§ 160D-804.1. Performance guarantees.

To assure compliance with G.S. 160D-804 and other development regulation requirements, a subdivision regulation may provide for performance guarantees to assure successful completion of required improvements.

For purposes of this section, all of the following apply with respect to performance guarantees:

(1) Type. – The type of performance guarantee shall be at the election of the developer. The term "performance guarantee" means any of the following forms of guarantee:
   a. Surety bond issued by any company authorized to do business in this State.
   b. Letter of credit issued by any financial institution licensed to do business in this State.
   c. Other form of guarantee that provides equivalent security to a surety bond or letter of credit.

(1a) Duration. – The duration of the performance guarantee shall initially be one year, unless the developer determines that the scope of work for the required improvements necessitates a longer duration. In the case of a bonded obligation, the completion date shall be set one year from the date the bond is issued, unless the developer determines that the scope of work for the required improvements necessitates a longer duration.

(1b) Extension. – A developer shall demonstrate reasonable, good-faith progress toward completion of the required improvements that are secured by the performance guarantee or any extension. If the improvements are not completed to the specifications of the local government, and the current performance guarantee is likely to expire prior to completion of the required improvements, the performance guarantee shall be extended, or a new performance guarantee issued, for an additional period. An extension under this subdivision shall only be for a duration necessary to complete the required improvements. If a new performance guarantee is issued, the amount shall be determined by the procedure provided in subdivision (3) of this subsection and shall include the total cost of all incomplete improvements.

(1c) Inspection. – A local government shall conduct an inspection of the improvements subject to a performance guarantee within 30 days of a request received from a developer and advise the developer whether the improvements are completed to the required specifications. In the event a local government and developer disagree whether a required improvement is completed to the specifications of a local government, a developer may obtain a certification under seal from a licensed professional engineer that the required improvements have been completed to the specifications of the local government.

(2) Release. – The performance guarantee shall be returned or released, as appropriate, within 30 days upon the acknowledgement by the local government that the improvements for which the performance guarantee is being required are complete or upon receipt of a certification under seal from a professional engineer that the required improvements have been completed to the specification of the local government. The local government shall return letters of credit or escrowed funds within 30 days upon completion of the required improvements to its specifications or upon acceptance of the required improvements, if the required improvements are subject to local government

acceptance. When required improvements that are secured by a bond are completed to the specifications of the local government, or are accepted by the local government, if subject to its acceptance, upon request by the developer, the local government shall timely provide written acknowledgement that the required improvements have been completed.

(3) Amount. – The amount of the performance guarantee shall not exceed one hundred twenty-five percent (125%) of the reasonably estimated cost of completion at the time the performance guarantee is issued. The local government may determine the amount of the performance guarantee or use a cost estimate determined by the developer. The reasonably estimated cost of completion shall include one hundred percent (100%) of the costs for labor and materials necessary for completion of the required improvements. Where applicable, the costs shall be based on unit pricing. The additional twenty-five percent (25%) allowed under this subdivision includes inflation and all costs of administration regardless of how such fees or charges are denominated. The amount of any extension of any performance guarantee shall be determined according to the procedures for determining the initial guarantee and shall not exceed one hundred twenty-five percent (125%) of the reasonably estimated cost of completion of the remaining incomplete improvements still outstanding at the time the extension is obtained.

(3a) Timing. – A local government, at its discretion, may require the performance guarantee to be posted either at the time the plat is recorded or at a time subsequent to plat recordation.

(4) Coverage. – The performance guarantee shall only be used for completion of the required improvements and not for repairs or maintenance after completion. No performance guarantee may be required for maintenance of any improvement once the improvement is completed to the specification of a local government or upon receipt of a certification under seal from a professional engineer that the required improvements have been completed to the specification of the local government.

(5) Legal responsibilities. – No person shall have or may claim any rights under or to any performance guarantee provided pursuant to this subsection or in the proceeds of any such performance guarantee other than the following:

a. The local government to whom the performance guarantee is provided.

b. The developer at whose request or for whose benefit the performance guarantee is given.

c. The person or entity issuing or providing the performance guarantee at the request of or for the benefit of the developer.

(6) Multiple guarantees. – The developer shall have the option to post one type of a performance guarantee as provided for in subdivision (1) of this section, in lieu of multiple bonds, letters of credit, or other equivalent security, for all development matters related to the same project requiring performance guarantees.

(7) Exclusion. – Performance guarantees associated with erosion control and stormwater control measures are not subject to the provisions of this section. (2020-25, s. 20(b); 2024-49, s. 1.12(a).)