



SUBDIVISION PERFORMANCE AGREEMENT

THIS AGREEMENT made this ____ day of _____, 20____ by and between the party of the first part, hereinafter Developer, and the TOWN COUNCIL OF VIENNA, VIRGINIA, party of the second part, hereinafter called Town,

WITNESSETH:

IN CONSIDERATION OF the approval by the Town, through its designee, of a subdivision plat/site plan /construction plan for a project known as (Name) _____ Plan No. _____ Developer, for himself, and his heirs, personal representatives, assigns, or other successors in interest, agrees to construct and install all of the physical improvements and facilities shown on the approved plans and profiles, and approved revisions thereof, within 18 (eighteen) months of the date hereof.

DEVELOPER FURTHER AGREES:

1. To comply with all the requirements of the Town of Vienna Code and the Department of Public Works Standards and Specifications.
2. That if, in the opinion of the Director of Public Works or his agent, the plan, profiles, and revisions thereto, although approved by the Town, are inadequate to ensure that construction and development of the site will be in conformance with the requirements of State Law, the Town Code, all applicable proffered conditions, and the Department of Public Works Standards and Specifications, the Developer, upon request of the Director, shall submit and obtain Town approval of revisions to the plans or profiles showing the changes necessary to bring the site into conformance with State Law, the Town Code, the Department of Public Works Standards and Specifications, and construct and develop the site in accordance with the approved revisions.
3. That if, in the opinion of the Director of Public Works or his agent, offsite drainage improvements are necessary to provide for adequate drainage, the Developer, upon request of the Director, shall submit and obtain Town approval of revisions to the plan or profiles showing the offsite improvement, and construct and develop the improvements in accordance with the approved revision.
4. That if, in the opinion of the Director of Public Works or his agent, the physical improvements and facilities as shown on the approved plan and profiles, or approved revisions thereof, are inadequate to prevent damage to other property, erosion, flooding, or other deleterious effects, the Developer, upon request of the Director, shall take appropriate steps to prevent any such damages to other property, erosion, flooding, or other deleterious effects, and speedily rectify any damages resulting therefrom, whether or not a revision to the plan or profiles delineating the necessary steps has been submitted or approved.
5. That if, upon expiration of the agreement, the Director of Public Works or his agent so directs, the Developer will cease all work on improvements covered by the bond and agreement and /or will remove all material and equipment from the Town easements and dedicated rights-of-way.
6. To provide and maintain all-weather access, including snow removal and ice control, from all occupied dwellings to a public highway in the primary or secondary highway system. The Developer is responsible for providing and maintaining this access for roads within the dedicated right-of-way until the roads are accepted by the Town into the Town's system of highways and the project is released by the Director from bond or other such instrument of security. If the Developer fails to provide and maintain this access, the Town or its assigns has the right to enter upon the property to provide and maintain this access. In the event that the Developer fails to provide and maintain all-weather access as described in this paragraph, or is otherwise in default, the Director may withhold the issuance of any permits to the Developer on this project. In addition, in the event that the Town has performed this work, the Developer shall fully compensate the Town for all documented costs and fees associated and related to the performance of such work.
7. That if, in the opinion of the Director that immediate action is required to secure, correct and/or restore any work, structural failure or similar occurrence that is causing or likely will cause damage or result in a health or safety hazard as a result of the project, the Developer shall fully compensate the Town for all its documented costs and fees directly associated with and related to the performance of such work.
8. That any construction or improvement required under this agreement that is ultimately to be maintained by a governmental entity shall be considered complete when it is accepted by the governmental entity. The Developer further agrees to be responsible for all maintenance and deterioration of the physical improvements and facilities until such improvements are accepted by the applicable governmental entity or until the bond and development agreement are released.
9. When required by the approved subdivision plan, to obtain and maintain until released from this Agreement and any extensions thereof, public liability insurance with Town as an additional named insured, in an amount not less than \$1,000,000 for injury to any one person, nor less than \$1,000,000 on account of any one accident; and property damage insurance in an amount not less than \$100,000 on account of any one accident nor less than \$500,000 for damages on account of all accidents. A Certificate of Insurance for the insurance required by this paragraph must be presented at the time that the agreement is submitted for review and approval.
10. That 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 parties intend that each provision of this Agreement be valid and binding upon each and all of them, and expressly agree to abide thereby. This Agreement shall not be amended or modified without the written consent of the parties.
11. In the event that any suit, action or proceeding is brought by the Town to enforce any provision of this Agreement, it is expressly agreed and understood that, regardless of when the breach of this Agreement occurs, the measure of damages recoverable shall be the costs of completion and/or correction of the work required by the Agreement as of the earlier of the following two dates:
 - (a) when the work is actually completed and/or corrected to final local and final state approval and acceptance; or
 - (b) date of trial.
 It is further expressly agreed and understood that the measure of damages shall include, but shall not be limited to, construction, engineering, surveying, maintenance, deterioration, administration, supervision, reasonable attorney's fees, and any costs associated or related to any Litigation of this Agreement and shall be adjusted for inflation.
12. To supply to the Town Cashier's Check, Letter of Credit, Corporate Surety from _____ (Company, bank, lender, etc.)
(Type of security or other guarantee)
in the amount of \$ _____
If a corporate surety bond is supplied to the Town, the Developer shall notify the Director if the Best Key rating for the insurance company falls below Class A-VI no later than 45 calendar days after the Best Key rating is reported. The Developer shall, submit and obtain the Director's approval of a replacement agreement with a security that meets the Town's minimum standards for any corporate surety that was provided by an insurance company whose Best Key rating has fallen to Class B-XV or lower. A complete replacement shall be submitted to the Director in accordance with Public Facilities Manual Section 2-602 no later than 45 calendar days after a Best Key rating of B-XV is reported.

IN WITNESS of which the Developer signs and seals this Agreement.

Type of Organization:

Legal Name and Address:

- Corporation
- Partnership
- Individual

(Signature)

By

(seal)

_____ (Signature)

By

(seal)

(Print or type name and title)

(Print or type name and title)

COMMONWEALTH/STATE OF _____

CITY/COUNTY _____

The foregoing instrument was acknowledged before me this _____ day of _____ 20__

By _____
Notary Public

My commission expires: _____, 20__.

IN WITNESS of which, the Town has caused this Agreement to be executed on its behalf:

TOWN COUNCIL OF VIENNA, VIRGINIA

By _____
Director of Public Works

STATE OF VIRGINIA
COUNTY OF FAIRFAX

This _____ day of _____ 20____, appeared before me in my State and County aforesaid,
Director, Department of Public Works and acknowledged his signature.

By _____
Notary Public

My commission expires: _____, 20__.

APPROVED AS TO FORM:

TOWN ATTORNEY