

Chapter 49.55

FINANCIAL RESPONSIBILITY

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To ensure the installation of the on-site or off-site improvements required by the commission or department, the subdivider or developer shall guarantee the installation thereof by one or a combination of the methods specified below.

- (1) *Approval.* The guarantee shall be approved as to form by the City and Borough attorney except that if the method specified in subsection (6) of this section is employed, approval by the assembly is required.
- (2) *Subdivisions.* The developer may, at the developer's option, complete the required improvements for a subdivision after approval and recording of the final plat if the improvements are guaranteed according to this section. The developer shall remain responsible for completion of the improvements, and the guarantee thereof shall remain in force notwithstanding damage to or interference with the construction of the improvements by individual lot construction contractors or other third parties.
- (3) *Performance bond.* The developer may furnish and file with the City and Borough a corporate surety bond or cash bond in an amount equal to the cost of the required improvements as specified by the City and Borough engineer or director to ensure the actual construction of such improvements within a period of one year. Such bond shall be approved in form by the City and Borough attorney. Upon satisfactory acceptance by the City and Borough of the improvements as installed the performance bond shall be released.
- (4) *Deposit in escrow.* The developer may deposit in escrow an amount of money equal to the cost of the improvements as specified by the City and Borough engineer or director under an escrow agreement. Such escrow shall be conditioned upon the installation of the improvements within one year and the maintenance thereof for one year after installation. The escrow funds may be used for payment of improvements, as made, in a manner in which a prudent real estate development lender would disburse loan funds for required development; provided, however, that a balance sufficient for maintenance shall remain on deposit.
- (5) *Reconveyance agreement.* The developer may convey lots to the City and Borough at the fair market value of the property at the time of the conveyance, the value of which is equal to or greater than the estimated cost of improvements. The conveyance shall be accompanied by a title report paid for by the developer naming the City and Borough as the insured and a reconveyance agreement which spells out the terms of reconveyance of the lots to the developer after completion of the improvements. Title shall be free from exception, encumbrance or defect. The determination of the value of the property shall be made by the City and Borough assessing department and the estimate of the cost of improvements shall be made by the City and Borough

engineer. All submittals shall be approved as to form by the City and Borough attorney. Reconveyance will take place after the City and Borough engineer has certified that all improvements have been satisfactorily completed.

- (6) *Agreement.* The developer may request alternative methods to guarantee required improvements in the form of an agreement that shall include the following:
 - (A) The construction and inspection requirements of the appropriate governmental agency;
 - (B) The time schedule for completion of required improvements and facilities;
 - (C) A method of ensuring that such improvements shall be completed to the specifications required and in the time schedule agreed upon; and
 - (D) A positive recommendation from the city attorney and final approval by the assembly.
- (7) *Maintenance bond.*
 - (A) *Filing of bond.* Upon conditional acceptance of the improvements by the City and Borough engineer or director, the developer shall furnish and file, with the City and Borough engineer or director, a corporate surety or cash bond in an amount equal to five percent of the cost of improvements for payment of any reconstruction or repair of improvements which may be necessary within one year from the conditional acceptance. A warranty bond in conjunction with certain development permits or design review permits may not be necessary and may be waived by the director or engineer.
 - (B) *Method of compliance.* When in the judgment of the City and Borough engineer or director, the improvements are in need of reconstruction, repair, or maintenance during the first year after date of installation, the City and Borough engineer or director shall notify the subdivider, developer or agent thereof, in writing, by certified mail, stating the areas of discrepancy and the recommended remedial action.
 - (C) *Action by subdivider.* Within 20 days of a receipt of a letter stating the need for repair or maintenance, the subdivider shall furnish to the City and Borough engineer, in writing, a schedule for completion of the necessary repair or maintenance.
- (8) *Default.* In the event the subdivider defaults or fails or neglects to satisfactorily install the required improvements within the agreed upon time or to repair and maintain the requirement improvements during the warranty period, the assembly may declare the bond, escrow deposit or other guarantee forfeited, and the City and Borough may install or contract to have installed, the required repair or maintenance using the proceeds from the collection of the bond, deposit, or other guarantee to defray the expense thereof.
- (9) *Acceptance and release of surety.* The following procedures shall be utilized for release of financial guarantees:

- (A) Conditional acceptance of the whole or a part of the required improvements shall be given after installation and written approval thereof from the City and Borough engineer or the director. The performance bond or other guarantee may then be released in whole or in part. Partial releases shall be made in installments no smaller than ten percent of the amount originally posted. The final ten percent or such other amount as may be remaining upon completion of the improvements shall be retained by the department until a maintenance bond is posted in accordance with subsection (7) of this section.
- (B) Final inspection shall be made by the City and Borough engineer or the director one year after all work has been completed. All defects shall be corrected prior to final acceptance and release of the maintenance bond.
- (C) Final acceptance and release of the bond shall be in writing from the City and Borough engineer or the director.
- (D) Upon vacation of a plat or portion thereof, and providing no lots have been conveyed or improved, the surety bond or appropriate portion thereof, shall be released.

(10) *Extension.* Upon request of the developer, the commission may extend the performance period for up to 12 months.

(Serial No. 87-49, § 2, 1987; Serial No. 99-22, § 9, 1999)