

ARTICLE VII - GUARANTEES OF REQUIRED IMPROVEMENTS

A. Definition and Purpose

An *improvement guarantee* is a security instrument accepted by the Town to ensure that all improvements, facilities, or work required by these Regulations or as a condition of approval of a subdivision plan by the Planning Board will be completed in compliance with the approved plans and specifications.

Improvement guarantees shall be provided to ensure the proper installation and maintenance of required street, utility and other physical improvements and to ensure compliance with other nonstructural conditions of final plat approval (if any). The nature and duration of the guarantee shall be structured to achieve this goal without adding unnecessary costs to the subdivider.

B. General Procedures

Before any land development or subdivision plan is endorsed by the Planning Board, and before the recording of any subdivision plats, the Planning Board shall be required to approve agreements for the completion of all required improvements. Such agreements may, at the option of the subdivider, take the form of (1) completion of actual construction of all improvements; (2) completion of actual construction of all improvements with the exception of those improvements provided in VII.C.1 below which shall require improvement guarantees; or (3) a combination thereof.

At the preliminary plat review stage, the subdivider shall submit either of the following: (1) a letter to the Planning Board indicating his/her intent to complete the required improvements prior to the Planning Board's endorsement of the final plat; or (2) a letter to the Board indicating his/her intent to complete the required improvements prior to the Planning Board's endorsement of the final plat with security sufficient to cover the cost of required improvements provided in Article VII, Section C., Item 1. at an amount established by the Board.

1. If all improvements are to be constructed without a financial guarantee, all work, including mylar as-built record drawings certified by a Professional Engineer licensed by the State of Rhode Island, shall be completed prior to endorsement and recording. Inspections shall be made by the Public Services Department at all required stages of construction as specified in Article XIII. All construction shall be inspected and approved under the direction of the Administrative Officer and according to the procedures in Article XIII. Upon completion of all required improvements, the Administrative Officer shall certify in writing of such completion, and a copy shall be provided to the subdivider upon request. The final plat shall be endorsed by the appropriate Planning Board or Town official and the plat shall be recorded as provided in Article VI, at which time the lots within the subdivision may be transferred or sold.

2. If improvements are to be guaranteed, the provisions of Section C. of this Article, below, shall apply.

3. Improvements which are proposed to be privately owned and maintained, such as, but not limited to, streets, utilities, and drainage systems, shall be covered by an improvement guarantee if required by the Planning Board.

C. Procedures for Financial Guarantees

1. Amount - Improvement guarantees shall be considered for the following subdivision improvements only:

- a. final asphalt or other approved paving surface;
- b. sidewalks;
- c. right-of-way plantings, or other required landscaping, where applicable;
- d. as-built record drawings; and,
- e. off-site improvements required by the Planning Board as a condition of final approval.

All other subdivision improvements shall be constructed in accordance with Article VII, Section B., Item 1. Improvement guarantees for Items C.1. a, b, c, d and e above shall be in an amount and with all necessary conditions to secure for the Town the actual construction and complete installation of said required improvements, and the satisfactory completion of all conditions of final approval within the time periods required for completion provided in Article V. The amount shall be based upon actual cost estimates which would be required for the Town to complete all improvements required as a condition of final approval. These estimates shall be initially prepared by the Director of Public Services and submitted to the Administrative Officer, who shall review the estimates, if requested, with the subdivider. If the subdivider disagrees with the estimated amount, he/she shall have the opportunity to submit a revised estimate along with supporting justification for the revisions. The Technical Review Committee shall review the Director of Public Services' amount of the improvement guarantee, or the subdivider's revision, and make a recommendation to the Planning Board, who shall review and approve the final amount. The Board may set the guarantee in a reasonable amount in excess of the estimated costs in order to anticipate for increases in economic or construction conditions. However, the amount of such increase shall not exceed 120 percent of the estimated cost of improvements as recommended by the Technical Review Committee.

All work, with the exception of Items C.1. a, b, c and d above shall be completed prior to endorsement and recording. Progress mylar as-built record drawings certified by a Professional Engineer licensed by the State of Rhode Island and depicting all improvements with the exception of final asphalt paving surface, sidewalks, and right-of-way plantings, where applicable, shall also be completed prior to endorsement and recording. Inspections shall be made by the Public Services Department at all required stages of construction as specified in Article XIII. All construction shall be inspected and approved under the direction of the Administrative Officer and according to the procedures in Article XIII. Upon completion of all required improvements, the Administrative Officer shall certify in writing of such completion, and a copy shall be provided to the subdivider upon request. The final plat shall be endorsed by the appropriate Planning Board or Town official and the plat shall be recorded as provided in Article VI, at which time the lots within the subdivision may be transferred or sold.

At the expiration of the final plan approval period, if all required improvements are not complete, the Planning Board shall review the status of improvements and may (1) require the subdivider to extend the duration of the entire improvement guarantee; or (2) authorize the Administrative Officer to take the steps necessary to ensure completion of the remaining work by using improvement guarantee funds.

If at any time during the guarantee period the procedures, implementation measures, methods, materials, and/or schedules of construction are determined by the Planning Board not to be in compliance with the approved plans, the Board may, after proper notification to the subdivider, authorize the use of improvement guarantee funds to insure proper compliance.

2. Required Form - The security shall be in the form of a financial instrument acceptable to the Finance Director and shall enable the Town to gain timely access to the secured funds, for cause. Performance and maintenance guarantees may be provided by a variety of means including, but not limited to, the following:

a. Security bond. The subdivider may obtain a security bond from a surety bonding company authorized to do business in the State of Rhode Island.

b. Letter of credit. The subdivider may provide an irrevocable letter of credit from a bank or other reputable institution.

c. Escrow account. The subdivider may deposit cash, or other instruments readily convertible into cash at face value, either with the Town or in escrow with a bank.

3. Releases - At the expiration of the final plan approval period, if all required improvements are complete, any improvement guarantee shall be returned to the subdivider. A written request for release of any improvement guarantee shall be made to the Administrative Officer, who shall refer such request to the Technical Review Committee. After inspection of all required improvements, the Technical Review Committee shall recommend that the Planning Board (a) authorize the Finance Director to return all improvement guarantees to the subdivider, or, (b) that no releases be made. Partial releases or reductions in the guarantee amount shall not be authorized. The Planning Board shall act on all such releases of improvement guarantees.

4. Phased Subdivisions - In the case of land development projects or subdivisions which are approved and constructed in phases, the Planning Board shall specify improvement guarantees in accordance with Article VII, Sections B. and C., related to each particular phase. If any off-site improvements or other improvements or conditions which are not directly related to a particular phase are required as a condition of approval, the Board shall, in setting the guarantee amount for each phase, clearly specify when such guarantees are to be provided.

5. Maintenance Guarantees - The Planning Board shall require that a maintenance guarantee be provided by the subdivider for all improvements whether or not such improvements are being dedicated to the Town for public acceptance and maintenance. The amount of the maintenance guarantee shall be five percent (5%) of the total estimated cost of all required improvements. The initial period for such maintenance guarantee shall be one (1) year and shall commence upon completion of all subdivision improvements; receipt of mylar as-built record drawings certified by a

Professional Engineer licensed by the State of Rhode Island; and in the case of public improvements, acceptance of streets by the Town Council. At the end of the one-year maintenance period, the Director of Public Services shall inspect all improvements subject to the guarantee and shall certify in writing to the Administrative Officer as to their condition. If found to be unacceptable, the Administrative Officer shall recommend an extension of the guarantee period to the Finance Director, and the original funds shall not be returned to the subdivider. If all improvements are in good condition and have not been damaged, the maintenance guarantee shall be returned to the subdivider.

In cases where the Planning Board finds there are extenuating circumstances, the initial maintenance period may be established for a period longer than one year. The reasons for establishing a longer maintenance period and the nature of the extenuating circumstances shall be made a part of the record.

6. Acceptance of Improvements - Upon completion of all required improvements, the subdivider shall convey all public improvements to the Town for ownership and maintenance. Private facilities, such as private roads, open space and privately maintained drainage systems shall not be conveyed to the Town. The subdivider shall first request the Department of Public Services to conduct a final inspection as provided in Article XIII, Section J. The Director of Public Services shall certify to the Administrative Officer in writing that all required improvements have been satisfactorily completed.

The subdivider shall also request, in writing to the Administrative Officer, that public improvements, streets, land, easements or other facilities be accepted by the Town. This request shall contain a description of all facilities to be accepted and shall be accompanied by an accurate description of all streets, easements, land or other facilities by metes and bounds and by reference to the final plat drawing(s) and by a warranty deed transferring ownership to the Town and describing any special conditions or other requirements.

Upon certification of completion of all required improvements, and upon receipt of all required information from the applicant, the Administrative Officer shall place the request for acceptance upon the next available agenda of the Technical Review Committee. If all requirements of these Regulations have been met by the subdivider, the Technical Review Committee shall recommend acceptance by the Town Council of all such improvements and shall transmit such recommendation to the Town Council in writing. In such recommendation for acceptance by the Town Council, the Technical Review Committee shall also recommend an amount for a maintenance bond in accordance with these Regulations and shall recommend to the Town Council that no public improvements or facilities be accepted for ownership and maintenance until such maintenance bond has been submitted as required in Section 5 of this Article.

Upon their acceptance by the Town Council, all improvements shall be permanently owned and maintained by the Town as part of the municipal system and the subdivider shall be no longer responsible for their care, repair, or maintenance.