

## ESCROW AGREEMENT

**THIS ESCROW AGREEMENT** made and entered into as of \_\_\_\_\_, 200\_\_\_\_, by and between the **TOWNSHIP OF WEST EARL**, a second class township under the laws of the Commonwealth of Pennsylvania with municipal offices at 157 West Metzler Road, Brownstown, Pennsylvania 17508, hereinafter called the "Township", and \_\_\_\_\_ of \_\_\_\_\_, hereinafter called "Developer".

WITNESSETH:

WHEREAS, Developer is developing \_\_\_\_\_ (the "Development") located at \_\_\_\_\_ within the Township (the "Property"), as set forth on plans submitted to the Township identified as Subdivision and/or Land Development Plan for \_\_\_\_\_, prepared by \_\_\_\_\_, Project Number \_\_\_\_\_, dated \_\_\_\_\_, last revised \_\_\_\_\_ (the "Plans"); and

WHEREAS, as a part of the Development, Developer is required by the provisions of the Pennsylvania Municipalities Planning Code ("MPC") and the West Earl Township Subdivision and Land Development Ordinance (the "Ordinance") to construct certain improvements hereinafter more fully described in Exhibit "A", which is attached hereto and incorporated herein (the "Improvements"); and

WHEREAS, in accordance with the requirements of the MPC and the Ordinance, Developer is required to post financial security to secure completion of the Improvements; and

WHEREAS, the Township is willing to maintain a cash escrow fund in accordance with Section 509 of the MPC at the request of Developer to insure construction in compliance with the Township's ordinances, resolutions, rules and regulations.

NOW, THEREFORE, intending to be legally bound hereby and in consideration of receiving approval of the Development from the Board of Supervisors of West Earl

Township and in consideration of receiving permits from the Township to develop the Property, Developer and the Township agree as follows:

1. The foregoing recitals are incorporated herein and constitute a substantive part of this Agreement.

2. Developer will deposit with the Township a cash escrow fund in the amount of \_\_\_\_\_ (\$ \_\_\_\_\_) Dollars. The fund created by this deposit shall be held by the Township as an escrow fund for the exclusive benefit of the Township for the construction of required Improvements, including storm drainage facilities, in accordance with Township and other applicable specifications, which amount and the interest earned thereon (the "Fund"), if any interest is earned, shall be held by the Township in accordance with the terms and conditions of this Agreement. Said Improvements are those specifically outlined on the Plans and any accompanying plans which are incorporated herein by reference and which are on file with the Township.

3. The Township will hold the Fund as the property of Township, and it is the intention of the parties that the Fund shall not be subject to the claims of the Developer's creditors.

4. The Township will release to the Developer sums from the Fund upon completion and satisfactory inspection by Township representatives of the Improvements. In the event that the Developer has defaulted or abandoned the construction of the Improvements, then the Township may draw upon the Fund. In such event, the Township's sole obligation to Developer is to advise Developer of the withdrawal of the Fund by the Township.

5. The Township by its Engineer, Road Superintendent or other designated person will inspect the construction of the Improvements at progressive stages of completion as shall be agreed upon.

6. In the event there is a difference of opinion as to the quality of the work completed, or as to the completion of the work to meet Township and other applicable specifications, the decision of the Township representative shall control, and no portion of the Fund will be released until such portion of the work is in compliance with Township

and other applicable specifications.

7. In the event any portion of the previously inspected Improvements is removed for any purpose, the reconstructed portion thereof must be reinspected in the same manner as provided for the original construction.

8. Upon satisfactory completion of the Improvements under this Agreement, the Township agrees to make a final inspection and release any and all sums remaining in the Fund to Developer if the Improvements meet Township and other applicable specifications and if all inspection, legal fees, and administrative costs of the Township to open and maintain the Fund have been paid by the Developer. A satisfactory final inspection is not intended to mean that the Township will accept dedication of the Improvements.

9. Legal, engineering and other costs incurred by the Township under this Agreement, including the legal expense to prepare this Agreement, engineering and other fees for inspections of the Improvements to be constructed hereunder, and the administrative costs incurred by the Township to open and maintain the escrow account shall be paid by Developer. It is expressly agreed that any interest earned upon the Fund may be retained by the Township to recover the Township's administrative costs. All such fees, costs and expenses shall be paid prior to the release of money in the Fund to Developer. Developer expressly agrees that the Township may retain as much of the Fund as necessary to reimburse itself for fees, costs and expenses, and Developer further agrees that should the Fund be insufficient to reimburse the Township for fees, costs and expenses incurred, Developer shall pay such fees, costs and expenses. The Township is irrevocably authorized to draw upon the Fund to reimburse itself for such fees, costs, and expenses.

10. The specifications for the Improvements are those set forth on the Plans and any profiles, utility plans and storm drainage plans which accompanied Developer's Plans. All of the aforesaid plans are incorporated herein by reference. All street and storm drainage Improvements are to be constructed in compliance with the ordinances, resolutions and regulations of the Township, all of which are by reference made a part hereof.

11. This Agreement will be construed, performed and enforced in accordance with

the laws of the Commonwealth of Pennsylvania.

12. This Agreement is not transferable without the written permission of the Township.

13. All Improvements shall be completed on or before \_\_\_\_\_, which time for completion shall be of essence of this Agreement. Should the Improvements not be completed, or should Developer commence development and thereafter cease reasonable prosecution of installation of the Improvements, or should Developer fail or refuse to pay legal and/or inspection and/or administrative expenses as agreed herein, then, in that event, the Township may withdraw the moneys remaining in said Fund to the extent necessary for the completion of the remaining Improvements which are required to be made hereunder and for the reimbursement of Township expenses.

14. Section 509 of the Pennsylvania Municipalities Planning Code, as amended by Act 170 of 1988, shall control and govern this Agreement.

15. Developer acknowledges that if the Fund created hereunder is insufficient to pay the cost of installing or making repairs or corrections to all of the Improvements covered by this Agreement and to pay all inspection and legal fees, the Township may, at its option, install all or part of said Improvements and may institute appropriate legal or equitable actions against Developer, its successors and assigns, to recover the monies necessary to complete the remainder of the Improvements and to collect any inspection, legal or administrative fees or expenses.

16. Developer may at any time post substitute financial security in an amount acceptable to the Township Engineer and in a form acceptable to the Township Solicitor. Should Developer elect to post other financial security, the remainder of the Fund created hereunder shall be released to Developer.

17. With respect to any of the Improvements which are dedicated to and accepted by the Township following completion, Developer, if requested to do so by the Township, shall post financial security or otherwise guarantee the structural integrity of said improvements in accordance with the design and specifications as depicted on the Plans for a term not to exceed 18 months from the date of acceptance of dedication. Said financial security, if required, shall be in the form and in the amount required by Section 509 of the

Pennsylvania Municipalities Planning Code. The Township and the Developer agree that the storm water management facilities (except those located within a public right-of-way) shall not be dedicated to nor accepted by the Township.

18. The Township, its agents, servants and employees, shall have no responsibility or liability with regard to the design and/or installation of the Improvements which are to be installed in connection with the development of the Property, and Developer shall indemnify and hold harmless the Township, its agents, servants and employees, from any claims or damages arising therefrom.

19. In the event it becomes necessary to disturb any existing Township streets, curbs, drainage structures or other facilities during the course of the installation of the Improvements, Developer agrees, at its cost, to restore such Township facilities to a condition equal to or better than their existing condition.

20. This Agreement sets forth the entire agreement and understanding between the parties as to the subject matter thereof and may only be amended subsequent to the date hereof by a written instrument signed by the party to be bound thereby.

21. The provisions of this Agreement shall be binding upon and inure to the benefit of the heirs, personal representatives, permitted assigns, grantees, lessees and successors of the parties hereto and shall constitute covenants running with the land.

22. For the purpose of this Agreement, the masculine gender shall be deemed to include the feminine and the neuter, and vice versa. Unless the context otherwise requires, the use of the singular and plural shall be interchangeable.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed as of the day and year first above written.

TOWNSHIP OF WEST EARL,  
Lancaster County, Pennsylvania

Attest: \_\_\_\_\_  
Secretary  
(Vice) Chairman,

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

[TOWNSHIP SEAL]

(Individual or Husband and Wife Developer)

Witness:

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

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

Trading and doing business as:

\_\_\_\_\_

-----  
(Partnership Developer\*)

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

Witness:

\_\_\_\_\_  
By: \_\_\_\_\_(Seal)  
Partner

\_\_\_\_\_  
By: \_\_\_\_\_(Seal)  
Partner

\_\_\_\_\_  
By: \_\_\_\_\_(Seal)  
Partner

\_\_\_\_\_  
By: \_\_\_\_\_(Seal)  
Partner

\*All Partners must execute this Agreement

-----  
(Corporation Developer)

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

ATTEST:

By: \_\_\_\_\_  
(Assistant) Secretary

By: \_\_\_\_\_  
(Vice) President

[CORPORATE SEAL]