

V. PERFORMANCE GUARANTEE

A. GENERAL

Before endorsement of its approval of a Definitive Plan of a subdivision, the Planning Board shall require the applicant file with the board a Performance Guarantee for the construction and completion of ways and installation of municipal services, as required in these Rules and Regulations for all lots in the subdivision. Such construction and installation to be secured by one, or in part by one and in part by the other, of the following methods which may from time to time be varied by the applicant. Before the Definitive Plan shall have been endorsed by the Planning Board, the owner(s) of the subdivision shall be the owner(s) of record.

B. APPROVAL WITH BONDS OR SURETY

The applicant shall either file a surety company performance bond or a deposit of money or negotiable securities in an amount determined by the board to be sufficient to cover the cost of all or any part of the improvements specified in Section IV and not covered by a covenant under C below. Such bond or security, if filed or deposited, shall be approved as to form and manner of execution by the City Solicitor and as to sureties by the City Treasurer and shall be contingent on the completion of such improvements within two years of the date of the bond or surety. At the discretion of the board, a time extension may be granted.

C. APPROVAL WITH COVENANT

The applicant shall file a covenant (Form E), executed and duly recorded by the owner of record, running with the land, whereby such ways and services, as specified in Section IV, not covered by bond or deposit under B above, shall be provided to serve any lot before such lot may be conveyed, other than by mortgage deed.

D. REDUCTION OF BOND OR SURETY

The penal sum of any required bond or the amount of any deposit held hereunder may from time to time be reduced by the board and the obligation of the parties thereto released by said board in whole or in part. Said bond or the amount of any deposit held hereunder shall be reviewed by the board every six (6) months as to its adequacy to ensure the completion of all remaining work items.

E. RELEASE OF PERFORMANCE GUARANTEE

Upon the completion of improvements required under Section IV, security for the performance of which was given by bond, deposit or covenant, or upon the performance of any covenant with respect to any lot, the applicant may request and agree on terms of release with the board, or he may send by registered mail to the City Clerk a written statement in duplicate that the said construction or installation in connection with such bond, deposit or covenant has been completed in accordance with the requirements contained under Section IV, such statement to contain the address of the applicant, and the City Clerk shall forthwith furnish a copy of said statement to the board.

If the board determines that said improvements have been completed, it shall release the interest of the city in such bond and return the bond or the deposit to the person who furnished the same or release the covenant by appropriate instrument (Form B), duly acknowledged, with a copy to the Building Commissioner. If the board determines that said improvements have not been completed, it shall within forty-five days specify to the applicant, in writing, the details wherein said improvements fail to comply with its rules and regulations.

F. EVIDENCE OF SATISFACTORY PERFORMANCE

Before the board will release the interest of the City in a performance bond or deposit or, in the case of approval

with covenant, issue a release of covenant:

1. The applicant shall file with the board three (3) certified copies of the layout plan (with accompanying cross sections and profile) for each street in the subdivision (or, in the case of approval with covenant, of the street or streets serving the lots for which a release is desired). Certification shall be by the engineer and surveyor employed by the applicant at his own expense, and shall indicate that all streets, sidewalks, sewers, storm drains, and water mains, and their appurtenances, have been constructed in accordance with the lines and grades of said plan and are accurately located as shown thereon. "As built" plans shall be submitted to the board before acceptance of streets by the board and as per Section IV subsection K.
2. Prior to releasing the City's interest in a performance bond or deposit or releasing a Covenant, the Board shall receive from the applicant acceptable As-Built and Acceptance Plans and related requirements in accordance with Section II.12 of these Rules and Regulations. *(This subsection added 6-23-15)*
3. The board shall obtain, in writing from the City Engineer, a statement that all work required by these Rules and Regulations has been inspected and completed in each street in the subdivision (or the street serving the lots in question), including storm drains, bridges and sidewalks, and that he has approved the methods of construction and materials used in the performance of such work.
4. The board shall obtain, in writing from the City Engineer, a statement that he has inspected and the applicant has completed each water main and sanitary sewer and their appurtenances in accordance with the requirements of these Rules and Regulations and they have approved the methods of construction and materials used in the performance of such work.
5. The board shall obtain, in writing, from the Board of Health a statement that each already installed on-lot sewerage system was installed in accordance with Article XI of the Sanitary Code of the Department of Health of the Commonwealth of Massachusetts and each on-lot water system was installed in accordance with the Manual of Individual Water Supply Systems of the U.S. Department of Health, Education and Welfare.
6. The applicant shall execute an instrument, in a form approved by the board (Form G), transferring to the city, without cost, valid unencumbered title to all sanitary sewers, water mains and appurtenances thereto, constructed and installed in the subdivision or approved portion thereof, and conveying to the city, without cost and free of all liens and encumbrances, perpetual rights and easements to construct, inspect, repair, renew, replace, operate and forever maintain such sanitary sewers and water mains, with any manholes pipes, conduits, and other appurtenances, and to do all acts incidental thereto, in, through and under the whole of all streets in the subdivision or approved portion thereof, and if any such sewers or water mains have been constructed and installed in land not within such streets, then in, through and under a strip of land extending 10-ft. in width on each side of the centerline of all such sewers and water mains.

G. CRITERIA FOR SATISFACTORY PARTIAL COMPLETION

1. When only a portion of the streets and other improvements shown on the Definitive Plan have been constructed or installed and a release of covenant is requested, the board shall consider as satisfactorily completed only such lengths and parts thereof as will (in and of themselves) form convenient and adequate systems without the necessity of further extension of improvement, and shall consider as eligible for release only such lots as front on, are connected, or are otherwise served by such streets, utilities and other improvements.
2. Work on the ground adjacent to a particular lot will normally be considered by the board as work necessary to adequately serve such lot, regardless of the degree to which the lot is dependent on said work for its

access or utility service. In any case, the board will not issue a release of covenant for the entire subdivision, or for the final lot or group of lots therein, where progressive improvements are made until all items of required work on the ground are completed regardless of location.