

## Development Improvement Agreement

**THIS AGREEMENT**, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

by and between \_\_\_\_\_, (hereinafter either the "Landowner" or the "Developer"), and

\_\_\_\_\_, Montour County, Pennsylvania, (hereinafter "Mahoning Township");

### WITNESSETH

**WHEREAS**, the Landowner is the owner of certain real property as recorded by deed in the land records of Montour County, Pennsylvania, Deed Book \_\_\_\_ at Page \_\_\_\_\_, (hereinafter "Property").

**WHEREAS**, the Landowner is proceeding to build and develop the Property (hereinafter "Developer's Plan"); and

**WHEREAS**, the development will occur as shown on the approved plot plans and that improvements will be installed in accordance with the plans, specifications and schedules approved by the Township Supervisors;

**NOW, THEREFORE**, the in consideration of the foregoing promises, the mutual covenants contained herein, and the following terms and conditions, the parties hereto agree as follows:

1.     Improvement Completion:

The Developer, at its own cost and expense, shall proceed to perform and complete all improvements required by the Developer's Plan, subject to the review and recommendation for approval of the Plans and Specifications by the Township Engineer. A copy of the Developer's Plan as is attached hereto as Exhibit "A".

2.     Financial Security to Guarantee Improvements.

Township and Developer agree that Developer may proceed with the construction of the required improvements, in accordance with the Developer's Plan, which was approved with conditions, with the express understanding and agreement of Developer that no occupancy permit shall be requested or issued prior to final plan approval of Developer's Plan and Developer shall not schedule a final inspection until final plan approval has been obtained.

While Developer has decided to proceed with the construction of the improvements prior to final plan approval under Developer's Plan as approved a with conditions, in lieu of

the completion of the improvements required as a condition for the final approval of the Developer's Plan, should the Developer subsequently decide to seek final plan approval prior to the completion of all required improvements, the Developer may opt to seek final plan approval prior to completion of all required improvement in which case Developer shall be required to provide for deposit with the Township, financial security (consistent with Section 509 of MPC) in an amount sufficient to cover the costs of any improvement including, but not limited to, roads, stormwater facilities, utilities, and other related facilities. Such Bond, or other security shall provide for, and secure to the public, the completion of the improvements within one (1) year of the date fixed in the Subdivision or Land Development plan for the completion of such improvements. The amount of financial security shall be equal to one hundred ten percent (110.00%) of the cost of the required improvements for which financial security is to be posted which cost shall reflect Pennsylvania Prevailing Wage requirement to the full extent applicable. The cost of the improvements shall be established by the submission to the Township and the Township Engineer of an estimate prepared by the Developer's Engineer, subject to review and comment by the Township Engineer and approval by the Township. The amount of the Bond or other security required by the Township would have to be approved by the Township Engineer. A revised development improvement agreement would be required in the event Developer decided to proceed in this manner.

3. Inspection and Approval of Facilities.

A) The Township, Mahoning Township Zoning Officers, the Township Engineer, and the Developer shall agree upon a notification procedure and a schedule of field inspections to be made during construction and upon completion of all improvements.

B) Upon completion of the improvements, the Developer shall give notice to the Township and the Township Engineer, in writing, to inspect the improvements. The Township and Township Engineer shall inspect the improvements within fourteen (14) calendar days, and the Township shall approve same if they are completed in accordance with the Subdivision or Land Development Plan and acceptable engineering practices. If the Township disapproves, then the Township shall notify the Developer promptly. If the Township does not approve or disapprove the improvements within forty-five (45) days after written notification of completion by the Developer, then in such event, the improvements shall be deemed approved.

4. Reimbursement of Review and Inspection Costs.

A) Developer agrees to reimburse the Township for Engineering services necessitated by the review and approval of the Developer's Plan, and necessitated by the review and inspection of all required improvements and all associated expenses, at the rate accepted by the Township on an annual basis for work done by Township Engineer plus associated itemized expenses, where applicable. It is agreed that the Township Engineering

services shall be payable by the Developer within fourteen (14) calendar days after date of invoice and prior to release of financial security and prior to occupancy.

B) Where applicable, Developer agrees to reimburse the Township for Solicitor services necessitated by the review and approval of the Developer's Plan and necessitated by the review of all required Bonds or security, etc. at the rate accepted by the Township on an annual basis for work done by Township Solicitor plus associated itemized expenses, where applicable. It is agreed that the Solicitor's services shall be payable within fourteen (14) calendar days after date of invoice and prior to the release of financial security and prior to occupancy.

5. Developer to Pay Filing Fees.

Developer further agrees to reimburse the Township for the required filing fees in the amount set for any such filing fees and/or services. Developer shall record all approved plan drawings.

6. Additional Requirements. Developer shall

A) Restrict access to South Academy Drive (specifically the Blizzards Run Crossing) to weighted construction traffic (deliveries, larger equipment, specialized machinery).

B) Supplement construction costs that exceed the grant secured by Mahoning Township for the intersection modernization at Bloom Road & Academy Avenue.

C) Obtain will-serve letters from public utilities, including water, sewer, and electric.

D) Continue to comply with all federal, state, and local requirements for the implementation of Developer's Plan, including, but not limited to Article VI Chapter 211-38 and 211-41 of the Subdivision and Land Development Ordinance, Mahoning Township's ordinances, and all other state and federal law.

7. *Financial Security to Secure Structural Integrity.*

If and when the Township accepts dedication of all or some of the required facilities following completion, the Developer shall post financial security to secure the functioning and structural integrity of said facilities as well as the functioning of said facilities in accordance with the design and Specifications as depicted on the Subdivision or Land Development Plan acceptable to the Township and in an amount equal to fifteen percent (15.00%) of the actual cost of installation of said facilities for a term not to exceed eighteen (18) months from the date of acceptance of dedication.

8. Developer to Provide "As-Built" Drawings.

Upon request of the Township or the Township Engineer, the Developer shall, upon completion of installation and construction of a required improvement, submit "As-Built" drawings for all completed site improvements and said "As-Built" drawings shall be certified and sealed by a Professional Engineer or Professional Land Surveyor as permitted by law.

9. Release of Liability.

Developer hereby agrees to indemnify, defend and hold harmless Township, its successors and assigns and its agents, servants, independent contractors, and employees from any and all actions, claims or demands, arising from or by virtue of this Agreement and the installation of required or promised facilities as provided herein.

Nothing in this Agreement shall be construed as approval by the Township or its agents, servants, independent contractors or employees of the adequacy or fitness of purpose or intended use of the facilities depicted upon the Plans and supporting documentation submitted to the Township, it being agreed that the Township's approval constitutes no more than its acknowledgement that minimum standards of the Township's Subdivision and Land Development Ordinance have been met.

10. No Offer of Dedication.

Nothing in this Agreement shall be construed as an offer by the Developer to dedicate any improvement to the Township and nothing herein shall be deemed to be an acceptance of an offer of dedication. In the event the Developer, or Developer's heirs, administrators, successors or assigns, offer to dedicate an improvement to the Township, there shall be no payment or compensation of any kind paid to the Developer or Developer's heirs, administrators, successors or assigns, and this Agreement shall constitute a full and complete release from any such claim or demand for payment. Developer shall bear all of the Township's costs incidental to the dedication of a required improvement. Nothing herein shall, however, require the Township to accept dedication of any improvements which may be required by the Township as a condition for approval of the Subdivision and Land Development Plans.

11. Default.

If the Developer fails or neglects to do or perform or observe any of the covenants contained herein, and such failure or neglect continues for a period of not less than thirty (30) calendar days after the Township has notified Developer in writing of Developer's default

hereunder, and Developer has failed to correct such default within fifteen (15) calendar days, or if Developer shall be declared to be bankrupt or insolvent according to law, or if any assignment of Developer's property shall be made to the benefit of Creditors, then in any such case or event, the Township may, at its option, immediately or at any time thereafter without demand or notice, declare this Contract to have been breached and exercise Township's remedies in law or equity, and simultaneously therewith to exercise its right under the Improvement Guarantee to complete such work or as much thereof as may be completed from the available resources of the Improvement Guarantee. The Township's exercise of its rights under the Improvement Guarantee shall not prohibit the Township from pursuing its rights under this Agreement and such remedies as are available pursuant to the Municipalities Planning Code, it being agreed that those rights are cumulative and not exclusive.

Upon default of this Agreement, the Township shall automatically be entitled to draw funds from the Bond or other posted security by providing written notice to Developer and the entity responsible for the Bond or other posted security demanding the same for purpose of completing the improvements of the Subdivision or Land Development Plan as approved by the Township. Any request by the Township shall be honored regardless of any objections which would be made by the Developer or any third party even if said objections indicate that no defaults have arisen therein, or if defaults are found to exist, that the same have been corrected.

12. Legal Fees.

In the event any action, suit or proceeding is brought by the Township against the Developer for Developer's failure to observe any of the covenants of this Agreement, Developer agrees to pay to the Township any and all reasonable Attorney fees and costs which may be incurred in said suit, action or proceeding.

13. Third Parties to Benefit.

This Agreement shall inure to the benefit of the Grantees, Lessees and Licensees of the Developer provided, however, in no event may such third party beneficiary, alone or together, bring action for breach of this Agreement without the prior written approval of the Township.

14. Non-Assignable by Developer.

Developer shall not transfer or assign this Agreement without the prior written consent of the Township.

15. Entire Agreement, Merger and Integration.

The parties do hereby covenant and warrant that this Agreement contains all of the representations, promises and agreements made by either of them to the other for the purposes set forth in the Preamble hereinabove; that there are no claims, promises or representations not herein contained, either oral or written, which shall or may be charged or enforced or enforceable unless reduced to writing and signed by both of the parties hereto.

16. Modification or Waiver of Terms.

The failure of either party to insist upon strict performance of any of the provisions of this Agreement shall not be construed as a waiver of any subsequent default of the same or similar nature.

17. Agreement Binding on Successors.

The terms, provisions and conditions of this Agreement shall be binding upon any and all of the heirs, executors, administrators, legal representatives, successors or assigns, of either of the respective parties hereto, except as otherwise herein provided.

18. Applicable Law.

This Agreement shall be construed under the laws of the Commonwealth of Pennsylvania.

This Agreement may, at the election of the Township, be recorded at the Office of the Recorder of Deeds of Montour County, Pennsylvania, and shall constitute a covenant running with the Property and/or equitable servitude, and shall be binding on the Developer, its administrators, executors, assigns, heirs and any other successors in interests, in perpetuity.

*[signature pages and Exhibit A to follow]*

ATTEST:

*IN WITNESS WHEREOF*, the parties have set their respective hands and seals hereto the date and year first above written.

ATTEST:

TOWNSHIP OF MAHONING

\_\_\_\_\_  
Secretary

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

COMMONWEALTH OF PENNSYLVANIA :

:

COUNTY OF \_\_\_\_\_ :

I, \_\_\_\_\_, a Notary Public in and for the County and State aforesaid, whose commission expires on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, do hereby certify that \_\_\_\_\_ whose name(s) is/are signed to the foregoing Agreement bearing date of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, has acknowledged the same before me in my said County and State.

GIVEN UNDER MY HAND THIS \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

(SEAL)

ATTEST:

LANDOWNER / DEVELOPER

\_\_\_\_\_  
Name:  
Title:

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

COMMONWEALTH OF PENNSYLVANIA :  
:  
COUNTY OF \_\_\_\_\_ :

I, \_\_\_\_\_, a Notary Public in and for the County and State aforesaid, whose commission expires on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, do hereby certify that \_\_\_\_\_ whose name(s) is/are signed to the foregoing Agreement bearing date of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, has acknowledged the same before me in my said County and State.

GIVEN UNDER MY HAND THIS \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

(SEAL)