

FINANCIAL SECURITY AND PERFORMANCE SECURITY AGREEMENT

This Financial Security and Performance Security Agreement (hereinafter "Agreement") is entered into this ____ day of _____, 2023, by and between Lower Paxton Township, acting through its governing body (hereinafter called "TOWNSHIP") and Kastbhanjan Realty, LLC (hereinafter called "DEVELOPER").

WHEREAS, DEVELOPER has an approved land development or subdivision plan (hereinafter called "Plan") as such terms are defined in the Municipalities Planning Code, Act of July 31, 1968, P.L. 805, No. 247, as reenacted and amended, 53 P.S. Section 10101, et seq., (hereinafter the "MPC") designated as "Preliminary/Final Land Development Plans for 4301 Union Deposit Road - Harrisburg, PA" (hereinafter called "Development"), which was approved by TOWNSHIP conditioned on DEVELOPER providing the proper improvement guarantee; and

WHEREAS, the DEVELOPER in accordance with the approved Plan is required to install or have installed on its behalf certain improvements as more specifically described in Appendix "A" attached hereto (hereinafter called "Improvements"); and

WHEREAS, in accordance with the provisions of the MPC and in order to guarantee that the Improvements shall be completed as described above, DEVELOPER has elected to provide financial security in the form of a check to be deposited in an escrow account by the Township (the "Escrow Account") sufficient to cover the cost of the Improvements, as determined by the submission to TOWNSHIP of a cost estimate prepared and certified by DEVELOPER's

professional engineer (licensed in the Commonwealth of Pennsylvania) to be a fair and reasonable estimate of the cost to complete the Improvements.

NOW THEREFORE, in consideration of the approval of the Plan by TOWNSHIP, and the mutual promises contained herein, TOWNSHIP and DEVELOPER agree as follows:

1. The total amount of the financial security required to be provided by DEVELOPER to guarantee the Improvements (hereinafter the "Security Amount"), shall be **Thirty Eight Thousand Nine Hundred Fifty-Three Dollars (\$38,953.00)**, which amount the parties agree equal one hundred ten percent (110%) of the cost of completing the remaining Improvements.

2. DEVELOPER shall, forthwith upon execution of this Agreement by the DEVELOPER and TOWNSHIP, a check to be deposited in the Escrow Account by the Township (hereinafter "Security") (equal to the amount of the Security Amount, for the benefit of TOWNSHIP in accordance with the provisions and purposes of this Agreement, in order to guarantee that the Improvements shall be completed and installed in accordance with the Plan and all applicable ordinances of TOWNSHIP and regulations of the Commonwealth of Pennsylvania, Department of Transportation.

3. The Escrow Account shall be held with a financial institution which is authorized to conduct such business within the Commonwealth of Pennsylvania within the meaning of Section 509(d) of the MPC, 53 P.S. §10509(d).

4. In the event that DEVELOPER has not completed and installed all of the Improvements as hereby guaranteed within

twelve (12) months from the date of this Agreement, or within such extended period of time as may hereafter be agreed upon in writing by TOWNSHIP and DEVELOPER, TOWNSHIP may make a claim against the Security for payment to TOWNSHIP of funds from the Escrow Account not to exceed the Security Amount in order that TOWNSHIP may make or cause the Improvements to be made.

5. All portions of the Security paid over to TOWNSHIP from the Escrow Account shall be used by TOWNSHIP solely for the purpose of completing and installing the Improvements as herein guaranteed and for no other purpose. Any moneys paid to TOWNSHIP from the Security in excess of the actual and reasonable cost of completing the Improvements shall be refunded by TOWNSHIP to DEVELOPER.

6. No funds paid from the Security to TOWNSHIP shall in any way be construed as a loan to TOWNSHIP, nor, except as specifically provided herein, obligate TOWNSHIP to repay such funds.

7. In the event that the Security is insufficient to cover the reasonable and actual cost of completing the Improvements, nothing herein shall be construed to limit the remedies available to TOWNSHIP.

8. When the Improvements have been completed and installed as herein guaranteed, DEVELOPER shall provide a notice of completion to TOWNSHIP and the TOWNSHIP Engineer as provided by Section 509(j) of the MPC, 53 P.S. §10509(j). TOWNSHIP shall, within the time limits prescribed by Section 509(j) of the MPC, 53 P.S. §10509(j), provide to DEVELOPER written notification of

TOWNSHIP's approval or rejection of the Improvements.

9. From time to time as work on the Improvements proceeds, DEVELOPER may make written requests to TOWNSHIP, pursuant to Section 509(j) of the MPC, 53 P.S. §10509(j), for release of portions of the Security. TOWNSHIP shall, within the time limits prescribed by Section 509(j) of the MPC, 53 P.S. §10509(j), provide to DEVELOPER written notification of the amount TOWNSHIP has authorized to be released from the Security pursuant to DEVELOPER's request.

10. In no event shall the financial institution incur liability to any party pursuant to this Agreement exceed the Security in force. The bonding company or financial institution shall not incur any liability whatsoever for acts taken or omitted in good faith reliance upon any instrument or document reasonably believed by Issuer to be genuine, to be truthful, to have been signed or presented by a proper person, and to conform with the provisions of this Agreement.

11. TOWNSHIP shall in its reasonable discretion determine whether the Improvements are constructed and installed in accordance with the Plan and the aforesaid ordinances and regulations.

12. Upon completion of the Improvements, and as a condition precedent to the acceptance of the Improvements by TOWNSHIP, the DEVELOPER, at its expense, agrees to:

- a. tender to TOWNSHIP a Legal Description and drawing for the proposed right-of-way for the Improvements;
and

b. submit to TOWNSHIP an affidavit, Waiver of Mechanics Liens or such other satisfactory evidence as TOWNSHIP may require, that all labor, material, rentals, contractors and subcontractors used, supplied, furnished or employed in the construction of the Improvements have been paid.

13. DEVELOPER shall upon the final and full completion of the Improvements and/or part thereof as herein set forth, guarantee the work, material, construction, and installation performed pursuant to this Agreement, and shall remedy, without cost to TOWNSHIP, any defects which may develop therein during a period of eighteen (18) months from the date of completion and acceptance of the work performed hereunder, and shall deliver or cause to be delivered to TOWNSHIP, maintenance security in the amount of fifteen percent (15%) of the actual cost for the installation of the Improvements for a term of eighteen (18) months, in accordance with Section 509(k) of the MPC, 53 P.S. §10509(k), in a form satisfactory to TOWNSHIP and in compliance with TOWNSHIP's requirements for the acceptance of the foregoing Improvements by TOWNSHIP.

14. In the event of either party bringing an action or proceeding against the other party in relation to a dispute arising out of this Agreement, the liable party shall, in addition to all damages available to the prevailing party, at law or in equity, be liable for any and all attorneys fees, costs, and other similar charges incurred by the prevailing party in connection with the action or proceeding.

15. The DEVELOPER agrees to reimburse TOWNSHIP for engineering and legal services necessitated for the review of the DEVELOPER'S documents and inspection of the Improvements.

16. The DEVELOPER shall provide TOWNSHIP with a minimum of two (2) working days' advance notice of its intent to construct any Improvements.

17. This Agreement is executed in and shall be construed in accordance with the laws of the Commonwealth of Pennsylvania and shall be binding upon and inure to the benefits of the parties hereto, and their heirs, representatives, successors, and assigns.

18. Neither this Agreement nor the obligations of the parties set forth herein shall be modified or changed except by written agreement executed by all parties hereto.

19. Each person whose signature appears below represents that he or she has been duly authorized in accordance with law to execute this Agreement with legally binding effect, in conformity with the Uniform Written Obligation Act of 1927, upon the party represented.

[signatures on next page]

FOR LOWER PAXTON TOWNSHIP

ATTEST:

Lowman Henry, Chairman

FOR KASTBHANJAN REALTY, LLC (DEVELOPER)

ATTEST:

By _____
Shilpa K. Patel, Member