



Article Seven IMPROVEMENT PROCEDURES

Section 7.01 Improvement Completion and Improvement Agreement

- A. Completion of Improvements. Before the final subdivision plat is signed by the City, all applicants shall be required to complete, in accordance with the approved construction drawings and to the satisfaction of the City Engineer, all the street, sanitary and other public improvements, including lot improvements on the individual lots of the subdivision, as required in these regulations, specified in the Final Plat and as approved by the Planning Commission, and to dedicate those public improvements to the City of De Soto, free and clear of all liens and encumbrances on the dedicated property and public improvements.
- B. Subdivision Improvement Agreement and Guarantee.
1. Agreement. The Governing Body in its sole discretion may waive the requirement that the applicant complete and dedicate all public improvements prior to the signing of the Final Plat and, as an alternative, permit the applicant to enter into a subdivision improvement agreement by which the subdivider covenants to complete all required public improvements no later than two (2) years following the date of the approval of the improvement agreement. The applicant shall covenant to maintain each required public improvement for a period of one (1) year following the acceptance by the Governing Body of the dedication of that completed public improvement. In addition, the covenant shall warrant that all required public improvements will be free from defect for a period of two (2) years following the acceptance by the Governing Body of the last completed public improvement. The subdivision improvement agreement shall contain such other terms and conditions agreed to by the applicant and the Governing Body.
 2. Covenants to Run. The subdivision improvement agreement shall provide that the covenants contained in the agreement shall run with the land and bind all successors, heirs, and assignees of the subdivider. The subdivision improvement agreement will be adopted by the Governing Body and shall be recorded in the Office of the Johnson County Register of Deeds.
 3. Security. Whenever the Governing Body permits an applicant to enter into a subdivision improvement agreement, it shall require the applicant to provide a cash escrow as security for the promises contained in the subdivision improvement agreement. The security shall be in an amount equal to one hundred fifty percent (150%) of the estimated cost of completion of the required public improvements, including lot improvements. The escrow agent shall be acceptable to the Governing Body.
 - a. Cash Escrow. The escrow instructions shall provide: (1) that the subdivider will have no right to a return of any of the funds except as provided in Section 6.03.E.2; and (2) that the escrow agent shall have a



legal duty to deliver the funds to the city whenever the City Attorney presents an affidavit to the agent attesting to the city's right to receive funds whether or not the subdivider protests that right.

If and when the Governing Body accepts the offer of dedication for the last completed required public improvement, the Governing Body shall execute a waiver of its right to receive all but twenty-five percent (25%) of the funds represented by the cash escrow if the subdivider is not in breach of the subdivision improvement agreement. The residual funds shall be security for the subdivider's covenant to maintain the required public improvements and its warranty that the improvements are free from defect.

- C. **Temporary Improvement.** The applicant shall build and pay for all costs of temporary improvements required by the Planning Commission and shall maintain those temporary improvements for the period specified by these regulations. Prior to construction of any temporary facility or improvement, the developer shall file with the Governing Body a separate subdivision improvement agreement and cash escrow in an appropriate amount for temporary facilities, which agreement and escrow shall ensure that the temporary facilities will be properly constructed, maintained, and removed.
- D. **Costs of Improvements.** All required improvements shall be made by the developer, at its expense, without reimbursement by the local government or any improvement district except that, as is allowed under state law, the developer may form or cause to be formed a benefit district or districts to construct and finance the construction of required public improvements excluding lot improvements on individual lots. If the subdivider does form or cause to be formed a benefit district for the purposes identified in this section, the Governing Body shall not release the subdivider from its obligations under any improvement agreement nor shall the Governing Body release any security, in whole or in part, until the benefit district has sold bonds or otherwise certifies to the Governing Body that it has an absolute right to raise revenues sufficient to construct, maintain, and warrant the quality of the required public improvements.
- E. **Governmental Agencies.** Governmental agencies to which these contract and security provisions apply may file, in lieu of the contract and security, a certified resolution or ordinance from officers or agencies authorized to act in their behalf, agreeing to comply with the provisions of this Article.
- F. **Failure to Complete Improvement.** For subdivisions for which no subdivision improvement agreement has been executed and no security has been posted, if the improvements are not completed within one year of the date of approval of the Final Plat, the Final Plat approval shall be deemed to have expired. In those cases where a improvement agreement has been executed and security has been posted and required public improvements have not been installed within the terms of the agreement, the Governing Body may then: (1) declare the agreement to be in default and require that all the improvements be installed regardless of the extent of the building development at the time the agreement is declared to be in default; (2) suspend Final Plat approval until the



improvements are completed and record a document to that effect for the purpose of public notice; (3) obtain funds under the security and complete improvements itself or through a third party; (4) assign its right to receive funds under the security to any third party, including a subsequent owner of the subdivision for which improvements were not constructed, in whole or in part, in exchange for that subsequent owner's promise to complete improvements in the subdivision; (5) exercise any other rights available under the law.

- G. Acceptance of Dedication Offers. Acceptance of formal offers of dedication of streets, public areas, easements, and parks shall be by ordinance of the Governing Body. The approval of a subdivision plat by the Planning Commission, whether Preliminary or Final, shall not be deemed to constitute or imply the acceptance by the municipality of any street, easement, or park shown on plat.

Section 7.02 Deferral of Required Improvements.

- A. The Governing Body may defer public improvements, subject to appropriate conditions, when in its judgment, such improvements are not requisite in the interests of the public health, safety, and general welfare, or that are inappropriate because of the inadequacy or in existence of connecting facilities. Any determination to defer the provision of any public improvement must be made on the record and the reasons for the deferral or waiver also shall be expressly made on the record.
- B. Whenever it is deemed necessary by the Governing Body to defer the construction of any improvement required under these regulations because of incompatible grades, future planning, inadequate or nonexistent connecting facilities, or for other reasons, the subdivider shall pay his share of the costs of the future improvements to the City prior to signing of the final subdivision plat by the Mayor. As an alternative the Governing Body may accept a separate improvement agreement secured by a letter of credit guaranteeing completion of the deferred improvements as specified by the Governing Body.
- C. In addition to the providing financial assurance for the future completion of deferred improvements, the subdivider shall submit a covenant of non-opposition to the future construction of the deferred improvements. Such covenant shall run with the land and bind all successors, heirs, and assignees of the subdivider.

Section 7.03 Inspection and Acceptance of Improvements.

- A. General Procedure and Fees. All improvements constructed or erected shall be subject to inspection by the City Engineer or the Office of the Building Inspector. The cost attributable to all inspections shall be charged to and paid by the subdivider. Fees shall be due and payable upon demand of the City and no building permits or certificates of occupancy shall be issued until all fees are paid. The subdivider shall give at least forty-eight (48) hours written notification to the inspector prior to the performance of any work.



- B. **Inspection Procedure.** After proper notice is received, the City Inspector shall conduct an on-site inspection to determine that the work compiles with the approved construction drawings and specifications. If the said inspector determines that such work does not comply with the approved construction drawings and specifications, said inspector shall so notify the subdivider, and may require the subdivider to terminate all further work until necessary steps are taken to correct any defect, deficiency, or deviation to the satisfaction of said inspector. Upon the correction of such defect, deficiency, or deviation, the subdivider shall notify the inspector for a re-inspection.

- C. **Final Inspection.** Upon completion of all improvements within the area covered by the Final Plat, the subdivider shall notify the City Inspector who shall thereupon conduct a final inspection of all improvements installed.

- D. **As-Built Drawings.** Before acceptance of any public improvement project, the applicant shall provide the City Inspector with one original set on mylar, one copy of the original set, and an electronic copy of the as-built drawings. Electronic copies shall be in a format compatible with the City's designated software.

The drawings must include results of a post-construction survey. The post-construction survey shall include, but shall not be limited to, the following:

- 1. Elevation of all structures, including sanitary sewer manholes, storm sewer inlets, pipe inverts, and structure top elevations;
- 2. Final adjusted stationing of all structures, including but not limited to valves, hydrants, and blow-off assemblies; and
- 3. Final adjusted contours as featured in the grading and drainage plans.

The as-built drawings must include a signed Engineer's Certification stating that the drawings are as-built and conform to construction records and post-construction survey information.

- E. **Formal Acceptance and Release or Reduction of Security.**
 - 1. **Certificate of Satisfactory Completion.** The Governing Body will not accept dedication of required improvements, nor release nor reduce the amount of any security posted by the subdivider until the City Engineer has submitted a certificate stating that all required improvements have been satisfactorily completed and until (1) the applicant's engineer or surveyor has certified to the City Engineer, through submission of a detailed "as-built" drawing as required by Section 6.03.D, that the layout of the line and grade of all public improvements is in accordance with construction drawings for the subdivision, and (2) a title insurance policy has been furnished to and approved by City Attorney indicating that the improvements have been completed, are ready for dedication to the local government, and are free and clear of any and all liens and encumbrances.



Upon such approval and recommendation by the City Engineer and City Attorney, the Governing Body shall thereafter accept the improvements for dedication. The Governing Body shall so notify the subdivider in writing, the Final Plat shall be signed by the Mayor, and after payment of all fees required, the subdivider may file the subdivision with the Johnson County Register of Deeds.

2. Reduction of Escrowed Funds and Security. The amount of the escrow shall be reduced upon actual acceptance of the dedication of public improvements and then only to the ratio that the cost of the public improvement for which dedication was accepted bears to the total cost of public improvements for the subdivision. In no event shall a cash escrow be reduced below twenty-five per cent (25%) of the principal amount. Funds held in the escrow account shall not be released to the subdivider, in whole or in part, except upon express written instructions of the Governing Body. At the end of the maintenance and warranty periods, all escrowed funds, if any, shall be released to the subdivider.

Section 7.04 Maintenance of Improvements.

The developer shall be required to maintain all required public improvements on the individual subdivided lots and provide for snow removal on streets and sidewalks until acceptance of the improvements by the Governing Body. If there are any certificates of occupancy on a street not dedicated to the City, the City may on twelve (12) hours notice plow the street or effect emergency repairs and charge those costs to the developer. Following the acceptance of the dedication of any public improvement, the Governing Body may, in its sole discretion require the subdivider to maintain the improvement for a period of one (1) year from the date of acceptance.

Section 7.05 Issuance of Building Permits and Certificates of Occupancy.

- A. Building Permits. Unless the required improvements have been installed and accepted by the Governing Body or guaranteed according to Section 6.01 for a lot or tract, no building permits shall be issued for that lot or tract.
- B. Occupancy Permits. No occupancy permit shall be issued until all improvements have been installed and accepted by the Governing Body.

Section 7.06 Temporary Occupancy / Escrow Deposits for Improvements.

- A. Acceptance of Escrow Funds. Whenever, by reason of a period of inclement weather or the season of the year, any improvements required by the subdivision regulations cannot be performed, the Building Inspector may issue a certificate of occupancy, provided there is no danger to health, safety, or general welfare upon accepting a cash escrow deposit in an amount equal to one hundred fifty percent (150%) of the estimated cost of completion of the lot improvements. The subdivision improvement agreement and security covering the lot improvements shall remain in full force and effect.
- B. Procedures on Escrow Fund. All required improvements for which escrow monies have been accepted by the Building Inspector at the time of issuance of a certificate of



occupancy shall be installed by the subdivider as soon as weather permits and in no case more than a period of nine (9) months from the date of deposit and issuance of the certificate of occupancy. If the improvements have not been properly installed at the end of the time period, the Building Inspector shall give two (2) weeks written notice to the developer requiring it to install the improvements, and if they are not then installed properly, the Building Inspector may request the Governing Body to proceed to contract out the work for the installation of the necessary improvements in a sum not to exceed the amount of the escrow deposit. At the time of the issuance of the certificate of occupancy for which escrow monies are being deposited with the Building Inspector, the developer shall obtain and file with the Building Inspector prior to obtaining the certificate of occupancy a notarized statement from the purchaser or purchasers of the premises authorizing the Building Inspector to install the improvements at the end of the nine (9) month period if the improvements have not been duly installed by the subdivider.