

**APPENDIX NO. 16**

**LAND DEVELOPMENT AGREEMENT**

THIS AGREEMENT made as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the Township of Clay, a second class township operating under the laws of the Commonwealth of Pennsylvania with municipal offices at Clay Township, 870 Durlach Road, Stevens, Lancaster County, Pennsylvania ("Township"), and \_\_\_\_\_, a \_\_\_\_\_, with a place of business at \_\_\_\_\_, Pennsylvania ("Developer").

**WITNESSETH**

A. Developer is the legal and/or equitable owner of a certain tract of ground comprising \_\_\_\_\_ acres, more or less, located at \_\_\_\_\_ in Clay Township, Lancaster County, Pennsylvania, which entire parcel is more fully described in the legal description attached hereto, made a part hereof, and marked Exhibit "A" (the "Tract"); and

B. Developer desires to develop the Tract or a portion thereof (the "Development") in accordance with certain final subdivision and/or land development plans for the project known as \_\_\_\_\_ prepared by \_\_\_\_\_, being Project No. \_\_\_\_\_, consisting of \_\_\_\_\_ sheets, dated \_\_\_\_\_, 20\_\_\_\_, with the last revision dated \_\_\_\_\_, 20\_\_\_\_, said plans hereinafter referred to as the "Plans" (a complete schedule of the plans to be recorded and all supporting plans is attached hereto as Exhibit "B" and expressly made a part hereof); and

C. Developer desires to develop all or a portion of the Tract and install the public improvements and/or common amenities shown on said Plans in accordance with Chapter \_\_\_\_ of the Code of Ordinances of the Township of Clay, commonly known as the Clay Township Subdivision and Land Development Ordinance (the "Subdivision Ordinance") and Chapter \_\_\_\_ of the Code of Ordinances of the Township of Clay, commonly known as the "Clay Township Stormwater Management Code" (the "SWMC") and in accordance with the Pennsylvania Municipalities Planning Code ("MPC"); and

D. If public sewer service and/or public water service is proposed for the Development, Developer has entered into a separate agreement or agreements with the Borough of Ephrata ("The Borough") to guarantee sewer service to the Development and into a separate agreement or agreements with the Ephrata Area Joint Authority ("EAJA") to guarantee water service to the Development and has delivered true, correct, and fully executed copies of same to the Township (collectively referred to as the "Utility Agreements"); and

ALTERNATE D. If public sewer service is being provided by the Township of Clay, through the use of its Hopeland Sewer Plant, Developer has entered into a separate agreement or agreements with the Township to guarantee sewer service to the Development to the satisfaction of the Township.; and

E. Developers have entered into a number of Agreements relating to the storm water facilities, clear sight easements and other issues known respectively as: Storm Water Management Agreement And Declaration Of Easement [other applicable agreements] (hereinafter collectively "Agreements"); and

F. Prior to commencing construction on any subdivision/land development, Developers are required, pursuant to the Subdivision Ordinance, to file the Final Plan with the Clay Township Planning Commission and obtain approval of the Final Plan from the Clay Township Board of Supervisors; and

G. Pursuant to the Subdivision Ordinance, Developers' Final Plan must reflect and/or be accompanied with supporting documentation which identifies the ownership of, and the method of administering and maintaining, all permanent and/or temporary storm water management facilities; and

H The purpose of this Agreement is to provide an instrument describing in detail the relationship between Developers and the Township, as it relates to the development of the municipal improvements.

I. The Township is prepared to approve the aforesaid Plans provided the duties and obligations of Developer with regard to the Development and the public improvements and/or common amenities shown on the Plans and such other off-site public improvements as are reasonably related to the burdens to be placed upon the Township by Development are clarified and the completion of those public improvements and/or common amenities is secured in the manner prescribed by the MPC.

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

1. All the provisions of Paragraphs A through I referenced above are incorporated herein by reference and agreed to be true and correct. It is specifically agreed by the parties hereto that each will and shall enter into and implement and enforce the provisions of each and every one of the Agreements referenced in Paragraph E hereof.

2. Improvements. All public and common improvements to be constructed and/ or installed and/or paid for in whole or in part by Developer (as well as the estimated costs of completing each) are listed on Exhibit "C" for improvements required to be constructed by the Subdivision Ordinance, Storm Water Management Ordinance or other applicable Ordinance or the rules and regulations of EAJA or The Borough, and on Exhibit "D" for capital contributions to be made by the Developer or other improvements to be constructed by Developer to address the impact of the Development upon the Township which are not expressly required by applicable Ordinances or by EAJA or The Borough both of which Exhibits are attached hereto and are expressly made a part hereof (the said public and common improvements shall hereinafter be referred to collectively as the "Improvements"). Improvements which will be dedicated to EAJA or The Borough shall hereafter be referred to as "Sewer/Water Improvements", and all other public and common improvements, including but not limited to improvements which will be offered for dedication to the Township, improvements relating to sanitary sewage facilities associated with the Township-owned Hopeland Treatment Plant, and storm water management facilities, shall be referred to hereafter as "Township Improvements". The following provisions shall be applicable to the Township Improvements and Sewer/Water Improvements:

- A. Sidewalks, Curbing and Cartways. Developer shall construct all roadways, curbing, sidewalks, pathways, and cartways as shown on the Plans. All sidewalks, curbing, cartways, pathways, and all postal-related facilities must comply with current Americans With Disability Act (“ADA”) regulations applicable at the time of installation. Developer acknowledges that Township will not accept dedications of improvements, unless said improvements comply with the ADA standards in effect at the time of dedication. No roadway shall be constructed between November 15 and March 15 of any year without prior written approval of the Township Engineer.
- B. Sanitary Sewers. Developer shall construct sanitary sewers to service the Tract and shall also provide laterals or approved service lines to serve each building erected thereon consistent with the Plans and the applicable Utility Agreement.
- C. Water Lines. Developer shall construct and install all water lines shown on the Plans so that each building to be constructed on the Tract shall be served with public water facilities in accordance with the applicable Utility Agreement. Furthermore, Developer shall submit to the Township satisfactory proof that public water will be adequately supplied to each and every aspect of the Development which requires water.
- D. Storm Water Management. Developer shall construct storm water management facilities in compliance with the SWMC and as shown on the Plans in order to adequately drain the Tract of surface waters. In the event that at any time during the construction period the Township Engineer determines that the storm water management facilities as designed are inadequate, Developer shall submit for approval a revised storm water management plan and shall make all of the changes necessary to the storm water management facilities to adequately drain the tract of surface water. Provided, however, if in such an instance Developer does not agree with the Township Engineer that the design is inadequate or that changes are necessary, Developer, within ten (10) business days of written notice of inadequacy from the Township, may notify the Township that the determination of inadequacy is disputed. If within twenty (20) business days of the date of written notice of inadequacy from the Township, the Township and Developer cannot agree on the changes, if any, necessary to the storm water management plans, Developer and the Township shall jointly, by mutual agreement, appoint an independent professional engineer licensed as such in the Commonwealth to review the determination of adequacy of the storm water management plan and to determine the changes, if any, that are necessary. The determination by said professional engineer and the appointment of an engineer if the parties cannot agree on one shall be made in a manner consistent with that set forth with respect to fee reimbursement disputes in MPC Sections 510(g)(3) and (4) or any amendment to those statutory provisions. The fee of the appointed professional engineer shall be paid by the Township if the independent engineer determines that Developer's existing or proposed revised storm water management plans are adequate. If the plans or revised plans are not adequate in the opinion of the independent professional engineer, Developer shall pay the fee of the appointed professional engineer and shall make all of the changes necessary to the storm water management facilities. Developer shall obtain at its sole expense any necessary storm drainage easements. Developer and the Township shall enter into a separate Storm Water Management Agreement and

Declaration of Easement concerning the installation and maintenance of the storm water management facilities in a form and content acceptable to the Township and consistent with the SWMC.

- E. Curbs. Developer shall construct all curbs and curb depressions as shown on the Plans providing sufficient curb depressions for each building as shown thereon.
- F. Park, Open Space and Recreational Area. If required by the Subdivision Ordinance, Developer shall provide park, open space or recreational land area, a fee in lieu thereof or a combination of land and fees. The land or lands to be dedicated and/or the fee to be paid to the Township shall be as indicated on Exhibit "C". The fee shall be paid prior to final approval of the Plans.

In consideration of certain modifications or accommodations granted by the Township in connection with the Development, Developer waives its right to request the Township to refund any of the recreation fees paid to the Township under this Agreement if the Township has failed to use the funds for the acquisition of or improvement to park and recreational land within three (3) years from the date of payment thereof. Developer specifically waives any right to a refund of any sum paid hereunder granted by Section 503(11) of the MPC or Section 611 of the Subdivision Ordinance. The Township shall not be required to deposit any of the recreation fees paid under this Agreement into an account which clearly identifies specific recreational facilities for which the sums are intended.

The Township may use the recreation fees for any purpose related to park, open space, and recreational land including, but not limited to, the purchase and improvement of land, the purchase of equipment, fees of consultants and engineers, and feasibility and other studies.

- G. Plantings. Developer shall plant all trees, shrubs, lawns, and other landscaping materials as shown on landscaping plans filed with the Township and, in addition thereto, shall comply with all screening and buffering requirements of any other applicable Clay Township Ordinances. Developer shall remove all unauthorized plantings within the rights-of-way of the Township or EAJA or The Borough and refrain from the planting of any shrubbery or landscaping materials in any of the rights-of-way or intersection lines of sight as shown on the Plans.
- H. Signs. Developer shall erect, in conformance with the Pennsylvania Department of Transportation ("PennDOT") and Township requirements, such street sign or signs, traffic control sign or signs, and no parking sign or signs within the Tract as shall be determined exclusively by the Township. Such signs shall be of the type, size, and construction designated by the Township and PennDOT approved and shall be paid for by the Developer. Developer shall erect all no parking signs required by the Township prior to the issuance of the certificate of use and occupancy for the first dwelling unit constructed on the Tract. Developer shall also pay for the cost of any traffic studies if required to be performed under the Vehicle Code and any legal and advertising costs the Township incurs to enact the necessary traffic ordinances in connection with the erection of such signs,

establishing speed limits, stop intersections, and other traffic control requirements mentioned in the Plan.

- I. Other Improvements. The list of Township Improvements and Sewer/ Water Improvements contained in Paragraphs 1.A. through 1. I. is not intended to encompass all of the Improvements required or shown on the Plans aforesaid. Developer shall install, construct or supply all other Improvements set forth on the Plans, listed on Exhibit "C" or required by Township, EAJA, Borough, County, State or Federal laws, ordinances, rules or regulations.
- J. Capital Improvements. Developer and Township expressly recognize that development of the Tract will have effects which cannot be addressed through the Improvements constructed and/or installed by Developer on the Tract. Developer and Township also expressly realize that the effects of the development of the Tract will interact with existing conditions and other proposed and potential development within the Township. Developer and Township agree that development of the Tract will contribute to the need for the Improvements set forth on Exhibit "D" but that development of the Tract is not the sole cause of such need. In order to address the need for the Improvements set forth in Exhibit "D", Developer shall contribute the sums set forth in Exhibit "D" and/or install such Improvements as are indicated on Exhibit "D" and the Plans.

Developer acknowledges that the capital contributions and/or off-site improvements set forth in Exhibit "D" herein have not been required by the Township as a condition of the approval of the Plans and are voluntarily made by Developer to address the effects of the proposed development. Developer acknowledges that the capital contributions set forth herein are not impact fees and are not governed by Article V-A of the MPC.

- K. Payment of Fee in Lieu of Completion of Required Improvements. Developer acknowledges that certain Township Improvements are required to be constructed by applicable Township Ordinances, the installation of which Developer has requested the Township to modify and/or to waive for reasons set forth in a request for a modification and/or waiver. In other cases, certain Township Ordinances permit the Developer to make a contribution to the Township in lieu of making the improvements. In order to enable the Township to install such improvements at an appropriate future date, Developer has made a contribution to the Township as set forth in Exhibit "E".

3. Conditions Precedent to Construction.

- A. Before commencing construction of the Improvements, Developer shall submit to the Township Engineer the specifications for materials to be used in such construction. Developer shall not proceed with any construction without the written approval of the Township Engineer.
- B. Unless the Township specifically agrees otherwise in writing and Developer complies with all conditions imposed by the Township with regard to the commencement of construction, the Township shall not issue any zoning or building permits, and Developer shall not commence construction of the Improvements until:

- (1) Developer records the Plan according to law;
- (2) Developer presents evidence satisfactory to the Township Solicitor that Developer has legal title to the Tract;
- (3) This Agreement is duly signed, acknowledged, and delivered;
- (4) Developer pays all fees required by Township ordinances and regulations, including payment of legal and engineering fees and expenses incidental to review of the Development;
- (5) Developer pays all amounts due the Township under Paragraphs 1(F) and/or 1(K);
- (6) Developer provides Financial Security to the Township and/or to the Pennsylvania Department of Transportation ("PennDOT") and EAJA and to The Borough, as applicable; and
- (7) Developer enters into the Utility Agreements.

4. Construction, Installation or Supply of Improvements in Accordance with the Specifications. Developer shall construct, install or supply all Township Improvements and Sewer/Water Improvements in accordance with the requirements and specifications of the Township, EAJA or The Borough, PennDOT, and the Pennsylvania Department of Environmental Protection ("DEP"), and all other laws, ordinances, rules and regulations of all duly constituted public authorities which shall have jurisdiction over the installation, construction, supply or maintenance of any Improvements. Developer shall install all utility lines in the Tract underground. Developer shall locate all underground structures and utilities which may be encountered during the construction of the Development, including but not limited to water, steam, oil and gas mains and lines, storm and sanitary sewers, telephone lines, cable television lines, electric conduits, and other underground installations, and shall make adequate provisions to protect the same from damage or disruption. In order to determine the location of the underground structures and utilities aforesaid, Developer shall arrange with the owners of such underground structures or utilities to assign a representative to mark the locations thereof. Developer shall pay the cost of determining the location and all other costs attendant with the identification and protection of all underground utilities in accordance with the provisions of the Act of December 10, 1974, P.L. 852, No. 287, as amended, 73 P.S. §176 et seq. Developer shall not enter upon, or occupy with workers, tools or materials, any private lands outside the Tract without the written permission of the owners of such private adjacent tracts having been obtained in advance.

5. Prior Notice to the Township of Intent to Begin Ground Clearing. No grading, excavating, removing or destruction of top soil, trees or other vegetative cover of any kind nor changes in the contours of the Tract shall be made unless and until the Township Engineer has been given seventy-two (72) hours' written notice of Developer's intention to do so. Upon receipt of such written notice, the Township Engineer shall certify that all appropriate soil erosion and sedimentation control measures applicable to the specific work being initiated by Developer have been put into place. In addition, Developer shall have installed snow fencing or other barriers acceptable to the Township Engineer to specify the limits of ground clearing so that trees and other vegetation not proposed to be affected by the construction of roads, buildings or other Improvements are not affected during the ground clearing process. The

Township Engineer shall not grant permission to grade and/or clear ground for any portions of the Tract on which soil and erosion control measures have not been fully installed. If it is the intention of Developer to clear lots on an individual basis, the notice required by this Paragraph shall be given to the Township Engineer for each lot on which grading or tree clearing of any kind is necessary.

6. Soil Erosion, Sedimentation Control, and Control of Water Pollution. No changes shall be made in the contours of the Tract, and no grading, excavating, removing or destruction of topsoil, trees or other vegetative cover on the Tract shall be made until such time as a plan for minimizing soil erosion and sedimentation has been reviewed and approved by the Township. Developer shall submit such a plan for minimizing soil erosion and sedimentation control to DEP or an agency approved by DEP. Developer shall deliver evidence of the approval of such plan to the Township prior to the date of this Agreement, and Developer shall comply with the plan during the course of construction. Developer shall use all care possible to prevent siltation and other pollution of the waters of the Commonwealth of Pennsylvania even if measures exceeding those set forth on approved plans prove necessary.

7. Inspections. The Township shall have the right, at any time, to inspect any of the work to be performed on the Tract, and all such inspections may be made by the Township through its employees or by consultants retained by the Township to determine that the construction has been and is being carried out in compliance with the approved Plans, the specifications of the Township and other duly constituted authorities, and this Agreement. Developer shall reimburse the Township for all costs incurred in such inspections, and if Developer fails to do so, the Township shall have the right to draw upon the Financial Security to reimburse itself for such costs.

8. Compliance by Contractors. Developer shall procure and be responsible for compliance by all of its contractors, subcontractors, and suppliers with all applicable Federal, State, County, EAJA, Borough, PennDOT, DEP, and Township statutes, ordinances, rules, and regulations in connection with any of the work on the Tract. Compliance shall include, but not be limited to, the procuring of all necessary permits and licenses in connection with the work to be done and the payment of all of the contributions, fees, premiums, and taxes required by such laws, ordinances, rules, and regulations.

9. Damage to Existing Streets, Drainage Structures or Other Facilities. In the event any existing Township streets, drainage structures or other facilities are disturbed, subjected to excessive wear and tear, damaged or destroyed during the course of the development of the Tract, including but not limited to damages resulting from openings into streets to install underground facilities or resulting from travel or use by vehicles or construction equipment, Developer agrees, at its cost, to repair or, if necessary, replace such facilities to the Township's satisfaction.

10. Developer shall be responsible for all damage to the sanitary sewer system of the Borough or the Township or public water system of EAJA which results from Developer's construction or development of the Tract and shall immediately contact the appropriate governing body to arrange for the repair of all such damage.

11. Protection of Reasonable Access During Construction. At all times during the construction of the Development, Developer and its contractors and subcontractors as aforesaid, shall conduct their work in such manner as to insure that there is a minimum obstruction to traffic and that the convenience of the general public, the residences and/or the commercial or industrial establishments adjacent to the Tract are provided for in an adequate

manner. No materials shall be stored upon any streets (whether or not such streets have yet been dedicated to or accepted by the Township) unless such storage is absolutely necessary. Any materials which must be stored upon such streets shall be placed so as to cause as little obstruction to traffic as possible. Fire hydrants on or adjacent to the Tract shall be kept accessible to fire apparatus at all times, and no materials or obstructions shall be placed within fifteen (15) feet of any such hydrant. All storm drainage and storm sewer inlets shall be kept unobstructed at all times. Developer shall maintain such barricades and warning lights or flares as are necessary during the course of construction to protect traffic and the public in general. Any work in a street which is unfinished for any reason whatsoever shall be left in such a condition as to make the Tract accessible at all points to fire and other emergency apparatus.

12. Waste Materials and Maintenance of Sanitary Facilities During Construction. Developer shall collect and properly discard all waste material, such as paper, cartons and the like, and shall prevent the same from being deposited, and then either thrown or blown upon the lands adjacent to the Tract or upon the Tract itself. In addition, Developer shall require that all contractors, subcontractors, and material suppliers shall comply with the provisions of this Paragraph. All rubbish and unused materials and tools shall be removed promptly from the Tract and, as work progresses, the Tract shall be carefully cleaned and kept clean of any rubbish or refuse. Developer shall maintain the Tract in a clean condition by removing all debris from the Tract or otherwise disposing of such debris in an appropriate fashion and with the prior approval of the Township. If Developer or any of its contractors, subcontractors or material suppliers shall fail to comply with any of these conditions, the Township shall have the right to enter upon the Tract and perform such cleaning and disposal with its own employees or with its contractors, and the Township may draw upon Developer's Financial Security to reimburse itself for such expense.

13. Developer shall provide and maintain properly secluded sanitary conveniences in accordance with regulations of the Departments of Labor and Industry, Health and DEP for the use of the workers.

14. Snow Removal. During the period of construction and occupancy and unless and until the roads within the Development are deeded to and accepted by the Township, Developer shall keep the roads cleared of snow and ice. In default thereof, the Township will at its option contract for the removal of snow as the Township deems necessary to make the roads passable, and Developer shall reimburse the Township for the expense thereof. If Developer fails to provide snow removal service and fails to reimburse the Township for providing or contracting for such service, the Township may draw upon Developer's Financial Security to reimburse itself for all costs incurred. The removal of snow by the Township prior to acceptance of the roads shall not be considered an acceptance thereof.

15. Wetlands. Approval by the Township of the Plans shall not be construed as compliance with the provisions of federal or state laws or regulations regarding building, dredging or filling in areas which are or may be deemed to be wetlands within the jurisdiction of the U. S. Army Corps of Engineers, the United States Environmental Protection Agency or DEP.

16. Construction Activities and Open Space. Except as may be specifically set forth on the Plans, Developer agrees that there shall be no construction, traffic or work on any open space area. Developer agrees that no dirt will be stockpiled on the open space, nor will the open space be altered from its original condition. No stumps, roots or debris will be buried in the open space. Developer agrees to do any necessary cleanup of the open space whether or not such land is proposed to be dedicated to the Township.



17. Swales and Detention/retention Basins. All swale and detention/ retention basin construction required by the Plans to be done by Developer on the Tract or on the property of any third party shall be done prior to the construction or erection of any buildings or other improvements which will create water runoff intended to be controlled by any such swale or detention/retention basin. The construction of such swales or basins shall be done simultaneously with and in conjunction with the construction of other public or common improvements for the Development so that there can be a stabilization process before the erection and construction of any buildings.

18. Boundary Markers. The boundaries of the Tract shall be marked with permanent surveyor monuments. The monuments shall be placed at each corner of the Development and in such additional locations as the shape of the Tract requires for clear designation of all boundary lines. In addition, the corners of all lots within the subdivision shall be "pinned" in a manner deemed sufficiently permanent by the Township Engineer. All such monuments and pins shall be placed by a registered surveyor and shall be visible when final grading has been completed and before any occupancy permit is issued. Developer shall provide the Township with a plan showing the accurate placement of said monuments and pins which shall be certified by Developer's registered surveyor.

19. Street Numbers. Developer agrees that neither it nor its successors or assigns shall permit occupancy of any buildings erected on the Tract without placement of the address numbers of such buildings on the premises so erected. All such addresses and any street names shall first be approved by other applicable governmental agencies, such as Countywide Communications and /or the U.S. Postal Service.

20. Cable Television Service. Prior to final road surface application, Developer, its agents, servants, workers or employees, contractors, subcontractors, independent contractors, successors or assigns, shall arrange for the installation of subsurface cable television lines to service the Tract if the Tract is within the service area of a cable television company granted a franchise by the Township. In the event that such installation must be postponed for any reason until after the lots, parcels or portions of the Tract are sold or if the Tract is not within a service area, Developer on behalf of itself, its successors or assigns, agrees that it, they, or any of them, will set aside or otherwise reserve an easement along and across the Tract for the installation of said service in the future.

21. Occupancy Permits. No structure shall be occupied until it and all of its appurtenances have been completed, all roads necessary for ingress and egress to the said structure have been completed to an extent which will permit unquestionable ease of access for emergency vehicles, and all of the other requirements of this Agreement and the Plans and other ordinances, laws, rules or regulations regarding such structure have been complied with, and the same have been inspected and approved by the Township, and the Township has issued an occupancy permit or permits therefor. Furthermore, no structure shall be occupied until provisions satisfactory to the Township Engineer have been made (including but not limited to seeding and sodding) to prevent runoff of rain water, melting snow, etc., from being discharged onto adjacent lands or onto the street or pavement and to prevent such runoff from coming onto said lot, street or pavement from other adjacent lands. The provisions of this Paragraph shall not prevent occupancy where the asphalt base course of any roadway or easement is constructed to the extent required by the Township and Developer desires to delay the top surfacing of said roadway until the end of the term in which the improvements are required to be completed. All SWMC improvements to each lot and all SWMC improvements that are affected by stormwater entering or exiting each lot must be completed before occupancy of any building on that lot.

22. Failure to Proceed.

- A. If Developer fails to prosecute the work of the development with promptness and diligence, or fails in the performance of any of the provisions contained in this Agreement, the Township shall give to Developer written notice of such default. In the event Developer does not commence to correct such default within two (2) business days of such notice, and thereafter to diligently continue to correct such default, the Township shall have the right to secure materials of the quality and quantity required by this Agreement and the Plans and the necessary numbers of workers, mechanics, and the required equipment in the open market at the then current market prices, from any party or parties, to cure such default. Provided, however, if the Township shall determine that curing such default shall require the Township to undertake completion of the Improvements, the procedures and time limits of Paragraph 23(A) shall apply. Additionally, it is acknowledged by Developer that Township may need to pay prevailing wages or have other restrictions on the completion of improvements that may cause additional costs. Developer agrees that those additional costs shall be added to the other costs to Township to be paid by Developer.
- B. Developer and Owner hereby grant to Township a temporary easement and right of way for purposes of entering upon the lands described in the Plan for purposes of the Township and the Township's agents implementing all rights of the Township under the MPC and under this Agreement.

23. If the Township secures workers, mechanics, and equipment in the open market to carry forward such work, the Township shall have the right to take possession of all materials, tools, appliances, and equipment on the Tract intended for use in the performance of this Agreement for the purpose of including them in the, and Developer hereby assigns to the Township all of its right, title and interest in and to such materials, tools, appliances, and equipment for use in the completion of the Improvements.

24. All workmanship and materials incorporated in the Improvements shall be subject to inspection, examination, and testing at any time and at all times during the installation or construction and at any and all places where such installation or construction is carried on. The Township shall have the right to reject defective materials and workmanship; and such workmanship shall be satisfactorily corrected, and rejected materials, equipment, and other articles shall be replaced. If Developer fails to proceed at once with the replacement of rejected materials, equipment or articles or the correction of any defective workmanship, the Township may proceed with the work as provided in this Paragraph.

25. Insurance/Indemnification. Developer agrees to defend, indemnify and hold harmless the Township and its officers, agents, and employees from and against all claims, damages, liability, losses, and expenses, including attorneys' fees and costs of investigation, arising out of or resulting from (a) the performance of the work on the Tract, (b) the approval of the Township Improvements and Sewer/Water Improvements or Plans, (c) the granting of any permit or approval, (d) the rough grading and final grading of the land within the Tract, and (e) as a result of any water or storm drainage runoff from the Tract. Developer assumes all risks and shall bear all loss resulting from any injury to property or persons occasioned by neglect or accident during the progress of development of the Tract. Developer shall obtain and maintain, at all times during the course of construction, comprehensive general liability insurance with minimum limits of liability with respect to bodily injury of at least \$500,000.00 for each person, \$1,000,000.00 for each occurrence, and \$250,000.00 with respect to property damage for each

occurrence. The said insurance shall contain a provision prohibiting its cancellation by the carrier without thirty (30) days' prior written notice of such cancellation to the Township. Prior to the commencement of any construction, Developer shall deliver to the Township a certificate issued by an insurance company, reasonably satisfactory to the Township, indicating that Developer has obtained comprehensive general liability insurance in accordance with the provisions of this Agreement, that the Township has been named as an additional insured, and that premiums for the said insurance have been paid in advance for the entire period covered by said insurance. At least thirty (30) days prior to the expiration date(s) of the said insurance, Developer shall deliver to the Township a certificate of insurance indicating that the said policy or policies have been renewed and that the premiums for the renewal period have been paid in advance. During the construction period, Developer shall have the right to substitute other insurance policies containing the same provisions as the original policies, provided however, that all such policies shall be in a form and issued by insurance companies reasonably acceptable to the Township, and the Township shall at all times be indicated as an additional insured.

26. Indemnity. In the event that a third party, his agents, servants, employees, heirs, assigns or grantees should institute any legal action whatsoever against the Township, its officers, agents, servants or employees for the hereinbefore stated reasons, Developer hereby agrees to further pay any and all attorneys' fees, engineering fees, court costs or any other expenses whatsoever incurred by the Township, its officers, agents, servants or employees in regard thereto. Developer agrees that if suit is brought by the Township against Developer to enforce this Agreement, Township shall be entitled to collect from Developer, provided that Township shall prevail in its suit, all reasonable costs and expenses of suit, including reasonable attorneys' fees.

27. Financial Security.

A. Financial Security.

- (1) The term "Financial Security" shall have the same meaning as provided by Section 509 of the MPC.
- (2) Developer shall provide the Township with Financial Security to secure the completion of the Township Improvements and capital contributions set forth in Exhibits "C", "D", and "E", the cost and/or amounts of which Township Improvements are set forth in Exhibit "F" attached hereto and incorporated herein, in the following form (check applicable Financial Security):

\_\_\_\_\_ irrevocable letter of credit  
\_\_\_\_\_ cash escrow agreement

in accordance with the requirements of MPC Section 509. The terms and conditions of the Financial Security are subject to the approval of the Township Solicitor.

- B. The financial security shall be posted in compliance with Section 509 of the MPC and administered in compliance with the provisions of a separate Improvement Guarantee Agreement entered into between the Developer and the Township and the financial guarantee supplied at the same time or prior to the execution of this Agreement.

28. Escrow for Reimbursement of Township Expenses. Developer shall deposit with the Township the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (the "Escrow Fund"). The Escrow Fund shall be used to reimburse the Township for all engineering and inspection fees and for all attorneys' fees incurred in connection with the preparation of this Agreement, the preparation and recording of deeds of dedication, the review of Financial Security, and any other legal expenses which the Township may incur in the furtherance of the development of the Tract. Developer hereby irrevocably authorizes the Township to withdraw from time to time any monies deposited in the Escrow Fund by Developer in order to pay expenses and fees incurred by the Township. At such point as the Escrow Fund has been reduced to the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) or less as a result of withdrawals as herein provided, then, and in that event, and at that time, the Township shall bill Developer an amount sufficient to restore the Escrow Fund to the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_). In the event the Escrow Fund is insufficient at any time to pay such costs, the Township shall bill Developer for the actual or anticipated additional costs. In the event the Escrow Fund is in excess of the Township's costs, the Township shall refund such excess monies, without interest, to Developer upon completion of the development of the Tract.

29. Default by Developer.

A. Installation of Township Improvements. If the Township determines that Developer has failed to construct or install the Township Improvements in accordance with the Plans and its obligations under this Agreement and the Township shall desire to undertake the completion of the Township Improvements, the Township shall notify Developer of its intention to undertake the completion of the Township Improvements in accordance with the Plans. Developer shall have twenty (20) days from the date of receipt of said notice in which to notify the Township in writing whether it will undertake the completion of the Township Improvements in accordance with the Plans. If Developer does not notify the Township of its intent to undertake completion of the Township Improvements within twenty (20) days, it will be conclusively presumed Developer has agreed to make the remainder of the Financial Security available to the Township to pay for the costs of the completion of the Township Improvements in accordance with the Plans. If the proceeds of the Financial Security are insufficient to pay the cost of installing or making repairs or corrections to all of the Township Improvements covered by this Agreement, the Township may, at its option, install part of such Township Improvements in all or part of the Development and may institute appropriate legal or equitable action to recover the monies necessary to complete the remainder of the Township Improvements. In all cases, Developer shall be responsible for one hundred (100%) percent of the costs of the installation of the Township Improvements plus all related expenses, including such reasonable attorneys' fees as may be incurred by the Township in enforcing the provisions of this Agreement against Developer.

B. Confession of Judgment.

(1) Developer agrees that in the event of any default under the terms of this Agreement, Township may cause judgment to be entered against Developer, and for that purpose DEVELOPER AUTHORIZES AND EMPOWERS THE TOWNSHIP OR ANY PROTHONOTARY, CLERK OF COURT OR ATTORNEY OF ANY COURT OF RECORD TO APPEAR

FOR AND CONFESS ONE OR MORE JUDGMENTS AGAINST DEVELOPER AND AGREES THAT TOWNSHIP MAY COMMENCE AN ACTION PURSUANT TO THE PENNSYLVANIA RULES OF CIVIL PROCEDURE FOR THE RECOVERY FROM DEVELOPER OF ALL DAMAGES, COSTS, AND EXPENSES PROVIDED FOR HEREIN, AS WELL AS FOR INTEREST AND COSTS AND ATTORNEYS' FEES, FOR WHICH AUTHORIZATION TO CONFESS JUDGMENT THIS AGREEMENT, OR A TRUE AND CORRECT COPY THEREOF, SHALL BE SUFFICIENT WARRANT. SUCH JUDGMENT MAY BE CONFESSED AGAINST DEVELOPER FOR THE AMOUNT OF DAMAGES, COSTS, AND EXPENSES PROVIDED HEREIN, AS WELL AS FOR INTEREST, COSTS, AND AN ATTORNEYS' COMMISSION IN THE AMOUNT OF FIFTEEN (15%) PERCENT OF THE FULL AMOUNT OF THE TOWNSHIP'S CLAIM AGAINST DEVELOPER. Notwithstanding the foregoing attorneys' commission, which is included for the purpose of establishing a sum certain in the event of confession of judgment, the attorneys' fees recoverable by the Township shall not exceed the actual fees incurred by the Township. Neither the right to institute an action pursuant to said Pennsylvania Rules of Civil Procedure nor the authority to confess judgment granted herein shall be exhausted by one or more exercises thereof, but successive complaints may be filed and successive judgments may be entered for the aforesaid damages as they are incurred under the provisions of this Agreement.

- (2) In any proceeding or action to enter judgment by confession for money pursuant to the above paragraph, if the Township shall first cause to be filed in such action an affidavit or averment of the facts constituting the default, the occurrence of the condition precedent or the event, the happening of which default, occurrence or event authorizes and empowers the Township to cause the entry of judgment by confession, such affidavit or averment shall be conclusive evidence of such facts, defaults, occurrences, conditions precedent or events, and if a true copy of this Agreement be filed in such procedure or action, it shall not be necessary to file the original as a warrant of attorney, any rule of court, custom or practice to the contrary notwithstanding.
- (3) Developer hereby releases the Township and any and all attorneys who may appear for the Township from all errors in any procedure or action to enter judgment by confession by virtue of the warrant of attorney contained in this Agreement, and all liability therefor. Developer further authorizes the prothonotary or any clerk of any court of record to issue a writ of execution or other process and further agrees that real estate may be sold on a writ of execution or other process.

C. Withholding of Permits By Township. If the Township has given the Developer the notification of a default required by Subparagraph A above and if Developer has failed to provide the Township with written notice of its intent to undertake completion of the Township Improvements or has thereafter failed to diligently undertake the completion of such improvements, the Township shall in addition to the remedies in Subparagraphs A and B be authorized to withhold all permits and/or certificates of use and occupancy for lots or units of occupancy within the Tract. Developer also expressly agrees that the Township shall be authorized to

withhold permits and certificates of use and occupancy for any failure by Developer to complete any improvement listed in the Exhibits, to install signs (including no parking signs) required by the Township or to make any capital contribution set forth in the Exhibits. The Township may also refuse to issue any permit or grant any approval for the reasons set forth in the MPC.

29. Date of Completion.

- A. Developer shall complete all of the Township Improvements on or before \_\_\_\_\_, 20\_\_\_\_. In the event that the Township Improvements are not completed by such date, or in the event that Developer is otherwise in default of this Agreement, then any undrawn funds remaining under the Financial Security shall, upon draw by Township, be paid to Township. Upon such payment, such funds shall be used and applied by Township for the purposes of paying the cost of completing the Township Improvements and for such other costs as are described herein. In completing said Township Improvements, Township may, at its option, have such Township Improvements completed by Developer or by independent contractors or by Township employees or by any combination of the foregoing, as Township may elect.
- B. The Township Improvements shall not be deemed to be completed until Township accepts by resolution the Certificate of Final Completion issued by the Township Engineer certifying that the Township Improvements have been satisfactorily completed in accordance with the terms of this Agreement. This Certificate of Final Completion shall be signed by Developer, the Township Engineer, and the Township Secretary.
- C. In the event that Developer requires more than one (1) year to complete the required Township Improvements, the Township may adjust the amount of Financial Security by comparing the actual cost of the Township Improvements which may have been completed and the estimated cost for the completion of the remaining Township Improvements as of the expiration of the ninetieth (90th) day after the date scheduled for completion of the Township Improvements. Developer shall provide additional Financial Security, if necessary, in order that the posted Financial Security shall equal one hundred ten (110%) percent of the cost of completing the required Township Improvements as reestablished at that time.

30. Dedication of Certain Improvements.

- A. Sanitary Sewer Facilities. When all sanitary sewer facilities are satisfactorily installed on the Tract, those portions which are deemed necessary for the operation of or addition to the Borough or Township sewer system shall be dedicated by Developer to the Borough or Township consistent with the applicable Utility Agreement. Developer shall comply with the provisions of the Utility Agreement with the Borough or Township.
- B. Water Facilities. When all water facilities are satisfactorily installed on the Tract, those portions which are deemed necessary for the operation of or addition to EAJA's water system shall be dedicated by Developer to EAJA consistent with the applicable Utility Agreement. Developer shall comply with the provisions of the Utility Agreement with EAJA.

- C. Streets and Other Improvements. When all of the Township Improvements are completed to the satisfaction of the Township and certified as such by the Township Engineer, Developer shall commence the process to dedicate the roads, rights-of-way, and recreational areas, as applicable, as shown on the Plans to be dedicated to the Township or PennDOT, as appropriate. Developer shall provide legal descriptions of the areas which have been so dedicated to the Township for the preparation of the Deeds of Dedication. The Deeds of Dedication shall be prepared or approved by the Township Solicitor and executed by Developer or the appropriate landowner for the transfer of the same to the Township or PennDOT. Prior to the acceptance of the Deeds of Dedication, Developer shall furnish to the Township, at Developer's expense, a commitment for title insurance issued by a title insurance company reasonably acceptable to the Township, indicating that the areas to be conveyed are free and clear of all encumbrances, restrictions, easements or covenants of any nature. Such commitment and title insurance policy, to be issued to the Township at the time of the acceptance of the Deeds, shall be in an amount satisfactory to the Township and shall be paid for by Developer. Developer shall also provide plans and specifications of such streets or other facilities as may be required by the Township Solicitor. Developer shall also be entirely responsible for any transfer tax which may be assessed by virtue of the Deeds or other documents of title conveying the Township Improvements or any associated easements to the Township. Dedication of roads shall comply with all applicable provisions of the Second Class Township Code and the Ordinances and Resolutions of the Township or the regulations of PennDOT, as applicable. Developer shall reimburse the Township for all costs associated with the acceptance of such Township Improvements, and if Developer fails to do so, the Township may draw upon Developer's Financial Security to reimburse itself for all costs incurred. A schedule of all the Township Improvements proposed to be dedicated upon completion is attached hereto as Exhibit "G".

31. Maintenance Security. Developer acknowledges that, pursuant to MPC Section 509, the Township is entitled to require the posting of Financial Security to secure the structural integrity of the Township Improvements, as well as the functioning of said Township Improvements, which are to be dedicated to the Township in accordance with the design and specifications as depicted on the final Plans (the "Maintenance Security"). This posting of Maintenance Security shall be for a period of eighteen (18) months from the date of the acceptance of the dedicated public improvements. Developer agrees that, simultaneously with the offering of deeds of dedication, Developer will supply Maintenance Security in the form authorized by the statute aforesaid and acceptable to the Township Solicitor in an amount equal to fifteen (15%) percent of the actual costs of installation of said Township Improvements, said security being posted for a period of eighteen (18) months to guarantee the structural integrity of the Township Improvements as aforesaid. A condition to the Maintenance Security to be posted herein shall be that Developer shall, for the period of eighteen (18) months as aforesaid, repair and maintain such Township Improvements and construct and make good and replace all materials, equipment, and work, and remedy all defects in materials, equipment, and workmanship, all shrinkage, settlement, and other defaults of any kind whatsoever arising therefrom at its own expense, and to the satisfaction of the Township, when notified in writing to do so.

32. Corrections to Work. Developer agrees that the Township shall have the right to make or cause to be made good or replace all inferior materials, equipment, and workmanship, and remedy all defects in materials, equipment, and workmanship, and all shrinkage, settlement or other faults of any kind whatsoever arising therefrom in case Developer shall fail or refuse to do so in accordance with the terms of this Agreement. In the event that the Township should exercise and give effect to such rights, Developer shall be liable hereunder to pay and indemnify the Township upon completion for the final cost thereof to the Township, including but not limited to engineering, legal, and any associated costs, together with any damages, either direct or consequential, which the Township may sustain as a result of the failure of Developer to carry out and execute all of the provisions of this Agreement.

33. PennDOT Maintenance Security. This Agreement is subject to Developers obtaining all necessary highway occupancy permits from the Pennsylvania Department of Transportation at Developers' sole expense. In addition to any maintenance security required by the Township, Developer shall provide any maintenance guarantees required by PennDOT.

34. "As Built" Plans. Upon the completion of all of the Township Improvements and all of the structures to be constructed within Tract, Developer shall cause its registered professional engineers to certify the Plans and supply "as built" plans to the Township for all streets, Township owned sewers, storm water management facilities, and any Improvements to be dedicated to the Township. If requested by EAJA or the Borough, Developer shall cause its registered professional engineers to certify the Plans and supply "as built" plans to EAJA or the Borough for the Sewer/Water Improvements.

35. Right to Connect to Storm, Sanitary Sewer, and Water Systems. Developer, on behalf of itself, its successors and assigns, irrevocably grants to the Township, EAJA or the Borough, and all others approved by the Township EAJA or the Borough the right to connect storm sewer lines at any time to the storm drainage system to be constructed by Developer within the Tract aforesaid or adjacent thereto and to connect to the sanitary sewer lines and water mains constructed by Developer within the Tract aforesaid or adjacent thereto.

36. Compliance with All Approvals. Developer shall comply in all respects with all conditions of all approvals relating to the development of the Tract. Such compliance shall include, but shall not be limited to:

- A. Compliance with all conditions the Board of Supervisors has imposed upon requested waivers from requirements of the Subdivision Ordinance.
- B. Compliance with all conditions the Board of Supervisors has imposed upon approval of the Plans under the Subdivision Ordinance.
- C. Compliance with all requirements of the Plans, including but not limited to all notes on the Plans.
- D. Compliance with all conditions imposed by the Board of Supervisors upon the granting of any conditional use.
- E. Compliance with any conditions imposed by the Zoning Hearing Board.



37. Fees and Costs. Developer shall pay to the Township the following:

- A. All inspection and engineering fees incurred by the Township during the course of construction of the Development.
- B. All recording fees and applicable transfer taxes (if any).
- C. All attorneys' fees and costs incurred by the Township for the negotiation, preparation, recording or enforcement of this Agreement, the review of Financial Security, the acceptance of any public improvements, including streets, the review of the Plans or any other legal expenses which the Township may incur in the furtherance of the development of the Tract.

If Developer fails or refuses to pay such fees and costs after receipt of an invoice therefor, the Township may draw upon Developer's Financial Security to reimburse itself for such fees and costs.

38. Approval. Provided that Developer complies with all of its obligations at the time of the execution of this Agreement and the Plans are in conformity with all applicable laws and regulations, the Township shall approve the Plans.

39. Notices. All notices or other communications required to be given under the terms of this Agreement shall be in writing and shall be sent by certified mail return receipt requested, postage prepaid, addressed as follows:

- A. If to the Developer, addressed to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- B. If to the Township, addressed to:

Clay Township  
870 Durlach Road  
Stevens, PA 17578

With copies to:

Shirk & Mejia, LLP  
115 South State Street  
Ephrata, PA 17522-2412

Hanover Engineering Associates  
20-C Snyder Lane  
Ephrata, PA 17522

or to such other address or addresses and to the attention of such other person or persons as any of the parties may notify the other in accordance with the provisions of this Agreement.

40. Covenants Running with the Land and Recording. This Agreement may be recorded in the Recorder of Deeds' Office in and for Lancaster County, Pennsylvania, if the Township so desires, at the expense of Developer. The provisions of this Agreement shall be binding on and inure to the benefit of the heirs, legal representatives, assigns, grantees, lessees, and successors of the parties hereto and shall constitute covenants running with the land.

41. Partial Invalidity. If any word, clause, sentence or paragraph hereof is ruled to be illegal by any Court of competent jurisdiction, then such ruling shall not invalidate the remainder hereof, but such Court shall interpret the remainder hereof as though such clause, sentence or paragraph was removed and result in a conclusion consistent therewith, it being intended that the remainder however it is intended by Township and Developer to be continued in effect.

42. IN WITNESS WHEREOF, the Township of Clay has caused this Agreement to be duly executed as of the day and year first above written.

TOWNSHIP OF CLAY  
Lancaster County, Pennsylvania

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

By: \_\_\_\_\_  
(Vice) Chairman  
Board of Supervisors

[TOWNSHIP SEAL]

43. IN WITNESS WHEREOF, the Developer and all legal and equitable owners have caused this Agreement to be executed as of the day and year first above written. It is understood that execution by all legal and equitable owners is intended to grant full consent to the terms and conditions hereof that might be applicable to them.

LEGAL OWNER:

\_\_\_\_\_

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

By: \_\_\_\_\_ [SEAL]  
\_\_\_\_\_

EQUITABLE OWNER:

\_\_\_\_\_

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

By: \_\_\_\_\_ [SEAL]  
\_\_\_\_\_

DEVELOPER:

\_\_\_\_\_

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

By: \_\_\_\_\_ [SEAL]

\_\_\_\_\_

**(Individual or Husband and Wife Developer)**

\_\_\_\_\_ (SEAL)  
(Signature of Individual)

(SEAL)

\_\_\_\_\_  
(Signature of Spouse if Husband and  
Wife are Co-Developers)

Witness:

Trading and doing business as:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**(Partnership Developer\*)**

\_\_\_\_\_  
(Name of Partnership)

Witness:

(SEAL)

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

Partner

(SEAL)

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

Partner

(SEAL)

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

Partner

\*All partners must sign. Additional signature lines should be attached if necessary.

**(Limited Liability Company Developer)**

\_\_\_\_\_  
(Name of Limited Liability Company)

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

By: \_\_\_\_\_  
(President or Vice President or \*\*Authorized Representative)

Title: \_\_\_\_\_  
(Assistant) Secretary

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

**[SEAL]**

\*\*Attach appropriate proof, dated as of the same date as the Agreement, evidencing authority to execute on behalf of the limited liability company.

**(Corporation Developer)**

\_\_\_\_\_  
(Name of Corporation)

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

By: \_\_\_\_\_  
(President or Vice President or \*\*Authorized Representative)

Title: \_\_\_\_\_  
(Assistant) Secretary

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

**[CORPORATE SEAL]**

\*\*Attach appropriate proof, dated as of the same date as the Agreement, evidencing authority to execute on behalf of the corporation.







[PARTNERSHIP ACKNOWLEDGMENT]

COMMONWEALTH OF PENNSYLVANIA )  
 ) SS:  
COUNTY OF LANCASTER )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, a notary public,  
the \_\_\_\_\_ undersigned \_\_\_\_\_ officer, \_\_\_\_\_ personally \_\_\_\_\_ appeared  
\_\_\_\_\_, who acknowledged themselves to be all of  
the partners of \_\_\_\_\_, a general  
partnership, and that as such partners, being authorized to do so, executed the foregoing  
instrument for the purposes therein contained by signing the name of the partnership by  
themselves as such partners.

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

\_\_\_\_\_  
Notary Public

My commission expires:





EACH EXHIBIT SHOULD BE PLACED ON A SEPARATE PAGE

**EXHIBIT "A"**

Legal Description of Tract

**EXHIBIT "B"**

Schedule of Plans

**EXHIBIT "C"**

Listing of Improvements, Recreational Land Dedications  
and/or Contributions or Fees in Lieu of Dedication  
Required by Applicable Statutes and Ordinances

**EXHIBIT "D"**

Listing of Capital Contributions and/or Off-site  
Improvements to Address Impacts of the Development

**EXHIBIT "E"**

Listing of Capital Contributions for On-site Improvements  
under Section 602.03 of the Township Subdivision and Land  
Development Ordinance or under other Sections of the Subdivision and Land  
Development Ordinance for which Modifications Have Been Granted

**EXHIBIT "F"**

Listing of Improvements and Costs Certified to be Fair  
and Reasonable by Developer's Engineer and Capital Contributions  
for which Financial Security is to be Posted with the Township

**EXHIBIT "G"**

Improvements to be Dedicated to the  
Township upon Completion