

## LAND DEVELOPMENT AGREEMENT

### (NAME OF DEVELOPMENT)

**THIS LAND DEVELOPMENT AGREEMENT** (together with all modifications and amendments, the "Agreement") made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by **WEST NANTMEAL TOWNSHIP**, Chester County, Pennsylvania, a political subdivision of the Commonwealth of Pennsylvania having an address of Box 234, Elverson, Pennsylvania 19520 (the "Township") and \_\_\_\_\_, a Pennsylvania \_\_\_\_\_ with offices at \_\_\_\_\_, \_\_\_\_\_, Pennsylvania \_\_\_\_\_ (the "Developer").

#### **BACKGROUND:**

A. Developer proposes to develop a \_\_\_\_\_ acre piece of property, known as Chester County Tax Parcel No. \_\_\_\_\_ situate at \_\_\_\_\_, West Nantmeal Township, Chester County, Pennsylvania, in accordance with a proposed subdivision and/or land development known as "\_\_\_\_\_" (the "Subdivision/Development").

B. The West Nantmeal Township Board of Supervisors (the "Board") granted final land development approval of the Subdivision/Development on \_\_\_\_\_, 20\_\_\_\_ pursuant to a Motion of Approval. Developer received final approval of the land development plans for the Subdivision, subject to, among other things entering into a Financial Security Agreement and this Agreement, and posting the Financial Security, as hereinafter defined, to complete the Secured Improvements, as hereinafter defined.

C. The parties desire to set forth their agreement and understanding with respect to the foregoing and such other matters as hereinbelow set forth.

**NOW, THEREFORE**, the parties hereunto, in consideration of the premises and the mutual promises herein contained and intending to be legally bound hereby, agree as follows:

1. **Definitions; Interpretation.**

A. For purposes of this Agreement, except where the context clearly indicates otherwise, the following words and phrases (including the singular and plural forms thereof) shall have the following meanings:

- (1) "Tract" shall mean all that certain \_\_\_\_\_ acre tract located at \_\_\_\_\_, West Nantmeal Township, Chester County, Pennsylvania, and which is more fully and further shown and described on the Plans.

- (2) “Plans” shall mean the land development plan entitled “Final Land Development Plan of \_\_\_\_\_” prepared by \_\_\_\_\_, dated \_\_\_\_\_, 200\_\_, last revised \_\_\_\_\_, 200\_\_, consisting of \_\_\_\_\_ (\_\_) sheets that are specifically numbered, entitled, dated, and last revised as set forth on Exhibit “A” attached hereto and made fully part hereof, including, without limitation, all notes, statements and other information appearing on the plans, and all reports, narratives, studies, profiles, delineations and other materials of whatever nature or kind accompanying or related to the plans.
- (3) “Subject Land Development” or “Project” shall mean the proposed land development of the Tract as \_\_\_\_\_, together with new streets and roads to serve the same and such other Improvements, as hereinafter defined, proposed or required in, on and/or related to the Subject Land Development, as the same are more fully depicted on the Plans.
- (4) “Improvements” shall mean all those streets, roads, walkways, curbs, gutters, street lights, fire hydrants, shade trees, water mains, sanitary sewers, storm drains and sewers, storm water detention and/or retention basins and other related drainage facilities, recreational facilities, open space improvements, buffer or screen plantings, and/or other improvements or common amenities, as the same are more fully shown, identified or otherwise described on and by the Plans.
- (5) “Secured Improvements” shall mean all those Improvements for which the Financial Security is provided or to which the Financial Security otherwise relates.
- (6) “Completion Date” shall mean the date specified in Section 2.D of this Agreement on or before which the Improvements shall be completed.
- (7) “Financial Security” shall mean the financial security provided under and in accordance with the provisions of Section 3 of this Agreement and the provisions of the Financial Security Agreement (including any additional financial security made part thereof, any increases and other adjustments thereto, and any financial security substituted therefor) and the funds representative thereof and therein.

- (8) “Financial Institution” shall mean the bonding company or lending institution chosen by Developer with which the Financial Security has been posted or established and/or which issues the Financial Security to the Township. The Financial Institution must be a bonding company or Federal or Commonwealth chartered lending institution which is authorized to conduct business in the Commonwealth of Pennsylvania.
- (9) “Financial Security Agreement” shall mean that certain Financial Security Agreement, of even date herewith, by and between the Township and Developer, which agreement is fully incorporated into and made part of this Agreement.
- (10) “Subdivision and Land Development Ordinance” shall mean the West Nantmeal Township Subdivision and Land Development Ordinance, as such Ordinance has been amended and now exists and as hereafter may be amended, provided that the application of subsequent amendments to the Subject Land Development shall be subject to the provisions of Section 508(4) of the MPC.
- (11) “MPC” shall mean the Pennsylvania Municipalities Planning Code, Act No. 247 of 1968, *as reenacted and amended*, 53 P.S. § 10101 *et seq.*, as the same now exists and hereafter may be further amended.
- (12) “Township Engineer” shall mean the professional engineer, licensed as such in the Commonwealth of Pennsylvania, duly appointed and employed as the engineer for the Township or engaged by the Township as a consultant thereto.

B. Except as may be otherwise provided herein and/or if the context clearly indicates otherwise, all words and phrases appearing in this Agreement, which also appear in the Subdivision and Land Development Ordinance or the MPC, shall have the meanings and shall be interpreted herein as under the Subdivision and Land Development Ordinance or the MPC.

2. **Construction and Completion of Improvements.**

A. Developer, at its sole expense, shall layout, construct, install, and/or otherwise complete the Improvements in a good and workmanlike manner, in full and strict accordance with and pursuant to the following: (i) the Subdivision and Land Development Ordinance; (ii) the Plans; (iii) the provisions of this Agreement; (iv) all applicable requirements of electric, telephone, and other utility companies having jurisdiction; and (v) all other applicable laws, statutes, ordinances, resolutions, rules, and

regulations of the Township and of other applicable or appropriate governmental authorities and/or agencies having jurisdiction. In the event of any inconsistency or conflict between or among the provisions of any of the foregoing, those provisions contained in the Plans shall prevail and control.

- B. No Improvements referred to herein, in connection with this Project shall be commenced until:
  - (1) The Plans are recorded according to law;
  - (2) This Agreement is duly signed and delivered;
  - (3) Financial security as defined in Section 509 of the MPC and in this Agreement is delivered to the Township and Developer and the Financial Institution have executed the Financial Security Agreement; and
  - (4) All fees (i) required by any Ordinance, Resolution or regulation of the Township and (ii) legal and engineering expenses, incurred by the Township for the completion of its approval of the Plans, preparation of the Agreements, Resolutions and other papers relating to the acceptance of this Agreement by the Township are paid.
- C. Upon compliance with the requirements of subsection B, above, Developer may obtain permits for the buildings which together constitute the Project.
- D. The Improvements shall be completed on or before the date occurring one (1) year from the date of this Agreement. Upon written request of Developer and approval of the Township, the Completion Date may be extended from time to time, provided that (i) Developer's written request is received by the Board of Supervisors not less than twenty (20) days prior to the then-current completion date, and (ii) the Financial Security is also extended so that it continues valid and effective for all purposes thereof to a date occurring at least sixty (60) days after the extended completion date. Such times shall be of the essence.
- E. Developer shall be solely responsible, at its sole cost and expense, for the repair and maintenance of all Improvements during and after construction thereof, provided however, that in the case of Improvements which are completed and dedication (or other transfer or assignment) of which is offered to and accepted by the Township, Developer shall have such repair and maintenance responsibility until such time as the acceptance of dedication (or other transfer or assignment) is final and effective, and the maintenance bond or other financial security is deposited with respect to

such dedicated (or otherwise transferred or assigned) Improvements as provided under Section 5 below. For purposes of this subsection, “repair and maintenance of all Improvements” shall mean, without limitation, keeping the Improvements at all times in such condition that the structural integrity and functioning of the same shall be maintained in accordance with the design and specifications thereof as shown on the Plans, and with respect to Improvements consisting of streets or roads, shall further mean, without limitation, keeping the same at all times free of mud, snow, ice and other impediments or other obstructions to motor vehicular traffic thereon and thereover, and otherwise in a permanently passable condition by and for motor vehicles.

- F. In the event that Developer is in default of any of its repair and maintenance obligations under Subsection E, the Township, shall have the right, but not the obligation, (which right shall be in addition to such other or further rights and remedies as may be available to the Township under this Agreement, the Financial Security Agreement, the Subdivision and Land Development Ordinance, and/or the MPC, and/or otherwise at law or in equity) to:
- (1) Enter upon the Tract and satisfy any of such defaulted repair and maintenance obligation of Developer (provided that any such entry and/or satisfaction shall not be deemed, in any manner or to any extent whatsoever, as an acceptance by the Township of the dedication, transfer or other assignment of the Improvements subject of the default, and/or as imposing any responsibility upon the Township for the completion, further repair and maintenance, or otherwise, with respect to the Improvements subject of the default); and
  - (2) In order to pay for the costs, expenses and/or fees incurred by the Township related to the satisfaction of such defaulted obligations, (i) obtain payment to the Township, or its order, of all or any part of the Financial Security for such costs, expenses and fees (notwithstanding that the amount of the Financial Security, but for this Paragraph, is not now or hereafter specifically established to guarantee or otherwise cover the payment of such costs, expenses and/or fees); and/or (ii) institute and prosecute appropriate legal and/or equitable actions or proceedings against Developer to recover such costs, expenses and/or fees, together with attorney fees and costs incurred by the Township for and otherwise related to any such legal and/or equitable action or proceeding.

- G. It shall be the obligation of Developer to arrange in advance with the Township for inspection of the work as the work progresses and the cost of such inspection shall be paid by Developer.
- H. Developer agrees that it will obtain use and occupancy permits as required under the Township's Zoning Ordinance prior to permitting occupancy of any dwelling or any building within the Project.
- I. Developer agrees to maintain such barricades, warning lights or fences as are necessary during the course of construction to give reasonable protection to the public.

3. **Guaranty of Completion of Secured Improvements.**

- A. Developer shall deposit with the Township or otherwise establish the Financial Security all in accordance with and pursuant to the terms and conditions of this Section 3 and the Financial Security Agreement. Unless and until the Financial Security is so deposited or otherwise established by Developer, no building or occupancy permit, relating to the erection, placement or occupancy of any of any buildings or other structures in, on and/or related to the Subject Land Development, shall be issued by the Township.
- B. The Financial Security shall provide for and secure to the public, as represented by the Township, the completion, on or before the Completion Date, of the Secured Improvements in accordance with and pursuant to the Financial Security Agreement. The Financial Security shall be of such type as more fully and further provided in and by the Financial Security Agreement.
- C. The initial amount of the Financial Security shall be \$\_\_\_\_\_, which is 110% of the total cost estimate as set forth in Exhibit "B" attached hereto and made fully part hereof. The amount of the Financial Security shall be subject to such increase, adjustment and reduction as provided in and by the Financial Security Agreement.

4. **Dedication.**

- A. Developer, at its expense, hereby offers to dedicate the following to the Township and with respect to the same, hereby agrees to tender to the Township deeds of dedication containing such provisions and in such form as shall be approved by the Township Solicitor:

- (1) All that certain new street/road, designated on the Plans as \_\_\_\_\_ to the full ultimate rights-of-way widths and lengths thereof, together with all road and other Improvements (including, without limitation, stormwater management facilities) as shall be constructed, installed, or otherwise completed in, under, or upon said streets or roads in accordance with and pursuant to the Plans and this Agreement;
- (2) All portions of the Tract, to the extent not heretofore dedicated to the Township, which portions are within the ultimate right-of-way lines of \_\_\_\_\_, together with all road and other Improvements (including, without limitation, stormwater management facilities) as shall be constructed, installed, or otherwise completed in, under, or upon said portions in accordance with and pursuant to the Plans and this Agreement;
- (3) All sanitary sewer easement areas, and the sanitary sewer facilities constructed within such easement areas, as are shown on the Plans;
- (4) All portions of the Tract designated on the Plans as open space areas to be dedicated to the Township for public use; and
- (5) Any or all other facilities specified to be dedicated to the Township as part of the approval of the Plans.

B. The Township shall accept dedication of the items described in Subsection A above, by deed of dedication (or other instrument) or otherwise, when all of the following have been satisfied, at the sole expense of Developer:

- (1) Certification by the Township Engineer that all Improvements which are to be dedicated have been satisfactorily completed fully in accordance with the terms of Section 2 above;
- (2) Deposit of a maintenance bond or other security, as provided under Section 5 below, with respect to each of the Improvements to be accepted for dedication; and
- (3) Advancement and/or reimbursement to the Township of and for all costs, expenses and fees as provided under and in accordance with Section 7 below;

5. **Maintenance Bond or Other Financial Security.**

The maintenance bond or other financial security, to be deposited by Developer under Section 4.B(2) above as a condition to the Township's acceptance of dedication of any of the Improvements offered for dedication under Section 4.A shall be in accordance with the following:

- (1) The form and provisions of the bond or other financial security shall reasonably be approved by the Township Solicitor;
- (2) The type of the bond or other financial security shall be a type permitted by Section 509 of the MPC;
- (3) The bond or other financial security shall be posted with (1) a bonding company; or (2) lending institution chartered by the Federal Government or the Commonwealth of Pennsylvania, provided said bonding company or lending institution is authorized to conduct such business within the Commonwealth of Pennsylvania;
- (4) The bond or other financial security shall provide for and secure to the public, as represented by the Township with respect to each of the dedicated Improvements, the structural integrity and proper functioning of each such Improvement, in accordance with the design and specifications thereof as shown on the Plans, for a term of eighteen (18) months from the date when the Township accepts dedication of each such Improvement;
- (5) The amount of the bond or other financial security shall be equal to Fifteen Percent (15%) of the actual costs of installing, constructing or otherwise completing the dedicated Improvements covered by the bond or other financial security;
- (6) The bond or other financial security shall provide that in the event the structural integrity or proper functioning of any of the dedicated Improvements, covered by the bond or other financial security, is not in accordance with the design and specifications of the Plans for the aforesaid 18-month term, the bonding company or lending institution, which issues or holds the bond or other financial security, shall pay to the Township, or its order, from time to time, as the Township shall determine and demand, all or part of the amount of the bond or other financial security; and that such payment shall be made by the bonding company or lending institution to the Township, or its order, at and upon receipt from the Township of a written demand for such payment (in, to or of which demand the consent, joinder, agreement and/or approval of



Developer shall not be required). The bond or the financial security shall further provide that the aforesaid right of the Township to payment under the bond or other financial security shall not constitute the exclusive right and/or remedy of the Township, but shall be in addition to such other or further rights and/or remedies as may be available to the Township under this Agreement, at law, in equity, or otherwise, in the event that the structural integrity or proper functioning of any of the dedicated Improvements is not in accordance with the design and specifications as aforesaid; and that the aggregate payments made to the Township, or its order, by the bonding company or lending institution shall not exceed the amount of the bond or other financial security (plus any interest which may be earned on the principal thereof); and

- (7) Final release of Developer under and from the bond or other financial security shall be subject to the advancement and/or reimbursement to the Township of and for all costs, expenses and fees under and in accordance with Section 7 below.

6. **Failure to Complete; Other Default.**

- A. In the event that any of the Improvements are not completed in accordance with the terms, conditions and requirements of Section 2 above, the Township shall have the right, but not the obligation, (which right shall be in addition to such other or further rights and remedies, as may be available to the Township under this Agreement, the Financial Security Agreement, and/or the MPC, and/or otherwise at law or in equity) to: (i) enter upon the Tract and complete all or part of the Improvements in accordance with the terms, conditions and requirements of Section 2; and (ii) with respect to incomplete Secured Improvements, obtain payment to it, or its order, of all or any part of the Financial Security and/or to otherwise enforce the Financial Security in order to pay for the costs of such completion and related costs, expenses and fees. If the proceeds of the Financial Security paid to the Township, or its order, are not sufficient or unavailable to pay the costs of fully completing all the incomplete Improvements, together with related costs, expenses and fees, the Township, at its option, shall have the right to complete part of the Improvements and to institute appropriate legal and/or equitable actions against Developer to recover monies necessary to complete the remainder of the incomplete Improvements and pay related costs, expenses and fees.
- B. In the event that the Township exercises its right, but not obligation, to complete all or part of the incomplete Improvements upon the aforesaid default of Developer, there shall be no requirement for the advertisement of public works or for competitive bidding. Any monies paid to the

Township of, from or under the Financial Security and any proceeds resulting from the aforesaid legal and/or equitable actions against Developer shall be not deemed to be public funds for the purpose of any laws relating to public advertising or solicitation of bids. The Township may use any commercially reasonable means to select contractors and/or negotiate prices or costs of material and labor, and Developer hereby ratifies all actions taken by the Township in that regard. The Township shall have the right, but not the obligation, to use its own employees to complete all or part of the Improvements.

7. **Advancement and/or Reimbursement of Expenses.**

- A. Developer shall advance and/or reimburse the Township the following:
  - (1) All costs, expenses and fees incurred by the Township in and for the preparation, review, and enforcement of this Agreement and the Financial Security Agreement. Such costs, expenses and fees shall include, without limitation: reasonable legal expenses and fees of the Township Solicitor; and reasonable expenses and fees of the Township Engineer, in visiting the site for the purposes of inspection and for the performance of official duties necessarily connected with said inspection purposes.
  - (2) All costs, expenses and fees incurred by the Township of and for necessary legal proceedings in connection with the dedication (or other transfer or assignment) under Section 5 hereof, including, without limitation, reasonable fees of the Township Solicitor and the Township Engineer.
- B. Developer shall, in accordance with the Subdivision and Land Development Ordinance (and/or any schedules which have been or may be adopted thereunder from time to time or at any time), (i) deposit monies with the Township, to be held in escrow by the Township, to cover the costs, expenses and fees, described in Subsection A above, and (ii) thereafter replenish such escrow deposits.
- C. Subject to the dispute provisions of Section 510(g) of the MPC to the extent applicable, the costs, expenses and fees, described in Subsection A above, shall be billed by the Township to Developer, and the amounts of the same shall be due and payable within fifteen (15) days of the billing date to the extent that such amounts are not earlier paid to or otherwise recovered by the Township from monies deposited by Developer with and held in escrow by the Township for any such costs, expenses or fees.

- D. The Township, under and in accordance with the Financial Security Agreement, shall have the right to recover, from and under the Financial Security, the costs, expenses and fees, described in Subsection A above, notwithstanding that the amount of the Financial Security Agreement, but for this Subsection D, is not now or hereafter specifically established to guarantee or otherwise cover the payment of such costs, expenses and/or fees. Such right shall be in addition to such other or further rights or remedies as may be now or hereafter available to the Township under this Agreement, the Financial Security Agreement, the Subdivision and Land Development Ordinance, and/or the MPC, and/or otherwise at law or in equity.
- E. It is expressly acknowledged and agreed that the Township shall not be obligated hereunder or otherwise to finally release Developer from and under the Financial Security, the Financial Security Agreement, or any other financial security provided pursuant hereto, and/or to accept dedication (or other transfer or assignment) of any of the items under Section 5 hereof, unless and until all the aforesaid costs, expenses and fees are paid in full.

8. **Indemnification.**

- A. It is understood and agreed that the Township has reviewed the Plans and specifications for the purpose solely of protecting the interests of the public and have not thereby expressly or impliedly warranted the technical suitability of Developer's Plans. Developer warrants that all Plans, designs, installations and specifications have been designed by registered engineers licensed in the Commonwealth of Pennsylvania and will be installed in a good and workmanlike manner and in accordance with the plans and specifications and sound construction practices. Developer does further warrant that the Improvements installed and each and every part thereof are fit for all purposes for which they are intended. The Township disclaims all liability for design, construction, installation or operational defects.
- B. Developer hereby agrees to indemnify, save harmless and defend the Township, its officials, officers, employees and agents, of, from, and against any liability, claim, suit or demand, of whatever nature or kind, whether founded or unfounded, arising from, out of, or related to the design, laying out, permitting, installation, construction, completion, inspection, testing, functioning, repair and/or maintenance of (or the failure to repair and/or maintain) the Improvements, together with all cost, fees and expenses (including, but not limited to, attorney's fees and costs, and expert witness fees and costs) as may be incurred by the Township in connection with any such liability, claim, suit or demand.

9. **Notices.**

- A. Any notice, demand or other communication required, authorized or permitted to be given under this Agreement shall be sufficient if given in writing and delivered to the party to whom or which the notice or demand is directed at the respective address of the party first above indicated, or to such other address as the party may give by notice complying with the terms of this section.
- B. Such notice, demand or other communication shall be delivered to the addressee by one of the following means: (i) personal delivery against receipt; (ii) certified United States mail, postage prepaid, return receipt requested; or (iii) nationally recognized express delivery service, postage or delivery charges prepaid. The notice, demand or other communication shall be deemed given and effective as follows: (i) if by personal delivery or by express delivery service, at the time of delivery; or (ii) if by mail, three (3) business days after the date of deposit in the United States mails.

10. **Miscellaneous.**

- A. **Waiver.** Neither the failure nor any delay on the part of the Township to exercise any right, remedy, power, or privilege granted under this Agreement or otherwise provided at law or in equity, shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, remedy, power, or privilege preclude further exercise of the same or of any other such right, remedy, power or privilege; nor shall any waiver of any such right, remedy, power, or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power, or privilege with respect to any other occurrence. No waiver shall be effective against the Township unless it is in writing signed by a duly authorized representative of the Township.
- B. **Assignment; Delegation.** Developer shall not assign or delegate any of its rights, powers, privileges, duties, obligations, or liabilities hereunder without the express written consent of the Township, except in conjunction with Developer's transfer of ownership of the Tract as a whole, in which event, the successor in interest shall execute a new Development Agreement and a new Financial Security Agreement or an assignment of this Agreement. Any such assignment or delegation, without such consent, shall be void.
- C. **Cumulative Rights and Remedies.** Any and all rights, powers, privileges and/or remedies granted or accruing to the Township under or pursuant to this Agreement and/or the Financial Security Agreement shall not be exclusive, but shall be cumulative and in addition to such other rights, powers, privileges, and/or remedies as may be now or hereafter

available to the Township under the MPC, and/or otherwise at law or in equity.

- D. **Headings.** The captions or headings preceding the text of the several sections and subsections of this Agreement are inserted solely for convenience of reference; they shall neither constitute a part of this Agreement nor affect its meaning, construction or effect.
- E. **Severability.** If any provision on this Agreement is held to be invalid or unenforceable: (i) the remaining provisions of this Agreement shall not be affected thereby, but shall continue in full force and effect; (ii) this Agreement be and is hereby amended, to the minimum necessary, to remedy such invalidity or unenforceability, and the parties hereto shall adjust their respective rights and obligations hereunder accordingly; and (iii) to the extent that such invalid or unenforceable provisions cannot be rendered valid or enforceable by amendment as aforesaid, the same shall be severed herefrom as though never set forth herein.
- F. **Binding Effect.** Subject to Subsection B above, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.
- G. **Entire Agreement; Amendment.** This Agreement, together with the exhibits attached hereto and made part hereof and the Financial Security Agreement, constitutes the entire understanding and agreement of the parties with respect to the subject matter hereof, and, except as may be otherwise specifically set forth herein, supersedes all prior and contemporaneous agreements and understandings, express or implied, oral or written. Except as may be otherwise specifically provided herein, this Agreement may not be amended, revoked, changed, altered, or modified in any manner whatsoever, other than by written unanimous agreement of and signed by all parties hereto.
- H. **Governing Law.** This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania.

- I. **Third Party Beneficiary.** The rights and benefits of this Agreement shall not inure to the benefit of any third party. This Agreement shall not be construed as creating any rights, claims or causes of action against the Township or Developer in favor of any other persons furnishing services or materials to or for the construction of the Development.

**IN WITNESS WHEREOF**, the parties hereunto have executed this Agreement as of the day and year first above written.

**WEST NANTMEAL TOWNSHIP**

\_\_\_\_\_  
Secretary

By: \_\_\_\_\_  
Chairman, Board of Supervisors

**DEVELOPER**

Attest: \_\_\_\_\_

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







**EXHIBIT "A"**

**PLAN SHEETS**

<b>Sheet No.</b>	<b>Drawing No.</b>	<b>Title</b>	<b>Date</b>	<b>Last Revised Date</b>
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**EXHIBIT "B"**  
**Cost Estimate of Improvements**