

Franklin Township



SOMERSET COUNTY
LAND USE/ENGINEERING

The Performance Bond or Letter of Credit shall be between the property owner and the Township. The Township cannot hold any contractor/sub-contractor responsible because they are not paying for their services. If a problem ensues during construction, the Township would contact the owner of record/the company who filed for the site plan or subdivision to resolve the problem.

MUNICIPAL BUILDING
475 DEMOTT LANE
SOMERSET, N.J. 08873
TEL. (732) 873-2500

A Letter of Credit or Performance Bond must be drawn on an established New Jersey insurance company or bank or one having rights to do business in the State of New Jersey. Guarantees (Letter of Credit or Performance Bond) maybe for 1 or 2 years renewable until released by the Township Council. The release has to be at the Township Council's discretion and not at the Bank's discretion.

In the text of the Performance Bond or Letter of Credit, mention shall be made to the Site Plan Number, also the Block and Lot Numbers. The Bonding Estimate Sheet shall be attached to and made part of the Bond or Letter of Credit. The estimate references all items covered under the bond amount.

Inspection Fees and Monument Installation Fees must be deposited separately, therefore, you cannot add these amounts to your Bond or Letter of Credit. The enclosed W-9 form must be completed and returned with the necessary checks since all monies are placed in an interest bearing account. Inspections covered by the Escrow Inspection Fee Deposit are listed on one of the attached sheets. Inspections made by the Engineering Staff will be deducted from the deposited amount. If at the completion of the project, when final inspection has been made and guarantees are ready for release, any monies remaining will be returned. Likewise, if all monies are expended a bill will be sent for the amount due and bonding guarantees will not be released until payment is received.

If work is started prior to a *completed and signed site plan or subdivision* from either the *Board of Adjustment* or the *Planning Board*, a Stop Work Order will be issued

Attachments—Copies-Letter of Credit, Performance Bond, W-9 Form, Listing of Inspections.

5:36-4.1 Performance surety bonds

The standardized form of performance surety bond required by an approving authority pursuant to section 41 of P.L. 1975, c.291 (N.J.S.A. 40:55D-53) shall be as follows:

Block(s) _____ Lot(s) _____

PERFORMANCE SURETY BOND

We, _____, having offices at _____, _____, as principal, and _____, having offices at _____, _____, a corporation duly licensed to transact a surety business in the State of New Jersey, as surety, are indebted to the municipality of _____ in the county of _____, obligee, in the sum of \$ _____, for which payment we bind ourselves and our respective heirs, legal representatives, successors, and assigns, jointly and severally.

On _____ (date), principal was granted approval by the _____ (approving authority) of the _____ of _____ for _____ (include reference to specific job and resolution of approval). The estimate by the municipal engineer of the cost of this work and the resolution of approval are attached hereto and made a part hereof.

Pursuant to municipal ordinance, adopted under authority of the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.), the principal hereby furnishes a performance surety bond in the amount of \$ _____ (not to exceed 120 percent of the cost of the improvements, as certified by the municipal engineer), written by _____, a surety licensed in the State of New Jersey, guarantying full and faithful completion of improvements approved by the approving authority, in lieu of completing the required improvements prior to the granting of final approval. This bond shall remain in full force and effect until such time as all improvements covered by the bond have been approved or accepted by resolution of the municipal governing body, except that in those instances where some of the improvements are approved or accepted by resolution of the governing body upon certification by the municipal engineer, partial release from the bond shall be granted in accordance with N.J.S.A. 40:55D-53. The amount of the bond remaining shall be sufficient to secure provision of the improvements not yet approved; provided, however, that the municipality may require that 30 percent of the amount of the bond be retained to ensure completion of all improvements.

This bond shall remain in full force and effect until released by resolution of the municipal governing body.

This bond is issued subject to the following expressed conditions:

1. This bond shall not be subject to cancellation either by the principal or by the surety for any reason until such time as all improvements subject to the bond have been accepted by the municipality, in accordance with the applicable provisions of the Municipal Land Use Law.
2. This bond shall be deemed to be continuous in form and shall remain in full force and effect until the

improvements are accepted by the municipality and the bond is released, or until default is declared, or until the bond is replaced by another bond meeting applicable legal requirements. Upon approval or acceptance of all improvements by the municipality, or upon replacement of this bond by another bond, liability under this bond shall cease. Upon approval or acceptance of some, but not all, of the required improvements by the municipality, partial release from the bond shall be granted in accordance with N.J.S.A. 40:55D-53; provided, however, that the portion of the bond amount sufficient to secure completion of the improvements shall continue in effect and the municipality may retain 30 percent of the bond amount posted in order to ensure such completion.

3. The aggregate liability of the surety shall not exceed the sum set forth above.

4. In the event that the improvements subject to this bond are not completed within the time allowed under the conditions of the final approval issued pursuant to the Municipal Land Use Law, including such extensions as may be allowed by the approving authority, the municipal governing body may, at its option, and upon at least 30 days prior written notice to the principal and to the surety by personal delivery or by certified or registered mail or courier, declare the principal to be in default and, in the event that the surety fails or refuses to complete the work in accordance with the terms and conditions of the original approval, claim payment under this bond for the cost of completion of the work. In the event that any action is brought against the principal under this bond, written notice of such action shall be given to the surety by the municipality by personal delivery or by registered or certified mail or courier at the same time.

5. The surety shall have the right to complete the work in accordance with the terms and conditions of the original approval, either with its own employees or in conjunction with the principal or another contractor; provided, however, that the surety, in its sole discretion, may make a monetary settlement with the municipality as an alternative to completing the work.

6. In the event that the principal and the approving authority agree to changes in the scope of work, the obligations of the surety under this bond shall not be affected so long as the cost of the work does not exceed 120 percent of the municipal engineer's certified estimate, attached hereto and made a part hereof, which 120 percent of the estimate shall be the limit of the surety's obligation under this bond in any case. If the cost of the work exceeds 120 percent of the certified estimate, the principal shall secure a rider from a surety for the additional amount; provided, however, that this provision shall not be construed as requiring a surety to provide additional coverage.

7. This bond shall inure to the benefit of the municipality only and no other party shall acquire any rights hereunder.

8. In the event that this bond shall for any reason cease to be effective prior to the approval or acceptance of all improvements, a cease and desist order may be issued by the governing body, in which case all work shall stop until such time as a replacement guarantee acceptable to the approving authority becomes effective.

Date: _____ Witness/Attest:
, Principal

, Surety

APPENDIX B-2

IRREVOCABLE STANDBY LETTER OF CREDIT
(PERFORMANCE)

[NAME OF BANK]
[ADDRESS OF BANK]
[DATE]

Mayor and Township Council
Franklin Township
Municipal Building
475 DeMott Lane
Somerset, NJ 08873

RE: Block(s) _____ Lot(s) _____

IRREVOCABLE STANDBY LETTER OF CREDIT (PERFORMANCE)

Issued by:

Name of Banking Institution: _____
Address: _____
City/State/Zip: _____
Telephone: _____ Fax: _____
Issue Date: _____
Expiration Date and Time: _____
Letter of Credit Number: _____

Beneficiary:

Name: _____
Address: _____
City/State/Zip: _____
Telephone: _____ Fax: _____

Applicant:

Name: _____
Address: _____
City/State/Zip: _____
Telephone: _____ Fax: _____

Amount: _____ Dollar(\$)

(Not to exceed 120 percent of the cost of the improvements, as certified by the Township Engineer)

Gentlemen and Ladies:

We hereby issue our Irrevocable Standby Letter of Credit in your favor, which is available by your draft at sight bearing our Letter of Credit number _____ on _____ (name of banking institution).

Your draft must be presented at the office indicated above by personal delivery or by registered or certified mail or courier and must be accompanied by (1) the original Standby Letter of Credit and any subsequent original amendments and (2) an original statement purportedly signed by the Township Engineer of Franklin Township stating: "The amount of this drawing under Irrevocable Standby Letter of Credit No. _____, issued _____ by _____ (name of banking institution), represents the amount due us as a result of the failure of

_____ (name of applicant) to complete, in whole or in part, the required site improvements as detailed in the Township resolution of approval and in that certain Engineer's Estimate entitled "_____" prepared by _____ and dated _____. I hereby certify that notice of the incompleteness upon which this drawing is based was given to the applicant by registered or certified mail or by courier on _____ (date at least 30 days prior to the date of the municipal engineer's statement)." This certification shall be accompanied by a resolution of the Township endorsing the Engineer's findings and stating that the improvements have not been approved or accepted.

This Letter of Credit shall be deemed to be automatically extended annually for periods of one year unless written notice is given by the banking institution by registered or certified mail or by courier to the applicant and the Township at least 60 days prior to the then current expiration date.

In the event of the failure of the applicant to furnish another Letter of Credit meeting the requirements of N.J.S.A. 40:55D-53.5 and N.J.A.C. 5:36-4.3, or other acceptable security, at least 30 days prior to the expiration date of this Letter of Credit, the Township may, to the extent allowed by law, draw upon this Letter of Credit to pay the cost of any incompleteness.

This Letter of Credit shall expire upon approval by resolution of the Township of all improvements cited in the aforesaid Engineer's Estimate or upon replacement of this Letter of Credit by other security meeting applicable legal requirements. Upon approval or acceptance of some, but not all, of said improvements, a reduction in the amount of this Letter of Credit shall be granted in accordance with N.J.S.A. 40:55D-53, provided that the remaining amount shall be sufficient to secure provision of the improvements not yet approved and that the Township may require that the remaining amount be 30 percent of the original amount.

All correspondence to the banking institution concerning this Letter of Credit shall be addressed to the office indicated above.

This Letter of Credit shall inure to the benefit of the Township only and no other party shall acquire any rights hereunder.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision), International Chamber of Commerce Publication No. 600.

We hereby agree with you that drawings under and in compliance with the terms of this Letter of Credit shall be duly honored upon presentation to us.

Witness/Attest:

(authorized signature and title)

LAND DEVELOPMENT

EXHIBIT "A"

ATTACHED TO AND MADE A PART OF THAT CERTAIN
IRREVOCABLE LETTER OF CREDIT ISSUED BY NAME OF BANK, DATE

SIGHT DRAFT FOR PAYMENT UNDER
IRREVOCABLE LETTER OF CREDIT NO. _____, ISSUED BY NAME OF BANK

Franklin Township, New Jersey
Date

\$

At sight, pay to the Order of Franklin Township, Somerset County, New Jersey and _____/100
(\$ _____) Dollars.

To: NAME OF BANK (Drawee)

From: Franklin Township, New Jersey

By:

Title: (Drawer)

EXHIBIT "B"

ATTACHED TO AND MADE A PART OF THAT CERTAIN
IRREVOCABLE LETTER OF CREDIT ISSUED BY
NAME OF BANK DATED _____, 20__

ENGINEERS ESTIMATE

Dated as of _____, 20__

APPENDIX B-1

IRREVOCABLE STANDBY LETTER OF CREDIT
(MAINTENANCE)

[NAME OF BANK]
[ADDRESS OF BANK]
[DATE]

Mayor and Township Council
Franklin Township
Municipal Building
475 DeMott Lane
Somerset, NJ 08873

RE: Block(s) _____ Lot(s) _____

IRREVOCABLE STANDBY LETTER OF CREDIT (MAINTENANCE)

Issued by:

Name of Banking Institution: _____
Address: _____
City/State/Zip: _____
Telephone: _____ Fax: _____
Issue Date: _____
Expiration Date and Time: _____
Letter of Credit Number: _____

Beneficiary:

Name: _____
Address: _____
City/State/Zip: _____
Telephone: _____ Fax: _____

Applicant:

Name: _____
Address: _____
City/State/Zip: _____
Telephone: _____ Fax: _____

Amount: _____ Dollar(\$)

(Not to exceed 15 percent of the cost of the improvements, as certified by the Township Engineer)

Gentlemen and Ladies:

We hereby issue our Irrevocable Standby Letter of Credit in your favor, which is available by your draft at sight bearing our Letter of Credit number _____ on _____ (name of banking institution).

Your draft must be presented at the office indicated above by personal delivery or by registered or certified mail or courier and must be accompanied by (1) the original Standby Letter of Credit and any subsequent original amendments and (2) an original statement purportedly signed by the Township Engineer of Franklin Township stating: "The amount of this drawing under Irrevocable Standby Letter of Credit No. _____, issued _____ by _____ (name of banking institution), represents the amount due us as a result of the failure of

_____ (name of applicant) to take necessary corrective action to repair defects in functioning, materials or quality of work in the required site improvements as detailed in the Township resolution of approval and in that certain Engineer's Estimate entitled "_____" prepared by _____ and dated _____. I hereby certify that notice of the defects upon which this drawing is based was given to the applicant by registered or certified mail or by courier on _____ (date at least 30 days prior to the date of the Township Engineer's statement)." This certification shall be accompanied by a resolution of the Township endorsing the Engineer's findings.

This Letter of Credit shall continue in effect until the expiration date and shall be deemed to be automatically extended for a further period of ____ (not to exceed one year) unless written notice is given by the banking institution by registered or certified mail or by courier to the applicant and the Township at least 60 days prior to the then current expiration date.

In the event of the failure of the applicant to furnish another Letter of Credit meeting the requirements of N.J.S.A. 40:55D-53.5 and N.J.A.C. 5:36-4.4, or other security meeting applicable legal requirements, at least 30 days prior to the expiration date of this Letter of Credit, the Township may draw upon this Letter of Credit, to the extent allowed by law.

All correspondence to the banking institution concerning this Letter of Credit shall be addressed to the office indicated above.

This Letter of Credit shall inure to the benefit of the Township only and no other party shall acquire any rights hereunder.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision), International Chamber of Commerce Publication No. 600.

We hereby agree with you that drawings under and in compliance with the terms of this Letter of Credit shall be duly honored upon presentation to us.

Witness/Attest:

(authorized signature and title)

**UPON MEETING ALL OF THE CONDITIONS OF THE
RESOLUTION OF APPROVAL AND RECEIPT OF A
SIGNED PLAN FROM EITHER OF THE BOARDS.**

PERFORMANCE BONDS
ESCROW INSPECTION DEPOSIT
PRE-CONSTRUCTION MEETING

CALL: 732-873-2500 EXTENSION 230 KAREN BUCKLEY

24 HOUR NOTICE WILL BE REQUIRED FOR THE ENGINEERING STAFF ON
THE FOLLOWING ITEMS:

STARTING DATE
SOIL EROSION
SEDIMENTATION INSTALLATION
CLEARING OF SITE
GRADING
STORM SEWER INSTALLATION:
 INLET, HEADWALLS, LOW FLOW CHANNELS
 PIPE MUST BE INSPECTED BEFORE COVERING
WATER PIPES INSTALLATION:
 VALVES, PRESSURE TEST, BACTERIA TEST
 PIPE MUST BE INSPECTED BEFORE COVERING
CURBS:
 AT COMPLETION OF FORMING
 POURING OF CONCRETE
 CUT SHEETS WILL BE REQUIRED
 CONCRETE SLIPS WILL BE COLLECTED
SIDEWALKS:
 AT COMPLETION OF FORMING
 POURING OF CONCRETE
 CUT SHEETS WILL BE REQUIRED
 CONCRETE SLIPS WILL BE COLLECTED
SUB BASE INSTALLATION:
 DRIVEWAYS-ROAD EXTENSIONS-PARKING AREA
 COMPACTION
 STONE GRADING
 CUT SHEETS WILL BE REQUIRED
 TICKETS WILL BE COLLECTED
PAVING:
 STABILIZED BASE
 FINAL COURSE
 TICKETS WILL BE COLLECTED
PUNCH LIST (LETTER SENT TO OWNER)

Request for Taxpayer Identification Number and Certification

Give this form to
the requester. Do
NOT send to IRS.

Please print or type	Name (If joint names, list first and circle the name of the person or entity whose number you enter in Part I below. See instructions on page 2 if your name has changed.)	
	Business name (Sole proprietors see instructions on page 2.) (If you are exempt from backup withholding, complete this form and enter "EXEMPT" in Part II below.)	
	Address (number and street)	List account number(s) here (optional)
	City, state, and ZIP code	

<p>Part I Taxpayer Identification Number (TIN)</p> <p>Enter your TIN in the appropriate box. For individuals, this is your social security number (SSN). For sole proprietors, see the instructions on page 2. For other entities, it is your employer identification number (EIN). If you do not have a number, see How To Obtain a TIN below.</p> <p><i>Note: If the account is in more than one name, see the chart on page 2 for guidelines on whose number to enter.</i></p>	<p>Part II For Payees Exempt From Backup Withholding (See Exempt Payees and Payments on page 2)</p> <p style="text-align: center;">Requester's name and address (optional)</p>
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Social security number									

OR

Employer identification number									

Certification.—Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding.

Certification Instructions.—You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because of underreporting interest or dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, the acquisition or abandonment of secured property, contributions to an individual retirement arrangement (IRA), and generally payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. (Also see **Signing the Certification** on page 2.)

Sign Here	Signature ▶	Date ▶
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Section references are to the Internal Revenue Code.

Purpose of Form.—A person who is required to file an information return with the IRS must obtain your correct TIN to report income paid to you, real estate transactions, mortgage interest you paid, the acquisition or abandonment of secured property, or contributions you made to an IRA. Use Form W-9 to furnish your correct TIN to the requester (the person asking you to furnish your TIN) and, when applicable, (1) to certify that the TIN you are furnishing is correct (or that you are waiting for a number to be issued), (2) to certify that you are not subject to backup withholding, and (3) to claim exemption from backup withholding if you are an exempt payee. Furnishing your correct TIN and making the appropriate certifications will prevent certain payments from being subject to backup withholding.

Note: If a requester gives you a form other than a W-9 to request your TIN, you must use the requester's form.

How To Obtain a TIN.—If you do not have a TIN, apply for one immediately. To apply, get Form SS-5, Application for a Social Security Card (for individuals), from your local office of the Social Security Administration, or Form SS-4, Application for Employer Identification Number (for businesses and all other entities), from your local IRS office.

60 days to obtain a TIN and furnish it to the requester. If the requester does not receive your TIN within 60 days, backup withholding, if applicable, will begin and continue until you furnish your TIN to the requester. For reportable interest or dividend payments, the payer must exercise one of the following options concerning backup withholding during this 60-day period. Under option (1), a payer must backup withhold on any withdrawals you make from your account after 7 business days after the requester receives this form back from you. Under option (2), the payer must backup withhold on any reportable interest or dividend payments made to your account, regardless of whether you make any withdrawals. The backup withholding under option (2) must begin no later than 7 business days after the requester receives this form back. Under option (2), the payer is required to refund the amounts withheld if your certified TIN is received within the 60-day period and you were not subject to backup withholding during that period.

Note: Writing "Applied for" on the form means that you have already applied for a TIN OR that you intend to apply for one in the near future.

As soon as you receive your TIN, complete another Form W-9, include your TIN, sign and date the form, and give it to the requester.

What is Backup Withholding?—Persons making certain payments to you after 1992 are required to withhold and pay to the IRS 31% of such payments under certain conditions. This is called "backup withholding." Payments that could be subject to backup withholding include interest,

dividends, broker and barter exchange transactions, rents, royalties, nonemployee compensation, and certain payments from fishing boat operators, but do not include real estate transactions.

If you give the requester your correct TIN, make the appropriate certifications, and report all your taxable interest and dividends on your tax return, your payments will not be subject to backup withholding. Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester, or
2. The IRS notifies the requester that you furnished an incorrect TIN, or
3. You are notified by the IRS that you are subject to backup withholding because you failed to report all your interest and dividends on your tax return (for reportable interest and dividends only), or
4. You do not certify to the requester that you are not subject to backup withholding under 3 above (for reportable interest and dividend accounts opened after 1983 only), or
5. You do not certify your TIN. This applies only to reportable interest, dividend, broker, or barter exchange accounts opened after 1983, or broker accounts considered inactive in 1983.

Except as explained in 5 above, other reportable payments are subject to backup withholding only if 1 or 2 above applies. Certain payees and payments are exempt from backup withholding and information reporting. See **Payees and Payments Exempt From**