

PART 6 - ASSURANCE FOR COMPLETION AND MAINTENANCE OF IMPROVEMENTS

SECTION 600 IMPROVEMENTS REQUIRED

Equivalent MPC, 18th addition, Sections 509(a) and 509(1)

- A. No plan shall be finally approved unless the streets shown on such plan have been improved to a mud free or otherwise permanently passable condition, or improved as may be required by the Chapter 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 Chapter have been installed in accordance with such Chapter, except that the surface course of streets shall not be completed until such time as ninety (90) percent of the lots in the subdivision or land development have been improved by the construction of a dwelling if approved for residential development or by the construction of the proposed commercial or industrial structures if the lots are approved for such uses. In lieu of the completion of any improvements required as a condition for the final approval of a plan, including improvements or fees required to pursuant to Act 247 Section 509(i), the deposit with the Borough 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.
- B. 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."
- C. If water mains 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 authority separate and distinct from the Borough, financial security to assure proper completion and maintenance thereof shall be posted in accordance with the regulations of the controlling public utility or authority and shall not be included within the financial security as otherwise required by this section.

SECTION 601 PLAN IMPROVEMENTS

- A. Recorded Plan Approval.
Equivalent MPC, 18th addition, Sections 509(b)
 - 1. When requested by the developer, in order to facilitate financing, the Highspire Borough Council, 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 ninety (90) days unless a written extension is granted by the Highspire Borough

Council; such extension shall not be unreasonably withheld and shall be placed in writing at the request of the developer.

B. Review Fees.

Equivalent MPC, 18th addition, Sections 503(1)

1. Review fees may include reasonable and necessary charges by the Borough's professional consultants for review and report thereon to the Borough. Such review fees shall be based upon a schedule established by resolution. Such review fees shall be reasonable and in accordance with the ordinary and customary charges for similar service in the community, but in no event shall the fees exceed the rate or cost charged by the professional consultant for comparable services to the Borough for services which are not reimbursed or otherwise imposed on applicants. Fees charged to the Borough relating to any appeal of a decision on an application shall not be considered review fees and may not be charged to an applicant.

C. Protection of Final Phases.

Equivalent MPC, 18th addition, Section 509(i)

1. In the case where development is projected over a period of years, the Highspire Borough Council may authorize submission of final plans by section or stages of development subject to such requirements or guarantees as to improvements in future sections or stages of development as it finds essential for the protection of any finally approved section of the development.

SECTION 602 IMPROVEMENT CONSTRUCTION GUARANTEE

A. Form of Financial Security.

Equivalent MPC, 18th addition, Sections 509(c), 509(d), and 509(e)

1. Without limitation as to other types of financial security which the Borough 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.
2. 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.
3. 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 Guarantee.

1. Amount of Financial Security Required.

Equivalent MPC, 18th addition, Section 509(f)

- a. The amount of financial security to be posted for the completion of the required improvements shall be equal to one hundred ten (110) percent of the cost of

completion estimated as of ninety (90) days following the date scheduled for completion by the developer. Annually, the Borough 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 as of the expiration of the ninetieth (90th) day after either the original date scheduled for completion or a rescheduled date of completion. Subsequent to said adjustment, the Borough may require the developer to post additional security in order to assure that the financial security equals said one hundred ten (110) percent. Any additional security shall be posted by the developer in accordance with this subsection.

2. Estimate of the Cost of Completion.
Equivalent MPC, 18th addition, Section 509(g)
 - a. The amount of financial security required shall be based upon an estimate of the cost of completion of the required improvements, submitted by an applicant or developer and prepared by a qualified engineer licensed to practice in the Commonwealth of Pennsylvania and certified by such qualified and licensed engineer to be a fair and reasonable estimate of such cost. The Borough, upon the recommendation of the Borough Engineer, may refuse to accept such estimate for good cause shown. If the applicant or developer and the Borough are unable to agree upon an estimate, then the estimate shall be recalculated and recertified by another qualified engineer licensed to practice in the Commonwealth of Pennsylvania and chosen mutually by the Borough and the applicant or developer. 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 (3rd) third engineer is so chosen, fees for the services of said third (3rd) engineer shall be paid equally by the Borough and the applicant or developer.

3. Additional Time for Completion.
Equivalent MPC, 18th addition, Section 509(h)
 - a. 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 (1st) anniversary date from posting of financial security or to an amount not exceeding one hundred ten (110) percent of the cost of completing the required improvements as reestablished on or about the expiration of the preceding one (1) year period by using the above bidding procedure.

SECTION 603 INSPECTION OF IMPROVEMENTS

The developer shall pay the cost of any such inspection in accordance with the provisions of Article V of the Municipalities Planning Code. The developer shall contact the Borough Engineer to coordinate the construction observation schedule, notification procedures, and other related improvement guarantee administration topics and to determine the need for an on-site, pre-construction meeting. The developer shall provide at least twenty four (24) hours notice prior to the start of construction of any improvements

that are subject to inspection. All inspections of completed items shall be requested, in writing, at least forty-eight (48) hours in advance of the inspection time and date.

It is generally required that the following phases of site construction have mandatory inspection. This general list of phases may be amended by mutual agreement of the Borough and developer when the site requires special construction procedures. The inspection schedule must be recorded with the final plan or shown on the approved improvement construction plan.

A. General Site Construction

1. Upon completion of preliminary site preparation including stripping of vegetation, stockpiling of topsoil and construction of temporary erosion and sedimentation control devices.
2. Upon completion of rough grading, but prior to placing topsoil, permanent drainage, or other site development improvements and ground covers.
3. During the construction of permanent stormwater management and BMP facilities.
4. Upon the final completion of permanent stormwater management and BMP facilities, including the establishment of ground covers and plantings.
5. After review of the as-built drawings, required by Section 508, but prior to final release of the financial guarantee for completion of final grading, vegetative controls required by the BMP standards, or other site restoration work.

B. Street Construction

1. Preparation of Road Subgrade. At the time of this observation, the subgrade should be proof rolled and the proposed crown and grade should be checked. It is recommended that a developer's/contractor's representative accompany the observer when the crown and grade are checked. Proof rolling should be performed with a fully loaded, tandem-axle dump truck.
2. Placement and Compaction of Road Subbase. At the time of this observation, the depth of subbase should be checked after compaction, the subbase should be proof rolled in the same manner as the subgrade and the crown and grade should be checked again. This observation must occur prior to any binder or base course being placed.
3. Placement and Compaction of the Binder/Base Course. At the time of this observation, the depth of the binder/base course should be checked, ambient temperature should be monitored (this is important in early spring and late fall days when the temperature can go below acceptable limits), the temperature of the bituminous material should be checked (if possible), and it is recommended that copies of the weight slips for each truckload are obtained. The crown and grade should also be checked again. This observation must occur prior to the wearing course being placed.
4. Placement and Compaction of the Wearing Course. At the time of this observation, the guidelines for the placement and compaction of the binder/base course should be followed.

- C. In addition to the above outlined observations, additional observations will be made at the request of the developer for reduction of financial securities. Random observations should be made at the frequency desired by the Borough. At the time of any of the above listed observations, all ongoing construction (i.e. storm drainage, sanitary sewer, water, erosion

control, etc.) should also be checked for compliance with the approved plans and the findings reported. Since the above inspections are mandatory, it is recommended that requests for reduction of financial guarantee to be submitted to coincide with the above inspections.

D. Inspection of Improvements.

Equivalent MPC, 18th addition, Sections 5 10(a) and 510(g)(1)

1. When the developer has completed all of the necessary and appropriate improvements, the developer shall notify the Highspire Borough Council, in writing, by certified or registered mail, of the completion of the aforesaid improvements and shall send a copy thereof to the Borough Engineer. The Highspire Borough Council shall, within ten (10) days after receipt of such notice, direct and authorize the Borough Engineer to inspect all of the aforesaid improvements. The Borough Engineer shall, thereupon, file a report, in writing, with the Highspire Borough Council, 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 Borough Engineer of the aforesaid authorization from the Highspire Borough Council; 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 Borough Engineer, said report shall contain a statement of reasons for such non approval or rejection.
2. The Highspire Borough Council shall submit to the applicant an itemized bill showing the work performed in connection with the inspection of improvements performed, identifying the person performing the services and the time and date spent for each task. In the event the applicant disputes the amount of any such expense in connection with the inspection of improvements, the applicant shall, no later than thirty (30) days after the date of transmittal of a bill for inspection services, notify the Borough and the Borough Engineer that such inspection expenses are disputed as unreasonable or unnecessary and shall explain the basis of their objections to the fees charged, in which case the Borough shall not delay or disapprove a request for release of financial security, a subdivision or land development application or any approval or permit related to development due to the applicant's dispute of inspection expenses. Failure of the applicant to dispute a bill within thirty (30) days shall be a waiver of the applicant's right to arbitration of that bill under this section.

E. Acceptance of Improvements.

Equivalent MPC, 18th addition, Sections 510(b) and 510(c)

1. The Highspire Borough Council shall notify the developer, within fifteen (15) days of receipt of the Borough Engineer's report, in writing by certified or registered mail of the action of said Highspire Borough Council with relation thereto.
2. If the Highspire Borough Council or the Borough Engineer fails to comply with the time limitation provisions contained herein, all improvements will be deemed to have been approved and the developer shall be released from all liability, pursuant to its performance guaranty bond or other security agreement.

F. Borough Does Not Accept Improvements.

Equivalent MPC, 18th addition, Section 510(d)

1. If any portion of the said improvements shall not be approved or shall be rejected by the Highspire Borough Council, the developer shall proceed to complete the same and, upon completion, the same procedure of notification, as outlined herein, shall be followed.

G. Duplication of Inspections.

Equivalent MPC, 18th addition, Section 510(g)

1. The Borough may prescribe that the applicant shall reimburse the Borough for the reasonable and necessary expense incurred in connection with the inspection of improvements. The applicant shall not be required to reimburse the Highspire Borough Council for any inspection which is duplicative of inspections conducted by other governmental agencies or public utilities or authorities. The burden of proving that any inspection is duplicative shall be upon the objecting applicant. Such reimbursement shall be based upon a schedule established by resolution. Such expense shall be reasonable and in accordance with the ordinary and customary fees charged by the Borough Engineer for work performed for similar services in the community, but in no event shall the fees exceed the rate or cost charged by the Borough Engineer to the Borough for comparable services when fees are not reimbursed or otherwise imposed on applicants.

H. Inspection Expenses Disputed.

1. Disputed Engineer Expenses.

Equivalent MPC, 18th addition, Section 5 10(1)

In the event the applicant disputes the amount of any such expense in connection with the inspection of Improvements, the applicant shall, no later than thirty (30) days after the date of transmittal of a bill for inspection services, notify the Borough and the Borough Engineer that such inspection expenses are disputed as unreasonable or unnecessary and shall explain the basis of their objections to the fees charged, in which case the Borough shall not delay or disapprove a request for release of financial security, a subdivision or land development application or any approval or permit related to development due to the applicant's dispute of inspection expenses. Failure of the applicant to dispute a bill within thirty (30) days shall be a waiver of the applicant's right to arbitration of that bill under this section.

2. Appointment of Third (3rd) Party Professional Engineer by Mutual Agreement.

Equivalent MPC, 18th addition, Section 51 0(g)(2)

If, the Borough Engineer and the applicant cannot agree on the amount of expenses which are reasonable and necessary, then the applicant shall have the right, within forty-five (45) days of the transmittal of the final bill or supplement to the final bill to the applicant, to request the appointment of another engineer to serve as an arbitrator. The applicant and engineer whose fees are being challenged shall by mutual agreement, appoint another engineer to review any bills the applicant has disputed and which remain unresolved and make a determination as to the amount thereof which is reasonable and necessary. The arbitrator shall be of the same profession as the engineer whose fees are being challenged.

3. Determination of Third (3rd) Party Professional Engineer.

Equivalent MPC, 1 8' addition, Section 51 0(g)(3)

The arbitrator so appointed shall hear such evidence and review such documentation as the arbitrator in his or her sole opinion deems necessary and shall render a decision no

later than fifty (50) days after the date of appointment. Based on the decision of the arbitrator, the applicant or the engineer whose fees were challenged shall be required to pay any amounts necessary to implement the decision within sixty (60) days. In the event the Borough has paid the engineer an amount in excess of the amount determined to be reasonable and necessary, the engineer shall within sixty (60) days reimburse the excess payment.

4. Appointment of Third (3rd) Party Professional Engineer by Court.
Equivalent MPC, 18th addition, Section 51 0(g)(4)

In the event that the Borough's Engineer and Applicant cannot agree upon the arbitrator to be appointed within twenty (20) days of the request for appointment of an arbitrator, then, upon application of either party, the President Judge of the Court of Common Pleas of the judicial district in which the Borough is located (or if at the time there be no President Judge, then the senior active judge then sitting) shall appoint such arbitrator, who, in that case, shall be neither the Borough Engineer nor any engineer who has been retained by, or performed services for, the Borough or the applicant within the preceding five (5) years.

5. Payment of Fee for Third (3rd) Party Professional Engineer.
Equivalent MPC, 18th addition, Section 510(g)(5)

The fee of the arbitrator shall be paid by the applicant if the review fee charged is sustained by the arbitrator, otherwise it shall be divided equally between the parties. If the disputed fees are found to be excessive by more than five thousand dollars (\$5,000), the arbitrator shall have the discretion to assess the arbitration fee in whole or in part against either the applicant or the engineer. The Highspire Borough Council and the Borough Engineer whose fees are the subject of the dispute shall be parties to the proceeding.

SECTION 604 RELEASE OF FUNDS

- A. Partial Release of Funds.
Equivalent MPC, 18th addition, Section 509(j)

1. As the work of installing the required improvements proceeds, the party posting the financial security may request the Highspire Borough Council to release or authorize the release, from time to time, 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 Highspire Borough Council, and the Highspire Borough Council shall have forty-five (45) days from receipt of such request within which to allow the Borough Engineer to certify, in writing, to the Highspire Borough Council that such portion of the work upon the Improvements has been completed in accordance with the approved plan. Upon such certification the Highspire Borough Council shall authorize release by the bonding company or lending institution of an amount as estimated by the Borough Engineer fairly representing the value of the Improvements completed or, if the Highspire Borough Council fails to act within said forty five (45) day period, the Highspire Borough Council shall be deemed to have approved the release of funds as requested. The Highspire Borough Council may, prior to final release at the time of completion and certification by the Borough Engineer, require retention of ten (10) percent of the estimated cost of the aforesaid improvements.

- B. Final Release.
Equivalent MPC, 18th addition, Section 510(g)(1.1)
1. Subsequent to the final release of financial security for completion of improvements for a subdivision or land development, or any phase thereof, the professional consultant shall submit to the Highspire Borough Council a bill for inspection services, specifically designated as a final bill. The final bill shall include inspection fees incurred through the release of financial security.
- C. Remedies to Effect Completion of Improvements.
Equivalent MPC, 18th addition, Section 511)
1. In the event that any Improvements which may be required have not been installed as provided in the Chapter or in accord with the approved final plan the Highspire Borough Council is hereby granted the power to enforce any corporate bond, or other security by appropriate legal and equitable remedies. If proceeds of such bond, or other security are insufficient to pay the cost of installing or making repairs or corrections to all the improvements covered by said security, the Highspire Borough Council may, at its option, in stall part of such improvements in all or part of the subdivision or land development and may institute appropriate legal or equitable action to recover the moneys 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 developer, or both, shall be used solely for the installation of the improvements covered by such security, and not for any other Borough purpose.

SECTION 605 DEDICATION OF IMPROVEMENTS

Equivalent MPC, 18th addition, Section 509(m)

- A. 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 Borough 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 to be erected shall not be withheld following: the improvement of the streets providing access to and from existing public roads to such building or buildings to a mud-free or otherwise permanently passable condition, as well as 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. Any ordinance or statute inconsistent herewith is hereby expressly repealed.

SECTION 606 MAINTENANCE GUARANTEE

Equivalent MPC, 18th addition, Section 509(k)

- A. Where the Highspire Borough Council accepts dedication of all or some of the required improvements following completion, the Highspire Borough Council may require the posting of financial security to secure 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) of the actual cost of installation of said improvements.

SECTION 607 MAINTENANCE OF STREETS

- A. The developer shall maintain all streets in the subdivision or development in travelable condition, including the prompt removal of snow therefrom, until such time as the streets are accepted by the Borough as part of the Borough highway system; or, if such streets are not to be dedicated, until a homeowners' association or other entity responsible for the maintenance of the streets has been formed.

SECTION 608 AS-BUILT PLAN

Prior to the final release of the financial security, the developer shall provide the Borough with one (1) Mylar and two (2) prints of the final as-built plan showing the following:

- A. Actual location of all concrete monuments which were set at all angle breaks, points of curvature and tangents around the perimeter of the total tract. When the outside perimeter of a tract falls within or along an existing road right-of-way, then the right-of-way of that roadway shall be monumented at the above referenced points.
- B. Actual location of all iron pins or drill holes in curbs for all individual lot lines.
- C. Actual cul-de-sac radius (if permitted to be constructed).
- D. Actual horizontal and vertical location of cartway centerline versus right-of-way centerline.
- E. Actual location of floodplain by elevation and dimension from property line.
- F. Actual location and cross section of swales and accompanying easements.
- G. Actual horizontal and vertical location of stormwater management facilities including type and size of storm drainage pipes.
- H. Detention basin:
1. Actual contours of the detention basin.
 2. Actual outlet structure details including type, size and inverts of outlet pipes.
 3. Actual elevation of the embankment and emergency spillway.
 4. A table showing the stage/storage/discharge curve for the constructed conditions.
 5. A table providing a comparison of the approved design vs. the as-built discharge rates from all detention facilities.