

SECTION 7

PERFORMANCE GUARANTEES

7.1 APPLICATION

Wherever a performance guarantee is required under the terms of this Code, said guarantee shall be submitted in conformance with this Section, and made a part of the Development Agreement executed for the Development.

7.2 TYPE AND AMOUNT OF GUARANTEE

The performance guarantee shall be one of the following:

- A. An irrevocable letter of credit from a financial institution acceptable to the County.
- B. A deposit of cash in a separate account, in the name of Carbon County and the developer.
- C. A performance bond from an institution acceptable to the County.
- D. A real property equity bond conforming to the specific requirements of paragraph 7.8.

Each performance guarantee shall be in an amount not less than 125 percent of the average of three (3) cost estimates from a qualified contractor or engineer experienced in constructing or engineering the type of public improvement for which the guarantee is requested. . In the event cost estimates cannot be readily obtained from three contractors or engineers, the County may accept a cost estimate from fewer than three contractors or engineers if, in the opinion of the County Engineer, the cost estimates received properly acknowledge the entire scope of work necessary to complete the public improvement and are reflective of local market costs. The guarantee, shall be posted in such a manner that any portion of the guarantee released shall require the advance written consent of the County. Any interest derived from cash guarantee accounts shall be the property of the developer.

7.3 DURATION OF GUARANTEE

The duration of the performance guarantee shall be for the applicable period of time specified for each particular type of development or activity. Said period shall begin on the date of final approval by the County.

7.4 FINAL DISPOSITION AND RELEASE

At the completion of the work, or not less than thirty (30) days prior to the release date of the bond or other assurance, the developer shall submit to the Zoning Administrator a Certificate of Completion. Following receipt of the certificate, the Zoning Administrator shall make a preliminary inspection and shall submit a report to the Chairman of the County Commission, setting forth the conditions of such facilities. The Zoning Administrator shall set the date and time of a staff meeting to review the status of the Development and to receive comments and recommendations from staff regarding the adequacy of the improvements and compliance with County Standards, Codes, and Ordinances. If the condition of said improvements or activities for which the guarantee is required are found to be satisfactory, and all liens are paid, the Chairman or their designated representative shall act to either:

- A. Approve and accept the improvements, at which time the guarantee of durability period shall begin; or
- B. Reject the improvements and notify the Developer of the deficiencies, and fix the time for said improvements to be complete; or
- C. Approve and accept portions or part of the improvements, at which time the guarantee of durability period shall begin on the improvements accepted; or
- D. Reject portions of the improvements and notify the Developer of the deficiencies, and fix the time for said improvements to be complete.

If the condition of material or workmanship shows unusual depreciation or does not comply with the acceptable standards of durability, or if any outstanding liens are not paid, or the terms of the guarantee have not been satisfied, the matter shall be referred to the County Commission and, in accordance with the provisions of 7.5, the Commission may declare the developer in default.

7.5 DEFAULT

Where, in the opinion of the County Commission, a developer fails or neglects to satisfactorily install the required improvements or make required corrections, or to pay all liens on connection with said improvements, or otherwise fails in carrying out the activity for which a financial guarantee was required, the Commission, after a public hearing with due notice on the matter may:

- A. Declare the performance guarantee forfeited and thereafter may install or cause the required improvement(s) to be installed using the proceeds from the guarantee to defray the costs; or
- B. Hold a public hearing to vacate the Subdivision Plat, Conditional Use Permit or other development for which the financial guarantee was posted
- C. Any funds remaining after completion of the required improvements or vacation of the project will be returned to the developer.

7.6 PARTIAL RELEASE PERMITTED

Where the guarantee is required to insure the timely installation of improvements, the County may authorize a partial release (s) of the performance guarantee in accordance with the following schedule:

Percent of Work Compete	Percent of Total Guarantee Amount Eligible for Release (less Retainage, see 7.7)
25	25
50	45
75	70
100 (upon satisfactory final inspection)	100

7.7 DURABILITY RETAINAGE

A retainage of not less than twenty-five percent (25%) of the total amount of the guarantee shall be retained by the County for a period of not less than one year following the date of final acceptance of the improvements by the County. Such retainage shall be a guarantee of the durability of all improvements. If during the one year period the durability of said improvements is found to be satisfactory, said retainage may be released following the procedure outlined under Section 7-4. If, however, during said period the condition, or material or workmanship, of the improvement(s) fail or show unusual depreciation, or if it becomes evident that certain work was not completed, or that said improvements do not otherwise comply with accepted standards of durability, said condition shall be corrected by the developer. If the corrections are not made within a reasonable time, the County Commission, in accordance with Section 7-5, may declare such person in default and use the retainage to defray the cost of any required work.

7.8 SPECIFIC CONDITIONS FOR REAL PROPERTY EQUITY BONDS

- A. A real property equity bond posted as a performance guarantee must be approved by the Zoning Administrator. The Zoning Administrator may approve the application and bond if the tax value of the

property offered as security is at least 250% of the estimated cost of performing the work for which the guarantee is requested, as determined by the County. The Zoning Administrator must deny the application for bond if there exist any encumbrances against the property.

- B. An application to post a real property equity bond as a performance guarantee must:
 - a. be located entirely within Carbon County;
 - b. be accompanied by an application for real property equity bond in a form approved by the County;
 - c. be accompanied by a copy of the document vesting title in the owners;
 - d. be accompanied by a copy of the property tax statement for the current and previous year;
 - e. be accompanied by a current title report or such additional title information required by the County;
 - f. be accompanied by a Deed of Trust in a form approved by the County and meeting the following additional requirements:
 - i. be signed by all owners of record;
 - ii. contain the complete legal description of the property and the property tax identification number;
 - iii. be acknowledged before a notary public;
- C. The bond is not effective until the approved Deed of Trust is recorded with the county recorder of the county in which the property is located and proof of recording has been filed with the County as part of the Development Agreement.
- D. Upon release of the performance guarantee, the County will re-convey the Deed of Trust.