

**SUBDIVISION/LAND DEVELOPMENT
LETTER OF CREDIT
AGREEMENT**

THIS AGREEMENT, made this _____ day of _____, _____, (year), by and among the TOWNSHIP OF FERGUSON, A Home Rule Municipality, of Centre County, Pennsylvania, hereinafter referred to as "Township"

A
N
D

_____, Centre County, Pennsylvania, hereinafter referred to as "Developer"

RECITALS

A. Developer desires final plan approval for Phase _____ of _____ Subdivision/Land Development Plan, pursuant to a plan dated _____, _____ (year).

B. Developer is desirous of installing the improvements pursuant to the Final Plan, being water lines, sanitary sewer lines, storm sewers, curbs, street lights, traffic signals, gutters, fire hydrants, shade trees, signage, recreational facilities, open space improvements, buffer or screen plantings, storm water detention basins, bikeways, walkways and sidewalks, curbing and paving for the street(s) known as _____, and administration, inspection and engineering fees, and for that purpose, has obtained an estimate prepared by a professional engineer, which estimate is in the amount of \$_____ (and which estimate is equal to the cost of completion, under prevailing wage laws, estimated as of ninety (90) days following the date scheduled for completion by the Developer, which date is one (1) year from the date of this agreement); and developer will provide to Township an Irrevocable Letter of Credit from Bank in the amount of

_____ (\$_____)

dollars, which amount is one hundred ten (110%) percent of the above described estimate amount as required by The Pennsylvania Municipalities Planning Code and the Township Subdivision and Land Development Ordinance.

C. Developer must complete the improvements for Phase _____ within fifty (50) weeks from the date hereof. The subdivision regulations of the Township require that financial security be posted for public improvements prior to final plan approval.

D. It is the purpose of this Agreement to provide the financial security needed by the Developer to guarantee the installation of the aforementioned public improvements.

NOW, THEREFORE, for and in exchange of mutual considerations and intending to be legally bound by the provisions hereof, the parties agree as follows:

1. Developer agrees to provide an Irrevocable Letter of Credit for the benefit of and made payable to Township for the purpose of guaranteeing payment for completion of public improvements by Developer, consisting of water lines, sanitary sewer lines, storm sewers, curbs, street lights, traffic signals, gutters, fire hydrants, shade trees, signage, recreational facilities, open space improvements, buffer or screen plantings, storm water detention basins, bikeways, walkways and sidewalks, and other improvements required by the Township Subdivision and Land Development Ordinance as set forth on specifications and plans submitted by Developer to Township, and for inspection and engineering fees.

2. The Irrevocable Letter of Credit shall be in the amount of \$_____, and shall initially be in force and issued for a period of one (1) year (52 weeks) from date hereof. Developer agrees that all improvements shall be completed within fifty (50) weeks from the date hereof.

3. (A) Township and Developer agree that Developer may draw upon his loan funds with Bank periodically on presentation to Bank of certification prepared by the Township Engineer and approved by the Township Board of Supervisors to the effect that said draw represents payment for work actually performed or materials actually installed toward completion of the improvements which are the subject of the Agreement.

(B) Township and Developer agree that the amount available for Township to draw upon pursuant to Bank's Letter of Credit shall be \$_____ (as stated in Paragraph 2, above) less the actual amount paid by Bank to Developer pursuant to Paragraph 3 (A), above, which amount shall be the cost of construction only. The ten (10%) percent required by the Municipalities Planning Code and the Township Subdivision and Land Development Ordinance of the original contract amount shall at all times be retained.

4. Developer will complete the improvements to _____ Subdivision/Land Development Plan in accordance with plans and specifications filed with the Township.

5. If all of the improvements referred to in Paragraph 1 of this Agreement are not completed within fifty (50) weeks from the date hereof, the Developer may seek extension of that period upon the concurrence of Township; provided, however, that as a condition to the grant of such extension, developer must provide an Irrevocable Letter of Credit for the benefit of and made to Township, in a form acceptable to Township, and in an amount and for a time to be determined by the Township. In the event of such extension, Developer agrees to complete all improvements prior to the expiration of the newly revised Irrevocable Letter of Credit.

6. Upon notification from Township to Bank of Developer's default in construction of the improvements pursuant to specifications and plans within fifty (50) weeks, Bank's responsibility under its Irrevocable Letter of Credit Agreement with Developer shall be triggered. The Bank shall pay the Township the original amount of the Irrevocable Letter of Credit less amounts paid pursuant to Paragraph 3 (B) above, as determined by and approved by Township; said amount to be used by Township toward the completion of said improvements. The required improvements are to be completed by Township at Township's option, with payment by Bank to Township upon Township's filing with Bank an affidavit stating Developer's default.

7. Upon default by Developer in construction of the improvements pursuant to specifications and plans, Township shall be authorized to withhold (a) permits for the further construction of improvements and (b) zoning permits.

8. Developer shall commence construction of sewage improvements only upon written authorization of the University Area Joint Authority and shall backfill and fill trenches only after inspection and approval of said Authority and Township; construction of water improvements shall be commenced only upon written authorization of the State College Borough Water Authority, Ferguson Township Authority or Rock Springs Water Company, and backfilling and filling trenches shall commence only after inspection and approval by said Authority and Township and with respect to all other improvements, notice in writing shall be given to Township of date of commencement of construction.

9. Township agrees that this Agreement and the Irrevocable Letter of Credit are the financial security required for the improvements for the improvements for the Final Plan of Phase _____ of _____ Subdivision/Land Development Plan.

10. Prior to acceptance and public use of any portion of the improvements, Developer shall deposit a maintenance bond to secure structural integrity of said improvements as well as the function of said improvements as required by the Municipalities Planning Code, Section 509 (k), as amended, {except water and sewer facilities for which financial security is posted in accordance with Municipalities Planning Code, Section 509 (1), as amended}, in accordance

with the design and specifications as required by Township and as depicted on the final plan of Phase _____, in form acceptable to Township and in an amount of not less than fifteen (15%) percent of the actual cost of installation of said improvements, conditioned that if the improvements are in satisfactory condition at the end of eighteen (18) months after completion and acceptance of dedication, the bond shall be void.

IN WITNESS WHEREOF, the parties set their hands and seals the day and year first above written.

ATTEST:

TOWNSHIP OF FERGUSON

(Secretary)

(Chairman)

WITNESS:

DEVELOPER

Revised 8/99