

EXPLANATION: This Ordinance supplements and amends Chapter XV entitled “Land Use Procedures and Development Ordinance of the Township of Warren” by amending Subsection 15-14.1 entitled “In General” to revise the performance and maintenance guarantees to conform with the requirements of N.J.S.A. 40:55D-53, and to authorize temporary certificate of occupancy guarantees and safety and stabilization guarantees.

**TOWNSHIP OF WARREN**

**ORDINANCE NO. 18-21**

**AN ORDINANCE AMENDING SECTION 15-14.1 ENTITLED “IN GENERAL” OF SECTION 15-14 ENTITLED “PERFORMANCE AND MAINTENANCE GUARANTEE OF IMPROVEMENTS/EXECUTION OF DEVELOPER’S AGREEMENT/ NOTIFICATION OF ADJOINING PROPERTY OWNERS AND OTHERS AFTER DEVELOPMENT APPROVAL” OF CHAPTER XV ENTITLED “LAND USE PROCEDURES AND DEVELOPMENT ORDINANCE OF THE TOWNSHIP OF WARREN” OF THE REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF WARREN**

**BE IT ORDAINED** by the Township Committee of the Township of Warren, in the County of Somerset, State of New Jersey, as follows:

**Section 1.** Subsection 15-14.1 entitled “In General” of Section 15-14 entitled “Performance and Maintenance Guarantee of Improvements/Execution of Developer’s Agreement/ Notification of Adjoining Property Owners and Others After Development Approval” of Chapter XV entitled “Land Use Procedures and Development Ordinance of the Township of Warren” of *The Revised General Ordinances of the Township of Warren*, as heretofore supplemented and amended, is hereby supplemented and amended to read as follows:

**15-14.1 In General.** In accordance with the provisions of N.J.S.A. 40:55D-53, the Township of Warren, before the recording of final subdivision plats or recording of minor subdivision deeds or as a condition of final site plan approval, or as a condition to the issuance of a zoning permit, [shall] may require the developer to post guarantees for the installation (performance) and maintenance of [all] certain on-tract improvements inclusive of residential and nonresidential land development which include common site improvements. The [approving authority] Township, Planning Board or Zoning Board of

Adjustment shall require, and shall accept, security in a form acceptable to the governing body and prepared by the Township Attorney, said security to be in accordance with the following standards for the purpose of assuring the installation and maintenance of certain on-tract improvements.

- a. The furnishing of a performance guarantee in favor of the Township of Warren in an amount not to exceed one hundred twenty (120%) percent of the cost of installation of only those improvements required by a developer's agreement, ordinance or regulation to be dedicated to a public entity, and that have not yet been installed, which cost shall be determined by the Township Engineer according to the method of calculation set forth in N.J.S.A. 40:55D-53.4 for the following improvements [which the approving authority may deem necessary or appropriate including] as shown on the approved plans or plat: streets, [grading,] pavement, gutters, curbs, sidewalks, street lighting, [shade] street trees, surveyor's monuments, as shown on the final map and required by the "Map Filing Law," N.J.S.A. 46:23-9.9 et seq., water mains, [culverts, storm sewers,] sanitary sewers [or other means of sewage disposal,] community septic systems, drainage structures, [erosion control and sedimentation control devices,] public improvements of open space, and [in the case site plans only, other on-site improvements and landscaping] any grading necessitated by the preceding improvements. The performance guarantee may also be required to include, at the discretion of the Township, Planning Board or Zoning Board of Adjustment, a guarantee for the installation of privately-owned perimeter buffer landscaping. At the developer's option, a separate performance guarantee may be posted for the privately-owned perimeter buffer landscaping.

The Township Engineer shall prepare an itemized cost estimate of the improvements covered by the performance guarantee, which itemized cost estimate shall be appended to each performance guarantee posted by the obligor. [Any performance guarantee for a single lot improvement, posted in cash or cashiers check, with no public improvements required and/or involved in the application may satisfy this subsection by completing and executing a preprinted cash bond form preapproved by the Township Attorney. Developers may use this preprinted form, which is available from the Township Engineering Department or Township Clerk to satisfy their guarantee/bond requirements under this subsection for single lot improvements with no public improvements required and/or involved in the application. The Township Engineer or designee may complete the preprinted cash bond form or approve the completed form for each application, without altering the substance of the preprinted cash bond form. The developer may execute the preprinted cash bond form and submit the same with the performance guarantee in the form of cash or cashiers check

or certified check made payable to Township of Warren, to the Township Clerk. Any charges to escrow as applicable.]

b. In addition to a performance guarantee required pursuant to paragraph a. of this subsection, a developer may be required to furnish to the Township a separate guarantee, referred to herein as a “safety and stabilization guarantee”, in favor of the Township, to be available to the Township solely for the purpose of returning property that has been disturbed to a safe and stable condition or otherwise implementing measures to protect the public from access to an unsafe or unstable condition, only in the circumstance that:

(1) site disturbance has commenced and, thereafter, all work on the development has ceased for a period of at least 60 consecutive days following such commencement for reasons other than force majeure, and

(2) work has not recommenced within 30 days following the provision of written notice by the Township to the developer of the Township’s intent to claim payment under the bond. The amount of the safety and stabilization guarantee shall be calculated as set forth in N.J.S.A. 40:55D-53. At the developer’s option, the safety and stabilization guarantee may be included as a line item for safety and stabilization in the performance guarantee rather than in the form of a separate guarantee.

The amount of a “safety and stabilization guarantee” for a development with bonded improvements exceeding \$100,000 shall be calculated as a percentage of the bonded improvement costs of the development or phase of development as follows:

\$5,000 for the first \$100,000 of bonded improvement costs, plus two and a half percent of bonded improvement costs in excess of \$100,000 up to \$1,000,000, plus one percent of bonded improvement costs in excess of \$1,000,000.

A municipality shall release a separate “safety and stabilization guarantee” to a developer upon the developer’s furnishing of a performance guarantee which includes a line item for safety and stabilization in the amount required under this paragraph.

A municipality shall release a “safety and stabilization guarantee” upon the municipal engineer’s determination that the development of the project site has reached a point that the improvements installed are adequate to avoid any potential threat to public safety.

[b]c. [Provision of] The developer shall post with the governing body, prior to the release of the performance guarantee, a maintenance guarantee [to be posted with the governing body] for a period not to exceed two (2) years after final acceptance of the improvement, in an amount not to exceed fifteen (15%) percent of the cost of the installation of the improvements which are being released, along with the following private site improvements: stormwater management basins, in-flow and water quality structures within the basins, and the out-flow pipes and structures of the stormwater management system, if any, which cost shall be determined by the Township Engineer according to the method of calculation set forth and generally based on documented construction costs for public improvements prevailing in the general area and as further set forth in subsection [m]o below. In the event that other governmental agencies o[f]r public utilities will own the utilities to be installed or the improvements are covered by a performance guarantee or maintenance guarantee to another government agency, no performance or maintenance guarantee shall be required by the Township for such utilities or improvements.

[c]d. The time allowed for installation of the bonded improvements for which the performance guarantee has been provided may be extended by the governing body by resolution. As a condition or part of any such extension, the amount of any performance guarantee shall be increased or reduced, as the case may be, to an amount not to exceed one hundred twenty (120%) percent of the cost of the installation, which cost shall be determined by the Township Engineer according to the method of calculation set forth in N.J.S.A. 40:55D-53.4 as of the time of the passage of the resolution.

[d]e. If the required bonded improvements are not completed or corrected in accordance with the performance guarantee, the obligor and surety, if any, shall be liable thereon to the Township for the guarantees posted for the improvements not completed or corrected and the Township may either, prior to or after the receipt of the proceeds thereof, complete such improvements. Such completion or correction of improvements shall be subject to the public bidding requirements of the “Local Public Contracts Law”, N.J.S.A. 40A:11-1 et seq.

[e]f. As-built drawings shall be submitted before a performance guarantee is considered for release. As each partial release is applied for, as-built drawings of the bonded improvements installed shall be submitted to the Township Engineer.

[f]g. Upon substantial completion of all required street improvements (except for the top course) and appurtenant utility improvements, and the connection of same to the public system, the obligor may request of the governing body, in writing, by

certified mail addressed in care of the Clerk, that the Township Engineer prepare, in accordance with the itemized cost estimate prepared by the Township Engineer and appended to the performance guarantee pursuant to paragraph a. of this subsection, a list of all uncompleted or unsatisfactory completed bonded improvements. If such a request is made, the obligor shall send a copy of the request to the Township Engineer. The request shall indicate which bonded improvements have been completed and which bonded improvements remain uncompleted in the judgment of the obligor. Thereupon the Township Engineer shall inspect all bonded improvements covered by the obligor's request and shall file a detailed list and report, in writing, with the governing body, and shall simultaneously send a copy thereof to the obligor not later than forty-five (45) days after receipt of the obligor's request. The list prepared by the Township Engineer shall state, in detail, with respect to each bonded improvement determined to be incomplete or unsatisfactory, the nature and extent of the incompleteness of each incomplete bonded improvement or the nature and extent of, and remedy for, the unsatisfactory state of each completed bonded improvement determined to be unsatisfactory. The report prepared by the Township Engineer shall identify each bonded improvement determined to be complete and satisfactory together with recommendation as to the amount of reduction to be made in the performance guarantee relating to the completed and satisfactory bonded improvement in accordance with the itemized cost estimate prepared by the Township Engineer and appended to the performance guarantee pursuant to paragraph a. of this subsection.

- [g]h. 1. The governing body, by resolution, shall either approve the improvements determined to be complete and satisfactory by the Township Engineer, or reject any or all of these improvements upon the establishment in the resolution of cause for rejection, and shall approve and authorize the amount of reduction to be made in the performance guarantee relating to the improvements accepted, in accordance with the itemized cost estimate prepared by the Township Engineer and appended to the performance guarantee pursuant to paragraph a. of this subsection. This resolution shall be adopted not later than forty-five (45) days after receipt of the list and report prepared by the Township Engineer. Upon adoption of the resolution by the governing body, the obligor shall be released from all liability pursuant to its performance guarantee, with respect to those approved bonded improvements, except for that portion adequately sufficient to secure compliance or correction of the improvements not yet approved; provided that thirty (30%) percent of the amount of the total performance guarantee and safety and stabilization guarantee posted may be retained to ensure completion and acceptability of all improvements. The safety and stabilization guarantee

shall be reduced by the same percentage as the performance guarantee is being reduced at the time of each performance guarantee reduction.

For the purpose of releasing the obligor from liability pursuant to the performance guarantee, the amount of the performance guarantee attributable to each approved bonded improvement shall be reduced by the total amount for each such improvement, in accordance with the itemized cost estimate prepared by the municipal engineer and appended to the performance guarantee pursuant to subsection a. of this section, including any contingency factor applied to the cost of installation. If the sum of the approved bonded improvements would exceed seventy (70%) percent of the total amount of the performance guarantee, then the municipality may retain thirty (30%) of the amount of the total performance guarantee and safety and stabilization guarantee to ensure completion and acceptability of the bonded improvements, as provided above, except that any amount of the performance guarantee attributable to bonded improvements for which a temporary certificate of occupancy guarantee has been posted shall be released from the performance guarantee even if such release would reduce the amount held by the municipality below thirty (30%) percent.

2. If the Township Engineer fails to send or provide the list and report as requested by the obligor pursuant to paragraph [f]g. of this subsection within forty-five (45) days from receipt of the request, the obligor may apply to the Superior Court of New Jersey in a summary manner for an order compelling the Township Engineer to provide the list and report within a stated time and the cost of applying to the court, including reasonable attorney's fees, may be awarded to the prevailing party.

3. If the governing body fails to approve or reject the bonded improvements determined by the Township Engineer to be complete and satisfactory or reduce the performance guarantee for the completed and satisfactory bonded improvements within forty-five (45) days from the receipt of the Township Engineer's list and report, the obligor may apply to the Superior Court of New Jersey in a summary manner for an order compelling, within a stated time, approval of the complete and satisfactory bonded improvements and approval of a reduction in the performance guarantee for the approved complete and satisfactory bonded improvements in accordance with the itemized cost estimate prepared by the Township Engineer and appended to the performance guarantee pursuant to paragraph a. of this subsection; and the cost of applying to the court, including reasonable attorney's fees, may be awarded to the prevailing party.

4. In the event that the obligor has made a cash deposit with the municipality or approving authority as part of the performance guarantee, then any partial reduction granted in the performance guarantee pursuant to this subsection shall be applied to the cash deposit in the same proportion as the original cash deposit bears to the full amount of the performance guarantee provided that if the developer has furnished a “safety and stabilization guarantee,” the municipality may retain cash equal to the amount of the remaining “safety and stabilization guarantee”.

[h]i. If any proportion of the [required] bonded improvements is rejected, the approving authority may require the obligor to complete or correct such improvements and, upon completion, the same procedure of notification[, ] as set forth in this subsection shall be followed.

[i]j. Nothing in this subsection shall be construed to limit the right of the obligor to contest by legal proceedings any determination of the governing body or the Township Engineer.

[j]k. In the event that the developer shall seek a temporary certificate of occupancy for a development, unit, lot, building or phase of development, as a condition of the issuance thereof, the developer shall furnish a separate guarantee, referred to herein as a “temporary certificate of occupancy guarantee” in favor of the Township in an amount equal to one hundred twenty (120%) percent of the cost of installation of only those improvements or items which remain to be completed or installed under the terms of the temporary certificate of occupancy and which are required to be installed or completed as a condition precedent to the issuance of the permanent certificate of occupancy for the development, unit, lot, building or phase of development and which are not covered by an existing performance guarantee. Upon posting of a temporary certificate of occupancy guarantee, all sums remaining under a performance guarantee, required pursuant to this subsection, which relate to the development, unit, lot, building or phase of development for which the temporary certificate of occupancy is sought, shall be released. The scope and amount of the temporary certificate of occupancy guarantee shall be determined by the Township Engineer. The temporary certificate of occupancy guarantee shall be released by the Township Engineer upon the issuance of a permanent certificate of occupancy with regard to the development, unit, lot, building or phase as to which the temporary certificate of occupancy relates.

[j]l. The obligor shall reimburse the Township for [all] reasonable inspection fees paid to the Township Engineer for the foregoing inspection of improvements [provided the] which fees shall not exceed the sum of the amount set forth in

N.J.S.A. 40:55D-53. The Township may require [of] the developer [a deposit for] to post the inspection fees in escrow in an amount [not to exceed, except for extraordinary circumstances, the greater of five hundred (\$500.00) dollars or five (5%) percent of the cost of improvements, which cost shall be determined pursuant to paragraph m. below.] calculated pursuant to the method of calculation set forth in N.J.S.A. 40:55D-53. If the Township determines that the amount in escrow for the payment of inspection fees, as calculated herein, is insufficient to cover the cost of additional required inspections, the Township may require the developer to deposit additional funds in escrow provided that the Township delivers to the developer a written inspection escrow deposit request, signed by the Township Engineer, which informs the developer of the need for additional inspections, details the items or undertakings that require inspection, estimates the time required for those inspections, and estimates the cost of performing those inspections. The inspection fees required to be posted by this paragraph shall be deposited in accordance with Section 15-13 of this chapter.

[k]m. In the event that final approval is by stages or sections of development pursuant to N.J.S.A. 40:55D-38, the provisions of this subsection shall be applied by stage or section.

[l]n. The Township shall not require that a maintenance guarantee required pursuant to N.J.S.A. 40:55D-53 be in cash or that more than ten (10%) percent of a performance guarantee be in cash. A developer may, however, provide at his option some or all of a maintenance guarantee in cash or more than ten (10%) percent of a performance guarantee in cash.

[m]o. The cost of the installation of the bonded improvements for the purposes of N.J.S.A. 40:55D-53 shall be estimated by the Township Engineer based on documented construction costs for improvements prevailing in the general area of the Township. The developer may appeal the Township Engineer's estimate to the County Construction Board of Appeals established under Section 9 of P.L. 1975, c. 217 (N.J.S.A. 52:27D-129).

[n]p. The approving authority shall, for the purposes of N.J.S.A. 40:55D-53, accept a performance guarantee or maintenance guarantee which is an irrevocable letter of credit if it:

1. Constitutes an unconditional payment obligation of the issuer running solely to the Township for an express initial period of time in the amount determined pursuant to N.J.S.A. 40:55D-53;

2. Is issued by a banking or savings institution authorized to and doing business in this State;

3. Permits the Township to draw upon the letter of credit if the obligor fails to furnish another letter of credit which complies with the provisions of this subsection thirty (30) days or more in advance of the expiration date of the letter of credit or such longer period in advance thereof as is stated in the letter of credit.

[o]q. *Execution of Developers Agreement.* Before the commencement of any work pursuant to a preliminary approval for a major subdivision or site plan, the developer will execute a developer's agreement in the form provided by the Planning Board or Zoning Board of Adjustment.

[p]r. The fees for the preparation and review of the performance guarantees, including those attributable to the Township Attorney, shall be reimbursed by the obligor through obligor's escrow account in connection with the improvements [of] for which the performance guarantee and/or bond is required in accordance with subsection 15-5.3. If no escrow account exists or is deposited under subsection 15-5.3, the obligor shall reimburse such fees in regard to the performance guarantee through their deposit for inspection fees in accordance with Section 15-13 and paragraph [j.] 1. of this subsection 15-14.1. If no deposit is made by the developer or the deposit is insufficient to cover such costs, then such fees shall be billed in accordance with subsections 15-13.1d., e. and f.

The fees for the preparation and inspection of the maintenance guarantees, including those attributable to the Township Attorney, shall be reimbursed by the obligor prior to the final release of the performance guarantee and/or bond. The monies for such fees shall be reimbursed through the obligor through obligor's escrow account in connection with the improvements [of] for which the performance guarantee and/or bond is required in accordance with subsection 15-5.3. If no escrow account is required or deposited under subsection 15-5.3, the obligor shall reimburse such fees in regard to the performance guarantee through their deposit for inspection fees in accordance with Section 15-13 and paragraph j. of this subsection 15-14.1. If no deposit is made by the developer or the deposit is insufficient to cover such costs, then such fees shall be billed in accordance with subsections 15-13.1d, e. and f.

**Section 2.** If any article, section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance and they shall remain in full force and effect.

**Section 3** In the event of any inconsistencies between the provisions of this Ordinance and any prior ordinance of the Township of Warren, the provisions hereof shall be determined to govern. All other parts, portions and provisions of *The Revised General Ordinances of the Township of Warren* are hereby ratified and confirmed, except where inconsistent with the terms hereof.

**Section 4.** After introduction, the Township Clerk is hereby directed to submit a copy of the within Ordinance to the Planning Board of the Township of Warren for its review in accordance with N.J.S.A. 40:55D-26 and N.J.S.A. 40:55D-64. The Planning Board is directed to make and transmit to the Township Committee, within 35 days after referral, a report including identification of any provisions in the proposed ordinance which are inconsistent with the master plan and recommendations concerning any inconsistencies and any other matter as the Board deems appropriate.

**Section 5.** This ordinance shall take effect immediately upon (1) adoption; (2) publication in accordance with the laws of the State of New Jersey; and (3) filing of the final form of adopted ordinance by the Clerk with the Somerset County Planning Board pursuant to N.J.S.A. 40:55D-16.

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Note to Codifier: Deleted provisions indicated by brackets [ ].

New provision indicated in underline \_\_\_\_\_.

**ATTEST:**

**TOWNSHIP OF WARREN**

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Cathy Reese, RMC

By: \_\_\_\_\_  
Victor Sordillo, Mayor

Introduced: August 9, 2018

Adopted: SEPTEMBER 13, 2018

Effective: SEPTEMBER 20, 2018