PLEASE TAKE NOTICE the following ordinance was introduced and passed on first reading at the June 2, 2025 meeting of the Mayor and Borough Council was scheduled for a public hearing to begin at 7:00 p.m. on June 16, 2025, in the Municipal Building, located at 555 Brighton Avenue, Spring Lake Heights, at which time and place any person desiring to comment on this ordinance will be given the opportunity to be heard. A copy of the ordinance is available in the clerk's office.

Janine Gillis, Borough Clerk

ORDINANCE NO. 2025-14

BOROUGH OF SPRING LAKE HEIGHTS
COUNTY OF MONMOUTH

ORDINANCE AMENDING SECTION 22-409, SECTION 22-410, AND SECTION 22-411 OF THE REVISED GENERAL ORDINANCES OF THE BOROUGH OF SPRING LAKE HEIGHTS, TITLED "PERFORMANCE GUARANTIES", "INSPECTIONS" AND "MAINTENANCE GUARANTY" RESPECTIVELY

WHEREAS, P.L. 2017, c. 312 amends provisions of the Municipal Land Use Law, more specifically N.J.S.A. 40:55D-53, with respect to performance bonds, maintenance bonds, and other guarantee requirements; and

WHEREAS, the Borough of Spring Lake Heights wishes to amend its ordinances to conform with the above-referenced law.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Borough Council of Spring Lake Heights in the County of Monmouth, State of New Jersey that the Code of the Borough of Spring Lake Heights be and is hereby amended as follows:

SECTION 1. Sections 22-409, 22-410, and 22-411 are hereby amended as follows (additions are **underlined and bolded**):

22-409. PERFORMANCE GUARANTIES

22-409.1. Requirements.

No approved final plat shall be signed by the Chairman and Secretary (or the Vice Chairman or Assistant Secretary in their absence, respectively) until:

a. Until all improvements required by Article V of this chapter **for certain on-tract improvements** ~~(on-site, on-tract and off-tract)~~ have been installed and approved by the Borough Engineer and accepted by the governing body and a maintenance guaranty has been filed and accepted by the governing body **and a safety and stabilization guarantee has been posted as to the requirements set forth in subsection 22-409.4(b);**

b. Until the installation of all improvements required by Article V **for certain on-tract improvements** ~~(on-site, on-tract and off-tract)~~ shall have been provided for by a performance guaranty accepted and approved by the governing body **and a safety and stabilization guarantee has been posted as to the requirements set forth in subsection 22-409.4(b);** or

c. Until a maintenance guaranty has been filed and accepted by the governing body for the portions of the improvement that have been installed and approved by the Borough Engineer and accepted by the governing body, and until a performance guaranty has been filed and accepted by the governing body providing for the satisfactory completion of the portions of the improvements that have not been installed and **a safety and stabilization guarantee has been posted as to the requirements set forth in subsection 22-409.4(b).**

A maintenance guaranty shall not be accepted for any portion of the improvements not completed and accepted by the governing body; nor shall any portion of the improvements which has further stages of work or which will require alteration or reworking due to the installation of other improvements, be approved by the Borough Engineer for acceptance by the governing body. Any improvements that have been installed prior to granting final plat approval, that do not meet required standards, shall be added to the performance guaranty.

22-409.2. Estimate of Cost; Fee Deposit.

The Borough Engineer shall prepare an estimate of cost of the improvements required in Article V of this chapter, and shall determine the amount of the performance guaranty and the engineering inspection fee deposit, **which itemized cost estimate shall be appended to each performance guarantee posted by the obligor**. The approving authority may direct the Borough Engineer to update the estimates as required.

22-409.3. Submission of Performance Guaranty.

The applicant shall submit the performance guaranty required as a condition of granting final approval to the Borough Engineer and Borough Attorney for review and then to the governing body for approval and acceptance by resolution. Final plat approval may be made by the approving authority prior to the submission of the performance guaranty accepted and approved by the governing body, provided that the Chairman and Secretary (or the Vice-Chairman or Assistant Secretary in their absence, respectively) shall not sign the approved plans until such time as the performance guaranties have been submitted to the approving authority.

22-409.4. The ~~Total~~ Performance Guaranty; Safety and Stabilization Guarantee.

a. The ~~total performance guaranty shall equal~~ **developer shall furnish a performance guarantee in favor of the Borough in an amount not to exceed** 120% of the ~~estimated~~ cost **of installation of only** those improvements **required by an approval or developer's agreement, ordinance, or regulation to be dedicated to a public entity, and that have not yet been installed** ~~not completed~~ **which cost shall** be determined by the Borough Engineer **according to the method of calculation set forth in N.J.S.A. 40:55D-53.4, for the following improvements**

as shown on the approved plans or plat: streets, pavement, gutters, curbs, sidewalks, street lighting, street trees, surveyor's monuments, as shown on the final map and required by "the map filing law," N.J.S.A. 46:23-9.9 et seq.; repealed by N.J.S.46:26B-1 through N.J.S.46:26B-8, water mains, sanitary sewers, community septic systems, drainage structures, public improvements of open space, and any grading necessitated by the preceding improvements. The performance guaranty may also be required to include, at the Borough's discretion, a guarantee for the installation of privately-owned perimeter buffer landscaping. At the developer's option, a separate performance guarantee may be posted for the privately-owned perimeter buffer landscaping. The developer shall prepare an itemized cost estimate of the improvements covered by the performance guarantee for review and approval by the Borough Engineer, which improvements shall be appended to each performance guarantee posted by the obligor. ~~plus an amount equal to 15% of the cost of improvements installed as provided in subsection 22-409.1 of this chapter; provided, however, that the total performance guaranty amount shall not be less than 30% of the total performance guaranty amount that would have been required if no improvements had been completed~~.

b. A safety and stabilization guarantee shall ensure that the Borough has an adequate guarantee to return the property that has been disturbed to a safe and stable condition or otherwise implement measures to protect the public from access to an unsafe or unstable condition. The Borough shall be permitted to access the guarantee when (a) site disturbance has commenced and, thereafter, all work on the development has ceased for a period of at least 60 consecutive days following such commencement for reasons other than force majeure; and (b) work has not recommenced within 30 days following the provision of written notice by the municipality to the developer of the municipality's intent to claim payment under the guarantee. At the developer's option, the safety and stabilization guarantee may be included as a line item for safety and stabilization in the performance guarantee rather than in the form of a separate guarantee.

The safety and stabilization guarantee shall be calculated pursuant to N.J.S.A. 40:55D-53.4 as follows:

(i) $5,000 for the first $100,000 of bonded improvements; plus

(ii) Two and a half percent (2.5%) of bonded improvement costs in excess of $100,000 up to $1,000,000; plus

(iii) One percent (1%) of bonded improvement costs in excess of $1,000,000.

~~b.~~ c. Not less than 10% of the performance guaranty shall be in the form of a certified check or bank money order; and the balance in the form of a certified check, bank money order or surety bond of a bonding company licensed to do business in the State of New Jersey and approved by the governing body. All moneys posted by the applicant shall be held in escrow as provided for in Section 22-813 of this chapter.

~~c.~~ d. In the event of default, then 10% cash portion of the performance guaranty shall be first

applied to complete the requirements; and the cash or surety bond shall thereafter be resorted to, if necessary.

~~d.~~ e. The Borough Engineer's certification that the principal has satisfactorily completed required improvements or has defaulted in meeting the conditions of approval or the required standards of construction shall be the basis for governing body action when considering acceptance or rejection of improvements.

22-409.5. Notification Upon Approval of Performance Guaranty.

The Borough Clerk shall immediately notify the approving authority and the Borough Engineer when the performance guarantee has been approved by the governing body.

22-410. INSPECTIONS

22-410.1. Preconstruction Conference.

Prior to beginning construction, the developer shall arrange for a preconstruction conference between the developer, contractor(s) and Borough Engineer. The Borough Engineer shall be notified at least five days in advance of the start of construction.

22-410.2. Cost of Inspection.

The cost of inspection shall be the responsibility of the developer who shall deposit with the Borough Clerk a certified check or bank money order a fee for engineering inspection of the improvements. **The fee shall not exceed the sum of the amount set forth in N.J.S.A. 40:55D-53(h). The Borough may require the developer to post the inspection fees in escrow in an amount calculated as follows: (a) except for extraordinary circumstances, the greater of $500 or 5% of the cost of improvements subject to a performance guarantee; plus (b) an amount not to exceed 5% of the cost of private site improvements not subject to a performance guarantee, which cost shall be determined pursuant to N.J.S.A. 40:55D-53.4. For those developments for which the inspection fees total $10,000 or greater, fees may, at the option of the developer, be paid in four installments. The initial amount deposited in escrow by a developer shall be 25% of the inspection fees. When the balance on deposit drops to 10% of the inspection fees because the amount deposited by the developer has been reduced by the amount paid to the municipal engineer for inspection, the developer shall make additional deposits of 25% of the inspection fees.**

If the Borough determines that the amount in escrow for the payment of inspection fees, as calculated herein, is insufficient to cover the cost of additional required inspections, the Borough may require the developer to deposit additional funds in escrow provided that the Borough delivers to the developer a written inspection escrow deposit request which informs the developer of the need for additional inspections, details the items or undertaking that require inspection, estimates the time required for those inspections, and estimates the cost of performing those inspections. ~~The fee shall be in addition to the amount of the performance guaranty and all application fees and shall be deposited prior to the start of any improvements.~~ Upon completion of the development and all inspections, the developer shall receive an accounting of the expended funds. Any unexpended funds shall be returned to the

developer. ~~Should the initial deposit be insufficient to cover inspections and costs, the developer shall deposit additional sums upon notice of the Borough Clerk, each additional deposit being an amount not to exceed 1/2 of the initial deposit amount. (See Section 22-813)~~

~~The initial deposit shall be:~~

[Table Redacted]

~~**Estimated Construction Cost**~~	~~**Initial Deposit**~~
~~Under $5,000~~	~~$350~~
~~$5,000 - $10,000~~	~~$350 + 5% of excess over $5,000~~
~~$10,000 - $50,000~~	~~$600 + 4 1/2% of excess over $10,000~~
~~$50,000 - $75,000~~	~~$2,400 + 4% of excess over $50,000~~
~~$75,000 - $100,000~~	~~$3,400 + 3 1/2% of excess over $75,000~~
~~Over $100,000~~	~~$4,275 + 3% of excess over $100,000~~

22-410.3. Inspection.

No work shall be done without permission from and inspection by the Borough Engineer. No underground installations shall be covered until inspected and approved. The Borough Engineer's office shall be notified prior to the commencement of the following phases of work: road subgrade; sanitary sewer; **community septic systems; public improvements of open space;** water main; curb and gutter forms; curbs and gutters; sidewalk**; street lighting;** road paving (each course); drainage facilities; **street trees;** shade trees and planting strips; street name signs and monuments.

22-410.4. Utility Installations.

Utility installations installed by the utility companies shall be subject to inspection of backfilling and surface restoration only.

22-410.5. Occupancy Permits; Planting of Trees.

Occupancy permits will be issued only after the Borough Engineer shall advise the Construction Official that curbs, utilities, functioning water supply; sewage disposal facilities; necessary storm drainage of the lot and surrounding land; rough grading of the lots; soil stabilization; base course for the street and driveway; and sidewalks are installed to serve the lot and structure for which the permit is requested; and that reasonable and safe access to the lot and structure has been provided. Streets shall not receive the surface course until all heavy construction has been completed. Planting of shade trees, **street trees**, and grass seed shall not be delayed beyond one planting season after occupancy of the lot or structure.

22-410.6. Temporary Certificate of Occupancy.

a. In the event that the developer shall seek a temporary certificate of occupancy for a development, unit, lot, building, or phase of development, as a condition of the issuance

thereof, the developer shall furnish a separate guarantee, referred to herein as a temporary certificate of occupancy, in favor of the Borough, in an amount equal to 120% of the cost of installation of only those improvements or items which remain to be completed or installed under the terms of the temporary certificate of occupancy and which are required to be installed or completed as a condition precedent to the issuance of the permanent certificate of occupancy for the development, unit, lot, building or phase of development and which are not covered by an existing performance guarantee. Upon posting of a temporary certificate of occupancy guarantee, all sums remaining under a performance guarantee, which relate to the development, unit, lot, building, or phase of development for which the temporary certificate of occupancy is sought, shall be released.

b. The scope and amount of the temporary certificate of occupancy guarantee shall be determined by the construction code official, zoning officer, municipal engineer, or any other municipal official designated by ordinance. The temporary certificate of occupancy guarantee shall be released by the construction code official, zoning officer, municipal engineer, or other municipal official designated by ordinance upon the issuance of a permanent certificate of occupancy with regard to the development, unit, lot, building, or phase as to which temporary certificate of occupancy relates.

22-410. 7. ~~6~~. Nonliability.

Inspections made by the Borough Engineer shall not subject the Borough to claims, suits or liability of any kind that may arise because of defects of negligence, it being recognized that the responsibility to provide proper utilities and improvements and to maintain safe conditions for workmen and the general public at all times on all parts of the tract is upon the developer and his contractors and subcontractors, if any.

22-410. 8. ~~7.~~ Extension of Time.

The time allowed for installation of the improvements for which the performance guaranty has been provided may be extended by the governing body by resolution. As a condition or as part of any such extension, the amount of any performance guaranty shall be increased or reduced, as the case may be, to an amount not to exceed 120% of the cost of installation as determined **by the developer and approved by the municipal engineer according to the method of calculation set forth in N.J.S.A. 40:55D-53.4** as of the time of the passage of the resolution.

22-410. 9. ~~8.~~ Notification of Completion; Inspection.

The governing body shall either approve, partially approve or reject the improvements and shall notify the obligor by certified mail of the contents of the Borough Engineer's report and the action of the governing body with relation thereto, not later than **45** ~~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 guaranty, except for that portion adequately sufficient to secure completion of the improvements not yet approved; provided that 30% of the amount of the performance guaranty posted shall be retained to ensure completion of all improvements. Failure of the governing body to send or provide such notification to the obligor within **45** ~~65~~ days shall be deemed to constitute approval of the improvements and the obligor and surety, if any, shall be released from all liability, pursuant to such performance guaranty for such improvements.

22-410.10. ~~9.~~ Approval of Improvements.

The governing body shall either approve, partially approve or reject the improvements and shall notify the obligor by certified mail of the contents of the Borough Engineer's report and the action of the governing body with relation thereto, not later than **45** ~~**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 guaranty, except for that portion adequately sufficient to secure completion of the improvements not yet approved; provided that 30% of the amount of the performance guaranty posted shall be retained to ensure completion of all improvements. Failure of the governing body to send or provide such notification to the obligor within **45** ~~**65**~~ days shall be deemed to constitute approval of the improvements and the obligor and surety, if any, shall be released from all liability, pursuant to such performance guaranty for such improvements.

22-410. 11. ~~10.~~ Rejection of Improvements.

If any portion of the required improvements are rejected, the approving authority 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.

22-411. MAINTENANCE GUARANTY

22-411.1. Requirements.

No improvement shall be accepted by the governing body unless and until all of the following conditions have been met:

a. The Borough Engineer shall have certified in writing that all the improvements have been completed and that they comply fully with the requirements of this chapter and of other applicable local ordinances.

b. The developer has provided a maintenance guaranty to the governing body for a ~~period not to exceed two years after final acceptance of the improvement,~~ in an amount not to exceed 15% of the cost of the **installation of the improvements covered under the performance guarantee, along with the following private site improvements: stormwater management basins, in-flow and water quality structures within the basins, and the out-flow pipes and structures of the stormwater management system, if any, which itemized cost shall be determined by the developer and approved by the municipal engineer according to the method of calculation set forth in N.J.S.A. 40:55D-53.4. The term of the maintenance guarantee shall be for a period not to exceed two years and shall automatically expire at the end of the established term.** ~~improvement.~~ Not less than 10% of the maintenance guaranty shall be in the form of a certified check or bank money order; and the balance in the form of a certified check, bank money order or surety bond of a bonding company licensed to do business in the State of New Jersey and approved by the governing body. All moneys posted by the applicant shall be held in escrow as provided for in Section 22-813 of this chapter.

22-411.2. Release from Guaranty.

To obtain release of the maintenance guaranty, the developer shall, after all required

maintenance has been completed, **reimburse the Borough for reasonable inspection fees paid to the municipal engineer for the inspection of improvements, provided such fees do not exceed the limits set forth in N.J.S.A. 40:55D-53(h), and** apply to the governing body in writing, by certified mail, with a copy to the Borough Engineer, for final inspection of the improvements. The Borough Engineer shall, within 30 days of receipt of the request for inspection, report in writing to the governing body, indicating either approval, partial approval or rejection of the improvements with a statement of reasons for any rejection. The governing body shall either approve or reject the improvements and release the maintenance guaranty or reduce the amount of the maintenance guaranty, following the same procedures as for performance guaranties.

SECTION 2. Severability.

If any section, subsection or paragraph of this ordinance be declared unconstitutional, invalid or inoperative, in whole or in part, by a court of competent jurisdiction, such chapter, section subchapter or paragraph shall to the extent that is not held unconstitutional, invalid or inoperative remain in full force and effect and shall not affect the remainder of this ordinance.

SECTION 3. Repealer.

All ordinances and resolutions, and parts of ordinances and resolutions which are inconsistent with provisions of this ordinance shall be, and are hereby, repealed to the extent of any such inconsistency.

SECTION 4. Effective Date.

This ordinance shall take effect after final adoption and approval pursuant to law.