

SIDEWALK DEFERRAL AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 20____, by and between _____ (hereinafter the “Landowner”), and Summit Township, Erie County, Pennsylvania, (hereinafter the “Township”);

WITNESSETH

WHEREAS, the Landowner is the owner of certain real adjacent property as recorded by deed in the land records of Erie County, Pennsylvania, at Deed Book _____, Page _____, located at _____, Erie County, Pennsylvania (the “Property”); and

WHEREAS, the Landowner is proceeding to build and develop the Property (the “Development”); and

WHEREAS, the Township Ordinance No. 1 of 2013, commonly known as the Summit Township Sidewalk Ordinance (the “Ordinance”), has established regulations that require sidewalk to be constructed on the aforementioned property; and

WHEREAS, the Americans with Disabilities Act (the “ADA”) establishes regulations intended to ensure accessibility to persons suffering from disabilities, and regulations promulgated pursuant to the ADA have established accessibility by way of sidewalks as a general requirement; and

WHEREAS, the Landowner has requested from the Township that the construction of sidewalk be deferred until such time that the Board of Supervisors deem the construction of sidewalk necessary; and

WHEREAS, the Township has agreed to defer, but not waive or excuse the obligation of Landowner to construct sidewalk in the development, due to unique physical circumstances and subject to terms of this Agreement.

NOW, THEREFORE, in consideration of the foregoing promises, the mutual covenants contained herein, and the following terms and conditions, the parties hereto agree as follows:

1. **Recitals**. The recitals set forth above are incorporated in this Agreement as if fully restated herein.

2. **Duty to Construct Sidewalks**.

(a) The Township’s approval of the Landowner’s plan for Development and execution of this Agreement shall not be interpreted to suggest that the Township has agreed to waive, forgo or excuse the Landowner’s duty to construct sidewalks meeting construction standards set forth in the Ordinance, the ADA, and its associated regulations.

(b) The Township has agreed solely to defer the actual performance of the Obligation to construct sidewalk, upon the Landowner’s request due to consideration of physical

conditions unique to the Development and subject to this Agreement's requirement that sidewalk shall be constructed promptly upon the occurrence of any of the events specified below.

3. **Deferral of Construction.** Subject to the terms of this Agreement and other applicable law the Landowner's duty to construct sidewalk shall be deferred until the date on which the Township issues written notice to the Landowner to construct all required sidewalk. Such notice shall be issued upon occurrence of any of the following events:

(a) A Federal and/or Pennsylvania department or agency having regulatory authority under the ADA directs that such sidewalk be constructed; and/or

(b) The Board of Supervisors determine that construction of the sidewalk is necessary to ensure protection of the public health and safety; and/or

(c) If deferral of the duty to construct sidewalk relates to the absence of sidewalk on adjacent properties, and sidewalk is subsequently constructed on either or both of the adjacent properties bearing Erie County Parcel No. _____ or _____; and/or

4. **Construction Upon Notice by the Township.**

(a) Within 30 days of the receipt of the written notice requesting construction from the Township, the Landowner shall provide the sidewalk design specifications to the Township and shall also provide a sidewalk construction bond covering the total cost of the sidewalk construction project to the Township within the abovementioned time period

(b) Failure by the Landowner to provide the sidewalk design specifications and/or the sidewalk construction bond within 30 days after the date of the Township's notice to do so shall constitute a default of this Agreement and a violation of the Township's approval of the Development Plan, a violation of the Ordinance, and a violation of the Township's Subdivision and Land Development Ordinance. Each day a violation continues shall constitute a separate violation. The Township shall have the sole discretion to extend the time for provision of either the design specifications or the sidewalk construction bond, if circumstances warrant such an extension.

(c) Landowner shall be obligated to commence construction of sidewalk related to the Development, as required by the Ordinance and described on the Development Plan, within 90 days of the date of the Landowner's receipt of the Township's written notice to the Landowner requesting that such sidewalk be constructed.

(d) Failure by the Landowner to commence construction of such sidewalk, in conformity with the Ordinance, within 90 days after the date of the Township's notice to do so shall constitute a default of this Agreement and a violation of the Township's approval of the Development Plan, a violation of the Ordinance, and a violation of the Township's Subdivision and Land Development Ordinance. Each day a violation continues shall constitute a separate violation. The Township shall have the sole discretion to extend the time for commencement of construction, if the circumstances warrant such an extension.

(e) Landowner shall be obligated to complete construction of sidewalk within the Development, as required by the Ordinance and described on the Development Plan, within ninety (90) days of the commencement of construction activities upon the sidewalk.

(f) Failure by the Landowner to finish construction of such sidewalk in conformity with the Ordinance within 90 days after the date of the Township's notice to do so shall constitute a default of this Agreement and a violation of the Township's approval of the Development Plan, Sidewalk Ordinance, and Subdivision and Land Development Ordinance. Each day a violation continues shall constitute a separate violation. The Township shall have the sole discretion to extend the time for completion of construction, if circumstances warrant such an extension.

5. **Incorporation in Developer's Agreement and Plan Approval.** This agreement shall be incorporated in and be deemed a part of the Developer's Agreement with the Landowner and the Development Plan

6. **Default.** In the event the Landowner should default in its obligation under this Agreement, the Landowner, in addition to penalties for violation of all applicable Township Ordinances, and all other remedies available to the Township, shall pay to the Township all litigation expenses and attorneys' fees incurred in enforcing this Agreement.

7. **Jurisdiction and Applicable Law.** This Agreement has been entered into in Erie County, Pennsylvania and shall be interpreted under the laws of the Commonwealth of Pennsylvania. Any disputes arising under this Agreement shall be brought in the Court of Common Pleas of Erie County.

8. **Modification.** This Agreement may be modified only by a writing signed by both of the parties and authorized by their governing bodies.

9. **Recording.** This Agreement shall be recorded at the Office of the Recorder of Deeds of Erie County, Pennsylvania, and shall constitute a covenant running with the Property and/or equitable servitude, and shall be binding on the Landowner, his administrators, executors, assigns, heirs and any other successors in interests, in perpetuity.

[SIGNATURE PAGE TO FOLLOW]

ATTEST:

SUMMIT TOWNSHIP

, Supervisor

By: _____
, Chairman

, Supervisor

COMMONWEALTH OF PENNSYLVANIA:

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COUNTY OF ERIE:

On this, the _____ day of _____, 20____, before me, a Notary Public, the undersigned officer, personally appeared _____, Chairman of the Summit Township Board of Supervisors, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that she executed the same for the purposes herein contained.

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

Notary Public

ATTEST:

By: _____

STATE OF _____

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COUNTY OF _____

On this, the _____ day of _____, 20____, before me, a Notary Public, the undersigned officer, personally appeared _____, known to me (or satisfactorily proven) to be the _____, and that they, as such, being authorized to do so, executed the same for the purposes therein contained.

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

Notary Public