

**SOUTHAMPTON TOWNSHIP, FRANKLIN COUNTY**  
**BOARD OF SUPERVISORS**  
705 Municipal Drive  
Shippensburg, PA 17257

TELEPHONE: (717) 532-9041  
FAX: (717) 532-7234

**FINANCIAL SECURITY INSTRUMENT/BONDING AGREEMENT**

THIS AGREEMENT, dated this day of \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_ and between THE TOWNSHIP OF SOUTHAMPTON, with its principal place of business being located at 705 Municipal Drive, Shippensburg, PA 17257 (hereinafter referred to as "TOWNSHIP")

AND

\_\_\_\_\_, business or individual operating in the State of Pennsylvania, with its principal place of business or residence being located at:

\_\_\_\_\_  
(hereinafter referred to as "**DEVELOPER/OWNER**").

WITNESSETH:

WHEREAS, **DEVELOPER/OWNER**, is the equitable/record owner of the subject property(s), located in Southampton Township, Franklin County, Pennsylvania, being Franklin County Tax Parcel No.(s) \_\_\_\_\_, and made application for the following named subdivision/land development plan, project and or improvements also known as:

\_\_\_\_\_  
NAME OF SUBDIVISION/LAND DEVELOPMENT PLAN OR TYPE OF PROJECT OR  
IMPROVEMENT

and is relative to above said tax parcel(s) property(s); and which plan was prepared by \_\_\_\_\_, is dated \_\_\_\_\_, 20\_\_\_\_ and which plan is incorporated hereby by reference; and

WHEREAS, **DEVELOPER/OWNER** is desirous of receiving final subdivision plan approval prior to the actual construction of the Public Works improvements for the subdivision

as is allowed by the Pennsylvania improvements for the subdivision as is allowed by the Pennsylvania Municipalities Code (Act 247 of 1968, as amended by Act 170 of 1988) (MPC) and the Southampton Township, Franklin County Subdivision and Land Development Ordinance, as amended (TOWNSHIP SLD ORDINANCE); and

WHEREAS, **DEVELOPER/OWNER** shall be obligated to construct public improvements which may include, but not be limited to: streets, stormwater facilities, water and sanitary sewer line work, as shown on the subdivision plan and to dedicate the streets to **TOWNSHIP** or any other improvements necessary for the project as provided for in the MPC; and

WHEREAS, the parties hereto are desirous of specifically delineating their respective rights and obligations for the design, construction, maintenance, dedication and financial security for the aforementioned public works, all in accordance with the applicable provisions of the MPC and the TOWNSHIP SLD ORDINANCE.

WITNESSETH:

NOW, THEREFORE, for and in consideration of the above recitals and of the mutual covenants, obligations, undertakings and agreements as hereinafter set forth and provided for, it is hereby agreed by and among the parties hereto as follows:

1. The "Whereas" clauses above mentioned are incorporated herein by reference as if fully set out and, further, form part of the parties' agreement. **DEVELOPER/OWNER** hereby warrants and represents that it is the record/equitable owner of the subject Property(s) and further, that they agree to be bound by the terms and conditions contained within this Agreement.
2. This agreement shall be binding upon the parties hereto, their successors and assigns, and shall not be altered, amended or vacated except by the express written consent of all parties.
3. This agreement shall be governed and shall be construed and interpreted in Pennsylvania in accordance with the laws of the Commonwealth of Pennsylvania.
4. This agreement may be signed in multiple counterparts and all such counterparts shall be deemed to be one and the same Agreement.
5. **DEVELOPER/OWNER** agrees to construct and install such streets, stormwater facilities, water and sanitary sewer line work as are shown on the subdivision plan referred to above and are more fully enumerated in **Exhibit "A"** attached hereto and made a part thereof or any other improvements necessary for the project as provided for in the MPC. (**Exhibit A** is copy of the approved plan).
6. Such installation shall be undertaken and completed in a good and workmanlike fashion and in accordance with all applicable rules, regulations and specifications of the approved plan and the **TOWNSHIP'S** standards.

7. Streets to be constructed shall be subject to the grants of easement for sewer, water and stormwater facilities.

8. All costs for the construction and installation of such facilities shall be paid by **DEVELOPER/OWNER**. In addition, **DEVELOPER/OWNER** shall be responsible for reasonable and necessary costs of inspection, engineering review, legal review and other expenses resulting to **TOWNSHIP** from this agreement or the work done pursuant hereto. **DEVELOPER/OWNER** further agrees to indemnify **TOWNSHIP** and save it harmless from and against, and to reimburse **TOWNSHIP** with respect to any and all claims, demands, costs, and expenses (including reasonable attorney fees and court costs and costs of defense) asserted against or incurred by **TOWNSHIP** by reason of or arising out of **DEVELOPER/OWNERS** construction or installation of such facilities. This obligation of indemnity shall cease and terminate at the end of the **DEVELOPER/OWNERS** maintenance obligation period provided for below.

9. Notices, inspection of work completed and other like matters shall be in accordance with the procedures specified in the MPC, 53 Pg. 10509-11, the appropriate portions of which are hereby incorporated by reference.

10. Concurrently with the execution of this Agreement, the **DEVELOPER/OWNER** shall provide the **TOWNSHIP** with financial security, as defined in Section 509 of the MPC (the "Financial Security"), for the Project Improvements in accordance with the requirements of Section 509 of the MPC through a Bond issued by an approved and acceptable bonding or insurance company in an amount equal to or greater than the completion amount as set forth in more fully enumerated in Exhibit "B" attached hereto and made a part hereof. **DEVELOPER/OWNER** and **TOWNSHIP** agree that said financial security/bond equals one hundred ten percent (110%) of the estimated cost of completing the Project Improvements (as of the date of this Agreement) and is allocable to the estimated cost to complete the Project, all as set forth on **Exhibit "B"** attached hereto. (**Exhibit B** is the amount of financial security required based upon an estimate of the cost of completion of the required improvements, submitted by an applicant or **DEVELOPER** and prepared by a professional engineer licensed by the Commonwealth.)

11. Contemporaneous with the execution of this Agreement, **DEVELOPER/OWNER** shall provide to the **TOWNSHIP** the Financial Security Instrument/Bond in accordance with this Agreement. *The Financial Security Instrument/Bond shall have an Expiration Date (the "Expiration Date") of one year from the Issue Date, which Expiration Date shall automatically renew for successive one-year periods unless the Bonding or Insurance Company sends written notice ("Non-Renewal Notice") to the TOWNSHIP and to the DEVELOPER/OWNER at least sixty days prior to the then applicable Expiration Date of its intent not to renew.*

12. As the **DEVELOPER** completes the various portions of the Project Improvements, it may certify to **Martin & Martin, Inc.** as the representative of the **TOWNSHIP** (the "Engineer"), that such portion of the Project Improvements have been completed in accordance with the terms of this Agreement and the Plans, and request, pursuant to Section 509(G) of the MPC, release of portions of the Financial Security Amount. The Engineer (and/or such independent consulting engineer or engineers as the Engineer shall designate) shall inspect when requested to do so and not less frequently than on a monthly basis, the portions of Project Improvements which the

**DEVELOPER** certifies have been completed. If the Engineer shall determine that the said Project Improvements have been completed in accordance with this Agreement and the Plans, the Engineer shall, within the time limits prescribed by Section 509(G) of the MPC, certify to the **TOWNSHIP** and provide to the **DEVELOPER** and the Bonding or Insurance Company written notice (the "Approval Notice") describing (i) the portion of the Financial Security which is appropriate for release and the minimum amount of the Financial Security which must remain ("Reduced Financial Security Amount") and (ii) the portion of the Project Improvements that have been completed in accordance with the Plans and the dollar value attributable thereto in accordance with the applicable line item(s) in **Exhibit "B"** (the "Release Amount"), provided, however, that in no event prior to completion of the Project Improvements shall the Financial Security Amount be reduced so that the Reduced Financial Security Amount is less than one hundred ten percent (110%) of the work with respect to the Project Improvements that remains to be completed. The **TOWNSHIP** acknowledges and agree that within five (5) business days following receipt of each Approval Notice, the Bonding or Insurance Company shall reduce the face amount of the Financial Security Instrument by the Release Amount and send notice to the **TOWNSHIP** and **DEVELOPER/OWNER** of such reduction. If at any time during the work, the Engineer believes that the cost necessary to complete the Project Improvements are in excess of the Reduced Financial Security amount, the Engineer shall so notify the **TOWNSHIP** and **DEVELOPER/OWNER** and **DEVELOPER/OWNER** shall provide the **TOWNSHIP** with such additional Financial Security as is determined by the Engineer to be needed to complete the Project Improvements.

13. When the **DEVELOPER** believes the Project Improvements to be complete and installed in accordance with the Plans and terms and conditions of this Agreement, the **DEVELOPER** shall provide a notice of completion to the **TOWNSHIP** which shall include an "as built" drawing prepared by a person licensed by the Pennsylvania Department of State, or otherwise qualified by law to prepare such plans. Within forty-five (45) days after the date of such notice, the **TOWNSHIP** and the Engineer shall (i) confirm to the **DEVELOPER** in writing that the Project Improvements have been, or have not been completed in accordance with the Plans. If the Project Improvements have been completed in accordance with the plans, then the **TOWNSHIP** shall (ii) authorize full release to the **DEVELOPER** of the Financial Security Instrument and any unused portion of the Inspection Escrow (as hereinafter defined) to the **DEVELOPER**. If the Project Improvements have not been completed in accordance with the plans, then the **TOWNSHIP** shall (iii) notify the **DEVELOPER** of the deficiencies, which the **DEVELOPER** shall correct prior to the **TOWNSHIP** authorizing a full release of the Financial Security Instrument and any unused portion of the Inspection Escrow. When the **TOWNSHIP** accepts dedication of roads, a **Maintenance Security** will be required in the amount of 15% of the cost of all public improvements within the dedicated right-of-way for a term not to exceed 18 months.

14. Subject to Section 15 below If the **DEVELOPER/OWNER** fails to perform the Project Improvements in accordance with this Agreement, after notice and an opportunity to cure, **TOWNSHIP** shall have the right to complete the construction of the Project Improvements located in the **TOWNSHIP** in accordance with the Plans and the terms and conditions of this Agreement. Said Bond shall authorize **TOWNSHIP** to draw up to the full amount of the Financial Security Instrument/Bond for completing the construction and inspection should

**DEVELOPER/OWNER** fail to complete the improvements and have same inspected by \_\_\_\_\_, 20\_\_\_. (Five years from plan approval date.)

15. Subject to Paragraph 16 below, if **DEVELOPER/OWNER** fails to construct or install the Project Improvements in accordance with the Plans and its obligations under this Agreement and **TOWNSHIP** shall desire to undertake the completion of the Project Improvements located within its jurisdiction, **TOWNSHIP** shall notify **DEVELOPER/OWNER** of its intention to undertake the completion of those Project Improvements in accordance with the Plans. The written notice shall provide reasonable details to the reasons for **TOWNSHIP'S** actions in order to permit **DEVELOPER/OWNER** to address those concerns. **DEVELOPER/OWNER** shall have sixty (60) days from the date of receipt of said notice in which to notify **TOWNSHIP** in writing whether it will undertake the completion of the Project Improvements in accordance with the Plans or will make the Financial Security available to the **TOWNSHIP** to pay for the costs of the completion of the Project Improvements in accordance with the Plans. If **DEVELOPER/OWNER** does not timely elect to provide notice that it will undertake the completion of the Project Improvements and otherwise remedy such failure, then **TOWNSHIP** may determine to draw upon the Financial Security Instrument/Bond. In addition, if **TOWNSHIP** receives a Non-Renewal Notice, **TOWNSHIP** may determine to draw on the Financial Security Instrument/Bond unless **DEVELOPER/OWNER** provides **TOWNSHIP** satisfactory replacement Financial Security/Bonding at least thirty (30) days prior to the Expiration Date. The party that has determined to make a draw on the Financial Security Instrument/Bond ("Determining Party") shall send written notice to **DEVELOPER/OWNER** and the Financial Security Institution/Insurance Company of its determination to make a draw on the Financial Security Instrument/Bond. If the proceeds of the Financial Security Instrument/Bond are insufficient to pay the cost of installing or making repairs or corrections to all of the Project Improvements covered by this Agreement, **TOWNSHIP** may, at its option, install part of such Project Improvements and may institute appropriate legal or equitable action to recover the monies necessary to complete the remainder of the Project Improvements. In all cases, **DEVELOPER/OWNER** shall be responsible for one hundred percent (100%) of the costs of the installation of the Project Improvements.

16. Notwithstanding Paragraph 15 above, **DEVELOPER/OWNER** understands and agrees that in the event that **TOWNSHIP** determines that exigent or emergency circumstances exist such that immediate intervention and completion of one or any of the project requirements is necessary, **TOWNSHIP** may immediately take any and all necessary actions to insure that such circumstances are addressed. **TOWNSHIP** shall make every effort to notify **DEVELOPER/OWNER** of the circumstances and the **TOWNSHIPS** intention to intervene; however, said notice shall not be required in advance of taking any appropriate and necessary steps to resolve the exigent or emergency circumstances either temporarily or permanently.

17. **DEVELOPER/OWNER** acknowledges that pursuant to Section 509 of the MPC (53 P.S. Section 10509, as amended), **TOWNSHIP** is entitled to require the posting of maintenance financial security to secure the structural integrity and functioning of the Project Improvements. The maintenance financial security shall be in the form authorized by the afore stated statute. The posting of maintenance financial security shall be for a period of eighteen (18) months from the date of issuance of the final Certificate of Final Completion by the Engineer indicating that

the Project Improvements have been satisfactorily completed in accordance with the terms of this Agreement. A condition to the maintenance financial security to be posted herein shall be that the **DEVELOPER/OWNER** shall, for the period of eighteen (18) months as aforesaid, repair and maintain such Project Improvements and construct and make good and replace all materials, equipment and work, and remedy all defects in materials, equipment and workmanship, all shrinkage, settlement and other faults of any kind whatsoever arising therefrom at its own expense, and to the satisfaction of the Engineer, when notified in writing to do so. **DEVELOPER/OWNER** agrees that **TOWNSHIP** shall have the right to make or cause to be made good or replace all inferior materials, equipment and workmanship, and remedy all defects in materials, equipment and workmanship, all shrinkage, settlement or other faults of any kind whatsoever arising therefrom in case **DEVELOPER/OWNER** shall fail or refuse to do so in accordance with the terms of this Agreement. In the event that **TOWNSHIP** should exercise and give effect to such rights, **DEVELOPER/OWNER** shall be liable hereunder to pay and indemnify **TOWNSHIP**, as applicable, upon completion, the final cost thereof to **TOWNSHIP**, including but not limited to engineering, legal and any associated costs, together with any damages, either direct or consequential which **TOWNSHIP** may sustain as a result of the failure of **DEVELOPER/OWNER** to carry out and execute all the provisions of this Agreement. Upon start of the maintenance period, **DEVELOPER/OWNER** shall provide **TOWNSHIP** with security for same through an irrevocable letter of credit in an amount equal to 15% of actual cost of construction of the streets and stormwater facilities and sanitary sewer line work.

18. The invalidity or unenforceability of any particular provision of this Agreement shall not affect any other provision hereof, and the Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

19. No failure to act upon any default or to exercise any right or remedy hereunder shall constitute a waiver of such default or a waiver of any other terms of the within Agreement.

20. The **DEVELOPER/OWNER** has fully read, completely understands and agrees to the **TOWNSHIP** Escrow Policies & Procedures as attached herein and signed accordingly.

21. All notices or other communications required to be given under the terms of this Agreement shall be in writing and shall be sent certified mail, postage prepaid, addressed as follows:

If to **DEVELOPER/OWNER**: \_\_\_\_\_  
\_\_\_\_\_

With copy to: \_\_\_\_\_  
\_\_\_\_\_

If to **TOWNSHIP**: Southampton Township, Franklin County  
705 Municipal Drive  
Shippensburg, PA 17257

*With copy to:*

Sean Shultz | Attorney  
100 Sterling Parkway, Suite 305  
Mechanicsburg, PA 17050  
Phone (717) 590-8529 | Fax (717) 960-1123  
Email sshultz@ssfadvocates.com

22. This Agreement shall be recorded with the Recorder of Deeds of Franklin County, Pennsylvania, at the expense of the **DEVELOPER**. The provisions of this Agreement shall be binding on the heirs, assigns, grantees and successors of the parties hereto and shall constitute covenants running with the land.

23. This Agreement shall be construed according to the laws of the Commonwealth of Pennsylvania.

24. This document contains the entire agreement made between the parties on the matters covered by this Agreement. This Agreement may not be amended, altered, revoked, waived or clarified orally or by any action other than by a signed writing.

25. In consideration of the **TOWNSHIP'S** acceptance of this agreement and with the intent to be legally bound, the undersigned have executed this agreement on the date beside his/her/it's name.

\_\_\_\_\_  
Authorized Township Representative & Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
(PRINT NAME) **DEVELOPER/OWNER**

\_\_\_\_\_  
**DEVELOPER/OWNER** Signature

\_\_\_\_\_  
Date

ACKNOWLEDGEMENT

COMMONWEALTH OF PENNSYLVANIA :  
: SS  
COUNTY OF FRANKLIN :

On this, the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before the undersigned officer, personally appeared \_\_\_\_\_ known to me or satisfactorily proven to be the Chairman of the Board of Supervisors of the **Township of Southampton**, whose name is subscribed to the within instrument and acknowledge that he executed the same on behalf of the Township of Southampton for the purposes therein contained.

**IN WITNESS WHEREOF**, I have hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

ACKNOWLEDGEMENT

COMMONWEALTH OF PENNSYLVANIA :  
: SS  
COUNTY OF FRANKLIN :

On this, the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before the undersigned officer, personally appeared \_\_\_\_\_, who acknowledged himself to be the \_\_\_\_\_ of \_\_\_\_\_, a corporation, and that he as such officer, being authorized to do so, executed the foregoing instrument for the purpose therein contained by signing the name of the corporation by himself as \_\_\_\_\_.

**IN WITNESS WHEREOF**, I have hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public