

## ARTICLE 3

### ASSURANCE FOR COMPLETION AND MAINTENANCE OF IMPROVEMENTS

#### **Sections:**

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- 3-103 Bond Standards and Requirements
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#### **3-101 THE DEVELOPMENT AGREEMENT**

A completed Development Agreement shall be prepared and executed before initiation of any land disturbance within any Major Subdivision to which these regulations are applicable and a performance or maintenance bond is to be posted. A draft Development Agreement shall be prepared following approval of the Construction Plans. The draft agreement shall reference the design incorporated within the approved Construction Plans and shall be sufficient in form to assure that proposed construction methods and materials meet or exceed minimum established standards. The draft agreement and an estimate of the amount of bond (as prepared by the Town Manager) shall be sent to the applicant for approval. Development activity may begin upon acceptance of the Development Agreement by the applicant and acceptance of the required bond by the Planning Commission.

#### **3-102 BONDING AND RECORDING OF FINAL PLATS**

##### **3-102.1 Construction Prior to Recording Final Plat**

When the developer desires to proceed with construction of a portion or all of the required improvements prior to recording the Final Plat, a reclamation bond shall be provided in an amount determined by the Town Manager to be sufficient to reclaim the property should the developer not complete the required improvements. Such reclamation is to include filling trenches, closing off streets, performing drainage work, re-seeding and other actions necessary to make the property safe and to remedy any nuisance, such as stagnating water or soil erosion the property may be causing to surrounding property owners or the public in general.

### **3-102.2 Recording of Final Plat Prior to Construction**

When the applicant wishes to record a Final Plat prior to completion of required improvements, the applicant shall provide a performance bond conforming to Section 3-103 (Bond Standards and Requirements) guaranteeing installation of such designations improvements. The amount and form of such bond shall in all regards be sufficient to guarantee to the town council or other agency ultimately responsible for acceptance of the facilities satisfactory construction, installation, and dedication, free and clear of any encumbrances, of the incomplete portion of required improvements.

## **3-103 BOND STANDARDS AND REQUIREMENTS**

### **3-103.1 General**

In order to ensure that the work will be completed in accordance with approved plans and specifications, all improvements proposed in conjunction with any subdivision must be covered by adequate bond unless such work is to be totally completed prior to filing of any Final Plat for any portion of the development site. When the work is to be completed prior to filing of a Final Plat, a reclamation bond sufficient to insure that the building site may be stabilized in the event of the failure of the applicant to complete the work shall be provided.

### **3-103.2 Amount of Bond**

The applicant shall post good and sufficient bond with the Town Manager in the amount of one hundred twenty-five percent (125) of the Town Manager's estimated cost to assure completion of the work. The Town Manager may consider input from a professional engineer, contractor, or the building official in developing an estimate of cost to assure completion of the work. Good and sufficient surety shall include the types of bond specified in Subsection 3-103.3, Types of Bond.

### **3-103.3 Types of Bond**

Subject to the standards and requirements of this Article and acceptance by the Town Manager, the following types of bond may be accepted for purposes of guaranteeing completion of improvements required by these Regulations:

1. Irrevocable Standby Letter of Credit.
2. Cash Escrow or bank assignment of certificates of deposit with a federally-insured bank having assets of at least \$100 million.
3. Surety or performance bond by an insurance company recognized and regulated by the Insurance Commissioner in the State of Tennessee.

#### **3-103.2.301 Irrevocable Standby Letters of Credit**

An irrevocable standby letter of credit may be utilized as the means of providing bond for improvements required under the various provisions of these Regulations. Any letter of credit shall be drafted so as to represent an obligation of the financial institution to the Town and not an obligation to the permittee. All Letters of Credit, and each provision thereof, shall be governed and construed in

accordance with the Uniform Customs and Practice for Documentary Credits (1983 Revision and subsequent revisions), International Chamber of Commerce, Publication 400 and Sections 47-5-101 through 47-5-118, TCA. Such letters shall be for one (1) year and shall be automatically renewable for successive one (1) year periods without any effort on the part of the Town. They shall be renewed until released by the Town. However, said letters may be revoked after giving the Town written notice with ninety (90) days opportunity to cash the letter. Such notice shall be by certified mail, return receipt requested.

### **3-103.302 Escrow Deposits for Improvements**

#### a. Acceptance of Escrow Funds

The term "Cash Escrow" as used in these regulations refers to two types of performance guarantees, cash escrows and bank assignment of funds. In the case of either cash or other near cash (i.e., certificates of deposit) guarantees, all funds shall be maintained in accounts that are beyond the reach of the developer and subject to an escrow agreement.

#### b. Procedures on Escrow Fund

The Town shall hold all escrows totally under its control and kept in its bank accounts. A detailed "Escrow Agreement" shall be prepared and appropriately endorsed by all parties to such agreement at the time of creation of any escrow account. The developer's tax identification shall be used for the escrow and the developer shall be responsible for paying tax on any interest credited to the escrow account.

### **3-103.303 Surety or Performance Bonds**

A performance bond may be used as the means of providing bond for improvements required under the various provisions of these Regulations. All performance bonds shall provide a location within Hamilton County or a county adjoining Hamilton County where such bond(s) may be drawn upon. All performance bonds shall be drafted so that the only requirement for the Town to draw upon such bond is to notify the financial institution (grantor) that:

"We have incurred liability by reason of the failure of the applicant/developer/owner to complete the construction of their project \_\_\_\_\_ [insert name of subdivision and plans] in accordance with the Development Plan and the rules and regulations governing the subdivision of land within Signal Mountain, Tennessee." The amount drawn, which may be more than required to complete the project, will be held in a segregated bank account until the work can be bid competitively and the bid awarded and paid for or until the contract for the work is otherwise let and the work paid for. Any excess over the cost of completing the work will be returned to the grantor."

### **3-104 COMPLETION OF IMPROVEMENTS**

Generally, the final paving course shall not be applied until seventy-five percent (75%) of the houses in the subdivision, or phase thereof, fronting along a street are completed. Where maintenance, safety or an unforeseen problem is created by the absence of the final paving course, paving of a street may be allowed prior to construction of seventy-

five percent (75%), but not less than fifty percent (50%), of the houses fronting along a street. The Town may permit final paving to occur and the Town Manager may allow subsequent reduction of the performance bond to an amount sufficient to guarantee maintenance of the streets as specified below. The Town Manager may permit the maintenance bond to be renewed if additional time is needed to complete further build-out of the subdivision. The Town Manager may require that the final paving course be applied one (1) year or longer after the date of the issuance of the first Certificate of Occupancy in said subdivision or phase thereof regardless of the number of houses built. Under no circumstances shall final paving occur until all utility installations, including service lines to individual lots, are complete.

### **3-104.1 Failure to Complete Improvements and Default**

In those cases where surety instruments have been posted and required improvements have not been installed according to the approved plans and specifications, the Town Manager may then recommend to the Planning Commission that the surety instruments be declared in default. If the Planning Commission declares the surety instruments to be in default, the Town Manager may require that all the improvements be installed regardless of the extent of the building development at the time default is declared. If the improvements are not completed within the time period specified, including any extension thereof, no additional building permits shall be issued for any lot or portion of such property until such facilities are completed to the satisfaction of the Planning Commission upon recommendation by the Town Manager. The applicant and the financial institution issuing the bond shall be jointly and severally responsible for completing said improvements according to specifications.

### **3-104.2 Notification of Failure to Complete Improvements and Default**

If circumstances led the Town Manager to believe that the Developer does not intend to complete the improvements, the Town Manager shall notify the Developer of his or her intent to proceed with calling of the Bond by certified mail, return receipt requested. The Developer shall have 10 days to present a written response regarding his or her plans to complete the improvements. If the Developer fails to respond or his response is inadequate the Town Manager shall recommend to the Town Council that the Developer's surety instruments be declared to be in default.

### **3-104.3 Maintenance of Improvements**

The applicant shall be required to maintain all improvements for one (1) year after acceptance by the governing authority. Additionally, the applicant shall be required to file a maintenance/warranty bond with the Town Manager prior to dedication. This bond is established for purposes of assuring the quality of the materials and construction of such facilities. Such bond shall be in an amount considered adequate by the Town Manager to assure satisfactory condition of the required improvements.

#### **3-104.301 Amount and Duration of Maintenance/Warranty Bonds**

The maintenance bond shall, at a minimum, cover forty percent (40%) of the construction cost of all road and drainage improvements, and ten percent (10%) of all water and sewer system improvements. The duration of Maintenance/Warranty bonds shall be two (2) years for roadways and one (1) year for all other improvements. The bond shall be released upon expiration of the required time, with a Final Inspection by the Town, a favorable recommendation by the Town Manager, and approval by the Town Council.

### **3-104.302 Notification of Necessity to Perform Maintenance**

The Town agrees to contact the Developer prior to making any repairs, unless these repairs are deemed to be of an emergency nature, to give the Developer the opportunity to make repairs prior to calling of the Bond. The Maintenance Bond may be called using the same procedure set forth for Performance Bonds in Section 3-104.2 above.

### **3-104.4 Inspection of Improvements**

The Town may inspect required improvements during construction. If the appropriate governmental representative finds upon inspection that any of the required improvements have not been constructed in accordance with the applicable construction standards and specifications, the developer shall be responsible for completing such improvements to the required standards. The fact that the Town inspects the facilities in no way relieves the developer from designing or installing such facilities in accordance with the provisions of these regulations.

Work done without proper inspection will be done at the developer's risk and may be rejected by the Town Manager. Upon failure by the developer to satisfactorily repair or to remove and replace, if so directed, rejected or condemned work or materials immediately after receiving notice from the Town Manager or inspector, the Town Manager shall, after giving written notice to the developer, have the authority to reject the work.

The developer shall furnish the Town Manager with every reasonable facility for ascertaining whether or not the work as performed is in accordance with the requirements and intent of the Development Agreement. If required by the Town Manager or inspector, the developer shall at any time, before acceptance of the work, remove or uncover such portions of the work as may be directed for inspection.

The Town Manager or inspector shall make or cause to be made final inspection of all work in the Development Agreement or any portion thereof as soon as practicable after the work is completed and ready for acceptance. If the work is not acceptable to the Town Manager at the time of final inspection, he or she shall inform the developer of the particular defects to be remedied before final acceptance can be made.

## **3-105 RELEASE OR REDUCTION OF RECLAMATION OR PERFORMANCE BOND**

### **3-105.1 Certificate of Satisfactory Completion**

Prior to release of any performance surety the engineer in charge of construction of such improvements shall be required to certify that such improvements have been installed in accordance with provisions of these regulations, and the approved Construction Plans and specifications. Upon receipt of such certification and "as-built drawings" required by Section 2-108.7 (As-Built Drawings Required) the governing body may accept the

dedicated improvements in accordance with the procedures set forth in Section 3-106 (Acceptance of Dedication Offers) of these regulations.

### **3-105.2 Reduction of Performance Bonds**

The surety instruments guaranteeing installation of improvements may be reduced upon completion of the base asphalt and again upon completion, dedication and acceptance of such improvements and then only to the ratio that the cost of the public improvements dedicated bears to the total cost of public improvements included in said plan. In no event shall a performance bond be reduced below fifteen percent (15%) of the principal amount prior to final acceptance of all items covered under such instrument.

### **3-106 ACCEPTANCE OF DEDICATION OFFERS**

Acceptance of offers of dedication of improvements for public maintenance shall only occur by action of the governing body. Such action shall be in the form of a resolution recommended by the Planning Commission to the Town Council. Approval by the Planning Commission of a subdivision plan shall not be deemed to constitute or imply an acceptance by the Town Council or other agency ultimately responsible for acceptance of the facilities of any street, easement or other ground shown on the plan. The Planning Commission may require the plat to be endorsed with appropriate notes to this effect.

### **3-107 DEFERRAL OR WAIVER OF REQUIRED IMPROVEMENTS**

The Planning Commission may defer or waive at the time of Final Plat approval, subject to appropriate conditions, the provision of any or all such improvements as, in its judgment, are not required in the interest of the public health, safety, and general welfare or which are unfeasible because of inadequacy or lack of connecting facilities. Whenever it is deemed necessary by the Planning Commission to defer construction of any improvement required herein because of incompatible grades, future planning, inadequate or lack of connecting facilities or other reasons, the developer shall either pay his share of the costs of the future improvements to the Town prior to signing of the Final Subdivision Plat or post a bond ensuring completion and/or maintenance of said improvements.

### **3-108 ISSUANCE OF BUILDING PERMITS AND CERTIFICATES OF OCCUPANCY**

Where a Development Agreement and/or surety instruments have been required for a subdivision, or any section of a subdivision, and such are determined to be in default, no building permit or Certificate of Occupancy shall be issued for any building in the subdivision or any affected section thereof prior to completion and dedication of the improvements to the appropriate governmental unit, as required in the Planning Commission resolution of approval. The extent of street improvements shall be adequate for vehicular access by the prospective occupant and by police and fire equipment prior to the issuance of a building permit.

No building permit shall be issued for the final ten percent (10%) of lots in a subdivision, or if ten percent (10%) is less than two (2) lots, for the final two (2) lots of a subdivision, until all public improvements required by the Planning Commission's resolution of final plat approval have been fully completed, dedicated, and accepted by the governing body.