

WESTTOWN TOWNSHIP

1039 Wilmington Pike
West Chester, PA 19382
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Westtown, PA 19395
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www.westtownpa.org

AGENDA Westtown Township Board of Supervisors Workshop

**Westtown Township Municipal Building
1039 Wilmington Pike, Westtown**

Monday, August 19, 2019

Executive Session at 6:00 pm

Public Session at 7:00 pm

- 1. Executive Session**
- 2. The Malvern School Land Development Application**

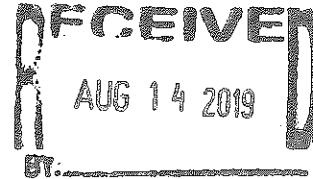
WS/Reg



RILEY RIPER HOLLIN & COLAGRECO
ATTORNEYS AT LAW

LOUIS J. COLAGRECO, JR.
Lou@rrhc.com
Extension: 203

August 14, 2019



VIA HAND DELIVERY

Robert Pingar
Township Manager
Westtown Township
1039 Wilmington Pike
West Chester, PA 19382

RE: Malvern School Real Estate, LP – 1081 Wilmington Pike
Land Development Plans and Agreements

Dear Rob:

As you are aware, this firm represents Malvern School Real Estate, LP (“Applicant”), the legal owner of property located at 1081 Wilmington Pike in Westtown Township, which is identified as UPI No. 67-4-38 (“Property”). Final land development approval was granted in April of 2019 for the development of a preschool and daycare facility on the Property, with 49 attendant parking spaces and outside playground area. I am enclosing the following documents and plans for execution by the Westtown Township Board of Supervisors at its meeting on Monday, August 19, 2019:

- Eight (8) copies of the Preliminary/Final Subdivision/Land Development Plan for The Malvern School, prepared by Edward B. Walsh & Associates, Inc., dated November 14, 2018, last revised March 24, 2019 (10 sheets)
- Six (6) copies of the Development Agreement signed and notarized by Malvern School Real Estate L.P.
- Six (6) copies of the Financial Security Agreement signed and notarized by Malvern School Real Estate L.P.
- Six (6) copies of the Stormwater Best Management Practices (BMPs) and Conveyances Operation and Maintenance Agreement signed and notarized by Malvern School Real Estate L.P.

I’ve identified the places on each agreement and plan that need to be signed and/or notarized by the Board of Supervisors. Kindly affix the Township’s seal to the first page of each land development plan. Should you have any questions regarding the signatures and notary required, please feel free to contact me or my associate, Gina Gerber, at your convenience.

Robert Pingar
Westtown Township
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I've also enclosed a check in the amount of \$15,000.00 made payable to Westtown Township for the Security Deposit (escrow) and the certificate of insurance, both of which are required by the Land Development Agreement.

Once all plans and agreements are signed, please contact me so that we can make arrangements to pick up them up. Our office will record the land development plans and Stormwater Agreement with the Chester County Recorder of Deeds Office and provide time-stamped copies of the same to the Township.

As always, please feel free to contact us with questions. Thank you for your attention to this matter.

Very truly yours,



LOUIS J. COLAGRECO, JR.

LJC, Jr./GMG
Enclosures

cc: Patrick McKenna, Esq. (via email, w/o enclosures)
Joseph A. Scandone (via email, w/o enclosures)
Andy Eberwein (via email, w/o enclosures)
Gina M. Gerber, Esquire (via email, w/o enclosures)

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (“Agreement”) is made this ____ day of _____, 2019, by and between: Westtown Township (“Township”); and Malvern School Real Estate L.P., a Pennsylvania limited partnership, with its address at 20 Creek Road, Glen Mills, Pennsylvania 19342, and its assigns and successors in interest (“Developer”).

Background

A. Developer represents that it is the owner of, and has proposed to develop, a tract of land situated in Westtown Township, located at 1081 Wilmington Pike, Westtown Township, Chester County, Pennsylvania, consisting of 2.755 +/- acres, being Tax ID No. 67-4-38 (“Subject Property”), as and for the development of the Subject Property into a two-story daycare and educational facility together with attendant parking, storm water management facilities and other related improvements proposed or required in, on and/or related to the proposed land development. A legal description of the Subject Property is attached hereto and made a part hereof as Exhibit “A.” The Subject Property is located in the R-3 Residential Office Zoning District of the Township.

B. The proposed land development of the Subject Property is known as “The Malvern School” as is depicted on the Preliminary/Final Subdivision and Land Development Plan dated November 14, 2018, last revised March 24, 2019 (“Plans”).

C. A Conditional Use Approval for the Subject Property was submitted to, and approved by, the Board of Supervisors of the Township on October 15, 2018, subject to numerous conditions as noted on the Plans.

D. On or about April 3, 2019, the Board of Supervisors of the Township granted Preliminary/Final Subdivision Plan Approval of the application to subdivide and develop the Subject Property into a daycare and educational facility, subject to certain conditions, including the timely completion of the proposed or required improvements and/or amenities, and the posting of financial security to guarantee said completion, all conditions of which were agreed to by the Developer who hereby confirms said agreement (the “Approvals”).

E. Township and Developer, contemporaneously herewith, have entered into a Financial Security Agreement further providing for the said financial security. The Improvements for which security must be provided, together with the estimated cost of completing such Improvements, are listed on Exhibit “B,” which is attached hereto and made a part hereof.

NOW, THEREFORE, the parties hereunto, in consideration of the premises and the mutual promises herein contained and intending to be legally bound hereby, agree as follows:

1. Definitions; Interpretation

a. For purposes of this Agreement, except where the context clearly indicates otherwise, the following words and phrases (including the singular and plural forms thereof) shall have the following meanings:

(1) “Completion Date” shall mean the date specified in Section 2.c of this Agreement on or before which the Improvements shall be completed.

(2) “Financial Institution” shall mean the bonding company or lending institution, approved by Township, with which the Financial Security has been posted or established and/or which issues the Financial Security.

(3) “Financial Security” shall mean the financial security provided for under and in accordance with the provisions of Section 6 of this Agreement and the provisions of the Financial Security Agreement (including any additional financial security made part thereof, any increases and other adjustments thereto, and any financial security substituted therefor) and the funds representative thereof and therein.

(4) “Financial Security Agreement” shall mean that certain Financial Security Agreement dated _____, by and between Township and Developer, which agreement is attached hereto and made a part hereof as Exhibit “B.”

(5) “Improvements” shall mean all site improvements shown on or contemplated by the Plans, including, but not limited to, public or private roads or streets, walkways, curbs, gutters, street lights, fire hydrants, shade trees, water mains, sanitary sewers, storm drains and sewers, storm water detention and/or retention basins and other related drainage facilities, recreational facilities, open space improvements, buffer or screen plantings or other plantings and landscaping, and/or other improvements or common amenities required by this Agreement and any applicable ordinances or regulations.

(6) “Plans” shall mean that certain Preliminary/Final Subdivision and Land Development Plans, prepared by Edward B. Walsh & Associates, Inc., dated November 14, 2018, last revised March 24, 2019, consisting of various plan sheets including, without limitation, all notes, statements and other information appearing on the plan, and all reports, narratives, studies, profiles, delineations and other materials of whatever nature or kind accompanying or related to the Plans.

(7) “MPC” shall mean the Pennsylvania Municipalities Planning Code, 53 P.S. §10101 et seq., as restated and amended, as the same now exists and hereafter may be further amended.

(8) “Secured Improvements” shall mean all those Improvements for which the Financial Security is provided or to which the Financial Security otherwise relates.

(9) “Subdivision and Land Development Ordinance” shall mean the Subdivision and Land Development Ordinance of the Township as such Ordinance has been amended and now exists and as hereafter may be amended, provided that the application of subsequent amendments to the Subject Subdivision/Land Development shall be subject to the provisions of §508(4) of the MPC.

(10) “Subject Land Development” shall mean the proposed subdivision and land development of the Subject Property, together with recreation facilities and other related improvements and/or common amenities proposed or required in, on and /or related to the proposed subdivision and land development, including together with driveways, streets, storm water management facilities (servicing the entire development), sanitary sewer improvements and such other Improvements proposed or required in, on and/or related to the proposed land development, as the same are more fully and further shown and depicted on and by the Plans.

(11) “Township Engineer” shall mean the professional engineer(s), licensed as such in the Commonwealth of Pennsylvania, duly appointed and employed as the engineer for the Township and/or engaged by the Township as a consultant thereto.

b. Except as may be otherwise provided herein and/or if the context clearly indicates otherwise, all words and phrases appearing in this Agreement, which also appear in the Subdivision and Land Development Ordinance or the MPC, shall have the meanings and shall be interpreted herein as under the Subdivision and Land Development Ordinance or MPC.

2. Completion of Improvements

a. The Background section set forth above is incorporated herein by reference thereto.

b. Developer, at its sole expense, shall lay out, construct, install, and/or otherwise complete the Improvements in a good and workmanlike manner, whether noted on the Plans or not, in full and strict accordance with and pursuant to the following: (i) the Subdivision and Land Development Ordinance, the Zoning Ordinance, Soil Erosion, Sedimentation and Grading Control Ordinance and Storm Water Management Ordinance; (ii) the Plans; (iii) the provisions of this Agreement; (iv) PennDOT regulations; (v) all applicable requirements of electric, telephone and other utility companies having jurisdiction; (vi) all other applicable laws,

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statutes, ordinances, resolutions, rules and regulations of the Township and of other applicable or appropriate governmental authorities and/or agencies having jurisdiction; and (vii) specifications established by the Township Engineer. In the event of any inconsistency or conflict between or among the provisions of any of the foregoing, those provisions which impose the greater or greatest, as the case may be, restrictions upon the Developer shall prevail and control.

c. The Improvements shall be completed on or before the date occurring one (1) year from the date of this Agreement. Upon written request of Developer and approval of the Township Board of Supervisors, which approval shall not be unreasonably withheld, said completion date may be extended from time to time, provided that (i) Developer's written request is received by the Board of Supervisors not less than sixty (60) days prior to the then-current completion date, and (ii) the Financial Security is also extended so that it continues valid and effective for all purposes thereof to a date occurring at least ninety (90) days after the extended completion date. Such times shall be of the essence.

d. Developer's present address is as set forth on page one of this Agreement. Developer promises to notify the Township, in writing by certified mail, of any change in this address. Developer agrees that notice of any kind or nature, relating to this Agreement or Township ordinances applicable to the Subject Property or its development, mailed to Developer at the above address, or any new address that Developer has given the Township notice of pursuant to this paragraph, shall be valid and effective for all purposes.

e. Before connecting any new sanitary or storm sewers to existing sewer or drainage systems, Developer shall obtain all necessary approvals and permits from the Township and the Commonwealth of Pennsylvania, and Developer shall provide proof of such State approvals and permits to the Township Engineer.

f. There shall be no revision or change to the Plans, as approved, or to any construction detail, requirement, specification or standard therein or required by any Township ordinance (collectively the "Specifications"), unless the Board of Supervisors first approves such change, except as otherwise provided herein.

(1) Developer shall submit any proposed changes in the approved Plans or any Specifications to the Township Engineer with such drawings, plans and written explanations as shall be required by the Township Engineer for adequate review of the proposed change. All such changes shall be reviewed by and bear the stamp of Developer's engineer.

(2) The Township Engineer may, without approval of the Board of Supervisors, authorize Developer to change construction details, which do not alter either a standard required by any applicable regulations or a condition of final plan approval and which do not make any substantial changes in the final Plans as approved.

(3) All changes directly affecting lots or property not owned by Developer must be approved by the owner(s) of those lots or property.

(4) The Township Engineer shall review any change proposed by Developer and shall provide the Township with an analysis of the change and make a recommendation for action, except that any change of a construction detail which the Township Engineer is permitted to authorize hereunder need not be submitted to the Board of Supervisors for approval. Developer shall not cause any work to be done pursuant to a change in the Plans or Specifications, except a change in a construction detail which the Township Engineer authorizes hereunder, until the Board of Supervisors has first approved the change.

(5) If the Township approves a change in the Plans or Specifications, then Developer agrees to enter into any additional formal agreements with the Township necessary to bring such changes within the scope of this Agreement. No construction or other work shall be done, pursuant to any change in Plans or Specifications, until such changes are incorporated into this Agreement and Developer provides satisfactory Financial Security, which complies with §509 of the MPC and is acceptable to the Township, to guarantee any additional construction costs for additional improvements.

g. Within five (5) days after each Improvement is completed, Developer, by written notice in accordance with the provisions hereof, shall ask the Township Engineer to conduct a final inspection of the Improvement. The Township Engineer, exercising reasonable judgment, will determine if the Improvement complies with the requirements hereof and with all applicable standards.

h. Developer agrees that if any materials used or any work done in the construction of the Improvements or in otherwise implementing the Plans shall be reasonably rejected or disapproved by the Township Engineer as defective or as not in compliance with the provision hereof or with any applicable standards, or if the work is done without prior inspection when prior inspection is required hereunder or is necessary to determine compliance with the Plans, Specifications, applicable regulations, or this Agreement, then, if such action is requested by the Township or Township Engineer, said materials and/or work shall be removed and replaced with other approved materials and/or the work shall be done anew, at the sole cost and expense of Developer and subject to inspection by the Township Engineer to determine compliance. Any work covered without an inspection when an inspection is required hereunder shall be uncovered at Developer's expense to permit the Township Engineer to make the inspection if the Township Engineer requests that such action be taken. Developer agrees that the Township Engineer is authorized to require the removal and replacement of any work and/or materials which are not completed in accordance with this Agreement and all applicable standards.

i. In the event the Township Engineer shall find that the provisions for drainage of the site, as designed by Developer, are inadequate and require revisions, or if the drainage facilities and storm water management facilities otherwise prove to be inadequate to protect existing highways, streets and roads or adjoining private or public areas from excess drainage, flooding or silting either because the Plans are inadequate or because of an improper method of development, Developer shall install such additional drainage work or make such corrections as are reasonably necessary.

j. Developer shall be responsible, at its sole cost and expense, for the repair and maintenance of all Improvements during and after construction thereof; provided, however, that in the case of Improvements which are completed and dedication (or other transfer or assignment) of which is offered to and accepted by Township, Developer shall have such repair and maintenance responsibility until such time as the acceptance of dedication (or other transfer or assignment) is final and effective, and the maintenance bond or other Financial Security is deposited with respect to such dedicated (or otherwise transferred or assigned) Improvements as provided under Section 8 below. For purposes of this subsection, "repair and maintenance of all Improvements" shall mean, without limitation, keeping the Improvements at all times in such condition that the structural integrity and functioning of the same shall be maintained at least in accordance with and/or as contemplated by the design and specifications thereof as shown on the Plans and with respect to Improvements consisting of streets or roads, shall further mean, without limitation, keeping the same at all times free of mud, snow, ice and other impediments or other obstructions to motor vehicle traffic thereon and thereover, and otherwise in a permanently passable condition by and for motor vehicles.

(1) In the event that Developer is in default of any of its repair and maintenance obligations under this Subsection, Township shall have the right, but not the obligation (which right shall be in addition to such other or further rights and remedies as may be available to the Township under this Agreement, the Financial Security Agreement, the Subdivision and Land Development Ordinance, and/or the MPC, and/or otherwise at law or in equity), after first giving Developer Notice and Opportunity to Cure as set forth in Section 9 herein, to:

(a) Enter upon the Subject Property and satisfy any of such defaulted repair and maintenance obligation of Developer (provided that any such entry and/or satisfaction shall not be deemed in any manner or to any extent whatsoever as an acceptance by Township of the dedication, transfer or other assignment of the Improvements subject of the default and/or as imposing any responsibility upon Township for the completion, further repair and maintenance, or otherwise, with respect to the Improvements subject of the default); and

(b) In order to pay for the reasonable costs, expenses and/or fees incurred by the Township related to the satisfaction of such defaulted obligations, (i) obtain payment to Township, or its order, of all or any part of the Financial Security for such reasonable

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costs, expenses and fees (notwithstanding that the amount of the Financial Security, but for this Paragraph (b), is not now or hereafter specifically established to guarantee or otherwise cover the payment of such costs, expenses and/or fees); and/or (ii) institute and prosecute appropriate legal and/or equitable actions or proceedings against Developer to recover such reasonable costs, expenses and/or fees, together with reasonable attorney fees and costs incurred by Township for and otherwise related to any such legal and/or equitable action or proceeding.

k. During the course of construction of the Improvements and the construction of improvements (those not covered by funds which Developer has posted with Township) on the individual residential building lots, Developer is required to establish and maintain temporary erosion and sedimentation controls ("E&S Controls") which are shown on the Plans. Part of the funds which Developer has posted with the Township includes an estimated cost to establish and maintain such E&S Controls. In the event Developer fails to establish or maintain the E&S Controls in accordance with the Plan, the Township shall provide Developer with written notice of violation and a five (5)-day period to cure, except in the event of an emergency where a lesser time may be imposed. If Developer fails to cure the default within five (5) days, or such lesser applicable time in the event of an emergency, the Township is hereby authorized to establish the necessary E&S Controls and use the funds as necessary to pay for the Township costs, including, but not limited to, reasonable engineering, legal and actual administrative costs. The Developer shall be required to restore any expended portion of the funds set aside for E&S Controls to the agreed upon amount, as set forth on the attached schedule. In the event the Developer fails to cure a violation within the prescribed time frame or violates any other aspect of this Agreement, the Developer acknowledges that the Township shall not be required to issue any building or occupancy permits for the entire development and a cease and desist order for all or a portion of the entire development may be issued by the Township in the discretion of the Township until the violation is cured or the security restored. In instances where the Developer "willfully neglects" to cure the E&S Control default following the expiration of period for cure contained in the notice from the Township, the Township shall have the right to impose a fine of Five Hundred Dollars (\$500) per day. For purposes of this paragraph, "willful neglect" shall mean that Developer fails to respond to two (2) or more notices of violation from the Township, not necessarily from the same lot. If Developer disputes that it willfully neglected to install the necessary E&S Controls, Developer has the right to contest the imposition of the fine by appealing the same to the Chester County Court of Common Pleas. The parties at any time may submit a dispute which arises hereunder to mediation.

3. Conditions to be Met Prior to Commencing Construction of Improvements

a. No building permits shall be issued and no Improvements shall be commenced until:

(1) The Plans, as finally approved, or such portion thereof which is agreed upon by the parties hereto, are recorded according to law; and

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(2) This Agreement is duly signed by all parties and delivered to the Township; and

(3) Developer pays to the Township to be held in escrow by the Township as a security deposit (“Security Deposit”) and to be drawn on by the Township to pay for the Township’s reasonable costs, including costs of preparing agreements, reviewing and approving plans and Specifications, inspecting construction of the Secured Improvements and removing snow and/or waste material and including any engineering, inspection, legal or other expense incurred by the Township in connection with the preparation, implementation or enforcement of the Plans and/or this Agreement and/or the Financial Security Agreement. The amount of the Security Deposit shall be Fifteen Thousand Dollars (\$15,000.00). If, over the course of the land development the Security Deposit is depleted to an amount below Five Thousand Dollars (\$5,000.00), Developer shall replenish it with an amount to bring the amount of the Security Deposit back to Fifteen Thousand Dollars (\$15,000.00); and

(4) All fees required by any ordinance, resolution or regulation of the Township or this Agreement are paid, including the payment of costs, legal and engineering expenses incurred by the Township for the review of plans, preparation of this Agreement, the Financial Security Agreement, resolutions and other papers reviewed or prepared pursuant to this Agreement; and

(5) Developer has entered into a Financial Security Agreement approved by the Township and has provided the Township with Financial Security for the Improvements required hereunder, which security shall meet the requirements of the MPC, Westtown Township ordinances and this Agreement and be satisfactory to the Township; and

(6) All required third party certificates, licenses, permits or approvals, including but not limited to a highway occupancy permit from PennDOT, have been obtained and are still in effect and satisfactory proof thereof has been provided to the Township; and

(7) All variances or other zoning approvals needed in order to develop the Subject Property as shown on the Plans have been obtained and are still in effect and have not expired and all applicable requirements of the Township's ordinances, resolutions and regulations have been met; and

(8) Developer has complied, to the reasonable satisfaction of the Township Engineer, with the requirements set forth in any Township Engineer's report or review letters relating to the development; and

(9) Developer has furnished the required insurance certificates to the Township.

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b. Before commencing any work on the Improvements, Developer shall submit the specifications for all materials to be used and all design specifications to the Township Engineer. Developer shall not proceed with any work on the Improvements without first giving notice to the Township Engineer and, when the Township Engineer's inspection is required under this Agreement, arranging with the Township Engineer for such inspection.

4. Obligations of Developer During Construction

a. All culverts, storm sewers and underdrains, manholes, paving, curbing, setting of monuments and other Improvements are subject to inspection by the Township Engineer. At least five (5) days prior to the commencement of each Improvement, Developer shall notify the Township Engineer. Developer shall also notify the Township Engineer at least two (2) days prior to the date when Developer or its contractor or any subcontractor performs any work subject to the inspection by the Township. Developer shall also notify the Township Engineer at least two (2) days prior to commencing each separate paving operation or Improvement and the Township Engineer shall inspect the materials and workmanship used on each such operation.

b. It shall be the obligation of Developer to arrange, in advance, with the Township Engineer for inspection of work as the work progresses. Developer agrees that the Township's personnel shall have reasonable access to the Subject Property at all times.

c. Developer shall bear the cost of and shall reimburse the Township for the cost of all inspections by the Township Engineer and the Township Code Enforcement Officer.

d. Developer shall bear the cost and expense of any relocation, removal or reconstruction of Improvements.

e. Developer agrees to erect, at its expense, all required street lights, street trees, fire hydrants, if any, shown on the Plans, as amended.

f. During the course of construction of the Improvements, Developer will be responsible for proper removal and disposal of all construction debris, waste materials, and trees, shrubs and other organic material from the Subject Property and surrounding areas, whether discarded by it or others employed by it or by persons engaged in the delivery of materials to and/or construction within the Subject Property and/or any other activity pursuant to the Plans. Developer agrees to prevent such waste materials from being buried or burned on the site or deposited, thrown or blown, upon any property adjacent to or within the vicinity of the Subject Property.

g. Developer agrees to provide dumpsters on the site in the size and number as reasonably required by the Township Engineer and/or the Township Code Enforcement Officer.

h. If Developer fails to remove any construction debris or waste materials, including rubbish, cartons and discarded materials, generated by or because of Developer's activities, from the Subject Property or from surrounding areas within seventy-two (72) hours after Developer received written notice from the Township to do so, or immediately if such debris or materials are causing a traffic hazard or other danger to the public health, safety and welfare, then the Township shall have the right but not the obligation to remove said waste materials and to draw, from the Security Deposit created under Section 3.a(3) hereof, the sums necessary to pay to parties who complete such work or to reimburse the Township for the costs of cleaning up the Subject Property and surrounding areas. The Township's exercise of its rights to remove waste materials pursuant to this paragraph shall not obligate the Township to do so in the future.

i. Developer agrees to maintain all streets, roads and parking lots constructed or improved pursuant to the Plans in a clean and safe condition as reasonably determined by the Township Engineer and/or Code Enforcement Officer and free of mud, snow, ices and construction debris. Developer agrees that in the event there is snowfall or ice storm prior to dedication of the roads required by the Plans, upon advance notice to the Developer the Township is authorized, but not required, to plow and/or remove the snow and/or ice on said undedicated roads and the cost of said plowing and/or removal shall be paid promptly by Developer. Any funds held in the Security Deposit may be used by the Township for said purposes. The Township's exercise of its right to remove snow and/or ice pursuant to this paragraph shall not obligate the Township to do so in the future.

j. Developer agrees that it will obtain use and occupancy permits or certificates for each building prior to any occupancy.

k. Developer shall, at all times, release and indemnify and hold the Township, its agents, employees and officials, harmless from any and all expenses and liability arising out of or from or relating to Developer's activities in implementing the Plans and for any and all failures to comply with applicable regulations. Developer agrees to furnish the Township prior to commencement of any work whatsoever a certificate showing that Developer and Developer's general contractor have adequate liability insurance coverage in an amount not less than two million dollars each and each such policy shall name the Township as an additional insured and shall provide that the policies cannot be terminated or not renewed without thirty (30) days prior written notice to the Township. Developer shall keep said coverage in effect until all work is completed and approved by the Township and shall continue to furnish to the Township certificates showing continued coverage.

l. Developer agrees to complete all Improvements by the Completion Date, unless the time for completion is extended by the Township in writing. This permission shall not relieve Developer from its obligation to properly complete the Improvements.

m. Developer agrees to be responsible for work at the site and to: (1) reasonably restrict the noise from workmen; (2) cease all work on the site by 7:00 PM on Monday to Friday and by 5:00 PM on weekends, except in cases of emergency or exceptional cases; and (3) not to begin work prior to 7:00 AM on Monday through Friday and 8:00 AM on weekends, except in cases of emergency or exceptional cases.

n. Developer agrees to commence construction of the Improvements within 180 days of the date of this Agreement. Developer further agrees to complete construction of any building within one (1) year of the date of the issuance of the building permit for said building.

5. Guaranty of Completion of Improvements

a. Developer shall complete all site Improvements in accordance with final approval of the Plans. Developer shall comply with the requirements of the Township Grading Permit to ensure buildings and associated grading and management of stormwater runoff is reasonably in accordance with the approved Plans as a condition precedent to the issuance of a use and occupancy permit.

b. An as-built lot plan shall be prepared by a registered professional land surveyor and certified by a registered professional engineer that the individual lot is in full conformance with the approved Plans and shall be subject to the review and approval by the Township Engineer.

d. Developer shall bind its heirs, successors and assigns to the requirements of this Section.

e. This requirement shall be in addition to all other as-built plan submissions that may be set forth in the Subdivision and Land Development Ordinance.

6. Guaranty of Completion of Secured Improvements

a. Developer shall deposit with Township or otherwise establish the Financial Security in accordance with and pursuant to the terms and conditions of this Section 6 and the Financial Security Agreement. Pursuant to §509 of the MPC, the Financial Security shall be deposited or otherwise established in and by the time provided in the Financial Security Agreement. Unless and until the Financial Security is so established by Developer, no work towards the completion of any of the Improvements shall be laid out, installed or otherwise

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commenced, and no building, grading, occupancy or other permit, relating to the erection, placement or occupancy of any of the Improvements or of any buildings or other structures in, on and/or related to the subject subdivisions/land developments, shall be issued by Township.

b. The Financial Security shall provide for and secure to the public, as represented by the Township, the completion, on or before the Completion Date, of the Secured Improvements in accordance with and pursuant to the terms and conditions of this Agreement, and shall further guarantee the performance of the other obligations of Developer under this Agreement and the Financial Security Agreement.

c. The Financial Security shall be of such type as more fully and further provided in and by the Financial Security Agreement.

d. The initial amount of the Financial Security shall be Four Hundred Ninety-Three Thousand, Six Hundred Seventy-Eight U.S. Dollars and Thirty Three Cents (\$493,678.33) which is one hundred and ten percent (110%) of the total cost estimate as set forth in Exhibit "B" attached hereto and made fully part hereof. The amount of the Financial Security shall be subject to such increase, adjustment and reduction as provided in and by the Financial Security Agreement.

7. Dedication (or Other Transfer of Assignment)

a. Developer, at its expense, hereby offers to dedicate (or otherwise transfer or assign as may be appropriate) the following to Township, and with respect to the same hereby agrees to tender to Township deeds of dedication (or other appropriate instruments) containing such provisions and in such form as shall be approved by the Township solicitor:

(1) All portions of the Subject Property, to the extent not heretofore dedicated to the Township, which portions are within the ultimate right-of-way lines of Township Roads, sewer easements, and drainage easements, together with all road and other Improvements (including, without limitation, stormwater management and sewerage facilities) as shall be constructed, installed or otherwise completed in, under, or upon said portions in accordance with and pursuant to the Plans and this Agreement.

b. Township shall not be obligated to accept dedication (or other transfer or assignment) of any or part of the items described in Subsection 7.a above, whether expressly by deed of dedication (or other instrument) or otherwise, unless and until all of the following have been satisfied, at the sole expense of Developer (all of the following also to apply to other of the Improvements, the dedication or other transfer or assignment of which may be offered to Township prior to, on or after the date of this Agreement):

(1) Certification by the Township Engineer that all Improvements (not only those which are or may be dedicated or otherwise transferred or assigned) have been satisfactorily completed fully in accordance with and pursuant to all terms, conditions and requirements of Section 2 above;

(2) Deposit of a maintenance bond or other security, as provided under Section 8 below, with respect to each of the Improvements offered for dedication (or other transfer or assignment);

(3) Compliance with all other or further requirements of the Subdivision and Land Development Ordinance concerning dedication (or other transfer or assignment) and acceptance thereof;

(4) Advancement and/or reimbursement to Township of and for all costs, expenses and fees as provided under and in accordance with Section 10 below;

(5) Satisfaction of or other compliance with all terms, conditions and requirements under and by which the Board of Supervisors of Township granted final plan approval of the Land Development; and

(6) Submission to Township of a recordable written agreement of Developer in such form and containing such provisions as shall be approved by the Township solicitor, indemnifying, holding harmless and defending Township, its officials, officers, employees and agents, of, from and against any liability, claim, suit or demand of whatever nature or kind, whether founded or unfounded, arising from, out of or related to: (i) the design, laying out, installation, construction and/or completion of the Improvements); and/or (ii) any repair and/or maintenance of such Improvements (or failure thereof), which repair and/or maintenance of such Improvements (or failure thereof) occurs or is alleged to occur, either in whole or in part, prior to the time when Township's acceptance of the offer of dedication (or other transfer or assignment) becomes final and effective.

8. Maintenance Bond or Other Financial Security

a. The maintenance bond or other financial security to be deposited by Developer under Section 7.b(2) above as a condition to Township's acceptance of dedication (or other transfer or assignment) of any of the Improvements offered for dedication (or other transfer or assignment) under Section 7.a (or any other of the Improvements the dedication, or other transfer or assignment, of which may be offered to Township prior to, on or after the date of this Agreement) shall be in accordance with the following:

(1) The form and provisions of the bond or other Financial Security shall be approved by the Township solicitor;

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(2) The type of the bond or other Financial Security shall be a type permitted by §509 of the MPC and shall be subject to approval of Township;

(3) The bond or other Financial Security shall be posted with a bonding company or lending institution chartered by the federal government or the Commonwealth of Pennsylvania, provided said bonding company or lending institution is authorized to conduct such business within the Commonwealth of Pennsylvania;

(4) The bond or other Financial Security shall provide for and secure to the public, as represented by Township, with respect to each of the dedicated (or otherwise transferred or assigned) Improvements, the structural integrity and functioning of each such Improvement, in accordance with the design and specifications thereof as shown on and/or contemplated by the Plans, for a term of eighteen (18) months from the date when the Township's acceptance of dedication (or other transfer or assignment) of each such Improvement becomes final and effective;

(5) The amount of the bond or other Financial Security shall be equal to fifteen percent (15%) of the actual costs of installing, constructing or otherwise completing the dedicated (or otherwise transferred or assigned) Improvements covered by the bond or other financial security, as such amount shall be certified by the Township Engineer in accordance with the Financial Security Agreement;

(6) The bond or other Financial Security shall provide that in the event the structural integrity or functioning of any of the dedicated (or otherwise transferred or assigned) Improvements covered by the bond or other financial security, is not in accordance with the design and specifications of the Plans for the aforesaid eighteen (18)-month term, the bonding company or lending institution, which issues or holds the bond or other financial security, shall pay to Township, or its order, from time to time, as Township shall determine and demand, all or part of the amount of the bond or other financial security; and that such payment shall be made by the bonding company or lending institution to Township, or its order, at and upon receipt from Township of a written demand for such payment (in, to or of which demand the consent, joinder, agreement and/or approval of Developer shall not be required). The bond or the financial security shall further provide that the aforesaid right of Township to payment under the bond or other financial security shall not constitute the exclusive right and/or remedy of Township, but shall be in addition to such other or further rights and/or remedies as may be available to Township under this Agreement, at law, in equity, or otherwise, in the event that the structural integrity or functioning of any of the dedicated (or otherwise transferred or assigned) Improvements is not in accordance with the design and specifications as aforesaid; and that the aggregate payments made to Township, or its order, by the bonding company or lending institution shall not exceed the amount of the bond or other financial security (plus any interest which may be earned on the principal thereof); and

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(7) Final release of Developer under and from the bond or other financial security shall be subject to the advancement and/or reimbursement to Township of and for all costs, expenses and fees under and in accordance with Section 10 below.

9. Failure to Complete; Other Default

a. In the event that any of the Improvements is or are not completed fully in accordance with the terms, conditions and requirements of Section 2 above and after the Township has first given Developer written notice of such incompleteness and provided Developer with thirty (30) days from the date the notice is received to cure said incompleteness (or such additional time as may be agreed to by Developer and Township if said incompleteness cannot be reasonably cured within thirty (30) days) except in the event of an emergency where the Township may take action without providing an opportunity to cure (herein referred to as "Notice and Opportunity to Cure"), or in the event that Developer becomes insolvent, declares bankruptcy or ceases work on the Improvements for a period of greater than ninety (90) days, the Township shall have the right, but not the obligation (which right shall be in addition to such other or further rights and remedies, as may be available to Township under this Agreement, the Financial Security Agreement, the Subdivision and Land Development Ordinance, the MPC and/or otherwise at law or in equity), to: (1) enter upon the Subject Property and complete all or part of the Improvements in accordance with the terms, conditions and requirements of Section 2; and (2) obtain payment to it, or its order, of all or any part of the Financial Security and/or to otherwise enforce the Financial Security in order to pay for the costs of such completion and related costs, expenses and fees.

b. If the proceeds of the Financial Security paid to the Township, or its order, are not sufficient or available to pay the costs of fully completing all the incomplete Improvements, together with related costs, expenses and fees, Township, at its option, shall have the right to complete part of the Improvements and to institute appropriate legal and/or equitable actions against Developer to recover monies necessary to complete the remainder of the incomplete Improvements and pay all reasonable related costs, expenses and fees, including, but not limited to, the following: (i) the amount that Township shall require to fully complete the Improvements or otherwise fully cure the default; (ii) any other reasonable costs, expenses and fees referred to in this Agreement for which Developer is obligated and has not paid and which are past due and/or which have been incurred by Township; (iii) interest, at the then-legal rate on all of the reasonable foregoing amounts, costs, expenses and fees accruing either as of the respective payment due dates herein provided or, if no payment due dates are so provided, as of the respective dates on which Township incurs such reasonable amounts, costs, expenses or fees; (iv) reasonable costs of suit; and (v) reasonable attorneys' fees.

c. In the event that Township exercises its right, but not obligation, to complete all or part of the incomplete Improvements upon the aforesaid default of Developer,

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there shall be no requirement for the advertisement of public works or for competitive bidding. Any monies paid to Township of, from or under the Financial Security and any proceeds resulting from the aforesaid legal and/or equitable actions against Developer shall be deemed not to be public funds for the purpose of any laws relating to public advertising or solicitation of bids. Township may use any commercially reasonable means to select contractors and/or negotiate prices or costs of material and labor, and Developer hereby ratifies all actions taken by Township in that regard. Township shall have the right, but not the obligation, to use its own employees to complete all or part of the Improvements. Developer shall exonerate, indemnify and hold harmless Township, its officials, officers, employees and agents, of and from any liability, claim, suit or demand of whatever nature or kind arising from, out of or related to any act of Township, or of any official, officer, employee or agent thereof, done or authorized to be done in completing all or part of the Improvements, with the exception of any liability, claim, suit or demand arising from the willful misconduct or gross negligence of Township, or of any official, officer, employee or agent thereof; and Developer hereby authorizes, ratifies and affirms any act done by Township, or by any official, officer, employee or agent thereof, in furtherance of such competition with the exception of willful misconduct or gross negligence.

10. Advancement and/or Reimbursement of Expenses

a. Developer shall advance and/or reimburse Township the following as provided in this Section 10:

(1) All reasonable costs, expenses and fees incurred by Township in and for the preparation, review, orderly performance and/or enforcement of this Agreement and the Financial Security Agreement. Such reasonable costs, expenses and fees shall include, without limitation: reasonable legal expenses and fees of the Township Solicitor; and reasonable expenses and fees of the Township Engineer, and/or any other professional consultant(s) engaged by Township in visiting the site for the purposes of inspection and for the performance of official duties necessarily connected with said inspection purposes.

(2) All reasonable costs, expenses and fees incurred by Township of and for necessary legal proceedings in connection with the dedication (or other transfer or assignment) under this Agreement, including, without limitation, reasonable fees of the Township Solicitor, the Township Engineer and/or other professional consultants engaged by Township.

(3) All reasonable professional consultant and administrative costs and expenses of or incurred by Township in connection with the subject subdivision/land development at then-prevailing rates.

b. In accordance with §503(1)(i) of the MPC and the Subdivision and Land Development Ordinance, Developer shall reimburse the Township for all reasonable outstanding

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engineering, administrative, legal and other review fees associated with the review of the Plans related to Developer's subdivision and land development for the Subject Property, or related to inspections or other work to satisfy the conditions of the approval. Township shall utilize the Security Deposit to satisfy all reasonable costs and fees associated with the review of the Plans, inspections or other work to satisfy the conditions of the approval. Developer shall, within forty-five (45) days of receipt of any such invoices from the Township or its professional consultants, remit payment to the Township for all reasonable engineering, administrative, legal and other review fees associated with the review of the plans related to Developer's subdivision and land development for the subject property to the extent the Security Deposit has been depleted. Should Developer wish to dispute any of the above-referenced fees, it must notify the Township and the Township's professional consultant no later than one hundred 100 days after the transmittal of any bill for services and shall identify, with specificity, the basis for the objection to any charge for fees, costs, expenses, etc. The failure of Developer to contest such fees within one hundred (100) days constitutes a waiver of the right to challenge any such fees charged. Should Developer contest any fee, it shall nonetheless remit payment of the disputed fees, without prejudice to its position in disputing the same. The procedure set forth in the MPC, 53 P.S. §10510(g)(2) through (5), shall then be utilized to resolve all timely disputed fees. Any balance not paid within such forty-five (45)-day period shall bear interest at the rate of one and one-half percent (1 1/2%) per month.

To the extent that Developer fails to remit payment within forty-five (45) days after depletion of the Security Deposit, the Township may withdraw such amounts from the Letter of Credit allocated for "Township Construction Inspection" as shown on Exhibit "B" created pursuant to the Financial Security posted in accordance with the Financial Security Agreement, and shall notify Developer of such withdrawal. Developer shall then be required to replenish the escrow fund created to the Financial Security within thirty (30) days thereafter.

c. In accordance with §510(g) of the MPC and the Subdivision and Land Development Ordinance, Developer shall, within forty-five (45) days of an itemized invoice showing the work performed, reimburse the Township for all outstanding engineering, administrative, legal and other review fees associated with the inspection of improvements related to Developer's subdivision and land development for the subject property and shall, within forty-five (45) days of receipt of any subsequent invoices from the Township or its professional consultants, remit payment to the Township for all reasonable engineering, administrative, legal and other review fees associated with the inspection of improvements related to Developer's subdivision and land development for the subject property. Township shall utilize the Security Deposit paid by Developer to satisfy all reasonable costs and fees associated with the review of the Plans and inspections. Should Developer wish to dispute any of the above-referenced fees, it must notify the Township and the Township's professional consultant no later than one hundred (100) days after the transmittal of any bill for services and shall identify, with specificity, the basis for the objection to any charge for fees, costs, expenses, etc. The failure of Developer to contest such fees within one hundred (100) days constitutes a

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waiver of the right to challenge any such fees charged. Should Developer contest any fee, it shall nonetheless remit payment of the disputed fees, without prejudice to its position in disputing the same. The procedure set forth in the MPC, 53 P.S. §10510(g)(2) through (5), shall then be utilized to resolve all timely disputed fees. Any balance not paid within such forty-five (45)-day period shall bear interest at the rate of one and one-half percent (1 1/2%) per month.

To the extent that Developer fails to remit payment within forty-five (45) days after depletion of the Security Deposit, the Township may withdraw such amounts from the Letter of Credit allocated for "Township Construction Inspection" as shown on Exhibit "B" created pursuant to the Financial Security posted in accordance with the Financial Security Agreement and shall notify Developer of such withdrawal. Developer shall then be required to replenish the escrow fund created pursuant to the Financial Security within thirty (30) days thereafter.

d. It is expressly acknowledged and agreed that Township shall not be obligated hereunder or otherwise to finally release Developer from and under the Financial Security, the Financial Security Agreement, or any other financial security provided pursuant hereto, to accept dedication (or other transfer or assignment) of any of the items under Section 7 hereof, and/or to issue any use and occupancy permit, or any other permit, unless and until all the aforesaid costs, expenses and fees are paid in full.

11. Indemnification

a. Developer hereby agrees to indemnify and save harmless Township, its officials, officers, employees and agents, of, from and against any liability, claim, suit or demand of whatever nature or kind, whether founded or unfounded, arising from, out of or related to the design, laying out, permitting, installation, construction, completion, inspection, testing, functioning, repair and/or maintenance of (or the failure to repair and/or maintain) the Improvements, together with all cost, fees and expenses (including, but not limited to, attorney's fees and costs and expert witness fees and costs) as may be incurred by Township in connection with any such liability, claim, suit or demand except to the extent caused by the willful misconduct or gross negligence of Township, its officials, officers, employees and agents.

b. The indemnification, save harmless and defense provisions of Subsection 11.a shall not apply to any claims, suits or demands arising from, out of or related to the repair and/or maintenance of (or the failure to repair and/or maintain) any Improvements, the dedication (or other transfer or assignment) of which has been offered to and accepted by Township, which repair and/or maintenance (or the failure thereof) occurs in whole after the time when Township's acceptance of the offer of dedication becomes final and effective.

12. Notices

a. Any notice, demand or other communication required, authorized or permitted to be given under this Agreement shall be sufficient if given in writing and delivered to the party to whom or which the notice or demand is directed at the respective address of the party first above indicated, or to such other address as the party may give by notice complying with the terms of this section.

b. Such notice, demand or other communication shall be delivered to the addressee by one of the following means: (i) personal delivery against receipt; (ii) certified U.S. mail, postage prepared, return receipt requested; or (iii) nationally recognized express delivery service, postage or delivery charges prepaid. The notice, demand or other communication shall be deemed given and effective as follows: (i) if by personal delivery or by express delivery service, at the time of delivery; or (ii) if by mail, at the time of deposit in the U.S. mails.

13. Miscellaneous

a. Waiver. Neither the failure nor any delay on the part of the Township to exercise any right, remedy, power or privilege granted under this Agreement or otherwise provided at law or in equity, shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, remedy, power or privilege preclude further exercise of the same or of any other such right, remedy, power or privilege; nor shall any waiver of any such right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective against Township, unless it is in writing signed by a duly authorized representative of the Township.

b. Assignment; Delegation. Developer shall not assign or delegate any of its rights, powers, privileges, duties, obligations or liabilities hereunder without the express written consent of Township, which shall not be unreasonably withheld or delayed. Any such assignment or delegation without such consent shall be void.

c. Cumulative Rights and Remedies. Any and all rights, powers, privileges and/or remedies granted or accruing to Township under or pursuant to this Agreement and/or the Financial Security Agreement shall not be exclusive, but shall be cumulative and in addition to such other rights, powers, privileges and/or remedies as may be now or hereafter available to Township under the Subdivision and Land Development Ordinance and/or the MPC and/or otherwise at law or in equity.

d. Headings. The captions or headings preceding the text of the several sections and subsections of this Agreement are inserted solely for convenience of reference; they shall neither constitute a part of this Agreement nor affect its meaning, construction or effect.

e. Severability. If any provision on this Agreement is held to be invalid or unenforceable: (i) the remaining provisions of this Agreement shall not be affected thereby, but

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shall continue in full force and effect; (ii) this Agreement shall be and is hereby amended, to the minimum necessary, to remedy such invalidity or unenforceability, and the parties hereto shall adjust their respective rights and obligations hereunder accordingly; and (iii) to the extent that such invalid or unenforceable provisions cannot be rendered valid or enforceable by amendment as aforesaid, the same shall be severed herefrom as though never set forth herein.

f. No Third Party Beneficiaries. This Agreement does not confer any enforceable rights or remedies upon any person other than the signatories hereto. Neither contractors of the Developer, nor owners of lots within or adjoining the Subject Property, shall be considered beneficiaries of this Agreement and, accordingly, shall have no rights hereunder, *inter alia* and without limitation, for the completion or maintenance of any Improvements, or for the use, increase, decrease or modification of any Financial Security for any purposes whatsoever.

g. Binding Effect. Subject to Subsection b. above, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

h. Entire Agreement; Amendment. This Agreement, together with the exhibits attached hereto and made a part hereof and the Financial Security Agreement, constitutes the entire understanding and agreement of the parties with respect to the subject matter hereof and, except as may be otherwise specifically set forth herein, supersedes all prior and contemporaneous agreements and understandings, express or implied, oral or written. Except as may be otherwise specifically provided herein, this Agreement may not be amended, revoked, changed, altered or modified in any manner whatsoever, other than by written unanimous agreement of and signed by all parties hereto.

i. Governing Law & Jurisdiction. This Agreement shall be governed by and construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania, regardless of conflicts of laws and principles. All claims arising from this Agreement shall be the exclusive jurisdiction of the Chester County Court of Common Pleas or the U.S. District Court for the Eastern District of Pennsylvania.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

ATTEST:

WESTTOWN TOWNSHIP

By: _____

Name: _____

Title: _____

Date: _____

ATTEST:

MALVERN SCHOOL REAL ESTATE
L.P., Developer

By: _____

Name: _____

Title: _____

Date: _____

ACKNOWLEDGMENT

COMMONWEALTH OF PENNSYLVANIA :

SS.

COUNTY OF CHESTER :

On this ____ day of _____, 2019, before me, a Notary Public in and for the Commonwealth of Pennsylvania, the undersigned officer, personally appeared _____, who acknowledged himself to be the Chairman of the Board of Supervisors of Westtown Township, and that he, as such official, being duly authorized to do so, executed the foregoing instrument for the purposes therein contained.

WITNESS my hand and official seal the day and year aforesaid.

Notary Public

My Commission Expires:

ACKNOWLEDGMENT

COMMONWEALTH OF PENNSYLVANIA :

SS.

COUNTY OF CHESTER :

On this ____ day of _____, 2019, before me, a Notary Public in and for the Commonwealth of Pennsylvania, the undersigned officer, personally appeared _____, who acknowledged himself to be the _____ of Malvern School Real Estate, L.P., and that he, as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

WITNESS my hand and official seal the day and year aforesaid.

Notary Public

My Commission Expires:

EXHIBIT A
(Legal Description)

EXHIBIT B
(Public Improvements Cost Estimate)

FINANCIAL SECURITY AGREEMENT

THIS Agreement, is made as of this ___ day of _____, 2019, by and between Westtown Township (by and through its Board of Supervisors), Chester County, Pennsylvania, a Township of the Second Class, with offices at 1039 Wilmington Pike, West Chester, Pennsylvania ("Township"), and Malvern School Real Estate L.P., a Pennsylvania limited partnership, with its address at 20 Creek Road, Glen Mills, Pennsylvania 19342, and its successors and assigns ("Developer").

BACKGROUND

A. Developer represents that it is the owner of, and has proposed to develop, a tract of land situated in Westtown Township, located at 1081 Wilmington Pike, Westtown Township, Chester County, Pennsylvania, consisting of 2.755 +/- acres, being Tax ID No. 67-4-38 ("Subject Property"), as and for the development of the Subject Property into a two-story daycare and educational facility together with attendant parking, storm water management facilities and other related improvements and/or common amenities proposed or required in, on and/or related to the proposed land development. The instant Agreement pertains to those improvements designated on the Plan, and listed in summary form on the Plan and on the attached spread sheet.

B. The proposed land development of the Subject Property is known as "The Malvern School" as is depicted on the Preliminary/Final Subdivision and Land Development Plan dated November 14, 2018, last revised March 24, 2019, and recorded in the Office of the Recorder of Deeds in and for Chester County, Pennsylvania, at plan _____ ("Plans").

C. A Conditional Use Approval for the Subject Property was submitted to, and approved by, the Board of Supervisors of the Township on October 15, 2018, subject to numerous conditions as noted on the Plans.

D. On or about April 3, 2019, the Board of Supervisors of the Township granted Preliminary/Final Subdivision Plan Approval of the application for the proposed land development to subdivide and develop the Subject Property into a daycare and educational facility, subject to certain conditions, including the timely completion of the proposed or required improvements and/or amenities, and the posting of financial security to guarantee said completion, all conditions of which were agreed to by the Developer who hereby confirms said agreement (the "Approvals").

E. Township and Developer, contemporaneously herewith, have entered into a certain Development Agreement, providing for, among other things, the said completion of improvements and amenities and the said posting of financial security. The Public Improvements Cost Estimate outlining the proposed Improvements is attached hereto as Exhibit "A."

F. The parties, by these presents, desire to set forth their further agreement and understanding with respect to the said financial security and such other matters as hereinbelow set forth.

NOW, THEREFORE, the parties hereunto, in consideration of the premises and the mutual promises herein contained and intending to be legally bound hereby, agree as follows:

1. Definitions; Interpretation

a. For purposes of this Agreement, except where the context clearly indicates otherwise, the following words and phrases (including the singular and plural forms thereof) shall have the following meanings:

(1) "Completion Date" shall mean the date specified in Section 2.c. of the Development Agreement on or before which the Improvements shall be completed.

(2) "Development Agreement" shall mean that certain Development Agreement of even date herewith by and between Township and Developer, which agreement is fully incorporated into and made part of this Agreement.

(3) "Financial Institution" shall mean the bonding company or lending institution, approved by Township, with which the Financial Security has been posted or established and/or which issues the Financial Security.

(4) "Financial Security" shall mean the financial security provided under and in accordance with the provisions of Section 2 and other provisions of this Agreement and with the provisions of Section 6 of the Development Agreement (including any additional financial security made part thereof, any increases and other adjustments thereto, and any financial security substituted therefor) and the funds representative thereof and therein.

(5) "Improvements" shall mean all site improvements shown on or contemplated by the Plans, including, but not limited to, public or private roads or streets, walkways, curbs, gutters, street lights, fire hydrants, shade trees, water mains, sanitary sewers, storm drains and sewers, storm water detention and/or retention basins and other related drainage facilities, recreational facilities, open space improvements, buffer or screen plantings or other plantings and landscaping and/or other Improvements or common amenities required by this Agreement and any applicable ordinances or regulations.

(6) "MPC" shall mean the Pennsylvania Municipalities Planning Code, 53 P.S. § 10101 *et seq.*, as restated and amended, as the same now exists and hereafter may be further amended.

(7) "Plans" shall mean that certain Preliminary/Final Subdivision and Land Development Plan prepared by Edward B. Walsh & Associates, Inc. dated November 14, 2018, last revised March 24, 2019, consisting of various plan sheets, including, without limitation, all notes, statements and other information appearing on the plan, and all reports, narratives, studies, profiles, delineations and other materials of whatever nature or kind accompanying or related to the Plans.

(8) "Secured Improvements" shall mean all those certain Improvements for which the Financial Security is provided or to which the Financial Security otherwise relates.

(9) “Subdivision and Land Development Ordinance” shall mean the Subdivision and Land Development Ordinance of the Township, as such Ordinance has been amended and now exists and as hereafter may be amended, provided that the application of subsequent amendments to the Subject Subdivision/Land Development shall be subject to the provisions of §508(4) of the MPC.

(10) “Subject Land Development” shall mean the proposed subdivision and land development of the portion of the Subject Property, together with recreation facilities and other related improvements and/or common amenities proposed or required in, on and/or related to the proposed subdivision and land development, including together with driveways, streets, storm water management facilities (servicing the entire development), sanitary sewer improvements and such other Improvements proposed or required in, on and/or related to the proposed land development, as the same are more fully and further shown and depicted on and by the Plans.

(11) “Township Engineer” shall mean the professional engineer(s), licensed as such in the Commonwealth of Pennsylvania, duly appointed and employed as the engineer for Township or engaged by Township as a consultant thereto.

b. Except as may be otherwise provided herein and/or if the context clearly indicates otherwise, all words and phrases appearing in this Agreement, which also appear in the Subdivision and Land Development Ordinance, the MPC or the Development Agreement, shall have the meanings and shall be interpreted herein as under the Subdivision and Land Development Ordinance, the MPC or the Development Agreement.

2. Financial Security

a. Developer, in accordance with and pursuant to the terms of this Financial Security Agreement and at its sole cost and expense, shall establish and maintain Financial Security in the form of an irrevocable letter of credit with Financial Institution under and in accordance with the terms and conditions of this Agreement. (The said letter of credit is defined herein as the “Financial Security.”) The Financial Security shall be established by Developer upon Developer’s execution of this Agreement. The Financial Institution, as issuer of the Letter of Credit, shall be subject to approval of Township, which approval shall not be unreasonably withheld. The Financial Security shall provide for and secure to the public, as represented by the Township, the completion, on or before the Completion Date, of the Secured Improvements in accordance with and pursuant to the terms and conditions of the Development Agreement, and shall further guarantee the performance of the other obligations of Developer under this Agreement and the Development Agreement.

b. The initial amount of the Financial Security shall be Four Hundred Ninety-Three Thousand, Six Hundred Seventy-Eight U.S. Dollars and Thirty Three Cents (USD \$493,678.33), which amount is one hundred and ten percent (110%) of the total of (i) the estimated costs of completing the Secured Improvements and (ii) the estimated amounts of other costs, expenses and fees, as such estimated costs and amounts are more fully and further set forth in Exhibit “B” to the Development Agreement and Exhibit “A” attached hereto.

c. The Financial Security shall be automatically extended from year to year for additional periods of twelve (12) months from the original or each future expiration date, without amendment, unless the Financial Institution shall have notified the Township in writing, not less than sixty (60) days before such expiration date, that the Financial Institution elects not to renew the Financial Security. The Financial Institution's notice of such election must be sent to the Township by certified mail addressed to the above Township address, return receipt requested. A copy of the same shall be forwarded to the Township Solicitor and Township Engineer. In the event that the Financial Institution provides the above-notice of its intent not to renew the Financial Security, the Township may draw upon the Financial Security to secure the completion of the remaining Secured Improvements, unless the Developer provides substitute Financial Security acceptable to the Township at least forty-five (45) days prior to the date of expiration of the then effective Financial Security. It shall be the continuing responsibility of the Developer to ensure that the Financial Security (or the acceptable substitute thereof) shall not be terminated or closed or expired, but shall be and remain open until the final release of funds therefrom in accordance with and pursuant to Section 7 of this Agreement.

d. A notation shall appear on the records of the Financial Institution providing that, except as provided in and by this Agreement or as may be otherwise consented to and approved and directed by the Board of Supervisors of the Township in and by a writing signed by the Chair of the Board of Supervisors, (i) no withdrawals shall be made from the Financial Security, (ii) the Financial Security shall not be terminated or closed or expired, and (iii) any balance of funds in the Financial Security shall be fully available to Township for use under and for purposes of this Agreement and the Development Agreement.

e. The Financial Institution shall acknowledge and verify in writing to Township that, among other things: (i) the Financial Security has been duly issued, and (ii) the issuance of the Letter of Credit does not violate any federal, state or other laws or regulations applicable to the Financial Institution, and (iii) that the notation required by Subsection 2.e. above appears on its records. The written acknowledgment and verification shall be substantially in the form attached hereto and made fully part hereof as Exhibit "B."

3. Adjustments to Financial Security

a. Developer agrees that the total amount of the Financial Security and the amount of each of the specific items thereof shall be subject to increase or other adjustment as permitted by and in accordance with the provisions of §509 of the MPC. Without limiting the generality of the foregoing:

(1) Developer agrees that, if the Secured Improvements, or any part thereof, are not completed to the satisfaction of Township within one (1) year after the date of this Financial Security Agreement and Township has agreed to extend the time for completion beyond the Completion Date as may be necessary for the completion, Developer shall post such additional financial security as directed by Township and in accordance with the provisions of the MPC; and Developer shall continue to provide such additional financial security on each one (1) year anniversary date of this Financial Security Agreement thereafter as so directed by Township, if the Secured Improvements, or any part thereof, are not completed to the satisfaction

of Township and Township has agreed to further extend the time for completion beyond the Completion Date, as the same may be previously extended, as such further extension may be necessary for the completion.

(2) Township reserves the right to refuse or limit a request for release of the Financial Security, or to increase or otherwise adjust the amount of the Financial Security on an annual basis, if, in the sole opinion of Township, the balance of the Financial Security is insufficient to complete the Secured Improvements, or to pay any of the other costs, expenses or fees for which the Financial Security has been established, as a result of any foreseeable or unforeseeable events which may arise at any time prior to the completion of the Secured Improvements, including, without limitation, interruptions in construction and inflationary increases in the cost of materials.

b. Notice of any such additional financial security or of any such increase or other adjustment in the amount of the Financial Security, or any part thereof, shall be given in writing by Township to Developer, and Developer shall post the amount of the additional financial security, increase or other adjustment within thirty (30) days of the date of such notice.

c. In the event that Developer fails to fully post the additional Financial Security, increase or other adjustment within the said thirty (30) day period, Township, in addition to such other or further rights and remedies as may be available, shall have the right to (i) withdraw or revoke all building and all other permits previously issued in connection with the Subject Property and/or the Subject Subdivision/Land Development, (ii) refrain from issuing new permits of any kind for the Subject Property and/or the Subject Subdivision/Land Development, and (iii) issue one (1) or more stop, cease and desist orders concerning further work upon construction of the Secured Improvements and/or other Improvements. Upon the issuance and delivery of any such stop, cease and desist order, Developer shall cease all further work on the construction of the Secured Improvements and/or other Improvements described in the order; provided, however, that upon posting of such additional financial security, increase or other adjustment in the Financial Security as required herein, the Township shall withdraw the stop, cease and desist order(s), and Developer may resume work on the construction of the Secured Improvements and/or other Improvements, and any building and other permits previously revoked or withdrawn shall be reinstated.

d. Any funds posted or provided under this Section 3 as additional financial security or as increases or other adjustments to the Financial Security shall become part of the Financial Security and fully subject to the terms and conditions of this Financial Security Agreement.

4. Interim Releases of Funds

a. As the work of the construction of the Secured Improvements satisfactorily proceeds, Township, from time to time upon written request of Developer prior to final release under Section 7 below, shall authorize the release of funds from the Financial Security in accordance with the provisions of the MPC, in such amounts as directed by the Township in writing, but only by and upon the issuance to and receipt by the Financial Institution of a duly executed Certificate of Completion signed by the Township Engineer and the Chairperson of the Board of Supervisors of the Township. The Certificate of Completion

shall be in the form substantially as set forth in Exhibit “C” attached to and made fully part of this Financial Security Agreement.

b. Unless Township expressly and affirmatively directs otherwise in and by the said duly executed Certificate of Completion, the following shall apply to every release of funds from the Financial Security requested under this Section 4: (i) ten percent (10%) of the amount of the funds requested for release shall be retained and not released; and (ii) in no event shall the balance of the Financial Security be reduced below one hundred ten percent (110%) of the estimated costs of completing the remaining uncompleted Secured Improvements, as such estimated costs of completion shall be determined or approved by the Township Engineer.

5. Default

a. If Township determines that any of the Secured Improvements have not been completed fully in accordance with the terms, conditions, and requirements of the Development Agreement or that Developer is otherwise in default of the Development Agreement (including in the event that Developer becomes insolvent, declares bankruptcy, or ceases work on the Improvements for a period of greater than ninety (90) days without Township approval), after providing Developer with Notice and Opportunity to Cure as set forth in Paragraph 9.a. of the Development Agreement, Township may declare Developer be in default under this Financial Security Agreement, and Township, in addition to such other or further rights and remedies as may be available, shall have the right to demand and collect payment from the Financial Institution of the full undrawn amount, after reductions and interim releases, if any, pursuant to this Agreement, of the Financial Security, or any part or lesser amount thereof which Township in its sole discretion deems necessary to cure any such default as well as to pay for any professional services related to such cure.

b. The following shall apply to such demand and payment:

(1) Developer hereby authorizes the Financial Institution upon such default, without further inquiry being made, to make said payment directly and immediately to Township or its order, and no further authorization, consent and/or approval of or by Developer to or of said payment shall be required.

(2) Township may draw amounts from and under the Financial Security prior to the performance of any work by or for Township in order to complete the Secured Improvements in accordance with the Development Agreement or otherwise cure the default, and/or to pay professional services related thereto, based upon (i) estimates received by Township for the completion and/or (ii) bills received by Township for the professional services.

(3) Developer agrees that it shall have no right or standing to prevent or delay any such payment to and/or collection by Township.

(4) Developer hereby remises, releases and forever discharges Financial Institution from any and all liability with respect to honoring any such draws by Township.

(5) In the event of a dispute between Developer and Township, Developer nevertheless agrees that the provisions of Paragraph 5.b(1) above shall continue to apply, and that the provisions of Paragraph 5.b(1) shall not be satisfied by the Financial Institution's payment into court of the amount demanded by Township but shall be satisfied only by the Financial Institution's payment of the demanded amount directly and immediately to Township.

(6) The right of Township to demand payment and collect less than the full undrawn amount of the Financial Security shall not be exhausted by a single exercise thereof, but may be exercised by Township from time to time and at any time without limitation on the number of exercises thereof until the amount of the Financial Security has been fully drawn.

(7) If the reasonable costs, expenses and fees incurred by Township on account of (i) the foregoing completion of Secured Improvements or otherwise curing the default of Developer and (ii) the professional services related thereto, exceed the amount, if any, received by Township from and under the Financial Security, Developer, in addition to such other and further obligations and liabilities imposed upon it under the Development Agreement and otherwise by law, shall be liable to Township for such excess of such reasonable costs, expenses and fees. Developer hereby agrees to pay the full amount of such excess to Township immediately upon demand.

6. Costs, Expenses and Fees

a. If Developer fails to reimburse Township any reasonable costs, expenses or fees, after depletion of the Security Deposit established by Paragraph 3.a.(3) of the Development Agreement, in accordance with and pursuant to Section 10 of the Development Agreement, after providing Developer with Notice and Opportunity to Cure as set forth in Paragraph 9.a. of the Development Agreement, Township may declare Developer to be in default of this Financial Security Agreement, and Township shall be authorized to collect the amount thereof from and under the Financial Security (notwithstanding that the amount of the Financial Security, but for this Subsection a., is not now or hereafter specifically established to guarantee, secure or otherwise cover the payment of such costs, expenses or fees) in same manner and to the same extent as a default made and provided for under Section 5 of this Financial Security Agreement.

b. Developer shall provide additional Financial Security, in a form acceptable to Township and in the amount by which the Financial Security was reduced by any payment made to Township from the Financial Security under provisions of Subsection 6.a above, within fifteen (15) days after written notice of such reduction in the amount of the Financial Security is sent by Township to Developer. Developer shall also provide Township, to Township's satisfaction and within such fifteen (15) day period, written proof of such additional financial security. The failure of Developer to provide Township, to Township's satisfaction, such additional financial security and written proof thereof within such time shall constitute a default or breach under this Agreement and the Development Agreement, and Developer shall be subject to the provisions governing its default or breach, after provision of Notice and Opportunity to Cure, as set forth in both agreements and/or as otherwise provided by law, including, without limitation, the revocation by Township of all building and other permits

issued in connection with the Subject Property and/or the Subject Subdivision/Land Development, the refusal of Township to reinstate any of the same or issue other permits in the future, and/or the issuance by Township of stop, cease and desist orders upon the construction of the Secured Improvements and/or other Improvements or any part thereof, until the default or breach is properly and fully cured. The additional financial security shall be and constitute financial security fully subject to the terms and conditions of this Financial Security Agreement.

7. Final Release of Financial Security; Termination of Agreement.

a. After all the Secured Improvements have been completed fully in accordance with the Development Agreement to the satisfaction of the Township, and after all the provisions of the Development Agreement and this Financial Security Agreement have been satisfied fully by Developer (including the payment of all reasonable costs, expenses and fees for which Developer is responsible under both said agreements), Township shall authorize the Financial Institution in writing to release the balance of the Financial Security. Such release authorized by Township shall be the final release of funds from the Financial Security, and shall further release Developer from and under the Financial Security and this Financial Security Agreement.

b. At and upon the aforesaid Township authorized release of the balance of the Financial Security, this Financial Security Agreement shall terminate without further action of the parties being required.

8. Validity and Enforceability of Financial Security

a. The Financial Security shall be valid, and shall be maintained by Developer in full force and effect at all times following the establishment thereof in accordance with and during continuance of this Financial Security Agreement.

b. During the continuance of this Financial Security Agreement, Developer shall, as may be requested by written notice from Township from time to time or at any time, provide verification and proof to Township concerning the existence, validity and enforceability of the Financial Security. The verification and proof shall be satisfactory to Township.

c. Developer agrees and hereby authorizes the Financial Institution, during the continuance of this Financial Security Agreement, to release to Township any information as may be requested from time to time or at any time by Township concerning the financial affairs of Developer relative to this Financial Security Agreement and the Financial Security.

d. If Township determines that, upon the information provided or not provided pursuant to Subsections 8.b and/or 8.c above, the financial security requirements of this Agreement and the Development Agreement are not satisfied, or, if Developer otherwise fails to provide and maintain the Financial Security under and in accordance with this Agreement and the Development Agreement, Township shall give Developer written notice to provide the required Financial Security within thirty (30) days of the date of the notice. If Developer fails to so provide the Financial Security to Township's reasonable satisfaction within that time, Township, in addition to other and further rights and remedies as may be available, may revoke all permits previously issued in connection with the Subject Property and/or the Subject

Subdivision/Land Development, may refuse to issue any new permits, and/or may issue stop, cease and desist orders upon the construction of the Secured Improvements and/or other Improvements or any part thereof, until the Financial Security is provided to Township's reasonable satisfaction.

e. Developer further agrees that if it determines or obtains knowledge during the continuance of this Financial Security Agreement that the Financial Institution is, may be or will be unable to honor, provide or maintain the Financial Security for any reason whatsoever in accordance with this Agreement and the Development Agreement (including, but not limited to, the reason that control of the Financial Institution is or is about to be assumed by an agency of the United States government or the Commonwealth of Pennsylvania), Developer shall, immediately, but in no event later than two (2) business days after making such determination or obtaining such knowledge, give written notice of the same to Township. Within thirty (30) days after either the aforesaid notice is given by Developer or such other time as Township notifies Developer that the Financial Security does not exist to the satisfaction of Township, Developer shall obtain additional or substituted financial security with another financial institution as shall be satisfactory to Township. The failure of Developer to provide such additional or substituted financial security shall allow Township, in addition to other or further rights and remedies as may be available, to revoke all permits previously issued in connection with the Subject Property and/or the Subject Subdivision/Land Development, to refuse to issue any new permits, and/or to issue stop, cease and desist orders upon the construction of the Secured Improvements and/or other Improvements or any part thereof, until such additional or substituted financial security is provided to Township's satisfaction.

f. Developer agrees that any and all notices from Township to the Financial Institution demanding payment of, from and under the Financial Security shall be valid and enforceable, and shall be honored by the Financial Institution if given to the Financial Institution during the continuance of this Financial Security Agreement.

9. Township Non-Responsibility

a. Neither this Financial Security Agreement nor the Development Agreement (including any actions taken by Township in or related to the review, consideration and/or approval of the Plans and Subject Subdivision/Land Development) shall impose, or be construed to impose, any liability, responsibility or obligation on Township for the design, layout, construction, installation, maintenance or upkeep of the Secured Improvements and/or other Improvements, or render Township liable for the costs of any work to be performed under or in connection with the Development Agreement or for any other costs to be incurred under or in connection with this Agreement or the Development Agreement, it being expressly understood and agreed that the full responsibility and financial liability for all the foregoing are imposed upon Developer, until such time as Improvements may be dedicated to (or otherwise transferred or assigned) to the Township or to a third party.

10. Financial Institution Non-Responsibility

a. Developer agrees that Financial Institution shall have no duty to inquire as to the truthfulness, acceptability, due execution, due authorization or validity of any document,

certificate, statement or notice which purports to have been executed by an official or other representative of the Township.

b. Developer further agrees that Financial Institution shall not have any duty or responsibility with respect to the Financial Security other than to comply with the terms of this Agreement and the Development Agreement that apply to the Financial Security and the actions which the Financial Institution is to take or not take with respect to the Financial Security.

c. Developer further agrees that the obligations of the Financial Institution under this Agreement and the Development Agreement, and under and with respect the Financial Security, are for the sole benefit of Township, and shall not be affected, in any way, by any default, action or omission of Developer.

d. Township and Developer further agree and acknowledge that the Financial Institution assumes no liability for the design, layout, construction, installation, maintenance and/or upkeep of the Improvements.

11. Charges of Financial Institution

a. Any and all charges made by the Financial Institution for the establishment, creation, administration or termination of the Financial Security and/or for all other actions of the Financial Institution under, pursuant and/or related to this Financial Security Agreement are the sole responsibility of Developer and shall be billed to and paid directly by Developer, and no amount of, from or under the Financial Security may be used by or paid to the Financial Institution for such charges. Developer agrees that Township shall not be liable or otherwise obligated for any of such charges, and Developer hereby agrees to indemnify, protect and defend Township from and against any such charges.

12. Insolvency of Developer

a. Developer acknowledges, covenants and agrees that, in case of any bankruptcy, receivership, or voluntary or involuntary assignment for the benefit of creditors by or of Developer, the Financial Security and all interest of Developer in, to or under this Financial Security Agreement are not and shall not be considered part of the estate of Developer, to the extent permitted by law.

13. Payments, Reductions or Releases of Financial Security

a. It is expressly and specifically understood, covenanted and agreed by Developer that no payment, reduction and/or release whatsoever shall be made at any time of, from or under the Financial Security without the express written consent and instructions of Township, and that the Financial Security shall be maintained by the Financial Institution at all times during the continuance of this Financial Security Agreement in the amounts required herein, less all sums drawn or released therefrom by Township in accordance with the terms hereof. Any violation of this covenant shall render Developer liable for all damages to Township, including, without limitation, all costs, fees and expenses (including, but not limited to, attorney's fees and costs), which Township is required to pay in order to cure any default or

breach by the Developer under the Development Agreement or this Financial Security Agreement because the Financial Security is not maintained and/or funds thereunder are not available or paid upon demand to the Township in order to cure such default or breach.

14. Notices

a. Except as may be otherwise specifically provided in this Agreement:

(1) Any notice, demand or other communication required, authorized or permitted to be given under this Financial Security Agreement shall be sufficient if given in writing and delivered to the party to whom or which the notice or demand is directed at the respective address of the party first above indicated, or to such other address as the party may give by notice complying with the terms of this section.

(2) Such notice, demand or other communication shall be delivered to the addressee by one of the following means: (i) personal delivery against receipt; (ii) certified United States mail, postage prepaid, return receipt requested; or (iii) nationally recognized express delivery service, delivery charges prepaid. The notice, demand or other communication shall be deemed given and effective as follows: (i) if by personal delivery or by express delivery service, at the time of delivery; or (ii) if by mail, at the time of deposit in the United States mails.

15. Miscellaneous

a. Waiver. Neither the failure nor any delay on the part of Township to exercise any right, remedy, power, or privilege granted under this Agreement or otherwise provided at law or in equity, shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, remedy, power, or privilege preclude further exercise of the same or of any other such right, remedy, power or privilege; nor shall any waiver of any such right, remedy, power, or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power, or privilege with respect to any other occurrence. No waiver shall be effective against Township unless it is in writing signed by a duly authorized representative of Township.

b. Assignment; Delegation. Developer shall not assign or delegate any of its rights, powers, privileges, duties, obligations, or liabilities hereunder without the express written consent of Township, which shall be not be unreasonably withheld or delayed. Any such assignment or delegation, without such consent, shall be void.

c. Cumulative Rights and Remedies. Any and all rights, powers, privileges and/or remedies granted or accruing to Township under or pursuant to this Agreement shall not be exclusive, but shall be cumulative and in addition to such other rights, powers, privileges, and/or remedies as may be now or hereafter available to Township at law or in equity.

d. Headings. The captions or headings preceding the text of the several sections, subsections, paragraphs and other parts of this Agreement are inserted solely for convenience of reference; they shall neither constitute a part of this Agreement nor affect its meaning, construction or effect.

e. Severability. If any provision on this Agreement is held to be invalid or unenforceable: (i) the remaining provisions of this Agreement shall not be affected thereby, but shall continue in full force and effect; (ii) this Agreement be and is hereby amended, to the minimum necessary, to remedy such invalidity or unenforceability, and the parties hereto shall adjust their respective rights and obligations hereunder accordingly; and (iii) to the extent that such invalid or unenforceable provisions cannot be rendered valid or enforceable by amendment as aforesaid, the same shall be severed herefrom as though never set forth herein.

f. No Third Party Beneficiaries. This Agreement does not confer any enforceable rights or remedies upon any person other than the signatories hereto. Neither contractors of the Developer, nor Owners of Lots within, or adjoining, the Property shall be considered beneficiaries of this Agreement, and, accordingly, shall have no rights hereunder, including, and without limitation, for the completion or maintenance of any Improvements, or for the use, increase, decrease or modification of any Financial Security for any purposes whatsoever.

g. Binding Effect. Subject to Subsection 16.b above, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

h. Entire Agreement; Amendment. This Agreement, together with the exhibits attached hereto and made part hereof and the Development Agreement, constitutes the entire understanding and agreement of the parties with respect to the subject matter hereof, and, except as may be otherwise specifically set forth herein, supersedes all prior and contemporaneous agreements and understandings, express or implied, oral or written. Except as may be otherwise specifically provided herein, this Agreement may not be amended, revoked, changed, altered, or modified in any manner whatsoever, other than by written unanimous agreement of and signed by all parties hereto.

i. Governing Law & Jurisdiction. This Financial Security Agreement shall be governed by, and construed and enforced in accordance, with the laws of the Commonwealth of Pennsylvania, regardless of conflicts of laws principles. All claims arising from this Financial Security Agreement shall be the exclusive jurisdiction of the Chester County Court of Common Pleas or the United States District Court for the Eastern District of Pennsylvania.

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IN WITNESS WHEREOF, the parties hereunto have executed this Agreement as of the day and year first above written.

ATTEST:

WESTTOWN TOWNSHIP

By: _____

Title: _____

Date: _____

ATTEST:

MALVERN SCHOOL REAL ESTATE
L.P., Developer

By: _____

Name: _____

Title: _____

Date: _____

ACKNOWLEDGMENTS

COMMONWEALTH OF PENNSYLVANIA:
COUNTY OF CHESTER : SS.

ON THIS, the _____ day of _____, 2019, before me, a notary public in and for said County and Commonwealth, personally appeared _____ who acknowledged himself/herself to be the _____ of Westtown Township and that he/she, as such, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

WITNESS my hand and notarial seal.

COMMONWEALTH OF PENNSYLVANIA:
COUNTY OF CHESTER : SS.

ON THIS, the _____ day of _____, 2019, before me, a notary public in and for said County and Commonwealth, personally appeared _____ who acknowledged himself/herself to be the _____ of Malvern School Real Estate L.P. and that he/she, as such, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

WITNESS my hand and notarial seal.

Exhibit "A"

Spread sheet showing details of escrow per paragraph 2(b).

EXHIBIT "B"

ACKNOWLEDGMENT AND VERIFICATION

THE UNDERSIGNED TD Bank, N.A., by duly authorized officer or other representative and intending to be legally bound, hereby acknowledges, verifies and agrees:

1. **THAT** the Undersigned is, for so long as the Letter of Credit is outstanding, the entity referred to as the "Financial Institution" in that certain Financial Security Agreement, dated _____, 2019 (the "Financial Security Agreement") and that certain Development Agreement, of the same date (the "Development Agreement") both between Westtown Township, Chester County (the "Township") and Malvern School Real Estate L.P., (the "Developer"), with respect to The Malvern School Subdivision and Land Development, as shown on the plan recorded in the Office of the Recorder of Deeds in and for Chester County PA at Plan #_____.

2. **THAT**, as of the date hereof, a Letter of Credit, in the amount of Ninety-Three Thousand, Six Hundred Seventy-Eight U.S. Dollars and Thirty Three Cents (USD \$493,678.33), has been duly issued by the Undersigned for use under, for purposes of and in accordance with the Financial Security Agreement and the Development Agreement.

3. **THAT** the Financial Security is a Letter of Credit, bearing No. _____, and that the Letter of Credit has been established with the Township as Beneficiary as the Financial Security for the Secured Improvements.

4. **THAT** the above Letter of Credit is the Financial Security referred to as the "Financial Security" in the Financial Security Agreement and the Development Agreement.

5. **THAT**, except as provided in and by the Financial Security Agreement or as may be otherwise consented to and approved and directed by the Board of Supervisors of the Township in and by a writing signed by the Chairperson of the Board of Supervisors, (i) no withdrawals shall be made from the Financial Security, (ii) the Financial Security shall not be terminated or closed or expired, unless in conformity with paragraph 2.c. of the Financial Security Agreement, and (iii) the balance of funds in the Financial Security shall be fully available to the Township for use under, for purposes of and in accordance with the Financial Security Agreement and the Development Agreement.

6. **THAT** a notation appears on the records of the Undersigned setting forth the substance of Paragraph 5 above.

7. **THAT** the Financial Security has been duly established and will be maintained by the Undersigned to comply with the Financial Security Agreement and the Development Agreement, copies of which Agreements have been reviewed, received and if required, executed, by the Undersigned.

8. **THAT** the Undersigned will comply with the terms of the Letter of Credit.

9. **THAT** the issuance of the Letter of Credit does not violate any of federal, state or other laws or regulations applicable to the Undersigned.

10. **THAT** the Undersigned shall not assign or delegate any of its duties or obligations under this Acknowledgment and Verification or otherwise, as the Financial Institution under the Financial Security Agreement and the Development Agreement, without the express written consent of Township, which shall not be unreasonably withheld, conditioned or delayed, except in the case of a sale or merger of the Undersigned where the successor remains liable under the letter of credit no consent shall be required.

11. **THAT**, subject to Paragraph 10 above, the duties and obligations of the Undersigned, under this Acknowledgment and Verification or otherwise as the Financial Institution under the Financial Security Agreement and the Development Agreement, shall be binding upon the successors and assigns of the Undersigned.

Financial Institution:

TD BANK, N.A.

Witness

By:_____

Printed Name

Printed Name

Printed Title

Printed Title

Date: _____

EXHIBIT "C"

**CERTIFICATE OF COMPLETION AND
AUTHORIZATION OF REDUCTION AND RELEASE
NO. _____**

WE, THE UNDERSIGNED, HEREBY:

A. CERTIFY that the work and improvements, described hereinbelow, completion of which is provided under and by that certain Development Agreement between Westtown Township, Chester County ("Township") and _____, ("Developer"), dated _____, 201__, concerning the construction, installation and completion of improvements in the _____ Subdivision and Land Development, **HAVE BEEN COMPLETED TO THE EXTENT OF THE AMOUNT INDICATED IN ITEM I BELOW**; and

B. AUTHORIZE _____, pursuant to the Development Agreement and related Financial Security Agreement of the same date, **TO REDUCE** the Financial Security, in the nature of a _____ provided and held with said Bank to guaranty, among other things, the completion of said work and improvements, **TO THE EXTENT OF THE AMOUNT INDICATED IN ITEM III BELOW**, and **TO RELEASE SAID AMOUNT OF REDUCTION FROM AND UNDER THE TERMS AND CONDITIONS OF THE ESCROW ACCOUNT.**

THE REDUCTION AND RELEASE of the amount of the Financial Security hereby authorized shall not be construed, in any manner or extent, as an acceptance by Township of the work and improvements described hereinbelow (or of any other work performed or any improvements installed or constructed), nor shall this Certificate and Authorization constitute any waiver by Township of its rights to inspect and approve the work and improvements described hereinbelow (or any other work performed and improvements installed and constructed). Township hereby reserves the right to re-inspect the work and improvements (as well as any other work and improvements) and to require Developer to correct, repair or demolish and to properly reconstruct any and all defective and deficient work and improvements not accepted and approved by Township.

THE FOLLOWING WORK AND Improvements are the subject of this Certificate and Authorization: *(See attached letter and invoice.)*

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THE REDUCTION AND RELEASE of the financial security authorized by this Certificate and Authorization have been determined as follows:

I. COST OF COMPLETED WORK AND Improvements	\$ _____
II. <i>less</i> AMOUNT OF RETAINAGE (10%)	\$ _____
III. AMOUNT OF REDUCTION AND RELEASE	\$ _____

Date

Township Engineer

Date

**Chairperson,
Westtown Township
Board of Supervisors**

PREPARED BY & RETURN TO:
Riley Riper Hollin & Colagreco
Attn.: Gina M. Gerber, Esquire
717 Constitution Drive, Suite 201
P.O. Box 1265
Exton, PA 19341
(610) 458-4400

UPI No.67-4-38
1081 Wilmington Pike, West Chester, PA

**STORMWATER BEST MANAGEMENT PRACTICES (BMPs) AND
CONVEYANCES
OPERATION AND MAINTENANCE AGREEMENT**

THIS AGREEMENT, made and entered into this _____ day of _____, 2019, by and between Malvern School Real Estate L.P., (hereinafter the “Landowner”), and Westtown Township, Chester County, Pennsylvania, (hereinafter “Municipality”);

WITNESSETH

WHEREAS, the Landowner is the owner of certain real property by virtue of a deed of conveyance recorded in the land records of Chester County, Pennsylvania, at Deed Book 9837 and Page 2178, (hereinafter “Property”); and

WHEREAS, the Landowner is proceeding to build and develop the Property with a two-story daycare and educational facility together with attendant parking, storm water management facilities and other related improvements in accordance with a Preliminary/Final Subdivision and Land Development Plan prepared by prepared by Edward B. Walsh & Associates, Inc., dated November 14, 2018, last revised March 24, 2019 (“Land Development Plan”); and

WHEREAS, the Post Construction Stormwater Management Plan approved by the Municipality for the Property, which is Sheets 6 and 10 of the Land Development Plan (hereinafter referred to as the “O&M Plan”) for The Malvern School, which is expressly made part hereof, provides for management of stormwater within the confines of the Property through the use of BMP(s) and conveyances; and

WHEREAS, the Municipality and the Landowner, for itself and its administrators, executors, successors, heirs, and assigns, agree that the health, safety, and welfare of the residents of the Municipality and the protection and maintenance of water quality require that stormwater BMP(s) and conveyances be constructed and maintained on the Property; and

WHEREAS, for the purposes of this agreement, the following definitions shall apply:
BMP – “Best Management Practice” –Those activities, facilities, designs, measures, or

procedures as specifically identified in the O&M Plan, used to manage stormwater impacts from land development, to meet state water quality requirements, to promote groundwater recharge, and to otherwise meet the purposes of the Municipality's Stormwater Management Ordinance. BMPs may include, but are not limited to, a wide variety of practices and devices, from large-scale retention ponds and constructed wetlands to small-scale underground treatment systems, infiltration facilities, filter strips, low impact design, bioretention, wet ponds, permeable paving, grassed swales, riparian or forested buffers, sand filters, detention basins, manufactured devices, and operational and/or behavior-related practices that attempt to minimize the contact of pollutants with stormwater runoff. The BMPs identified in the O&M Plan are permanent appurtenances to the Property; and

Conveyance – As specifically identified in the O&M Plan, a man-made, existing or proposed facility, structure or channel used for the transportation or transmission of stormwater from one place to another, including pipes, drainage ditches, channels and swales (vegetated and other), gutters, stream channels, and like facilities or features. The conveyances identified in the O&M Plan are permanent appurtenances to the Property; and

WHEREAS, the Municipality requires, through the implementation of the O&M Plan, that stormwater management BMPs and conveyances, as required by said O&M Plan and the Municipality's Stormwater Management Ordinance, be constructed and adequately inspected, operated and maintained by the Landowner, its administrators, executors, successors in interest, heirs, and assigns.

NOW, THEREFORE, in consideration of the foregoing promises, the mutual covenants contained herein, and the following terms and conditions, the parties hereto, intending to be legally bound hereby, agree as follows:

1. The foregoing recitals to this Agreement are incorporated as terms of this Agreement as if fully set forth in the body of this Agreement.
2. The Landowner shall construct the BMP(s) and conveyance(s) in accordance with the final design plans and specifications as approved by the Municipality and as shown on the O&M Plan.
3. The Landowner shall inspect, operate and maintain the BMP(s) and conveyance(s) as shown on the O&M Plan in good working order acceptable to the Municipality and in accordance with the specific inspection and maintenance requirements in the approved O&M Plan.
4. The Landowner hereby grants permission to the Municipality, its authorized agents and employees, to enter upon the Property from a public right-of-way or roadway, at reasonable times and upon presentation of proper identification, to inspect the BMP(s) and conveyance(s) whenever it deems necessary for compliance with this Agreement, the O&M Plan and the Municipality's Stormwater Management Ordinance. Whenever possible, the Municipality shall notify the Landowner prior to entering the Property. When requested by the Landowner, , the Municipality shall give the Landowner, its successors and assigns, copies of any inspection report with findings and evaluations of the inspection.
5. The Municipality intends to inspect the BMP(s) and conveyance(s) at a minimum of once

Every three (3) years to determine if they continue to function as required.

6. The Landowner acknowledges that, per the Municipality's Stormwater Ordinance, it is unlawful, without written approval of the Municipality, to:

- a. Modify, remove, fill, landscape, alter or impair the effectiveness of any BMP or conveyance that is constructed as part of the approved O&M Plan;
- b. Place any structure, fill, landscaping, additional vegetation, yard waste, brush cuttings, or other waste or debris into a BMP or conveyance that would limit or alter the functioning of the BMP or conveyance;
- c. Allow the BMP or conveyance to exist in a condition which does not conform to the approved O&M Plan or this Agreement; and
- d. Dispose of, discharge, place or otherwise allow pollutants including, but not limited to, deicers, pool additives, household chemicals, and automotive fluids to directly or indirectly enter any BMP or conveyance.

7. In the event that the Landowner fails to operate and maintain the BMP(s) and conveyance(s) as shown on the O&M Plan in good working order acceptable to the Municipality, the Municipality shall provide to Developer written notice of the need for remedial action and grant Developer thirty (30) days from the date the notice is received to remediate the issue (or such additional time as may be agreed to by Developer and Township if said remediation cannot be reasonably taken within thirty (30) days) (herein referred to as "Notice and Opportunity to Cure"). If Landowner fails to remediate the issue in accordance with the Notice and Opportunity to Cure, the Landowner shall be in violation of this Agreement, and the Landowner agrees that the Municipality or its representatives may, in addition to and not in derogation or diminution of any remedies available to it under the Stormwater Ordinance or other statutes, codes, rules or regulations, or this Agreement, enter upon the Property and take whatever action is deemed necessary to maintain said BMP(s) and conveyance(s). It is expressly understood and agreed that the Municipality is under no obligation to maintain or repair said facilities, and in no event shall this Agreement be construed to impose any such obligation on the Municipality.

8. In the event that the Municipality, pursuant to this Agreement, performs work of any nature or expends any funds in performance of said work for labor, use of equipment, supplies, materials, and the like, the Landowner shall reimburse the Municipality for all expenses (direct and indirect) incurred within forty-five (45) days of delivery of an invoice from the Municipality. Failure of the Landowner to make prompt payment to the Municipality may result in enforcement proceedings, which may include the filing of a lien against the Property, which filing is expressly authorized by the Landowner, or may proceed to recover its costs through proceedings in equity or law as authorized under the provisions of the Westtown Township Code.

9. The intent and purpose of this Agreement is to ensure the proper maintenance of the on-site BMP(s) and conveyance(s) by the Landowner; provided, however, that this Agreement shall not be deemed to create or affect any additional liability on any party for damage alleged to result from or be caused by stormwater runoff.

10. The Landowner, for itself and its executors, administrators, assigns, heirs, and other successors in interest, hereby releases and shall release the Municipality's employees, its agents and designated representatives from all damages, accidents, casualties, occurrences, or claims

which might arise or be asserted against said employees, agents or representatives arising out of the construction, presence, existence, or maintenance of the BMP(s) and conveyance(s) either by the Landowner or Municipality, except those caused by the willful misconduct or gross negligence of Municipality, its employees, agents and designated representatives. In the event that a claim is asserted or threatened against the Municipality, its employees, agents or designated representatives, the Municipality shall notify the Landowner, and the Landowner shall defend, at his own expense, any claim, suit, action or proceeding, or any threatened claim, suit, action or proceeding against the Municipality, or, at the request of the Municipality, pay the cost, including attorneys' fees, of defense of the same undertaken on behalf of the Municipality, except those claims arising from the willful misconduct or gross negligence of Municipality, its employees, agents and designated representatives. If any judgment or claims against the Municipality's employees, agents or designated representatives shall be allowed, the Landowner shall pay all damages, judgments or claims and any costs and expenses incurred by the Municipality, including attorneys, regarding said damages, judgments or claims, except such damages, judgments or claims arising out of the willful misconduct or gross negligence of Municipality, its employees, agents and designated representatives.

11. The Municipality may enforce this Agreement in accordance with its Stormwater Ordinance, at law or in equity, against the Landowner for breach of this Agreement. Remedies may include fines, penalties, damages or such equitable relief as the parties may agree upon or as may be determined by a Court of competent jurisdiction. Recovery by the Municipality shall include its reasonable attorney's fees and costs incurred in seeking relief under this Agreement.

12. Failure or delay in enforcing any provision of this Agreement shall not constitute a waiver by the Municipality of its rights of enforcement hereunder.

13. The Landowner shall inform future buyers of the Property about the function of, operation, inspection and maintenance requirements of the BMP(s) prior to the purchase of the Property by said future buyer, and upon purchase of the Property the future buyer assumes all responsibilities as Landowner and must comply with all components of this Agreement.
14. This Agreement shall inure to the benefit of and be binding upon, the Municipality and the Landowner, as well as their heirs, administrators, executors, assigns and successors in interest.
15. Additional items or conditions, as required by the Municipality (per Subsection 703.B of this Ordinance), as attached herein:

This Agreement shall be recorded at the Office of the Recorder of Deeds of Chester County, Pennsylvania, and shall constitute a covenant running with the Property, in perpetuity.

ATTEST:

WESTTOWN TOWNSHIP

By: _____

Title: _____

Date: _____

ATTEST:

MALVERN SCHOOL REAL ESTATE
L.P., Developer

By: _____

Name: _____

Title: _____

Date: _____

ACKNOWLEDGMENT

COMMONWEALTH OF PENNSYLVANIA :

SS.

COUNTY OF CHESTER :

On this ____ day of _____, 2019, before me, a Notary Public in and for the Commonwealth of Pennsylvania, the undersigned officer, personally appeared _____, who acknowledged himself to be the Chairman of the Board of Supervisors of Westtown Township, and that he, as such official, being duly authorized to do so, executed the foregoing instrument for the purposes therein contained.

WITNESS my hand an official seal the day and year aforesaid.

Notary Public

My Commission Expires:

ACKNOWLEDGMENT

COMMONWEALTH OF PENNSYLVANIA :

SS.

COUNTY OF CHESTER :

On this ____ day of _____, 2019, before me, a Notary Public in and for the Commonwealth of Pennsylvania, the undersigned officer, personally appeared _____, who acknowledged himself to be the _____ of Malvern School Real Estate, L.P., and that he, as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

WITNESS my hand and official seal the day and year aforesaid.

Notary Public

My Commission Expires:

August 8, 2019

IRREVOCABLE STANDBY LETTER OF CREDIT NO. DRAFT
EXPIRATION DATE: August 8, 2020

Westtown Township
1039 Wilmington Pike
West Chester, PA 19382

Re: Malvern School Real Estate LP
1081 Wilmington Pike, UPI No. 67-4-38

We hereby establish our Irrevocable Standby Letter of Credit No. DRAFT in favor of Westtown Township, hereinafter referred to as "Beneficiary", at the request of Malvern School Real Estate LP, hereinafter referred to as "Applicant", in an amount not to exceed in the aggregate Four Hundred Ninety-Three Thousand Six Hundred Seventy-Eight and 33/100 (\$493,678.33) U.S. Dollars.

Funds are available by your draft on us at sight, bearing the clause: "Drawn under TD Bank, N.A. Letter of Credit No. DRAFT dated August 8, 2019" and accompanied by the following documents:

1. This original Letter of Credit and any amendments thereto.
2. A certificate of the Engineer of Westtown Township, stating that:

"Malvern School Real Estate LP has not performed in accordance with the terms and conditions of that certain Development Agreement and Financial Security Agreement between Malvern School Real Estate LP and Westtown Township."

It is a condition of this Letter of Credit that it will be extended automatically, without amendment, for additional periods of one (1) year from the present or each future expiration date, unless at least sixty (60) days prior to the then current expiration date, we notify you in writing by certified mail, return receipt or overnight courier, at the above address, with a copy to the Township Solicitor and Township Engineer, that we elect not to renew this Letter of Credit for said additional period. Receipt by Westtown Township of our non-renewal notice fulfills our obligation to provide times notice of non-renewal.

We hereby agree that draft(s) drawn under and in compliance with the terms of this Letter of Credit will be duly honored upon receipt of documents as specified above, which may be presented in person or sent via overnight courier at our office located at 6000 Atrium Way, Mt. Laurel, NJ 08054 on or before the expiration date noted above or any extended date.

Except so far as otherwise expressly stated herein, this Letter of Credit is subject to the "Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce, Publication No. 600."

TD BANK, N.A.

TO THE BENEFICIARY:

Please sign and date below to indicate your approval of this DRAFT.

Signing this draft simply indicates your acceptance of the above wording.

The authenticated letter of credit will be forwarded to you under separate cover.

Beneficiary's Signature _____ **Date** _____