

**TOWNSHIP OF TREDYFFRIN**  
CHESTER COUNTY, PENNSYLVANIA

**FINANCIAL SECURITY AGREEMENT**

**THIS AGREEMENT**, made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between \_\_\_\_\_ (hereinafter referred to as the “Developer”) and the Township of Tredyffrin, Chester County, Pennsylvania, (hereinafter referred to as the “Township”).

**WHEREAS**, the Developer contemplates construction of streets, parking facilities, sidewalks, curbs, drainage facilities, sanitary sewers and other utilities, landscaping, and other such public and quasi-public improvements as provided in the final approved subdivision or land development plan for \_\_\_\_\_, prepared by \_\_\_\_\_, dated \_\_\_\_\_, last revised \_\_\_\_\_, and consisting of \_\_\_\_\_ sheets (hereinafter referred to as the “Plan”);

**WHEREAS**, the improvements made the subject of this Financial Security Agreement (the “Secured Improvements”) and the estimated cost of construction thereof as approved by the Township Engineer, together with the estimated cost of ancillary services including engineering, legal, inspections and project administration, are specified in Exhibit A appended hereto; and

**WHEREAS**, the construction of the Secured Improvements is to be done in accordance with a Subdivision and Land Development Agreement between the Developer and the Township which bears the date \_\_\_\_\_ and sets forth the terms and conditions under which the Developer may obtain permits and construct said development, and which is incorporated herein by reference without attachment hereto; and

**WHEREAS**, the Developer has committed to the advancement of funds representing one hundred ten percent (110%) of the cost of constructing and installing the Secured Improvements by means of an irrevocable letter of credit from a Federal or Commonwealth chartered lending institution that is authorized to conduct business in the Commonwealth of Pennsylvania (hereinafter referred to as the “Financial Institution”) in the amount of \$\_\_\_\_\_, a copy of which is appended hereto as Exhibit B (hereinafter the “Letter of Credit”) and made a part hereof.

**NOW, THEREFORE**, in consideration of the Township relying upon the terms of this Financial Security Agreement as security for the conditions set forth in the associated Subdivision and Land Development Agreement, and intending to be legally bound, the Township and Developer hereby agree as follows:

## **I. Posting of Letter of Credit**

- A. Developer agrees to post the Letter of Credit from the Financial Institution. The equivalent of one hundred percent (100%) of the cost of constructing and installing the Secured Improvements (\$\_\_\_\_\_ ) shall be designated the Working Account. Certain sums may be released to the order of the Developer from the Working Account as set forth herein. The remaining balance of the total Letter of Credit, equivalent to ten percent (10%) of the cost of constructing and installing the Secured Improvements (\$\_\_\_\_\_ ) shall be designated the "Retainage Account" and shall not be released to the order of the Developer until a period of eighteen months has lapsed since all of the improvements as set forth on Exhibit A have been completed and inspected and approved by the Township Engineer, and where appropriate, a deed of dedication is accepted by the Township. Reduction and/or release of the Retainage Account from the Letter of Credit to the order of the Developer shall be authorized by the Township upon final inspection by the Township Engineer of the Secured Improvements or, with respect to the dedicated improvements, upon delivery of a maintenance bond. Notice shall be given to the Financial Institution posting the Letter of Credit.
- B. The Township will hold the Letter of Credit as security to cover the completion of any and all Secured Improvements as required by the Plan and the Subdivision and Land Development Agreement, as specified in Exhibit A.
- C. It is agreed that if Developer shall install and complete the Secured Improvements secured hereby within the time limits set forth in the Agreement or as modified by the parties according to law, in strict accordance with the plans and applications so approved, and in accordance with applicable ordinances of the Township and with all statutes, laws, ordinances, and rules and regulations of all governmental bodies or agencies having jurisdiction over all or part of the work involved in the Subdivision and Land Development Agreement, the Township shall, upon inspection and approval by the Township Engineer, release the balance of the Letter of Credit to the Developer. In the event of the Developer's default hereunder, the Township may in its discretion utilize and direct payment of the Letter of Credit only for completion of the Secured Improvements and/or payment of any fees due to the Township.
- D. The Developer agrees that it will submit to Pennsylvania jurisdiction and Chester County venue in the event of legal action involving this Agreement.

## **II. Release from Letter of Credit**

- A. As the work involved progresses, the Township may direct the Financial Institution to release to the order of the Developer certain sums from the Working Account. The sums released or refunded to the Developer shall be limited to those amounts authorized by the Township Engineer and Board of Supervisors in

writing, in the form as shown on Exhibit C attached hereto. Such certificates of completion shall constitute full authorization to the Financial Institution to pay the amount designated from the Working Account to the Developer.

- B. Upon submission to the Developer of an itemized bill for inspections conducted by the Township Engineer or an approved consultant or a bill from the Township Solicitor for legal services required to negotiate and enforce the terms of this Agreement and the Subdivision and Land Development Agreement, the Developer shall direct the Financial Institution to release to the Township the said amount, payable within twenty (20) days after receipt of the itemized bill.
- C. Notice shall be given to the Financial Institution, which shall be substantiated as shown on Exhibit D attached hereto, to release funds from the Retainage Account directly to the Township upon final inspection and approval of all Secured Improvements by the Township Engineer.
- D. The Township shall have the right to complete the Secured Improvements covered by this Financial Security Agreement, if any of the following occurs:
  - (1) the credit of the Developer becomes impaired;
  - (2) the Developer, without defense, fails to pay bills presented to it which are due in a normal course of business and with respect to the Secured Improvements;
  - (3) the Developer, after notice from the Township and as further provided in Paragraph II(E) below, has failed within sixty (60) days to marshal at the job site sufficient workers, materials and equipment or to complete or commence and proceed with due diligence to complete, the correction of work improperly done or defective materials installed; or
  - (4) the work has not been completed in a good and workmanlike manner within such time periods set forth in the Subdivision and Land Development Agreement and in accordance therewith.

In that event, the Township may, at its option, after notice in writing to the Developer, enter into possession and undertake to complete the Secured Improvements described herein and for which the security is furnished hereby. The work may be done either by the Township's own agents or by contract, and the cost of completion of said work shall be paid by the Township only from the balance then remaining in the Letter of Credit; provided, however, that any balance remaining in the Letter of Credit, after payment by the Township, shall be released to the Developer. It is further provided, in the event the cost of completion shall exceed the balance remaining in the Letter of Credit at the time of the Developer's failure, refusal or neglect, the Developer agrees to pay the Township, within twenty (20) days after receipt of written notice by the

Township, such amount as the Township requires to make up any deficit in the cost of completion. Cost of completion, as used in this Agreement, is defined to include the cost of material, labor, construction and installation, engineering and inspection charges, Township Solicitor's charges necessary to negotiate and enforce the terms of this Agreement and the Subdivision and Land Development Agreement, plus the cost of all permits, bonds, insurance, and maintenance guaranties as provided for in the Subdivision and Land Development Agreement, and expenses incurred by the Township as a result of Developer's breach. The Township shall be reimbursed immediately from the Letter of Credit by the Financial Institution without approval by the Developer upon certification of the Township Board of Supervisors to the Financial Institution.

- E. In the event of incomplete, inadequate, improper or untimely construction of any of the Secured Improvements, or of the failure to construct the Secured Improvements in accordance with the approved Plan and the terms and conditions of any approval thereof, or any occurrence described in Paragraph II(D) above, such portions of the Letter of Credit as necessary may be applied to the cost of completion and/or the proper completion and/or construction of those Secured Improvements; provided, however, that in the event the Township Engineer determines that the Secured Improvements have not been completed in a timely fashion or have been improperly constructed, notice shall be given to the Developer of such defective or incomplete work, with a detailed description of all work required to be performed, and the Developer shall have sixty (60) days within which to commence correction or completion of said defects. If commencement of the correction or completion of the work has not occurred within the sixty (60) day period or if the correction or completion has commenced but, thereafter, the Developer fails to continuously marshal at the job site sufficient workers and material to complete or correct the work with all due diligence, then the Financial Institution, upon notice from the Township, shall release from the Letter of Credit the sum of money requested by the Township for correction of the incomplete, inadequate, improper or untimely construction. The Township's demand for such payment, signed by the Township Manager, together with a certification of compliance by the Township of the notice provisions of this Paragraph, will be all the authority the Financial Institution needs or requires to pay such sums to the Township and may be substantiated as shown on Exhibit E attached hereto.
- F. The Financial Institution shall not release any funds unless specifically authorized to do so by the Township in writing in the form as shown on Exhibits C, D, or E attached hereto.

### **III. Delay in Completion of Secured Improvements**

The Developer agrees that if completion of the Secured Improvements is delayed beyond one year from the date of the posting of financial security, the amount of the Letter of Credit shall be increased by an additional ten (10%) percent for each succeeding year

beyond the date of this Agreement or to an amount not exceeding one hundred ten percent (110%) of the cost of completion of the Secured Improvements as reestablished on or about the expiration date of the preceding one (1) year period, whichever is greater. In the event the Developer fails to increase the amount of the Financial Security as provided herein within thirty (30) days of written notice by the Township, the Township shall not release any funds from the Letter of Credit and may at its discretion demand payment over of the Letter of Credit upon certification of the Township Board of Supervisors to the Financial Institution.

#### **IV. Financial Institution's Obligation**

All parties recognize that the Financial Institution is merely holding the funds in question in order to insure the obligations of the Developer. The Financial Institution's obligations to disburse the funds on demand by the Township and in accordance with this Agreement shall not be impaired by the default of the Developer for any reason. The Financial Institution is to exercise no discretion with respect to payment of the funds to the Township and when proper and timely demand is made by the Township upon the Financial Institution, the Financial Institution shall pay over the funds in accordance with the terms of this Agreement and shall be released, thereafter, from any further liability to either the Developer or the Township. It is neither the responsibility nor the right of the Financial Institution to exercise any discretion whatsoever with respect to whether the Township is right or correct in its demand for said funds. The Financial Institution's sole responsibility is to pay over those funds upon demand.

#### **V. Maintenance of Improvements**

- A. The Developer covenants that it shall well and truly repair or replace all defects in workmanship and materials appearing in the Secured Improvements and shall repair all defects and damage caused by lack of structural integrity or failure of the improvement to function in accordance with the design and specifications as depicted on the final plans where said defects appear within eighteen (18) months from the date that all of the improvements as set forth on Exhibit A have been completed and inspected and approved by the Township Engineer, and where appropriate, a deed of dedication is accepted by the Township.
- B. The retainage account shall serve as financial security for the maintenance period, except that if the amount of the retainage account is less than fifteen percent (15%) of the cost of constructing and installing the dedicated improvements, then sufficient financial security must be provided to make up the difference in the form of a bond with surety or a federal or commonwealth chartered lending institution irrevocable letter of credit or restrictive or escrow account in such a lending institution or any other financial security approved by the Township.
- C. Although the amount of the security shall be limited to the retainage account or fifteen percent (15%) of the cost of the dedicated improvements, the Developer shall be liable for the full cost of repair or replacement due to defects in

workmanship and materials appearing in the Secured Improvements and for the full cost of repair of all defects or damage caused by lack of structural integrity or failure for the improvement to function in accordance with the design and specifications as depicted on the final plan where said defects appear within eighteen (18) months from the date that all of the improvements as set forth on Exhibit A have been completed and inspected and approved by the Township Engineer, and where appropriate, a deed of dedication is accepted by the Township.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed by their respective duly authorized officers, each intending to be legally bound hereby.

**DEVELOPER**

By: \_\_\_\_\_  
(Title)

Attest: \_\_\_\_\_  
(Title)

**BOARD OF SUPERVISORS  
OF TREDYFFRIN TOWNSHIP**

By: \_\_\_\_\_  
Chairman

Attest: \_\_\_\_\_  
Township Manager

## EXHIBIT A

(Insert Estimated Cost of Construction here.  
Sample spreadsheet is on the Township's website.)

EXHIBIT B

(Insert Letter of Credit here.)

EXHIBIT C

**TREDYFFRIN TOWNSHIP**

**FINANCIAL SECURITY AGREEMENT – RELEASE FROM WORKING ACCOUNT**

**CERTIFICATE OF COMPLETION**

Development name / location:

Subdivision and Land Development Agreement approval date:

Original amount of Financial Security:

On the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, the Board of Supervisors of Tredyffrin Township, upon recommendation by the Township Engineer, authorized the release of \$\_\_\_\_\_ from the letter of credit posted as financial security for construction of Secured Improvements at the above referenced development.

The construction of the Secured Improvements has been completed to the extent of \_\_\_\_\_ %, representing \$\_\_\_\_\_, leaving a balance of \$\_\_\_\_\_.

The reduction of the Financial Security hereby authorized shall not be construed as acceptance of the work by Tredyffrin Township and Tredyffrin Township hereby reserves the right to reinspect the work and to require the Developer to correct any and all deficiencies and defects.

This certification does not authorize a reduction in the Letter of Credit below the amount held as retainage (\$\_\_\_\_\_).

Date: \_\_\_\_\_

**TREDYFFRIN TOWNSHIP**

By: \_\_\_\_\_  
Recording Secretary

EXHIBIT D

**TREDYFFRIN TOWNSHIP**

**FINANCIAL SECURITY AGREEMENT – RELEASE FROM RETAINAGE ACCOUNT**

Development name / location:

Subdivision and Land Development Agreement approval date:

Original amount of Financial Security:

On the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, the Board of Supervisors of Tredyffrin Township received notice from the Township Engineer that all of the Secured Improvements at the above referenced development have been constructed, inspected and approved. Accordingly, the Board of Supervisors authorized the release of \$ \_\_\_\_\_ from the letter of credit posted as financial security.

Following this release, the balance in the account will be \$0.00.

Date: \_\_\_\_\_

**TREDYFFRIN TOWNSHIP**

By: \_\_\_\_\_  
Recording Secretary

EXHIBIT E

**TREDYFFRIN TOWNSHIP**

**FINANCIAL SECURITY AGREEMENT – RELEASE FROM WORKING ACCOUNT**

**DEMAND FOR PAYMENT FOR INCOMPLETE OR UNCORRECTED WORK**

Development name / location:

Subdivision and Land Development Agreement approval date:

Original amount of Financial Security:

Pay to the order of Tredyffrin Township the sum of \$ \_\_\_\_\_ from the letter of credit posted as financial security for the above referenced development. Tredyffrin Township certifies that it sent the Developer the attached notice on \_\_\_\_\_ indicating that certain Secured Improvements remain incomplete or the defective condition thereof remains uncorrected as of this date.

Date: \_\_\_\_\_

**TREDYFFRIN TOWNSHIP**

By: \_\_\_\_\_  
Township Manager