

55-123. PERFORMANCE GUARANTY. [Amended 3-17-86 by Ord. No. 1986-4; 4-1-91 by Ord. No. 1991-15; 10-5-98 by Ord. No. 1998-20 § 5 and Ord. No. 1998-21 § 5]

- A. Before recording of a final subdivision plat, the developer shall post with the Township a performance guarantee assuring the installation and maintenance of the on-tract improvements. The performance guarantee shall be in the amount of one hundred twenty percent (120%) of the cost of installation of the improvements as calculated by the Municipal Engineer for the following improvements: streets, grading, pavement, gutters, curbs, sidewalks, street lighting, shade trees, surveyor's monuments as shown on the final map and required by the Map Filing Law, water mains, culverts, storm sewers, sanitary sewers or other means of sewage disposal, drainage structures, erosion control and sedimentation control devices and public improvements of open space." If the developer chooses to install the subdivision improvements prior to the filing of the final map, then the developer must post a reforestation bond with the Township prior to commencing clearing operations to insure that the site will be stabilized and revegetated should the developer decide to abandon the project after clearing has occurred. **[Amended 4-6-09 by Ord. No. 2009-10]**
- B. As a condition of final site plan approval, the developer shall post with the Township a performance guarantee assuring the installation and maintenance of the off-tract improvements located within the Township, County or State highway right-of-way. The performance guarantee shall be in the amount of one hundred twenty percent (120%) of the cost of installation of the improvements within the right-of-way as calculated by the Municipal Engineer and including streets, grading, pavement, gutters, curbs, sidewalks, street lighting, shade trees, surveyor's monuments as shown on the final map and required by the Map Filing Law, water mains, culverts, storm sewers, sanitary sewers or other means of sewage disposal, drainage structures, erosion control and sedimentation control devices, and landscaping. In addition, in lieu of posting a bond for the on-site improvements, the developer will be required to post a reforestation bond with the Township prior to commencing clearing operations to insure that the site will be stabilized and revegetated should the developer decide to abandon the project after clearing has occurred. In addition, all of the required on-site

improvements must be installed and accepted by the Township prior to the issuance of a certificate of occupancy. If the developer requests a certificate of occupancy before all of the required site improvements have been completed, then the Township reserves the right to determine if the improvements have been completed to the point where the issuance of a certificate of occupancy is warranted. In addition, the developer will be required to post a performance guarantee with the Township to guarantee the completion of all outstanding items. [Amended 4-6-09 by Ord. No. 2009-10]

- C. Such performance guaranty shall be in favor of the municipality in an amount not to exceed one hundred twenty percent (120%) of the cost of the required improvements. Ten percent (10%) of said performance guaranty shall be posted in cash with the municipality at the time of the posting of the performance guaranty and said funds shall be deposited in accordance with the requirements of the Municipal Land Use Law. The performance guaranty shall run for a period not to exceed twenty-four (24) months but, with the consent of the developer and the surety, if there be one, the Township Committee may, by resolution, extend the terms of the performance guaranty for a period not to exceed an additional twelve (12) months. The performance guaranty shall be in the form of a performance bond issued by an insurance or surety company which has been approved by the State of New Jersey and licensed to do business within the State of New Jersey.
- (1) In the event that the performance guaranty hereinabove referenced is in the form of an Irrevocable Letter of Credit acceptable and approved by both the Township Engineer and the Township Attorney, said Letter of Credit must include the following language: "In the absence of

notice to both the Township Clerk and the Township Engineer by certified mail, return receipt request at least forty-five (45) days prior to the expiration of the within Irrevocable Letter of Credit, then the within Letter of Credit shall automatically be extended for an additional one (1) year period from the date of its expiration."

Notwithstanding the above language, the Township Engineer and the Township Clerk shall receive notice by certified mail, return receipt requested of the expiration of the renewal period of the Irrevocable Letter of Credit hereinabove described. This paragraph shall be read in conjunction with the Planning or Zoning Board's resolution granting the developer a specific period of time to complete the required improvements.

- D. The amount of the performance guaranty may be revised by the Township Committee from time to time to reflect work progress, increasing costs and changing conditions in regard to the uncompleted or unacceptable portions of the required improvements. If the required improvements have not been installed in accordance with the performance guaranty, the obligor and surety shall be liable thereon, at the option of the municipality, for the reasonable cost of the improvements not installed (and upon receipt of the proceeds thereof, the municipality shall install such improvements) or the completion of all required improvements.
- E. If the required improvements are not completed or corrected in accordance with the performance

guaranty, 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.

F. Procedure upon substantial completion of improvements.

- (1) Upon substantial completion of all required appurtenant utility improvements and connection of same to the public system, the obligor may notify the Township Committee, in writing and by certified mail addressed to the Township Clerk, of the completion or substantial completion of said improvements and shall send a copy thereof to the Township Engineer. The developer shall simultaneously therewith submit to the Township Engineer as-built drawings, in ink and on tracing cloth, to such scale as required by the Township Engineer, accurately showing the location, profile, size and appurtenances of all storm drains, catch basins, sanitary sewers and water mains and all utilities, including service connections, constructed within the subdivision. The developer shall also submit a certification by an engineer of the placement and installation of monuments.
- (2) The Township Engineer shall then inspect all improvements of which such notice has been given. The Township Engineer shall file a report, in writing, with the Township Committee, which report shall be detailed and shall indicate either approval, partial approval or rejection of such improvements. If said improvements or any portion thereof shall not be approved or shall be rejected by the Township Engineer, said report shall contain a statement of the reasons for such nonapproval or rejection. The cost of the

improvements as approved or rejected shall be set forth.

- (3) The Township Committee shall accept or reject the improvements, grant partial approval or withhold approval on the basis of applicable engineering reports and shall notify the developer, in writing, and by certified mail, of the contents of said reports and the actions of said Township Committee with relation thereto not 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 obligor shall be released from all liability pursuant to its performance guaranty, except for that portion adequately sufficient to secure provision of the improvements not yet approved; provided that thirty percent (30%) of the amount of the performance guarantee posted may be retained to ensure completion of all improvements.
- (4) If the Township Committee fails to send such notification to the developer within the sixty-five (65) days, the developer may notify the Township Committee, in writing and by certified mail, with a copy thereof sent to the Township Engineer. Failure of the Township Committee to provide the developer with such notification within sixty-five (65) days shall constitute approval of the improvements. Within sixty-five (65) days after receipt of this warning notice, the Township Committee shall send such notification of the contents of the report and its action with relation thereto to the developer by certified mail. Failure of the Township Committee to send or provide such notification to the developer within sixty-five (65) days shall be deemed to constitute approval of the improvements, and the developer and surety, if

any, shall be released from all liability pursuant to its performance guaranty for such improvements.

- (5) If any portion of said improvements shall not be approved or shall be rejected by the Township Committee, the developer shall cause the same to be completed, and, upon completion, the same procedure of notification as outlined herein shall be followed.
- (6) The developer and/or surety shall reimburse the municipality for all reasonable inspection fees paid to the Township Engineer for the foregoing inspection of improvements. The Township may require of the developer a deposit for all or a portion of the reasonably anticipated fees to be paid to the Township Engineer for such inspection.
- (7) Nothing contained herein shall absolve the developer or surety from latent defects in the construction or installation of the improvements should the same become ascertainable to the inspections and procedures as outlined above.
- (8) If the developer fails, neglects or refuses to correct deficiencies as may be discovered by the procedures outlined herein or which may be found to exist as a result of an inspection of said development, the municipality is hereby authorized and empowered to correct said deficiencies after the expiration of a reasonable period of time and/or upon the failure of the developer or surety to take affirmative steps to correct such deficiencies; provided, however, that the municipality shall not be deemed liable, responsible or compellable to proceed with said corrections or installations.
- (9) Nothing contained herein shall affect the obligation of any person relating to the performance of the obligations hereunder to post a sufficient

maintenance guaranty relative to the required improvements.

- (10) Nothing contained herein, however, shall be construed to limit the right of the developer to contest by legal proceedings any determination of the Township Committee or the Township Engineer.

G. *Inspection Fees Required.* Although a developer will not be required to provide a performance guarantee for on-site improvements associated with site plan approval, the developer as a condition of beginning onsite construction must post inspection fees based upon the cost of improvements mandated by the Planning Board, on-site and off-site, but not including fees for inspections which will be undertaken by persons other than the Township Engineer, such as, but not limited to, the Township Construction Code Official, Plumbing Subcode Official or Electrical Subcode Official. Any and all inspection fees required to be paid for those services shall be paid in accordance with the provisions of the Uniform Construction Code as incorporated into the Barnegat Township Code. [Added 4-6-09 by Ord. No. 2009-10]