

**HANOVER COUNTY, VIRGINIA
PLANNING DEPARTMENT**

SUBDIVISION PERFORMANCE AGREEMENT

THIS SUBDIVISION PERFORMANCE AGREEMENT ("the Agreement") is entered into _____, 200____, by _____, ("the Developer"), and HANOVER COUNTY, VIRGINIA, ("the County").

IN CONSIDERATION OF the approval by the County, through its Agent, of a subdivision plat titled " _____", by _____, dated _____, Developer for itself and its personal representatives, assigns, and other successors in interest, agrees to construct, install and complete all of the physical improvements and facilities necessary to comply with all statutory and other requirements, including all provisions of the Virginia Code, the Hanover County Code, including the Zoning and Subdivision Ordinances, all rules and regulations adopted pursuant to those statutes and ordinances, agreements, and proffers, and the conditions of final approval established by the Subdivision Agent (collectively referred to as "the Requirements"). Any reference in this Agreement to completion or construction of improvements shall be deemed to include all functions, goods and services and design and engineering work necessary to conform to the Requirements.

The Developer shall complete all facilities and improvements in conformance with the Requirements and in conformance with approved plans and revisions. Approved plans are incorporated in this Agreement only to the extent that they meet the Requirements. Facilities and improvements shall be completed within eighteen (18) months of the date of recordation of the subdivision plat, or, in the case of residential subdivision, upon the occupancy of one-third (1/3) of the residences in the subdivision, whichever occurs first. Extensions of time for completion may be granted by the County in accordance with the Hanover County Code, regulations and procedures of the County.

If, in the opinion of the Planning Director ("the Director"), the approved plans are inadequate to ensure that construction and development will conform to the Requirements, the Developer, upon request of the Director, shall submit revised plans conforming to the Requirements and shall construct and complete improvements in accordance with the revisions. If in the opinion of the Director, the actual improvements made or facilities constructed do not conform to the plans or the Requirements, the Developer shall, upon the Director's request, design, redesign, construct or reconstruct all such facilities or improvements so as to comply.

DEVELOPER FURTHER AGREES:

1. To comply with all requirements of the Virginia Code, the Hanover County Code and any conditions or requirements imposed by the Hanover County Board of Supervisors or its agents, and utility agreements, if any, and to maintain any stormwater management, detention or retention facilities associated with the development and not either maintained by the Virginia Department of Transportation ("VDOT"), or accepted as County facilities.

2. In the event the subdivision includes public roads:

A. To be responsible for having the streets and other improvements in any dedicated right-of-way accepted by VDOT into the State system of highways; to comply with all requirements of VDOT for acceptance, and to make prompt application upon completion of the required work for acceptance by VDOT.

B. Where a road intended for public use has not been accepted into the State system of highways, the Developer shall maintain such road until such time as it is accepted into the system, and if requested, shall furnish the County a maintenance and indemnifying bond with surety to secure such maintenance in accordance with the Hanover County Code and the Virginia Code.

C. The Developer shall provide and maintain adequate all weather access, including snow removal and ice control, from all occupied structures to a public highway in the State system, until such time as roads in the subdivision are accepted by VDOT.

3. To request inspections, file applications and take any other actions required of the Developer for the purpose of effecting acceptance or approval of completed improvements by the appropriate governmental entity.

4. To acquire on behalf of the County any property rights necessary for completion of the obligations of this Agreement in the event of default by the Developer, or for the purpose of maintenance by a governmental entity, if applicable, or to pay all costs of acquisition of such property rights.

5. That no required construction or public improvement shall be considered complete until it is accepted by the governmental unit which is to have ultimate responsibility for its maintenance, if applicable, and it is approved by the County as being in compliance with the Requirements and as-built plans certified by a professional engineer or certified land surveyor are provided to the Director.

6. A default shall be deemed to have occurred on the part of the Developer if Developer shall fail to complete its obligations under this Agreement within the specified time or any extensions; or prior to the expiration of such period, if in the judgment of the Director, the Developer has:

- (a) abandoned the performance of its obligations under the Agreement; or,
- (b) renounced or repudiated its obligations under the Agreement; or,
- (c) demonstrated through insolvency, inaction, or otherwise, that its obligations under the Agreement cannot be completed within the time allotted under the Agreement.

In the event of default, the County may terminate whatever rights the Developer may have to construct or correct construction of facilities.

7. In the event of default, the Developer shall be responsible for payment of administrative costs of ten percent (10%) of the cost of construction or correction of the improvements, in addition to the cost of construction. The cost of construction or correction shall include all functions, goods and services, and design and engineering work necessary to construct improvements conforming to the Requirements.

8. To provide and maintain security satisfactory to the County, to secure performance of this Agreement. The security shall be provided and maintained in the form of a cash bond, letter of credit or surety bond in an amount and with content acceptable to the Director and in a form acceptable to the County Attorney. Evidence of continuing validity of the security shall be provided to the County upon request. In the event all improvements are not completed thirty days

prior to the expiration of any bond or letter of credit, the Developer shall provide substitute security documents on that date, or shall be deemed to be in default and shall pay the full cost of completion of those improvements.

9. To defend and indemnify the County and hold the County harmless for all loss or damage to property, or injury, or death of any and all persons; for any suits, claims, liability or demands in connection with the physical improvements and facilities, however caused, including those arising directly or indirectly from construction, failure to maintain, or use of such improvements prior to final acceptance.

10. That no building permits shall be issued within the subdivision if any lot or development of any portion of the subdivision does not meet all requirements of the Hanover County Code, including the Hanover County Zoning and Subdivision Ordinances, all other applicable laws, proffered conditions or the terms of any special exception or permit; nor shall any building permits be issued within the subdivision at any time during which the Developer is not in complete compliance with this Agreement, including the requirement that the Developer maintain security satisfactory to the County.

If any clause or portion of this Agreement is found not to be valid and binding, the remainder shall continue in full force and effect.

The failure or refusal of the County to take any action, proceedings, or step to enforce any remedy or exercise any right under this Agreement or the taking of any action, proceeding, or step by the County, acting in good faith upon the belief that same is permitted shall not in any way release the Developer from the obligations of this Agreement.

This Agreement shall be administered and interpreted in accordance with the laws of the Commonwealth of Virginia. Any actions arising out of this Agreement, bonds or other obligations securing the obligations of this Agreement shall be filed and maintained in the District Court or Circuit Court of Hanover County, Virginia.

The parties, if more than one, collectively referred to in this Agreement as the "Developer", shall each be fully, jointly and severally liable for all obligations of this Agreement, including performance and payment. This Agreement shall be recorded in the Hanover County Circuit Court Clerk's Office, and shall be binding on the Developer's successors in interest.

The purpose and effect of this Agreement is to secure the completion of all improvements required by the Virginia Code, the Hanover County Code, the Hanover County Zoning and Subdivision Ordinances, and all other applicable statutes, ordinances, rules and regulations. The County does not waive or modify any provision or requirement of those statutes, ordinances, rules or regulations by this Agreement. Any approved plan or revision referred to anywhere in this Agreement is incorporated for reference purposes only to the extent that it meets, at a minimum, the unmodified requirements of those statutes, ordinances, regulations and rules.

Any notice required by this Agreement shall be effective if given by receipted mail or delivery, to Developer or to the County in the name and at the address given below; provided that change of address shall be effective if given in accordance with this paragraph. The Developer agrees to notify the County immediately of any change of legal status or of address.

The parties have acknowledged this Agreement by their signatures and seals set out below.

DEVELOPER

Type of Organization (Individual/
Sole Proprietorship/Partnership/
Corporation):

Legal Name(s) & Mailing Address(es):
(Print or type)

Signature: _____(SEAL)

Name (Print or type): _____

Address (if different from above): _____

Signature: _____(SEAL)

Name (Print or type): _____

Address (if different from above): _____

COMMONWEALTH OF VIRGINIA,
CITY/COUNTY OF _____, to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____, 200____, by _____.

My commission expires: _____

Notary Public

COMMONWEALTH OF VIRGINIA,
CITY/COUNTY OF _____, to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____, 200____, by _____.

My commission expires: _____

Notary Public

HANOVER COUNTY, VIRGINIA

Director of Planning

P. O. Box 470

Hanover, Virginia 23069-0470

Signature: _____(SEAL)
Director of Planning or Designee

COMMONWEALTH OF VIRGINIA,
COUNTY OF HANOVER, to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____, 200____, by _____.

My commission expires: _____

Notary Public