



# NEW STANTON

*All Roads Lead Home*

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## DEVELOPER'S AGREEMENT

**THIS AGREEMENT** entered into this \_\_\_\_\_ day of \_\_\_\_\_, 200\_, by and between the **BOROUGH OF NEW STANTON**, a borough organized and existing under the laws of the Commonwealth of Pennsylvania, having its principal office located at 437 Center Avenue, New Stanton, Westmoreland County, Pennsylvania, (hereinafter referred to as "**Borough**"),

AND

\_\_\_\_\_, a corporation having a principal business address of \_\_\_\_\_, (hereinafter called "**Developer**"),

WHEREAS, the **Developer** represents that it is the owner of a certain tract of ground situated in the Borough of New Stanton, Westmoreland County, Pennsylvania, upon which **Developer** desires to develop a certain subdivision or land development known as \_\_\_\_\_; and

WHEREAS, the **Developer** has received preliminary plan approval and now seeks final plan approval for Phase Three and Phase Four of said development; and

WHEREAS, the **Borough**, prior to final approval, requires that an agreement be entered into by and between the **Borough** and **Developer** for the purpose of securing the completion of any and all streets, storm drains, catch basins, fire hydrants, storm water management systems,

and any and all other improvements, (collectively the Improvements), required by the Zoning, Subdivision and Land Development, and/or Storm Water Management Ordinances of the **Borough**; and as per the plans and specifications presented to the **Borough** by the **Developer**, consisting of the documents listed on Exhibit "A", attached hereto and made a part hereof.

WHEREAS, the **Developer** has submitted to the Borough Engineer for his review, plans and specifications for the Improvements required by said Ordinances; and

WHEREAS, the **Developer** has also submitted to the **Borough**, through its Engineer, the certified costs of the Improvements.

NOW, THEREFORE, WITNESSETH:

1. That the **Developer** shall provide to the **Borough** performance and completion security in the form of an irrevocable letter of credit in the amount of

\_\_\_\_\_ (\$ \_\_\_\_\_), to

be issued by, to provide for the completion of the streets, storm drains, catch basins, fire hydrants, water mains and storm water management system improvements in said Subdivision and Land Development, as per the plans and specifications presented to the **Borough** by the **Developer**, copies of which are attached hereto, made a part hereof and marked Exhibit "B".

2. That the **Developer** covenants, acknowledges and agrees that it has presented written proof to the **Borough** that it has received from the Hempfield Township Municipal Authority (hereinafter "**Sewer Authority**") an allocation of EDU's or connections in said plan and has entered into a separate agreement with the Sewer Authority and the **Borough** for the construction of the necessary sewer facilities for this Plan, and Developer covenants and agrees that all necessary sanitary sewer lines, appurtenances and facilities related thereto, sufficient and necessary to undertake the particular developments to occur on each and every lot in the final

plan submitted have been installed or will be installed and that no building permits shall be issued by the **Borough** until the necessary sanitary sewer facilities are installed.

3. That the **Developer** covenants, acknowledges and agrees that it has presented written proof to the **Borough** that it has received from the Municipal Authority of Westmoreland County (hereinafter "**Water Authority**") an allocation of taps or connections in said plan, and has agreed in writing, with the necessary financial security, to install all water lines, appurtenances and facilities related thereto, sufficient and necessary to undertake the particular developments to occur on each and every lot in the final plan submitted, and that no building permits shall be issued by the **Borough** until the necessary water systems and facilities are installed.

4. That the **Developer** and the **Borough** covenant and agree that the **Borough** is a third party beneficiary to any agreements entered into between the **Developer** and the **Sewer Authority and Water Authority**; and in the event the **Developer** fails to fully comply with its covenants and agreements with the **Sewer Authority and Water Authority**, then and in that event, the **Borough** may, but shall not be obligated to, maintain and bring any actions in its own name and right against the **Developer** or in conjunction with others.

5. The **Developer** agrees and acknowledges that it has submitted a Storm Water Management Plan to the **Borough** in connection with said Plan and covenants and agrees with the **Borough** that all matters and items shown on said plan and required by said Plan and by the **Borough's** Storm Water Management Ordinance shall be kept and performed by **Developer**.

6. **Developer** understands and acknowledges that it is required to place underdrains on the high side of every street or road shown on its plan.

7. **Developer** understands and acknowledges that on the final plans submitted to the **Borough**, the collector system for the roof drainage from the proposed structures on the lots in Phase Three and Phase Four must be shown and there must be a collector system of roof drainage that is in accord with the **Borough's** ordinances and acceptable to the **Borough** and its engineer.

8. That the **Developer** shall provide to the **Borough** performance and completion security in the form of a performance bond in the amount of \_\_\_\_\_, in the form of a corporate bond or other financial security acceptable to the **Borough** and authorized under Section 509 of the Pennsylvania Municipalities Planning Code, to provide for the completion of the streets, storm drains, catch basins, fire hydrants and storm water management system improvements in said Subdivision or Land Development, as per the plans and specifications presented to the **Borough** by the **Developer**, copies of which are incorporated herein by reference thereto.

9. That the financial security herein provided shall remain unless and until the **Developer** has conformed and complied with all of the provisions, terms and conditions of this Agreement and the ordinances and decisions of the **Borough** applicable to the Subdivision and Land Development which is the subject of this Agreement. Subject to the provisions of Paragraph 10 and Paragraph 20 herein, **Developer** covenants and agrees to complete said improvements within One Hundred Twenty (120) days from the date hereof. In the event that the **Developer** does not properly and timely complete and/or does not fully pay for any and all of the improvements subject to this Agreement, then, in that event, the security provided herein shall be paid to the Borough of New Stanton, to the extent necessary to pay for such improvements, as said sum is determined by the Borough Engineer. In furtherance of this covenant and

undertaking, the **Developer** hereby authorizes and directs the financial institution or surety where said security is deposited, to pay over to the **Borough**, from the aforesaid account or bond, so much of said security as the **Borough** directs in writing as is necessary to pay for said improvements; and further, the parties hereto, hereby covenant and agree that any sums remaining in said financial institution or bond, after said payment to the **Borough**, shall be paid to the **Developer**.

10. Except as it relates to the installation of the final wearing course pursuant to Paragraph 20 of this Agreement, if the **Developer** requires more than One Hundred Twenty (120) days from this date to complete the required improvements, the **Developer** shall provide additional security in any of the following amounts:

- (a) An amount equal to One Hundred Ten (110%) Percent of the original security for one (1) year beyond the anniversary date of the posting of said financial security; or
- (b) An amount not exceeding one hundred ten (110%) percent of the cost of completing the required improvements as re-established on or before the expiration of the preceding one year date; or
- (c) The amount required for completing the required improvements shall be determined by the **Developer** submitting to the **Borough** its estimates of the cost of completion, and the same shall be established and verified by the **Borough** Engineer.

11. The Developer shall, prior to the start of any further activity, obtain from the **Borough**, all appropriate permits in accordance with the requirements of all pertinent **Borough** ordinances. A violation of any section or provision of this agreement shall be deemed a violation of any such permits and ordinances, and shall subject the **Developer** to any fines and penalties

pursuant thereto, and shall, in addition, permit the **Borough** to revoke any permits issued concerning the development and take any other remedial action provided for in this agreement, or available under applicable law. No building permits shall be issued in any plan unless and until the plat has been duly and timely recorded with the Westmoreland County Recorder of Deeds and any and all covenants, terms or conditions of this Agreement have been met or performed.

12. It is specifically understood that this Agreement is binding upon the **Developer**, its successors, assigns, agents, representatives and officers, and that any partial or whole transfer of construction rights, approvals or agreements, as conferred upon the Developer pursuant to this Agreement, shall subject the transferee and all transferee's contractors and subcontractors to all provisions of this Agreement and all other rules, regulations, statutes and ordinances of the **Borough** and other appropriate municipal entities, the Commonwealth of Pennsylvania, the United States Government and their agencies. It is further specifically understood that the **Developer** may not assign or transfer its rights, as conferred upon the Developer pursuant to this Agreement, without prior, written consent of the **Borough**.

13. In addition to the aforesaid requirements, the **Developer** agrees that it will, at its own expense:

(a) obtain all approvals and permits required from Federal, State, County and other **Borough** regulations, and shall abide by the requirements of such approvals and permits and time schedules relating to such approvals and permits.

(b) prior to commencement of any further site preparation activity or construction, as required by this Agreement, the **Developer** shall make arrangements necessary in order to comply with all requirements and regulations in effect at the time of final plan approval with respect to hauling equipment and building materials over **Borough** roads. Said requirements and regulations include, but are not limited to, fees and/or bonding requirements.

(c) during construction of all improvements required by this Agreement, all contractors, sub-contractors and builders, shall keep public roads, private drives and highways surrounding the property, which are used by vehicles entering and leaving the construction site, in good repair, clean and free of mud and dust, and maintain existing drainage patterns on all roadways.

(d) during construction of all improvements required by this Agreement, the **Developer** shall police the construction area daily, keeping the area free and clear of all rubbish, refuse, brush and debris; the **Developer** will accumulate said material and deposit the same in an area specified by the **Borough** representative until such time as the accumulated material is removed from the site by the **Developer**; the Developer shall contain such material in a manner so that it will not become wind-blown, spread, or otherwise become a nuisance. The **Developer** shall remove from the site and dispose of all rubbish, refuse, brush, debris and discarded building materials, leaving the Development free and clear of the same prior to the release of any remaining financial security or final acceptance of any public improvements. The burning of any rubbish, refuse, debris or discarded building materials is specifically prohibited in the **Borough**.

(e) in accordance with appropriate subdivision and land development regulations, cause all utilities, including sewer, water, gas, electric, telephone and cable television, to service the development with underground facilities. All utility cuts necessary for the installation of service lines within street rights of way must be made prior to installation of the base material for any paving.

(f) the **Developer** shall not permit any grading, construction or other physical work to be conducted on the site between the hours of 11:00 p.m. and 7:00 a.m., Monday through Saturday. No work or activity shall be permitted on Sundays without prior approval of the **Borough**.

(g) construct all the improvements in accordance with the approved plan, and make no changes in the location or grade of roads, nor any change in design or location of sanitary and storm sewers or water lines, or any other changes in the approved plan(s) without the prior written approval of the **Borough** or of the appropriate authority. Any unapproved changes shall constitute a breach of this Agreement.

(h) that any permits issued in accordance with this Agreement, and all appropriate **Borough** ordinances, shall automatically be revoked if the **Developer**, or its contractors, subcontractors or builders fail to comply with any portion of this Agreement, other Agreements entered into as part of this plan approval, the approved plan and **Borough** ordinances, after notification to the **Developer** and his subsequent failure to correct such condition within the time frame set forth in the notification.

(i) hereby authorize the **Borough**, its employees, agents or contractors to conduct inspections on the **Developer's** property to determine compliance with this Agreement, other Agreements entered into as part of this plan approval, the approved plan and **Borough** ordinances. These inspections may take place at any time and with any frequency as the **Borough** deems appropriate. Where the **Developer** proposes to offer the proposed improvements to the **Borough**, the **Developer** shall notify the **Borough** a minimum twenty-four (24) hours prior to the following activities: excavating, embankment construction, detention ponds, storm sewers, underdrains, sub-grade, base course, binder course, wearing course, and seeding.

j) construct all erosion and sedimentation controls in accordance with an approved Westmoreland County Conservation District plan and report, or, where applicable, a Department of Environmental Resources Earth Disturbance Activity Permit, prior to any other construction activity occurring at the Development. The erosion and sedimentation controls shall



be properly maintained throughout the duration of the Development and until all disturbed areas have been stabilized to the satisfaction of the appropriate governmental agencies having jurisdiction and the Borough Engineer. If determined necessary by the **Borough**, a construction entrance shall be installed in accordance with approved construction drawings and shall be maintained throughout the duration of the Development, so as not to carry mud and dirt onto adjoining public roads. If, at any time, in the sole discretion of the **Borough**, during the development of the plan the construction entrance does not function adequately, the **Developer** shall make such modifications, changes and/or repairs as required.

(k) during development of the plan, parking for vehicles related to the construction activities shall be arranged so as not to create a potential traffic hazard. On-street parking shall be minimized by the construction of double-wide driveways or pull-off areas. A minimum of fifteen (15) feet of cartway width shall remain unobstructed at all times.

(l) all reasonable engineering and professional consulting fees and expenses incurred by the **Borough** during the inspection processes, which exceed the gross inspection fees paid by the **Developer** to the **Borough**, shall be borne by the **Developer** and shall be paid to **Borough** as such expenses are incurred and billed by the **Borough**, but such expenses shall be billed no more frequently than monthly.

(m) shall cause its contractors and subcontractors to obtain and maintain liability and other insurance coverage in amounts required by the **Borough**, and to furnish certificates of insurance to the **Borough**, where contractors are installing improvements located on existing public road rights of way and as may be required by the **Borough**.

14. The **Developer** does further agree to be solely responsible for providing snow and ice control on all streets within the Development whenever a structure or structures are occupied, and prior to the **Borough's** acceptance of those streets, except wherein the **Developer** has entered

into a separate legally binding agreement with the **Borough** for removal of the same. It shall be the sole responsibility of the **Developer** to contact the appropriate **Borough** official in order to execute an agreement for snow and ice removal. All costs and fees incurred by the **Borough** in the preparation of the agreement shall be borne by the **Developer**. Should the **Developer** decide to not enter into an agreement for the removal of snow and ice with the **Borough**, the **Developer** shall, in any event, provide for the same, at its sole cost and expense, and such removal shall be consistent with those techniques and materials and with the frequency normally use in the **Borough**.

15. The **Developer** agrees to offer for dedication, all Improvements by formal written communication, delivered by certified or registered mail to the **Borough**, accompanied by legal descriptions, as-built plans and profiles of all improvements to be dedicated, indicating established center lines, test boring results verifying the requisite depth of, and the materials used in the paving of said streets, and all other reasonable detail required by the **Borough** Engineer. The **Borough** shall not accept a request for dedication prior to the completion of eighty (80%) percent of the dwellings and structures on the lots in the Plan.

16. The **Developer** shall indemnify completely, defend and hold harmless the **Borough**, its elected and appointed officers, agents, consultants and employees from any and all costs and damages, losses, claims, suits and actions including cost of defense and attorney's fees which the **Borough**, its elected and appointed officers, agents, consultants and employees may sustain or suffer by reason of **Developer** failing to adequately and property perform the terms and conditions of this Agreement, including the construction of public and private improvements.

17. That upon completion of the Improvements set forth herein, the **Developer** may request the **Borough** to accept the dedicated improvements pursuant to the terms and conditions of the **Borough** Zoning, Subdivision and Land Development and/or Storm Water Management

Ordinances and the amendments thereto, the law of the Commonwealth of Pennsylvania and/or any other applicable ordinances of the **Borough**. As a precondition of the **Borough's** acceptance of such improvements the **Developer** shall post financial security to secure the soundness, durability and structural integrity of said improvements, as well as the function of said improvements in accordance with the designs and specifications as depicted on the final plat and the actual construction drawings thereof which also must be submitted to the **Borough**. Said financial security shall be in the amount of fifteen (15%) percent of the actual cost of construction and installation of the Improvements, and shall be held by the **Borough** for a period of eighteen (18) months from the date of the acceptance of the dedication.

18. That the **Developer** also agrees that prior to commencing construction of the Improvements required by this Agreement, **Developer** shall tender to the **Borough** the contracts between itself and the installers of the required Improvements which shall include the streets, storm drains, catch basins, fire hydrants and storm water management system improvements.

19. That in the event the **Developer** does not complete the required Improvements pursuant to the terms of this Agreement, it is agreed that the **Borough** may exercise all its rights and remedies as set forth in this Agreement and under the laws of the Commonwealth of Pennsylvania.

20. The **Borough** shall not be required to accept the dedication of any of the streets or roads within the Plan until it is determined that there will be no additional heavy equipment traversing upon said streets or roads for the purpose of construction of any subsequent phases of the Plan, other lands of the **Developer** or other lands to which it is anticipated that such roads shall connect. It is specifically understood and agreed that as part of the construction of the roadways in said Plan, that the same shall not have the final wearing course placed thereon until the **Developer** has been directed to do so by the **Borough** or its designated representative.

21. The **Developer** further agrees that it shall pay to the **Borough**, at the execution of his Agreement, fees as set forth on Exhibit "C", attached hereto and made a part hereof.

22. That this Agreement shall become effective upon execution of the same by all the parties hereto and the delivery of the sums, financial security, conveyances, agreements and contracts for improvements.

23. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

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

**ATTEST:**

**BOROUGH OF NEW STANTON**

\_\_\_\_\_  
Secretary-Treasurer

By: \_\_\_\_\_  
President of Council

**TRUE LINE CORPORATION**

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

**CHANTICLEER - PHASE THREE AND PHASE FOUR DEVELOPMENT**

<b><u>Document Title</u></b>	<b><u>Date</u></b>	<b><u>Revised</u></b>	
Sheet 2G	Plat of Subdivision, Phases 3 & 4, Sheet 1 of 3	07/30/03	
Sheet 2H	Plat of Subdivision, Phases 3 & 4, Sheet 2 of 3,	07/30/03	09/03/03
Sheet 2I	Plat of Subdivision, Phases 3 & 4, Sheet 3 of 3	07/30/03	09/03/03
Sheet 4B	Site Plan, Sheet 2 of 2	03/23/99	09/15/99
Sheet 5D	Sanitary Sewer Profiles, Sheet 4	04/30/99	07/29/03
Sheet 6B	Storm Sewer Profiles, Sheet 2	04/30/99	07/30/03
Sheet 7A	Roadway Profiles, Sheet 1	03/11/99	07/28/99
Sheet 10A	Construction Details, Sheet 1 of 2	03/23/99	12/14/99
Sheet 10b	Construction Details, Sheet 2 of 2	03/23/99	12/14/99
Sheet 1AA	Project Specifications and Notes	03/23/99	12/27/99

**EXHIBIT "A"**