

ORDINANCE No. 2014-17 _____

**AN ORDINANCE AMENDING IMPROVEMENTS SECURITY
PROVISIONS OF THE VILLAGE OF BRISTOL LAND DIVISION CODE**

The Village Board of the Village of Bristol, Kenosha County, Wisconsin, do ordain as follows:

SECTION 1. REPEAL AND ADOPTION OF PROVISIONS.

Section 14-1-51 of the Village of Bristol Code of Ordinances pertaining to security requirements with land divisions is repealed and recreated to read as follows:

**Sec. 14-1-51 Developer's Required Agreement Providing for
Proper Installation of Improvements;
Survey Monumentation.**

(a) Developer's Agreement Required; Financial Security for Improvements.

- (1) **Condition of Approval.** Prior to the final approval and recording of any Certified Survey Map, Subdivision Final Plat, or Condominium requiring improvements located within the jurisdictional limits of this Chapter, and prior to the installation of any required improvements, and as a condition of said approval, the Subdivision, Condominium or Certified Survey Map Developer (as applicable), shall enter into a contract ("Developer's Agreement" or "Subdivider's Agreement") with the Village of Bristol agreeing to furnish, construct, and install the required improvements at the sole cost of the Subdivision, Condominium or Certified Survey Map Developer (as applicable) and shall file with said contract a performance bond, irrevocable letter of credit, or certified check in the amount equal to, or not exceeding, one hundred twenty percent (120%) of the Village Engineer's estimate. Such security amount determination shall be made by the Village Board after review and recommendation of the Village Engineer's estimated total cost to complete the required public improvements. It shall be the Developer's option whether to execute a performance bond or whether to provide a letter of credit or certified check to satisfy the Village's requirement that the Developer provide security to ensure that the required public improvements are made within a reasonable time per the Subdivider's Agreement. Security phasing, pursuant to Subsection (b) below, shall be utilized if the project is to be completed pursuant to an approved phasing plan.
- (2) **Purpose of Guarantee.** The purpose of the guarantee and surety is to ensure that such required improvements will be completed by the Subdivision, Certified Survey Map or Condominium Developer (as applicable), or the Developer's subcontractor or agent, and serves as a further guarantee that all obligations to subcontractors for work

on the development are satisfied. Such improvements shall be completed by the Developer of the Subdivision, Certified Survey Map or Condominium project, or by his/her subcontractor, as set forth in the Subdivider's Agreement.

- (3) **Form of Agreement.** The contract form shall be approved by the Village Attorney and provided by the Village and may provide for a phasing of public improvements construction, providing such phasing is approved by the Village Board. The Village reserves the right to control the phasing through limits and sequence so as to provide for continuity of streets, sewers, water mains, and other necessary public improvements within and between the phases. The amount of security that can be required by the Village is limited to the phase of the project that is currently being constructed.
- (4) **Authorized Reductions of Security Amounts.** The Village may allow for the reduction of the performance bond, irrevocable letter of credit, or certified check as work is completed on the project or phases of the project.
- (5) **Disputes Over the Amount of Financial Sureties.** In a dispute over the amount of a surety, the estimate prepared by the Village Engineer shall be given the greater weight.
- (6) **Partial Completion of Improvements; Escrow Account/Security Reductions.** On request of the Subdivision, Certified Survey Map or Condominium Developer (as applicable), the contract may provide for completion of part or all of the improvements covered thereby prior to acceptance of the plat, and in such event the amount of the escrow deposit and/or required security may be reduced in a sum equal to the estimated cost of the improvements so completed prior to acceptance of the plat only. The amount of any reduction in an escrow account (see Section 14-1-100 regarding escrow account) or required security shall be at the sole discretion of the Village Board, upon the recommendation from the Village Engineer and Village Attorney. Any balance remaining after such improvements have been made shall be returned to the Subdivision, Certified Survey Map or Condominium Developer (as applicable). The Village Board, at its option, may extend the escrow deposit period for an additional period not to exceed two (2) years for non-secured warranty purposes.
- (7) **Village Authority to Draw on Escrow Accounts.** The Village Board shall have the authority to draw upon the required security or escrow account if at any time:
 - a. The developer is in default under this Chapter in any aspect of the Developer's Agreement with the Village of Bristol; or
 - b. The developer does not complete the installation of improvements within the time established in the Developer's Agreement, unless otherwise extended by agreement or action of the Village Board; or
 - c. The security on file with the Village is dated to expire in the next sixty (60) days and has not been extended, renewed or replaced, or the escrow deposit is seventy-five (75%) exhausted; or
 - d. The Subdivision, Certified Survey Map or Condominium Developer (as applicable) otherwise fails to maintain the required security in the amount approved by the Village Engineer and agreed to in the Developer's Agreement.
- (8) **Improvements Completion Schedule.** The time for completion of the infrastructure work and the several parts thereof required by this Chapter shall be determined by the Village Board, upon recommendation of the Village Engineer, after consultation with

the Subdivision, Certified Survey Map or Condominium Developer (as applicable). The completion date shall be a component of the contract.

- (9) **Review and Inspection Costs.** The Subdivision, Certified Survey Map or Condominium Developer (as applicable) shall pay the Village for all costs incurred by the Village for review and inspection of the development. [See Section 14-1-100]. This would include review, and preparation at the Village Board's discretion, of plans and specifications by the Village Engineer, Planner, and Attorney, as well as other costs of a similar nature. The Village may draw on the escrow account for this purpose.

- (10) **Legal Signatories to Contract.** If the Subdivision, Certified Survey Map or Condominium Developer (as applicable) and the individual or entity holding title to the property on which the development is to occur are different entities or individuals, then both shall sign the Developer's Agreement. If either or both the Subdivision, Certified Survey Map or Condominium Developer (as applicable) or titleholder to the development property are a corporate or legal entity, then all of the owners of that entity (or entities if both the subdivider and the title holder are legal entities) shall sign the Developer's Agreement on behalf of the corporate or legal entity and in their individual capacities. Developer's Agreements shall also be acknowledged and executed by all project mortgagees.

- (11) **Miscellaneous Provisions.** In addition, the following requirements shall apply:

- a. Contracts and contract specifications for the construction of street and utility improvements on dedicated street rights-of-way, as well as the contractors and subcontractors providing such work, shall be subject to the inspection of construction by the Village or its agent, and approval of the Village. Unless otherwise authorized by the Village Engineer, said specifications shall follow those specified in this Chapter or as directed by the Village Engineer.
- b. The amount of the required security or certified check shall be determined by the Village Board following the Village Engineer's estimate.
- c. Governmental units to which these security and contract provisions apply may file, in lieu of said contract and bond/security, a letter from officers authorized to act on their behalf agreeing to comply with the provisions of this Section, subject to the approval of the Village Attorney.

(b) **Phasing.**

- (1) **Infrastructure Phasing Option.** Pursuant to Sec. 236.13(2)(a), Wis. Stats., if the project is approved to be constructed in phases, which approval shall not be unreasonably withheld, the security required to be deposited shall be limited to the phase of the project currently being constructed. The agreement shall provide a reasonable time not exceeding fourteen (14) months by which such security shall be provided, which shall be no sooner than is reasonably necessary before the commencement of the installation of the improvements. In addition, the Village may require by agreement that the Developer provide non-secured improvements warranties. The Subdivision, Condominium or Certified Survey Map Developer (as applicable) may elect, with the approval of the Village, to install the improvements in construction phases provided that:

- a. The phases are specified in the contract for land division improvements;

- b. The Subdivision, Condominium or Certified Survey Map Developer (as applicable) submits security in an amount equal to one hundred twenty percent (120%) of the estimated costs of improvements required for the installation and construction schedules for that phase. Improvements constructed during that phase shall not be accepted nor shall any building permit be issued for construction within the completed area of that phase of the land division unless required infrastructure for that phase has been properly installed pursuant to this Chapter;
 - c. The Subdivision, Condominium or Certified Survey Map Developer (as applicable) is responsible for recording deed restrictions, approved by the Village Attorney, which specify that the lots which are included in future construction phases of the land division will not be transferred or sold unless the Village's approval is obtained;
 - d. The Subdivision, Condominium or Certified Survey Map Developer (as applicable) minimizes grading and other disturbances to lands included in future construction phases in order to prevent erosion; and
 - e. Erosion control plans and measures submitted and approved herein shall address the individual phases of construction.
- (2) **Phasing Timeline Considerations.** The time period for completion of a phased improvement program shall take into account the needs of the Village and adjacent property owners for street and other improvements to serve lands adjacent to and/or within the land division.
- (3) **Reduction of Security Upon Phase Completion.** As work progresses on installation of improvements constructed as part of the contract, the Village Engineer, upon written request from the Subdivision, Condominium or Certified Survey Map Developer (as applicable) from time to time, is authorized to recommend a reduction in the amount of surety as hereinafter provided. When portions of construction (any required utilities infrastructure, street, sidewalk, greenway, stormwater management or other improvements) are completed by the Subdivision, Condominium or Certified Survey Map Developer (as applicable) and determined acceptable by the Village Engineer, the Village Administrator is authorized, upon submission of lien waivers by the Subdivision, Condominium or Certified Survey Map Developer's (as applicable) contractors, to reduce the amount of surety. The amount of surety may be reduced at the time any required underground utilities are installed and tested. The amount of surety remaining shall be equal to one hundred twenty percent (120%) of the estimate of the Village Engineer of costs of work remaining to be completed and accepted and to ensure performance of the fourteen (14) month guarantee as specified in Subsection (d) below against defects in workmanship and materials on work accepted.
- (4) **Village Acceptance of Surety Reduction.** When the work on the major components of construction has been substantially completed, except for work which cannot be completed because of weather conditions or other reasons which, in the judgment of the Village Engineer are valid for noncompletion, the Village Board is authorized to accept a reduction in the amount of surety to an amount in the estimate of the Village Engineer, sufficient to cover the work remaining to be completed, including performance of the fourteen (14) month guarantee period against defects in workmanship

and materials. As a further guarantee that all obligations under contract for work on the development are satisfied, the contractor and subcontractors who are to be engaged in the construction of utilities or street improvements on the street right-of-way to be dedicated shall be approved for such work by the Village Engineer prior to commencing construction.

(c) **Issues To Be Addressed by Developer's Agreement.** The Developer's Agreement should, but is not limited to, address the following development issues:

- (1) The Developer's Agreement shall identify all individuals or business entities holding an ownership interest in the subject property or holding an interest under an executed purchase agreement at the time the Developer's Agreement is executed. The Developer's Agreement shall also be executed and acknowledged by current and known future mortgagees and shall be binding on the successors and assigns of the named developers, owners and mortgagees.
- (2) The Developer's Agreement shall contain a full and accurate description of the area being subdivided.
- (3) The Developer's Agreement shall address all exceptions to design standards being sought or being granted by the Village and affecting the area being subdivided.
- (4) The Developer's Agreement shall require that acceptable security be posted with and in favor of the Village if all public improvements called for under this Chapter for the Subdivision, Certified Survey Map, or Condominium development are not fully installed and accepted by the Village by the time a plat receives Preliminary Plat approval or when a Certified Survey Map is finally approved. The Developer's Agreement shall address whether and when said security can be released and shall further require the developer to take all steps necessary to maintain the required security in the Village's possession and not to allow it to expire.
- (5) The Developer's Agreement shall disclose and confirm relevant details regarding the developer's insurance, warranties, continuing maintenance requirements and responsibilities, and other contracts and agreements affecting the subject property.
- (6) Where any platted area in a Subdivision or Certified Survey Map will serve as open or buffer space and be jointly maintained and controlled by the owners of the platted lots or where erosion control or stormwater management devices will be installed in the area being subdivided that will require ongoing maintenance, the Developer's Agreement shall require that a homeowners' association be created with membership on an equal basis of all platted lots not commonly owned and on an equal basis, that association bylaws be developed and that a restrictive covenant or other perpetual, binding legal device be employed that will create, administer and enforce the collective responsibilities of the individual members of said homeowners' association concerning commonly held areas and/or erosion control or stormwater management devices.
- (7) A Developer's Agreement shall contain measures to protect the investments and expectations of existing and future lot owners against unilateral changes in the organizational or governing documents of a homeowners' association by a developer so long as the subject area is under the developer's control by requiring advance Village approval of material changes to the homeowners' association bylaws or restrictive covenants from the time the Developer's Agreement is executed until a majority of the lots are conveyed to individual homeowners.

- (8) The Developer's Agreement shall contain the developer's representation concerning intended subdivision design standards and home price ranges and its agreement to maintain such standards through build out of the Subdivision, Certified Survey Map or Condominium development (as applicable).
- (9) The Developer's Agreement shall address the timing of joint driveway paving, shall require shared maintenance agreements concerning shared driveways and shall address the control and removal of debris and rubbish during initial construction on lots being created.
- (10) The Developer's Agreement shall refer to or include as exhibits the following information:
 - a. Preliminary Plat (or Certified Survey Map);
 - b. Final Plat, to be added once approved and recorded;
 - c. Road design and construction plans;
 - d. Stormwater calculations and plans;
 - e. Village permits for any incoming transfer of development rights that will operate to create greater dwelling unit densities in the development than would be allowed under this Chapter without a transfer of development rights; and
 - f. Other project-related information as required by the Village of Bristol.
- (11) The Developer's Agreement shall require the developer to pay all of the Village's professional fees and expenses related to the Developer's Agreement.
- (12) The Developer's Agreement may also address areas not included in this Chapter or otherwise expressly required by law but that are nonetheless mutually agreeable to the developer and the Village and which promote the public health, safety and welfare of the residents and taxpayers of the Village of Bristol.
- (d) **Approval of Subdivider's Agreement.** The Subdivider's Agreement shall be drafted or approved as to form and content by the Village Attorney, and shall be approved by the Village Board prior to the final approval of the Certified Survey Map, Subdivision Final Plat, or Condominium Plat.
- (e) **Improvement Guarantee.**
 - (1) **Types of Required Security.** The Subdivision, Condominium or Certified Survey Map Developer (as applicable) shall include in said contract an instrument of public improvement guarantee by irrevocable letter of credit, certified check, or performance bond whereby a bonding company [with assets exceeding Ten Million Dollars (\$10,000,000.00) and authorized to do business in the State of Wisconsin] guarantees maintenance, repair, replacement by the Subdivision, Condominium or Certified Survey Map Developer (as applicable) of said required public improvements which deteriorate or fail to meet performance or operating standards during the bond/security term, or any penalties which may be incurred as a result thereof, equal to one hundred twenty percent (120%) of the Village Engineer's estimate of the cost of the public improvements. Pursuant to Sec. 236.13(2)(a)1, Wis. Stats., it is the Developer's choice as to whether to provide as required security a performance bond, irrevocable letter of credit, or a certified check. When a certified check is posted as security, the instrument shall be negotiable by the Village. When a letter of credit is posted as security, the Village shall be the beneficiary.
 - (2) **Village Authority to Correct Deficient Improvements.** If within fourteen (14) months after the date the public improvements for which the security is provided are

substantially completed are found by the Village to be deficient or substandard, the Subdivision, Condominium or Certified Survey Map Developer (as applicable) shall remove it and replace it with nondefective work in accordance with written instructions given by the Village Engineer. If the Subdivision, Condominium or Certified Survey Map Developer (as applicable) does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, the Village may cause the removal and replacement of said defective work and charge all direct, indirect and consequential costs of such removal and replacement to the performance bond or improvement guarantee instrument.

- (3) **Warranty Period.** The agreement may require a non-secured warranty period longer than the fourteen (14) month secured guarantee period.
 - (4) **Definition of Substantially Completed.** For purposes of this Section pursuant to Section 236.13(2)(a)2, Wis. Stats., public improvements reasonably necessary for a project or phase of a project are considered to be "substantially completed" at the time the binder course is installed on streets or roads to be dedicated or, if the required public improvements do not include a street or road to be dedicated, at the time that ninety percent (90%) of the public improvements by cost are completed. The Village Board may allow for the reduction of the security as work is completed.
- (f) **Survey Monuments.**
- (1) **Monument Installation.** Before final approval of any plat within the corporate limits of the Village, the Subdivider or Condominium Developer (as applicable) shall cause survey monuments to be installed as required by and placed in accordance with the requirements of Section 236.15, Wis. Stats., and as may be required by the Village Engineer.
 - (2) **Waiver.** The Village Engineer may waive the placing of monuments, as provided in Section 236.15(1)(6), Wis. Stats., for a reasonable time, not to exceed one (1) year, on condition that the Subdivider or Condominium Developer (as applicable) provide a letter of credit, certified check, or performance bond to ensure the placing of such monuments within the time required by Wisconsin Statute under and in compliance with the provisions of Subsection (a) above. Additional time may be granted by the Village Engineer upon show of cause.
 - (3) **Preservation of Established Monuments.** Building permits shall not be issued until all survey monumentation for the block(s) of lots in which the lot(s) for which building permits are being applied for within the phase of the land division under development has been installed. When the land division includes an established one-half (1/2), one quarter (1/4), one quarter-one quarter (1/4-1/4), or other such section monument, the established monument shall be preserved and/or fully restored by the Subdivision, Condominium or Certified Survey Map Developer (as applicable).

SECTION 2. SEVERABILITY.

If any provision of this Ordinance is invalid or unconstitutional or if the application of this Ordinance to any person or circumstance is invalid or unconstitutional, such invalidity or

unconstitutionality shall not affect the other provisions or applications of this Ordinance which can be given effect without the invalid or unconstitutional provisions or applications.

SECTION 3. EFFECTIVE DATE.

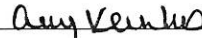
This Ordinance shall take effect upon passage and publication as provided by law.

ADOPTED this 14th day of July, 2014.

VILLAGE OF BRISTOL, WISCONSIN



Village President



Village Clerk-Treasurer

INTRODUCED: 7/14/14

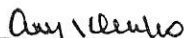
PASSED: 7/14/14

PUBLISHED/POSTED: 8/4/14

State of Wisconsin:
County of Kenosha:

I hereby certify that the foregoing ordinance is a true, correct, and complete copy of an ordinance duly and regularly adopted by the Village Board of the Village of Bristol on the 14th day of July, 2014, and that said ordinance has not been repealed or amended and is now in full force and effect.

Dated this 4th day of August, 2014.



Village Clerk-Treasurer