

ARTICLE 4

IMPROVEMENT AND MAINTENANCE GUARANTEES

Section 401. GENERAL STATEMENT

- A. No plan or project shall be in compliance with this Ordinance until the public improvements including, streets, street lights, all street name signs, all traffic control signs, sidewalks, curbs, stormwater management facilities, storm drainage for dedication or which effect adjacent properties or streets, sanitary sewer facilities for dedication, water supply facilities, fire hydrants, lot line markers, survey monuments, recreation facilities, open space requirements and other such public improvements have been installed in accordance with this Ordinance, other applicable Township Ordinances, and the rules and regulations of a public utility or the Township.
- B. If water mains and/or sanitary sewer lines, along with apparatus or facilities related thereto, are to be installed under the jurisdiction and pursuant to the rules and regulations of a public utility or the Township, financial security to assure proper completion and maintenance thereof shall be posted in accordance with the regulations of the controlling public utility or Township and shall not be included with the financial security as otherwise required by Section 401.
- C. No Final Plan shall be signed by the Board of Commissioners for recording in the Office of the Cumberland County Recorder of Deeds unless:
 - 1. financial security in accordance with the requirements of Section 402 is accepted by the Board of Commissioners, and/or;
 - 2. the improvements required by this Ordinance have been properly guaranteed.

Section 402. FINANCIAL SECURITY FOR IMPROVEMENT GUARANTEE

- A. General
 - 1. The administration of the financial security shall comply with the provisions of Article 5, the PA Municipalities Planning Code, Act 247, as amended, and other applicable laws of the Commonwealth of Pennsylvania.
 - 2. Such financial security shall provide for, and secure to the public, the completion of any improvements which may be required on or before the date fixed in the formal action of approval or in the Developer's Agreement for completion of the improvements. (See EXHIBIT 4-1)
- B. Submission of Improvements Guarantee

Final plan applications that include public improvements that have not been installed shall include an improvement guarantee in the form of financial security.

 - 1. Type of Financial Security

Irrevocable Letters of Credit will be accepted, although the Board of Commissioners may accept an alternative type of financial security. Such financial security shall be posted with a bonding company or Federal or Commonwealth chartered lending institution chosen by the party posting the financial security, providing said bonding

company or lending institution is authorized to conduct such business in the Commonwealth of Pennsylvania, subject to review by the Township Solicitor for adequacy.

2. Amount of Financial Security

- a. The amount of financial security to be posted for the completion of the required improvements shall be equal to one hundred and ten (110) percent of the current estimated cost of the required improvements. Annually, the Township may adjust the amount of the financial security by comparing the actual cost of the improvements which have been completed and the estimated cost for the completion of the remaining improvements as of the expiration of the ninetieth (90th) day after either the original date scheduled for completion or a rescheduled date of completion. Subsequent to said adjustment, the Township may require the Applicant to post additional security in order to assure that the financial security equals said one hundred and ten (110) percent. Any additional security shall be posted by the Applicant in accordance with this Ordinance.
- b. The amount of financial security required shall be based upon an estimate of the cost of completion of the required improvements, submitted by the Applicant prepared by a professional engineer licensed as such in this Commonwealth and certified by such engineer to be a fair and reasonable estimate of such cost. The estimate submitted to the Township shall be organized and itemized to provide a detailed line by line estimate of costs of all public improvements required. The Township, upon the recommendation of the Township Engineer, may refuse to accept such estimate for good cause shown. If the Applicant and the Township are unable to agree upon an estimate, then the estimate shall be recalculated and recertified by another professional engineer licensed as such in this Commonwealth and chosen mutually by the Township and the Applicant. The estimate certified by the third (3rd) engineer shall be presumed fair and reasonable and shall be the final estimate. In the event that a third (3rd) engineer is so chosen, fees for the services of said engineer shall be paid equally by the Township and the Applicant.
- c. If the party posting the financial security requires more than one (1) year from the date of posting of the financial security to complete the required improvements, the amount of financial security may be increased by an additional ten (10) percent for each one (1) year period beyond the first anniversary date from posting of financial security, or at the Township Engineer's sole discretion to an amount not exceeding one hundred and ten (110) percent of the then current estimate of completing the remaining required improvements.
- d. In the case where development is projected over a period of years, the Board of Commissioners may authorize submission of final plans by section or stages of development subject to such requirements or guarantees as to improvements in future section or stages of development as it finds essential for the protection of any finally approved section of the development.

3. Developer's Agreement

The applicant shall declare the intent to provide an improvement guarantee by executing the Developer's Agreement included in this Ordinance. The Developer's Agreement shall be executed prior to the recordation of the final plan.

C. Plan Approval Conditioned Upon Financial Security

When requested by the Applicant, in order to facilitate financing, the Board of Commissioners shall furnish the Applicant with written certification indicating approval of the final plan contingent upon the Applicant obtaining a satisfactory financial security. The final plan shall not be recorded until the Developer's Agreement is executed. Conditional approval shall expire and be deemed to be revoked if the Developer's Agreement is not executed within one hundred and eighty (180) days unless a written extension is granted by the Board of Commissioners. Such extension shall not be unreasonably withheld and shall be placed in writing at the request of the developer. The time extension must be requested by the applicant in writing.

D. Release of Financial Security

1. As the work of installing the required improvements proceeds, the party posting the financial security may request the Board of Commissioners to release or authorize the release, from time to time, of such portions of the financial security necessary for payment to the contractor or contractors performing the work. Any such requests shall be in writing addressed to the Board of Commissioners, and the Board of Commissioners shall have forty-five (45) day from receipt of such request within which to allow the Township Engineer to certify, in writing, to the Board of Commissioners that such portion of the work upon the improvements has been completed in accordance with the approved plan. Upon such certification the Board of Commissioners shall authorize release by the bonding company or lending institution of an amount as estimated by the Township Engineer fairly representing the value of the improvements completed or, if the Board of Commissioners fails to act within said forty-five (45) days period, the Board of Commissioners shall be deemed to have approved the release of funds as requested. The Board of Commissioners shall always, prior to final release at the time of completion and certification by the Township Engineer, require retention of a minimum of ten (10) percent of the estimated cost of the aforesaid improvements. Such funds will be released only after certification by the Township Engineer that all required public improvements so guaranteed have been completed satisfactorily.

2. When the Applicant has completed all of the necessary and appropriate improvements, the Applicant shall notify the Township Engineer of the completion of the aforesaid required improvements; within ten (10) days of such notification, the Township Engineer will inspect all the aforesaid completed improvements; within thirty (30) days of such an inspection, the Township Engineer shall notify the applicant in writing and in sufficient detail as to the acceptance or rejection of said improvements, containing as a minimum, reasons for rejection or disapproval.

The said report shall be detailed and shall indicate approval or rejection of said improvements, either in whole or in part, and if said improvements, or any portion thereof, shall not be approved or shall be rejected by the Township Engineer, said report shall contain a statement of reasons for such disapproval or rejection.

a. The Board of Commissioners shall notify the Applicant, within fifteen

(15) days of receipt of the Township Engineer's report, in writing by certified or registered mail of the action of said Board of Commissioners with relation thereto.

b. If the Board of Commissioners or the Township Engineer fails to comply with the time limitation provisions contained herein, all improvements will be deemed to have been approved and the Applicant shall be released from all liability, pursuant to this performance guaranty bond or other security agreement.

c. If any portions of the said improvements are not approved or are rejected by the Board of Commissioners, the Applicant shall proceed to complete the same with the required corrections and, upon completion, the same procedure of notification, as outlined herein, shall be followed.

3. Upon satisfactory completion of all required improvements, after consultation with the Township Manager, the Township Engineer may release to the applicant any remaining financial security, including but not limited to, the withheld ten (10) percent minimum.

4. Nothing herein shall be construed as a limitation of the Applicant's right to contest or question by legal proceedings or otherwise, any determination of the Board of Commissioners or the Township Engineer.

E. Remedies to Effect Completion of Improvements

In the event that any improvements which may be required have not been installed as provided in Article 4 or in accordance with the approved final plan, the Board of Commissioners is hereby granted the power to enforce any financial security by appropriate legal and equitable remedies. If proceeds of the financial security are insufficient to pay the cost of installing or making repairs or corrections to all the improvements covered by said security, the Board of Commissioners may, at its option, install all or part of such improvements and may institute appropriate legal or equitable action to recover the funds necessary to complete the remainder of the improvements. All of the proceeds, whether resulting from the security or from any legal or equitable action brought against the applicant, or both, shall be used solely for the installation of the improvements covered by such security, and not for any other municipal purpose.

F. Other Effects of Financial Security

If financial security has been provided in lieu of the completion of improvements required as a condition for the final approval of a plan as set forth in this Section, the Township shall not condition the issuance of building, grading or other permits relating to the erection or placement of improvements, including buildings, upon the lots or land as depicted upon the final plan upon actual completion of the improvements depicted upon the approved final plan. Moreover, if said financial security has been provided, occupancy permits for any building or buildings shall not be withheld following: (1) the application of the asphalt binder course the streets providing access to and from existing public roads to such building or buildings, as well as (2) the completion of all other improvements as depicted upon the approved plan, either upon the lot or lots or beyond the lot or lots in question if such improvements are necessary for the reasonable use of or occupancy of the building or buildings.

Section 403. INSPECTION OF IMPROVEMENTS DURING CONSTRUCTION

A. Prior to the initiation of construction, the developer shall notify the Township in order to

coordinate an inspection schedule with the construction schedule. Additionally, the Township Engineer shall be notified four (4) working days in advance of any intended date of construction. The provisions stated herein shall be construed as mandating periodic inspections and the undertaking of periodic inspections shall not be construed as an acceptance of the work during construction or as a final inspection of the construction.

B. Reimbursement for Inspections

The Applicant shall reimburse the Township for the reasonable and necessary expense incurred for the inspection or improvements according to a schedule of fees adopted by resolution of the Board of Commissioners and as amended from time to time.

1. In the event the Applicant disputes the amount of any such expense in connection with the inspection of improvements, the Applicant shall, within ten (10) working days of the date of billing, notify the Township that such expenses are disputed as unreasonable or unnecessary, in which case the Township shall not delay or disapprove a land development application or any approval or permit related to development due to the applicant's request over disputed engineer expenses.
2. If, within twenty (20) days from the date of billing, the Township and the Applicant cannot agree on the amount of expenses which are reasonable and necessary, then the Applicant and the Township shall jointly, by mutual agreement, appoint another professional engineer licensed as such in the Commonwealth of Pennsylvania to review the said expenses and make a determination as to the amount thereof which is reasonable and necessary.
3. The professional engineer so appointed shall hear such evidence and review such documentation as the professional engineer in his sole opinion deems necessary and render a decision within fifty (50) days of the billing date. The Applicant shall be required to pay the entire amount determined in the decision immediately.
4. In the event that the Township and Applicant cannot agree upon the professional engineer to be appointed within twenty (20) days of the billing date, then, upon application of either party, the President Judge of the Court of Common Pleas of the judicial district in which the Township is located (or if at the time there be no President Judge, then the senior active judge then sitting) shall appoint such engineer, who, in that case, shall be neither the Township Engineer nor any professional Engineer who has been retained by, or performed services for, the Township or the applicant within the preceding five (5) years.
5. The fee of the appointed professional engineer for determining the reasonable and necessary expenses shall be paid by the Applicant if the amount of payment required in the decision is equal to or greater than the original bill. If the amount of payment required in the decision is less than the original bill by one-thousand (\$1,000) dollars or more, the Township shall pay the fee of the professional engineer, but otherwise the Township and the Applicant shall each pay one-half (1/2) of the fee of the appointed professional engineer.

Section 404. DEDICATION OF IMPROVEMENTS

All improvements shall be deemed to be private improvements and only for the specific project until such time as the same have been offered for dedication and formally accepted by the Board of Commissioners. No responsibility of any kind with respect to improvements of the Final Plan shall be transferred until the improvements have been formally accepted. No improvements shall be accepted for dedication except upon submission of as-built drawings by the developer and inspection of the

final construction by the Township in accordance with the provisions of this Ordinance.

Section 405. MAINTENANCE GUARANTEE

- A. Where the Board of Commissioners accepts dedication of all or some of the required improvements following completion, the Board of Commissioners may require the posting of financial security to secure the structural integrity of said improvements as well as the functioning of said improvements in accordance with the design and specifications as depicted on the final plan for a term not to exceed eighteen (18) months from the date of acceptance of dedication. Said financial security shall be of the same type as otherwise required in this Section with regard to installation of such improvements, and the amount of the financial security shall not exceed fifteen (15%) percent of the actual cost of installation of said improvements.
- B. If water mains or sanitary sewer lines, or both, along with appurtenances or facilities related thereto, are to be installed under the jurisdiction and pursuant to the rules and regulations of a public utility or municipal authority separate and distinct from the Township, financial security to assure proper completion and maintenance thereof shall be posted in accordance with the regulations of the controlling public utility or municipal authority and shall not be included within the financial security as otherwise required by this Article.

Section 406. AS BUILT PLANS

Upon completion of all required improvements and prior to final inspection by the Township of all improvements and site grading for which an improvement guarantee has been posted, the developer shall submit a plan labeled "As Built Plan," which shall depict the location, dimensions and elevations of all improvements and site grading. In addition, the plan shall indicate that the improvements are in substantial conformance with the previously approved drawings and required specifications. The plan shall note all deviations from the previously approved drawings. Four copies of the As Built Plan (two paper, one electronic version, and one transparency) shall be submitted to the Township for future reference.

EXHIBIT 4-1

AGREEMENT

MADE this _____ day of _____, 20__ by and between
_____ (hereinafter "Developer")

A
N
D

East Pennsboro Township, Cumberland County, Pennsylvania (hereinafter "East Pennsboro" or "Township").

WHEREAS, Developer is the owner of a certain parcel of land situate within East Pennsboro Township, said parcel of land being more particularly described in Exhibit "A" attached hereto; and

WHEREAS, Developer is desirous of developing said lands under a Land Development Plan captioned _____ and dated _____, 20__, (hereafter "Plan"), as the same was approved by the Board of Commissioners of East Pennsboro on _____, copies of which plan are marked Exhibit "B" and attached hereto; and

WHEREAS, in the application to East Pennsboro for approval of the Plan the Developer indicated his intention to construct at his sole cost and expense (including but not limited to engineering, inspection and legal expenses incurred by East Pennsboro in connection with the Plan) all those improvements required by the Plan or by any conditions attached thereto, more particularly described in Exhibit "C" attached hereto; and

WHEREAS, Developer has agreed to deliver to East Pennsboro a renewable Irrevocable Letter of Credit (in form and substance to be approved by the Township) from an institution licensed to do business in Pennsylvania in the amount of \$_____ to guarantee the installation of the improvements and reimbursement of East Pennsboro for expenditures directly incurred in connection with the improvements.

NOW, THEREFORE, IT IS AGREED:

1. Developer covenants, promises and agrees to build, construct and install all improvements in accordance with the specifications of East Pennsboro Township and in the manner provided and approved by the Township, on or before the _____ day of _____, 20__, time being of the essence of this agreement.
2. Developer shall enter into contract(s) with such person or persons necessary to construct the improvements. Developer shall notify East Pennsboro promptly thereafter (1) that it has contracted for the construction of improvements, (2) specify an improvement construction schedule, (3) provide a schedule of job site meetings (no less than monthly), and (4) the name and address of the contractor and the Supervisor of the work for the contractor. The contract between Developer and his contractor shall contain a provision that the construction or installation is subject to the inspection and approval of East Pennsboro.
3. Developer concurrently delivers to East Pennsboro its Irrevocable Letter of Credit, in the amount of \$_____. The amount of financial security required shall be based upon an estimate of the cost of completion of the required improvements, submitted by the Developer and prepared by a Professional Engineer licensed as such in this Commonwealth and certified by such Engineer

to be a fair and reasonable estimate of such cost. The Township, upon the recommendation of the Township Engineer, may refuse to accept such estimate for good cause shown.

The Letter of Credit shall be posted as security for performance of this agreement, including the construction of the improvements in a manner approved by East Pennsboro. The term of such Letter of Credit shall be for the period agreed upon for the completion of construction of the improvements and, if required by the Township, will include an "evergreen" clause which will allow for an automatic extension of term to cover any extended period of construction.

In the event Developer shall fail to construct the improvements in a manner acceptable to East Pennsboro, East Pennsboro may, at its option, construct said improvements at the Developer's expense, in which event the funds represented by and posted through said Letter of Credit shall be used to reimburse East Pennsboro for the costs of such construction and its reasonable necessary ancillary expenses. In the event the funds secured by said Letter of Credit shall not be sufficient to satisfactorily construct the improvements or reimburse East Pennsboro for its cost and expense to construct the same, East Pennsboro may file an appropriate legal action against Developer based upon this agreement for the balance of the funds required to so construct the improvements or reimburse East Pennsboro for the same.

4. As the work of installing the required improvements proceeds, the party posting the financial security may request that the Township release or authorize the release, from time to time, such portions of the financial security necessary for the payment to the contractor or contractors performing the work. Any such request shall be in writing addressed to the Township Engineer, and the Township Engineer shall have 45 days from receipt of such request within which to allow the Township Engineer to certify in writing to the Board of Commissioners that such portion of the work upon the improvements has been completed in accordance with the approved plat. Upon such certification the Township Engineer shall authorize a reduction in the Letter of Credit by the lending institution by an amount as estimated by the Township Engineer fairly representing the value of the improvements completed or, if the Board of Commissioners fails to act within said 45 day period, the governing body shall be deemed to have approved the release of funds as requested. The Board of Commissioners may, prior to final release at the time of completion and certification by its Engineer, require retention of 10% of the estimated cost of the aforesaid improvements.
5. Developer will cause electric, telephone and cable utilities to be installed as underground facilities and not aerial.
6. East Pennsboro shall designate an Engineer to review development plans and specifications for the improvements. If necessary, an escrow account shall be established by the Developer as provided for in the Land Development Ordinance, and as adopted by the Board of Commissioners from time to time.
7. During construction, East Pennsboro shall designate an inspector to determine whether the improvements are being made in accordance with the plans and capital improvement specifications. It shall be the duty of the Developer to request scheduling 2 working days prior to the desired inspection. Lack of inspection does not constitute approval. East Pennsboro shall do all things necessary to assure the timely arrival of its inspector at the site of the improvements following notice by the Developer. Inspections required shall

include, as a minimum, the following:

- A. Erosion and sedimentation control, prior to any other earth moving activity occurring.
 - B. Inlet boxes must be inspected for full concrete connections with piping and inlet tops. (Both outside and inside the box prior to C. below). Flushing of all storm sewers may be required by the Township Engineer should, in his/her sole judgment, the necessity exists.
 - C. Road inspections (for roads to be dedicated to Township):
 - (1) Road sub-base shall be inspected prior to the base (stone) being installed. Contractor shall provide a loaded tri-axle for proof roll.
 - (2) Road base shall be inspected prior to the surface coat being installed.
 - (3) Road binder shall be inspected prior to the wearing surface being installed.
 - D. Sidewalks and curbs must be inspected prior to acceptance by the Township
8. All construction shall be in accordance with the construction plans and East Pennsboro Township Ordinances. If a conflict exists between the plans and ordinances, the stricter of the two will be used. The Developer is responsible, at his/her own expense, to correct any unforeseen conditions that are caused by this development.
9. All erosion and sedimentation controls shall be installed in accordance with the approved plan and the Land Development Ordinance prior to any other construction activity occurring at the site. The erosion and sedimentation controls will be properly maintained until all disturbed areas have become stabilized. This shall include all stormwater conveyance controls (such as detention ponds, swales, piping, etc). It is the Developer's responsibility to stabilize the swales and detention facilities.
10. Developer shall convey to East Pennsboro by Deed of Dedication all streets, alleys, roads, courts, avenues, drives, public ways and park areas as these facilities are indicated and described on the Plan.
11. Developer shall grant and convey, to third parties if appropriate, by Deed of Dedication easements for rights-of-way (including maintenance) for all sewer and water lines and telephone and electric facilities, bikeways and drainage ways. In the event easements are required from third parties, it shall be the duty of the Developer to obtain them at his sole cost and expense.
12. Upon completion of the improvements and before acceptance by East Pennsboro Township, owner shall deposit with Township a maintenance escrow, in terms acceptable to East Pennsboro, equal to 15% of the total cost of improvements to ensure repair of defective conditions appearing in said improvements within and for a period of eighteen (18) months from the date of acceptance thereof by the Township, in form and with sufficient surety acceptable to the Township, conditioned that if said improvements are in satisfactory condition by Township standards at the end of said maintenance

period (18 months), then said escrow will be returned to the Developer, otherwise to remain in full force and effect until all defective conditions are remedied to Township's specifications.

13. Upon the satisfactory completion and final inspection of the improvements, delivery of the appropriate Deeds of Dedication, their recording fees and the delivery of Maintenance Escrow, East Pennsboro agrees to accept the improvements and to operate and/or maintain them. A stop work order may be issued by the Township whenever any provision of this agreement is broken.
14. The Developer shall cause its contractors or subcontractors to obtain and maintain liability ,workers' compensation and other insurance coverage, as may be required by law, and furnish certificates of such insurance as required by the Township.
15. In addition to the aforesaid requirements, the Developer agrees that it will at his/her own expense:
 - A. Pay to the Township any fees required by outside/third party agencies for entering into the development plan and for fees and other expenses such as, but not limited to, the payment for Engineers, applications and approvals, as may be required by the ordinances and regulations of the Township or other government entities.
 - B. Connect any underground springs or other waters encountered during construction to the proposed storm sewers or to a proper outlet as designated by the Township Engineer.
 - C. During construction, the Developer shall police the construction area daily, keeping it free and clear of all rubbish, refuse, brush and debris; the Developer will accumulate said material and deposit the same in an area specified by the Township representative until such time as the accumulated matter is removed from the site by the Developer; he shall contain such matter so that it will not become wind-blown spread, or otherwise become a nuisance. All soil washed or carried onto public streets during construction shall be cleaned up each day. Upon completion of the construction, the Developer shall remove from the site and dispose of all brush, rubbish, refuse and debris, leaving the area free and clear of same.
 - D. Remove all temporary buildings or structures within one month after completion of the Improvements.

THIS AGREEMENT shall be binding upon the heirs, executors, administrators, successors and assigns of Developer and East Pennsboro.

ATTEST

DEVELOPER

EAST PENNSBORO TOWNSHIP

Secretary

Chairman (or Designee)

EXHIBIT C

IMPROVEMENTS:

1. Storm sewers
2. Detention ponds
3. Swales
4. Sanitary Sewers
5. Water supply
6. Fire hydrants
7. Streets
8. Curbs
9. Sidewalks
10. Survey monuments and iron pins