ARTICLE VII

GUARANTEES AND IMPROVEMENT PROCEDURES

SECTION-7.1 PERFORMANCE GUARANTEE

A. Prior to the signing of a final plat, issuance of a Development Permit, and/or the commencing of any clearing, grading or installation of improvements, the developer shall have filed with the Borough a performance guarantee sufficient in amount to equal the total cost to the Borough, as estimated by the Borough Engineer, of constructing those on-site, off-site and off-tract improvements necessary to protect adjacent property and the public interest in the event development of the subdivision or site were not completed. Such improvements shall include, but are not limited to streets, grading, pavement, gutters, curbs, sidewalks, street lighting, shade trees, surveyor's monuments, water mains, culverts, storm sewer, drainage structures, erosion control and sediment control devices, public improvements of open space and in the case of site plans, other onsite improvements and landscaping. Such guarantee shall assure the installation of such improvements on or before an agreed date, guarantee the completion of all improvements without damage to or interference with adjacent properties or public facilities, and hold the Borough Council and the Planning Board and their employees and agents harmless with respect to any acts of the developer, if agents, successors or assigns. The total estimated cost to the Borough of constructing all improvements shall be based upon the estimated contract construction costs, which would prevail upon expiration of the guarantee period, and shall also include appropriate allowances for contract related costs such as engineering, legal, financial and other usual costs, which shall be estimated to be on hundred twenty (120%) percent of the estimated contract construction costs. Such performance guarantee may be in the form of cash, certified check, negotiable securities, a performance bond issued by a bonding company or surety company approved by the Borough Council, or any other type of surety acceptable to and approved by the Borough Attorney and Borough Council, provided that at least ten (10%) percent of the performance guarantee shall be in the form of cash, certified check, or savings passbook or certificate of deposit drawn on an insured banking institution in the State of New Jersey; provided, however, that all rights, including the right to interest with dividends, be assigned to the Borough in a form of assignment acceptable to the Borough Attorney for the period of the bond and that the principal amount of the passbook or certificate of deposit, together with interest, be returned to the developer upon completion of the bonded improvements, or in the event of default, both interest and principal shall be used by and for the benefit of the Borough in the completion of said improvements.

B. If at the time the performance guarantee is filed with the Borough, the developer has not also filed with the Borough proof that any other necessary performance guarantees have been filed and accepted by governmental bodies, authorities, public utility companies, and private utility companies other than the Borough, which have jurisdiction over improvements in the site or subdivision, the amount of the performance guarantee shall be increased to reflect the cost of such improvements.

C. All performance guarantees shall run to and be in favor of the Borough of Little Silver in the County of Monmouth.

D. "The performance guarantee shall be approved by the Borough-Attorney as to form, sufficiency and execution. Such performance guarantee shall run for a period to be fixed by the Borough Council, but in no case for a term of more than two. (2) years. However, with the consent of the owner and the surety, if there be one, the Borough Council may, by resolution, extend the term of such performance guarantee for an additional period not to exceed one (1) year. The amount of the performance guarantee may be revised by the Borough Council from time to time to reflect work progress, increasing costs and changing conditions in regard to the uncompleted or unacceptable portions of the required improvements, if the required improvements have not been installed in accordance with the performance guarantee, the obligor and surety shall be liable thereon, at the option of the municipality for:

1. The reasonable cost of the improvements not installed, and upon receipt of the proceeds thereof, the municipality shall install such improvements; or

2. The completion of all required improvements.

E. If during the period of the performance guarantee the developer fails to prosecute the work of completing the improvements so as not to create hazards to life, health, property or public safety, the Borough may, after five (5) days notice perform, or cause to be performed, any necessary corrective work and deduct the cost thereof from the 10% cash or certified cheek portion of the guarantee. Upon notice of any such deduction, the developer shall, within ten (10) days, restore the full 10% cash balance or hit performance guarantee will be held to be void and the Borough may take action as if final plat approval had not bean obtained.

When all of the required improvements have been completed, the obligor shall notify the Borough Council in writing, by certified mail addressed in care of the Borough Clerk of the completion of said improvements and shall send a copy thereof to the Borough Engineer, which shall be accompanied by supporting documentation set forth in Section 7.6, G of

this Chapter. Thereupon the Borough Engineer shall inspect all of the improvements and shall file a detailed report, in writing, with the Borough Council, indicating either approval, partial approval or rejection of the improvements with a statement of reasons for any rejection. If partial approval is indicated, the cost of the improvements rejected shall be set forth.

G. The Borough Council shall either approve, partially approve or reject the improvements, on the basis of the report of the Borough Engineer and shall notify the obligor in writing, by certified mail, of the contents of said report and the action of said approving authority with relation thereto, not later than sixty-five (65) days after receipt of the notice from the obligor of the completion of the improvements. Where partial approval is granted, the obligor shall be released from all liability pursuant to its performance guarantee, except for that portion adequately sufficient to secure provision of the improvements not yet approved. Failure of the Borough Council to send or provide such notification to the obligor within sixty-five (65) days shall be deemed to constitute approval of the improvements and the obligor and surety, if and, shall be released from all liability, pursuant to such performance guarantee.

H. If any portion of the required improvements are rejected, the Borough Council may require the obligor to complete such improvements and, upon completion, the same procedure of notification, as set forth in this section shall be followed.

I. Nothing herein, however, shall be construed to limit the right of the obligor to contest by legal proceedings any determination of the Borough Council or the Borough Engineer.

SECTION-7.2 APPROVAL OF PERFORMANCE GUARANTEES

A. Duties of Borough Engineer, Borough Attorney and Borough Clerk.
No performance guarantees shall be presented for approval of the Borough Council until the municipal officials listed below have performed the following and make certification of their performance, in writing to the Borough Council.

1. Borough Engineer: The Borough Engineer shall:

a. Where applicable, examine the plat map of a subdivision to make certain that it complies with all state laws and this Chapter relative to the preparation and filing of maps or plans for the subdivision of land.

b. Ascertain that the plat of a site plan or subdivision has been approved by the Monmouth County and Little Silver Planning Board.

c. Determine those acts or things the Applicant is to do to protect the Borough, such as to provide proper drainage, streets, curbs, signs, monuments or any other item or thing and the cost of each, as well as the maximum time he recommends granting the applicant to provide each item or all items.

d. Determine if the landowner is an individual, corporation or partnership; if an individual, his full name and address; if a corporation, its correct name, date and state of corporation, the name of its President and Secretary and location of its principal office in this state; if a partnership, the names and addresses of all partners.

e. Give the applicant a form of the surety company bond required by the Borough, and all figures dates and details required by Section-7.2, A,1, c above so that same may be included in the bond to be furnished to the Borough; also, advise the applicant of the amount required to pay the Borough as a proper inspection, testing and administration fee.

f. Deliver to the Borough Attorney:

1. The original copy of the surety company bond of the applicant; and

2. The Borough Engineer's written certificate addressed to the Borough Council which certificate and bond shall be delivered at one and the same time.

g. The Borough Engineer's certificate shall also state and give the nature of cash, or its equivalent, deposited as a portion or all of the performance guarantee (i.e., cash, certified check, cash escrow deposit, or other security).

h. If there is nothing the applicant needs to do under Section-7.2, A, 1, c above the certificate shall so state and give the reason therefor.

2. Borough Attorney: Upon receipt from the Borough Engineer of the surety bond and Engineer's certificate, the Borough Attorney shall promptly examine said bond and determine whether or not it is correct in form, content and execution. If the bond is not correct, the Borough Attorney shall notify the applicant of its shortcomings. When the bond is or has been made correct, the Borough Attorney shall make a written certificate to that effect to the Borough Council. Thereupon said Attorney shall deliver the bond and Engineer's and Attorney's certificates to the Borough Clerk.

3. Borough Clerk: Upon the receipt from the Borough Attorney of the bond and certificates of the Engineer and Attorney, the Borough Clerk shall:

   a. Collect from the applicant the proper fee or fees, if any, payable, to the Borough in accordance with the Engineer's certificate.

   b. Place the matter of approval of bond(s) on the agenda of the next regular meeting of the Borough Council for its consideration.

   c. Submit the bond, certificate and fees to the Borough Council at the next regular meeting of said Council.

B. Certificates - Form, Dating. Each of said certificates shall be dated and written in letter form upon the stationery of the maker or of the Borough, and signed by him or his authorized agent or representative.

C. Bond Requirements. There must be attached to said bond an authority of the surety company empowering the person or persons who executed said bond for the surety company to do so. If the bonding, company is not a New Jersey corporation, there should also be attached to the bond proof of its authority to do business in New Jersey and a copy of its last financial statement, made not more than one (1) year before, showing its financial conditions. If the principal on the bond is a corporation, there must be attached to the bond a certified copy of a resolution adopted by its Board of Directors authorizing the execution and delivery of said bond. Said bond must also bear the corporate seal of the surety company and the seal, corporate or otherwise, of the principal.

D. Copies. The Borough Clerk shall keep a supply of copies of these bond requirements in his office for the use of applicants and the general public.

SECTION-7.3 OFF-TRACT IMPROVEMENTS

A. General Requirements. Where the Planning Board determines that off-tract improvements are necessary for the proper development and utilization of the proposed site or subdivision and the surrounding area, it may require either (1) that such off-tract improvements be installed or (2) that the developer contribute to the installation of such off-tract improvements. Where the Planning Board has determined that off-tract improvements are required, it shall be a condition of the granting of final approval that such improvements be constructed or that the developer shall make payments toward the ultimate installation of off-tract improvements such as, but not limited to, streets, curbs and gutters, sidewalks, water mains, sanitary sewers, storm sewers and culverts, monuments and street lights all in accordance with the specifications governing on-tract improvements.

B. Cost Allocation. If the Planning Board determines that the developer may contribute toward required off-tract improvements in lieu of such improvements being installed, the Planning Board shall allocate the cost of said off-tract improvements in accordance with the standards hereinafter set forth. The improvement of a stream and/or widening of, or the construction of drainage or other improvements in, a street or road fronting on the tract to be subdivided and/or developed shall not constitute an off-tract improvement and the cost of said improvement shall not be allocated.

1. The allocation of the cost of off-tract improvements shall be determined in accordance with the following:

a. The Planning Board may consider the total cost of the off-tract improvements, the benefits conferred upon the site or subdivision, the needs created by the site or subdivision, population and land use projects for the general areas of the site or subdivision and other areas to be served by the off-tract improvements, the estimated times of construction of off-tract improvements and the condition and periods of usefulness, which periods may be based upon the criteria of H.J.R.S. 40A:2-22. The Planning Board may further consider the criteria set forth below.

b. Road, curb, gutter and sidewalk improvements way be based upon the anticipated increase of traffic generated by the site or subdivision. In determining such traffic increase, the Planning Board; may consider traffic counts, existing and projected traffic patterns, quality of-roads and sidewalks in the area, and the other factors related to the need created by the sits or subdivision and anticipated thereto.

c. Drainage facilities may be based upon the percentage relationship between the site or subdivision acreage and the acreage of the total drainage basins involved or upon calculations developing the percentage contribution that the storm runoff from a particular site or subdivision bears to the total design capacity of any improvement; the particular methods to be selected in each instance by the Borough Engineer.

d. Sewage facilities shall be based upon a proportion as determined by the current rules and regulations of the Two Rivers Water Reclamation Authority.

e. Water supply and distribution facilities may be based upon the current rules and regulations governing the particular utility supplying water service.

2. All monies received by the municipality in accordance with the provisions of this section shall be paid to the Municipal Treasurer who shall provide for a suitable depository therefor. Such funds shall be used only for the improvements for which they are deposited or improvements serving the same purposes unless such improvements are not initiated for a period of five (5) years from the date of payment, after which time said funds shall be transferred to the capital improvement fund of the municipality.

3. The apportionment of costs shall be determined by the Planning Board. The developer shall be afforded an opportunity before said Board to present evidence relative thereto.

C. Assessment not Precluded. Nothing in this section of the Chapter shall preclude the municipality from assessing any property benefiting from installation of any off-tract improvements as provided in this section pursuant to the provisions of the Revised Statutes of New Jersey, an allowance being made to the respective parcels of realty for payments herein.

SECTION-7.4 ASSIGNMENT OF INTEREST

Before any developer effectively assigns any of his interest in any preliminary or final approval he must notify the Zoning Officer and supply detailed information with regard to the name, address, principals, type of organization, competency, experience and past performance of the assignee, transferee or agent. Notice of such assignment or transfer shall be given no later than ten (10) days after its effective date. The assignee must be made acquainted with all the conditions of approval and the developer shall so certify.

SECTION-7.5 SUPERVISION

A. No contractor, builder, developer or subcontractor shall engage any personnel in any of the work on constructing any improvements unless they are continually supervised by a competent, English-speaking supervisor acceptable to the Borough Engineer.

B. No less than five (5) days prior to commencing construction of any improvements on the site, the developer or his agent shall provide the Borough Engineer with the names, addresses, phone numbers and emergency phone numbers of the subdivider and/or a representative empowered to act for the developer and/or each contractor and their supervisor in charge of the construction, setting forth the aspect of construction for which each is responsible.

C. The developer may retain throughout the course of construction a registered New Jersey Professional Engineer to supervise the implementation of the approved subdivision or site design and to make periodic reports to the Borough as well as to the developer regarding conformance of the construction with the requirements of final approval.

D. If the developer proposes to retain someone other than the engineer who prepared the final plat to supervise construction, he shall notify the Borough Engineer and the Planning Board of the name, address and license number of the engineer retained. If at any time during the course of construction the developer elects or is required to replace the responsible engineer and/or employ additional engineers, he shall likewise notify the Borough Engineer and the Planning Board.

E. The supervising engineer shall immediately notify the Borough Engineer of any deviation (observed or proposed) from the requirements of final approval and/or this Chapter.

F. At regular intervals during the course of construction, but not less often than at monthly intervals, the supervising engineer shall submit to the Borough Engineer a report listing his observations of the work undertaken during the reporting period, specifically noting any deviation from the requirements of final approval and/or this Chapter and listing those improvements expected to be undertaken during the next reporting period. The developer shall accompany any request for acceptance of public improvements and/or release of performance guarantees with a certification by the responsible supervising engineer attesting to the completion of the improvements in full conformance with the requirements of final approval

SECTION -7.6 INSPECTION REQUIREMENTS

A. Inspection, Testing and Engineering Administration Fees.
Prior to signing of any final plat, issuance or a development permit or the start of construction of any improvements required by the provision of this Chapter the developer shall deposit by cash or certified check with the Borough Clerk an amount determined from the schedule under Section -3.4, or Section -3.4, of this Chapter. Said amount shall be used to defray the cost of inspection, testing, engineering, administration, and other costs, and fees paid by the Borough in connection with the inspection and acceptance of the installation of the required improvements. All monies received on account of engineering and inspection fees shall be deposited by the Borough Treasurer as general revenue as provided by law. The Borough shall provide appropriate budget items to cover the cost of all necessary administrative and engineering services.

B. Inspection Notice. All required improvements except those utility improvements which are not the responsibility of the Borough shall be subject to inspection and approval by the Borough Engineer, who shall be notified by the developer at least five (5) days prior to the initial start of construction and again twenty-four (24) hours prior to the resumption of work after any idle period exceeding one (1) working day. All of the utility improvements shall be subject to inspection and approval by the owner of or agency controlling the utility who shall be notified by the developer in accordance with the utilities requirements. "No underground installation shall be covered until it is inspected and approved by the owner of or agency controlling the utility or by the Borough Engineer in all other cases.

C. Modification of Improvements. At any time, whether as a result of his inspection of work underway or otherwise the Borough Engineer may recommend that the developer be required to modify the design and extent of the improvements required, notifying the Planning Board of his recommendations. The Planning Board shall, if it considers such modifications to be major, or if requested by the developer or Borough Engineer, take formal action to approve or disapprove such recommendations, provided, however, that it must first afford the developer an opportunity to be heard. If the Board takes no formal action within thirty (30) days of such recommendations, or where the developer has not requested formal Planning Board action, its approval will be assumed. Similarly, the Planning Board may grant or deny the developer permission to effect such modification upon his application and the Borough Engineer's approval. In either event, where such modification is to be effected, the appropriate plat must be revised by the developer or his engineer to reflect such modification and sufficient copies thereof submitted to the Administrative Officer for distribution.

D. General Inspection Requirements. All improvements, except as otherwise provided, shall be subject to inspection and approval by the Borough Engineer. No underground installation shall be covered until inspected and approved by the Borough Engineer or those agencies having jurisdiction over the particular installation. If such installation is covered prior to inspection, it shall be uncovered or other inspection means used, such as a television or other pipeline camera as may be deemed necessary by the Borough Engineer, and charges for such work will be paid for by the developer.

E. Inspection not Acceptance. Inspection of any work by the Borough Engineer, or his authorized representative, shall not be considered to be final approval or rejection of the work, but shall only be considered to be a determination of whether or not the specific work involved was being done to Borough specifications or other required standards at the time of inspection. Any damage to such work or other unforeseen circumstances such as the effect of the weather, other construction, changing conditions, settlement, etc., between the time of installation and the time that the developer wishes to be released from his performance guaranty, shall be the full responsibility of the developer, and no work shall be considered accepted until release of the performance guaranty.

F. Payment to Contractors. No developer shall enter into any contract requiring the Borough Council, the Borough Engineer, or any of their agents, employees or other representatives to make any declarations, written or otherwise, as a condition of payment of said developer to a contractor as to the acceptance or rejection of the work. Neither the Borough Council, the Borough Engineer nor any of their agents, w employees or representatives shall make any such declaration.

G. Procedure on Acceptance of Public Improvements. When the developer has constructed and installed the streets, drainage facilities, curbs, sidewalks, street signs, monuments and other improvements in accordance with Borough regulations, standards and specifications, and desires the Borough to accept the said improvements, he shall, in writing, addressed to and in a form approved by the Borough Council, with copies thereof to the Borough Engineer, request the Borough Engineer to make a semi-final inspection of the said improvements. If the improvements have been constructed under a performance guaranty after approval, of a final plat, the developer shall submit an as-built plan showing as-built grades, profiles and sections and locations of all subsurface utilities such as french drains, combination drains, sanitary sewage disposal systems, both public and individual water lines and control valves, gas lines, telephone conduits, monuments, iron property markers, and any other utilities or improvements installed other than as shown on the approved final plat. Said as-built plan shall be certified to by a licensed New Jersey professional engineer. If any improvements are constructed prior to

final plat approval, the final plat shall reflect all changes and as-built conditions and be so certified. Said as-built plan(s) shall be submitted on reproducible media.

SECTION-7.7 SITE MAINTENANCE DURING CONSTRUCTION

A. It shall be the responsibility of the developer to maintain the entire site or subdivision in a safe and orderly condition during construction. Necessary steps shall be taken by the developer to protect occupants of the site or subdivision and the general public from hazardous and unsightly conditions during the entire construction period. These steps shall include but are not limited to the following:

1. Open excavations shall be enclosed by fencing or barricades during non-construction hours. Moveable barricades shall be equipped with yellow flashing hazard markers or other lighting during the hours of darkness.

2. The excavation of previously installed sidewalk and pavement areas which provide access to occupied buildings in the site or subdivision shall be clearly marked with signs and barricades. Alternate safe access shall be provided for pedestrians and vehicles to the occupied buildings.

3. Materials stored on the site shall be screened from the view of occupants of the subdivision or site and adjoining streets and properties.

4. Construction equipment, materials and trucks, shall not be stored within one hundred fifty (150) feet of occupied buildings in the site or subdivision and adjoining streets and properties during non-construction hours.

5. Safe vehicular and pedestrian access to occupied buildings in the site or subdivision shall be provided at all times.

6. Construction activities which create obnoxious and unnecessary dust, fumes, odors, smoke, vibrations or glare noticeable in occupied buildings in the subdivision or site and adjoining properties and streets shall not be permitted.

7. Construction activities which will result in damage to trees and landscaping in occupied buildings in the site or subdivision or adjoining properties shall not be permitted.

8. All locations and activities in the site or subdivision which present potential hazards shall be marked with signs indicating the potential hazard.

9. Unsightly construction debris, including scrap materials, cartons, boxes and wrappings must be removed daily at the end of each working day.

10. Whenever construction activities take place within or adjacent to any traveled way, or, interfere with existing traffic patterns in any manner, suitable warning signs, conforming to the requirements of the Uniform Manual on Traffic Control Devices, will be erected and maintained by the developer.

B. Should the developer fail in his obligation to maintain the site or subdivision in a safe and orderly condition, the Borough may, on five (5) days written notice or immediately in the case of hazard to life, health or property, undertake whatever work may be necessary to return the site or subdivision to a safe and orderly condition and deduct the cost thereof from the ten percent (10%) cash or certified check portion of the performance guaranty. Upon notice of such deduction, the developer shall, within ten (10) days, restore the full ten percent (10%) cash balance or his performance guaranty will be held to be void and the Borough may take action as if final plat approval had not been obtained.

C. The Construction Official shall, upon receiving notice from the Borough Engineer that a developer is in violation of this section, suspend further issuance of Certificates of Occupancy and building permits and may order cessation of work on any outstanding permits.

SECTION -7.8 <u>IMPROVEMENTS REQUIRED PRIOR TO ISSUANCE OF CERTIFICATE OF OCCUPANCY</u>

A. No permanent Certificate of Occupancy shall be issued for any use or building until all required improvements are installed and approved by the Borough Engineer or other appropriate authority.

B. No temporary Certificate of Occupancy shall be issued for any use or building involving the installation of utilities or street improvements, parking areas, buffer areas, storm drainage facilities, other site improvements, the alteration of the existing grade on a lot or the utilization of a new on-site well or sanitary disposal system unless the Borough Engineer or other appropriate authority shall have, where applicable, certified to the following:

1. Utilities and Drainage: All utilities, including, but not limited to, water, gas, storm drains, sanitary sewers, electric lines and telephone lines shall have been properly installed and service to the lot, building or use from such utilities shall be available.

2. Street Rights-of-way: All street rights-of-way necessary to provide access to the lot, building or use in question shall have been completely graded and all slopes retaining devices or slope planting shall have been installed.

3. Sidewalks: All sidewalks necessary to provide access to the lot, building or use in question shall have been properly installed.

4. Street: Curbing and the bituminous base course of bituminous concrete streets or the curbing and pavement course for portland cement concrete street necessary to provide access to the proposed lot, building or use shall have been properly installed.

5. Curbing and Parking Areas: Curbing and the bituminous base course of parking areas necessary to provide access to the required number of parking spaces for the building or use in question shall have been properly installed.

6. Obstructions: All exposed obstructions in parking areas, access drives or streets such as manhole frames, water boxes, gas boxes and the like shall be protected by building to the top of such exposures with bituminous concrete as directed by the Borough Engineer.

7. Screening, Fences and Landscaping: All required screening, fencing and/or landscaping related to the lot, building or use in question shall have been properly installed unless the Borough Engineer, upon the advice of the Environmental Commission, shall direct the developer to delay the planting of screening and landscaping until the next planting season in order to improve the chances of survival of such plantings.

8. Site Grading: All site grading necessary to permit proper surface drainage and prevent erosion of soils shall have been completed in accordance with the approved soil disturbance plans.

9. On-site Wells: All on-site wells have been installed, tested and approved by the Board of Health.

10. On-site Sanitary Disposal Systems: All on-site sanitary disposal systems shall have been installed and approved by the Board of Health.

11. Public Water Supply: Where the proposed lot, building or use is served by a public water supply, said supply shall have been installed and tested and all required fire hydrants or fire connections shall have been installed and tested and approved.

12. Lighting: All outdoor lighting shall have been installed and shall be operational.

13. Street Signs and Traffic Control Devices: All street signs, paint lining and/or traffic control device affecting the proposed lot, building or use, and required under the terms of approval of a subdivision or site plan or by Federal, State, County or municipal rules, regulations or Laws, shall have been installed.

14. Other: Any other conditions established for issuance of a Certificate of Occupancy by the Planning Board as a condition of final site plan approval shall be complied with.

C. Temporary Certificates of Occupancy shall be issued for a specified period of time, not to exceed one (1) year, and the applicant shall post a cash guarantee with the Borough in an amount equal to the cost, to the Borough, of constructing all uncompleted improvements, prior to the issuance of any such temporary Certificate of Occupancy.

SECTION-7.9 MAINTENANCE GUARANTEE

A maintenance guarantee shall be furnished by the developer upon release of the performance guarantee, acceptance of public improvements by the Borough Council and/or approval of site improvements by the Borough Engineer. The developer may elect to furnish such maintenance guarantee either by (1) maintaining on deposit with the Borough the ten percent (10%) cash or certified check portion of the performance guarantee provided in accordance with Section 7.1 of this Article or (2) by a bond issued by a bonding company or surety company, or other type of surety acceptable to and approved by the Borough Attorney and Borough Council in an amount equal to fifteen percent (15%) of the total cost of improvements in accordance with Section 7.1 of this Article. The maintenance guarantee shall begin with the release of the performance guarantee and shall run for a period of two (2) years.

The maintenance guarantee shall be to the effect that the applicant, developer, owner or user guarantees the complete maintenance of all improvements for a. period of two (2) years from the release of his performance guarantee. Should he fail in his obligation to properly maintain all improvements, the Borough may, on ten (10) days written notice or immediately, in the case of hazard to life, health or property, proceed with necessary repair or replacement of any unacceptable improvements and charge the cost thereof against the guarantee. At the end of the maintenance guarantee, the cash or certified check on deposit will be returned to the subdivider less any sums, properly documented by the Borough, which have been expended to repair or replace any unsatisfactory improvements.