

DEVELOPMENT REGULATIONS

95 Attachment 1

**Township of Manalapan**

IRREVOCABLE STANDBY LETTER OF CREDIT

LETTER OF CREDIT NUMBER:

DATE:

BENEFICIARY: Township of Manalapan, N.J. (from now on referred to as "Township")

AMOUNT: \$

INITIAL EXPIRATION DATE:

DEVELOPER AND LEGAL ADDRESS:  
(from now on referred as "Developer")

ISSUING FINANCIAL INSTITUTION AND ADDRESS:  
(from now on referred as "Bank")

The Bank submits to the Township this Irrevocable Standby Letter of Credit (from now on referred to as "Letter of Credit") in the amount of \$ \_\_\_\_\_, representing the performance guarantee required under the provisions of the Land Use Ordinances of the Township of Manalapan, N.J., to guarantee installation and completion of the improvements required by the Township Planning Board or Zoning Board of Adjustment (from now on referred to in either case as the "Board") in connection with the following development:

Block(s) \_\_\_\_\_ Lot(s) \_\_\_\_\_

Application No. \_\_\_\_\_

The improvements required to be completed are set forth in the Township Engineer's estimates dated \_\_\_\_\_, 19\_\_ 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 Township by a duly adopted Resolution releasing this Letter of Credit, or

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- c) The Developer has failed to perform as required by the Developer's Agreement entered into between the Developer and the Township, 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 Township, pursuant to Paragraph 3 hereafter, for:

- 1) All costs of having the improvements installed, and upon receipt of the proceeds under this Letter of Credit, the Township shall install or have such improvements installed as may be required, and/or
- 2) All costs and/or damages resulting from the Developer not having complied with the Developer's Agreement, and/or
- 3) All Township 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 Township 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 Township Clerk and the Township Attorney by certified mail, return receipt requested, that the Bank elects not to extend. Upon receipt of such notice, the Township may draw under this Letter of Credit by stating in writing that the Letter has not been renewed or extended and by the Township 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 Township; 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 Township Engineer and Township Committee. 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 Township under this Letter of Credit (sometimes referred to as a "draw" or "draw down") shall be accomplished by a written demand authorized by written resolution of the Township Committee and setting forth the Developer's failure to perform.

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In addition to the written demand, the Township 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
- b) A certified true copy of the appointing Resolution if the demand is executed by a Township official other than the Township Engineer, Township Clerk or Township 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 mails, 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 Township 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 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 Township.

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 Township may have under law or other documents delivered to the Township 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

BY: ( )  
President

DATED:

DATED:

FINANCIAL INSTITUTION:

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ATTEST: (Affix Seal)

\_\_\_\_\_  
Secretary

BY: ( )  
President

DATED:

DATED:

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 financial institution in the attached documents;
- (b) This person is the attesting witness to the signing of this document by the proper corporate officer who is \_\_\_\_\_, the President of the financial institutions;
- (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 \_\_\_\_\_

\_\_\_\_\_  
(Impress Seal)

DEVELOPMENT REGULATIONS

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)

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IF INDIVIDUAL DEVELOPER

STATE OF NEW JERSEY:

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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 named in and personally signed this document; and
- (b) This person signed, sealed and delivered this document as his act and deed.

Sworn and Subscribed to before me  
this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires on \_\_\_\_\_

\_\_\_\_\_  
(Impress Seal)