

## DEVELOPMENT AGREEMENT

**THIS AGREEMENT** ("Agreement"), made as of this \_\_\_ day of \_\_\_\_\_, 2009, by and among **BEAR CREEK FOUNDATION**, a private foundation organized under section 170 of the Internal Revenue Code of 1986, as amended with offices at 1900 Bear Creek Boulevard, Wilkes-Barre, Luzerne County, PA 18702; (the "Developer"); the **BEAR CREEK COMMUNITY CHARTER SCHOOL**, a Pennsylvania Public Charter school, with offices at 2000 Bear Creek Boulevard, Wilkes-Barre, Luzerne County, PA 18702 (the "School"); **BEAR CREEK TOWNSHIP**, a Pennsylvania municipal corporation organized as a Township of the second class with offices located at 3333 Bear Creek Boulevard, Bear Creek Township, PA 18702 ("Township").

### WITNESSETH:

**WHEREAS**, the parties have identified real property within the Township for the design, development and construction of a public elementary and middle school operated as a public charter school together with recreational fields and facilities ("Recreation/Charter School Project"); and

**WHEREAS**, the real property is composed of a 48.87 acre tract of land to the rear of the present location of the School as more particularly depicted on the map attached hereto as Exhibit "A-1" and incorporated herein (the "Real Property"); and

**WHEREAS**, the Real Property is more particularly describe in the surveyed legal description marked Exhibit "A-2" which is attached hereto and incorporated herein; and

**WHEREAS**, title to the land composing the Real Property is now held by private parties unrelated to the either the Township, the School or the Developer; and

**WHEREAS**, Developer has been unable despite multiple good faith efforts to acquire title to the Real Property for the Recreation/Charter School Project; and

**WHEREAS**, the Recreation/Charter School Project includes capital projects in the nature of the construction of an elementary and middle school facility to accommodate up to Four Hundred Seventy Five (475) students including accessory recreational fields and playgrounds for the students and residents of Bear Creek Township and surrounding areas; and

**WHEREAS**, the parties hereto are desirous of creating additional recreation and community areas for the residents of Bear Creek Township and the surrounding communities, and the Real Property has been identified as the area which best suits the goals of the Township and the other parties; and

**WHEREAS**, the development, construction and completion of the Recreation/Charter School Project so as to provide a conveniently located school avoids the need for long distance and hazardous transportation of students and is vital to the continuing residential and economic growth of the Township; and

**WHEREAS**, the Township has the authority to enter into this Development Agreement and take the action contemplated herein pursuant to the Eminent Domain Code as well as Sections 661542, 672201 and 672205 of the Second Class Township Code (53 P.S. § 661542, 672201, and 672205); and

**WHEREAS**, the parties agree that the planning, solicitation of public input, development, construction and completion of the Recreation/Charter School Project would be best accomplished through the expertise and offices of the Developer.

**NOW, THEREFORE**, in consideration of the foregoing premises and the mutual covenants hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. That the Developer will provide project management and development services to include, without limitation, the conducting of the necessary due diligence and feasibility studies; the securing of public and private financing for the Recreation/Charter School Project; the completion of the project design/construction drawings; the engaging of the entities and individuals referenced in Paragraph 4, below and ongoing ownership, operation and management of the Recreation/Charter School Project.
2. That the Township will acquire good and marketable title to the Real Property, including, if necessary through the exercise of the power of eminent domain, and will thereafter convey such title by Special Warranty Deed from the Township to the Developer. The form of the Agreement of Sale detailing the terms of the conveyance is attached hereto as Schedule "A" and incorporated herein. The Township shall commence the filing of the Notice of Condemnation no later than October 6, 2009.
3. That the Developer, in anticipation of obtaining title to the Real Property, will engage the necessary entities and individuals to develop, design and begin construction of the Recreation/Charter School Project. The construction of the Project shall be consistent in a material sense with the "Concept Plan" attached hereto as Schedule "B" and incorporated herein.
4. Prior to the Developer's acquisition of title to the Real Property the Township will grant the Developer reasonable and necessary access to the Real Property to the extent that it has the right to do so in order to facilitate the planning of the construction and completion of necessary testing of the Real Property. The Developer shall be responsible for any damage to the Real Property caused by it, or its employees, agents, consultants or contractors. Said testing shall not affect any amounts due to the Township herein, nor any parties obligations outlined herein.

5. The funding for the design, development and construction of the Recreation/Charter School Project is presently projected to be obtained from the following sources:
  - (a) Twenty Percent (20%) from School Equity
  - (b) Eighty Percent (80%) from the public offering of tax free bonds.
  - (c) The Township shall not be required to contribute financially to the design, development or construction of the Recreation / Charter School Project.

In the event the Township is eligible for and the Township secures any federal, state or local grants specific to the Recreation/Charter School Project, the relevant funds will be assigned and/or transferred to the Developer to be used as agreed to by the Township and the Developer. However, in no event is this Agreement contingent upon the Township's application and /or receipt of federal, state or local grants.

6. In consideration of the assignments to the Developer as more particularly set forth in 5, above, the Developer agrees to follow all federal, state and/or local guidelines with respect to the various grants and shall indemnify and hold the various grant recipients harmless from and against any financial loss and/or obligation that the grant recipient may suffer as a consequence of said failure on the part of the Developer. The form of the indemnity is attached hereto as Schedule "C" and incorporated herein.
7. The Developer agrees to maintain or cause its professionals and/or contractors to maintain adequate insurance, naming the Developer, the School, its lenders and the Township should it have an insurable interest, as additional insureds, as their respective interests may appear. The insurance coverages shall serve to indemnify and hold the Developer, the School, and the Township harmless from and against any and all claims, losses, damages, liabilities, costs and expenses (or actions in respect thereto) including, without limitation, fees and expenses of counsel and expert witnesses, which may be incurred by any of them in connection with any investigation, litigation or other proceeding arising in connection with the Project, other than for their own negligence or willful misconduct. As additional insureds, the parties shall receive at least thirty (30) days notice of the insurer's intent to cancel any of the insurance coverages provided pursuant to this paragraph. Notwithstanding any insurance coverage, the School and the Developer shall indemnify and hold the Township harmless from and against any and all claims, losses, damages, liabilities, costs and expenses (or actions in respect thereto) including, without limitation, fees and expenses of counsel and expert witnesses, which may be incurred by any of them in connection with any investigation, litigation, or other proceeding arising in connection with the Project, other than for their own negligence or willful misconduct.



12. All covenants, terms and provisions of this Agreement shall extend to and bind the successors and assigns of the parties hereto.
13. Except as hereinafter set forth, the parties shall not have the right to assign their rights or responsibilities under this Agreement, except in connection with financing, without the express written approval of the others, which approval shall not be unreasonably withheld. The Developer's lenders shall have the right to exercise any remedies under their loan documents, without the approval or consent of any other party, which may result in a successor to the Developer.
14. This Agreement shall constitute a contract under the laws of the Commonwealth of Pennsylvania and shall for all purposes be construed in accordance with such laws. The obligations of the Developer which require ownership of the Real Property shall be conditioned upon the transfer of title to the Developer in accordance with the terms of the Agreement of Sale.
15. This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute one and the same instrument.
16. This Agreement constitutes the entire agreement between the parties and there are no other terms, covenants, representations, statements or conditions, oral or otherwise, of any kind whatsoever, which are not herein referred to or incorporated. Any agreement hereafter made shall be ineffective to change, modify, discharge or effect an abandonment of this Agreement in whole or in part unless such agreement is in writing and signed by the party against whom enforcement of the change, modification, discharge or abandonment is sought.
17. This Agreement shall not be construed more strictly against one party than another by virtue of the fact that it may have been prepared primarily by counsel for one of the parties, it being recognized that all parties contributed substantially and materially to the preparation of this Agreement and that each has been represented by independent counsel.

**IN WITNESS WHEREOF**, and intending to be legally bound, the parties have executed this Agreement as of the day and year first above written.

ATTEST/WITNESS:

\_\_\_\_\_

**BEAR CREEK FOUNDATION**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST/WITNESS:

**BEAR CREEK TOWNSHIP**

\_\_\_\_\_  
Township Secretary

\_\_\_\_\_  
Gary Zingaretti, Chair

\_\_\_\_\_  
Bonnie J. Wasilewski, Vice Chair

\_\_\_\_\_  
Ruth Ann Koval

\_\_\_\_\_  
Gary Slusser

\_\_\_\_\_  
Joseph Masi

ATTEST/WITNESS:

**BEAR CREEK COMMUNITY  
CHARTER SCHOOL**

\_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## LISTING OF EXHIBITS AND SCHEDULES

<b>Exhibit "A-1"</b>	Plan of Tract of Land to be conveyed from the Township to the Developer
<b>Exhibit "A-2"</b>	Legal Description of Real Property
<b>Schedule "A"</b>	The form of the Agreement of Sale for the Real Estate
<b>Schedule "B"</b>	The Concept Plan
<b>Schedule "C"</b>	Indemnification Agreement
<b>Schedule "D"</b>	Public Use and Access Agreement
<b>Schedule "E"</b>	Cross-Indemnification Agreement