

## ARTICLE 4

### ASSURANCES FOR COMPLETION AND MAINTENANCE OF IMPROVEMENTS

#### **SECTION 400 - Completion Requirement for Public Improvements**

Before the Staff can consider the Secondary Plat application, the Subdivider shall be required to:

1. Complete the required improvements in the manner prescribed by this Ordinance, the approved Primary Plat, Improvement Plan, and by the Subdividers Contract;
2. Follow the requirements as outlined within Section 430 and Article 5; and
3. Provide the County with a maintenance bond that complies with Section 435.

#### **SECTION 405 – Performance Guarantee Alternative to Completion Requirement**

An alternative to the Subdivider's completion of the required improvements and installations prior to seeking Secondary Plat approval is to provide a financial Performance Guarantee. Required improvements and installations to be constructed shall include, but may not necessarily be limited to: streets, curbs and gutters, sidewalks, stormwater drain and sewer systems, sanitary sewer systems, water supply systems, street signs, monuments and the various appurtenances related thereto.

Prior to or at the time of the Secondary Plat approval, the Subdivider shall be required to provide a financial Performance Guarantee to ensure that all improvements and installations set forth in this Section are completed within two (2) years of the approval date of the Secondary Plat—or as set forth in an amended Subdivider's Contract.\* The Subdivider's engineer or surveyor shall provide an itemized, detailed estimate of the cost for construction to assist the County Engineer or his designee in the process of fixing the amount of the guarantee. The initial estimate approved by the County Engineer or his designee must equal one hundred percent (100%) of the total estimated completion cost of all required improvements and installations including, but not necessarily limited to: streets, curbs and gutters, sidewalks, stormwater drain and sewer systems, sanitary sewer systems, water supply systems, street signs, monuments and the various appurtenances related thereto. The County Engineer or his designee shall use the Subdivider's estimate as a guide to establish the dollar amount needed for the Performance Guarantee. The final amount established by the County Engineer or his designee shall include a twenty percent (20%) contingency for any unforeseen expense(s).

The time period for financial Performance Guarantees shall correspond to the entire time that is necessary to complete all construction and inspections. The County Engineer or his designee can reduce the Performance Guarantee amount proportionally for partial completion of the required improvements. The County Engineer or his designee shall establish the Performance Guarantee amount within fourteen (14) days of receipt of the information listed above and notify the Subdivider in writing. If the County Engineer or his designee has not responded within fourteen (14) days, the submitted amount shall become the amount for the guarantee.

All financial guarantees shall be deposited and placed under the control of the Planning Director, or his designee. The Planning Director will present monthly reports to the Plan Commission, County Engineer and County Auditor that detail the status of all financial Performance Guarantees. The purpose of these reports is to ensure that these entities remain informed of the subdivision review process associated with each development and to make certain that both Subdividers and financial institutions are notified in the following prescribed manner:

The Planning Director, or his designee, will notify the Subdivider and the affected financial institutions approximately ninety (90) days prior to the expiration of the Subdivider's Contract and its corresponding financial Performance Guarantee to determine if the required improvements have not been—or will not be—completed.

If the Subdivider has not completed the necessary improvements and installations within **thirty (30) days** prior to the expiration of the approved two (2) year period—or within a time extension approved in accordance with the terms set forth in this Section—the Planning Director and County Engineer shall take the necessary steps to proceed with the construction of these improvements and installations, making use of the financial Performance Guarantee to the extent required.

#### **Renewal Process, Detailed**

\*The completion period for the required improvements can be extended once for an additional two (2) years by submitting an amended Subdivider's Contract (proposal) and a corresponding financial Performance Guarantee to both the County Engineer and the Planning Director. All requests pertaining to an extension must be submitted in writing at least sixty (60) days prior to the expiration of the effective Subdivider's Contract and corresponding financial Performance Guarantee; extensions shall only be issued if the Subdivider has been unable to complete the required improvements despite due diligence. All requests for renewals must be received, and completed, **thirty (30) days** before the expiration of the Subdivider's Contract and its corresponding financial Performance Guarantee to avoid a withdrawal as noted earlier in this Section.

#### **SECTION 410 - Types of Financial Guarantees**

A Performance Guarantee or Maintenance Guarantee authorized or required by these regulations shall be secured by one (1) surety bond, which must be obtained from a single financial institution licensed in the State of Indiana in the amount required to complete improvements as described in Section 405 and Section 435. The beneficiary of such financial guarantee shall be the Dearborn County Board of Commissioners or appropriate legislative unit. Financial Guarantees submitted pursuant to this Article shall comply with Certificates J and K of Article 7. A Subdivider's Contract shall be completed and attached to any financial Performance Guarantee. (See Article 7, Certificate I)

#### **SECTION 415 - Governmental Units**

Governmental units, to which these regulations apply, may secure financial Performance Guarantees by filing a certified resolution, or ordinance, with the County Commissioners. The resolution, or ordinance, must have been adopted by the unit's fiscal body and must affirm the unit's obligation and financial ability to complete the required improvements.

#### **SECTION 420 - Temporary Public Improvements**

The Subdivider, at the Subdivider's expense, shall complete, maintain, and remove all temporary public improvements required by this ordinance, the approved Primary Plat and Improvement Plan, and the Subdivider's Contract. The schedule for the completion, maintenance and removal of temporary improvements shall be incorporated in the approved Improvement Plan. The amount of the Performance Guarantee shall be adjusted to reflect the cost of the temporary improvements.

#### **SECTION 425 - Cost of Required Improvements**

All required improvements shall be made by the Subdivider, at the Subdivider's expense, without reimbursement by the County, unless the Board expressly agrees to share in the cost of the required improvements.

## **SECTION 430 - Release of Financial Performance Guarantee**

The County Engineer may release the construction financial guarantee, but only if:

1. The Subdivider applies to the County Engineer, in writing, for the release of the Performance Guarantee and provides accompanied by a certification signed by the Subdivider's engineer or surveyor. This certification shall state that, based on the information provided and to the best of his knowledge, all required improvements have been completed in the manner prescribed by this Ordinance, the Subdivider's Contract, and the approved Primary Plat and Improvement Plan(s). The certification of the Subdivider's engineer or surveyor shall also be accompanied by "record drawings." The record drawings shall be submitted as an up-to-date Improvement Plan, and shall contain all of the information set forth in Article 2, Section 232 of this Ordinance. Such record drawings must be prepared, signed, and stamped by the Subdivider's engineer or surveyor and must be submitted in both electronic (preferably CAD-based, where applicable)\* and hard copy formats; and
2. The Board, or legislative unit with jurisdiction, has accepted the dedication of required improvements and a Maintenance Guarantee, if required, has been established.

The County Engineer, in coordination with the Technical Review Committee, shall review the record drawings and any inspection reports provided by the County's road inspector (See Article 5) to determine if the Performance Guarantee can be released. He will then notify the Subdivider in writing within fourteen (14) days of receipt of the letter of the decision and the amount and term needed for the Maintenance Guarantee, if required. (See Section 435) This guarantee must be provided prior to the release of the Performance Guarantee.

Any costs incurred by the County in connection with a request for Performance Guarantee release (for example, without limitation, engineering inspection fees, legal fees, etc.) shall be borne by the Subdivider, regardless of whether the request is ultimately granted. A Maintenance Guarantee shall only be released when the Subdivider has paid such costs.

### **(\*) Footnote:**

The engineer's or surveyor's signature and stamp are not required on the electronic record drawings.

## **SECTION 435 - Maintenance Guarantee of Public Improvements**

The Subdivider shall be required to maintain the improvements and to provide for snow and ice removal on streets. If the County accepts the dedication and maintenance of such improvements, then the County shall maintain the improvements and provide for snow and ice removal.

Prior to the County's acceptance of the required improvements, and prior to the release of the financial Performance Guarantee, the Subdivider shall be required to post a Maintenance Guarantee if less than eighty percent (80%) of the proposed development is complete—unless a reduction is requested in writing and is subsequently authorized by both the County Engineer and the Planning Director. The purpose of this financial guarantee shall be to ensure the satisfactory condition of the required improvements over a specified period of time and/or to complete any unfinished final improvements common in road construction, such as the finish course of asphalt. The length of time and amount of the Maintenance Guarantee shall be established by the County Engineer, however, the minimum amount shall be no less than twenty five percent (25%) of the financial Performance Guarantee. This guarantee cannot be reduced prior to release. The Maintenance Guarantee shall be secured in the manner prescribed by Article 7, Certificate K for a minimum period of two (2) years. The release of the Maintenance Guarantee shall be by the same procedure as outlined in Section 430.

Any costs incurred by the County in connection with a request for Maintenance Guarantee release (for example, without limitation, engineering inspection fees, legal fees, etc.) shall be borne by the Subdivider, regardless of whether the request is ultimately granted. A Maintenance Guarantee shall only be released when the Subdivider has paid such costs.

For Subdivisions developed in phases, the County Engineer shall consider construction damage to the accepted phase of the Subdivision during construction of the remaining phases and adjust the Maintenance Guarantee amount accordingly. In addition, Maintenance Guarantee amounts shall be increased accordingly to add appropriate permanent termination points for roads that developed in phases in the event the subsequent phase(s) are not built. Also, improvements that were required to be connected by a designated phase of the Subdivision shall be added to the Maintenance Guarantee amount and shall not be released until such improvements have been completed.

#### **SECTION 440 - Issuance of Permits**

No building permit or zoning permit shall be issued for a Subdivision lot until the Subdivider has obtained Secondary Plat approval, has submitted a signed and approved Subdivider's Contract, and has completed—or provided an approved financial guarantee for—all of the required improvements, except sidewalks and the final pavement course.

#### **SECTION 445 - Acceptance of Dedication Offers and Maintenance**

The Commission's approval of a Primary Plat, Improvement Plan or Secondary Plat shall not be deemed to constitute or imply the County's acceptance of any street, easement, park or other public improvement shown on the plat. Acceptance of dedication of streets, public areas, easements, and parks shall be by ordinance of the legislative unit as required by law. The Secondary Plat shall be endorsed with appropriate notes to that effect by the Subdivider. The County may accept the dedication of such public improvements by appropriate official action.

#### **SECTION 450 - Acceptance of Maintenance for Public Improvements**

The Subdivider may petition to the County Engineer in writing for acceptance of public improvements for maintenance by Dearborn County. The County Engineer shall then, if warranted, certify to the Board or legislative unit with jurisdiction in writing that all required improvements have been satisfactorily completed according to County regulations. This legislative unit may then upon ordinance or resolution at any duly advertised public meeting accept the maintenance of the certified improvements. A copy of the ordinance or resolution shall be provided to the Commission for its file.