



**BOROUGH OF FLORHAM PARK  
COUNTY OF MORRIS, STATE OF NEW JERSEY  
ORDINANCE #19-7**

**AN ORDINANCE OF THE MAYOR AND BOROUGH COUNCIL OF THE  
BOROUGH OF FLORHAM PARK IN THE COUNTY OF MORRIS,  
STATE OF NEW JERSEY, AMENDING SECTION 212-27 OF THE CODE  
OF THE BOROUGH OF FLORHAM PARK, RELATING TO  
PERFORMANCE AND MAINTENANCE GUARANTEES AND  
DEVELOPER AGREEMENTS**

**WHEREAS**, the New Jersey Legislature adopted S3233 which was signed into law by the Governor, and which substantially alters NJSA 40:55D-53, regarding performance and maintenance guarantees that may be required by a municipality with respect to approvals granted under the Municipal Land Use Law; and

**WHEREAS**, it is necessary to revise the Borough Code in order to comply with this legislation.

**NOW, THEREFORE, BE IT ORDAINED** by the Borough Council of the Borough of Florham Park, County of Morris, State of New Jersey, as follows:

**SECTION 1.** Section 212-27 entitled “Installation or guaranty required prior to approval,” is hereby repealed and is replaced in its entirety by a new section 212-27, bearing the same title, which is attached hereto as Attachment A,

**SECTION 2.** – All ordinances inconsistent with this ordinance are hereby repealed to the extent of such inconsistencies.

**SECTION 3.** - If any article, section, subsection, paragraph, phrase or sentence of this ordinance is for any reason declared to be invalid, such declaration shall not affect the remainder of the ordinance.

**SECTION 4.** - This ordinance shall take effect upon final publication as provided for by law.

INTRODUCED: March 21, 2019

ADOPTED: April 18, 2019

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Mark Taylor, Mayor

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Sheila Williams, R.M.C.  
Borough Clerk

CERTIFIED AS A TRUE COPY OF AN ORDINANCE ADOPTED BY THE GOVERNING BODY OF THE BOROUGH OF FLORHAM PARK ON APRIL 18, 2019

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Sheila A. Williams, RMC

## ATTACHMENT A

A. Before filing 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 pursuant to subsection d. of section 52 of P.L.1975, c.291 (C.40:55D-65), the Borough requires and shall accept in accordance with the standards adopted by ordinance and regulations adopted pursuant to section 1 of P.L.1999, c.68 (C.40:55D-53a) for the purpose of assuring the installation and maintenance of certain on-tract improvements, the furnishing of a performance guarantee, and provision for a maintenance guarantee in accordance with subsections (1) and (2) as follows.

1. Performance Guarantee.

- a. The developer shall furnish a performance guarantee in favor of the Borough in an amount not to exceed 120% of the cost of installation of only those improvements required by an approval or 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 Borough engineer, according to the method of calculation set forth in section 15 of P.L.1991, c.256 (C.40:55D-53.4), for the following as shown on the approved plans or plat: streets, pavement, gutters, curbs, sidewalks, street lighting, street trees, surveyor's monuments, as shown on the final map and required by "the map filing law," P.L.1960, c.141 or N.J.S.46:26B-1 through N.J.S.46:26B-8, water mains, sanitary sewers, community septic systems, drainage structures, public improvements of open space, and any grading necessitated by the preceding improvements.

- b. The Borough 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.
- c. The developer shall be required to furnish a performance guarantee to include, within an approved phase or section of a development, privately-owned perimeter buffer landscaping, as required by Borough ordinance or imposed as a condition of approval. At the developer's option, a separate performance guarantee may be posted for the privately-owned perimeter buffer landscaping.
- d. In the event that the developer shall seek a temporary certificate of occupancy for a development, unit, 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 bond," in favor of the Borough in an amount equal to 120% 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, building or phase of development. Upon posting of a "temporary certificate of occupancy bond," all sums remaining under a performance guarantee, required pursuant to subparagraph (a) of this paragraph, which relate to the development, unit, building, or phase of development for which the temporary certificate of occupancy is sought, shall be released. At no time may a Borough hold more than one guarantee or bond of any type with respect to the same line item. The temporary certificate of occupancy bond shall be released upon the issuance of a permanent certificate of occupancy with regard

to the development, unit, building, or phase as to which the temporary certificate of occupancy relates.

- e. In addition to a performance guarantee required pursuant to subparagraph (a) of this paragraph, a developer shall furnish to the Borough a separate guarantee, referred to herein as a “safety and stabilization bond,” in favor of the Borough, to be available to the Borough 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: (i) 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(ii) work has not recommenced within 30 days following the provision of written notice by the Borough to the developer of the Borough’s intent to claim payment under the bond. The Borough shall not provide notice of its intent to claim payment under a “safety and stabilization bond” until a period of at least 60 days has elapsed during which all work on the development has ceased for reasons other than force majeure. The Borough shall provide written notice to a developer by certified mail or other form of delivery providing evidence of receipt.
- f. The amount of a “safety and stabilization bond” for a development with bonded improvements in an amount not exceeding \$100,000 shall be \$5,000. The amount of a “safety and stabilization bond” 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.

- g. The time allowed for installation of the improvements for which the performance guarantee has been provided may be extended by the governing body by resolution. As a condition or as 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 120% of the cost of the installation, which cost shall be determined by the Borough engineer according to the method of calculation set forth in section 15 of P.L.1991, c.256 (C.40:55D-53.4) as of the time of the passage of the resolution.
2. Maintenance Guarantee.
- a. The developer shall post with the Borough, prior to the release of a performance guarantee required pursuant to subsection 1 above, a maintenance guarantee in an amount not to exceed 15% of the cost of the installation of the improvements which are being released.
  - b. The developer shall post with the Borough, upon the inspection and issuance of final approval of the following private site improvements by the Borough engineer, a maintenance guarantee in an amount not to exceed 15% of the cost of the installation of 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 according to the method of calculation set forth in section 15 of P.L.1991, c.256 (C.40:55D-53.4).

- c. The term of the maintenance guarantee shall be for a period not to exceed two years and shall automatically expire at the end of the established term.
  - d. In the event that other governmental agencies or public utilities automatically will own the utilities to be installed or the improvements are covered by a performance or maintenance guarantee to another governmental agency, then the Borough shall not require any performance or maintenance guarantee, as the case may be, for such utilities or improvements.
- B. Successor Developer. Any party who succeeds to the interest of an original developer shall be obligated to the same degree as the original developer. If any such successor developer has furnished a replacement performance guarantee, as a condition to the approval of a permit update under the State Uniform Construction Code, for the purpose of updating the name and address of the owner of property on a construction permit, the Borough requires and shall accept the furnishing of a performance guarantee and provision for a maintenance guarantee which satisfies the requirements of this section with respect to original developer guarantees.
- C. Guarantee Liability and Guarantee closeout procedures. The liability of the Obligor on the performance guarantee, and the procedure to seek a reduction or closing out of the performance guarantee shall be as set forth in NJSA 40:55D-53, et. seq.
- D. Dedication of Improvements to the Borough. To the extent that any of the improvements have been dedicated to the Borough on the subdivision plat or site plan, the Borough governing body shall be deemed, upon the release of any performance guarantee required pursuant to this ordinance, to accept dedication for public use of streets or roads and any other improvements made thereon according to site plans and subdivision plats approved by the Planning Board or Board of Adjustment, as the case may be, provided that such

improvements have been inspected and have received final approval by the Borough engineer

- E. Developer's Agreement. Prior to the issuance of building permits for any buildings in a subdivision or site plan approved under this chapter, a fully executed developer's agreement approved by the Borough and an appropriate performance bond in accordance with the terms of the developer's agreement must be submitted to the Borough.