

Chapter 3

Assurance for Completion and Maintenance of Improvements

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8-3-010: IMPROVEMENTS

A. COSTS OF IMPROVEMENTS

All required improvements shall be made by the applicant, at the applicant's expense, without reimbursement by the City or any improvement district therein, and in accordance with related codes, fee schedules, and ordinances.

B. ESCROW DEPOSITS OR LETTERS OF CREDIT FOR LOT IMPROVEMENTS:

1. **Acceptance of Escrow Funds.** When, by reason of the season of the year any lot improvements required by the subdivision regulations cannot be performed, the Building Official may, nevertheless, issue a temporary certificate of occupancy, provided there is no danger to health, safety, or general welfare, upon accepting a cash escrow deposit in an amount approved by the City for one hundred twenty (120) percent of the cost of remaining improvements. The performance guarantee covering such lot improvements shall remain in full force and effect.
2. **Procedures on Escrow Fund.** All required improvements for which have been accepted by the City at the time of issuance of a certificate of occupancy shall be installed by the developer within six (6) months from the date of deposit and issuance of the temporary certificate of occupancy. In the event that the improvements have not been properly installed, at the end of the time period the City shall give two (2) weeks written notice to the developer requiring installation of the improvements. In the event that they are not installed properly as approved and shown on the building or site plans the City Council may proceed to contract out the work for the installation of the necessary improvements in a sum not to exceed the amount of the escrow deposit.

C. Temporary Improvements.

The applicant shall build and pay for all costs of temporary improvements required by the City Council, Planning Commission, or Staff and shall maintain them for the period specified. Prior to construction of any temporary facility or improvement, the developer shall file with the City a separate suitable guarantee, in accordance with this Code, for temporary facilities, which ensures that the temporary facilities will be properly constructed, maintained, and removed.

D. DEFERRAL OR WAIVER OF REQUIRED IMPROVEMENTS.

1. The Planning Commission may recommend that the City Council defer or waive at the time of final approval, subject to appropriate conditions, the provision of any or all such improvements as, in its judgment, are not requisite in the interests of the public health, safety, and general welfare, or which are inappropriate because of inadequacy or lack of connecting facilities.
2. Whenever it is deemed necessary by the Planning Commission to defer the construction of any improvement required herein because of incompatible Grades, future planning, inadequate or lack of connecting facilities, or for other reasons, the Applicant shall pay his share of the costs of the future improvements to the City government prior to the signing of the final Subdivision Plat, or the Applicant may post a Guarantee insuring completion of said improvements upon demand of the municipality.

E. Construction and Inspections of Improvements

1. General Procedure and Fees.

An Authorized City Representative shall inspect the required improvements during construction to oversee their satisfactory completion.

The applicant shall, in accordance with the City's fee ordinance pay to the City an inspection fee, and the Final Plat shall not be signed by the Chair of the Planning Commission or Mayor unless the fees have been paid. These fees shall be due and payable upon demand of the City and no project approvals, building permits or certificates of occupancy shall be issued until all fees are paid.

If the Staff finds upon inspection that any of the required improvements have not been constructed in accordance with the approved plans or City Engineering Standards and Construction Specifications, the applicant shall be responsible for completing the improvements. Wherever the cost of improvements is covered by a performance guarantee, the applicant and the issuing company shall be severally and jointly liable for completing the improvements according to the approved plans and specifications.

2. Public Improvements.

No construction of public improvements shall proceed until the final plat has been approved by the City Council and filed for record in the office of the County Recorder. All public improvements shall be completed within one year of the date the final plat was approved, and the Authorized City Representative shall inspect the construction as it proceeds and at the completion of construction

A construction punch list of outstanding items shall be made up by the Authorized City Representative indicating the items missed or needing correction prior to acceptance of the improvements. All required replacements or repairs shall be completed by the subdivider, at his expense, prior to acceptance by the City.

3. As Built Drawings.

The developer shall provide the City with record drawings accurately defining for permanent record the surface improvements and underground utilities as they were actually constructed and shall provide one reproducible copy, drawn to scale, which indicates any changes from the original approved final drawings. All sewer, storm drain, and land drain manhole flow lines shall be verified.

4. Inspection.

All construction work involving the installation of improvements in subdivisions shall be subject to inspection by the Authorized City Representative. The City may request the services of the City Engineer to assist in inspection if it is deemed necessary.

- a. To cover the cost of inspection and management of off-site improvements, the subdivider shall pay a fee to the City based on the linear feet of improvements installed, the number of building lots in the subdivision, and the average number of hours spent inspecting off-site improvements. Said fee shall be established by resolution of the City Council. Said fee shall be paid prior to recordation of the subdivision plat. (1% of the total bond amount, regardless of "on or off" site.)
- b. An Authorized City Representative shall determine ~~insure~~ whether all off-site improvements have been installed in accordance with approved subdivision standards prior to acceptance by the City.
- c. Inspection frequency shall be discussed and agreed to during the pre-Construction Meeting.

5. Requests for Inspection.

Requests for inspections shall be made to the City by the person responsible for construction. Notice shall be given one (1) day in advance of the starting of work requiring periodic inspection.

6. Acceptance of Materials.

Material such as, but not limited to, bituminous products, Portland cement, steel, pipe gaskets, joints filler, fire hydrants and other similar commercially produced products will be accepted by the City upon submission by the subdivider of a supplier certification that the material meets specifications. These materials shall not be incorporated into the project until such certification has been received and approved in writing by the City.

7. Samples and Tests.

Materials, equipment, and workmanship shall be subject to sampling or testing by the City to verify compliance with standards. At the option of the City, materials shall be subject to tests and inspections before such materials are used in the work. Representative preliminary samples of the character and quality prescribed shall be submitted without charge by the contractor or producer of materials to be used in the work in sufficient quantities or amounts for testing.

All tests of materials furnished by the contractor shall be made in accordance with the commonly recognized standards of National technical organizations and such special methods and tests as are prescribed herein.

The result of all testing performed under the direction of the contractor must be submitted to the city within 3 days of when the results are complete.

F. MAINTENANCE and WARRANTY OF IMPROVEMENTS:

1. Prior to Completion.

The applicant shall be required to maintain all improvements on the individual subdivided lots and provide for snow removal on streets and sidewalks until Final Acceptance of the improvements by the City Council. The City will not normally accept water improvements or street improvements or assume responsibility for either general maintenance or snow removal until fifty (50) percent of the lots within the subdivision are built upon and have been issued a certificate of occupancy.

2. Warranty after Acceptance and Dedication.

The applicant shall be required to file a maintenance guarantee with the City, prior to acceptance, in an amount equal to twenty (20) percent of the construction cost and in a form satisfactory to the City Attorney, in order to assure the satisfactory condition of the required improvements, including all lot improvements on the individual subdivided lots for a period of one (1) year after the date of their Final acceptance by the City and dedication of same to the City.

The subdivider shall warrant and guarantee (and post bond or other security) that the improvements provided for hereunder, and every part thereof, will remain in good condition for a period of one (1) year after the date of the construction completion inspection report by the City Inspector and shall agree to make all repairs to and maintain the improvements and every part thereof in good condition during that time with no cost to the City.

It is further agreed and understood that the determination for necessity of repairs and maintenance of the work rests with the City. Their decision upon the matter shall be final and binding upon the subdivider, and the guarantee hereby stipulated shall extend to and include, but shall not be limited to, the entire street base and all pipes, joints, valves, backfill and compaction, as well as the working surface, curbs, gutters, sidewalks, and other accessories that are, or may be affected by the construction operations, and whenever, in the judgement of the City, said work shall be in need of repairs, maintenance, or rebuilding, they shall cause a written notice to be served to the subdivider.

Thereupon, the subdivider shall undertake and complete such repairs, maintenance, or rebuilding. If the subdivider fails to do so within ten (10) days from the date of service of such notice, the City Inspector shall have such repairs made, and the cost of such repairs shall be paid by the subdivider, together with 15 percent in addition thereto as and for stipulated damages for such failure on the part of the subdivider to make the repairs.

G. COMPLETION OF IMPROVEMENTS.

Prior to issuance of building permits, the applicant shall be required to complete any and all on and off-site improvements indicated by the project approval. The applicant shall also dedicate all applicable public improvements to the City, including any water right transfers, conservation easements or dedications of public lands to Land Trusts, free and clear of all liens and encumbrances on the property and public improvements thus dedicated.

All construction shall be completed according to the approved plans and site improvement specifications. For purposes of this Code, the term site improvements shall include all roads, sidewalks, trails, curbs, gutters, drains, drainage systems, grades, walls, landscaping, planting, paving, utility lines and related facilities or similar improvements as shown on the set of plans on which the final approval is based. Off-site Improvements shall refer to all facilities as defined in site improvements above, but located off of the development parcel(s) and required by the infrastructure impact review studies. These improvements shall be constructed at the same time as the site and building development that required the improvements and shall be constructed to City standards and approved, inspected and constructed under the authority of the City Engineer or representative. These two types of improvements may be referred to

collectively as improvements. Deviations from the approved plans must be approved in advance by the City.

Before the Plat is signed by the Planning Commission Chair and the Mayor, all Applicants shall be required to complete, in accordance with the Planning Commission's decision and to the satisfaction of the City Engineer, all the Street, sanitary sewer, and other improvements, i.e: storm drainage, trails, sidewalk, curb, gutter, Street signs, water lines, etc., including Lot improvements on the individual Lots of the Subdivision as required, and as approved by the Planning Commission and the City Council, and to dedicate same to the local government, free and clear of all liens and encumbrances on the Property and public improvements thus dedicated.

H. CERTIFICATE OF SATISFACTORY COMPLETION.

Subject to maintenance provisions contained in Section 8-3-010(F), the City will not accept dedication of required improvements, or release or reduce a performance Guarantee, until the City has submitted a certificate stating that all required improvements have been satisfactorily completed and until the Applicant's engineer or surveyor has certified to the City, through submission of detailed "as-built" survey plats of the Subdivision, indicating location, dimensions, materials, and other information required by the Planning Commission and City, that the layout of the line and Grade of all public improvements is in accordance with the City approved construction plans for the Subdivision and that a commitment for a title policy or other acceptable evidence has been furnished to the City indicating that the improvements have been completed, are ready for dedication to the local government and are free and clear of any and all liens and encumbrances. Upon such approval and recommendation, the City Council shall thereafter accept the improvements for dedication in accordance with the established policy and procedure.

I. FAILURE TO COMPLETE IMPROVEMENT

For Subdivisions for which no performance Guarantee has been posted, if the improvements are not completed within the period specified by the Planning Commission and City Council in the Ordinance approving the plat, the approval shall be deemed to have expired. In those cases where a performance Guarantee has been posted and required improvements have not been installed within the terms of such performance Guarantee, the City Staff may thereupon declare the Guarantee to be in default and require that all the improvements be installed.

8-3-020: PERFORMANCE GUARANTEE

A. Performance Guarantee

The City Council shall require the applicant to post an acceptable guarantee at the time of Final Plat approval in an amount equal to one hundred twenty (120) percent

estimated by the developer and approved by the City as sufficient to secure to the municipality the satisfactory construction, installation, and dedication of the required improvements. The posting of guarantees are in lieu of actual construction and are therefore established for the benefit of and inure to the public at large and as such are not to be used for satisfying contractor or mechanics liens or other unrelated obligations. The performance guarantee shall also secure all lot improvements on the individual lots of the subdivision as may be required. Such performance guarantee shall comply with all statutory requirements and shall be satisfactory to the City Attorney as to form, sufficiency, and manner of execution.

1. Security Required.

In order to protect the City from the financial burdens resulting from damage to or increased maintenance costs for City facilities and infrastructure that may occur as a result of incomplete or inadequate site improvements on private construction projects or off-site improvements performed by the developer as required by the City, developers shall complete all required on and off site improvements prior to building permit issuance. If that is not possible, adequate financial security for completion, together with a right of entry to the property to complete the work shall be granted to the City in accordance with this Title.

2. Security for Completion.

No building permit will be issued, unless all required on and off site improvements are completed, or the developer has provided adequate security to guarantee timely completion of the improvements. When all of the improvements cannot be completed due to weather conditions or other factors beyond the control of the developer (excluding financial inability to complete the project) the City may issue building permits for the project, provided all the following conditions are met:

- a. The Building Official determines that construction of the buildings, or portions thereof, prior to completion of required site improvements is safe and that access for emergency vehicles is adequate with the site improvements unfinished.
- b. The developer posts adequate security to insure completion of the site improvements in full compliance with the approved plans within one (1) year from the date of final plat approval.
- c. Access to an operational fire hydrant is within 400 feet of the farthest building wall.

3. Amount of Security.

The amount of the security to be posted by the developer shall be equal to one hundred twenty (120) percent of the amount reasonably estimated by the

developer and approved by the City as being necessary to complete on and off site improvements as shown on the approved plans.

4. Terms of Security.

The terms of any security arrangement offered to the City shall state a date certain by which the developer agrees to have on and off site improvement work completed in accordance with the plans, and further provide that in the event that the developer has not completed required site improvement work by that date, the City may, at its option, and on its schedule, draw on the funds in escrow, or credit established, or such other security device by its own act, and shall not be required to obtain consent of developer to withdraw funds for completion of the work shown on approved plans. The City's actual costs in administering the completion of work in the event of a default by the developer shall be reimbursed from the escrow or other security arrangements in an acceptable and timely manner.

5. Form of Security.

Security arrangements offered in lieu of advance completion and payment for site improvements shall be in an amount fixed under the terms of Section 8-3-020-A3, shall be documented in form and substance as required by the City Attorney, and shall be in one or more of the following forms subject to approval in each instance by the City Attorney:

- a. A performance bond executed by a corporate surety guaranteeing payment of construction costs and completion of the project.
- b. A deposit of cash with a third party escrow.
- c. An agreement with the construction lender providing that the lender will withhold funds in the construction loan in an amount equal to the amount calculated in Section 8-3-020-A3 and will disburse those funds only with the written consent of the City, and only for the completion of required improvements. As improvements are completed, the City will consent to the disbursement of the funds set aside by the lender.
- d. A security agreement (Property Bond) secured by the encumbrance of unencumbered real property. This is not a favored form of security and shall not be approved except under exceptional circumstances as determined by a unanimous vote of the City Council.
- e. Some combination of the foregoing.

6. Retainage.

The amount in excess of the actual construction costs, but in no event more than twenty five (25) percent of the actual construction cost, shall be held for a period of one year following final inspection and approval of the required on and off site

improvements. The retainage amount may be provided in any of the ways described in Section 8-3-020-A5. If the developer fails to provide new security instruments within thirty (30) days from the expiration of the security instruments provided for the initial construction, the City shall make a demand or draw on that security to the extent of the required retainage amount, and hold the proceeds in cash until and unless other adequate security, as provided in this Code, is posted by the developer. Retainage will be used to replace or repair any site improvements which fail or appear to be defective during the one year retainage period. The corrective work may be done by the City or the developer. Upon completion of work, the retainage, or so much of it as remains, shall be released. Retainage amounts may be drawn and applied to any outstanding fees owed by the developer to the City, provided that such fees are imposed by ordinance and the amount of the fees is not contested by the developer.

7. Payment of Interest.

Any interest accruing on escrow funds shall, unless expended for completion of site improvements required, inure to the benefit of the developer upon release and not to the City, and the City shall not be required to pay interest to the developer on any funds in escrow for this purpose.

8. No Third Party Beneficiaries Intended.

It is the intention of the City that financial security given by the developer is limited to a contract between the City and the developer for the express purpose of providing for the protection of City facilities and elimination of conditions which could become public nuisances. It is not intended that this security be available for payment of subcontractors or material suppliers in the nature of a surety bond, or that the security provided become available to the purchasers of property to correct construction flaws or defects, which are the fault of the developer. In no event will the funds be used for purposes other than those stated in this section and the time and manner of the expenditure and prioritization of work performed shall rest in the sole discretion of the City.

B. Performance Guarantee to Include Lot Improvements.

The performance guarantee shall include an amount to guarantee completion of all requirements contained in this Chapter, and in the regulations including, but not limited to, final grading, lot drainage, landscaping, revegetation, curb, gutter and sidewalk, removal of debris and waste, fencing, and all other lot improvements required by the City. Whether or not a building permit or certificate of occupancy has been issued, at the expiration of the performance guarantee, the City may enforce the provisions of the guarantee where the provisions of this section or any other applicable law, ordinance, or regulation have not been complied with.

1. Modification of Plans.

A developer may request modifications to plans covering on or off site improvement work by submitting revised plans to the City for review and approval consideration. Until the revised plans have received approval by the City, the

developer shall be required to offer security for the performance of the improvement work as shown on the last set of plans to have received City approval. Upon acceptance of revised plans by the City, the City shall release any cash, credit or other security held, which is in excess of one hundred twenty (120%) percent of the completion cost (estimated) of work shown on the most recently revised plan. If the modification of the plans increases the cost of required improvements, additional security shall be provided by the developer to cover the increased costs.

2. Detailed Improvement Plans and Specifications.

Detailed on or off site improvement plans and specifications shall be presented, showing the location, design and nature of all streets, drainage systems, utility pipelines, storage tanks, pumping systems and related facilities, grade changes, retaining walls and landscaping, together with any trails, paths, or walkways that may be included or required under these or other provisions of this Development Code. All plans and supporting documentation must be approved by the City prior to any construction by the Developer. The Developer is responsible for all plan review fees incurred by the City or its consultants.

C. Time Period to Complete Improvements.

The period within which required improvements must be completed shall be specified by the City Council with the approval of the Final Plat. The completion time period shall be incorporated in the guarantee and shall not in any event exceed two (2) years from the date of final plat approval. Such guarantee shall be approved by the City Council with satisfactory surety and conditions. The City Council may extend the completion date set forth in such guarantee one (1) time for a maximum period of one (1) additional year. The City Council may at any time during the period of such guarantee accept a substitution of principal or sureties.

D. Release or Reduction of Performance Guarantee.

Subject to the provisions contained in this Code, the City will not accept dedication of required improvements, or release or reduce a performance guarantee, until the City Community Development Director, City Engineer, Public Works Director or Building Official has submitted a certificate stating that all required improvements have been satisfactorily completed and until the applicant's engineer or surveyor has certified to the City, through submission of detailed "as-built" survey plats of the subdivision indicating location, dimensions, materials, improvements and other information required by the Planning Commission and City Council, that the layout of the line and grade of all public improvements is in accordance with the approved Construction Drawings for the subdivision.

Further, a title insurance policy shall be furnished to the City indicating that the improvements have been completed, are ready for dedication to the local government, and are free and clear of any and all liens and encumbrances. Upon

such approval and recommendation, the City Council shall thereafter accept the improvements for dedication in accordance with the established policy and procedure.

1. Reduction of Performance Guarantee.

A performance guarantee may be reduced upon actual completion and acceptance of public improvements and then only to the ratio that the public improvement accepted bears to the total public improvements for the project. In no event shall a performance guarantee be reduced below twenty (20) percent retainage of the principal amount until total completion.

E. Single Family Buildings.

This provision shall apply to all construction in Coalville, including single family dwellings when improvements are required by the impact analysis. The amount of security required for single family dwellings shall be the reasonably estimated cost to complete construction of any improvements, including required landscaping on a labor and materials basis.

F. Phased Projects and Concurrency.

On and off-site improvements applicable to each phase of a phased project or development shall be completed concurrently with the first phase of the project and appropriate securities shall be put in place to insure that the total infrastructure is completed along with the first phase. Phasing of improvements may be allowed only under special circumstances as outlined by the City and approved by the City Council. If phasing is allowed, adequate security for completion of each phase must be provided to insure that each phase of infrastructure is constructed.

8-3-030: ACCEPTANCE OF DEDICATION OFFERS

- A. Acceptance of formal offers of dedication of streets, public areas, easements, and parks shall be by action of the City Council. The recommendation for approval by the Planning Commission of a Final Plat shall not be deemed to constitute or imply the acceptance by the City Council of any street, easement, park or public improvement shown on said plat.

8-3-040: ISSUANCE OF BUILDING PERMIT:

- A. The following requirements shall be met prior to issuance of any building permit within a subdivision:
1. All required fencing installed as a condition of subdivision approval in compliance with Coalville City Fence Ordinance Title 10 Chapter 25;

2. All water, sewer, and drainage systems installed, inspected and tested by City approved inspector;
 3. All curb and gutter installed;
 4. A minimum of 8 inches of road base in place and graded;
- B. Contractors will be responsible to see that all construction materials and/or debris are continuously secured or removed from construction site.
- C. The developer shall at the time of the dedication submit in escrow to the City a sum determined by the City Engineer for the necessary final improvement of the street(s).
- D. No building permits shall be issued for the final fifty (50) percent of lots in a subdivision until all public improvements required by the City for the project have been fully completed and dedicated to the City.

8-3-050: CERTIFICATE OF OCCUPANCY:

All structures shall meet the following guidelines prior to occupancy:

- A. All underground off-site improvements properly installed and operational as approved by Coalville City.
- B. All required asphalt or concrete hard surface roadway installed and completed throughout the entire phase in which the dwelling is located in accordance with Coalville City design standards. In the event that hard surface paving cannot be properly installed due to weather related circumstances, the developer may petition the City Council for conditional occupancy providing the following guidelines are met:
1. Road-base installed in accordance with Coalville City design standards.
 2. Developer must maintain all road-base surfaces providing for adequate vehicular accessibility and that the developers provide for services which will not be available due to the absence of paving.
 3. Required asphalt or concrete hard surface roadway shall be installed and completed as soon as weather related circumstances change or as directed by Coalville City.
- C. Where a performance guarantee has been required for a subdivision, no certificate of occupancy for any building in the subdivision shall be issued prior to the completion of the improvements and dedication to the City, as required in the Planning Commission's and City Council's final approval of the project

8-3-060: CONSUMER PROTECTION LEGISLATION AND CONFLICTS OF STATUTES:

No building permit or certificate of occupancy shall be granted or issued if a developer or his authorized agent shall have violated any federal, state, or local law pertaining to consumer protection of real estate land sales, promotion, or practices, or any applicable conflicts-of-interest legislation with respect to the lot or parcel of land which is the subject of the permit or certificate, until so ordered by a court of competent jurisdiction.

With respect to a lot or parcel of land, in the event a building permit or certificate of occupancy has been granted or issued, it shall be subject to revocation by the City until so ordered otherwise by a court of competent jurisdiction, provided that in no event shall the rights of intervening innocent third parties in possession of a certificate of occupancy be prejudiced by any such revocation.

Any violation of a federal, state, or local consumer protection law (including but not limited to: Postal Reorganization Act of 1970; the Federal Trade Commission Act of 1970; Interstate Land Sales Full Disclosure Act; the Truth in Lending Act; the Uniform Commercial Credit Code; State "Blue Sky" laws; State subdivision disclosure acts or conflicts of interest statute, law, or ordinance) shall be deemed a violation of these regulations and subject to all of the penalties and proceedings as set forth in this Code.

