

DEVELOPER AGREEMENT

THIS AGREEMENT (“Agreement”) made and entered into this ____ day of December, 2012.

BETWEEN:

THE WARREN COUNTY SCHOOL DISTRICT, a school district created under and by virtue of the Pennsylvania Public School Code of 1949, Act 14 of 1949, P.L. 20, 24 P.S. §§ 1-101 et seq., as amended, with a principal place of business located at 589 Hospital Drive – Suite A, N. Warren, PA 16365-4875, hereinafter referred to as “Developer”

AND

FARMINGTON TOWNSHIP, a Township of the Second Class and political subdivision created under and by virtue of the Pennsylvania Second Class Township Code, Act 69 of 1933, P.C. 103, 53 P.S. §§35101 et seq., as amended, with its principal office located at 596 Fairbanks Road, Russell, PA 16345 in the Township of Farmington, County of Warren, and State of Pennsylvania, hereinafter referred to as “Township”.

WITNESSETH:

WHEREAS, the Developer is the record owner of certain real property located 3700 Route 957, Farmington Township, Warren County, identified as the “Eisenhower Middle/High School” on the plot plan attached hereto and made a part hereof as Exhibit A (the “Plot Plan”) and more particularly described on Exhibit B;

WHEREAS, the Developer intends to build an addition to the Eisenhower Middle/High School (the “Project”); and

WHEREAS, the Developer has submitted an application for a Pennsylvania Department of Environmental Protection General NPDES Permit for Stormwater Discharges Associated with

Construction Activities for the continued development of the Eisenhower Middle/High School, a Land Development Plan, and a Storm Water Application pursuant to an Ordinance adopted by the Township in accordance with Act 167; and

WHEREAS, all such applications and plans are anticipated to be further revised to accommodate Developer's development of the Eisenhower Middle/High School; and

WHEREAS, the Developer understands that the Township has engaged the services of Hill Engineering to review and advise on the applications and plans submitted to the Township; and

WHEREAS, the Township requires that the Developer submit a developers fee in the amount of \$5,000 to the Township to reimburse the Township for legal and engineering fees associated with the continued development of the Eisenhower Middle/High School; and

WHEREAS, Developer desires to proceed with construction of the Eisenhower Middle/High School and agrees to remit the \$5,000 developers fee to the Township with this signed Developers Agreement.

NOW THEREFORE, in consideration of their intent to be legally bound hereby and other good and valuable consideration, the parties hereto agree as follows:

1. **Recitals.** The above recitals are incorporated as if more fully set forth herein.
2. **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, Warren County and Township with regard to storm water management. In exchange for the costs to be paid by Developer to Township pursuant to Section 3 of this Agreement, Township agrees, so long as all applicable requirements have been met by Developer, to proceed with all good faith and due diligence to endeavor to approve the Developer's Stormwater Management Plan on or before December 19, 2012.
3. **Costs.** Developer will, upon execution of this Agreement, deposit with the Township a sum of money (the "Escrow Deposit") in the amount of five thousand dollars (\$5,000). 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. The balance of the Escrow Deposit will be returned to Developer, upon written request, after the completion of development. The parties hereto agree that under no circumstances shall the total amount paid by the Developer exceed five thousand dollars (\$5,000).

4. **Damage to Existing Township Roadways.** Developer will be solely responsible for keeping adjacent Township roads used by Developer's contractors, subcontractors and any other parties in Developer's employ with respect to construction of the Project (collectively, 'Contractors') free from mud and dirt that is caused by the development. Furthermore, Developer will be responsible for any repair or replacement or additional maintenance caused to such Township roads by the Contractors. Developer acknowledges that it shall be responsible for a penalty of \$100.00 per day if it fails to clean such Township roads of its construction mud or dirt within two (2) business days following receipt of written notice from Township. All penalties may be deducted from the Escrow Account. It is Developer's responsibility to police all employees and its Contractors, for the protection of said Township roads, when work is under way on the Project site. Notwithstanding the foregoing, the parties agree that under no circumstances shall Developer be responsible for any repair or replacement or additional maintenance to Township roads that is not caused by the development or the Contractors.
5. **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.
6. **Inspections.** Developer hereby specifically grants permission to the Township, its supervisors, employees, agents, contractors or consultants to conduct necessary 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. Unless an emergency necessitates an inspection, the Developer shall be provided with twenty-four (24) hours notice of any such inspection so that the Developer can ensure that the Developer's appropriate representatives can be present during the inspection.
7. **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.

8. **Maintenance of Detention System.** Developer will be solely responsible for the maintenance of any required detention system.
9. **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.
10. **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 or failure to 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 the Project. Notwithstanding the foregoing, the parties hereto agree that this provision shall not be construed to in any way limit the Developer's ability to assert any defenses, including, but not limited to, the defense of immunity.

Township hereby agrees to indemnify and hold harmless Developer, its board members, 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 Developer, its board members, officers, employees and agents, or any of them, by reason of an act or failure to act, such act relating to the Township's obligations relating to the Project, of the Township, its Supervisors, officers, employees, attorneys, engineers, or agents, whereby such negligent act or negligent failure to act is a direct cause of any accident, injury, death or damage to any person or property relating to the Project, and until such time that the Project is determined to be completed.

Notwithstanding the foregoing, the parties hereto agree that this provision shall not be construed to in any way limit the Township's ability to assert any defenses, including, but not limited to, the defense of immunity.

11. **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 certified mail to the respective addresses stated above: Any notice sent to the Developer shall be addressed to the attention of the Developer's Director of Buildings and Grounds.
12. **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.

13. **Assignability.** This Agreement may not be assigned or transferred by Developer without the written consent of Township.
14. **Revocation.** Subsequent to Township notice and a cure period of thirty days, 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 material breach of the terms and conditions of this Agreement or any Ordinance, Resolution or Regulation of Township or any laws of the County of Warren, Commonwealth of Pennsylvania or the United States of America.
15. **Force Majeure.** The Township and Developer understand that performance by Developer may be interrupted or delayed by an occurrence outside of Developer's control, including but not limited to the following: an act of God, war, riot, adverse weather conditions or sovereign conduct. If that should occur, Developer shall be excused from performance for as long as it is reasonably necessary to complete performance as determined by the Township and Township will not revoke any permit or approval during this time period.
16. **Recording.** This Agreement may be recoded by the Township. Any and all expenses incurred in the recording of this Agreement will be borne by the Township.
17. **Jurisdiction.** It is agreed by the parties hereto that with respect to any controversy arising in relation to or out of this Agreement, that the laws of Pennsylvania shall apply.
18. **One Call.** The Developer will comply with the Pennsylvania One Call System. Developer will be responsible for any and all costs or damages associated with Developer failure to comply with the Pennsylvania One Call System. Developer shall be responsible for Pennsylvania One Call Identification stakes or markings.

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

ATTEST:

FARMINGTON TOWNSHIP

Secretary

By: _____
Supervisor

By: _____
Supervisor

By: _____
Supervisor

ATTEST:

WARREN COUNTY SCHOOL DISTRICT

Secretary, Board of School Directors

By: _____
President, Board of School Directors