

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

SECTION 901-A. 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
VARIANCES		
"A" Variance (Appeal)		
Residential	\$50.00	\$300.00
Non-Residential	\$100.00	\$300.00
"B" Variance (Interpretation): Certificate of Non-Conformity, Bldg Permit in Mapped Street		
Residential	\$50.00	\$200.00
Non-Residential	\$100.00	\$500.00
"C" Variance (Bulk)		
Residential	\$200.00	\$700.00
Non-Residential	\$500.00	\$1,000.00
"D" Variance (Use)		
Residential	\$300.00	\$700.00
Non-Residential	\$500.00	\$1,000.00
SUBDIVISION PLANS		
Minor Subdivision Plan	\$300.00 + (\$50.00/lot)	\$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	25% of preliminary escrow
SITE PLANS		
Site Plan Waiver	\$100.00	\$500.00
Minor Site Plan	\$500.00	\$1,500.00
Preliminary Site Plan		
Residential	\$500.00	\$2,000 + (\$50.00/unit)
Non-Residential	\$500.00	\$2,500 + (\$100.00/acre)
Final Site Plan		
Residential	\$500.00	\$2,000 + (\$50.00/unit)
Non-Residential	\$500.00	\$2,500 + (\$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)
Amended Site Plan	\$300.00	25% of preliminary escrow
General Development Plan	\$1,000.00	\$10,000.00

MISCELLANEOUS		
Concept Plan Workshop	-	\$300.00
Conditional Use	\$200.00	\$300.00
Inspection Escrow	-	5% of cost estimate
Property Owners List	\$0.25/name or \$10.00, whichever is greater.	
Publication of Decision	\$25.00	-
Request for a Relief of Condition of Approval	\$50.00	\$200.00
Request for an Extension of Approval	\$100.00	\$300.00
Rezoning Request	\$100.00	\$500.00
Street Vacation	\$100.00	\$300.00
Submission and/or Design Waiver	\$100.00	-
PERMITS		
Sign Permit Application	\$20.00	-
Sign Permit	\$2.00/square foot or \$50.00, whichever is greater.	
Sign Permit Renewal	\$20.00	-
Zoning Permit		
Residential	\$20.00	-
Non-Residential	\$50.00	-

- 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-A. 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 direct its staff to 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. In all instances, fifty (50%) percent of the development fee shall be collected at the time of issuance of the building permit. The remaining portion shall be collected at the issuance of the certificate of occupancy. The developer shall be responsible for paying the difference between the fee calculated at building permit and that determined at issuance of certificate of occupancy.
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.54:48-1 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-A. 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, which cost shall be determined by the Township Engineer according to the method of calculation set forth in §904.B for improvements which the Board may deem necessary or appropriate, including streets, grading, pavement, gutters, curbs, sidewalks, street lighting, shade trees, surveyor's monuments, as shown on the final subdivision plan and required by Map Filing Law (*N.J.S.A. 46:23-9.9 et seq.*), culverts, storm sewers, drainage structures, public improvements of open space and, in the case of site plans only, improvements that are to be publicly dedicated, only.
- B. Maintenance Guarantee. Provision for a maintenance guarantee to be posted with the Township Council for a period not to exceed two (2) years after final acceptance of the improvement, in an amount not to exceed fifteen (15%) percent of the cost of the improvement, which cost shall be determined by the Township Engineer according to the method of calculation set forth in §904-A.B. 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.
- C. The Municipal 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 developer.

SECTION 904-A. 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 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.
 - 2. Improvements to be Guaranteed. Improvements shall be defined to include construction and installation costs of grading, pavement, clearing, surveyor's monuments, drainage structure, storm sewers, sanitary sewers and other means of sewage disposal, water mains, fire protection features, streets, gutters, curbs, culverts, sidewalks, street lighting, shade trees, parking areas, landscaping, street signs, sedimentation and erosion control devices, public improvements of open space and other on-tract improvements and other improvements to be publicly dedicated. 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 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 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. Ten (10%) percent of the amount of the approved performance guarantee estimates shall be deposited with the Township by the applicant in cash. The remaining ninety percent (90%) may be in cash, surety bond or other securities or guaranties approved by the Township Solicitor. In the event of default, the ten (10%) percent fund herein mentioned shall be first applied to the completion of the requirements and the cash or the surety shall thereafter be resorted to, if necessary, for the completion of the requirements. The cash or surety may recite the foregoing provisions. The Township Engineer's determination that the principal has defaulted in her or his obligation shall be binding and conclusive upon the principal.
 4. 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

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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-A. PRE-CONDITIONS TO COMMENCEMENT OF CONSTRUCTION.

- A. **Required Pre-Conditions.** Except as otherwise provided in §905-A.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*.

Tax Map Update for Subdivisions			
MINOR SUBDIVISION PLAN		MAJOR SUBDIVISION PLAN	
Calculate, Protract & Apply to Maps	\$50.00 / lot	Remove from Plat & Key Map	\$45.00 / 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	
MISCELLANEOUS REVISIONS		Detail on Existing plate (i.e. 400'-scale)	
Street Name Change	\$20.00 / street	Reduction of Maps (half size)	
Dimension Change	\$5.00 / change	Photocopies & Letters	
Key Map Change	\$10.00 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.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-A; 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-A 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-A.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. Reduction of Performance Guarantee or Rejection Thereof.

1. Upon substantial completion of all required appurtenant utility improvements, and the connection of same to the public system, the obligor may notify the governing body in writing, by certified mail addressed in care of the Municipal Clerk of the completion or substantial completion of improvements and shall send a copy thereof to the Township Engineer and Administrative Officer. Thereupon the Township Engineer shall inspect all improvements of which such notice shall file a detailed report, in writing, with the governing body, indicating either approval, partial approval or rejection of such improvements with a statement of reasons for any rejection. The cost of the improvements as approved or rejected shall be set forth.
2. The Township Engineer shall certify the amount to be reduced, if any, as follows:
 - a. An estimate of value of all work completed will be made, and multiplied by one hundred and twenty (120%) percent.
 - b. This amount shall be reduced by fifteen (15%) percent, which shall be withheld to guarantee the repair of damages which may occur prior to final acceptance.
 - c. The amount of the previous reductions shall be subtracted.
 - d. The remainder shall be the amount to be reduced.
3. The Township Engineer shall forward copies of their report, as referenced in §905-A.F, to the governing body, Township Solicitor, and the developer.
4. Township Council shall either approve, partially approve, or reject the improvements on the basis of the report of the Township Engineer, and shall notify the obligor in writing, of the contents of said report and the action of the Planning or Zoning Board in relation thereto, no later than sixty-five (65) days after receipt of the notice from the developer of the completion of the improvements. Where partial approval is granted, the developer shall be released from all liability pursuant to its performance guarantee, except for that portion adequately sufficient to secure a provision of the improvements not yet approved, provided that thirty (30%) percent of the amount of the performance guarantee posted may be retained to insure completion of all improvements. Providing a request is made for a reduction in conformity with this ordinance, failure of the governing body to send or provide such notification to the obligor within sixty-five (65) days shall be deemed to constitute approval of the improvements, and the developer or surety, shall be released from all liability pursuant to such performance guarantee for such improvements.
5. If any portion of the required improvements is rejected, the Township Engineer and such other individuals as designated by the Mayor, shall prepare a "punch list" of the items remaining to be completed, whether they are newly created as a result of construction practices. A new estimate for the cost of completing items rejected and the balance of all other improvements shall be prepared. The performance guarantee shall not be reduced below the estimate of the amount deemed necessary to complete the items as identified on the "punch lists", and if the performance guarantee balance is below said amount, an additional performance guarantee shall be posted in the amount of the new estimate. Unless otherwise recommended by the Township Engineer, the developer shall have one hundred and twenty (120) days to reduce the "Punch List" to a condition

suitable for a final inspection, at which time the same procedure of notification as set forth above for reduction shall be followed.

G. 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-A.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.

H. 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 improvement 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-A.D.
3. As-built plans have been submitted in accordance with §905-A.E.

I. 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.

J. 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.

- K. Penalties. In addition to the penalties for violation of this Ordinance as set forth in §1103-A 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-A.C; the conditions as set forth in §905-A.A; or the standards for construction as established by the Township.

SECTION 906-A. 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-A. 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-A, 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.