

DEVELOPER'S AGREEMENT

**THIS DEVELOPER'S AGREEMENT entered into
this ____ day of ____, 2008
by and between**

**SUMMIT TOWNSHIP
Erie County, Pennsylvania
8900 Old French Road
Erie, Pennsylvania 16509
(hereinafter "Township")**

- a n d -

(hereinafter "Developer")

Project Name

Purpose

County Index Number

Size of Development

Responsible Party

Address

Telephone Number

Fax Number

Email Address

Date

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RECITALS:

- A.** It is the function of Township to protect public and other property, to control the development of Township under the laws of the Commonwealth of Pennsylvania and its Ordinances, Resolutions and Regulations and to prevent the creation of health and safety hazards or conditions; and
- B.** Developer desires to develop land in Summit Township for the purpose stated on title page and to be known as the Project stated on the title page (hereinafter referred to as "the development").
- C.** Developer desires to develop the aforesaid development in compliance with all Pennsylvania law, applicable Township ordinances, resolutions and codes and in accordance with the terms of this Agreement; and
- D.** Developer agrees that it will construct at its own cost and expense including, but not limited to, engineering, inspection and legal fees incurred by the Township, directly related to all those public and other improvements as identified in the approved plan; and
- E.** Developer agrees to deposit with Township, as financial security, the amount recommended by the Township Engineer and approved by Township Supervisors for all improvements in the form of cash, irrevocable letter of credit, escrow account or bonds from a bonding company or lending institution authorized to conduct such business in the Commonwealth of Pennsylvania; and
- F.** Developer desires, irrespective of the applicable land use or subdivision ordinance of Township, other laws of Township, the County of Erie, the Commonwealth of Pennsylvania and the United States of America, to be bound by the terms of the within Agreement.
- G.** The parties desire to memorialize their understanding by entering into this binding, legal agreement; and

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

ARTICLE I - DEFINITIONS

- Section 1.01 Financial Security.** Financial security will be in the form of cash, irrevocable letter of credit, escrow account, or bonds from a bonding company or lending institution authorized to conduct such business within the Commonwealth of Pennsylvania, naming Summit Township, its officers, agents and employees as obligee in an amount equal to 110% of the cost of completion of all public and other improvements.
- Section 1.02 Maintenance Agreement.** Maintenance security will be in the form acceptable to the Township as set forth in Section 4.02
- Section 1.03 Other Improvements.** Other improvements will be all those improvements required by Township ordinances including, but not limited to, planting, grading, drainage, storm water retention/detention, paving, landscaping, lighting and traffic control signage and devices, whether such improvements are located on developer's property or on contiguous streets or rights-of-way.
- Section 1.04 Public Improvements.** Public improvements will be all those improvements to be conveyed or otherwise dedicated to the Township or other public body for public use.
- Section 1.05 Schedule of Values.** An estimate of the cost to complete required improvements or common amenities including, but not limited to, roads, stormwater detention (and/or retention basins and other related drainage facilities), water, sanitary sewers and buffer or screen plantings as may be required. Said schedule of values to be submitted by the applicant or developer, prepared by a professional engineer licensed as such in the Commonwealth of Pennsylvania, and certified by such engineer to be a fair and reasonable estimate of such cost.

ARTICLE II - PREDEVELOPMENT PHASE

- Section 2.01 Preliminary Plan.** Developer has heretofore, or will upon execution of this Agreement, submit a sketch or preliminary plan to Township, the Summit Township Planning Commission and the Erie County Department of Planning, which plan shall be attached hereto as Exhibit "A".
- Section 2.02 Land Operations Permit.** The Developer will not start any site preparation activities, including clearing, grubbing, grading, burning or the like until a Land Operations Permit has been issued by Township.
- Section 2.03 Compliance.** Developer covenants, promises and agrees to build, construct and install all improvements in accordance with the rules, regulations and specifications of Summit Township in existence on the date of this agreement.
- Section 2.04 Project Completion.** Construction of all improvements will be completed within twelve (12) months of issuance of the building Permit. The completion date will extend automatically for an additional twelve (12) month period, provided no uncured violations exist.
- Section 2.05 Sewer Planning Module.** Developer will submit to Township a sewage facilities planning module for revision to the official sewage facilities plan of Township, which must include at a minimum a sketch plan indicating salient existing features of the tract and the general layout of the proposed development. Developer will submit, at its sole cost, sufficient data and information, including a sewer facilities planning module application package, to permit Township or its authorized representative, as permittee, to apply to the Department of Environmental Protection, Commonwealth of Pennsylvania ("DEP") for all necessary permits and approvals for the construction of a sanitary sewage system. Developer will not commence construction of the system until all necessary permits and approvals have been received from DEP. Developer agrees that the final plan of development will not be approved by Township until DEP approval of such revision has been secured.
- Section 2.06 Water Authority and Sewer Authority Compliance.** Developer will provide to Township certificates of the Summit Township Sewer Authority and Summit Township Water Authority acknowledging compliance with all of their respective rules and regulations prior to the issuance of any building permit by Township.
- Section 2.07 Transportation Plan.** Developer agrees, covenants and promises to comply with the Township's comprehensive plan and, in particular, the Transportation Plan in constructing the development and any future developments on Developer's parcel, it being specifically understood that the proposed development will, in all respects, be in accordance with the Transportation Plan of Township as now existing or as may be amended pursuant to Developer's request.
- Section 2.08 Greenspace.** Developer agrees, covenants and promises to comply with the

Greenspace Ordinance of Summit Township as now existing or as may be amended pursuant to Developer's request.

Section 2.09 Storm Water Management. Developer agrees, covenants and promises to comply with all regulations, approvals and specifications and Acts promulgated by the United States of America, the Commonwealth of Pennsylvania, Erie County and Township with regard to storm water management.

Section 2.10 Burning. Developer agrees, covenants and promises to comply with the Burning Ordinance of Township and will apply for a permit in accordance with the terms thereof and will also be in conformity with the rules and regulations of the Department of Environmental Resources, Bureau of Air Quality. Permit fees for burning operations will be the responsibility of Developer in accordance with the amounts established by the Township Fee Resolution as amended from time to time by Township.

Section 2.11 Fire Hydrants. Developer agrees that Township will have the sole right to determine and approve the location and number of fire hydrants it deems necessary for the protection of development. All costs and expenses relating to the installation of said fire hydrants will be borne by Developer.

Section 2.12 Costs. Developer will, upon initial submission of any application to develop property in Township but no later than upon execution of this Agreement, deposit a sum of money in accordance with the Township Escrow Deposit Resolution in effect at the time of application. From this amount will be deducted any documented fees incurred by the Township as a result of the development including, but not limited to, application fees, engineering or consulting fees, engineering inspection fees and legal fees. If at any time during the progression of development, it is determined by Township, in its sole discretion, that the balance available is, or will be, inadequate to fully cover anticipated costs, Developer will be notified of the amount of additional deposit required.

Developer will remit such additional deposit within ten (10) days of notification. Developer's failure to pay the additional deposit within such ten (10) day period will cause immediately suspension of review and/or issuance of any and all permits and/or revocation of existing approvals and permits. The balance of the deposit will be returned to Developer, upon written request, after the completion of development, dedication and acceptance of all public improvements and the release of the maintenance security required in Section 4.02.

Section 2.13 Final Plan Approval. Developer will submit its final plan of development and plat for approval to Township with all the appropriate signatures for recording with the Recorder of Deeds of Erie County, Pennsylvania. After Township review for compliance with any and all Township requirements and conditions of approval, the plat shall be recorded at Developer's cost.

Prior to recording the plat, Developer will install all and other improvements in accordance with the approved plan and all Ordinances of Township or provide

financial security for the completion thereof.

Section 2.14 Financial Security. In lieu of completion of all and other improvements as required for final approval of the plan, Developer will provide to Township financial security in amounts sufficient to cover the cost of such improvements, as noted in Recital E. Such financial security will be posted in cash or with a bonding company or federal or state chartered lending institution authorized to conduct business within the Commonwealth of Pennsylvania and in accordance with Section 1.01 hereof. The Township may adjust the amount of financial security by comparing the actual cost of improvements which have been completed and the estimated costs of the completion of the remaining improvements as of the expiration of the 90th day after either the original date scheduled for completion or rescheduled date for completion. Subsequent to said adjustment, Township may require Developer to post additional security in order to insure that financial security equals 110%.

If Developer requires more than one (1) year from the date of posting of financial security to complete the required improvements, 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 such financial security or to an amount not exceeding 110% of the cost of completing the projects using the aforesaid method.

The amount of financial security required will be based upon an estimate of the cost of completion of the improvements prepared by a professional engineer licensed as such in the Commonwealth of Pennsylvania, retained by Developer, certified by such engineer to be a fair and a reasonable estimate of such cost and acknowledged as such by Township's engineer. Irrespective of the above, Township may establish the amount of financial security required, based upon the recommendation of Township's engineer.

Financial security may be released only upon written request from Developer upon completion of improvements, certified by Township Engineer as complete.

If Developer is unable to complete the improvements identified in the approved plan of development by the date determined in accordance with Section 2.04 hereof, Township may, in its sole discretion, seize the financial security or grant an extension thereto. If Township grants such an extension to the time for completing such improvements, Developer will secure an extension to the expiration of financial security, which extension will be for not less than ninety (90) days.

ARTICLE III - DEVELOPMENT PHASE

Section 3.01 Erosion and Sedimentation Controls. All erosion and sedimentation controls will be installed in accordance with the approved plan prior to any other construction activities occurring at the development. The erosion and sedimentation controls will be properly maintained throughout the duration of the development until all disturbed areas have been stabilized to the satisfaction of Township engineer, in his sole discretion.

Section 3.02 Installation of Utilities. Developer will, in accordance with appropriate subdivision and land development ordinances and regulations, install all utilities, including sewer, water, gas, electric, telephone, cable TV, if available, and such other utilities to service the development. All utility cuts necessary for installation of service lines within street rights-of-way must be made prior to the installation of the base material for any such paving.

Section 3.03 Construction of Improvements. Developer covenants, promises and agrees to build, construct and install all improvements including, but not limited to, paving, grading, roads, storm water facilities, sidewalks, landscaping and lighting in accordance with the provisions adopted by Resolution and Ordinance or accepted as commonly used guidelines or provisions of Township in effect at the time of final plan or final phase approval. All improvements in the development will be constructed and installed in accordance with Township specifications and Ordinances and must be certified as such by Township engineer.

Section 3.04 Dedication and Conveyance of Public Improvements. Developer will offer for dedication all proposed public improvements accompanied by legal descriptions, as built mylars and executed deeds of dedication. The Township will not accept a request for dedication prior to completion of the entire development. Developer acknowledges and agrees that all costs of constructing such dedications will be borne by Developer. Developer will submit to Township a detailed and specific plan regarding the construction of such roadway. Said plan will address and include, by way of illustration but not by way of limitation, provisions for storm water drainage, including surface and subsurface, depth of road surface and subsurface and location of utility lines. Said plan must be approved by Township prior to Developer's commencement of any work. Developer agrees to construct said roadway according to the approved plan. Any changes to said plan must be approved by Township.

Section 3.05 Damage to Existing Roadways. Developer, its contractors, subcontractors and builders will keep all public roads, other drives and highways used by vehicles entering and leaving the construction site in good repair and free and clear of mud and dust. Additionally existing draining patterns on such roadways must be maintained. If such damage occurs to such roads, drives and highways, Developer will be responsible for the cost of any replacement, repair or additional maintenance that may be required. Developer will, within five (5) business days after notification from Township, deposit with Township sufficient amounts to cover the cost of such replacement, repair or additional maintenance. Developer will keep all roads clean of mud and dirt. After notification the Developer will clean roads immediately. If Public roadways are not kept clean Developer will pay penalty of \$100.00 per day after written notification is given. All penalties will be deducted from Escrow Account. It is Developers responsibility to police all employees and contractors, for the protection of Public Roadways, working on site.

Section 3.06 On Site Dust Control. Developer will employ such controls as may be reasonably necessary, under the circumstances, to keep dust to a minimum.

Section 3.07 Police Area. During construction Developer will police the construction area daily keeping the same free and clear of all rubbish, refuse, brush, debris and discarded building materials so as not to create a public nuisance. Developer may accumulate such materials in the area approved by Township until such time as accumulated matters are removed from site by Developer, provided that Township, in its sole discretion, may require the removal of any such material by written communication indicating the reasons therefore at any time during development. Developer will remove from site and dispose all rubbish, refuse, brush, debris and discarded building materials leaving the development free and clear of the same prior to the release of any remaining financial security or final acceptance of any public improvements.

Section 3.08 Infiltration of Sewer System. Developer covenants, promises and agrees that no storm water, roof run-off, drainage or the like will infiltrate the sanitary sewer system servicing the development. Violation of this covenant will result in the immediate automatic revocation of any and all approvals and permits covering the development. Reinstatement of said permits and approvals may be granted by Township when Developer has sufficient guarantee to protect Township from any and all fines for infiltration of storm water.

Section 3.09 Hauling Over Weight-Restricted Roads. Prior to construction Developer will make arrangements necessary in order to comply with all requirements and regulations in effect at the time of final plan approval with respect to hauling equipment and building materials over weight-restricted roads. Said requirements and regulations may include, but not limited to, fees and/or bonding requirements.

Section 3.10 Hours of Operation. Developer will not permit any grading, construction or other physical work to be conducted on the site between the hours of 10:00 p.m. and 6:00 a.m. without written permission from Township.

Section 3.11 Inspections. Developer hereby specifically grants permission to Summit Township, its supervisors, employees, agents, contractors or consultants to conduct inspections on its property. These inspections may take place at any time and with any frequency as Township deems appropriate and necessary under the circumstances.

Section 3.12 Snow Removal and Ice Control. Developer will be solely responsible for providing snow removal and ice control on all streets within the development whenever a structure is occupied until Township accepts said streets by way of deeds of dedication or otherwise. Developer may enter into a separate legally binding agreement with Township for snow removal and ice control. It will be the sole responsibility of Developer to contact the appropriate Township official in order to execute the appropriate agreement for snow removal and ice control. All costs and fees incurred by Township in the preparation of the agreement will be borne by Developer. If Developer elects not to enter into an agreement for snow removal and ice control with Township, Developer will provide for the same at its sole cost and expense and such removal and control will be consistent with those techniques normally used by Township.

Section 3.13 Identification of Traffic Control Signage. Developer will, prior to the issuance of any occupancy permit for any structure in the development, install any and all identification and traffic control signage. Developer will submit to Township a traffic circulation plan identifying all proposed identification and control signage. Accompanying the circulation plan, the Developer will submit a traffic engineering study for all proposed control signage. The proposed circulation plan and accompanying engineering studies will be reviewed and recommended by Township's engineer to Township and must be approved by Township prior to the installation of any signage and/or occupancy of any structure.

Section 3.14 Off Street Parking. During construction of any and all phases, parking for vehicles related to construction activities will be arranged so as not to create a potential traffic hazard and must be off street. On street parking will be permitted only during the time of preparation of an off site parking area, provided, however, that a minimum of 15 feet of right-of-way must be remain unobstructed at all times. After notice of violation and second violation occurs Developer will pay penalty of \$25.00 per day to be deducted from escrow fund.

ARTICLE IV - POST DEVELOPMENT PHASE

Section 4.01 Maintenance of Detention System. Developer will be solely responsible for the maintenance of any required detention system. Developer is hereby permitted to transfer title to commonly shared detention systems upon submission and approval of legal documentation as to who will retain ownership and maintenance responsibilities for such system. Such legal documentation so specifically identified in the manner in which the system will be maintained, providing for inspections of the same and will indemnify the party or parties who cause such maintenance to be affected. The transfer of common detention systems may include, but not be limited to, transfer to home owner groups of residential subdivisions and/or groups of property owners on commercial sites. Such documentation will also include provisions for municipal intervention in the event the responsible party or parties fail to maintain the system and provide for the assessment of fees related to the cost of such maintenance.

Section 4.02 Maintenance Agreement. This only applies when developer conveys Public Improvements to Township. Township will not accept dedication of public improvements by Developer until Developer enters into the Township's Road Maintenance Agreement to ensure structural integrity of said improvement, as well as the functioning of said improvements in accordance with their design and specifications, for a period of eighteen (18) months from the date of acceptance of dedication. Developer hereby agrees, covenants and promises to make such replacements, repairs and maintenance within reasonable notice from Township to Developer. Failure to make such replacements, repairs or maintenance within a reasonable time after such notice shall be a default upon which Township may make such repair, replacement and maintenance. Notwithstanding any of the foregoing, in the event of an emergency, as determined by Township in its sole discretion, Township may perform such repair, replacement and maintenance required to correct the emergency situation. Township shall notify developer of such emergency as soon as practicable. Developer shall reimburse Township for all costs incurred for such repair, replacement, and/or maintenance within fifteen (15) business days of invoicing. If Developer fails to reimburse Township within fifteen (15) business days after written notification from Township then Township may pursue appropriate legal remedies.

ARTICLE V - GENERAL PROVISIONS

Section 5.01 Insurance. Developer will cause its contractors and/or subcontractors to obtain and maintain liability and other insurance coverage and agrees to furnish certificates of such insurance as may be reasonably required from time to time by Township. Township states that its current requirements for insurance are \$1,000,000.00 for liability or casualty per occurrence, and \$2,000,000.00 in the aggregate.

Section 5.02 Indemnification. Developer hereby agrees to indemnify and hold harmless Township, its Supervisors, officers, employees, attorneys and agents from any and all liability, suits, actions, claims, demands, losses, expenses and costs of every kind and nature incurred by or asserted or imposed against Township, its Supervisors, officers, employees, attorneys and agents, or any of them, by reason of any accident, injury, death or damage to any person or property relating to the Project, provided that such liability, suit, action, claim, demand, loss, expense or cost is not due to an act of Township, its Supervisors, officers, employees, attorneys or agents. Developer hereby agrees to indemnify, defend and hold harmless Township, its officers, agents and employees from any and all costs and damage which Township, its officers, agents and employees may sustain or suffer that are proximately caused by reason of Developer's material breach of the terms and conditions of this agreement including the construction of Public Improvements and Other Improvements.

Section 5.03 Notice. Any notice from one party to the other hereunder shall be in writing and shall be deemed to have been given if personally delivered or mailed by first class mail to the respective addresses stated below:

Summit Township
8900 Old French Road
Erie, PA 16509-5461

(Corporation) See Page 1

(Representative) See Page 1

Section 5.04 Binding Effect. This Agreement is binding upon Developer, its successors, assigns, agents, representatives and officers, contractors and sub-contractors and shall inure to the benefit of Township.

Section 5.05 Assignability. This Agreement may not be assigned or transferred by Developer without the written consent of Township.

Section 5.06 Revocation. Any permit or approval issued in accordance with the Land Use and Subdivision Ordinance, any other Ordinance of Township or this Agreement will be revoked automatically upon Developer's failure to satisfy the terms and conditions of this Agreement or any Ordinance, Resolution or Regulation of Township or any laws of the County of Erie, Commonwealth of Pennsylvania or the United States of America.

Section 5.07 Covenant Running with Land. This Agreement constitutes a covenant running with the land and may be recorded by Township. Any and all expenses incurred in the preparation and recording of this Agreement will be borne by Developer.

Section 5.08 Phases. Developer will enter into separate agreements for each and every phase of the development.

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

ATTEST:

SUMMIT TOWNSHIP

Christopher R. Gradler, Chairman

Marlin K. Coon, Vice Chairman

Thomas H. Church, Jr., Supervisor

WITNESS

(COMPANY)

Representative, Title

STATE OF _____)

)ss.

COUNTY OF _____)

On this, the _____, day of _____, 2008, before me, a Notary Public, the undersigned officer, personally appeared _____, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission expires: _____