

**IMPROVEMENT GUARANTEE AGREEMENT**

**(Letter of Credit)**

**THIS AGREEMENT** is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and among  
WEST COCALICO TOWNSHIP, 156B West Main Street, Reinholds, Lancaster County,  
Pennsylvania, a political subdivision of the Commonwealth of Pennsylvania, (hereinafter called  
“Township”); and

[1] \_\_\_\_\_,  
of \_\_\_\_\_,

Lancaster County, Pennsylvania, (hereinafter collectively referred to as “Owner”);

**WITNESSETH:**

**WHEREAS**, Owner intends to build certain improvements shown on a plan prepared by [5]  
\_\_\_\_\_ known as [4] \_\_\_\_\_,  
Drawing No. [6] \_\_\_\_\_ dated [7] \_\_\_\_\_, 20 \_\_, dates (s)  
last revised (if applicable) [9] \_\_\_\_\_ (hereinafter referred to as the “Plan”); and

**WHEREAS**, the Township requires that security be established to ensure construction in  
compliance with the Plan, Township ordinances and resolutions; and

**WHEREAS**, Owner is willing to obtain an irrevocable *letter of credit* for the funds required to  
complete construction in compliance with the Plan, Township ordinances and resolutions;

**NOW THEREFORE**, in consideration of the mutual covenants and promises contained  
therein, the parties do agree as follows:

**ARTICLE I:** Owner shall supply an irrevocable *letter of credit* (the copy of which is attached  
hereto and marked as “Exhibit A”) issued by [8] \_\_\_\_\_ in  
order to provide funds in the amount of [2] \_\_\_\_\_ for excavation, street, sidewalk,  
curb and storm water system construction (including retention/detention systems), signs, monument

placement, and electric lines, (collectively referred to hereafter as “improvements”) as-built drawings, and observation costs in accordance with Township specifications and the proposals attached to this Agreement as Exhibit “B”. The aforesaid amount of the *letter of credit* is equal to one hundred ten percent (110%) of the estimated costs of completion of such improvements. In the event that the period for completion of the improvements as set forth below shall exceed one year, the aforesaid amount shall include an additional sum equal to ten percent (10%) of the approved costs of the improvements times as many years in excess of one year as will be required to complete the improvements.

The aforesaid irrevocable *letter of credit* shall remain in effect until released by the Township.

**ARTICLE II:** Owner warrants that the improvements shall be completed within \_\_\_\_\_ of the date of the execution of this agreement, except for the top coat of paving, PennDot specifications 1.5 inch I.D. – 2W, which shall be completed within \_\_\_\_\_ of the date of execution of this agreement.

**ARTICLE III:** The Township, by its engineer or other designated person, will inspect the construction of the improvements at progressive stages of completion as shall be required by the Township. The Owner shall reimburse Township for all inspection fees incurred by Township according to the fee schedule adopted by the Township. Such reimbursement shall be due within thirty days from posting of a claim for same from Township to Owner. No release from the *letter of credit* shall be made until all such outstanding claims have been paid to the Township.

The Owner may request the release of a proportionate part of the security upon the completion of all curbing and the street base coat provided such work totals at least twenty percent (20%) of the total estimated costs of the improvements. Any such requests shall be in writing addressed to the Township, which shall have 45 days from receipt of such request within which to allow the municipal engineer to certify, in writing, that such portion of the work has been completed in accordance with



the approved plan and any applicable Township ordinances or regulations. Upon certification as aforesaid, the Township shall authorize a release of the security equal to the amount estimated by the Township engineer to fairly represent the value of the improvements completed and certified. Failure by the Township to respond within the 45 day period shall be deemed an approval of the request for a release.

In the event that the engineer does not approve all or a portion of the work for which the release is requested, he shall specify in writing the nature of the objections and the steps necessary for correction and certification and forward same to Owner. Upon completion of the requested corrections, Owner shall resubmit the request for release as aforesaid. No partial release from any request shall be permitted.

The engineer's certification shall be solely for the purpose of determining that after reduction, the balance remaining on the *letter of credit* will be adequate to complete the remaining improvements. In no event shall the engineer's certification be construed as, nor is said certification intended as, a representation that the completed work is of any stated value, or deemed to constitute a warranty or representation as to the quality of the workmanship.

**ARTICLE IV:** In the event there is a difference of opinion as to the quality of the work completed, or as to the completion of the work to meet Township's specifications, the decision of Township's representative shall control and Owner's obligation to maintain the *letter of credit* shall continue until released in whole or in part by the Township.

**ARTICLE V:** It is intended that all improvements built pursuant to the Plan shall be private until offered for dedication and formally accepted by the Township pursuant to Articles VI and IX hereof.

**ARTICLE VI:** Upon written notice from Owner, the Township agrees to make a final inspection and within 45 days release Owner from any obligation to maintain the *letter of credit* if the

improvements conform to the plans and meet Township's specifications. Despite final inspection, all improvements shall be deemed to be private improvements until such time as the same have been offered for dedication and formally accepted by the Township by ordinance, resolution, deed or other formal document.

In the event that the Township Engineer shall determine, in his sole discretion, that either the work does not comply with the plans or all applicable standards, or that work previously determined to be in compliance has been damaged or has unreasonably deteriorated, he shall notify Owner in writing of the work found to be unsatisfactory and shall provide the steps necessary to obtain compliance. Upon completion of the corrections, Owner may resubmit his request for a release as aforesaid. No final release shall be given until all costs of the Township claimed to be due from Owner have been paid.

**ARTICLE VII:** Legal, engineering, and observation costs, including engineering as well as legal costs related to preparation or review of this agreement and related documents, incurred by the Township through or under this Agreement in regard to all improvements set forth in Article I shall be paid by Owner within 35 days of mailing of notice of claim.

All improvements as specified herein shall be completed in accordance with the standards established and the ordinances existing as of the date of the final plan approval for [4] \_\_\_\_\_. Should said improvements not be completed, then and in that event the Township Engineer may notify the Township that the Owner has defaulted.

**ARTICLE VIII:** The specifications for the various improvements are those set forth on a plan dated [7] \_\_\_\_\_, date(s) last revised (if applicable) [9] \_\_\_\_\_, Drawing No. [6] \_\_\_\_\_, prepared by [5] \_\_\_\_\_ known as [4] \_\_\_\_\_. All improvements shall be constructed in compliance with the Ordinances, Resolutions and Regulations of Township and Lancaster County



(where a conflict exists the most stringent requirement shall control), all of which are by reference made a part hereof.

**ARTICLE IX:** The Township will, prior to the final release at the time of completion and notification by its Engineer, require retention of ten percent (10%) of the estimated costs of the improvements specified herein, which shall be secured by a *letter of credit*, for a period of eighteen (18) months from the date the improvements are constructed and accepted by the Township. It is understood and acknowledged that no improvement shall be accepted for dedication unless Owner shall comply with all of the terms and conditions of Ordinance #80.

**ARTICLE X:** Owner agrees to pay all costs involved in establishing and servicing the *letter of credit* with [8]\_\_\_\_\_.

**ARTICLE XI:** The following shall be considered events of default under this agreement, whereupon Township shall be entitled to demand payment in full of the *letter of credit* in order to complete any required improvements not yet completed, and/or to correct or repair any unacceptable improvements. With respect to a default under subparagraphs a-d, Township may thereafter demand from the aforesaid [8]\_\_\_\_\_ payment either in the full amount of the *letter of credit*; or, in Township's sole discretion, the full amount necessary to complete or correct such improvements; or, with respect to a default under subparagraph e, immediately upon notice of non-renewal demand from the aforesaid [8]\_\_\_\_\_ payment in the full amount of such letter. In either event, the amount paid to the Township by [8]\_\_\_\_\_ shall thereafter be held in an interest-bearing account (selected by Township in its sole discretion, with interest to follow principal), pending completion or repair of the improvements, or, in Township's sole discretion, substitution of another *letter of credit* acceptable to the Township:

- a. Failure to complete the improvements within the time allowed for completion above;

- b. Abandonment of the project (abandonment shall be construed to mean failure to perform significant work on the project for a period of ninety (90) consecutive days after the project has been commenced;
- c. Failure to commence correction of any unacceptable construction with thirty (30) days of posting to Owner of written notice as aforesaid or failure to complete such corrections within forty-five (45) days of commencement of correction, which period shall be extended for such time as Owner is unable to work due to acts of God
- d. Entry by Owner into receivership, insolvency, voluntary or involuntary bankruptcy, or in the event the property upon which the improvements are constructed is listed for foreclosure, sheriff or tax sale; or
- e. Notice from [8]\_\_\_\_\_ to Township of intent not to renew Owner's *letter of credit*, following which notice Owner does not within fifteen (15) days provide substitute equivalent security.

In the event that the reasonable cost to complete and or repair the improvements shall exceed the amount remaining available under the *letter of credit*, Owner shall remain personally liable for any such excess. Township shall have the right to collect such excess by any means legally available to it for such purpose.

**ARTICLE XII:** This Agreement shall be construed, performed and enforced in accordance with the laws of the Commonwealth of Pennsylvania.

**ARTICLE XIII:** This Agreement is not transferable or assignable without the written consent of the Township.

**ARTICLE XIV:** This Agreement sets forth the entire agreement and understanding among the parties as to the subject matter thereof and may be amended subsequent to the date hereof only in writing and if signed by the party to be bound hereby.

**ARTICLE XV:** This Agreement shall be binding upon and shall inure to the benefit of the parties, their heirs, administrators, successors and assigns.

IN WITNESS WHEREOF, and intending to be legally bound thereby, the parties hereto have caused these presents to be executed and their corporate seals thereunto affixed, the day and year first above written.

WEST COCALICO TOWNSHIP

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

Attest: \_\_\_\_\_

**If Owner is a Corporation:**  
*(and affix corporate seal)*

NAME OF CORPORATION

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

*Insert name, President*

Attest: \_\_\_\_\_

*Insert name, Secretary*

**If Owner is a Partnership:**  
*(to be signed by all partners)*

NAME OF PARTNERSHIP

\_\_\_\_\_  
*Insert name, Partner*

\_\_\_\_\_  
*Insert name, Partner*

\_\_\_\_\_  
*Insert name, Partner*

**If Owners are Husband & Wife:**

\_\_\_\_\_  
*Insert name of Husband*

\_\_\_\_\_  
*Insert name of Wife*

**Key to Codes for insertions in  
Improvement Guarantee Agreement attached:**

**(Letter of Credit)**

- [1] - Name(s) of developer (s)  
  
i.e.,     Husband and Wife; or  
             Name of Corporation  
                 (to be signed by President and Secretary, with corporate seal attached); or  
             Name of Partnership  
                 (to be signed by all partners)
- [2] - Amount of security required
- [3] - Letter of Credit
- [4] - Name of development
- [5] - Name of engineer
- [6] - Plan No.
- [7] - Date of plan
- [8] - Name of bank issuing letter of credit
- [9] - Date(s) of plan revisions (if applicable)