

## ARTICLE IX FEES, GUARANTEES, INSPECTIONS & OFF-TRACT IMPROVEMENTS

### SECTION 901. APPLICATION & ESCROW FEES.

A. Fee & Escrow Schedule. Every application shall be accompanied by a check or checks payable to the Township of Cherry Hill in accordance with the following schedule:

APPLICATION TYPE	FILING FEE	REVIEW ESCROW
<b>VARIANCES</b>		
"A" Variance (Appeal)		
Residential	\$50.00	\$1,000.00
Non-Residential	\$100.00	\$1,500.00
"B" Variance (Interpretation): Certificate of Non-Conformity, Bldg Permit in Mapped Street		
Residential	\$50.00	\$1,500.00
Non-Residential	\$100.00	\$2,000.00
"C" Variance (Bulk)		
Residential	\$200.00	\$1,500.00 (initial) \$200.00 (each additional)
Non-Residential	\$500.00	\$2,000.00 (initial) \$250.00 (each additional)
"D" Variance (Use)		
Residential	\$300.00	\$1,500.00 (initial) \$200.00 (each additional)
Non-Residential	\$500.00	\$2,000.00 (initial) \$250.00 (each additional)
<b>SUBDIVISION PLANS</b>		
Minor Subdivision Plan	\$300.00 + (\$50.00/lot)	\$1,500.00/lot
Preliminary Major Subdivision Plan		
Up to 30 lots	\$500.00 (+ \$50.00/lot)	\$2,000 + (\$500.00/lot)
31 lots or more	\$500.00 (+ \$50.00/lot)	\$10,000 + (\$100.00/lot)
Final Major Subdivision Plan		
Up to 30 lots	\$500.00 (+ \$50.00/lot)	\$1,000 + (\$300.00/lot)
31 lots or more	\$500.00 (+ \$50.00/lot)	\$5,000 + (\$50.00/lot)
Preliminary & Final Major Subdivision Plan		
Up to 30 lots	\$800.00 (+ \$50.00/lot)	\$3,000 + (\$800.00/lot)
31 lots or more	\$800.00 (+ \$50.00/lot)	\$15,000 + (150.00/lot)
Amended Subdivision Plan	\$300.00	50% of preliminary escrow
<b>SITE PLANS</b>		
Site Plan Waiver	\$100.00	\$1,500.00
Minor Site Plan	\$500.00	\$5,000.00
Preliminary Site Plan		
Residential	\$500.00	\$4,000 + (\$50.00/unit)
Non-Residential	\$500.00	\$5,000 + (\$100.00/acre)
Final Site Plan		
Residential	\$500.00	\$4,000 + (\$50.00/unit)
Non-Residential	\$500.00	\$5,000 + (\$100.00/acre)
Preliminary & Final Site Plan		
Residential	\$1,000.00	\$4,000 + (\$100/unit)
Non-Residential	\$1,000.00	\$5,000 + (\$200.00/acre)

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Amended Site Plan	\$300.00	50% of preliminary escrow
General Development Plan	\$1,000.00	\$10,000.00

### MISCELLANEOUS

Concept Plan Workshop	\$100.00	\$1,500.00
Administrative Review	\$100.00	\$1,500.00
Conditional Use	\$200.00	\$300.00
Field Modification	-	\$100.00
Grading Plan Checklist Review		
Associated with a Board Application	\$100.00	\$1,000.00
All others with 2,000 sf or less of disturbance	\$750.00	-
All others with 2,000 sf or more of disturbance	\$1,000.00	-
Inspection Escrow	-	5% of cost estimate
Maintenance Inspection Escrow	-	\$500.00
Property Owners List	\$0.25/name or \$10.00, whichever is greater.	
Publication of Decision	\$60.00	-
Redevelopment Plan as requested by private party (subject to escrow agreement for all costs related to preparation & adoption of a Redevelopment Plan)	\$1,500.00	\$10,000.00
Request for a Relief of Condition of Approval	\$50.00	\$200.00
Request for an Extension of Approval	\$100.00	\$500.00
Rezoning Request	\$500.00	\$2,500.00
Street Vacation	\$500.00	\$2,500.00
Submission and/or Design Waiver	-	\$100.00
Zoning Verification Letter (Basic)	\$50.00	
Zoning Verification Letter (Complex)	\$100.00	
(Requests requiring research, full recitation of Zoning history, or as otherwise determined by the Zoning Officer).		

### ADMINISTRATIVE AGENT SERVICES

Affirmative Marketing	-	\$50.00 per hour
Initial Application Processing	-	\$50.00 per hour
Application Lottery	\$100.00	
Lottery Outreach	-	\$50.00 per hour
Income Certification	-	\$50.00 per case
Application Review (Escrow)	\$100.00 filing fee	\$1,000.00 per application

*\*Any and all municipal employee and/or consultant rates billed to the Township will be carried through to the developer and/or landlord*

*\*\*All direct expenses incurred by the Township, including but not limited to printing, overnight mailings, or photocopying, will be carried through to the developer and/or landlord, and shall be established at the rates designated by the Open Public Records Act*

*\*\*\*All Administrative Agent Services are subject to consent of the Township and require a contractual agreement between any relevant party*

### PERMITS

Sign Permit Application	\$50.00	-
Sign Permit	\$2.00/square foot or \$50.00, whichever is greater.	

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Sign Permit Renewal	\$20.00	-
Zoning Permit		
Residential	\$50.00	-
Non-Residential	\$100.00	-
Temporary Use Permit	\$50.00 per day of use	

- B. Purpose of Fees. The application charge is a flat fee to cover direct administrative expenses and is non-refundable. The escrow account is established to cover the costs of professional services including engineering, legal, planning and other expenses connected with the review of the submitted materials. In accordance with *N.J.S.A. 40:55D-53* and *N.J.S.A. 40:55D-53.1*, sums not utilized in the review process shall be returned to the applicant upon written request. If additional sums are deemed necessary, the applicant shall be notified in writing of the required additional amount and shall add such sum to the escrow. Payment shall be due from the applicant within fifteen (15) days of receipt of notice. If payment is not received within fifteen (15) days, the applicant shall be considered to be in default, and such default may be grounds for deeming the application incomplete.
- C. More Than One Request. Where one application for development includes several approval requests, the sum of the individual required fees for each approval request shall be paid.
- D. Costs of Review & Inspection. Each applicant submitting an application for review by the Planning or Zoning Board shall agree in writing to pay all reasonable costs for professional review of the application, including costs incurred with any informal review of a concept plan which may have preceded the submission of a preliminary application. Additionally, each applicant shall agree in writing to pay all reasonable costs for the municipal inspection of the constructed improvements. All such costs for review and inspection shall be paid upon request and prior to the issuance of any construction permits. All remaining costs must be paid in full upon request and before any certificate of occupancy is issued or bonds are released.
- E. Court Reporter. If an applicant desires a court reporter, the cost of said reporter for taking testimony and transcribing it and providing a copy of the transcript to the municipality shall be at the expense of the applicant who shall arrange for the reporter's attendance. The municipality provides for the recording of the proceedings held before the Board.
- F. Waiver of Fees for Affordable Housing. Notwithstanding any other provision of this ordinance, a waiver of all municipal subdivision and site plan escrow fees and building permit and certificate of occupancy fees shall be granted by the applicable Board for all housing units being provided by the applicant for low and moderate income families, in accordance with the Housing Element of the Master Plan.

### **SECTION 902. AFFORDABLE HOUSING FEES & PROCEDURES.**

- A. Purpose.
1. In *Holmdel Builder's Association V. Holmdel Township*, 121 NJ. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the *Fair Housing Act of 1985* (the Act), *N.J.S.A. 52:27d-301 et seq.*, and the State Constitution, subject to the Council on Affordable Housing's (COAH's) adoption of rules.
  2. Pursuant to *P.L.2008, c.46 section 8 (C.52:27D-329.2)* and the *Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7)*, COAH is authorized to adopt and promulgate regulations necessary for the establishment, implementation, review, monitoring and enforcement of municipal affordable housing trust funds and corresponding spending plans. Municipalities that are under the jurisdiction of the COAH or court of competent jurisdiction and have a Court-approved spending plan may retain fees collected from non-residential development.

3. This ordinance establishes standards for the collection, maintenance, and expenditure of development fees pursuant to COAH's regulations and in accordance *PL.2008, c.46, Sections 8 and 32-38*. Fees collected pursuant to this ordinance shall be used for the sole purpose of providing low- and moderate- income housing consistent with COAH rules and regulations, statutes and ordinances. This ordinance shall be interpreted within the framework of COAH's rules on development fees, codified at *N.J.A.C. 5:97-8*.

**B. Basic Requirements.**

1. This ordinance shall not be effective until approved by a Court pursuant to *N.J.A.C 5:96-5.1*.
2. Unless otherwise ordered by the Court, Cherry Hill Township shall not spend development fees until a Court has approved a plan for spending such fees in conformance with *N.J.A.C. 5:97-8.10* and *N.J.A.C. 5:96-5.3*.

- C. Definitions.** Unless specifically defined in §202, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

**D. Residential Development Fees.**

**1. Imposed Fees.**

- a. Within the residential zones of RA, RAPC, R1, R2, R3, R7, R10 and R20, residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of one and one-half (1.5%) percent of the equalized assessed value for residential development provided no increased density is permitted.
- b. When an increase in residential density pursuant to *N.J.S.A. 40:55D-70d(5)* (known as a 'd' variance) has been permitted, developers may be required to pay a development fee of one and one-half (1.5%) percent of the equalized assessed value for each additional unit that may be realized. However, if the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application.

Example: If an approval allows four units to be constructed on a site that was zoned for two units, the fees could equal one and a half percent of the equalized assessed value on the first two units; and the specified higher percentage up to six percent of the equalized assessed value for the two additional units, provided zoning on the site has not changed during the two- year period preceding the filing of such a variance application.

**2. Exactions.** Eligible exactions, ineligible exactions and exemptions for residential development:

- a. Affordable housing developments and developments where the developer has made a payment in lieu of on-site construction of affordable units shall be exempt from development fees.
- b. Developments that have received preliminary or final site plan approval prior to the adoption of a municipal development fee ordinance shall be exempt from development fees, unless the developer seeks a substantial change in the approval. Where a site plan approval does not apply, a zoning and/or building permit shall be synonymous with preliminary or final site plan approval for this purpose. The fee percentage shall be vested on the date that the building permit is issued.
- c. Developers of residential structures demolished and replaced as a result of a natural disaster, shall be exempt from paying a development fee.

**E. Non-Residential Development Fees.**

**1. Imposed Fees.**

- a. Within all zones, non-residential developers, except for developers of the types of development specifically exempted, shall pay a fee equal to two and one-half (2.5%) percent of the equalized assessed value of the land and improvements, for all new non-residential construction on an unimproved lot or lots.
  - b. Non-residential developers, except for developers of the types of development specifically exempted, shall also pay a fee equal to two and one-half (2.5%) percent of the increase in equalized assessed value resulting from any additions to existing structures to be used for non-residential purposes.
  - c. Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of two and a half (2.5%) percent shall be calculated on the difference between the equalized assessed value of the pre-existing land and improvement and the equalized assessed value of the newly improved structure (i.e. land and improvement) at the time final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the non-residential development fee shall be zero.
2. Exactions. Eligible exactions, ineligible exactions and exemptions for non-residential development:
- a. The non-residential portion of a mixed-use inclusionary or market rate development shall be subject to the two and a half (2.5%) percent development fee, unless otherwise exempted below.
  - b. The two and a half (2.5%) percent fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint, reconstruction, renovations and repairs.
  - c. Non-residential developments shall be exempt from the payment of nonresidential development fees in accordance with the exemptions required pursuant to *P.L.2008, c.46*, as specified in the Form N-RDF "*State of New Jersey Non-Residential Development Certification/Exemption*" or applicable form(s). Any exemption claimed by a developer shall be substantiated by that developer.
  - d. A developer of a non-residential development exempted from the nonresidential development fee pursuant to *P.L.2008, c.46* shall be subject to it at such time the basis for the exemption no longer applies, and shall make the payment of the non-residential development fee, in that event, within three (3) years after that event or after the issuance of the final certificate of occupancy of the non-residential development, whichever is later.
  - e. If a property which was exempted from the collection of a non-residential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this section within forty-five (45) days of the termination of the property tax exemption. Unpaid nonresidential development fees under these circumstances may be enforceable by Cherry Hill Township as a lien against the real property of the owner.
- F. Collection Procedures.
1. Upon the granting of a preliminary, final or other applicable approval for a development, the Planning or Zoning Board shall notify the construction official responsible for the issuance of a building permit.
  2. For non-residential developments only, the developer shall also be provided with a copy of Form N-RDF "*State of New Jersey Non-Residential Development Certification/Exemption*" to be completed as per the instructions provided. The Developer of a non-residential development shall complete Form N-RDF as per the instructions provided. The construction official shall verify the information submitted by the non-residential developer, as per the instructions provided in the Form N-RDF. The Tax Assessor shall verify exemptions and prepare estimated and final assessments as per the

instructions provided in Form N-RDF.

3. The Construction Official responsible for the issuance of a building permit shall notify the Department of Community Development and the Township Tax Assessor of the first building permit being issued for any development in order that a determination can be made as to whether it is eligible and that is subject to a development fee.
4. Within ninety (90) days of receipt of that notice, the Township Tax Assessor, based on the plans filed, shall provide an estimate of the equalized assessed value of the development.
5. The Construction Official responsible for the issuance of a final certificate of occupancy (C.O.) will notify the Township Tax Assessor and the Department of Community Development of any and all requests for the scheduling of a final inspection on property that is subject to a development fee.
6. Within ten (10) business days of a request for the scheduling of a final inspection, the Township Tax Assessor shall confirm or modify the previously estimated equalized assessed value of the improvements of the development; calculate the development fee; and thereafter notify the developer of the amount of the fee in writing.
7. Should the Township fail to determine or notify the developer of the amount of the development fee within ten (10) business days of the request for final inspection, the developer is still obligated to pay the fee. The developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in subsection b. of section 37 of P.L.2008, c.46 (C.40:55D-8.6).
8. The payment of the development fees shall be collected prior to the issuance of a certificate of occupancy for such development, consistent with sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7).
9. Appeal of Development Fees.
  - a. Residential. A developer may challenge residential development fees imposed by filing a challenge with the Camden County Board of Taxation. Pending a review and determination by such Board, collected fees shall be placed in an interest bearing escrow account by Cherry Hill Township. Appeals from a determination of this Board may be made to the tax court, in accordance with the provisions of the *State Tax Uniform Procedure Law, R.S.54:48-i et seq.*, within ninety (90) days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.
  - b. Non-Residential. A developer may challenge non-residential development fees imposed by filing a challenge with the Director of the Division of Taxation. Pending a review and determination by the Director, which shall be made within forty-five (45) days of receipt of the challenge, collected fees shall be placed in an interest bearing escrow account by Cherry Hill Township. Appeals from a determination of the Director may be made to the tax court in accordance with the provisions of the *State Tax Uniform Procedure Law, R.S.54:48-l et seq.*, within ninety (90) days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

**G. Affordable Housing Trust Fund.**

1. There is hereby created a separate, interest-bearing Affordable Housing Trust Fund to be maintained by the Township chief financial officer (CFO) for the purpose of depositing development fees collected from residential and non-residential developers and proceeds from the sale of units with extinguished controls.
2. The following additional funds shall be deposited in the Affordable Housing Trust Fund and shall at

all times be identifiable by source and amount:

- a. payments in lieu of on-site construction of affordable units;
  - b. developer contributed funds to make ten (10%) percent of the adaptable entrances in a townhouse or other multistory attached development accessible;
  - c. net rental income from municipally operated affordable housing units;
  - d. repayments from affordable housing program loans;
  - e. recapture funds;
  - f. proceeds from the sale of affordable units; and
  - g. any other funds collected in connection with Cherry Hill Township's affordable housing program.
3. Within seven (7) days from the opening of the Affordable Housing Trust Fund, Cherry Hill Township shall provide COAH with written authorization, in the form of a third-party escrow agreement between the municipality, and COAH to permit COAH to direct the disbursement of the funds as provided for in *N.J.A.C. 5:97-8.13(b)*.
  4. All interest accrued in the Affordable Housing Trust Fund shall only be used on eligible affordable housing activities approved by COAH or the court having jurisdiction.

#### H. Use of Funds.

1. The expenditure of all funds shall conform to a Spending Plan approved by the Court. Funds deposited in the Affordable Housing Trust Fund may be used for any activity approved by the Court to address the Cherry Hill Township's fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited to: preservation or purchase of housing for the purpose of maintaining or implementing affordability controls, rehabilitation, new construction of affordable housing units and related costs, accessory apartment, market to affordable, or regional housing partnership programs, conversion of existing non-residential buildings to create new affordable units, green building strategies designed to be cost saving and in accordance with accepted national or state standards, purchase of land for affordable housing, improvement of land to be used for affordable housing, extensions or improvements of roads and infrastructure to affordable housing sites, financial assistance designed to increase affordability, administration necessary for implementation of the Housing Element and Fair Share Plan, or any other activity as permitted pursuant to *N.J.A.C. 5:97-8.7* through *8.9* and specified in the approved spending plan.
2. Funds shall not be expended to reimburse Cherry Hill Township for past housing activities.
3. At least thirty (30%) percent of all development fees collected and interest earned shall be used to provide affordability assistance to low- and moderate-income households in affordable units included in the Township Fair Share Plan. One-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning thirty (30%) percent or less of median income by region.
  - a. Affordability assistance programs may include down payment assistance, security deposit assistance, low interest loans, rental assistance, assistance with homeowners association or condominium fees and special assessments, and assistance with emergency repairs.
  - b. Affordability assistance to households earning thirty (30%) percent or less of median income may include buying down the cost of low or moderate income units in the municipal Fair Share Plan to make them affordable to households earning thirty (30%) percent or less of median income. The use of development fees in this manner shall entitle Cherry Hill Township to bonus credits pursuant to *N.J.A.C. 5:97-3.7*.
  - c. Payments in lieu of constructing affordable units on site and funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement.

4. Cherry Hill Township may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including the requirement for affordability assistance, in accordance with *N.J.A.C. 5:96-18*.
  5. No more than twenty (20%) percent of all revenues collected from development fees, may be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultant fees necessary to develop or implement a new construction program, a Housing Element and Fair Share Plan, and/or an affirmative marketing program. In the case of a rehabilitation program, no more than twenty (20%) percent of the revenues collected from development fees shall be expended for such administrative expenses. Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with COAH's monitoring requirements. Legal or other fees related to litigation opposing affordable housing sites or objecting to the Council's regulations and/or action are not eligible uses of the affordable housing trust fund.
- I. Monitoring. Cherry Hill Township shall complete and return to COAH all monitoring forms included in monitoring requirements related to the collection of development fees from residential and non-residential developers, payments in lieu of constructing affordable units on site, funds from the sale of units with extinguished controls, barrier free escrow funds, rental income, repayments from affordable housing program loans, and any other funds collected in connection with Cherry Hill Township's housing program, as well as to the expenditure of revenues and implementation of the plan approved by the court. All monitoring reports shall be completed on forms designed by COAH.
  - J. Ongoing Collection of Fees. The ability for Cherry Hill Township to impose, collect and expend development fees shall expire with its judgment of compliance unless Cherry Hill Township has filed an adopted Housing Element and Fair Share Plan with the Court, has petitioned for substantive certification, and has received Court's approval of its development fee ordinance. If Cherry Hill Township fails to renew its ability to impose and collect development fees prior to the expiration of judgment of compliance, it may be subject to forfeiture of any or all funds remaining within its municipal trust fund. Any funds so forfeited shall be deposited into the "New Jersey Affordable Housing Trust Fund" established pursuant to section 20 of P1.1985, c.222 (C.52:27D-320). Cherry Hill Township shall not impose a residential development fee on a development that receives preliminary or final site plan approval after the expiration of its substantive certification or judgment of compliance, nor shall Cherry Hill Township retroactively impose a development fee on such a development. Cherry Hill Township shall not expend development fees after the expiration of its substantive certification or judgment of compliance.

### **SECTION 903. GUARANTEES & INSPECTIONS.**

Before recording final subdivision plans, as a condition of final site plan approval, or as a condition of issuing a zoning permit pursuant to *N.J.S.A. 40:55D-65d*, the Administrative Official, for the purpose of assuring the installation and maintenance of on- and off-tract (pursuant to *N.J.S.A. 40:55D-42*) improvements, shall require and accept in accordance with the standards adopted by this Ordinance, the following:

- A. Performance Guarantee. The furnishing of a performance guarantee in favor of the Township of Cherry Hill in an amount not to exceed one hundred and twenty (120%) percent of the cost of installation, of only those improvements required by an approval or developer's agreement, ordinance, or regulation to be dedicated to a public entity, and that have not yet been installed, which cost shall be determined by the Township Engineer or applicable Board Engineer according to the method of calculation set forth in §904.B for the following improvements as shown on the approved plans or plat: streets, pavement, gutters, curbs, sidewalks, street lighting, street trees, surveyor's monuments, as shown on the final map

and required by Map Filing Law (N.J.S.A. 46:23-9.9 *et seq.* repealed by section 2 of P.L. 2011, c.217) or N.J.S.A. 46:26B-1 through N.J.S.A. 46:26B-8, water mains, sanitary sewer, community septic systems, drainage structures, public improvements of open space and any grading necessitated by the preceding improvements.

1. The Township Engineer or applicable Board Engineer shall prepare an itemized cost estimate of the improvements covered by the performance guarantee, which itemized cost estimate shall be appended to each performance guarantee posted by the obligor.
2. Privately-Owned Perimeter Buffer Landscaping. The Performance Guarantee reference in §903.A shall also be required within an approved phase or section of a development that includes privately-owned perimeter buffer landscaping. At the developer's option, a separate performance guarantee may be posted for the privately-owned perimeter buffer landscaping.
3. Temporary Certificate of Occupancy Guarantee. In the event that the developer shall seek a temporary certificate of occupancy for a development, unit, lot, building, or phase of development, as a condition of the issuance thereof, the developer shall furnish a separate guarantee, referred to herein as a "temporary certificate of occupancy guarantee," in favor of the Township in an amount equal to 120% of the cost of installation of only those improvements or items which remain to be completed or installed under the terms of the temporary certificate of occupancy and which are required to be installed or completed as a condition precedent to the issuance of the permanent certificate of occupancy for the development, unit, lot, building or phase of development and which are not covered by an existing performance guarantee. Upon posting of a "temporary certificate of occupancy guarantee," all sums remaining under a performance guarantee, required pursuant to §903.A, which relate to the development, unit, lot, building, or phase of development for which the temporary certificate of occupancy is sought, shall be released. The scope and amount of the "temporary certificate of occupancy guarantee" shall be determined by the Township Engineer or applicable Board Engineer. At no time may a municipality hold more than one guarantee or bond of any type with respect to the same line item. The "temporary certificate of occupancy guarantee" shall be released by the Director of Engineering or Administrative Officer upon the issuance of a permanent certificate of occupancy with regard to the development, unit, lot, building, or phase as to which the temporary certificate of occupancy relates.
4. Safety and Stabilization Guarantee. A developer shall furnish to the Township a "safety and stabilization guarantee," in favor of the municipality. At the developer's option, a "safety and stabilization guarantee" may be furnished either as a separate guarantee or as a line item of the performance guarantee. A "safety and stabilization guarantee" shall be available to the municipality solely for the purpose of returning property that has been disturbed to a safe and stable condition or otherwise implementing measures to protect the public from access to an unsafe or unstable condition, only in the circumstance that:
  - a. Site disturbance has commenced and, thereafter, all work on the development has ceased for a period of at least 60 consecutive days following such commencement for reasons other than force majeure; and
  - b. Work has not recommenced within 30 days following the provision of written notice by the municipality to the developer of the municipality's intent to claim payment under the guarantee. A municipality shall not provide notice of its intent to claim payment under a "safety and stabilization guarantee" until a period of at least 60 days has elapsed during which all work on the development has ceased for reasons other than force majeure. A municipality shall provide written notice to a developer by certified mail or other form of delivery providing evidence of receipt.

5. The amount of a “safety and stabilization guarantee” for a development with bonded improvements in an amount not exceeding \$100,000.00 shall be \$5,000.00. The amount of a “safety and stabilization guarantee” for a development with bonded improvements exceeding \$100,000 shall be calculated as a percentage of the bonded improvement costs of the development or phase of development as follows:
    - a. \$5,000.00 for the first \$100,000.00 of bonded improvement costs, plus two and a half percent of bonded improvement costs in excess of \$100,000.00 up to \$1,000,000.00 or plus one percent of bonded improvement costs in excess of \$1,000,000.
  6. The Township shall release a separate “safety and stabilization guarantee” to a developer upon the developer’s furnishing of a performance guarantee which includes a line item for safety and stabilization in the amount required herein.
  7. The Township shall release a “safety and stabilization guarantee” upon the Township Engineer’s or applicable Board Engineer’s determination that the development of the project site has reached a point that the improvements installed are adequate to avoid any potential threat to public safety.
- B. Maintenance Guarantee. The developer shall post with the Township, prior to the release of a performance guarantee required herein, a maintenance guarantee in an amount not to exceed 15% of the cost of the installation of the improvements which are being released.
1. Upon the inspection and issuance of final approval of the following private site improvements by the Township Engineer or applicable Board Engineer, a maintenance guarantee in an amount not to exceed 15% of the cost of the installation of the following private site improvements: stormwater management basins, in-flow and water quality structures within the basins, and the out-flow pipes and structures of the stormwater management system, if any, which cost shall be determined according to the method of calculation set N.J.S.A 40:55D-53.4.
  2. The term of the maintenance guarantee shall be for a period not to exceed two years and shall automatically expire at the end of the established term.
- C. In the event that other government agencies or public utilities automatically will own the utilities to be installed or the improvements are covered by a performance or maintenance guarantee to another government agency, no performance or maintenance guarantee, as the case may be, shall be required by the municipality for such utilities or improvements.
- D. The time allowed for installation of the bonded improvements for which the performance guarantee has been provided may be extended by the Township Council by resolution. As a condition or as part of any such extension, the amount of any performance guarantee shall be increased or reduced, as the case may be, to an amount not to exceed 120% of the cost of the installation, which cost shall be determined by the Township Engineer or applicable Board Engineer according to the method of calculation set forth in §904.B as of the time of the passage of the resolution.
- E. If the required bonded improvements are not completed or corrected in accordance with the performance guarantee, the obligor and surety, if any, shall be liable thereon to the Township for the reasonable cost of the improvements not completed or corrected, and the Township may either prior to or after the receipt of the proceeds thereof complete such improvements. Such completion or correction of improvements shall be subject to the public bidding requirements of the Local Public Contracts Law, P.L. 1971, c. 198 (N.J.S.A. 40A:11-1 et seq.).
- F. Upon substantial completion of all required street improvements (except for the top course) and appurtenant utility improvements, and the connection of same to the public system, the obligor may request of the governing body, in writing, by certified mail addressed in care of the Township Clerk,

that the Township Engineer or applicable Board Engineer prepare, in accordance with the itemized cost estimate prepared by the Township Engineer or applicable Board Engineer and appended to the performance guarantee, a list of all uncompleted or unsatisfactory completed bonded improvements. If such a request is made, the obligor shall send a copy of the request to the Township Engineer. The request shall indicate which bonded improvements have been completed and which bonded improvements remain uncompleted in the judgment of the obligor. Thereupon the Township Engineer or applicable Board Engineer shall inspect all bonded improvements covered by the obligor's request and shall file a detailed list and report, in writing, with the Township Council, and shall simultaneously send a copy thereof to the obligor not later than 45 days after receipt of the obligor's request.

- G. The list prepared by the Township Engineer or applicable Board Engineer shall state, in detail with respect to each bonded improvement determined to be incomplete or unsatisfactory, the nature and extent of the incompleteness of each incomplete improvement or the nature and extent of, and remedy for, the unsatisfactory state of each completed bonded improvement determined to be unsatisfactory. The report prepared by the Township Engineer or applicable Board Engineer shall identify each bonded improvement determined to be complete and satisfactory together with a recommendation as to the amount of reduction to be made in the performance guarantee relating to the completed and satisfactory bonded improvement, in accordance with the itemized cost estimate prepared by the Township Engineer or applicable Board Engineer and appended to the performance guarantee.
- H. The Township Council, by resolution, shall either approve the bonded improvements determined to be complete and satisfactory by the Township Engineer or applicable Board Engineer, or reject any or all of these bonded improvements upon the establishment in the resolution of cause for rejection, and shall approve and authorize the amount of reduction to be made in the performance guarantee relating to the improvements accepted, in accordance with the itemized cost estimate prepared by the Township Engineer and appended to the performance guarantee. This resolution shall be adopted not later than 45 days after receipt of the list and report prepared by the Township Engineer or applicable Board Engineer. Upon adoption of the resolution by the Township Council, the obligor shall be released from all liability pursuant to its performance guarantee, with respect to those approved bonded improvements, except for that portion adequately sufficient to secure completion or correction of the improvements not yet approved; provided that 30% of the amount of the performance guarantee and Safety and Stabilization Guarantee posted may be retained to ensure completion and acceptability of all improvements. The Safety and Stabilization Guarantee shall be reduced by the same percentage as the performance guarantee is being reeducated at the time of each performance guarantee.
- I. For the purpose of releasing the obligor from liability pursuant to its performance guarantee, the amount of the performance guarantee attributable to each approved bonded improvement shall be reduced by the total amount for each such improvement, in accordance with the itemized cost estimate prepared by the Township Engineer and appended to the performance guarantee, including any contingency factor applied to the cost of installation. If the sum of the approved bonded improvements would exceed 70% of the total amount of the performance guarantee, then the municipality may retain 30% of the amount of the total performance guarantee and Safety and Stabilization Guarantee to ensure completion and acceptability of all bonded improvements, provided herein, except that any amount of the performance guarantee attributable to bonded improvement for which a Temporary Certificate of Occupancy Guarantee has been posted shall be released from the performance guarantee even if such release would reduce the amount held by the Township below 30%.
- J. If the Township Engineer fails to send or provide the list and report as requested by the obligor within 45 days from receipt of the request, the obligor may apply to the court in a summary manner for an order compelling the Township Engineer to provide the list and report within a stated time, and the cost of applying to the court, including reasonable attorney's fees, may be awarded to the prevailing party.

- K. If the governing body fails to approve or reject the improvements determined by the Township Engineer to be complete and satisfactory or reduce the performance guarantee for the complete and satisfactory improvements within 45 days from the receipt of the Township Engineer's list and report, the obligor may apply to the court in a summary manner for an order compelling, within a stated time, approval of the complete and satisfactory improvements and approval of a reduction in the performance guarantee for the approvable complete and satisfactory improvements in accordance with the itemized cost estimate prepared by the Township Engineer and appended to the performance guarantee; and the cost of applying to the court, including reasonable attorney's fees, may be awarded to the prevailing party.
- L. In the event that the obligor has made a cash deposit with the Township or approving authority as part of the performance guarantee, then any partial reduction granted in the performance guarantee pursuant to this subsection shall be applied to the cash deposit in the same proportion as the original cash deposit bears to the full amount of the performance guarantee, provided that if the developer has furnished a Safety and Stabilization Guarantee, the Township may retain cash equal to the amount of the remaining Safety and Stabilization Guarantee.
- M. If any portion of the required bonded improvements is rejected, the Board may require the obligor to complete or correct such improvements, and, upon completion or correction, the same procedure of notification, as set forth in this section, shall be followed.
- N. Nothing herein shall be construed to limit the right of the obligor to contest by legal proceedings any determination of the Township Council or the Township Engineer.
- O. The obligor shall reimburse the Township for reasonable inspection fees paid to the Township Engineer for the foregoing inspection of improvements; which fees shall not exceed the sum of the amounts set forth in §903.A and §903.A.2. The developer shall post the inspection fees in escrow in an amount not to exceed, except for extraordinary circumstances, the greater of \$500 or 5% of the cost of bonded improvements that are subject to a performance guarantee provided herein, and the cost of private site improvements that are not subject to a performance guarantee provided herein, which cost shall be determined pursuant to Section 15 of P.L. 1991, c. 256 (N.J.S.A. 40:55D-53.4). For those developments for which the inspection fees total less than \$10,000, fees may, at the option of the developer, be paid in two installments. The initial amount deposited in escrow by a developer shall be 50% of the inspection fees. When the balance on deposit drops to 10% of the inspection fees because the amount deposited by the developer has been reduced by the amount paid to the Municipal Engineer for inspections, the developer shall deposit the remaining 50% of the inspection fees. For those developments for which the inspection fees total \$10,000 or greater, fees may, at the option of the developer, be paid in four installments. The initial amount deposited by a developer shall be 25% of the inspection fees. When the balance on deposit drops to 10% of the inspection fees because the amount deposited by the developer has been reduced by the amount paid to the Township Engineer for inspection, the developer shall make additional deposits of 25% of the inspection fees. If the Township determines that the amount in escrow for the payment of inspection fees is insufficient to cover the cost of additional required inspections, the Township may require the developer to deposit additional funds in escrow provided that the Township delivers to the developer a written inspection escrow deposit request, signed by the Township Engineer, which informs the developer of the need of additional inspections, details the items or undertaking that require inspection, estimates the time required for those inspections and estimate the cost of performing those inspections. In the event that final approval is by stages or sections of development pursuant to Subsection (a) of Section 29 of P.L. 1975, c. 291 (N.J.S.A. 40:55D-38), the provisions of this section shall be applied by stage or section.
- P. To the extent that any of the improvements have been dedicated to the Township on the subdivision plat or site plan, the municipal governing body shall be deemed, upon the release of any performance

guarantee required hereunder, to accept dedication for public use of streets or roads and any other improvements made thereon according to site plans and subdivision plats approved by the Board, provided that such improvements have been inspected and have received final approval by the Township Engineer.

**SECTION 904. CERTIFICATION OR GUARANTEE REQUIRED; ESTIMATE OF GUARANTEE.**

- A. Improvements to be Installed. No final plan shall be approved unconditionally by the Planning or Zoning Board until the satisfactory completion and performance of all such required bonded improvements have been certified to the Board by the Township Engineer, unless the owner shall have filed with the Township a performance guarantee sufficient in amount to cover the cost of all such improvements in uncompleted portions thereof as estimated by the Township Engineer, and assuring the installation of such uncompleted improvements on or before an agreed upon date.
- B. Determination of Performance Guarantee Estimate.
1. Preparation of Estimate. A performance guarantee estimate shall be prepared by the Township Engineer or the developer's engineer and approved by the Township Engineer, setting forth all requirements for improvements as fixed by the Board and their estimated cost. The estimated cost of the installation of improvements determined by the Township Engineer shall be based on documented construction costs for public improvements prevailing in the general area of the Township. The developer may appeal the Township engineer's estimate to the Camden County Board of Appeals.
  2. Improvements to be Guaranteed. Improvements shall be defined to include construction and installation costs of those items listed in §904. Any improvements installed prior to the application for final approval that do not meet Township or *Residential Site Improvement Standards (N.J.A.C. 5:21-1 et seq.)* shall be included in the performance guarantee.
  3. Appeal of Determination. The developer may appeal the Township Engineer's estimate to Township Council. Township Council shall decide the appeal within forty-five (45) days of receipt of the appeal in writing by the Township Clerk. After the developer posts a guarantee with the Township based on the cost of the installation of improvements as determined by the Township Council, she or he may institute legal action within one year of the posting in order to preserve the right to a judicial determination as to the fairness and reasonableness of the amount of the guarantee.
- C. Determination of Maintenance Guarantee Estimate. The approved performance guarantee estimate shall fix the maintenance requirements of the utilities and improvements to be installed and completed by the developer. An approved surety company licensed in the State of New Jersey or cash bond meeting the requirements herein may be furnished to secure the maintenance guarantee, or the performance bond may be styled or amended to provide such security in reduced amount in keeping with the requirements.
- D. Performance & Maintenance Guarantee Approval.
1. The developer shall present two (2) copies of the performance and maintenance guarantees, in an amount equal to the total of the approved performance guarantee estimate, for approval as to form and execution by the Township Solicitor.
  2. The Township Solicitor shall forward his or her approval of the form of the performance and maintenance guarantee for consideration for adoption by the governing body.
- E. Bonding & Cash Requirements.
1. The performance guarantee shall be in the amount of the guarantee estimate as determined by the Municipal Engineer and a performance bond should be issued with the applicant as principal. The bond is to be provided by an acceptable surety company licensed in the State of New Jersey, an

irrevocable letter of credit drawn on a banking or savings and loan institution located in and licensed in the State of New Jersey, or such other form of security as may be approved by the Township Solicitor, or cash, or a certified check shall be deposited with the Township of Cherry Hill by payment to the Township Treasurer.

2. The performance guarantee in favor of the Township shall be in an amount not to exceed one hundred and twenty (120%) percent of the cost of the installation and bonded improvements. The Township Treasurer shall issue its receipt for such cash deposits and shall cause the same to be deposited in a bank named by the Township for this purpose to be retained as security for completion of all improvement requirements and to be returned to the developer on completion of all required work and expiration of the period of maintenance guarantee or, in the event of default on the part of the subdivider, to be used by the Township of Cherry Hill to pay the cost and expense of obtaining completion of all requirements. Every bond, whether cash or surety, shall contain a clause to the effect that the obligation shall remain in full force and effect until such time as certification is received from the Township Engineer that the principal has met and complied with all specifications and requirements for which said cash or surety bond has been posted.
3. Irrevocable letters of credit shall include, but not be limited to, the following provisions:
  - a. An unconditional payment obligation of the issuer running solely to the Township for an express initial period of time in the amount determined pursuant to *N.J.S.A. 40:55D-53*; and
  - b. Is for a period of time of at least two (2) years; and
  - c. Permits the Township to draw upon the letter of credit if the developer fails to furnish another letter of credit which complies with the provisions of this subsection thirty (30) days or more in advance of the expiration date of the letter of credit or such longer period in advance thereof as is stated in the letter of credit.
- F. Municipal Improvements. Sanitary sewerage improvements to be connected to the Township sanitary sewer system or to be owned or maintained by the Township shall be approved by said Township, in accordance with the design and performance standards set forth this ordinance and the requirements of the Township Department of Engineering. Performance and maintenance guarantees in favor of the Township Department of Engineering shall be required to assure proper construction and installation of such sanitary sewerage improvements and facilities and shall be posted with the Department of Engineering. All releases of Performance Guarantees posted for said sanitary improvements shall be secured from the Department of Engineering in accordance with its regulations and statute.
- G. Public Utilities. No performance or maintenance guarantee shall be required for the installation of utilities when the improvements have been or will be installed by the utility company involved.

#### **SECTION 905. PRE-CONDITIONS TO COMMENCEMENT OF CONSTRUCTION.**

- A. Required Pre-Conditions. Except as otherwise provided in §905.B below, no construction of buildings, structures, site improvements (whether on-site or off-site) or other work shall be commenced on any site for which an approval is required pursuant to this Ordinance, until all of the following conditions are met:
  1. Approvals and Signatures. All required local, County and State approvals shall have been obtained, including both preliminary and final approval, if required, and all required signatures are obtained on the final plat and/or site plan, after review by the appropriate officials.
  2. Notification of Construction Start. The Township Engineer shall be notified by the developer not less than three (3) business days (excluding Saturdays and Sundays), in advance of the starting or re-starting of site clearing, construction or other work.

3. Inspector to be Present. Except where prior permission has been granted by the Township Engineer, no construction or work shall be performed unless the Township Engineer's inspector is present to insure satisfactory progress and completion of the construction.
4. Tax Map Update for Subdivisions. A fee will be required in conjunction with updating the tax maps, under *N.J.S.A. 40:55D-8*.

<b>Tax Map Update for Subdivisions</b>			
<b>MINOR SUBDIVISION PLAN</b>		<b>MAJOR SUBDIVISION PLAN</b>	
Calculate, Protract & Apply to Maps	\$150.00 / lot	Remove from Plat & Key Map	\$75.00 / lot
All Lines Removed (dimensions)		Calculate Entire Tract (survey) Protraction	
Address Change		Match Plate Number	
Reduction of Maps (half size)		Surrounding Plate Changes	
Photocopies & Letters		Key Map Changes	
<b>MISCELLANEOUS REVISIONS</b>		Detail on Existing plate (i.e. 400'-scale)	
Street Name Change	\$20.00 / street	Reduction of Maps (half size)	
Dimension Change	\$20.00 / change	Photocopies & Letters	
Key Map Change	\$20.00 fee		

- B. Required Pre-Conditions Under Preliminary Approval. In the event that a developer elects to perform initial site construction of improvements based on a preliminary approval granted by the Planning and/or Zoning Board, construction may be commenced only after a revised preliminary plan has been submitted and signed, incorporating all conditions of approval required as a result of the public hearing and the resolution granting said preliminary approval. The developer shall still comply with §905.A as preconditions prior to the commencement of work.
  1. Minor Subdivision. In the case of a minor subdivision, in the event that the developer elects to complete all improvements without posting the performance guarantee required by §904; no construction shall be commenced until a revised plan is submitted and signed, incorporating all conditions of approval as above. The developer shall still post the inspection escrow and notify the Township Engineer prior to commencement of work. Whether or not an inspection escrow is required, all site improvements under this subsection must be completed prior to the issuance of a Certificate of Occupancy, or within one hundred and twenty (120) days of a temporary Certificate of Occupancy if the performance guarantee covering the balance of the uncompleted improvements has been posted.
  2. Relationship to UCC. The enforcement provisions of §1101 shall be in addition to any other requirements of the Uniform Construction Code (UCC), as it may be amended or superseded, and the regulations promulgated pursuant thereto, governing construction permits. Nothing in this Ordinance shall relieve the developer or the contractors performing the work and construction from complying with all of the Uniform Construction Code requirements as enforced by the Township Construction Official.
- C. Stop Construction Orders. In the event that construction, including clearing, on any lands, buildings, structures, site improvements (whether on-site or off-site) or other work by any owner or developer of any site for which approval is required pursuant to this Ordinance, is commenced or continued contrary to the provisions of the Municipal Land Use Law, this Ordinance, or the conditions of any approval granted by any official, Board, or other entity pursuant to this Ordinance, or in violation of any denial of approval by said Official, Board, Mayor or his/her designees (including the Municipal Engineer and the Director of Community Development) may issue a written, dated stop construction order that shall

require that construction shall immediately cease and shall further include the conditions upon construction may be resumed. The order shall be served on the owner or developer of the site, or the holder of the approval, in person or by certified mail, return receipt requested. If the owner, developer, or holder of the approval is not known or cannot be located, the notice may be served on the person in charge of, or apparently in charge of, the construction. No construction or work shall continue after service of a stop construction order, and construction shall not be resumed without written, dated permission of the Administrative or Construction Official (or her or his designee) removing or lifting the stop construction order.

D. Staging & Completion of Improvements Installation.

1. **Staging Schedule.** In the case of major subdivisions, at the same time of granting final subdivision approval, the applicant shall submit a construction schedule to the Township Engineering Department for approval, establishing the scheduling and timing of installation of all improvements covered by the performance guarantee. The approved schedule shall be required for the protection of the interest of the public and of the residents, occupants and owners of the proposed development in the total completion of the project. The schedule shall be included in the resolution granting final approval and completion of the improvements in accordance with the schedule shall be a condition of approval.
2. **Completion of Improvements.** Unless otherwise approved by the Planning or Zoning Board, based on the size of the development, specific site conditions, or improvements proposed, said schedule shall provide for all improvements to be completed within two (2) year period. The schedule shall be based on the performance guarantee estimate, as prepared by the Township Engineer at the time of final approval, in relation to the proposed number of construction permits for the project, and shall require at a minimum that prior to the time that seventy-five (75%) percent of the construction permits are issued for the project, seventy-five (75%) percent of the improvements as set forth in the performance guarantee estimated shall be installed, inspected, and the performance guarantee reduced in that amount by the governing body.
3. **Completion of Improvements by Plan Section.** In the event that final approval is granted by sections, then the provisions of subsection §905.F, hereinabove, shall apply by sections. Prior to the granting of final approval for a subsequent section of the project, the Planning Board may require:
  - a. A report from the Township Engineer certifying that the developer is in compliance with the schedule previously adopted for a prior section; and
  - b. In the event that all of the certificates of occupancy have been issued for a prior section that all improvements have been completed for that section.
4. **Failure to Meet Schedule.** At any time that the developer is not in compliance with the schedule required pursuant to this subsection, the governing body, at the request of the Planning Board, or upon its own motion based on information submitted by the Township Engineer, may order that the issuance of any further construction permits be suspended until certain, specified improvements are completed and certified by the Township Engineer as complete. The suspension of permits may be pursued independently or in conjunction with a formal declaration of default and action against the developer's performance guarantee for projects that received final approval prior to the effective date of this Ordinance, but are still under construction at the time of adoption hereof, the provisions of this subparagraph shall apply and construction permits may be withheld and/or default declared if the Township Engineer reports that the developer has received final approval in new sections and the improvements have not been completed in prior sections in which certificates of occupancy have been issued.
5. **Conveyance of Public Easements and Open Space.** Prior to the approval by the governing body

of the final reduction and release of the performance guarantee, all easements and open space shall be conveyed to the Township, or such other guarantee, as specified on the final plan, by deed containing a metes and bounds legal description.

6. **Extension of Time of Installation of Improvements.** The time allowed for installation of the improvements for which a performance guarantee has been provided, may be extended by the governing body by resolution only upon written request of the developer. As a condition or part of any such extension, the amount of any performance guarantee shall be increased or reduced, as the case may be, to an amount not to exceed one hundred and twenty percent (120%) of the cost of the remaining construction and improvements to be installed as determined as of the time of the passage of the resolution.
- E. **As-Built Plans.** After completion of construction of the improvements covered by the performance guarantee, and prior to final acceptance by the Township of any improvements, the developer shall have the approved, final development plans and profiles to be updated to show "as-built" conditions. An as-built plan shall be submitted that indicates the constructed conditions and/or location of:
1. Final grading;
  2. Roads;
  3. Curbing
  4. Sidewalks, bicycle, or other pedestrian path;
  5. Utilities;
  6. Building location;
  7. Driveways and parking lots;
  8. Stormwater management facilities, including as-built topographic contours & volume calculations;
  9. Walls and fences; and
  10. Other structures deemed pertinent by the Township Engineer.

One electronic set and three (3) sets of record prints shall be furnished; two (2) to the Administrative Officer and one (1) to the Township Engineer. "As-built" plans shall be signed and sealed by a Professional Engineer or Land Surveyor, as the case may be, of the State of New Jersey.

- F. **Default by Developer of the Installation of Public Improvements.**
1. If the required improvements are not completed or in accordance with the performance guarantee, the obligor and surety, if any, under the performance guarantee shall be liable thereon to the Township for the cost of the improvements not completed or corrected. The Township may either prior to or after receipt of the proceeds thereof, complete the improvements. For purposes of this subsection, "default" shall mean failure to install the improvements in accordance with Township standards of construction, including but not limited to, failure to install the improvements:
    - a. Prior to the expiration of the performance guarantee;
    - b. within the time schedule established pursuant to §905.D;
    - c. in accordance with the terms and conditions of the Resolution granting approval; and/or
    - d. in accordance with any applicable provision of *N.J.S.A. 40:55D-53*.
  2. **Basis for Action.** The Township Engineer's certification that the developer has defaulted in compliance with the required standard of construction and installation of improvements shall be the basis for governing body action which rejects the improvement, withholds approval, withholds construction permits, or formally declares default and authorizes Township collection on the performance guarantee.
- G. **Acceptance of Improvements.** The approval of any plan under this Ordinance or the reduction of any performance guarantee by the approving authority shall in no way be construed as acceptance of any street, drainage systems, or other improvements required by this Ordinance, nor shall such plan or

performance guarantee reduction obligate the Township in any way to maintain or exercise jurisdiction over such street, drainage system, or other improvements. Acceptance of any street, drainage system or the improvements shall be implemented only by favorable action of the governing body in accordance with the provisions set forth in N.J.S.A. 40:55D-53. No improvements shall be accepted by the governing body unless and until the following conditions have been met:

1. The Township Engineer shall have certified in writing to the governing body that all of the improvements are complete and that the improvements are complete and that the improvements fully comply with the requirements of this Ordinance and any approval granted pursuant thereto.
  2. A maintenance guarantee has been posted and approved in accordance with §904.D.
  3. As-built plans have been submitted in accordance with §905.E.
- H. Acceptance of Publicly Dedicated Streets. A publicly dedicated street shall be deemed accepted by the municipality when Township Council grants full release of the performance guarantee and acceptance of the maintenance guarantee, and adopts the appropriate ordinance.
- I. Acceptance of Street Lighting on Publicly Dedicated Streets. The Township shall accept responsibility for the costs of street lighting on publicly dedicated streets within thirty (30) days upon written notice when the following conditions have been fulfilled by the developer:
1. The street lights have been connected to a public utility;
  2. The street lights have been installed and accepted for service by the public utility; and
  3. Certificates of occupancy have been issued for at least fifty (50%) percent of the dwelling units and fifty (50%) percent of the floor area of the non-residential uses by section or phase of development.

Compliance by the Township with the provisions of this subsection shall not be deemed to constitute acceptance of the street by the Township.

- J. Penalties. In addition to the penalties for violation of this Ordinance as set forth in §1103 of this Ordinance, the Township Engineer is specifically authorized to require the replacement and reconstruction of any construction, including clearing, of any land, buildings, structures, site improvements (whether on-site or off-site) or other work commenced or continued on any site for which an approval is required pursuant to this Ordinance in violation of any stop construction order pursuant to §905.C; the conditions as set forth in §905.A; or the standards for construction as established by the Township.

#### **SECTION 906. OFF-TRACT IMPROVEMENTS RECAPTURE.**

- A. When Required. Whenever an application for development requires the construction of off-tract improvements that are clearly, directly, and substantially related to or necessitated by the proposed development, the Planning Board or Zoning Board of Adjustment, as the case may be, shall provide as a condition of final site plan or subdivision approval, that the applicant shall pay the *pro rata* share of such off-tract improvements. Off-tract improvements shall include water, sanitary sewer, drainage and street improvements, including such easements as are necessary; or as may otherwise be permitted by law. The applicant shall either install the off-tract improvements or pay the *pro rata* cost to the Township, at the sole discretion of the municipality.
- B. Determination of Cost. When off-tract improvements are required, the Township Engineer shall calculate the cost of such improvements, in accordance with the procedures for determining performance guarantee amounts in §904. Such costs may include, but not be limited to, any or all costs of: planning, surveying, permit acquisition, design, specification, property and easement acquisition, bidding, construction, construction management, inspection, legal, and other common and necessary costs for the construction of improvements. The Township Engineer shall also determine the percentage of off-tract

improvements that are attributable to the applicant's development proposal and shall expeditiously report her or his findings to the approving authority and the applicant.

- C. Improvements Required Solely for Applicant's Development. Where the need for an off-tract improvement is necessitated by the proposed development and no other property owners receive a special benefit thereby, where no planned capital improvement by a governmental entity is contemplated, or the improvement is required to meet the minimum standard of the approving authority, the applicant shall be solely responsible for the cost and installation of the required off-tract improvements.
- D. Improvements Required for Applicant's Development and Benefiting Others. Where the off-tract improvement would provide capacity in infrastructure in excess of the requirements in subsection -C, above, the applicant shall be eligible for partial reimbursement of costs for providing such excess. The calculation of excess shall be based on an appropriate and recognized standard for the off-tract improvement being constructed, including, but not limited to, gallonage, cubic feet per second, and number of vehicles. Nothing herein shall be construed to prevent a different standard from being agreed to by the applicant and the Township Engineer. The process, procedures, and calculation used in the determination of off-tract costs shall be memorialized in a municipal developer's agreement to be reviewed and approved by the Township Solicitor who may request advice and assistance from the Planning Board Solicitor.
- Future developers benefiting from the excess capacity provided by the initial developer shall be assessed their pro rata share of off-tract improvement cost based on the same calculation used in the initial calculation. Such future developers shall pay their assessment plus a two percent (2%) administration fee to the Township, not to exceed two-thousand (\$2,000.00) dollars, at the time of the signing of the final site and/or subdivision plan as a condition precedent to such signing. The Township shall forward the assessment payment to the initial developer within ninety (90) days of such payment.
- E. Performance & Maintenance Guarantee. The applicant shall be required to provide, as a condition of final approval, a performance guarantee for the off-tract improvements in accordance with N.J.S.A. 40:55D-53 and §904, hereinabove. After the performance guarantee release, a maintenance guarantee must be issued.
- F. Certification of Costs. Once the required off-tract improvements are installed and the performance bond released, the developer shall provide a certification to the Township Engineer of the actual costs of the installation. The Township Engineer shall review the certification of costs and shall either accept them, reject them, or conditionally accept them. In the review of costs, the Township Engineer shall have the right to receive copies of invoices from the developer sufficient to substantiate the certification. Failure of the developer to provide such invoices within forty-five (45) days of the Township Engineer's request shall constitute forfeiture of the right of future reimbursement for improvements that benefit others.
- G. Time Limit for Reimbursement. Notwithstanding any other provision to the contrary, no reimbursement for the construction of off-tract improvements providing excess capacity shall be made after ten (10) years has elapsed from the date of the acceptance of the certification of costs by the Township Engineer.