is not guaranteed and that the City has no control over the award of such grants.

- c. *Water charges for multi-family development.* With respect to the multi-family development in the Plan, the City's connection charges for water will include an upfront payment of \$900,000 at permit application, followed by amortized payment of the balance over 10 years. Easton Farm Partners, or its assignee, will install and maintain individual unit water meters at its expense. The City will read the master meter and issue a single invoice on a monthly basis in accordance with the City's typical payment schedule, plus the one-twelfth of the agreed-upon annual amortized amount.
- d. *Construction manager.* The City will undertake pursuant to legally required process prescribed by Ohio statutes and/or the City's Charter to hire Easton Farm Partners as the construction manager to perform the public improvements (with separate agreements for the park and non-park improvements). The Warren County Port Authority may be a party to these agreements.
- e. *Traffic study.* If requested by Easton Farm Partners, the City will not object to an updated traffic study for the Plan, including signalized access on SR 741.
- f. *CED/DORA.* If requested by Easton Farm Partners, the City will cooperate in establishing an outdoor refreshment area (DORA) at a mutually agreed location within the Property and/or adoption of a Community Entertainment District (CED) for the commercial areas of the development.
- g. *Maintenance of public improvements.* Easton Farm Partners shall maintain certain public improvements within the Property but may assign such obligations to one or more owners' associations.

4. **No Liability.** The parties agree that this Settlement Agreement does not constitute any admission of liability. The Parties enter into this Settlement Agreement to avoid the further expense and uncertainties inherent in the litigation process.

5. **Interpretation.** This Settlement Agreement shall be interpreted in accordance with the laws of the State of Ohio. Since both Parties have had input into the contents of this Settlement Agreement, the Parties agree that, for purposes of construction, each Party shall be deemed to have been an author of the entire Settlement Agreement.

6. **Further Litigation.** Should further litigation regarding the development of the Property under the terms of this Settlement Agreement be commenced and, in the event that Plaintiffs prevail in that litigation, the City shall reimburse Plaintiffs' reasonable attorney fees.

7. **Headings.** The Section headings contained in this Settlement Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Settlement Agreement.

8. **Voluntary Agreement.** The Parties execute this Settlement Agreement voluntarily. Each Party has consulted with counsel concerning the meaning and effect of its provisions.

9. Entire Agreement. This Settlement Agreement integrates all understandings, promises and representations between the Parties of every kind and nature. Any promise, undertaking or representation not contained within the terms of this Settlement Agreement were intentionally omitted, because the Parties intend this Settlement Agreement to supersede all such prior and concurrent promises, representations and undertakings.

10. Run with the Land. This Settlement Agreement shall run with the Property and be binding upon and inure to the benefit of Plaintiffs and their successors and assigns.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement.

THE TED AND REBECCA HALL  
LIVING TRUST

By: Rebecca A. Hall  
Rebecca A. Hall, Co-Trustee

Date: September 22 2022

By: Ted D. Hall  
Ted D. Hall, Co-Trustee

Date: September 22 2022

EASTON FARM PARTNERS, LLC

By: Jeff Fontaine  
Name: JEFF FONTAINE  
Title: AUTHORIZED SIGNATORY

Date: September 27 2022

THE COOK REALTY TRUST

By: Ruth E. Cook  
Ruth E. Cook, Trustee

Date: September 22 2022

THE CITY OF SPRINGBORO, OHIO

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

Name:

Title:

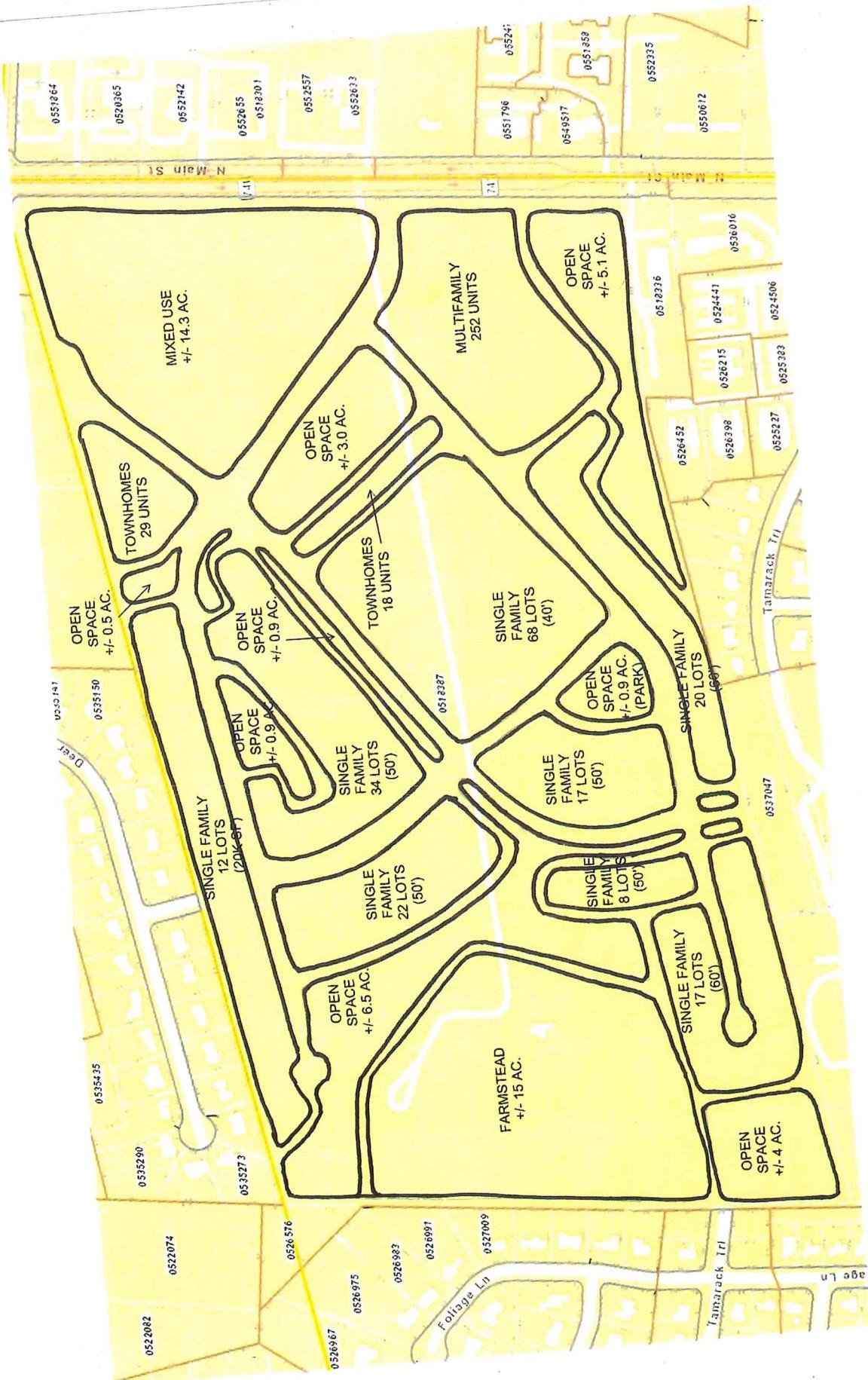
Date: September \_\_\_, 2022

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Name, Title

Date: September \_\_\_, 2022

# EXHIBIT 1



# EXHIBIT 2

**ORDINANCE NO. 22 O-\_\_\_\_\_**

**AN ORDINANCE AUTHORIZING THE EXECUTION OF A JUDGMENT ENTRY AND RELATED SETTLEMENT AGREEMENT STEMMING FROM THE MEDIATION IN THE EASTON FARMS ZONING LITIGATION MATTER AND DECLARING AN EMERGENCY**

WHEREAS, on October 7, 2021, City Council voted against rezoning the property commonly known as Easton Farm from R-1 District to a Planned Unit Development District-Mixed Use; and

WHEREAS, on November 2, 2021, a complaint was filed against the City in Warren County Common Pleas Court as Case No. 2021 CV 94668 alleging, among other things, that the City's rejection of the Easton Farm rezoning was unconstitutional and constituted a taking of the Property (the "Complaint"); and

WHEREAS, the Complaint seeks a rezoning of the Property and damages in excess of \$7,000,000; and

WHEREAS, the City vigorously defended against the allegations in the Complaint, including the filing of a multiple count Motion to Dismiss the Complaint; and

WHEREAS, the Court denied the City's Motion to Dismiss the Complaint, finding that the Plaintiffs had in fact alleged viable causes of action; and

WHEREAS, the parties to the litigation engaged in mediation that lasted several weeks in which legal counsel for the parties gave their respective positions and engaged in lengthy and detailed discussions in regard to their respective positions with a mediator that was present and who also provided input; and

WHEREAS, as a result of the mediation, a proposed settlement to rezone the Easton Farm Property to Planned Unit Development District-Mixed Use, approve a general plan that complies with Springboro Municipal Code Chapter 1266, and dismiss all claims for monetary damages and attorney fees was tentatively negotiated; and

WHEREAS, City Council has had the opportunity to discuss the merits of the Complaint, the mediation, and the potential benefits and risks associated with continued litigation with its legal counsel on multiple occasions; and

WHEREAS, the City Attorney has recommended that Council consider approval of the proposed negotiated mediation settlement at this time;

**NOW, THEREFORE, THE MUNICIPALITY OF SPRINGBORO HEREBY ORDAINS:**

**SECTION 1**

After extensive discussion, negotiation and review of the legal options as well as considering the risks of further litigation, the City of Springboro accepts and acknowledges the terms and provisions of the proposed Judgment Entry and Settlement Agreement, both attached hereto and incorporated herein

by reference, that emanated out of the mediation, recognizing that the same will result in the dismissal of Case No. 2021 CV 94668 and all claims therein, including monetary damages and attorney fees.

#### SECTION 2

The City Manager is hereby authorized to execute the Settlement Agreement and the City's legal counsel is authorized to execute and file the proposed Judgment Entry.

#### SECTION 3

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

#### SECTION 4

This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that resolution of the pending litigation at the earliest opportunity is required to avoid further costs and potential liability to the City; therefore, this Ordinance shall take full force and effect immediately upon its adoption by Council.

Adopted: \_\_\_\_\_.

\_\_\_\_\_  
John H. Agenbroad, Mayor

ATTEST:

\_\_\_\_\_  
Lori A. Martin, Clerk of Council

This Ordinance was prepared by Law Director Gerald McDonald.

# EXHIBIT 3

IN THE COMMON PLEAS COURT OF WARREN COUNTY, OHIO  
CIVIL DIVISION

EASTON FARM PARTNERS, LLC, <i>et</i>	:	Case No. 2021 CV 94668
<i>al.</i> ,	:	Judge Donald E. Oda II
	:	
Plaintiffs,	:	
	:	
vs.	:	<b><u>JUDGMENT ENTRY</u></b>
	:	
CITY OF SPRINGBORO,	:	
	:	
Defendant.	:	

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This matter is before the Court by the agreement of Plaintiffs Easton Farm Partners, LLC (“Easton Farm Partners”), Rebecca A. Hall and Ted D. Hall (“Hall Trustees”), Co-Trustees of The Ted and Rebecca Hall Living Trust dated April 8, 1999, and Ruth E. Cook, Trustee of The Cook Realty Trust dated July 22, 2004 (together, the “Trustees” and collectively with Easton Farm Partners, “Plaintiffs”) and Defendant the City of Springboro (“City”) as is evidenced by the signature of their respective counsel below.

The Court finds that it has jurisdiction to issue a declaration concerning Plaintiffs’ constitutional rights pursuant to R.C. 2721.03 and Civ.R. 57, jurisdiction over the petition for writ of mandamus pursuant to R.C. 2731.02, and jurisdiction over all remaining matters pursuant to R.C. 2305.01. Venue in this Court is proper because the property that is the subject of this lawsuit (“Property”) is situated in Warren County, Ohio, and pursuant to Civ.R 3(C)(6) because all or part of the claims for relief arose in Warren County, Ohio.

After the filing of the Complaint, the City filed a Motion to Dismiss which was denied by this Court in its entirety. In the Decision and Order Denying the City’s Motion to Dismiss (“Order”), the Court found that Plaintiffs had brought forth a set of facts for each of their claims

upon which the Court could find in their favor. The Complaint alleges four claims for relief. In their first two claims, Plaintiffs requested a declaratory judgment and injunction for the unconstitutional zoning of the Property. The Plaintiffs allege that the City's refusal to rezone the Property is both arbitrary and unreasonable as it disregards the language set forth by the City's 2009 Land Use Plan (and now its 2022 Land Use Plan). Plaintiffs also have set forth evidence that areas surrounding the Property are zoned as commercial and mixed-use. The City argued that the R-1 District's inconsistency with its Land Use Plan(s) was not a basis for the claims of unconstitutionality. This Court disagreed with the City and stated in the Order that "the Complaint provide[s] a basis for Plaintiffs' causes of action and pleas for declaratory judgment and injunctive relief."

Plaintiffs also assert a claim for damages for the temporary regulatory taking of the Property. Plaintiffs argue that the Property's current zoning classification is a regulatory taking that has unlawfully deprived Plaintiffs of the lawful use of the Property without reasonable compensation. In its Motion to Dismiss, the City raised the defense that money damages were not available. However, the Court again disagreed, holding that "there is a set of facts upon which damages can be sought [by Plaintiffs]."

Interest rates have substantially increased since the date of the initial Application's denial. Inflation throughout the country has also increased and labor costs are being affected as a result. Plaintiffs allege that, because of the City's refusal to rezone the Property, Easton Farm Partners will have to pay additional costs for financing and materials and labor necessary to complete construction in excess of \$1,320,000 in additional financing costs and more than \$6,490,000 in increased expenses for labor and material. Plaintiffs also allege they are entitled to recover interest at the statutory rate of 3% per annum from the City. Along with damages due to

delayed construction, Plaintiffs have also alleged that they are entitled to recovery of their attorney fees incurred because of the City's temporary regulatory taking.

Plaintiffs assert that they are entitled to a Writ of Mandamus because the existing zoning of the Property effectuates an involuntary regulatory taking that deprives Plaintiffs of the economically viable use of the Property. The City argued that Plaintiffs had no legal right to the relief requested. In the Order, the Court found that such relief could be available, stating that “[t]he Complaint sets forth Plaintiff[s'] expectations that the Application to have the Property rezoned was approved. Further, in considering the general surrounding areas, as outlined in the Complaint, Plaintiffs reasonably anticipated, that the rezoning would be approved.” In the Order, the Court also held that Plaintiffs demonstrated that “the economic impact of the [zoning] regulation would be a deprivation of \$265,000,000 in economic development to Plaintiffs, and Defendants.”

The Parties have reported to the Court that following the Order, they have engaged in mediation before Robert E. Portune, a lawyer specializing in municipal law and former counsel for the City of Moraine. The Parties have also reported that the mediation involved multiple meetings over several days. Following the mediation, the Parties drafted and executed a Settlement Agreement, a copy of which is attached hereto as Exhibit 1, which the Court has reviewed and approves.

As part of the proposed settlement, Plaintiffs submitted a preliminary development plan. Springboro City Staff has reviewed this plan and has found that it complies with Springboro Municipal Code Chapter 1266.

As part of the proposed settlement, the Springboro City Council authorized the execution of the Settlement Agreement by enacting Ordinance No. \_\_\_\_ as an emergency measure. Sec. 4

of Ordinance No.    states that “[t]his Ordinance is declared to be an emergency measure necessary for the preservation of the public peace, health, welfare and safety of the inhabitants of this City and for the further reason that resolution of the pending litigation at the earliest opportunity is required to avoid further costs and potential liability to the City; therefore, this Ordinance shall take full force and effect immediately upon its adoption by Council.” The Court finds that this language satisfies the requirements in R.C. 731.30 for the enactment of an emergency ordinance.

Accordingly, IT IS HERBY ORDERED:

1. The Court-ordered Settlement Agreement is hereby approved and adopted.
2. Plaintiffs’ Application to rezone the Property as PUD-MU, Planned Unit

Development-Mixed Use is granted. From the date of this Entry, the Property is zoned as PUD-MU, Planned Unit Development-Mixed Use and Springboro shall amend its zoning map to reflect this zoning.

3. Plaintiffs’ general plan, a copy of which is attached as “Exhibit 2,” is approved.

As did the City Staff, the Court finds that this plan is consistent with Springboro Municipal Code Chapter 1266 in general and in particular Section 1266.09.

4. Plaintiffs understand that final development plans must still be received and approved by the Planning Commission.

5. The remaining claims in Plaintiffs’ Complaint are dismissed.

6. Should further litigation regarding the development of the Property be commenced and in the event that Plaintiffs prevail in that litigation, the City shall reimburse Plaintiffs’ reasonable attorney fees.

7. If the deposit fails to cover all of the court costs, the City is required to cover the remaining costs.

8. The Court retains jurisdiction over this matter solely for the purposes of enforcing this Judgment Entry.

IT IS SO ORDERED.

APPROVED:

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Judge Donald E. Oda II

SUBMITTED BY:

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