

ARTICLE 3

ASSURANCE FOR COMPLETION AND MAINTENANCE OF IMPROVEMENTS

3-101 Improvements and Performance Bond

3-101.1 Completion of Improvements -- Before the final subdivision plat is signed by the planning commission as specified in Section 2-105.1 of these regulations, all applicants shall complete, in accordance with the planning commission's decision and to the satisfaction of the engineer or the appropriate governmental representative, all public way, sanitary, and other improvements, including lot improvements on the individual lots of the subdivision, as required in these regulations and approved by the planning commission, and shall dedicate such improvements to the governing body free and clear of all liens and encumbrances on the property and public improvements thus dedicated.

3-101.2 Surety Instrument -- The planning commission at its discretion may waive the requirement that the applicant complete and dedicate all public improvements prior to the signing of the final subdivision plat by providing that, as an alternative, the applicant post a bond at the time of submission for final subdivision approval in an amount estimated by the planning commission as sufficient to guarantee to the governing body the satisfactory construction, installation, and dedication of the incompleting portion of required improvements.

The Planning Commission in its' discretion may waive the requirement that the applicant complete and dedicate all public improvements prior to the signing of the final subdivision plat and may provide that, as an alternative, the applicant may post a bond or letter of credit at the time of application for final subdivision plat approval in an amount estimated by the Planning Commission as sufficient to secure to the government the satisfactory construction, installation, and dedication of the incompleting portion of required improvements. Said estimate shall include an additional ten (10%) over and above the cost of securing all necessary improvements to cover the rate of inflation over the bondable period. The performance bond or letter of credit also shall secure all lot improvements on the individual lots of the subdivision as required in these regulations.

Such performance bond shall comply with all statutory requirements and shall be satisfactory to the attorney, as appropriate, as to form, sufficiency, and manner of execution as set forth in these regulations. Accordingly, such performance bond must be officially filed and approved on Form Number 1 as illustrated in Appendix B of these regulations. Moreover, only corporate insurance companies authorized to do business in the State of Tennessee shall file such bonds with the community.

When a letter of credit is utilized it shall also be satisfactory to the attorney as to form, sufficiency, and manner of execution as set forth in these regulations. Accordingly, such letter of credit must be officially filed and approved on Form Number 2 within Appendix B of these regulations. Moreover, only commercial banks and federally chartered savings and loan associations located in Sumner or Davidson County, Tennessee shall be acceptable institutions for the issuance of documentary letters of credit as required for the purposes of these regulations.

It shall be the responsibility of the engineer to establish the total amount of all performance bonds or letters of credit. All such surety instruments shall be segregated into cost estimates for each specific type of improvements, i.e., streets, drainage, lot improvements, utilities, etc. (See required surety instrument form in Appendix B).

The period within which required improvements must be completed as assured through the use of a performance bond or letter of credit shall be specified by the Planning Commission in the resolution approving the final subdivision plat and shall be incorporated in the bond or letter of credit. This period shall be for one (1) year and shall not in any event exceed two (2) years from date of final approval. Moreover, whenever such bond or letter of credit is extended according to these regulations, the price of completing all bondable improvements must be reanalyzed and established by the Planning Commission in order that the surety instrument be adequate to cover the cost of all improvements. Again, an additional ten (10%) of the cost of securing all necessary improvements shall be added to this cost figure in order to insure that these improvements be properly installed in relation to the rate of inflation for the period of extension. Such bond or letter of credit shall be approved by the Commission or a designated representative as to amount, surety and conditions. The Planning Commission may recommend to the appropriate local legislative body, upon proof of difficulty, extension of the completion date set forth in such bond or letter of credit (normally a one (1) year period) for a maximum period of one (1) additional year. The legislative body may accept, at any item during the period of such bond or letter of credit, a substitution of principal or sureties on the bond or letter of credit upon the recommendation of the Planning Commission.

- 3-101.3 Temporary Improvements -- The applicant shall build and pay for all costs of temporary improvements required by the planning commission, and shall maintain them to a reasonable satisfaction for the period specified by the planning commission. Prior to construction of any temporary facility or improvement, the applicant shall file with the governing body a separate suitable bond for temporary facilities, which shall ensure that the temporary facilities will be properly constructed, maintained, and removed.

- 3-101.4 Costs of Improvements -- All required improvements shall be made by the applicant at his expense. Any provisions for reimbursement by the governing body or any utility agency shall be stipulated clearly in the provisions of any bonds.
- 3-101.5 Governmental Units -- Governmental units to which these bonds and contract provisions apply may file, in lieu of said contract or bond, a certified resolution or ordinance from officers or agencies authorized to act in their behalf agreeing to comply with the provisions of this article.
- 3-101.6 Failure to Complete Improvements -- In subdivisions for which no performance bond has been posted, if the improvements are not completed within the period specified by the planning commission in the resolution approving the plat, the approval shall be deemed to have expired. In those cases in which a performance bond has been posted and required improvements have not been installed within the terms of such performance bond, the governing body thereupon may declare the bond to be in default and require that all the improvements be installed regardless of the extent of the building development at the time the bond is declared to be in default.
- 3-107.7 Acceptance of Dedication Offers -- Acceptance of formal offers of dedication of public ways, easements, and parks shall be by formal action of the governing body. Such action shall be in the form of a resolution recommended by the planning commission to the governing body. The approval by the planning commission of a subdivision plat shall not be deemed to constitute or imply an acceptance by the local government of any public way, easement, or other ground shown on the plat. The planning commission may require the plat to be endorsed with appropriate notes to this effect.

3-102 Inspection of Improvements

- 3-102.1 General Procedure -- The planning commission may provide for inspection of required improvements during construction and ensure their satisfactory completion. If the appropriate governmental representative finds upon inspection that any of the required improvements has not been constructed in accordance with the governing body's construction standards and specifications, the applicant shall be responsible for completing the improvements to the required standards. Whenever the cost of improvements is covered by a performance bond, the applicant and the bonding company shall be liable severally and jointly for completing said improvements according to specifications.
- 3-102.2 Release or Reduction of Performance Bond
- 3-102.201 Certificate of Satisfactory Completion - The governing body shall not accept dedication of required public improvements nor release nor reduce a performance bond until the engineer or appropriate governmental representative submits a certificate stating that all required improvements

have been satisfactorily completed, and that the layout and the line and grade of all public improvements are in accordance with the approved construction plans for the subdivision. Upon such approval and recommendation, the governing body, thereafter, may accept the dedicated improvements in accordance with the procedures set forth in Sections 1-112.106 and 3-101.7 of these regulations.

3-102.202 Reduction of Performance Bond -- A performance bond may be reduced upon actual dedication and acceptance of public improvements and then only to the ratio that the public improvement dedicated bears to the total public improvements for the plat. In no event shall a performance bond be reduced below twenty-five (25) percent of the principal amount prior to final acceptance of all items covered under the bond.

3-103 Maintenance of Improvements -- The applicant shall be required to maintain all improvements including all lot improvements, until acceptance of the public improvements by the governmental body.

The applicant may be required to file a maintenance bond with the governing body prior to dedication, in an amount considered adequate by the engineer or appropriate governmental representative and in a form satisfactory to legal counsel in order to assure the satisfactory condition of the required improvements, including all lot improvements, for a period of one year after the date of acceptance of the public improvements by the governing body. The minimum amount of a maintenance bond pertaining to public ways shall not be less than twenty (20%) of the total amount of the surety bond filed with the to construct said public way.

3-104 Deferral or Waiver of Required Improvements -- The planning commission may 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 interest of the public health, safety, and general welfare, or which are inappropriate because of inadequacy or lack of connecting facilities.

Whenever it is deemed necessary by the planning commission to deter the construction of any improvements required herein because of incompatible grades, future planning, inadequate or lack of connecting facilities, or for other reasons, the developer shall either pay his share of the costs of the future improvements to the governing body prior to signing of the final subdivision plat by the appropriate governmental representative(s) or post a bond or other surety instrument ensuring completion of said improvements upon demand of the governing body.

3-105 Escrow Deposits for Lot Improvements

3-105.1 Acceptance of Escrow Funds -- Whenever, by reason of the season of the year, any lot improvements required by these regulations cannot be performed, the enforcing officer nevertheless may issue a certificate of occupancy upon accepting a cash escrow deposit in an amount to be determined by the appropriate

governmental representative for the cost of such improvements; provided, there otherwise is no danger to the health, safety, or general welfare. The performance bond covering such lot improvements shall remain in full force and effect.

- 3-105.2 Procedures on Escrow Fund -- All required improvements for which escrow moneys have been accepted by the enforcing officer at the time of issuance of a certificate of occupancy shall be installed by the developer within a period of nine (9) months from the date of deposit and issuance of the certificate of occupancy. In the event that the improvements have not been installed properly at the end of the time period, the enforcing officer shall provide written notice of two (2) weeks to the developer requiring him to install the improvements, and in the event they are not installed properly, in the judgment of the enforcing officer, he may request the governing body to proceed to install or to contract for the installation of the necessary improvements in a sum not to exceed the amount of the escrow deposit.

At the time of the issuance of the certificate of occupancy for which escrow moneys are being deposited, the applicant shall obtain and file with the enforcing officer, prior to obtaining the certificate of occupancy, a notarized statement from the purchaser(s) of the premise authorizing the enforcing officer to install the improvements at the end of the nine month period in the event the improvements have not been installed properly by the developer.

3-106 Issuance of Building Permits and Certificates of Occupancy

- (1) Where a performance bond has been required for a subdivision, or any section of a subdivision, no certificate of occupancy for any building in the subdivision or section thereof shall be issued prior to the completion and dedication of the improvements to the appropriate governmental unit, as required in the planning commission's resolution of final approval of the subdivision plat.
- (2) The extent of public way improvements shall be adequate for vehicular access by the prospective occupant and by police and fire equipment prior to the issuance of an occupancy certificate. The developer shall at the time of the dedication submit monies in escrow to the governing body in a sum to be determined by the appropriate governmental representative.
- (3) No building permit shall be issued for the final ten (10) percent of lots in a subdivision, or if ten (10) percent be 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 governmental body.