

IN THE COURT OF COMMON PLEAS OF
MONTGOMERY COUNTY, PENNSYLVANIA

HIGHWAY MATERIALS, INC.,

Plaintiff,

v.

WHITEMARSH TOWNSHIP, *et al.*,

Defendants.

:
: **Civil Action**
: **No. 09-41816**
:
:
: **Hon. Esther R. Sylvester, S.J.**
: **(By Special Appointment)**
:
:

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is made this ___ day of _____, 201__, by and between Peter DePaul ("DePaul") and HIGHWAY MATERIALS, INC. ("HMI"), on their own behalf and on behalf of their respective heirs, predecessors, affiliates, successors, insurers, and assigns (hereinafter collectively referred to as "HMI Parties"), on the one hand, and Ross Weiss, Esquire ("R. Weiss"), on his own behalf and on behalf of his law firm, current and former partners, shareholders, associates, counsel, attorneys, affiliates, insurers, successors and assigns (hereinafter collectively referred to as "Weiss Parties"), Sean P. Kilkenny, Esquire ("Kilkenny") on his own behalf and on behalf of his law firm, current and former shareholders, associates, counsel, attorneys, affiliates, successors and assigns (hereinafter collectively referred to as ("Kilkenny Parties"), Whitemarsh Township, Montgomery County, Pennsylvania and the Whitemarsh Township Board of Supervisors ("Board of Supervisors"), and its and their predecessors, affiliates, successors, insurers, and assigns (hereinafter collectively referred to as "Township"), the Whitemarsh

Township Planning Commission (“Planning Commission”), and its and their predecessors, affiliates, successors, insurers, and assigns (hereinafter collectively referred to as “Whitemarsh Planning Commission”), and **William P. Rimel, III** (“Rimel”), **Ann Younglove** (“Younglove”), **William E. Kramer** (“Kramer”), **Elizabeth Gordon Graf** (“Graf”), **Ronald DeRosa** (“DeRosa”), **Peter B. Cornog** (“Cornog”), **Michael A. Zeock** (“Zeock”), **Jonathan D. Weiss** (“J. Weiss”), **Joseph P. Corcoran, III** (“Corcoran”), **Steven S. Brown** (“Brown”), **Jean McLenigan** (“McLenigan”), **Kelly C. Wall** (“Wall”), **Leslie S. Richards** (“Richards”), **Sara J. Erlbaum** (“Erlbaum”), **David E. Brook** (“Brook”), **Robert R. Hart** (“Hart”), **Kenneth Parsons** (“Parsons”), **Charles Hough** (“Hough”), **James Behr** (“Behr”), **James Corr** (“Corr”), **Ann Gardner** (“Gardner”), **William O’Donnell** (“O’Donnell”), **Lawrence J. Gregan** (“Gregan”), **Thomas F. Zarko** (“Zarko”), and **Christopher Van de Velde** (“Van de Velde”), on behalf of themselves, their heirs, successors, insurers and assigns (hereinafter collectively referred to as “Whitemarsh Individuals”), on the other hand. The HMI Parties, the Weiss Parties, the Kilkenny Parties, the Township, the Planning Commission, and the Whitemarsh Individuals may sometimes be collectively referred to as the “Parties.” In addition, where applicable, all other defendants named as a party to this Agreement, except for the Township, may sometimes be referred to as “Other Settling Defendants.”

BACKGROUND

WHEREAS, HMI is the record owner of:

A. approximately 54 acres of land located on Stenton Avenue in Whitemarsh Township (“Township”), Montgomery County, Pennsylvania (“Hole No. 1”);

B. approximately 67 acres of land located on Stenton Avenue and on Joshua Road in the Township (“Hole No. 2”); and

C. approximately 193 acres of land located on Joshua Road in the Township (“Hole No. 3”). Hole No. 1 is also referred to herein as the “Property”. Hole Nos. 1, 2 and 3 are referred to herein, collectively, as the “HMI Properties”.

WHEREAS, at all times material hereto, up to and including September 2001, the majority of the HMI Properties was zoned HVY-X Industrial and Lim-X Industrial under the Whitmarsh Township Zoning Ordinance (“Zoning Ordinance”) (a portion of Hole No. 3 was and is zoned A Residential and a small portion of Hole No. 1 was and is zoned AA-Residential); and

WHEREAS, on September 10, 2001, HMI filed an application for land development (“Land Development Application”) with the Township for Hole No. 1 to construct 500,000 square feet of office space and accompanying parking areas on the Property; and

WHEREAS, on the afternoon of October 18, 2001, HMI filed land development plans for Hole No. 2 and Hole No. 3 proposing the construction of numerous buildings, roads and associated parking on those properties in accordance with the HVY-X and Lim-X zoning then applicable to those properties. By subsequent agreement between HMI and the Township, further action on and consideration of the development plans for Hole No. 2 and Hole No. 3 was indefinitely stayed pending resolution of the disputes between the Parties related to Hole No. 1. As of the date of this Agreement, the development plans for Hole No. 2 and Hole No. 3 remain “pending” before the Township; and

WHEREAS, on the evening of October 18, 2001, the Board adopted Ordinance Nos. 740, 741, 742 and 743, thereby enacting the EX-Extraction Zoning District and rezoning the HVY-X and Lim-X portions of all three of the HMI Properties to the EX-Extraction district (“the First Rezoning Ordinances”); and

WHEREAS, on November 15, 2001, HMI filed a procedural validity challenge with the Township Zoning Hearing Board with regard to the First Rezoning Ordinances; and

WHEREAS, on February 28, 2002, the Board enacted Ordinance Nos. 747, 748, 749 and 750, which repealed the First Rezoning Ordinances, re-enacted the EX-Extraction District and again rezoned the HVY-X and Lim-X portions of all three of the HMI Properties to EX-Extraction; and

WHEREAS, on March 21, 2002, the Board voted unanimously to deny HMI's Land Development Application for Hole No. 1 ("Plan Denial"); and

WHEREAS, on April 19, 2002, HMI filed an appeal of the denial of its Land Development Application to the Court of Common Pleas of Montgomery County (the "Court") at No. 2002-07500, Montgomery County, Pennsylvania (hereinafter "Land Use Action"); and

WHEREAS, on May 24, 2002, HMI filed a federal civil rights action at Civil Action Number 02-3212 in the United States District Court for the Eastern District of Pennsylvania against Whitmarsh Township, individual members of the Board and others, as a result of the denial of its Land Development Application and the rezoning of all three of the HMI Properties to EX-Extraction. On October 4, 2004, summary judgment was entered in favor of all of the defendants and against HMI by the District Court, which decision was affirmed on appeal to the United States Court of Appeals for the Third Circuit at Docket No. 04-4195 ("Federal Appeal"); and

WHEREAS, on July 1, 2008, the Honorable Kent H. Albright entered his Decision on the Land Use Action reversing the denial of HMI's Land Development Application and remanding that application back to the Township for further consideration consistent with the Court's Order; and

WHEREAS, the Township (among others) appealed the July 1, 2008 Order to the Commonwealth Court of Pennsylvania; and

WHEREAS, on May 21, 2009, the July 1, 2008 Order was affirmed by the Commonwealth Court of Pennsylvania, and no further appeal was thereafter pursued; and

WHEREAS, on October 18, 2010, HMI filed its Amended Petition for Contempt in the Land Use Action, which Petition remains pending before the Court of Common Pleas, which is holding disposition of the Amended Petition in abeyance by agreement of the parties; and

WHEREAS, HMI on December 4, 2009 filed a civil action in the Court of Common Pleas of Montgomery County captioned *Highway Materials, Inc. v. Whitemarsh Township, et al.*, and bearing docket number Civil Action Number 2009-41816 (“Civil Action”) arising out of the Township’s denial of HMI’s Second Revised Preliminary Plan of Development on or about March 21, 2002 (“Plan Denial”), HMI’s Land Use Action, the rezoning of all three of the HMI Properties to Ex-Extraction and related conduct; and

WHEREAS, R. Weiss, Kilkenny, the Board of Supervisors, the Planning Commission, and the Whitemarsh Individuals, were named as defendants in the Civil Action; and

WHEREAS, the Whitemarsh Individuals were named as defendants in their individual and official capacities as members of the Board of Supervisors, the Planning Commission, or Whitemarsh Township, managers, or engineers, as the case may be; and

WHEREAS, Donald Cohan, Neil Stein, Esquire, Marc Kaplin, Esquire, and Kaplin, Stewart, Meloff, Reiter & Stein, P.C. (collectively, the “Kaplin Defendants”) were also named as defendants in the Civil Action; and

WHEREAS, among other proceedings in the Lawsuit, the Whitemarsh Individuals and the Township Parties filed Preliminary Objections on January 25, 2010, which were overruled by

the Court on June 15, 2011 by Order entered June 17, 2011, and defendant Ross Weiss filed Preliminary Objections on January 25, 2012, which were overruled on June 15, 2011 by Order entered June 17, 2011, and the Kaplin Defendants filed Preliminary Objections which were overruled on June 15, 2011 by Order entered June 17, 2011, and defendant Sean Kilkenny filed Preliminary Objections on February 8, 2010, which were overruled on June 15, 2011 by Order entered June 17, 2011, and the Whitemarsh Individuals and the Township Parties filed a Motion for a Protective Order on February 21, 2012 to prevent depositions of 5 of the Whitemarsh Individuals, which Motion was denied by on February 29, 2012 by Order entered March 6, 2012, and on July 8, 2011, the Kaplin Defendants sought to Appeal the Lawsuit to the appellate courts, which Appeal was quashed by Order of the Commonwealth Court dated August 22, 2011, and on September 19, 2011 the Kaplin Defendants filed a Petition for Allowance of Appeal of the Commonwealth Court's Order with the Pennsylvania Supreme Court, which Petition for Allowance of Appeal was denied by the Supreme Court on April 25, 2012, and the Whitemarsh Individuals and the Township Parties filed a Motion for Judgment on the Pleadings on March 7, 2012, which Motion was denied on October 17, 2012 by Order entered October 22, 2012, and various defendants have filed various motions for summary judgment which are all currently pending before the Court (hereinafter the Civil Action and the Answer shall be referred to collectively as the "Lawsuit"); and

WHEREAS, HMI filed a zoning appeal in the Court of Common Pleas of Montgomery County at Case No. 2010-29117 and the Township filed a zoning appeal in the Court of Common Pleas of Montgomery County at Case No. 2010-28799, both of which were related to the HMI Properties, and both of which have been discontinued; and

WHEREAS, on November 30, 2012 and December 6, 2012, the HMI Parties, the Weiss Parties, the Kilkenny Parties, the Township, the Planning Commission, and the Whitemarsh Individuals (collectively, the “Mediation Parties”) mediated the claims set forth in the Lawsuit and Land Use Action; and

WHEREAS, during the mediation, the Mediation Parties engaged in settlement discussions and agreed upon the essential terms of this agreement to settle the Lawsuit as among the Mediation Parties, the Land Use Action, and the Civil Action including the payment of certain monies to HMI with respect to the Lawsuit; and

WHEREAS, during the mediation, the settlement reached included an agreement between the Township and the HMI Parties concerning the resolution of the Plan Denial and Land Use Action; and

WHEREAS, on the specific terms and conditions set forth herein, and without an admission of liability on the part of any Party, the Parties have agreed to enter into this Agreement for that purpose.

NOW, THEREFORE, in consideration of the facts set forth in the Background section of this Agreement, and in consideration of the mutual covenants and agreements contained herein, the Parties hereto, intending to be legally bound hereby, agree as follows:

1. **Incorporation of Background.** The Background section of this Agreement is incorporated into the body of this Agreement as if fully set forth herein.
2. **Surrender of HVY-X Development Rights for Hole No. 1, No. 2 and No. 3.** In exchange for the alternative development rights and other rights and obligations of the Parties set forth in this Agreement, HMI agrees to surrender any rights it may otherwise have to develop Holes No. 1, No. 2 and No. 3 under the regulations of the HVY-X Heavy Industrial

District regulations including, but not limited to, the land development plans for 500,000 square feet of office space known as "Creekside Commons" which are the subject of the Land Use Action docketed at No. 2002-07500 in the Montgomery County Court of Common Pleas; as well as the industrial park plans for Hole No. 2 and Hole No. 3 which were filed in October 2001. All subdivision and land development filing fees and/or escrows totaling \$49,244 previously paid to the Township in connection with the HVY-X plans for these three properties in 2001 shall be repaid to HMI within 10 days following expiration of the thirty day appeal period after Court approval of this Agreement, provided no appeal has been taken during such period. If an appeal has been taken during such period, such amount shall be repaid into the Joint Escrow Account as established in Paragraph 13 below. Thereafter, these funds shall be governed and disbursed in accordance with the provisions of Paragraph 13 below. Upon HMI's receipt of such fees and/or escrows, HMI shall formally (and in writing) withdraw the 2001 HVY-X plans for Holes 1, 2 and 3.

3. **The Development of Hole No. 1.** The Township and HMI agree that Hole No. 1 may be developed, in phases if HMI so elects, by HMI in accordance with the following criteria:

a. **Office Building.** An office building may be developed on Hole No. 1 which is not to exceed 30,000 square feet of useable floor area nor three (3) stories in height. Any vehicular parking area situate within the office building which is more than 50% below average outside grade shall not be counted toward the three (3) story height limitation. HMI shall design all parking required (under the zoning ordinance) for the office building, but shall be required to construct only that parking which such building shall actually need and the balance of such required parking shall be kept "in reserve" (and constructed only if and when

either HMI or the Board reasonably believe that additional parking is needed by the occupants of the office building).

b. Residential Units. Hole No. 1 may also be developed for up to 335 residential dwelling units in a mix of condominium units, carriage homes and townhouses. Notwithstanding the depiction of a certain number of condominium units and a certain number of townhouses on the Hole No. 1 Concept Plan, attached hereto as Exhibit "A", HMI shall be permitted to change the numbers and locations of each type of dwelling permitted (condominium unit, townhouse or carriage home) provided the total number of dwelling units does not exceed 335 and provided all other provisions of this Agreement are otherwise addressed.

c. Election. At the sole election of HMI, Hole No. 1 may also be developed for up to 360 residential dwelling units in a mix of condominium units, carriage homes and townhouses provided HMI elects, in its sole discretion, not to construct an office building in accordance with 3(a). Should HMI make this election, HMI shall be permitted to change the numbers of each type of dwelling permitted (condominium unit, townhouse or carriage home) provided the total number of dwelling units does not exceed 360 and provided all other provisions of this Agreement are otherwise addressed.

d. Height Limitations of Residential Units. The permitted height of any townhouses or carriage homes on Hole No. 1 shall not exceed two and one-half (2 1/2) stories. The permitted height of any condominium buildings shall not exceed three (3) stories if any part of such condominium building is within 500 feet of the current ultimate right-of-way of Stenton Avenue. The permitted height of any condominium building located entirely beyond the distance of 500 feet from the current, ultimate right-of-way of Stenton Avenue shall not exceed four (4) stories in height. In the case of vehicular parking located within any condominium

building, any such parking which is constructed more than 50% below the average surrounding grade of the building, shall not be included in the three (3) story or four (4) story height limitation.

e. Hole No. 1 Perimeter Setbacks. The proposed development plans for Hole No. 1 shall respect perimeter setbacks of 100 feet from the existing, ultimate right-of-way of Stenton Avenue for carriage homes and townhouses and their related parking; 190 feet from the existing ultimate right-of-way of Stenton Avenue for the office building (also 60 feet for any office building drive aisle and 90 feet for office building parking); 50 feet from any property lines; and 25 feet from the edge of the right-of-way of the railway line which forms the northerly side boundary of Hole No. 1. With regard to townhouses and/or carriage homes, any uncovered patios and/or uncovered decks attached thereto may encroach into the required setback areas (and specified distances between buildings) (not including the 25 foot setback from the railroad right-of-way) to a maximum distance of 20 feet from the building they serve.

f. Stormwater Detention. The stormwater detention plan and facilities for the proposed development on Hole No. 1 shall be designed according to law without regard to a pre-development "meadow" condition. The stormwater detention plan and facilities shall otherwise be in accordance with Township law in effect on September 10, 2001 and in accordance with current State and Federal law.

4. Agreed Future Development of Hole No. 2.

a. The Township and HMI hereto specifically recognize and affirm the valid, pre-existing, non-conforming uses currently existing on the Hole No. 2 and Hole No. 3 properties which include, but are not limited to: quarrying; quarry reclamation or filling; concrete manufacture; bituminous blacktop manufacture; distribution of quarry materials, concrete and

bituminous blacktop; the parking, storage, service and repair of vehicles used in the aforementioned businesses; and such other businesses as were permitted under the HVY-X and Lim-X zoning regulations and are reasonably related to the uses already described herein. It is further understood that certain of the uses on Hole No. 2 may, depending on future business plans, need to be relocated to Hole No. 3, and vice versa. The Township and HMI agree that the industrial uses on Holes 2 and 3 may be located and relocated to either property as determined in the sole business judgment of HMI (subject to the SALDO and relevant building code issues, if any).

b. Except for the pre-existing, non-conforming uses described in paragraph 4(a) above, the 35 acres of open space shown on the settlement sketch plan for Hole No. 2, prepared by Heuser Design dated March 31, 2006 and last revised February 22, 2009 (the "Hole No. 2 Concept Plan", which is attached hereto as Exhibit "B") shall be permanently deed restricted against further development and shall be offered in dedication to the Township upon completion of the DEP approved "closure" plan for Hole No. 2 subject to the retention of any utility easements needed to develop Hole No. 2. In addition, upon completion of the DEP approved "closure" plan for Hole No. 2, all the pre-existing, non-conforming quarry related uses on Hole No. 2 shall be deemed surrendered (unless moved to Hole No. 3 as provided for below). The Township shall be under no obligation to accept the dedication of such open space. If the Township does accept dedication, the Township shall be permitted to utilize the dedicated land for passive or active recreational uses including ball fields, parkland, trails, etc. The Township may also utilize the dedicated land for a new Township building, provided such building (and any accessory structures) maintains a setback of no less than 400 feet from any portion of the remainder of Hole No. 2 being retained by HMI for residential development and construction is

started within 7 years of the date of dedication. The Township shall not use any portion of the dedicated land on Hole No. 2 for a municipal garage, public works facility, equipment storage, recycling center, incinerator, transfer station, salt storage, or any other usage which would be noxious or inconsistent with development of the remainder of Hole No. 2 for “high end” residential use.

c. HMI may develop the land shown on the Hole No. 2 Concept Plan (outside the 35.0 acre open space area) for 193 residential, dwelling units, which development may be a combination or mixture of single family detached dwellings, townhouses, carriage homes, or three story condominium buildings (not including, if constructed, one floor of parking beneath any such condominium building) which development may be in phases if HMI so elects. No such residential development of Hole No. 2 shall take place, however, until DEP approval of the final implementation of the “closure” plan for Hole No. 2, or at least such portion of Hole No. 2 as is proposed for residential development.

5. **Agreed Future Development of Hole No. 3.**

a. HMI and the Township specifically recognize and affirm the valid, pre-existing, non-conforming uses currently existing on the Hole No. 2 and Hole No. 3 properties which include, but are not limited to: quarrying; quarry reclamation or filling; concrete manufacture; bituminous blacktop manufacture; distribution of quarry materials, concrete and bituminous blacktop; and the parking, storage, service and repair of vehicles used in the aforementioned businesses; and such other businesses as were permitted under the HVY-X and Lim-X zoning regulations and are reasonably related to the uses already described herein. It is further understood that certain of the uses on Hole No. 2 may, depending on future business plans, need to be relocated to Hole No. 3, and vice versa. HMI and the Township agree that the

industrial uses on Holes 2 and 3 may be located and relocated to either property as determined in the sole business judgment of HMI (subject to the SALDO and relevant building code issues, if any).

b. Except for the pre-existing, non-conforming uses described in paragraph 5(a) above, the 100 acres of open space shown on the settlement sketch plan for Hole No. 3, prepared by Heuser Design and dated March 31, 2006, and last revised February 22, 2009 (the "Hole No. 3 Concept Plan", which is attached hereto as Exhibit "C") shall be permanently deed restricted against further development and shall be offered in dedication to the Township upon completion of the DEP approved "closure" plan for Hole No. 3 subject to the retention of any utility easements needed to develop Hole No. 3. In addition, upon completion of the DEP approved "closure" plan for Hole No. 3, all the pre-existing, non-conforming quarry related uses on Hole No. 3 shall be deemed surrendered. The Township shall be under no obligation to accept the dedication of such open space. If the Township does accept dedication, the Township shall be permitted to access such land as shown on the Hole No. 3 Concept Plan and to utilize the dedicated land for passive or active recreational uses including ball fields, parkland, trails, etc. The Township may also utilize the dedicated land for a new Township building, provided such building maintains a setback of no less than 400 feet from any portion of the remainder of Hole No. 2 or Hole No. 3 being retained by HMI for residential development and construction is started within 7 years of the date of dedication. The Township shall not use any portion of the dedicated land on Hole No. 3 for a municipal garage, public works facility, equipment storage, recycling center, incinerator, transfer station, salt storage, or any other usage which would be noxious or inconsistent with development of the remainder of Hole No. 3 for "high end" residential use.

c. HMI may develop the 75.2 acres shown on the Hole No. 3 Concept Plan (outside the 100 acre open space area and the 18.6 acres of existing "A" Residential Zone lands along Flourtown Road) for 263 residential, dwelling units, which development may be a combination or mixture of single family detached dwellings, townhouses, carriage homes or three (3) story condominium buildings (not including, if constructed, one (1) floor of parking beneath any such condominium building) which development may be in phases if HMI so elects. No such residential development of Hole No. 3 shall take place, however, until DEP approval of the final implementation of the "closure" plan for Hole No. 3, or at least such portion of Hole No. 3 as is proposed for residential development.

6. **Stenton Avenue Streetscape.** HMI and the Township agree as part of the land development improvements required in connection with the development of Hole No. 1, the Stenton Avenue streetscape of Hole No. 1 shall be improved with berming along its entire length plus landscaping consistent with one of the options for a Class B Buffer Yard as set forth in section 105-52 of the Township Subdivision and Land Development Ordinance as it existed on September 10, 2001 (unless some different landscape design is mutually agreed to between the Township and HMI). It is specifically understood that the Hole No. 1 Stenton Avenue streetscape improvements shall be part of the land development plans for the development of Hole No. 1 and shall be included in the public improvement escrow for the development of Hole No. 1 as provided in the Pennsylvania Municipalities Planning Code ("MPC").

7. **Existing A-Residential Zoning on Hole No. 3.** HMI and the Township specifically recognize that the existing A-Residential zoning along the Flourtown Road frontage of Hole No. 3 was not proposed for rezoning by the Township in October of 2001 nor in February of 2002 and has not, as of the date of this Agreement, been proposed for development

by HMI. It is therefore specifically understood that such A-Residential zoning (to a depth of 200 feet from the centerline of Flourtown Road) has not been a part of any of the litigation among the Parties and is unaffected by the provisions of this Settlement Agreement.

8. Sanitary Sewage Treatment for Development on Hole No. 1 and Hole No. 2.

a. HMI and the Township agree to support the application of Highway Materials and/or the Township for a sanitary sewage design initially taking the flow from Hole No. 1 to the pump station along Flourtown Road approximately 1000 feet east of Joshua Road. (Such support is specifically understood to include any necessary amendment to the Township's 537 Plan).

b. Township agrees to be responsible for all costs (engineering, design, permitting, construction, etc.) relating to the upgrade of the pump station and installation of a sanitary sewer line from Hole No. 1, across Hole No. 2, to connect the development of Hole No. 1 to the pump station with sufficient capacity to accommodate the anticipated flows from both the development of Hole No. 1 and Hole No. 2 as contemplated by this Agreement.

c. If, for any reason, the sanitary sewer design specified above does not receive approval for construction and operation from the DEP, the Township agrees to fully cooperate with HMI (including the amendment of the Township 537 Plan, if necessary) to find alternate, sanitary sewage treatment capability for Hole No. 1 and Hole No. 2 and specifically including a package plant on site or the possible connection of those properties via Stenton Avenue to the public sanitary sewer main which currently runs along the Wissahickon Creek in the vicinity of Mill Road and Stenton Avenue, and the Township shall either construct such sanitary sewer improvements as the alternate sanitary sewage capability shall require or shall

contribute towards such cost the amount that the Township would have incurred to engineer, design, construct, etc. the improvements described in subparagraph 8(b) immediately above.

9. Road and Traffic Improvements.

a. As part of the approved Land Development Plan reflecting the Hole No. 1 Concept Plan, the Stenton Avenue frontage of Hole No. 1 only shall be widened and/or improved at the sole cost of HMI in a manner which shall be approved by the governmental entity having jurisdiction over such road. Under no circumstances shall off-site improvements be required.

b. As part of the approved Land Development Plan reflecting the Hole No. 2 Concept Plan, the Stenton Avenue frontage of Hole No. 2 shall be widened and/or improved at the sole cost of HMI in a manner which shall be approved by the governmental entity having jurisdiction over such roads. Under no circumstances shall off-site improvements be required.

c. As part of the approved Land Development Plan reflecting the Hole No. 3 Concept Plan, the Joshua Road frontage of Hole No. 3 and the Flourtown Road frontage of Hole No. 3 shall be widened and/or improved at the sole cost of HMI in a manner which shall be approved by the governmental entity having jurisdiction over such roads. Under no circumstances shall off-site improvements be required.

d. Upon completion of the site frontage improvements required by this paragraph (at the appropriate times), HMI shall dedicate such improvements and necessary right-of-way to the appropriate governmental entity having jurisdiction, and if to the Township, such dedication shall be accepted. On state roads, the Township shall not be obligated to accept any dedication of right-of-way beyond such dedication as is required by PennDOT. All

improvements required by this paragraph shall be treated by the Parties as “Public Improvements” within the meaning of Article V of the MPC (and at the anticipated times) so that “financial security” shall be supplied by HMI (to the appropriate governmental entity) to guarantee their completion as well as HMI’s responsibilities under section 509 (k) of the MPC as to dedicated improvements.

e. Township agrees to fully cooperate with and support in good faith all efforts by Highway Materials to obtain the necessary permits for the site frontage road improvements provided for in this paragraph.

f. Township shall be required to improve the intersection of Stenton Avenue and Joshua Road, as well as the Stenton/Cricket/Flourtown intersection, as set forth in the Plan by Traffic Planning and Design, Inc., dated February 22, 2012, unrevised, titled INTERSECTION IMPROVEMENTS OF STENTON RD & FLOURTOWN RD & CRICKET RD, and the Plan by Traffic Planning and Design, Inc., dated February 22, 2012, last revised August 24, 2012, titled INTERSECTION IMPROVEMENTS OF STENTON RD & JOSHUA RD, entirely at the Township’s cost, including any condemnation costs for necessary right-of-way. Township shall also be required to do any other off-site road, traffic, signalization, or drainage improvements required by any other entity with jurisdiction (specifically including DEP and PENNDOT) in connection with the development of Hole No. 1 described herein. HMI may bid to perform the work intersection of Stenton Avenue and Joshua Road, as well as the Stenton/Cricket/Flourtown intersection, and, if successful, shall bill the Township for such work at HMI’s cost. The Township and HMI agree that all such work shall be completed within 18 months of the issuance of the first building permit to HMI for Hole No. 1, or as soon thereafter as practicable.

10. Open Space Dedication and Township Open Space, Park and Recreation Impact Fees.

a. HMI can transfer any setback area or open space on Hole No. 1 along Stenton Avenue as long as such area remains green and open except for HMI's entrances. Any open space dedication requirement, or park and recreation impact fee of the Township (whether now existing or enacted in the future) in connection with the proposed development on Hole No. 1 shall be deemed completely and entirely satisfied by the offer of future dedication of open space on Hole No. 2 and Hole No. 3. Similarly, any open space dedication requirement in connection with the proposed development on Hole No. 2, shall be deemed completely and entirely satisfied by the future dedication of open space on Hole No. 2 as set forth herein and the actual dedication of the open space shown on the Hole No. 2 Concept Plan to the Township at the time of DEP approval of the full implementation of the "closure" plan for Hole No. 2. Similarly, any open space dedication requirement in connection with the proposed development on Hole No. 3, shall be deemed completely and entirely satisfied by the future dedication of open space on Hole No. 2 as set forth herein and the actual dedication of the 100 acres of open space shown on the Hole No. 3 Concept Plan to the Township at the time of DEP approval of the full implementation of the "closure" plan for Hole No. 3. As a result of the above, there shall be no open space fee required for the development on any of the HMI properties (Hole Nos. 1, 2, and 3) and no other open space dedication or restriction requirement except as set forth herein. Moreover, any open space dedication shall be subject to such road or access easement or utility easements as are reasonably necessary to permit the development described herein.

b. Any additional open space designated on the future development plans (within the areas permitted to be developed) for any of the HMI Properties (with the

specific exception of private, recreational amenities for the future homeowners on such properties such as clubhouses, swimming pools, tennis courts, private walking trails, etc. or settlement ponds in connection with any remaining, ongoing quarry operations) shall initially be offered for dedication to the Township at no cost, but the Township shall be under no obligation to accept such offer of dedication. If the Township does not accept such offer, HMI shall (at its discretion) be permitted to deed the open space to the appropriate homeowners association or to a recognized privately-operated open space, land preservation or conservation organization, provided such entity agrees to be responsible for the future maintenance (if any) and stewardship of such open space.

c. It is specifically understood that except as set forth in this paragraph, no past, present or future open space dedication requirement or Township park, open space or recreation impact fee of any kind or nature whatsoever shall be chargeable in connection with the future development of any of the HMI properties.

11. Fees.

a. No fees of any kind shall be charged by the Township in connection with the Hole No. 1 development by HMI or any successor in title. The foregoing includes:

- (i) Traffic impact fees;
- (ii) Park and recreation fees;
- (iii) Subdivision fees;
- (iv) Plan review fees;
- (v) Building permit fees, including, but not limited to, electrical, plumbing, and foundation inspection fees;
- (vi) Use and occupancy permit fees;
- (vii) Sewer tapping or connection fees;

- (viii) Water connection fees;
- (ix) Township's legal fees;
- (x) Stormwater outfall fees;
- (xi) Any and all other administrative fees which could be charged by the Township in connection with the subdivision and land development of Hole No. 1 including engineering inspection fees during construction.

HMI agrees that it will be responsible for any and all other fees imposed by governmental entities other than the Township.

b. Notwithstanding provisions to the contrary in the Pennsylvania Municipalities Planning Code ("MPC"), HMI shall not be obligated to pay any Township consultant whatsoever in connection with the plans or the development of Hole No. 1.

12. **Agreed Procedure for Review and Approval of the Land Development Plans for Hole No. 1.**

a. HMI and the Township agree that HMI may develop Hole No.1 in conformity with: the setback, height and other development regulations set forth in this Agreement ("Development Regulations"); and the applicable provisions (or modifications thereof) of the SALDO referred to below in subparagraph (c) ("Applicable SALDO Requirements"). HMI shall cause its engineer to prepare preliminary plans for the subdivision and land development of Hole No.1 in accordance with the Development Regulations and the Applicable SALDO Requirements ("Preliminary Plans"). The Township agrees that when the Preliminary Plans depict the subdivision and land development of Hole No.1 in accordance with this Agreement (or in accordance with any other plan acceptable to the Township), the Development Regulations and the Applicable SALDO Requirements (collectively, the "Standards"), the Preliminary Plans (and final plan versions thereof) shall be approved by the

Township as promptly as possible, with all required meetings and hearings scheduled, and all required notices thereof being properly given, at the earliest dates possible. It is understood and agreed that for the purpose of determining the approvability of the Final Plan, the Standards shall include any applicable regulations of federal or state agencies having jurisdiction over development on Hole No. 1.

b. The Township and HMI acknowledge that it is virtually impossible at this stage of the design of the Hole No. 1 development to identify every provision of the SALDO which cannot be practically complied with on the Preliminary Plans. Accordingly, the parties specifically agree that if the Development Regulations are complied with, the Preliminary Plans (and the final versions thereof) shall be approved, even though they do not comply with every provision of the SALDO and strict compliance with every applicable provision of the SALDO will not be required, but any such provisions will be waived to the extent necessary to permit the proposed development in accordance with this Agreement.

c. **Preparation of Preliminary Plans.** After the execution and approval of this Agreement by the Parties and the issuance of the Court Order approving this Agreement, HMI shall cause its engineer to prepare the Preliminary Plans in accordance with the Development Regulations set forth in this Agreement, and the Applicable SALDO Requirements (collectively referred to hereinafter as “the Standards”). HMI shall then submit the Preliminary Plans to the Board/Township staff for review. For purposes of this Agreement, the term “Applicable SALDO Requirements” shall mean the provisions of the SALDO in existence at the time the Land Development Application was filed (September 10, 2001)(the “SALDO”), except as provided in this Agreement and unless: (i) a provision of the SALDO is replaced with an alternative suggested by HMI which provides a solution to the issue addressed by the replaced

SALDO provision which solution is equal to or better than the solution intended by the replaced SALDO provision in the reasonable opinion of HMI; (ii) the SALDO provision that is deviated from cannot be incorporated into the Preliminary Plans because incorporation of such SALDO provision is physically or economically prohibitive or results in loss of office square footage or residential density permitted by this Agreement and the deviation does not result in a material, adverse impact upon the public health, safety or welfare; or (iii) the SALDO provision that is deviated from causes an undue hardship upon HMI, such that HMI would be entitled to a waiver of such provision under the Pennsylvania Municipalities Planning Code (“MPC”). To the extent that an Applicable SALDO Requirement modifies a SALDO provision, such modification shall be sufficient to permit construction of the proposed development shown on the preliminary plans in accordance with this Agreement and shall be approved if it does not materially and adversely affect public health and safety, which approval will not be unreasonably withheld or delayed. The Township shall expeditiously approve such waivers of, and or modifications to, SALDO provisions as may be appropriate to implement this section 12(c).

d. **Preparation of Consultants’ Report.** Within forty-five (45) days after receipt of the initial Preliminary Plans (and 30 days after receipt of any revised Plans), the Township staff and consultants (hereinafter referred to as “Township Consultants”) shall review the Preliminary Plans in accordance with the Standards and shall simultaneously submit their joint, written comments with regard to the Preliminary Plans (the “Consultants’ Report”) to the Board of Supervisors of the Township and to HMI as follows:

- (i) Stating whether they believe that the Preliminary Plans have been prepared in accordance with the Standards;
- (ii) Stating which, if any, of the aspects of the Preliminary Plans deviate from the Standards;

- (iii) Recommending any objective changes or additions to the Preliminary Plans required to satisfy the Standards (the “Objective Requested Changes or Additions”); provided, however, the Township Consultants will only be permitted to recommend that any such Objective Requested Changes or Additions be incorporated in the Preliminary Plans if such changes/additions will not: (A) reduce the number of the residential units or the amount of office square footage as depicted on the Preliminary Plans; or (B) substantially change the location of the units or the configuration of the Proposed Development depicted on the Preliminary Plans unless, for either (A) or (B), such Objective Requested Change or Addition is clearly necessary to prevent a material, adverse impact upon the public health, safety or welfare. ((A) and (B) are hereinafter collectively referred to as the “Minimum Settlement Configuration”);
- (iv) Recommending any subjective changes or additions to the Preliminary Plans not required by the Standards (the “Subjective Requested Changes or Additions”) that they believe should be made to improve the technical engineering aspects of the Preliminary Plans. The Township Consultants shall not recommend any Subjective Requested Changes or Additions which would: (A) negatively impact the Minimum Settlement Configuration; or (B) materially increase the cost of construction of the Hole No. 1 Development (the Township Consultants’ suggested changes and/or additions under Subparagraphs (iii) and (iv) above are hereinafter collectively referred to as the “Requested Changes or Additions”); and

- (v) If the Township Consultants are of the opinion that: (A) there are any deviations from the Standards contained in the Preliminary Plans; or (B) that Requested Changes or Additions should be made to the Preliminary Plans, then the Township Consultants' Report shall contain detailed explanations of: (A) the nature of each deviation from the Standards; (B) the nature of each of the Requested Changes or Additions; (C) the basis as to why the Requested Changes or Additions are required and/or how the Requested Changes or Additions will improve the technical engineering aspects of the Preliminary Plans; (D) how the Objective Requested Changes or Additions can be made to the Preliminary Plans in a manner that will not: (E) negatively impact the Minimum Settlement Configuration; and (F) how the Subjective Requested Changes or Additions can be made to the Preliminary Plans in a manner that will not: (G) negatively impact the Minimum Settlement Configuration; or (H) substantially increase the cost of construction of the Hole No. 1.
- (vi) The Preliminary Plans may be reviewed by the Township Planning Commission and the County Planning Commission in light of the Standards and the other requirements of this Agreement for an advisory recommendation to the Township Consultants or the Board.

e. **Approval of Preliminary Plans.** HMI and the Township agree that they, together with the Township Consultants, shall work co-operatively and in good faith to resolve any issues raised by any Consultants' Report within 15 days of the issuance of such Consultant's Report, and if the parties cannot resolve the issues raised within such time period, unless the parties agree to submit the unresolved issues to an appropriate professional engineer

(such as Joseph J. Nolan, P.E., who is satisfactory to all parties) or other professional, the matter may be submitted by any party to the Court in accordance with Paragraph 24 below. When the Township Consultants' Reports, as modified by the resolution of any issues as contemplated by the preceding sentence, indicate that the Preliminary Plans (or any revised versions thereof) have been reasonably prepared in accordance with the Standards and have reached a level of design detail so as to be entitled to Preliminary Plan approval or conditional Preliminary Plan approval, the Township shall approve the Preliminary Plans at the earliest date possible, given requirements for notice of required Township proceedings.

f. **Agency Permits.** During the review of the Preliminary Plans, HMI intends to take the additional actions necessary to obtain all of the permits, approvals, waivers and agreements required to be obtained by it from governmental agencies and public and municipal authorities, other than the Township, which have jurisdiction over the development of Hole No. 1 ("Agency Permits"). The Township and their representatives shall issue such authorizations, documents and perform all necessary acts to cooperate with HMI during its application and review processes to obtain the Agency Permits. The Township and the Township Consultants and shall be permitted to have appropriate input in the normal course of the Plan Approvals process but shall not attempt to block or interfere with HMI's efforts to obtain the Agency Permits and shall reasonably cooperate in such efforts. When HMI obtains the Agency Permits, HMI shall deliver copies thereof to the Township.

g. **Final Plans.** After approval of the Preliminary Plans, HMI shall cause its engineer to add to the Preliminary Plans those additional categories of items that are necessary to convert the Preliminary Plans into final plans ("Final Plans") under the Applicable SALDO Requirements and the MPC. After the Preliminary Plans are converted into Final Plans,

copies thereof shall be delivered to the Township and the Township Engineer. Within thirty (30) days after receipt, the Township Engineer shall determine whether the Preliminary Plans have been properly converted into the Final Plans (and remain in compliance with the Standards) and shall issue his written report regarding such review within such 30 day period. HMI and the Township agree that they, together with the Township Engineer, shall work co-operatively and in good faith to resolve any issues raised by the Township Engineer's written report within 15 days of the issuance of such report, and if the parties cannot resolve the issues raised within such time period, unless the parties agree to submit the unresolved issues to an appropriate professional engineer (such as Joseph J. Nolan, P.E., who is satisfactory to all parties) or other professional, the matter may be submitted by any party to the Court in accordance with Paragraph 24 below.

h. **Signing of Final Plans.**

- (i) Upon issuance of the report by the Township Engineer that the Preliminary Plans have been properly converted into the Final Plans, or upon such a finding made under the dispute procedure set forth in Paragraphs 12(e) and 27, all signatures, seals and approvals of Township officials shall be endorsed upon the Final Plans sufficient for their recording in the Office of the Recorder of Deeds for the County of Montgomery. The Township may condition approval of the Final Plans, if necessary, upon HMI obtaining any necessary, outstanding Agency Permits, and HMI executing and funding the Township's normal improvement construction agreement (which agreement shall not exceed the permitted requirements of the MPC).
- (ii) HMI shall deliver to the Township the following copies of the Final Plans: One full set of mylars; two mylars of the record plans; five paper copies of the record plans; and four

full sets of paper copies . Such copies of the Final Plans shall have been appropriately signed by HMI and sealed by HMI's Engineer prior to delivery to the Board. Immediately thereafter, the Township Manager shall cause all necessary signatures, including those of the Township Engineer and Representatives of the Township Planning Commission, to sign the Final Plans, and the Board shall cause the Final Plans to be appropriately signed by the appropriate Board Members. The Township Solicitor shall then hold the signed Final Plans in escrow in accordance with this Agreement. All Township signatures shall be applied and Final Plans delivered to the Township Solicitor no later than fifteen (15) days after the delivery to the Township Manager.

i. **Determination of Amount of Financial Security.** At such time as HMI desires to commence the construction of the buildings of the Hole No. 1 Development depicted on the Final Plans, HMI shall sign the Township's normal improvement construction agreements and financial security agreements provided such agreements are consistent with the provisions of the MPC. HMI shall also deliver financial security ("Security") to the Township as governed by Section 509 of the Municipalities Planning Code with the valuation for such security to be determined based upon reasonable costs for such work and materials as exist at or about the time such financial security is being provided plus a 10% contingency factor as permitted by MPC section 509(F). Upon delivery of the improvement construction agreements, the financial security agreements and the Security, the Township Solicitor shall cause the signed copies of the Final Plans to be recorded or immediately delivered to HMI or its title company for recording. HMI and the Township agree that they, together with any appropriate Township

Consultants, shall work co-operatively and in good faith to resolve any disputes arising from the finalization of the improvement or development agreements or financial security agreement within 15 days of such dispute arising, and if the parties cannot resolve the issues raised within such time period, unless the parties agree to submit the unresolved issues to an appropriate professional engineer (such as Joseph J. Nolan, P.E., who is satisfactory to all parties) or other professional, the matter may be submitted by any party to the Court in accordance with Paragraph 24 below.

j. **Building and Zoning Permits.** Notwithstanding any provisions contained in any Township Ordinance, Rule, Regulation or Custom, at any time after Preliminary Approval of the Plans, HMI may submit building plans and the appropriate building permit applications to the Township for review by the Township Code Enforcement Officer under the then-applicable building codes of the Township. HMI shall be entitled to any favorable interpretations of such codes as have been made by the Township for similar buildings elsewhere in the Township. Such plans shall be reviewed by the Township Code Enforcement Officer and the Township Code Enforcement Officer shall issue a building permit (or a denial of the permit for specifically stated reasons under the then-applicable codes) within thirty (30) days after the date of submission. HMI may thereafter submit and resubmit revisions to the building plans until such time as the current version of the building plans satisfies all applicable building code provisions. When the building plans are in a form upon which building permits may be issued, the Township Code Enforcement Officer shall promptly indicate in writing to HMI that building permits will be issued when the Final Plans are recorded, all Agency Permits are in hand and Security has been posted for the public improvements shown on the Final Plans, which may be constructed in phases in accordance with the MPC. HMI and the Township agree that they,

together with any appropriate Township Consultants, shall work co-operatively and in good faith to resolve any disputes arising from the review and approval of the building permit applications within 15 days of such dispute arising, and if the parties cannot resolve the issues raised within such time period, unless the parties agree to submit the unresolved issues to an appropriate professional engineer (such as Joseph J. Nolan, P.E., who is satisfactory to all parties) or other outside professional, the matter may be submitted by any party to the Court in accordance with Paragraph 24 below.

k. **Planning Module Approvals.** At the time of approval of the Preliminary Plans, the Supervisors shall also approve HMI's sewage facilities planning modules ("Planning Modules") for the Proposed Developments and forward the approved planning modules to the Pennsylvania Department of Environmental Protection for its review and approval.

l. **Waiver of Submissions to Environmental Advisory Board and Shade Tree Commission.** With regard to the development of Hole No. 1, HMI shall not be required to make any application or submission for review of its project to the Township Environmental Advisory Board and/or Shade Tree Commission.

13. **Settlement.** Within ten (10) days after the expiration of the applicable appeal period running from the entry of an order approving this Agreement issued by the Honorable Esther Sylvester, sitting by designation for the Court of Common Pleas of Montgomery County, and provided that no appeal has been filed by any person, the sum of the "Settlement Amount") will be paid to HMI by check or by wire payable to Highway Materials, Inc., as and for full and final settlement of all claims that the HMI Parties had, has or may have against the Township and the

Other Settling Defendants with regard to, relating to, resulting from, or arising out of the Plan Denial, the Land Use Action, the Civil Action, and the Lawsuit, and the claims asserted and/or which could have been asserted by the HMI Parties in the Civil Action and Lawsuit, in accordance with and subject to the terms and provisions of this Agreement.

In the event an appeal is filed from the Court's approval of this Agreement, then the funds shall be paid into a Joint Escrow Account on behalf of H. Robert Fiebach, Richard A. Sprague, and Harry G. Mahoney. Upon entry of a final, non-appealable order on any such appeal, or the expiration of all appeal periods without an appeal having been taken, wherein the Court's approval of this Agreement is sustained, the Escrow Agents will pay the Settlement Amount to HMI by check or wire payable to Highway Materials, Inc., as and for full and final settlement of all claims that the HMI Parties had, has or may have against the Parties with regard to, relating to, resulting from, or arising out of the Plan Denial, the Land Use Action, the Civil Action, and the Lawsuit, and the claims asserted and/or which could have been asserted by the HMI Parties in the Civil Action and Lawsuit, in accordance with and subject to the terms and provisions of this Agreement.

In the event the appeal results in the reversal of the Court's decision to approve this Agreement, then the funds paid into the Joint Escrow Account shall be returned to the paying party, this Agreement shall become void *ab initio*, and the Lawsuit shall continue with each party responsible for its own attorneys' fees and costs.

14. **Other Parties.** It is further understood and agreed that the HMI Parties, in accepting the Settlement Amount, are expressly not releasing any claims that they may have against any other person or entity other than the Weiss Parties, the Kilkenny Parties, the Township, the Planning Commission and the Whitemarsh Individuals with respect to the subject

matter hereof, including, without limitation, not releasing claims against the remaining defendants in the Lawsuit, such as the Kaplin defendants, or any other party that may be named in the Lawsuit or any other litigation arising out of, relating to and/or resulting from the Plan Denial, the Land Use Action, the Civil Action, the Lawsuit and/or the Land Use Agreement in the future.

15. **Release by HMI.** Upon HMI's receipt of the Settlement Payment as set forth in Paragraph 13 above, the HMI Parties, on behalf of themselves, their heirs, and their respective affiliates, subsidiaries, predecessors, successors and assigns, and its and their respective officers, directors, agents, partners, servants, shareholders, employees, attorneys, insurers, counsel, consultants, personal representatives and their respective successors and assigns, hereby releases the Weiss Parties, the Kilkenny Parties, the Township, the Planning Commission, and the Whitemarsh Individuals, of and from any and all claims, liabilities, damages, relief, assessments, judgments and lawsuits whatsoever that HMI may currently have against the above parties, arising from the zoning classification, use, development and/or proposed development of the HMI Properties or any other reason from the beginning of time until the date of execution of this Settlement Agreement, and except for any claims, petitions, liabilities and lawsuits that may arise from the parties' performance under this Agreement.

16. **Release of HMI.** The Weiss Parties, the Kilkenny Parties, the Township, the Planning Commission, and the Whitemarsh Individuals hereby release HMI, its Board members, officers, employees, subsidiaries, attorneys, consultants and engineers from all claims, liabilities, damages, relief, assessments, judgments and lawsuits whatsoever, whether known or unknown, from the beginning of time until the date of this Settlement Agreement, that in any way relate to, arise from, pertain to, involve and/or refer to Hole Nos. 1, 2 or 3, the Lawsuit at

No. 09-41816, Montgomery County Pennsylvania or any other lawsuit or proceeding from the beginning of time up to the date of execution of this Settlement Agreement, and except for any claims, petitions, liabilities and lawsuits that may arise from the parties' performance under this Agreement.

17. **Dismissal of the Lawsuit and Land Use Action.** Contemporaneous with HMI's receipt of payment of the Settlement Amount pursuant to Paragraph 13 of this Agreement, the HMI Parties, with the cooperation of the Weiss Parties, the Kilkenny Parties, the Township, the Planning Commission and the Whitemarsh Individuals and their counsel, shall file voluntarily dismissals with prejudice of the following defendants from the Lawsuit: R. Weiss, Kilkenny, the Township, the Planning Commission, and the Whitemarsh Individuals, with each such party to bear its own attorneys' fees and costs. HMI's counsel shall promptly provide a time-stamped copy of the dismissal to counsel for the Parties identified therein.

The HMI Parties, with the cooperation of the Township and their counsel, shall also take all appropriate action to voluntarily dismiss the Land Use Action, pending in the Court of Common Pleas of Montgomery County, at Civil Action No. 2002-07500.

18. **No Admission of Liability.** Each Party acknowledges that this Agreement is being entered into as a compromise of several disputes, and is without any admission of fault, liability or wrongdoing by the HMI Parties, the Weiss Parties, the Kilkenny Parties, the Township, the Planning Commission and the Whitemarsh Individuals. Each such Party has freely entered into this Agreement after fully reviewing the terms and consulting with its respective counsel and fully understands that this Agreement represents a full and final compromise of all matters as more fully noted above, for the express purpose of precluding forever any future suits arising out of those matters. Notwithstanding the foregoing, nothing

herein shall prohibit the introduction into evidence of this Agreement in any action to enforce this Agreement or any term or provision of this Agreement.

19. **Entire Agreement.** This Agreement contains the entire agreement of the Parties with respect to the settlement of the Lawsuit and all disputes between them arising out of, relating to and/or resulting from the Plan Denial, the Land Use Action, the Civil Action, and the Lawsuit, as more fully set forth above, and supersedes any prior discussions, negotiations, agreements or understandings. No Party is relying on any representation of the other Party that is not expressly set forth herein. Any amendment, modification, or waiver of this Agreement, or any provision hereof, shall not be effective unless in writing signed by the Party against which such amendment, modification or waiver is sought to be enforced.

20. **Full Authority.** The signatories hereto represent and warrant that each of them is authorized to execute this Agreement and to release and forever discharge the claims released herein on behalf of the Parties for whom they are signing. The signatories hereto further represent and warrant that no others have any rights, titles or interest to such claims.

21. **Confidentiality of Settlement Amount.** The Parties are permitted to disclose the fact of the Settlement if asked. No party to this Agreement or their counsel shall issue any press release concerning the Settlement or otherwise publicize the amount of Settlement. Any party not otherwise required by law, if asked any questions relating to the amount of the Settlement, shall respond only that the case has been settled and the Parties agreed to confidentiality. Other than any disclosures to their respective auditors, lenders, insurers, accountants, and counsel in connection with their performance of their respective duties, or as may be required by law, including the Pennsylvania Sunshine Act, the Right to Know Law, or other public disclosure laws, the Parties promise to keep the Settlement Amount set forth in this

Agreement completely confidential, and further promise not to disclose the amount of this Agreement to Third Parties, other than for the sole purpose of enforcing any of the terms set forth in this Agreement and to instruct their attorneys to do so as well, or to defend themselves from or against any claims asserted against any of them relating to the subject matter of the Plan Denial, the Land Use Action, the Civil Action, or the Lawsuit, or pursuant to an order of court. If any Party or its counsel is compelled to disclose the Settlement Amount by court order or otherwise by compulsion of law (whether in the Lawsuit or otherwise), such Party or its counsel will promptly provide notice to the other Parties through their respective counsel of record in the Lawsuit, with reasonable notice, to the extent practicable, in advance of such proposed disclosure to enable such non-disclosing Parties to be heard with respect to any such disclosure.

22. **Governing Law.** This Agreement shall be governed by Pennsylvania law, without regard to its conflict of laws principles.

23. **Further Assurances.** The Parties agree to execute and deliver all other instruments and to take all such other action as any Party may reasonably request from time to time, and without payment of further consideration, in order to effectuate the transactions and actions provided for herein. The Parties shall promptly cooperate fully with each other and with their respective counsel in connection with any steps required to be taken as part of their respective obligations under this Agreement in order to promptly effectuate the terms of this Agreement. In the event the Lawsuit proceeds to trial against any of the Kaplin Defendants (as defined in this Agreement), then the Weiss Parties, the Kilkenny Parties, the Township, the Planning Commission, and the Whitmarsh Individuals (as such parties are defined in this Agreement) agree to be characterized in the Lawsuit as defendants for evidentiary purposes, and shall not oppose any effort by HMI to designate and call them during the course of such trial as

party witnesses, provided, however, that the calling of any such person for such purpose does not constitute a waiver of any applicable privilege.

24. **Retention of Jurisdiction by the Court and Resolution of Dispute.**

Any dispute arising out of or in connection with this Settlement Agreement including, without limitation, a dispute as to the formation, enforceability, performance (subject to the procedures in subparagraphs 12(e), (g), (i) and (j) above, if applicable), termination, validity or existence of this Settlement Agreement shall be resolved by the Honorable Esther R. Sylvester or such successor judge to whom this matter is assigned by Order of the Supreme Court

25. **Board of Supervisors Action on this Agreement.** On January 10, 2013, or as soon as practicable thereafter, the Board of Supervisors shall consider and vote upon this Agreement as an agenda item at a duly noticed public meeting in accordance with the provisions of the Pennsylvania Sunshine Law. If this Agreement is approved by a majority of the Board of Supervisors, the Township will promptly execute this Agreement.

26. **Court Approval.** The Parties agree that, upon execution of this Agreement by all signatories, HMI, the Township, the Board, and the Other 2 Defendants shall jointly file an Application for Public Hearing and Approval (“Application”) with the Court (as part of the lawsuit at No. 09-41816, Montgomery County, Pennsylvania) attaching a copy of this Agreement. The Application shall request the Court to direct the type of notice required before the public hearing and that the Court enter an Order (i) approving this Agreement and (ii) of Discontinuance with Prejudice as to the signatories of this Agreement of the claims against them subject only to the Court’s retaining jurisdiction over all Parties hereto to enable the Court to enforce the settlement provisions of the Agreement as provided in the Agreement. Subsequent to

court approval, no Party to this court-approved Settlement Agreement shall ever challenge the validity of this Agreement.

In the event the Court does not so approve this Agreement, and the discontinuance with prejudice as to the signatories of this Agreement, this Agreement shall become null and void *ab initio*. All funds paid into the Joint Escrow Account, as set forth in Paragraph 13, shall be returned to the paying party.

27. **Recording of the Agreement.** Immediately after Court Approval of this Agreement, HMI shall record a fully executed copy of this Agreement against the HMI Properties in the Office of the Recorder of Deeds for the County of Montgomery.

28. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and to their respective successors and assigns.

29. **Amendment.** This Agreement, the Concept Plans for Hole Nos. 1, 2 and 3, and the ultimate Preliminary and Final Plans for each of the HMI Properties may be amended upon the written consent of the Township and HMI. Except as set forth below, no waiver or discharge of any provision of this Agreement shall be effective against the Township or HMI, unless the Township and HMI have consented thereto in writing. The consent of the Other Settling Defendants shall not be required unless a proposed amendment directly impacts a right of one or more of the Other Settling Defendants created under this Settlement Agreement. In addition, future amendments to this agreement, which have been agreed upon by the Township and HMI may be finalized over the objection of the Other Settling Defendants if the Court finds, upon petition, that the objection of the Other Settling Defendants does not involve a right of one or more such Other Settling Defendant created under this Settlement Agreement or the objection is unreasonable or contrary to the public interest.

30. **Indemnification.** The Township agrees to defend any challenge to this Settlement Agreement. The Township further agrees to indemnify and hold harmless HMI from and against any and all costs, expenses, damages, fees, including reasonable attorney fees, losses, liability and damages of any nature whatsoever, arising from any land development appeal filed with respect to any of HMI's land development applications. The Township shall control the defense and select counsel of its choice which may include the Township's Solicitor. HMI shall waive any alleged conflict concerning the Township Solicitor and shall fully cooperate in the defense of such appeal.

31. **Joint Tortfeasor Provisions.** It is further understood and agreed that in the event it is determined that any of the defendants in the Lawsuit who are parties hereto (the "Settling Defendants"), on the one hand and any defendants in the Lawsuit who are not parties hereto (the "Non-Settling Defendants") on the other hand (such as the Kaplin Defendants), are found to be joint tortfeasors at trial in the Civil Action, that in further consideration for this settlement, HMI hereby agrees to and shall reduce its total judgment against the Non-Settling Defendants (as said joint tortfeasors), by the full extent of the percentage share of liability of the Settling Defendants adjudicated in the Civil Action under a final unappealable verdict or judgment. It is the intent of the parties to this agreement that in the event that any Non-Settling Defendant is found to be a joint tortfeasor with the Settling Defendants, then the Non-Settling Defendants shall not be obligated or required to pay more than the Non-Settling Defendants' percentage share of the adjudicated liability found against them and that the Settling Defendants be relieved from liability for contribution and/or indemnity to the Non-Settling Defendants.

To give full force and effect to the stated intentions, HMI agrees to seek to mold any verdict and/or judgment which may be entered in the action against the Settling Defendants on

the one hand and the Non-Settling Defendants on the other, as joint tortfeasors, to effectuate this provision so that the Settling Defendants' direct monetary payment to settlement is limited to \$1,100,000.00 as set forth in paragraph 13 as the "Settlement Amount". This provision shall not in any way limit the Township's non-monetary contributions towards settlement as set forth in this agreement, including fee waivers and the completion of certain public improvements, obligations to indemnify HMI as provided under this Agreement, or any other monetary obligation to HMI as provided under this Agreement.

32. **Construction.** Since each of the Parties hereto has had ample opportunity to have this Agreement reviewed by their own attorneys, no language in the Agreement shall be construed for or against any Party solely as a result of such language being written or requested by a particular Party or that Party's counsel.

33. **Mutual Release between Settling Defendants.** The Settling Defendants, on behalf of themselves, their heirs, affiliates, predecessors, successors and assigns, their respective officers, directors, agents, attorneys, partners, associates, counsel, servants, insurers, sureties, employees, and consultants, personal representatives and their respective successors and assigns, hereby release and forever discharge each other, their respective affiliates, subsidiaries, predecessors, successors and assigns, their respective officers, directors, agents, members, shareholders, managers, servants, attorneys, partners, associates, counsel, subsidiaries, insurers, sureties, employees, personal representatives, consultants, and their respective heirs, executors, successors and assigns of and from any and all manner of actions, and causes of action, suits, debts, dues, accounts, bonds, covenants, contracts, liabilities, agreements, judgments, claims and demands of whatsoever kind or nature, whether asserted or unasserted, in law or in equity, known or unknown, foreseen or unforeseen, suspected or unsuspected, direct or indirect which

they each have or may have against each other arising out of, relating to, or resulting from the Plan Denial, the Land Use Action, the Civil Action, the Lawsuit, and the subject matter of the Civil Action and Lawsuit, from the beginning of time through to and including the Effective Date of this Agreement, including, any claims that were asserted, could have been asserted, or may hereafter be asserted therein.

34. Notices. All notices or other communications required or permitted to be given under the terms of this Agreement shall be in writing and shall be sent by certified mail, postage prepaid or by private carrier guaranteeing next day delivery, addressed as follows:

If to HMI, addressed as follows:

Highway Materials, Inc.
c/o The DePaul Group
1750 Walton Road
Blue Bell, PA 19422

with a copy addressed to:

James J. Garrity, Esquire
Wisler Pearlstine, LLP
484 Norristown Road, Suite 100
Blue Bell, PA 19422

-And-

Richard A. Sprague, Esquire
Sprague & Sprague
The Wellington Bldg. – Suite 400
135 S. 19th Street
Philadelphia, PA 19103

If to the Township or the Board, addressed as follows:

Board of Supervisors
Whitemarsh Township
616 Germantown Pike
Lafayette Hill, PA 19444-1821
Attn: Township Manager

with a copy addressed to:

Jonathan W. Hugg
Thorp, Reed & Armstrong, LLP
One Commerce Square
2005 Market Street
Philadelphia, PA 19103

Sean P. Kilkenny, Esquire
Friedman, Schuman, Applebaum, Nemeroff & McCaffery, P.C.
Jenkintown Plaza
101 Greenwood Avenue, 5th Floor
Jenkintown, PA 19046

If to Ross Weiss, Esquire, addressed as follows:

Ross Weiss, Esquire
Cozen O'Connor
200 Four Falls Corp. Ctr. – Suite 400
P.O. Box 800
West Conshohocken, PA 19428-0800

with a copy addressed to:

H. Robert Fiebach, Esquire
Jennifer M. McHugh, Esquire
Cozen O'Connor
1900 Market Street
Philadelphia, PA 19103

If to Sean P. Kilkenny, Esquire, addressed as follows:

Sean P. Kilkenny, Esquire
Friedman, Schuman, Applebaum, Nemeroff & McCaffery, P.C.
Jenkintown Plaza
101 Greenwood Avenue, 5th Floor
Jenkintown, PA 19046

with a copy addressed to:

Daniel D. McCaffery, Esquire
Friedman, Schuman, Applebaum, Nemeroff & McCaffery, P.C.
Jenkintown Plaza
101 Greenwood Avenue, 5th Floor

Jenkintown, PA 19046

If to the remaining Other Settling Defendants, addressed as follows:

At the address in the Complaint at No. 09-41816 for each such defendant with a copy to such defendants' counsel as identified in the pleadings at No. 09-41816.

35. **Fees and Costs.** Except as otherwise indicated herein, each of the Parties hereto shall be solely responsible for their own costs in all disputes controlled by this Agreement including the fees of their attorneys, experts and other consultants.

36. **Counterparts.** This Agreement may be executed in multiple counterparts such that all counterparts together shall create a fully executed and complete Agreement.

37. **Effective Date.** This Agreement shall become effective upon the expiration of the appeal period, if any, applicable to the Court's approval of this Agreement, or the expiration of all appeal periods without an appeal having been taken, as more fully set forth in Paragraph 13 above.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed the day and year first above written.

ATTEST:

HIGHWAY MATERIALS, INC.

By: _____

Name: _____

Date: _____

WITNESS:

[Signature]

PETER DEPAUL

[Signature]

Date: 12-20-12

WITNESS:

ROSS WEISS, ESQUIRE

Date: _____

WITNESS:

SEAN R. KILKENNY, ESQUIRE

Date: _____

ATTEST:

WHITEMARSH TOWNSHIP BOARD OF SUPERVISORS

By: _____

Name: _____

Date: _____

WITNESS:

PETER DEPAUL

Date: _____

WITNESS:

ROSS WEISS, ESQUIRE

Noreen S. Duffren
NOREEN S. DUFFREN

[Handwritten Signature]

Date: _____

WITNESS:

SEAN P. KILKENNY, ESQUIRE

Date: _____

ATTEST:

WHITEMARSH TOWNSHIP BOARD OF SUPERVISORS

By: _____

Name: _____

Date: _____

WITNESS:

PETER DEPAUL

Date: _____

WITNESS:

ROSS WEISS, ESQUIRE

Date: _____

WITNESS:

SEAN P. KILKENNY, ESQUIRE

Jean Marie Wright
Jean Marie Wright

S. P. K.

Date: *12/20/12*

ATTEST:

WHITEMARSH TOWNSHIP BOARD OF SUPERVISORS

M. Sterling

By: *M*

Name: *Melissa Sterling*

Date: *1-10-2013*

ATTEST:

[Signature]

WHITEMARSH TOWNSHIP PLANNING
COMMISSION

By: [Signature]

Name: J. DAVID SHULT

Date: 1/10/13

WITNESS:

Kathleen B. Jeniel

WILLIAM P. RIMEL, III

William P. Rimel

Date: 12-22-12

WITNESS:

ANN YOUNGLOVE

Date: _____

WITNESS:

WILLIAM E. KRAMER

Date: _____

WITNESS:

ELIZABETH GORDON GRAF

Date: _____

ATTEST:

WHITEMARSH TOWNSHIP PLANNING
COMMISSION

By: _____

Name: _____

Date: _____

WITNESS:

WILLIAM P. RIMEL, III

Date: _____

WITNESS:

ANN YOUNGLOVE

John G. Taylor

Ann Younglove

Date: 12-24-12

WITNESS:

WILLIAM E. KRAMER

Date: _____

WITNESS:

ELIZABETH GORDON GRAF

Date: _____

ATTEST:

WHITEMARSH TOWNSHIP PLANNING
COMMISSION

By: _____

Name: _____

Date: _____

WITNESS:

WILLIAM P. RUMEL, III

Date: _____

WITNESS:

ANN YOUNGLOVE

Date: _____

WITNESS:

WILLIAM KRAMER

Diana M. Conroy

[Signature]

Date: 12/20/2012

WITNESS:

ELIZABETH GORDON GRAF

Date: _____

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ATTEST:

WHITEMARSH TOWNSHIP PLANNING
COMMISSION

By: _____

Name: _____

Date: _____

WITNESS:

WILLIAM P. RIMEL, III

Date: _____

WITNESS:

ANN YOUNGLOVE

Date: _____

WITNESS:

WILLIAM E. KRÄMER

Date: _____

WITNESS:

ELIZABETH GORDON GRAF

Carol D. Lyden

Elizabeth Gordon Graf

Date: 1-8-13

WITNESS:

Quincy Brown

RONALD DEROSA

Ronald Derosa

Date: *12/23/2012*

WITNESS:

PETER B. CORNOG

Date: _____

WITNESS:

MICHAEL A. ZLOCK

Date: _____

WITNESS:

JONATHAN D. WEISS

Date: _____

WITNESS:

JOSEPH P. CORCORAN, III

Date: _____

WITNESS:

RONALD DEROSA

Date: _____

WITNESS:

PETER B. CORNOG

[Handwritten Signature]

Peter B. Cornog

Date: *12-23-12*

WITNESS:

MICHAEL A. ZEOCK

Date: _____

WITNESS:

JONATHAN D. WEISS

Date: _____

WITNESS:

JOSEPH P. CORCORAN, III

Date: _____

WITNESS:

RONALD DEROSA

Date: _____

WITNESS:

PETER B. CORNOG

Date: _____

WITNESS:

MICHAEL A. ZECK

Michael A. Zuck

Michael A. Zuck

Date: 12/23/2012

WITNESS:

JONATHAN D. WEISS

Date: _____

WITNESS:

JOSEPH P. CORCORAN, III

Date: _____

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24



WITNESS:

RONALD DEROSA

Date: _____

WITNESS:

PETER B. CORNOG

Date: _____

WITNESS:

MICHAEL A. ZEOCK

Date: _____

WITNESS:

JONATHAN D. WEISS

[Handwritten Signature]

[Handwritten Signature]

Date: 12/26/12

WITNESS:

JOSEPH P. CORCORAN, III

Date: _____

RONALD DEROSA

Date: _____

WITNESS:

PETER B. CORNOG

Date: _____

WITNESS:

MICHAEL A. ZECK

Date: _____

WITNESS:

JONATHAN D. WEISS

Date: _____

WITNESS:

JOSEPH P. CORCORAN, III

Date: 12/19/12

(001992236)
W. CONSHOHOCKEN VJ005909A
12/19/2012 4:46 PM

WITNESS:

STEVEN S. BROWN

Kathy K. Brown Steve S. Brown

Date: 12/22/2012

WITNESS:

JEAN MCLENIGAN

Date: _____

WITNESS:

KELLY C. WALL

Date: _____

WITNESS:

LESLIE S. RICHARDS

Date: _____

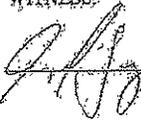
WITNESS:

STEVEN S. BROWN

Date: _____

WITNESS:

JEAN MCLENIGAN

 _____

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Date: 12/26/12

WITNESS:

KELLY C. WALL

Date: _____

WITNESS:

LESLIE S. RICHARDS

Date: _____

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WITNESS:

STEVEN S. BROWN

Date: _____

WITNESS:

JEAN MCLENIGAN

Date: _____

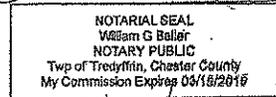
WITNESS:

KELLY C. WALL

[Handwritten Signature]

[Handwritten Signature]

Date: 12/26/12



3/15/15

WITNESS:

LESLIE S. RICHARDS

Date: _____

WITNESS:

STEVEN S. BROWN

Date: _____

WITNESS:

JEAN MCLENIGAN

Date: _____

WITNESS:

KELLY C. WALL

Date: _____

WITNESS:

LESLIE S. RICHARDS

Leslie S. Richards

Leslie S. Richards

Date: 12.28.12

~~WITNESS~~

SARA J. ERLBAUM

Date: 12/30/12

WITNESS:

DAVID E. BROOK

Date:

WITNESS:

ROBERT R. HART

Date:

WITNESS:

KENNETH PARSONS

Date:

{00199222(3)
BY CONS/OBROCK/11/03/09/4
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WITNESS:

SARA J. ERLBAUM

Date: _____

WITNESS:

DAVID E. BROOK

Christina Brookie

[Signature]

Date: *12/18/2017*

WITNESS:

ROBERT R. HART

Date: _____

WITNESS:

KENNETH PARSONS

Date: _____

WITNESS

SARA J. ERLBAUM

Date

WITNESS

DAVID E. BROOK

Date

WITNESS

ROBERT R. HART



Date

12-23-12

WITNESS

KENNETH PARSONS

Date

WITNESS
W. CONTEGEOCKERY
12/19/12 4:56 PM

6

WITNESS:

SARA J. ERLBAUM

Date: _____

WITNESS:

DAVID E. BROOK

Date: _____

WITNESS:

ROBERT R. HART

Date: _____

WITNESS:

KENNETH PARSONS

Velvet Flouder

Kenneth Parsons

Date: *Dec 28, 2012*

WITNESS:

Wesley H. Hough

CHARLES HOUGH

Charles S. Hough

Date: December 24, 2012

WITNESS:

JAMES BEHR

Date: _____

WITNESS:

JAMES CORR

Date: _____

WITNESS:

ANN GARDNER

Date: _____

Reason:

WITNESS:

CHARLES ROUGH

Date:

WITNESS:

JAMES BEHLE

Maura Bahg

James Behle

Date:

WITNESS:

JAMES CORR

Date:

WITNESS:

ANN GARDNER

Date:

001994721
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WITNESS:

CHARLES HOUGH

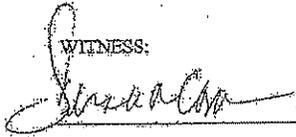
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WITNESS:

JAMES BEHR

Date: _____

WITNESS:



JAMES CORR



Date: 12/26/12

WITNESS:

ANN GARDNER

Date: _____

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WITNESS:

CHARLES BOUGH

Date: _____

WITNESS:

JAMES BEHR

Date: _____

WITNESS:

JAMES CORR

Date: _____

WITNESS:

ANN GARDNER

Ann Gardner

Ann Gardner

Date: *12/19/2012*

20019992121
W. CONSIDOROCKENMBS2004
12/19/2012 4:56 PM

WITNESS:

William O'Donnell

WILLIAM O'DONNELL

William O'Donnell

Date: *1/2/13*

WITNESS:

LAWRENCE J. GREGAN

Date: _____

WITNESS:

THOMAS F. ZARRO

Date: _____

WITNESS:

CHRISTOPHER VAN DE VELDE

Date: _____

10019986203
M CONSHOCK KIN 10000078
12/10/2012 4:56:22

WITNESS:

WILLIAM O'DONNELL

Date: _____

WITNESS:

LAWRENCE J. GREGAN

Arthur O'Riordan

Lawrence J. Gregan

Date: *12/20/12*

WITNESS:

THOMAS F. ZARCO

Date: _____

WITNESS:

CHRISTOPHER VAN DE VELDE

Date: _____

0019227A
W. CONSIDORCKEN10049094
12/19/2012 4:56:17M

WITNESS:

WILLIAM O'DONNELL

Date: _____

WITNESS:

LAWRENCE J. GREGAN

Date: _____

WITNESS:

THOMAS F. ZARKO

Maureen A. Kelly

[Handwritten Signature]

Date: *12/24/12*

WITNESS:

CHRISTOPHER VAN DE VELDE

Date: _____

WITNESS:

WILLIAM O'DONNELL

Date: _____

WITNESS:

LAWRENCE J. GREGAN

Date: _____

WITNESS:

THOMAS F. ZARKO

Date: _____

WITNESS:

CHRISTOPHER VAN DE VELDE

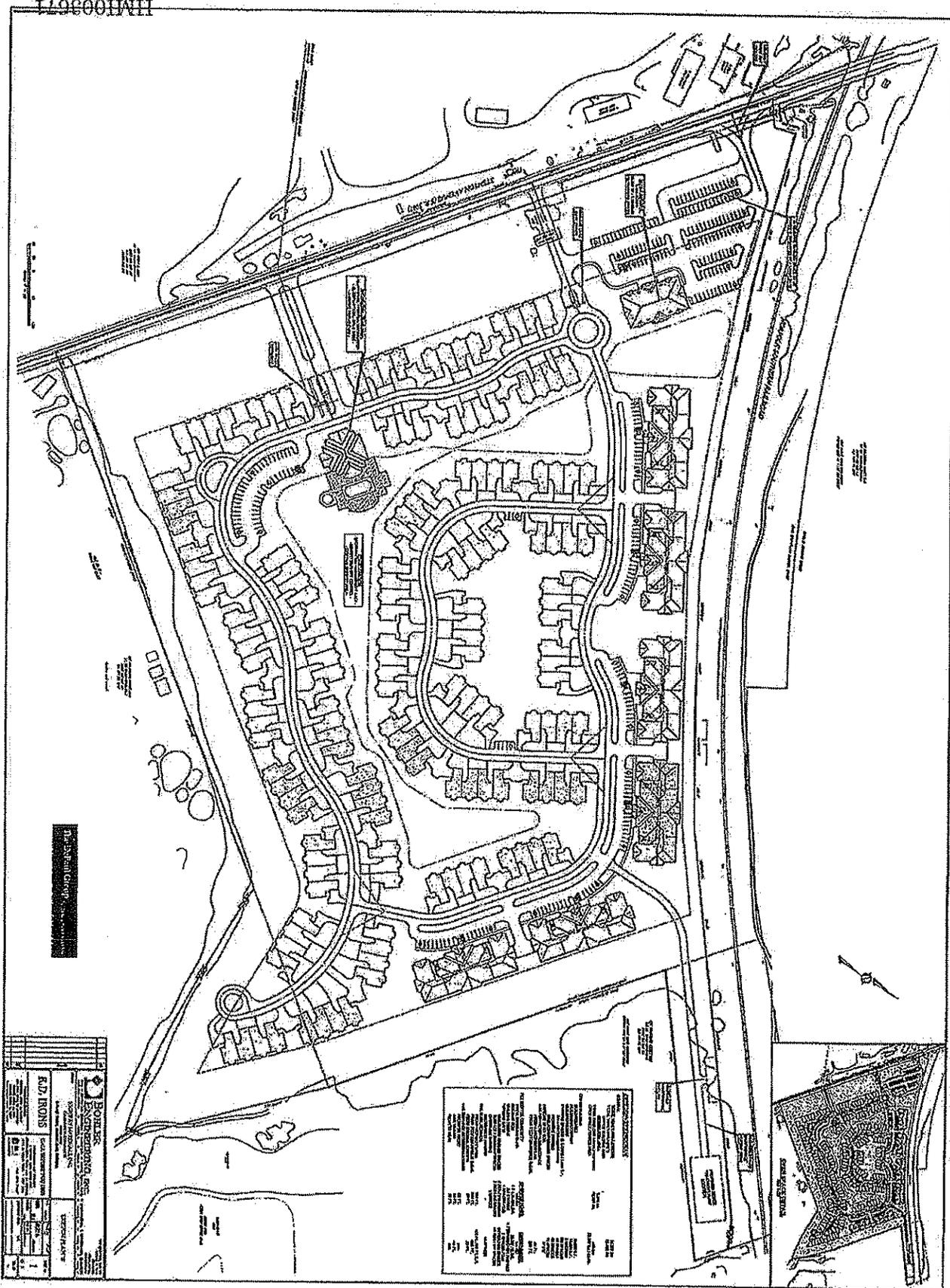
Lee Cooper

[Signature]

Date: *12/26/2012*

EXHIBIT "A"

JHM1003671



ED. IRONS 10000 1st Street, N.E. Redmond, WA 98073 (206) 881-1111 Fax: (206) 881-1112 www.edirons.com									
PROJECT INFORMATION Project Name: _____ Project No: _____ Date: _____ Scale: _____ Drawing No: _____	REVISIONS <table border="1"> <tr> <th>No.</th> <th>Description</th> </tr> <tr> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> </tr> </table>	No.	Description						
No.	Description								

LEGEND [Symbol] Building Footprint [Symbol] Parking Space [Symbol] Landscaping [Symbol] Street Right-of-Way [Symbol] Utility Lines [Symbol] Water Feature [Symbol] Other
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EXHIBIT "B"

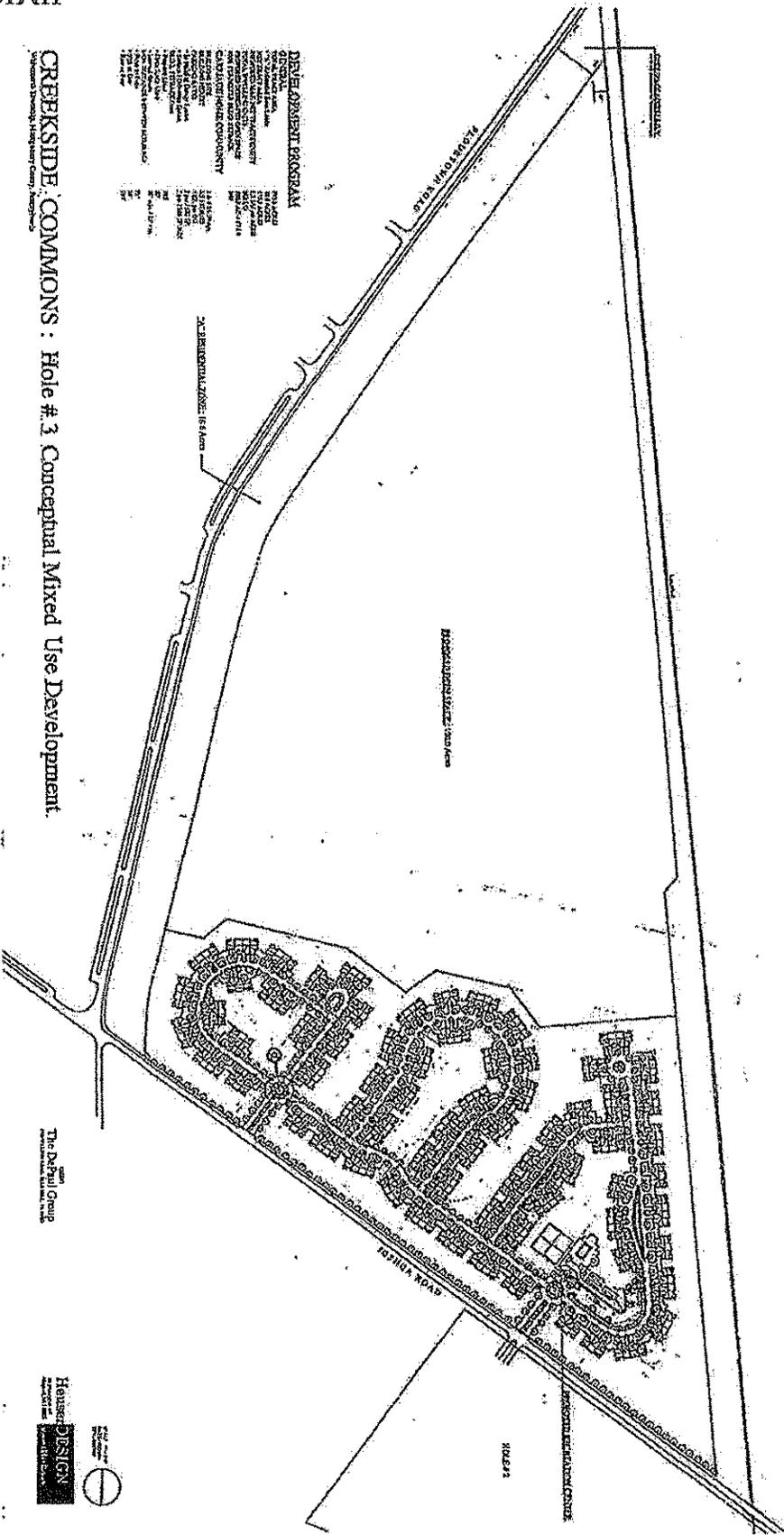
EXHIBIT "C"

CRIBKISSIDE COMMONS : Hole # 3 Conceptual Mixed Use Development

Submitted Through: [unclear] County, [unclear]

DEVELOPMENT PROGRAM

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The Detail Group
[unclear]

