

WEST HANOVER TOWNSHIP DAUPHIN COUNTY, PENNSYLVANIA

ORDINANCE NO. 2019-5

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF WEST HANOVER TOWNSHIP, DAUPHIN COUNTY, PENNSYLVANIA, ADDING EXHIBIT XIII OF CHAPTER 173 OF THE CODE OF WEST HANOVER TOWNSHIP. BE IT ENACTED AND ORDAINED BY THE BOARD OF SUPERVISORS OF WEST HANOVER TOWNSHIP, DAUPHIN COUNTY, PENNSYLVANIA, AND IT IS HEREBY ENACTED AND ORDAINED BY THE AUTHORITY OF THE SAME AS FOLLOWS:

Section 1. The following amendments are hereby added to the West Hanover Township Code of Ordinances:

ADD Bold – New Language, deleted text

FINANCIAL SECURITY AGREEMENT

This Financial Security Agreement (hereinafter "Agreement") is entered into this ____ day of _____, 20____, by and between WEST HANOVER TOWNSHIP, acting by and through its governing body (hereinafter called "TOWNSHIP") and _____ (hereinafter called "DEVELOPER").

WHEREAS, DEVELOPER has approved a final land development plan (hereinafter called "Plan") as such term is defined in the Municipalities Planning Code, Act of July 31, 1968, P.L. 805, No. 247, as reenacted and amended, 53 P.S. Section 10101, et. seq. (hereinafter the "MPC"), designated as _____ (hereinafter called the "Plan" or the "Development") ^(name of plan) which was approved by TOWNSHIP on _____, 20____, conditioned on DEVELOPER providing the proper improvement guarantee; and

WHEREAS, the DEVELOPER, in accordance with the approved Plan is required to install or have installed on its behalf certain improvements as more specifically described in Appendix "A" attached hereto (hereinafter called "Improvements"); and

WHEREAS, in accordance with the provisions of the MPC, in order to guarantee that the Improvements will be completed as described above, DEVELOPER has elected to provide financial security sufficient to cover the cost of completing the Improvements, as determined by the submission to TOWNSHIP of a cost estimate prepared and certified by DEVELOPER's professional engineer (licensed in the Commonwealth of Pennsylvania) to be a fair and reasonable estimate of the cost to complete the Improvements.

NOW THEREFORE, in consideration of the approval of the Plan by TOWNSHIP, and the mutual promises contained herein, TOWNSHIP and DEVELOPER agree as follows:

1. The total amount of the financial security required to be provided by DEVELOPER to guarantee the Improvements (hereinafter the "Security Amount"), shall be _____ (\$_____), which amount the parties agree equals one hundred ten percent (110%) of the cost of completing the remaining Improvements.

2. DEVELOPER shall, forthwith upon execution of this Agreement by the DEVELOPER and TOWNSHIP, deposit with TOWNSHIP (check one):

- Cash.
- Performance bond (in form satisfactory to TOWNSHIP) for the benefit of TOWNSHIP, _____ (hereinafter called "Surety"), which is agreed to be a surety authorized to do business in the Commonwealth of Pennsylvania within the meaning of Section 509 (d) of the MPC, 53 P.S. §10509 (d), shall provide the Performance Bond for the Security Amount in accordance with the terms of this Agreement.
- Letter of Credit pursuant to 53 P.S. § 10509(c).

equal to the amount of the Security Amount, in accordance with the provisions and purposes of this Agreement, in order to guarantee that the Improvements will be completed and installed in strict accordance with the Plan and all applicable ordinances of TOWNSHIP and regulations of the Commonwealth of Pennsylvania, Department of Transportation.

4. In the event that DEVELOPER has not completed and installed all of the Improvements as hereby guaranteed within twelve (12) months from the date of this Agreement, or within such extended period of time as may hereafter be agreed upon in writing by TOWNSHIP and DEVELOPER, TOWNSHIP may draw upon the Security Amount for payment to TOWNSHIP of funds not to exceed the Security Amount in order that TOWNSHIP may make or cause the Improvements to be made.

5. All portions of the amounts paid over to TOWNSHIP herein shall be used by TOWNSHIP solely for the purpose of completing and installing the Improvements as herein guaranteed and for no other purpose. Any moneys paid to TOWNSHIP from the Security Amount in excess of the actual and reasonable cost of completing the Improvements shall be refunded by TOWNSHIP to DEVELOPER.

6. No funds paid from the Security Amount to TOWNSHIP shall in any way be construed as a loan to TOWNSHIP nor, except as specifically provided herein, obligate TOWNSHIP to repay such funds.

7. In the event that the Security Amount is insufficient to cover the reasonable and actual cost of completing the Improvements, nothing herein shall be construed to limit the remedies available to TOWNSHIP.

8. When the Improvements have been completed and installed as herein guaranteed, DEVELOPER shall provide a notice of completion to TOWNSHIP and the TOWNSHIP Engineer as provided by Section 509 (j) of the MPC, 53 P.S. §10509 (j). TOWNSHIP shall, within the time limits prescribed by Section 509 (j) of the MPC, 53 P.S. §10509 (j), provide to DEVELOPER, written notification of TOWNSHIP's approval or rejection of the Improvements.

9. From time to time as work on the Improvements proceeds, DEVELOPER may make written requests to TOWNSHIP, pursuant to Section 509 (j) of the MPC, 53 P.S. §10509 (j), for release of portions of the Security Amount. TOWNSHIP shall, within the time limits prescribed by Section 509 (j) of the MPC, 53 P.S. §10509 (j), provide to DEVELOPER written notification of the amount TOWNSHIP has authorized to be released from the Security Amount pursuant to DEVELOPER's request.

10. In no event shall the Surety's liability to any party pursuant to this Agreement exceed the Performance Bond in force. Surety shall not incur any liability whatsoever for acts taken or omitted in good faith reliance upon any instrument or document reasonably believed by Surety to be genuine, to be truthful, to have been signed or presented by a proper person, and to conform with the provisions of this Agreement.

11. TOWNSHIP shall, in its sole discretion, determine whether the Improvements are constructed and installed in strict accordance with the Plan and the aforesaid ordinances and regulations.

12. Upon completion of the Improvements and as a condition precedent to acceptance by TOWNSHIP the DEVELOPER, at its expense agrees to:

- a. tender to TOWNSHIP a Legal Description and drawing for the proposed right-of-way for the Improvements; and
- b. shall submit to TOWNSHIP an affidavit, Waiver of Mechanics Liens, or such other satisfactory evidence as TOWNSHIP may require, that all labor, material, rentals, contractors, and subcontractors used, supplied, furnished, or employed in the construction of the Improvements have been paid.

13. DEVELOPER shall upon the final and full completion of the Improvements and/or part thereof as herein set forth, guarantee the work, material, construction, and installation performed pursuant to this Agreement, and shall remedy, without cost to TOWNSHIP, any defects which may develop therein during a period of eighteen months from the date of completion and acceptance of the work performed hereunder, and shall deliver or cause to be delivered to TOWNSHIP, maintenance security in the amount of fifteen percent (15%) of the actual cost for the installation of the Improvements for a period of eighteen (18) months, in accordance with Section 509 (k) of the MPC, 53 P.S. §10509

(k), in form satisfactory to TOWNSHIP and in compliance with TOWNSHIP's requirements for the acceptance of the foregoing Improvements by TOWNSHIP.

14. In the event of default by the DEVELOPER, the DEVELOPER shall, in addition to all damages available to TOWNSHIP, at law or in equity, be liable for any and all attorney's fees, costs, and other similar charges incurred by TOWNSHIP in completing or securing completion of the Improvements.

15. The DEVELOPER agrees to reimburse TOWNSHIP for engineering and legal services necessitated for the review of the DEVELOPER's documents and inspection of the Improvements.

16. This Agreement is executed in and shall be construed in accordance with the laws of the Commonwealth of Pennsylvania and shall be binding upon and inure to the benefits of the parties hereto, and their heirs, representative, successors, and assigns.

17. Neither this Agreement nor the obligations of the parties set forth herein shall be modified or changed except by written agreement executed by all parties hereto.

18. Each person whose signature appears below represents that he or she has been duly authorized in accordance with law to execute this Agreement with legally binding effect, in conformity with the Uniform Written Obligation Act of 1927, upon the party represented.

[signatures on following page]

ATTEST:

WEST HANOVER TOWNSHIP

By: _____

ATTEST:

DEVELOPER:

By: _____

Appendix "A"
IMPROVEMENTS

Section 2. Saving Clause.

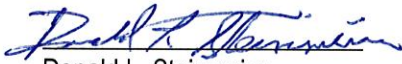
That nothing in this Ordinance shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause of action acquired or existing, under any act or ordinance hereby; nor shall any just or legal right or remedy or any character be lost, impaired or affected by this Ordinance.

Section 3. Date of Effect.

That the Secretary of West Hanover Township shall certify to the adoption of this Ordinance and cause the same to be published as required by law; and this Ordinance shall take full force and effect immediately upon final passage and approval.

ENACTED AND ORDAINED as Ordinance 2019- this 3rd day of September 2019.

ATTEST:


Donald L. Steinmeier
Secretary

WEST HANOVER TOWNSHIP
BOARD OF SUPERVISORS


Kyle Miller
Chairman

SEAL

