

DEVELOPMENT REGULATIONS

150 Attachment 4

Borough of Atlantic Highlands

**Irrevocable Standby Letter of Credit
[Adopted 4-12-1995 by Ord. No. 5-95]**

LETTER OF CREDIT NUMBER:

DATE:

BENEFICIARY: Borough of Atlantic Highlands (from now on referred to as "Borough")

AMOUNT: \$

INITIAL EXPIRATION DATE:

DEVELOPER:

(from now on referred to as "Developer")

ISSUING FINANCIAL INSTITUTION AND ADDRESS:

(from now on referred to as "Bank")

The Bank submits to the Borough this Irrevocable Standby Letter of Credit (from now on referred to as "Letter of Credit") in the amount of \$, representing the cash performance guarantee required under the provisions of the Land Use Chapters of the Borough of Atlantic Highlands, to guarantee installation and completion of the improvements required by the Borough Planning Board (from now on referred to as the "Board") in connection with the following development:

The improvements required to be completed are set forth in the Borough Engineer's estimates dated _____, 20 ____ attached to this Letter of Credit and incorporated herein. The Bank hereby agrees with respect to this Letter of Credit as follows:

1. If:

- a) The improvements required by the Board have not been installed in accordance with the development approval and the attached Engineer's estimates, and
- b) The improvements have not been accepted by the Borough by a duly adopted Resolution releasing this Letter of Credit, or
- c) The Developer has failed to perform as required by the Developer's Agreement entered into between the Developer and the Borough, which Agreement shall be deemed incorporated herein and a part of this Letter of Credit;

Then, the Bank shall release funds under this Letter of Credit to the Borough, pursuant to Paragraph 3 hereafter, for:

- a) All costs of having the improvements installed, and upon receipt of the proceeds under this Letter of Credit, the Borough shall install or have such improvements installed as may be required, and/or

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- b) All costs and/or damages resulting from the Developer not having complied with the Developer's Agreement, and/or

All Borough costs (including reasonable attorney's fees and expert witness' fees) of any litigation brought as a result of the Developer's failure to have the improvements installed and approved or as a result of Developer having failed to perform pursuant to the Developer's Agreement.

It is expressly understood that the liability of the Bank is limited to the draw down requirements as explained in this Letter of Credit hereafter.

- 2. This Letter of Credit shall be valid for a period commencing on the date set forth above and expiring on the initial expiration date set forth above, except as that initial expiration date may be extended as explained hereafter. If the required improvements have not been completed, approved and accepted at least 60 days before the initial expiration date set forth above, then the Borough shall have the right to draw any amount which is then due up to the full amount of this Letter of Credit. This Letter of Credit shall be automatically extended, without amendment, for periods of one year each from the initial, or any future expiration date, unless 60 days prior to the expiration date, the Bank notifies the Borough Clerk and the Borough Attorney by certified mail, return receipt requested, that the Bank elects not to extend. Upon receipt of such notice, the Borough may draw under this Letter of Credit by stating in writing that the Letter has not been renewed or extended and by the Borough complying with the provisions of Paragraph 3 hereafter. The Developer, until a replacement Irrevocable Standby Letter of Credit in this form has been deposited with the Borough, will cease and desist any and all work on the development, unless the required improvements under the approval, this Letter of Credit and the Developer's Agreement have been completed and approved by the Borough Engineer and Borough Council. In the event any occupancy is taking place in any improvements in the development, such occupancy shall then be deemed illegal, shall cease and desist. The provisions of this paragraph apply only to the Developer.
- 3. In all circumstances, the release of money to the Borough under this Letter of Credit (sometimes referred to as a "draw" or "draw down") shall be accomplished by a written demand setting forth the Developer's failure to perform and signed by one of the following:
 - a) Borough Engineer
 - b) Borough Clerk
 - c) Mayor
 - d) Official authorized by written Resolution, duly adopted by the Borough Council, to act in the place of the Borough Engineer, Borough Clerk or Mayor

In addition to the written demand, the Borough shall present:

- a) This original Letter of Credit if demand is made for the full amount, or a copy of this Letter of Credit if the demand is for less than the full amount, and

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- b) A certified true copy of the appointing Resolution if the demand is executed by a Borough official other than the Borough Engineer, Borough Clerk or Borough Administrator.

The written demand and any required accompanying documents shall be served on the Bank by either of the following two methods:

- a) Certified Mail, Return Receipt Requested, to the Bank at the address indicated on this Letter of Credit by depositing the documents in the United States mail, postage prepaid, no later than three days before the expiration date, either initial or as extended, of this Letter of Credit; or
b) Personal presentation of the documents by any Borough representative at the Bank at the address indicated on this Letter of Credit on or before the expiration date, either initial or as extended.

4. The Bank and Developer hereby irrevocably bind themselves, their heirs, successors, assigns and representatives to the to the full and faithful performance of the obligations contained in this Letter of Credit until all conditions for release as provided in this Letter of Credit are complied with. It is expressly understood that the obligation of the Bank shall terminate upon full release of this Letter of Credit by the Borough.

5. The use, i.e., draw down, of all or part of this Letter of Credit shall in no way be deemed to constitute a waiver of any other right the Borough may have under law or other documents delivered to the Borough by the undersigned Developer. It is expressly understood that the provisions of this paragraph shall not apply to the Bank.

DEVELOPER:

ATTEST: (Affix Seal)

Secretary

President

DATED:

DATED:

FINANCIAL INSTITUTION:

____ BY:
ATTEST: (Affix Seal)

Secretary

President DATED:

____ BY:
DATED:

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IF CORPORATE DEVELOPER

STATE OF NEW JERSEY :
: ss
COUNTY OF :

I certify that on _____, 20____, _____ personally came before me and this person acknowledged under oath, to my satisfaction, that:

- (a) This person is the secretary of the Developer named in the attached document;
- (b) This person is the attesting witness to the signing of this document by the proper corporate officer who is the President of the Developer;
- (c) This document was signed and delivered by the corporation as its voluntary act duly authorized by a proper resolution of its Board of Directors;
- (d) This person knows the proper seal of the corporation which was affixed to this document; and
- (e) This person signed this proof to attest to the truth of these facts.

Secretary

Sworn and Subscribed to before me this _____ day of _____ 20 ____

NOTARY PUBLIC OF NEW JERSEY
My Commission Expires on _____

(Impress Seal)

