PART 6

IMPROVEMENT AND MAINTENANCE GUARANTEES

SECTION 601. GENERAL STATEMENT

1. No final plat shall be approved unless the streets shown on such plat have been improved to a mud-free or otherwise permanently passable condition, or improved as may be required by the subdivision and land development ordinance and any walkways, curbs, gutters, street lights, fire hydrants, shade trees, water mains, sanitary sewers, storm sewers and other improvements as may be required by the subdivision and land development ordinance have been installed in accordance with such ordinance. In lieu of the completion of any improvements required as a condition for the final approval of a plat, including improvements or fees required pursuant to Section 502, the subdivision and land development ordinance shall provide for the deposit with the municipality of financial security in an amount sufficient to cover the costs of such improvements or common amenities including, but not limited to, roads, stormwater detention and/or retention basins and other related drainage facilities, recreational facilities, open space improvements, or buffer or screen plantings which may be required. The applicant shall not be required to provide financial security for the costs of any improvements for which financial security is required by and provided to the Department of Transportation in connection with the issuance of a highway occupancy permit pursuant to Section 420 of the act of June 1, 1945 (P.L. 1242, No. 428) known as the "State Highway Law."

2. If water mains and/or sanitary sewer lines, or both, along with apparatus or facilities related thereto, are to be installed under the jurisdiction and pursuant to the rules and regulations of a public utility or municipal authority separate and distinct from the municipality, financial security to assure proper completion and maintenance thereof shall be posted in accordance with the regulations of the controlling public utility or municipal authority and shall not be included within the financial security as otherwise required by this section.

3. No Final Plan shall be signed by the Board of Supervisors for recording in the Office of the Perry County Recorder of Deeds unless:

    A. Financial security in accordance with the requirements of Section 602 is accepted by the Board of Supervisors, and/ or;

    B. The improvements required by this Ordinance have been properly guaranteed or completed in accordance with this ordinance.

SECTION 602. FINANCIAL SECURITY FOR IMPROVEMENT GUARANTEE

1. General

   A. The administration of the financial security shall comply with the provisions of Article V, Section 509 of the PA Municipalities Planning Code, Act 247, as amended, and other applicable laws of the Commonwealth of Pennsylvania.

   B. Such financial security shall provide for, and secure to the public, the completion of any improvements which may be required on or before the date fixed in the formal action of approval or in the Developer's Agreement for completion of the improvements. (See Appendix #2)

2. Submission of Improvements Guarantee

   Final plan applications that include public improvements that have not been installed shall include an improvement guarantee in the form of financial security.

   A. Type of Financial Security

      Without limitation as to other types of financial security which the municipality may approve, which approval shall not be unreasonably withheld, Federal or Commonwealth chartered lending institution irrevocable letters of credit and restrictive or escrow accounts in such lending institutions shall be deemed acceptable financial security for the purposes of this section.

      Such financial security shall be posted with a bonding company or Federal or Commonwealth chartered lending institution chosen by the party posting the financial security, provided said bonding company or lending institution is authorized to conduct such business within the Commonwealth.

      Such bond, or other security shall provide for, and secure to the public, the completion of any improvements which may be required on or before the date fixed in the formal action of approval or accompanying agreement for completion of the improvements.

   B. Amount of Financial Security

      1). The amount of financial security to be posted for the completion of the required improvements shall be equal to one hundred and ten (110) percent of the cost of completion estimated as of 90 days following the date scheduled for completion by the developer.

Annually, the Board of Supervisors may adjust the amount of the financial security by comparing the actual cost of the improvements, which have been completed and the estimated cost for the completion of the remaining improvements, which have been completed and the estimated cost for the completion of the remaining improvements as of the expiration of the 90th day after either the original date scheduled for completion or a rescheduled date of completion. Subsequent to said adjustment, the municipality may require the developer to post additional security in order to assure that the financial security equals said 110%. Any additional security shall be posted by the developer in accordance with this subsection.

2). The amount of financial security required shall be based upon an estimate of the cost of completion of the required improvements, submitted by the Applicant prepared by a professional engineer licensed as such in Pennsylvania and certified by such engineer to be a fair and reasonable estimate of such cost. The estimate submitted to the Board of Supervisors shall be organized and itemized to provide a detailed line by line estimate of costs of all public improvements required. The Board of Supervisors, upon the recommendation of the Township Engineer, may refuse to accept such estimate for good cause shown. If the Applicant and the Township Engineer are unable to agree upon an estimate, then the estimate shall be recalculated and recertified by another professional engineer licensed as such in Pennsylvania and chosen mutually by the Board of Supervisors and the Applicant. The estimate certified by the third (3rd) engineer shall be presumed fair and reasonable and shall be the final estimate. In the event that a third (3rd) engineer is so chosen, fees for the services of said engineer shall be paid equally by the Board of Supervisors and the Applicant.

3). If the party posting the financial security requires more than one (1) year from the date of posting of the financial security to complete the required improvements, the amount of financial security may be increased by an additional ten (10) percent for each one (1) year period beyond the first anniversary date from posting of financial security, or to an amount not exceeding one hundred and ten (110) percent of the cost of completing the remaining required improvements as reestablished on or about the expiration of the preceding one (1)-year period.

4). In the case where development is projected over a period of years, the Board of Supervisors may authorize submission of final plans by section or stages of development subject to such requirements

or guarantees as to improvements in future section or stages of development as it finds essential for the protection of any finally approved section of the development.

C. Developer's Agreement

The applicant shall declare the intent to provide an improvement guarantee by executing the Developer's Agreement satisfactory to the Miller Township Board of Supervisors and their solicitor. The Developer's Agreement shall be executed prior to the recordation of the final plan.

3. Plan Approval Conditioned Upon Financial Security

When requested by the developer, in order to facilitate financing, Board of Supervisors, shall furnish the developer with a signed copy of a resolution indicating approval of the final plan contingent upon the developer obtaining a satisfactory financial security. The final plan or record plan shall not be signed nor recorded until the financial improvements agreement is executed. The resolution or letter of contingent approval shall expire and be deemed to be revoked if the financial security agreement is not executed within 90 days unless a written extension is granted by the Board of Supervisors; such extension shall not be unreasonably withheld and shall be placed in writing at the request of the developer.

4. Release of Financial Security

A. As the work of installing the required improvements proceeds, the party posting the financial security may request the Board of Supervisors to release or authorize the release, from time to time, of such portions of the financial security necessary for payment to the contractor or contractors performing the work. Any such requests shall be in writing addressed to the Board of Supervisors, and the Board shall have forty-five (45) days from receipt of such request within which to allow the Township Engineer to certify, in writing, to the Board of Supervisors that such portion of the work upon the improvements has been completed in accordance with the approved plan. Upon such certification the Board of Supervisors shall authorize release by the bonding company or lending institution of an amount as estimated by the Perry County Engineer fairly representing the value of the improvements completed or, if the Board of Supervisors fails to act within said forty-five (45) day period, the Board of Supervisors shall be deemed to have approved the release of funds, as requested. The Board of Supervisors shall always, prior to final release at the time of completion and certification by the Township Engineer, require retention of a minimum of ten (10) percent of the estimated cost of the aforesaid improvements. Such funds will be released only after certification by the Township Engineer that all required public improvements so guaranteed

have been completed satisfactorily.

B. When the developer has completed all of the necessary and appropriate improvements, the developer shall notify the Board of Supervisors in writing, by certified or registered mail, of the completion of the aforesaid improvements and shall send a copy thereof to the municipal engineer. The Board of Supervisors shall, within ten (10) days after receipt of such notice, direct and authorize the Township Engineer to inspect all of the aforesaid improvements. The Township Engineer shall, thereupon, file a report, in writing, with the Board of Supervisors, and shall promptly mail a copy of the same to the developer by certified or registered mail. The report shall be made and mailed within thirty (30) days after receipt by the Township Engineer of the aforesaid authorization from the Board of Supervisors said report shall be detailed and shall indicate approval or rejection of said improvements, either in whole or in part, and if said improvements, or any portion thereof, shall not be approved or shall be rejected by the Township Engineer, said report shall contain a statement of reasons for such non-approval or rejection.

1). The Township Secretary shall notify the Applicant, within fifteen (15) days of receipt of the Township Engineer's report, in writing by certified or registered mail of the action of said Board of Supervisors with relation thereto.

2). If the Board of Supervisors or the Township Engineer fails to comply with the time limitation provisions contained herein, all improvements will be deemed to have been approved and the Applicant shall be released from all liability, pursuant to this performance guaranty bond or other security agreement.

3). If any portions of the said improvements are not approved or are rejected by the Board of Supervisors, the Applicant shall proceed to complete the same, with the required corrections and, upon completion, the same procedure of notification, as outlined herein, shall be followed.

Upon the satisfactory completion of all required improvements, after consultation with the Municipal Manager (where applicable) and the Township Engineer, the Board of Supervisors may release to the Applicant any remaining financial security, including by not limited to, the withheld ten (10) percent minimum.

C. Nothing herein shall be construed as a limitation of the Applicant's right to contest or question by legal proceedings or otherwise, any determination of the Board of Supervisors or the Township Engineer.

5. Remedies to Effect Completion of Improvements

   In the event that any improvements, which may be required have not been installed as provided in Article 5 or in accordance with the approved final plan, the Board of Supervisors is hereby granted the power to enforce any financial security by appropriate legal and equitable remedies. If proceeds of the financial security are insufficient to pay the cost of installing or making repairs or corrections to all the improvements covered by said security, the Board of Supervisors may, at its option, install all or part of such improvements and may institute appropriate legal or equitable action to recover the funds necessary to complete the remainder of the improvements. All of the proceeds, whether resulting from the security or from any legal or equitable action brought against the applicant, or both, shall be used solely for the installation of the improvements covered by such security, and not for any other municipal purpose.

6. Other Effects of Financial Security

   If financial security has been provided in lieu of the completion of improvements required as a condition for the final approval of a plan as set forth in this Section, the Board of Supervisors shall not condition the issuance of building, grading or other permits relating to the erection or placement of improvements, including buildings, upon the lots or land as depicted upon the final plan upon actual completion of the improvements depicted upon the approved final plan. Moreover, if said financial security has been provided, occupancy permits for any building or buildings shall not be withheld following: (1) the application of the asphalt binder course the streets providing access to and from existing public roads to such building or buildings as well as (2) the completion of all other improvements as depicted upon the approved plan, either upon the lot or lots or beyond the lot or lots in question, if such improvements are necessary for the reasonable use of or occupancy of the building or buildings.

SECTION 603. INSPECTION OF IMPROVEMENTS DURING CONSTRUCTION

1. Prior to the initiation of construction, the developer shall notify the Township in order to coordinate an inspection schedule with the construction schedule. Additionally, the Township Engineer shall be notified four (4) working days in advance of any intended date of construction. The provisions stated herein shall be construed as mandating periodic inspections and the undertaking of periodic inspections shall not be construed as an acceptance of the work during construction or as a final inspection of the construction.

2. Reimbursement for Inspections

   The applicant shall reimburse the Township for the reasonable and necessary expense incurred for the inspection or improvements according to a schedule of fees adopted by resolution of the Board of Supervisors and as amended from time to time.

   A. In the event the Applicant disputes the amount of any such expense in connection with the inspection of improvements, the Applicant shall, within ten (10) working days of the date of billing, notify the Board of Supervisors that such expenses are disputed as unreasonable or unnecessary, in which case the Township shall not delay or disapprove a subdivision or land development application or any approval or permit related to development due to the Applicant's request over disputed Perry County Engineer expenses.

   B. If, within forty-five (45) days from the date of billing, the Perry County Planning Commission and the Applicant cannot agree on the amount of expenses which are reasonable and necessary, then the Applicant and the Perry County Planning Commission shall jointly, by mutual agreement, appoint another professional engineer licensed as such in Pennsylvania to review said expenses and make a determination as to the amount thereof which is reasonable and necessary.

   C. The professional engineer, so appointed, shall hear such evidence and review such documentation as the professional engineer in his sole opinion deems necessary and render a decision within fifty (50) days of the billing date. The applicant shall be required to pay the entire amount determined in the decision immediately.

   D. In the event that the Township and Applicant cannot agree upon the professional engineer to be appointed within twenty (20) days of the billing date, then, upon application of either party, the President Judge of the Court of Common Pleas of the judicial district in which the Township is located (or if at the time there be no President Judge, then the senior

active judge then sitting) shall appoint such engineer, who, in that case, shall be neither the Township Engineer nor any professional engineer who has been retained by, or performed services for the Township or the applicant within the preceding five (5) years.

E. The fee of the appointed professional engineer for determining the reasonable and necessary expenses shall be paid by the Applicant if the amount of payment required in the decision is equal to or greater than the original bill. If the amount of payment required in the decision is less than the original bill by one-thousand ($1,000) dollars or more, the Township shall pay the fee of the professional engineer, but otherwise the Township and the Applicant shall each pay one-half (1/2) of the fee of the appointed professional engineer.

SECTION 604. DEDICATION OF IMPROVEMENTS

All improvements shall be deemed to be private improvements and only for the specific project until such time as the same have been offered for dedication and formally accepted by the municipal governing body. No responsibility of any kind with respect to improvements of the final plan shall be transferred until the improvements have been formally accepted. No improvements shall be accepted for dedication except upon submission of as-built drawings by the developer and inspection of the final construction by either the municipal engineer in accordance with the provisions of this Ordinance.

SECTION 605. MAINTENANCE GUARANTEE

1. Where the Township accepts dedication of all or some of the required improvements following completion, the Board of Supervisors may require the posting of financial security to secure the structural integrity of said improvements, as well as the functioning of said improvements in accordance with the design and specifications as depicted on the final plan for a term not to exceed eighteen (18) months from the date of acceptance of dedication. Said financial security shall be of the same type as otherwise required in this Section with regard to installation of such improvements, and the amount of the financial security shall not exceed fifteen (15%) percent of the actual cost of installation of said improvements.

2. If water mains or sanitary sewer lines, or both, along with appurtenances or facilities related thereto, are to be installed under the jurisdiction and pursuant to the rules and regulations of a public utility or municipal authority separate and distinct from the Municipality, financial security to assure proper completion and maintenance thereof shall be posted in accordance with the regulations of the controlling public utility or municipal authority and shall not be included within the financial security as otherwise required by this Article.

SECTION 606. AS BUILT PLANS

Within ninety (90) of construction completion of all required improvements including facilities proposed for dedication to the municipality and prior to final inspection by the Miller Township Engineer of all improvements and site grading for which an improvement guarantee has been posted, the developer shall submit a plan labeled "As- Built Plan," which shall depict the actual location, dimensions and elevations of all existing improvements and site grading. In addition, the plan shall indicate that the existing grading, drainage structures and/or drainage systems and erosion and sediment control practices, including vegetative measures, are in substantial conformance with the previously approved drawings and required specifications. The plan shall note all deviations from the previously approved drawings. The applicant's engineer shall certify that the construction of the stormwater management facility was completed in accordance with the plans and specifications as originally submitted and approved by the Board of Supervisors. Four (4) copies of the "As-Built Plan" shall be submitted to the Township, which shall retain one copy and distribute copies to the Perry County Engineer (1) and two (2) copies to the Perry County Register and Recorders Office.