

Chapter 16.60

FINANCIAL SECURITY

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16.60.010 Purpose.

The Town of Burlington has an interest in ensuring that it does not bear the cost of private development. In order to guarantee the financial security of the developer, the following ordinance is established.

16.60.020 Surety Required.

As assurance of compliance with all of the requirements of under this Chapter, the Developer shall file with the Town a Performance Bond, or Irrevocable Letter of Credit or escrow a cash deposit representing one hundred and twenty (120%) percent of the Town Engineer's estimate of the cost of improvements, which Performance Bond, Irrevocable Letter of Credit, or cash deposit shall be adjusted periodically so that at all times it equals or exceeds the total amount of improvement contracts entered into in accordance with this Agreement. The said Performance Bond, Irrevocable Letter of Credit, or cash deposit shall be filed with the Town Board prior to letting any improvement contracts hereunder and which Performance Bond shall be executed by the Developer, as principal, and a Surety Corporation duly licensed and authorized to do business under the Laws of the State of Wisconsin, as surety, that said Performance Bond shall be payable to the Town of Burlington and be conditioned upon the faithful performance of any and all services and labor furnished by the Developer. The

surety shall specify that it shall remain effective until the Development is completed and all public improvements are approved and accepted by the Town. Failure to file such bond within ten (10) days after written demand shall result in the cessation of all development until such surety has been filed.

16.60.030 Reduction of Surety.

After the acceptance of any improvement by the Town, the amount which the Town is entitled to draw on the Performance Bond, or Irrevocable Letter of Credit, or cash deposit in escrow shall be reduced by an amount equal to ninety (90) percent of the estimated cost of the improvement. At the request of the Developer, the Town shall execute a certificate verifying the acceptance of the improvement and waiving its right to draw on the Performance Bond, or Irrevocable Letter of Credit, or cash deposit in escrow to the extent of such amount. If the Developer is in default under this Agreement, the Developer shall have no right to such a certificate. Upon the acceptance of all of the improvements, the balance that may be drawn under the Performance Bond, or Irrevocable Letter of Credit, or cash deposit in escrow shall be available to the Town for ninety (90) days after expiration of the Period of Guaranty.

16.60.040 Use of Proceeds.

The Town shall use funds drawn under the Performance Bond, or Irrevocable Letter of Credit, or cash deposit in escrow only for the purposes of completing the improvements, correcting defects in or failures of the improvements, or the completion of any of the Developer's obligations under this Agreement.

16.60.050 Failure to Pay for Improvements.

In the event the Developer fails to pay a Contractor the required amount for the improvement or services enumerated herein within thirty (30) days after being billed for each improvement of each stage, the Surety Corporation shall make the said payments to the Contractor upon five (5) days demand by the Town. Demand shall be by registered letter with a return receipt requested, addressed to the Surety Corporation at the address indicated on the Performance Bond. It is understood between the parties to this Agreement, that the billing for the improvements shall take place as the various segments and sections of said improvements are completed and certified by the Town Engineer, and accepted by the Town. However, thereafter the sequence and timing of the billing is to be entirely at the discretion of the Town.

16.60.060 Events of Default.

The following conditions, occurrences, or actions shall constitute a default by the Developer during the completion period:

- A. Developer's failure to cure the defective construction of any improvement within the applicable cure period; or
- B. Developer's failure to perform work within the Subdivision Plat for a period of more than sixty (60) consecutive days; or
- C. Developer's insolvency, the appointment of a receiver for the Developer or the

filing of a voluntary or involuntary petition in bankruptcy respecting the Developer; or

- D. Foreclosure of any lien against the Property or a portion of the Property or assignment or conveyance of the Property in lieu of foreclosure.

The Town may not declare a default until written notice has been given to the Developer.

16.60.070 Town's Rights Upon Default.

When any event of default occurs, the Town may draw on the Performance Bond, or Irrevocable Letter of Credit, or cash deposit in escrow to the extent of the face amount of the credit less ninety (90) percent of the estimated cost (as shown on Exhibit D) of all improvements theretofore accepted by the Town. The Town shall have the right to cure the default itself or contract with a third party to cure the defaults, and the Developer hereby grants to the Town, its successors, assigns, agents, contractors, and employees, a nonexclusive right and easement to enter the Property for the purposes of constructing, maintaining, and repairing required improvements. Alternatively, the Town may assign the proceeds of the Performance Bond, or Irrevocable Letter of Credit, or cash deposit in escrow to a subsequent developer (or a lender) which agrees in writing to complete the unfinished improvements. In addition, the Town also may suspend Final Plat approval during which time the Developer shall have no right to sell, transfer, or otherwise convey lots or homes within the Subdivision or

Condominium Plat without the express written approval of the Town or until the improvements are completed and accepted by the Town. These remedies are cumulative in nature; except that during the Period of Guaranty, the Town's only remedy shall be to draw funds under the Performance Bond, or Irrevocable Letter of Credit, or cash deposit in escrow. The provisions herein shall not affect the right of third parties who may have acquired lots in the subdivision prior to a default or their lenders.