

## NEGOTIATION PROCEDURE AND SETTLEMENT AGREEMENT

THIS NEGOTIATION PROCEDURE AND SETTLEMENT AGREEMENT (the "Agreement") made and entered into this 9<sup>th</sup> day of February, 2009, by and among **CARROLL TOWNSHIP**, a Second Class Township, with address at 555 Chestnut Grove Road, Dillsburg, Pennsylvania ("Township")

and

**DILLSBURG VENTURES, LLC**, a Maryland limited liability company, with business address of 113 Westminster Road, Suite 200 Reistertown, Maryland ("Dillsburg Ventures").

### RECITALS

A. Dillsburg is the owner of an approximate 44.7 acre tract of land located on Logan Road adjacent to U.S. Route 15 and Harrisburg Pike in Carroll Township (the "Property"); and

B. Dillsburg has submitted preliminary land development plans entitled "Preliminary Subdivision & Land Development Plan for the Village of South Mountain" for a Traditional Neighborhood Design project consisting of a mixture of 236 residential units and neighborhood center civic and office uses (the "Plans"); and

C. On February 25, 2008, the Township issued their written decision denying the Plans and requested waivers (the "Township Decision"); and

D. On March 25, 2008, Dillsburg Ventures filed a Notice of Appeal with the Court of Common Pleas of York County at Docket No. 2008-SU-1421-Y08 challenging the Township Decision; and

E. On July 23, 2008, the Court of Common Pleas of York County issued an Order and Opinion reversing the Township Decision, requiring the Plans to be approved as presented (the "Trial Court Decision"); and

F. On August 20, 2008, the Township filed an Appeal to the Commonwealth Court of Pennsylvania at Docket No. 1588 CD 2008 challenging the Trial Court Decision (the "Appeal"); and

G. The Appeal is currently subject to the mediation program of the Commonwealth Court and counsel for both parties have participated in several mediation sessions with the Commonwealth Court; and

H. The parties, through their staff and consultants, have met several times to discuss alternative plans for development on the Property as a way to settle the Appeal; and

I. The parties have agreed in concept of an alternate plan for development of the Property which would best meet the concerns of the Township, while providing sufficient development opportunities to Dillsburg Ventures; and

J. The parties desire to memorialize their understanding concerning the ongoing negotiations leading to the finalization and approval of the alternate plan and set forth a process by which the alternate plan will be approved as a preliminary land development plan and as a full and final settlement of the Appeal.

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

1. **RECITALS.** The foregoing recitals are incorporated herein by reference as if set forth fully herein, and constitute a material portion of this Agreement.

2. **APPROVAL OF CONCEPT SKETCH PLAN.** The parties agree that the concept sketch plan attached hereto as Exhibit "A" (the "Sketch Plan"), titled "The Village at South Mountain Design No. 18B" represents an acceptable development on the Property and is generally consistent with Carroll Township ordinances as to general site layout and design. The parties agree that the Sketch Plan shall form the basic layout and site design for the forthcoming land development plans to be submitted by Dillsburg Ventures.

3. **SUBMISSION AND REVIEW OF LAND DEVELOPMENT PLANS.** The parties agree that the submission, review and approval of the land development plans for the Property shall be according to the following schedule (three copies of all documents shall be submitted to the Township):

(a) Dillsburg Ventures will submit land development plans, consistent with the Sketch Plan to Carroll Township on or before April 14, 2009. The submission shall include a revised traffic impact study, a revised stormwater report and architectural design standards. There shall be no fee due with the submission. The submission will be made in accordance with the preliminary plan requirements of the Township Subdivision and Land Development Ordinance.

(b) Carroll Township engineer and staff shall review the submitted plans and materials for conformity to Township ordinances. The Township shall deliver to Dillsburg Ventures a review letter of the submitted materials on or before May 5, 2009 indicating conformity or non-conformity with the Township Ordinances.

(c) Dillsburg Ventures will submit revised land development plans and supporting documents addressing the Township comments on or before May 19, 2009.

(d) Carroll Township engineer and staff shall review the submitted revised plans and supporting documents and deliver a review letter to Dillsburg Ventures on or before June 2, 2009.

(e) Dillsburg Ventures will then submit revised land development plans and supporting documents addressing the Township comments on or before June 16, 2009.

(f) Carroll Township engineer and staff shall review the submitted revised plans and supporting documents and deliver a review letter to Dillsburg Ventures on or before June 30, 2009.

(g) Dillsburg Ventures will submit the final revised plans (the "Preliminary Plans") and supporting documents addressing the Township comments on or before July 14, 2009. The Preliminary Plans shall be signed and sealed by Dillsburg Ventures.

(h) Carroll Township shall sign the Preliminary Plans on or before July 21, 2009.

4. **COURT APPROVAL OF PLANS.** Counsel for the parties shall submit, on or before August 1, 2009, a joint motion to Court (either the Commonwealth Court or the Court of Common Pleas of York County, which ever is monitoring the settlement at the time) for the Court to approve the signed Preliminary Plans. The motion shall include a stipulation that approval by the Court shall operate as a full settlement and discontinuance of the Appeal.

5. **PHASING OF DEVELOPMENT.** Dillsburg Ventures anticipates that the plans will have the Property being developed with a phased development consisting of three (3) phases. The submitted materials to Carroll Township will include a phasing schedule for the development.

6. **COOPERATION BETWEEN THE PARTIES.** The parties agree to cooperate and perform their obligations undertaken pursuant to this agreement in good faith with the goal of settling the Appeal to allow for development on the Property consistent with the Sketch Plan. Should either party believe that the other party is not proceeding in good faith, or should the parties have a disagreement on a technical aspect of the plans or interpretation of any ordinance provision as applied to the plans, application may be made to the Court monitoring the settlement for resolution of the dispute. The parties further agree that after the Preliminary Plans are approved by the Court, the parties shall work in good faith in the submission, processing, review and approval of the final land development plans and supporting documents which Dillsburg will file for development of the Property consistent with the Preliminary Plans.

7. **COOPERATION ON OUTSIDE AGENCY APPROVALS.** The parties agree to cooperate regarding outside agency approvals, including but not limited to Dillsburg Area Authority, PennDOT, Department of Environmental Protection and the U.S. Army Corps, of any and all permits that may be required the by Preliminary Plans and any final

plans filed for development of the Property. This will include reviewing, processing, executing and submitting applications and supporting documentation.

8. **TERMINATION OF AGREEMENT.** The parties may terminate this Agreement, when in the sole discretion of either party, the settlement proceedings (being either the review or submission of the plans) are not proceeding in good faith or the parties can not resolve a dispute as set forth herein. Prior to such termination, the party asserting the problem shall notify the other of the specific nature of the dispute, and the other party shall provide a written response with 3 business days. If such response is not satisfactory, then the party asserting the problem shall provide notice of termination of this Agreement, and the settlement discussions shall end. At which point, the parties shall continue on with the Appeal.

9. **CONFIDENTIAL PROCEEDINGS.** The parties agree that they are proceeding with this Agreement with the understanding that all aspects of the settlement process shall be and are to remain confidential to the maximum extent allowable under law. While, pursuant to proper request, this Agreement may be disclosed pursuant to the State Right to Know Law, the reviews or plans exchanged pursuant to this Agreement, or any other information related to this Agreement and the settlement process shall not be disclosed at a public meeting, to the press, or otherwise disseminated to the public as such represent the ongoing settlement discussions between the parties. Nothing submitted, discussed or stated by either party shall be construed as an admission by that party for any reason, including, but not limited to ordinance interpretation, or how the Property may be developed. The settlement discussions, plans and reviews may not be used by the other party outside the terms of this Agreement in any other way, including as part of the Appeal or any other court proceeding.

10. **FEES AND EXPENSES.** The parties shall be responsible for their own engineering design and review fees for the work set forth in this Agreement; provided, however, Dillsburg Ventures shall be responsible for the review fees incurred by the Township-retained traffic engineer. Each party shall bear its own legal fees resulting from the negotiations between the parties up to through the drafting and review of this Agreement, and the court approval of the Preliminary Plans.

11. **APPROVAL BY TOWNSHIP.** This Agreement was approved by the Board of Supervisors of Carroll Township at a public meeting held on the 9<sup>th</sup> day of February, 2009.

*[Remainder of Page Intentionally Left Blank]*

12. **NOTICES.** All notices required to be given hereunder shall be in writing and shall be given by (1) by overnight courier with a copy sent by first class mail, or (2) by facsimile. Any notice which is sent by overnight courier, by hand-delivered or transmitted by facsimile shall be deemed to have been received on the date of delivery or, as the case may be, the date of transmission. Either party may change its address, for purposes of receiving notice, by notice to the other given in compliance with this paragraph.

If to Township: Carroll Township Board of Supervisors  
Attn: Mark Hilson, P.E.  
555 Chestnut Grove Road  
Dillsburg, PA 17019  
Telephone: (717) 432-4951  
Facsimile: (717) 502-8807

With a copy to: Steve Stine, Esq.,  
23 Waverly Drive  
Hummelstown, PA 17036  
Telephone (717) 903-1268  
Facsimile (717) 583-2943

If to Dillsburg Ventures: Dillsburg Ventures, LLC  
113 Westminster Road, Suite 200  
Reisterstown, Maryland 21136  
Telephone: (888) 967-4400  
Facsimile: (410) 833-0043

With a copy to: Charles M. Suhr, Esq.,  
Stevens & Lee  
17 N. Second Street, 16th Floor  
Harrisburg, PA 17101  
Telephone: (717) 255-7356  
Facsimile: (610) 371-7368

13. **MISCELLANEOUS.**

- (a) This Agreement may be signed in counterparts.
- (b) Captions preceding the text of each section are included only for convenience of reference.

(c) This Agreement contains the entire agreement of the parties with regard to the above-stated subject matter hereof and shall be binding upon the parties and their respective heirs, successors and assigns.

(d) No modification or amendment of this Agreement shall be effective without the written consent of both parties.

(e) This Agreement shall be interpreted under the laws of the Commonwealth of Pennsylvania.

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

WITNESS/ATTEST

Jaye L Romberg

CARROLL TOWNSHIP

By: William B. Turner  
Name: William B. Turner  
Title: Chairman

DILLSBURG VENTURES, LLC

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Commonwealth of Pennsylvania.

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

WITNESS/ATTEST

CARROLL TOWNSHIP

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

*Barbara Sabina*  
\_\_\_\_\_

DILLSBURG VENTURES, LLC

By: *Jeffrey B Powers*  
Name: *Jeffrey B Powers*  
Title: *Member*