

**DEVELOPER’S AGREEMENT**

THIS AGREEMENT made and entered into this            day of            , 20  
by and between            , having their office at

(hereinafter collectively referred to as “Developer”).

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NORTH STRABANE TOWNSHIP, a Pennsylvania second class township, located in the County of Washington, Pennsylvania (hereinafter referred to as “Township”).

**WITNESSETH:**

WHEREAS, the Developer is the owner of certain real property known as  
, situate in the Township of North Strabane, Washington County, Pennsylvania, which  
the Developer intends to develop

; and

WHEREAS, on            ,            , the North Strabane Township Planning Commission (“Planning Commission”) recommended approval for the development of the subject real estate and construction of the improvements, subject to the terms and conditions more fully set forth in the Planning Commission’s recommendation and the construction of roads, sanitary sewers, storm sewers, storm water management facilities and other utilities as specified herein (hereinafter referred to as “Public Improvements”) and the North Strabane Township Board of Supervisors approved the same as aforesaid; and

WHEREAS, said Public Improvements are shown and detailed in a set of drawings, base drawing dated \_\_\_\_\_, as prepared by \_\_\_\_\_, which drawings are made a part hereof by reference as though more fully attached hereto except that said set of drawings include drawings for the sanitary sewers which sewers are not part of the Public Improvements for purposes of the Agreement; and

WHEREAS, to insure completion of Public Improvements as required hereby, the Developer is required to post security in the amount set forth herein and to perform the duties set forth herein.

NOW, THEREFORE, in consideration of the foregoing preambles which are incorporated herein, and for other good and valuable consideration, the parties hereto, intending to be legally bound hereby, agree as follows:

1. Developer, at his sole cost and expense, will construct the Public Improvements strictly in accordance with the plans and specifications approved by the Township Engineer (as to all non-sanitary sewer Public Improvements) and the Engineer for the North Strabane Township Municipal Authority (Authority) (as to sanitary sewer Public Improvements) and in strict accordance with all laws, ordinances and the requirements of the Township and governmental entities having authority and/or jurisdiction with respect to this project. In the event the Developer enters into an agreement with any other person or entity to undertake the construction of any of the Public Improvements, the Developer will insert provisions identical to this paragraph and paragraphs 3(A), 6, 7, 8, 9, 15, 16, 18, 19, 20 and 24, made applicable to any such contractor or subcontractor, in any such Agreements and furnish the Township with a copy of any such Agreements.

2. Developer will deliver to the Township, prior to the commencement of any work in connection with said Public Improvements, the following:

(A) A certificate of insurance certifying that the Developer is insured with an insurance company authorized to do business in the Commonwealth of Pennsylvania for public liability in the minimum amount of \$500,000.00 for personal injury and \$100,000.00 for property damage. The Developer shall accept the provisions of the Workmen's Compensation Act of 1915 ("Act"), as supplemented and amended and will insure liability thereunder, or file with the Township a certificate of exemption from insurance from the Bureau of Workmen's Compensation of the Department of Labor and Industry and/or comply with all requirements of State statutes regarding the providing of Workmen's Compensation. Prior to the execution of this Agreement, the Developer shall deliver to the Township proof that the Developer has accepted the Act and proof that the Developer has insured its liability thereunder in accordance with the terms of the Act, or that the Developer has had issued to it a certificate of exemption from insurance from the Bureau of Workmen's Compensation of the Department of Labor and Industry.

(B) (I) Financial security bond in the amount of One Hundred Ten Percent (110%) of the costs of completion estimated as of 90 days following the date scheduled for completion by the Developer executed by the Developer with an insurance company appearing on the approved surety list of the Commonwealth of Pennsylvania Insurance Department and authorized to do business in the Commonwealth of Pennsylvania, naming the Township as obligee, insuring that the Developer will perform in accordance with the terms of the Agreement and the Ordinances, regulations and requirements of the Township and all applicable governmental entities having jurisdiction with respect to this project in

connection with the construction of Public Improvements; provided, however, that said bond may be obtained and furnished by any contractor naming the Developer and the Township as obligees and further provided that any such bond shall conform in all particulars to the requirements of this Agreement.

(ii) For purposes of this Agreement, the initial amount of financial security must be 110% of \$ \_\_\_\_\_ or the sum of at least \$ \_\_\_\_\_. These amounts do not include the estimated cost of \$ \_\_\_\_\_ for the construction of the sanitary sewer system which is excluded from this Agreement.

(iii) In lieu of a financial security bond, the Developer may post as security a guarantee ("guarantee agreement" in the form attached hereto, issued by a Federal or Commonwealth of Pennsylvania chartered lending institution or bank. Any changes in the form of Guarantee Agreement must be approved by the Township Solicitor. Any terms and provisions in this Agreement referring to a financial security bond shall apply to and govern the Guarantee Agreement.

(iv) Annually, the Township may adjust the amount of the financial security by comparing the actual cost of the Public Improvements, exclusive of the costs of the sanitary sewers, which have been completed and the estimated cost for the completion of the remaining improvements as of the expiration of the 90th day after the date of anticipated completion as estimated by the Township Engineer. Subsequent to said adjustments, the Township may require the Developer to post additional security which equals said 110%. Any additional security shall be posted by the Developer in accordance with this Agreement.

3. If the Developer requires more than one year from the date of posting of the financial security to complete the required Public Improvements, exclusive of the sanitary sewers, the amount of financial security may be increased by an additional 10% for each one-year period beyond the first anniversary date from posting of the financial security but not to exceed 110% of the cost of completing the required Public Improvements, exclusive of the sanitary sewers, as reestablished on or about the expiration of the preceding one-year period by using the above procedure as set forth in section 509(h) of the Pennsylvania Municipalities Planning Code, as amended.

4. Financial security to assure proper completion and maintenance of the sanitary sewer Public Improvements shall be posted in accordance with the regulations of the Authority and is not included within the financial security to be posted with the Township.

5. Developer shall be held responsible for accidents and to the fullest extent permitted by law, Developer shall indemnify, hold harmless and protect the Township and its professional advisors, agents, servants, workmen and employees from and against all suits, claims, arbitrations, actions, damages, losses and expenses, including, but not limited to, counsel fees and expenses, brought by any person, including, but not limited to, employees of Developer or contractors or subcontractors of Developer and for all costs or liability to which Township may be put for any injury or alleged injury including death, to the person or property of another resulting from any act in the performance of the work or defect therein or from condition of the project or from any improper or inferior workmanship, or from inferior or defective materials used in the work referred to herein. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph. Further, Developer expressly understands and agrees that any bond or insurance required by this Agreement, or

otherwise provided by Developer, shall in no way limit the obligation to indemnify and hold harmless the Township as herein provided.

6. Developer agrees that all work to be performed shall be subject to inspection and approval by the Township (or its authorized agents) and that no work shall be covered or concealed unless and until inspected and approved by the Township. In the event any work shall be covered or concealed prior to inspection and approval thereof, the Developer agrees that it will, at the request of the Township, immediately uncover or cause to be uncovered such work at its own expense. In the event the Township determines that any of the Public Improvements have not been completed in accordance with the plans and specifications and all applicable laws, ordinances and requirements of the Township and governmental entities having authority and/or jurisdiction, the Developer agrees to remove or cause to be removed and replaced at its own cost and expense any work disapproved or rejected by the Township as aforesaid.

7. Developer agrees that the Township or its authorized agent(s) shall have the right to enter upon Developer's property at any time without advance notice for the purpose of inspecting the work to be performed hereunder, and in case any work shall be disapproved or rejected by the Township as not having been completed as set forth in paragraph 6 of this agreement and not corrected by the Developer within fifteen (15) days after written notice to do so, the Township shall have the right, at its sole option, to remove and replace said work, and the expense of such removal and replacement shall be charged to Developer and subject to the security referred to in this Agreement. The Developer shall give written notice to the Township Engineer at least 48 hours prior to undertaking the commencement of construction of each phase of the Public Improvements.

8. Developer agrees that there will be no change made in the construction of the

Public Improvements or any deviation from the plans and specifications referred to herein, unless the Township agrees to such change or deviation in writing.

9. (A) Developer agrees that within forty-five (45) days of completion of the construction of the Public Improvements that it will convey to the Township, by instruments approved by the Township, all right, title and interest of the Developer in and to the said Public Improvements, including all necessary rights of way required therefore.

(B) It is strictly understood and agreed that the obligation to furnish these documents of title and rights of way, in recordable form satisfactory to the Township, shall be that of the Developer. All such documents of title and rights of way shall be prepared by Developer and submitted to the Township for approval and recording and Developer shall pay all recording fees therefore.

(C). For purposes of this paragraph, it is understood and agreed that the Public Improvements referred to exclude the sanitary sewers. The sanitary sewers shall be conveyed to the Authority and rights and duties of the Township in this paragraph shall apply to the Authority should the Municipal Authority elect to accept them.

10. Developer agrees that it will, within forty-five days (45) of completion of construction of the Public Improvements, submit to the Township Engineer in a form approved by the Township Engineer, the following:

(A) A certification that all of the work contemplated herein has been completed according to the plans and specifications, and the specific date when it was completed;

(B) An "as-built" plan showing the final location and dimensions of all Public Improvements as actually constructed.

(C). A reproducible tracing of all the Public Improvements constructed.

11. (A) By the execution and delivery of this Agreement, Developer agrees to guarantee and to maintain the structural integrity and all functioning of the work referred

to herein, as well as storm sewer pipe and other materials furnished, for a period of eighteen (18) months from the specific date of completion certified by the Township Engineer. Defects of any kind appearing during this guarantee period shall be forthwith corrected by Developer at its own expense and to the satisfaction of the Township.

(B) To further secure and insure this covenant to maintain the work, Developer shall furnish a maintenance bond in the amount not to exceed fifteen (15%) percent of the actual cost of the installation of said improvements. Any dispute as to the computation of the amount of the maintenance bond or other financial security shall be resolved in the following manner: If the Developer and the Municipality are unable to agree upon an estimate, then the estimate shall be recalculated and recertified by another professional engineer licensed as such in this Commonwealth and chosen mutually by the Municipality and the Developer. The estimate certified by the third engineer shall be presumed fair and reasonable and shall be the final estimate. In the event that a third engineer is so chosen, fees for the services of said engineer shall be paid equally by the Municipality and the Developer. The maintenance bond or other financial security shall be issued by the insurance company authorized to do business in the Commonwealth of Pennsylvania or by a Federal or Commonwealth of Pennsylvania chartered lending institution or bank. The bond or other financial security shall guarantee to maintain the stability of the work, as well as the storm sewer pipes and other materials furnished, for a period of eighteen (18) months from the date of acceptance of the dedication.

12. Developer agrees that prior to making any sewer connection to any premise, improvement, structure or structures erected or to be erected in the development that it will submit or cause to be submitted a written application on forms provided by the Authority requesting sewer service connection and will obtain the approval of both the Township and the Authority.

13. (A) Township agrees upon the delivery to it of all the required documents certifying completion of the construction of the Public Improvements as set forth herein, and the necessary conveyance of title, rights of way and maintenance bond (insuring all Public Improvements), that it will promptly accept by Resolution the Public Improvements, except the sanitary sewers, and operate and maintain the same as part of its own system; provided, however, that the following provisions also be met:

(i) The streets and roads built by the Developer within the subject Plan of Lots shall be constructed in accordance with the plans, specifications and Township Ordinances. The final wearing course to be added only when at least 95% of all lots have been developed. The Township is not required to accept streets/roadways until the 95% build out is complete.

(ii) Sufficient funds shall be reserved pursuant to the attached Guarantee Agreement to pay for the construction of the final wearing course and the required maintenance bond or security. Any dispute as to the computation of the amount of the maintenance bond or other financial security shall be resolved in the following manner: If the Developer and the Municipality are unable to agree upon an estimate, then the estimate shall be recalculated and recertified by another professional engineer licensed as such in this Commonwealth and chosen mutually by the Municipality and the Developer. The estimate certified by the third engineer shall be presumed fair and reasonable and shall be the final estimate. In the event that a third engineer is so chosen, fees for the services of said engineer shall be paid equally by the Municipality and the Developer.

(iii) Upon final approval of the final wearing course by the Township Engineer, a maintenance bond or other acceptable security shall be provided to the Township, the duration of such security being eighteen (18) months

from the date of final approval of the final wearing course by the Township Engineer.

(B) In the event the Township determines that any of the Public Improvements have not been completed in accordance with the plans and specifications and all applicable laws, ordinances and requirements of the Township and governmental entities having authority and/or jurisdiction, it shall forthwith set forth any objections thereto in detail and in writing to the Developer. Until the work is completed to the Township's satisfaction, the Township has no obligation to accept the aforementioned Public Improvements.

14. It is specifically understood and agreed that the execution and delivery of the Agreement is contingent upon the Developer complying with all Ordinances and Resolutions of the Township and the Rules and Regulations of the Authority with respect to the construction of the Public Improvements. It shall be the responsibility of the Developer to obtain, at its sole cost and expense, copies of any such Ordinances, Resolutions and Rules and Regulations and to follow and comply with the same. However, the Township will provide written notice to the Developer of any changes to any such Ordinances, Resolutions and Rules and Regulations which affect this subject development.

15. Developer acknowledges that this Agreement and Developer's rights hereunder are specifically limited to the facilities referred to in the drawings referred to above and specifications. In no event shall Developer make additional Public Improvements without first presenting the Township all requested data, plans and specifications with respect thereto and obtaining from the Township written approval and, where required, appropriate permits.

16. By execution of this Agreement, the Township does not warrant or represent that sufficient capacity exists in any public sanitary sewers to which the sewers in the

plan of the Developer will connect. If and when a permit has been issued by the Pennsylvania Department of Environmental Protection for the construction of sewer extensions to sewer the project, the Developer may apply to the Authority for a certain number of sewer connection permits to the sanitary sewer system.

17. Developer shall begin construction of the Public Improvements within sixty (60) days after receipt of the required Pennsylvania Department of Environmental Protection permits. The construction of the Public Improvements shall be completed no later than one (1) year from the date of final approval of the plan of the subject development by the Township except as otherwise provided in writing by the Township.

18. The Developer at all times shall observe and comply with all federal and state laws and regulations, and local Ordinances and regulations in any manner affecting the conduct of the work or applying to employees on the project, as well as all safety precautions and orders or decrees which have been promulgated or enacted, or which may be promulgated or enacted, by any legal bodies or tribunals having authority or jurisdiction over the work, materials, equipment, employees or the contract; such observance and compliance shall be solely and without qualification the responsibility of the Developer without reliance on direction by the Township or Municipal Authority. The duty of enforcement of all said laws, ordinances, regulations, orders of decrees lies with the body or agency promulgating them.

19. Each and every provision of law and clause required by law, as well as rules and regulations required by regulatory bodies, to be inserted in the Agreement, shall be deemed to be inserted herein and the Agreement shall be read and enforced as though it were included herein.

20. Nothing contained in the Agreement shall in any manner create any liability against the Township on behalf of any claimant for labor or materials, and nothing herein contained shall affect the liability of the Developer or its sureties to the Township

or to any workman or materialman upon any bond given in connection with this agreement.

21. As used in this Agreement, the “Developer” shall include the Developer and any contractor, subcontractor, agent, servant, consultant, business professional and the like.

22. If any steel or cast iron products (hereinafter collectively referred to as “steel products”) are to be used or supplied in the performance of the Agreement as to Public Improvements to be taken over by the Township, only steel products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed, or processed by a combination of two or more of such operations, from steel made in the United States by the open hearth, basic oxygen, electric furnace, Bessemer or other steel making process and shall include machinery and equipment listed in United States Department of Commerce Standard Industrial Classification 25 (furniture and fixture), 35 (machinery, except electrical) and 37 (transportation equipment) and made of, fabricated from, or containing steel components. Upon request of the Township, Developer shall provide documentary proof that the steel products, if any, used in the project comply with the requirements of the Agreement and the Steel Products Procurement Act of the Commonwealth of Pennsylvania.

23. (A) The Developer shall pay any fees and costs, incurred or to be incurred by the Township for the reasonable and necessary expenses including, but not limited to, the fees charged the Township by its Engineer, for the inspection of the Public Improvements and fees charged the Township by its Solicitor for the negotiation and preparation of this and other Agreements connected with this Development. Such expenses shall be reasonable and in accordance with the ordinary and customary fees charged by the Township Engineer and/or Solicitor for work performed for similar services to the Township and in no event shall the fees exceed the rate or cost charged

by the Engineer and/or Solicitor to the Township when the fees are not reimbursed or otherwise imposed on developers. Payments shall be made to the Township within thirty (30) days from the date invoices are rendered to the Developer, unpaid invoices bearing a service charge of one percent (1%) per month.

(B) As security for the foregoing obligations, the Developer shall, prior to the commencement of construction, deposit with the Township the sum of \$\_\_\_\_\_ which the Township estimates to be the cost of the foregoing services; provided, however, that the Township shall credit to this account the amount remaining of said sum after all grading inspections have been concluded, previously advanced to the Township by the Developer for grading inspections. The Township shall hold said sum in an interest bearing escrow account at Pittsburgh National Bank. Interest earned on said account shall be credited to the escrow account. The Township shall pay for services against invoices submitted to it for the performance of such services, including, but not limited to, services of its own personnel. A copy of the invoice, when presented, shall be forwarded to the Developer. In the event said escrow account, plus accrued interest, is deemed by the Township in its sole judgement to be insufficient to pay the aforesaid obligations, the Developer shall post additional security in an amount deemed fair and reasonable by the Township for the purposes of paying for the services in the manner aforesaid. Upon acceptance of dedication of the Public Improvements, any unexpended funds in the escrow account, together with unexpended interest, shall be returned to the Developer.

(C) The Township shall not accept dedication of any Public Improvement until such fees and costs are paid or until any dispute with respect thereto is resolved pursuant to section 510 of the Code and the amount determined thereby is paid.

24. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

25. Execution of the Agreement by the Township is not and may not be construed as the Township's approval of the final plans for this project. Such approval is dependent, inter alia, upon the Developer's compliance with the applicable provisions of Chapter 22 of the Township of North Strabane Code of Ordinances and the approval by the Authority of the plans and specifications for the sanitary sewer Public Improvements, provisions for the dedication and acceptance thereof and the posting of any security that may be required.

26. If the plan calls for any offsite improvements, the following provisions shall apply:

(A) Developer shall deliver to the Township an irrevocable letter of credit issued by an Federal or Commonwealth of Pennsylvania chartered lending institution or bank, said letter of credit in the amount of \$ \_\_\_\_\_ which sum shall be expended on the following projects only:

(B) The Township will expend the monies in the letter of credit referred to above only for the improvements mentioned herein or for improvements reasonably related thereto. Any monies remaining in the said letter of credit after the completion of the said projects will be released to the Developer.

(C) The letter of credit shall remain in effect until one year after final inspection by the Township Building Inspector of the last unit or dwelling in the subject development but shall not exceed seven years from the date of its issuance. All improvements to the intersection shall be substantially completed within one year after final inspection. The Developer shall increase the amount of the letter of credit annually (or provide acceptable alternate security) by the percentage increase, if any, of the Construction Cost Index as published by

the Engineering News Record. The base from which changes in the Construction Cost Index are to be computed is the construction Cost Index for August 1997.

(D) The Developer expressly agrees to the provision of this paragraph 26 and waives any and all claims, rights and causes of action it may have by virtue of Act 209 of 1990.

27. If any provision of the Agreement, for any reason, is held invalid, unenforceable, illegal or unconstitutional, such invalidity, unenforceability, illegality or unconstitutional provision had never been contained therein.

28. This Agreement may be amended only by a document in writing signed by the parties hereto. This Agreement shall be construed according to the laws of the Commonwealth of Pennsylvania.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

ATTEST:  
\_\_\_\_\_  
(SEAL)

TOWNSHIP OF NORTH STRABANE

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DEVELOPER

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WITNESS

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\_\_\_\_\_  
WITNESS

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