

10/13 02/09

SUBSTITUTE
PERFORMANCE AGREEMENT FOR SITE PLANS
-NEW OWNER-

This agreement ("Agreement") made and entered into this ____ day of _____,
20____, by and between _____
(hereinafter called "**Developer** "); and **THE BOARD OF SUPERVISORS OF LOUDOUN**
COUNTY, VIRGINIA, a body politic (hereinafter called "**Board** ").

WHEREAS, _____ (the "**Prior Owner**")
entered into a Performance Agreement for Site Plans with the Board dated _____,
20____ (the "**Original Agreement**") to construct certain improvements in accordance with an
approved Site Plan designated as STPL _____ - _____ for the site plan known as _____
(the "**Plans**"); and

WHEREAS, the Prior Owner provided security in the amount of \$ _____
in the form of [Irrevocable Letter of Credit] [Corporate Surety Bond] Number _____
issued by _____ dated _____,
20____ to secure the performance of the obligations of the Original Agreement as required by law;
and

WHEREAS, Developer has acquired title to the land which is being developed or is to be
developed in accordance with the Plans (the "**Property**") and wishes to complete performance of the
work required by the Plans and to undertake all of the obligations of the Prior Owner as contained in
the Original Agreement and to provide a substitute security to secure performance of such
obligations; and

DMG 02/09

WHEREAS, under the Original Agreement and [Letter of Credit] [Bond], the date for performance of the obligations set forth in the Original Agreement is/was _____, 20__ and the amount of the security is \$ _____; and

[**WHEREAS**, the Director of Building and Development, upon recommendation by the Loudoun County Bond Committee, on behalf of the Board, has determined that the security provided is inadequate to complete the work and improvements required by the Agreement; and]

[**WHEREAS**, the Subdivider has agreed that the amount of the security is hereby increased from \$ _____ to \$ _____, such increase being evidenced by the Bond/Bond Rider/Letter of Credit/Letter of Credit Amendment attached hereto; and]

WHEREAS, the parties hereto wish to confirm by this Agreement that Developer, as successor in interest to the Prior Owner has undertaken all of the obligations of the Prior Owner under the Original Agreement; and

[**WHEREAS**, the parties desire to extend the time for performance of the obligations under the Original Agreement; and]

WHEREAS, in consideration of the approval by the Board of the Plans, and any and all revisions thereof however such revisions may be redesignated, and the Board not requiring the following work to be completed prior to the approval of the said Site Plan, the Developer, its successors and assigns agrees to complete the following work [within twelve (12) months from the date hereof] [on or before _____, 20__]:

1. To construct all physical improvements as shown on the approved Plans and in accordance with applicable provisions of the Loudoun County Subdivision and Zoning Ordinances governing such Plans (with Ordinances to take precedence over Plans in the event of conflict), including, but not limited to, the placement of survey monuments, the construction of an adequate

MO 03/09

storm drainage system both on the subject property and on adjacent properties as needed, the construction of vehicle and pedestrian travelways in accordance with current standards of the Board, and the submission of as-built plans for all such improvements; and

2. To provide adequate supervision on the project site during the installation of all required improvements and a responsible superintendent or foreman together with one (1) set of approved Plans on the project site at all times when work is being performed; and

3. To construct the improvements in such a manner that they will be reasonably acceptable to the applicable property owners' Association or such other entity that will be responsible for the permanent operation and maintenance of the improvements, to make prompt application to the Board and the Association or such other entity for acceptance of such improvements, and diligently to pursue and carry out all actions reasonably necessary to achieve such acceptance; and

4. To maintain dust control on the project site at all times; and

5. To provide for the adequate control of erosion and sedimentation by temporary and permanent control practices and measures which will be implemented during all phases of clearing, grading, and construction; and

6. To provide and maintain convenient, safe, unobstructed, all-weather access to all those premises which are occupied by owners or occupants other than the Developer or its agents, until such premises are accessible via travelways that have been built in accordance with the Plans as approved by the Board and accepted for permanent maintenance and operation by the said Association or other entity and promptly to repair any deterioration or damage to completed work for which partial but not complete reduction in the amount of the security has been approved; and

7. To install all traffic warning and regulatory signs and devices required by the approved Plans during construction and to maintain said signs and devices in an operable condition

03/01

until the (a) travelways have been accepted for maintenance and operation by the said Association or other entity or the subsequent owners of all the property abutting the travelways or (b) Board is otherwise satisfied regarding the provisions for permanent maintenance. All traffic signs shall be kept in proper position, clean, and legible at all times. Damaged signs shall be replaced immediately. Special care shall be taken to see that weeds, shrubbery, construction materials, and snow are not allowed to obscure the face of any sign; and

8. To maintain control on the project site at all times so that mud is not tracked out of the project by vehicle tires and deposited on adjacent streets of the state system, or such other travelways as may be adjacent to the project site.

9. It is agreed and understood that final approval of completed work can only be given by the Director of Building and Development of Loudoun County, Virginia, upon recommendation of the Zoning Administrator.

10. It is agreed and understood that in the event the Developer shall default in its obligations under this Agreement and it becomes necessary for the Board to institute legal proceedings to enforce compliance with said obligations or to obtain reimbursement for costs incurred in fulfilling said obligations on behalf of the Developer, the Developer shall pay all reasonable attorney's fees and all other costs that may reasonably be incurred.

[11. Developer hereby provides security in the form of a cash escrow deposit in the amount of \$ _____, which funds are to be made available to the Board upon default or breach of any of the terms and conditions of this Agreement by the Developer. The said deposit is delivered herewith by certified check (or cashiers check issued by a bank satisfactory to the County), receipt of which is hereby acknowledged by the Board. Such amount shall be placed in an escrow account with the Treasurer of Loudoun County until drawn upon by the Board or returned to

03/09

Developer as provided herein and in the Bonding Policy of Loudoun County, Virginia. All interest accruing on this account shall be paid to the same party to whom the principal is paid, except that, in any event, five percent (5%) of any interest accrued may be retained by the Treasurer to cover the cost of administering the account. The Developer hereby ratifies and reaffirms its agreement that the said funds deposited as cash escrow are available to the Board on default of this Agreement. This paragraph shall not be construed in any manner as a waiver of any right of the Board to enforce the obligations of this Agreement against the Developer or its successors and assigns.]

[OR]

[11. Developer hereby provides security in the form of a [Letter of Credit] [Corporate Surety Bond] in the amount of \$ _____, which funds are to be made available to the Board upon default or breach of any of the terms and conditions of this Agreement by the Developer. Such [Bond] [Letter of Credit] Numbered _____ is attached hereto and made a part hereof, and the Developer hereby ratifies and reaffirms its agreement that the said funds represented by the [Bond] [Letter of Credit] are available to the Board on default of this Agreement. This paragraph shall not be construed in any manner as a waiver of any right of the Board to enforce the obligations of this Agreement against the Developer, its successors and assigns.]

12. If a Bond or Letter of Credit is provided to the Board as security to guarantee the performance of this Agreement and such Bond or Letter of Credit becomes not an acceptable form of surety or security, whether as a result of the failure of the issuing Bank or Surety Company to achieve and maintain the rating required by the Board's duly adopted Bonding Policy or as a result of any other failure of such Bond or Letter of Credit to satisfy any of the other criteria established by said Bonding Policy for acceptable forms of surety or security, then the Developer shall, upon

Nov 03/09

request of the Director of Building and Development, promptly provide a substitute surety or security satisfactory to the Board. Failure of the Developer to furnish such substitute surety or security within sixty (60) days after the Director mails such request to the Developer by certified mail with return receipt requested shall constitute a default and a failure to perform in accordance with this Agreement and a failure to discharge its obligations under this Agreement, such that the Board may, thereafter, without further notice, call upon such Bond or Letter of Credit for payment in accordance therewith.

The undersigned warrants that this Agreement is made and executed pursuant to authority properly granted by the partnership agreement or charter, bylaws and action of the Board of Directors or articles of organization, operating agreement or majority vote of the members or other applicable organizational documents of the Developer.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

MS 07/09

IN WITNESS WHEREOF, the Developer has caused its name and seal to be affixed hereto,

by _____,

[PRINT NAME OF PERSON SIGNING FOR DEVELOPER]

its duly authorized representative.

Developer: _____

[TYPE OR PRINT NAME OF DEVELOPER]

By: _____ (SEAL)

[signature]

Title: _____

[type or print]

STATE OF _____

COUNTY OF _____, to-wit

I, _____, a
Notary Public in and for the State and County aforesaid, do hereby certify that on the _____ day of
_____, 20____, personally appeared before me in my jurisdiction

as _____

of _____

whose name is signed to the affixed Agreement and acknowledged said signature.

Notary Public

My Commission Expires: _____

My Notary Registration Number: _____

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

10/30/09

IN WITNESS WHEREOF, the County has caused this Agreement to be executed, under seal, in its behalf, and its seal affixed.

APPROVED AS TO LEGAL FORM

THE BOARD OF SUPERVISORS OF
LOUDOUN COUNTY, VIRGINIA

By: _____
Assistant County Attorney

By: _____

Director of Building and Development

COUNTY OF LOUDOUN
COMMONWEALTH OF VIRGINIA, to-wit

I, _____, a
Notary Public in and for the jurisdiction aforesaid, do hereby certify that on the ____ day of
_____, 20__, personally appeared before me in my jurisdiction

as _____
on behalf of The Board Of Supervisors Of Loudoun County, Virginia, whose name is signed to the
affixed Agreement and acknowledged said signature.

Notary Public

My Commission Expires: _____

My Notary Registration Number: _____

Please complete the below contact information in reference to the attached agreement and submit this with your completed agreement and bond packet.

Project Name: _____

Bond Number: _____

Please provide contact information for the PRINCIPAL/CO-PRINCIPAL of the bond:	Please provide contact information for the Developer/ Owner. This individual will keep the Performance Agreement/Bond current with Loudoun County:
Name:	Name(s):
Title:	Title(s):
Address:	Address(es):
Phone No:	Phone No(s):
Email:	Email(s):

Thank you for your help.
Bonds Management Team

For more Information:

Email: bonds@loudoun.gov

www.loudoun.gov/bonds

QUICK REFERENCE FOR PERFORMANCE BOND PROCESS WITH LOUDOUN COUNTY

Now that your agreement has been accepted by Loudoun County, its life has begun and may consist of Bond Maintenance prior to Bond Release.

This is only the beginning. You are not done.

Per [Facilities Standards Manual \(FSM\)](#) Section 8.302, “If construction of the subject project is not completed within the initial Performance Agreement term (12, 24, or 36 months), the performance bond amount may require *adjustment* (increase in bond amount) and subsequent *reconsideration* (new owner or surety substitution) and review by the Bond Committee”.

Until the Bond Committee recommends approval or release of the bond, the performance agreement must be extended every year with a new set of completed extension documents and a \$500.00 extension fee per year(s) extended. (See [FSM](#) Section 8.305.E for release requirements).

To keep your agreement *current* (not expired and out of default), you may need to take one or more of the following actions:

- 1) ***When would I need an Extension Agreement?*** This is the most common action that needs to be taken every year in order to keep your agreement current. Submit the required completed extension documents and a \$500.00 fee per year. Except for the 1st extension, all extensions are for one (1) year.

Please note, when extending a State Maintained Roads Agreement, a Preliminary Street Acceptance Package is also required. (See [Checklist for Preliminary Street Acceptance Package \(aka PSAP\)](#)).

Documents required:

- | | | |
|---------------------------|-------------------------|-------------------------------------|
| 1) Extension Agreement | 2) Consent to Extension | 3) Rider/Letter of Credit Amendment |
| 4) Extension Request Form | 5) Fee | |

Please note, if your agreement is not extended by the expiration date, your agreement will be in DEFAULT (No reduction, release, permits, or inspections for project will be authorized) (See Loudoun County’s website for documents/information: [LC Perf Agree Extension](#)). Per [FSM](#) Section 8.305.B, submit an extension agreement approximately sixty (60) days prior to the agreement expiration. Upcoming expiration letters are generally emailed to owner/developer ninety (90) days from the expiration date of the agreement.

- 2) ***When would I need a New Owner Substitution?*** If the ownership of the property has changed, request a New Owner Substitution.

Please note, if the original agreement is expired, the agreement is in DEFAULT. When submitting a New Owner Substitution agreement on an expired performance agreement, a \$500.00 fee is required, per year(s) in default, to bring the expired agreement current. (See Loudoun County’s website for documents/information: [LC Substitutions](#)).

Documents required:

- | | |
|--------------|--|
| 1) Agreement | 2) Bond (Preferred Collateral Discussion: Cash, Letters of Credit, Surety Bonds) |
|--------------|--|

- 3) ***When would I need a Surety Substitution?*** If the bank or surety company no longer meets the requirements of [FSM](#) Section 8.303, request a Surety Substitution. (See Loudoun County’s website for documents/information: [LC Substitutions](#))

Documents required:

- | | |
|--------------|--|
| 1) Agreement | 2) Bond (Preferred Collateral Discussion: Cash, Letters of Credit, Surety Bonds) |
|--------------|--|

- 4) ***When would I need a Reduction?*** If you have completed 30% of the improvements, request a bond reduction and submit a \$1,215.00 fee. (See Loudoun County’s website for documents/information: [LC Reductions](#)).

Documents required:

- | | | | |
|-----------------------------|-------------------------|---------|------------------------------|
| 1) Reduction request letter | 2) Bond Unit Price List | 3) Fees | 4) Geo-tech certified letter |
|-----------------------------|-------------------------|---------|------------------------------|

- 5) ***When would I need a Release?*** If improvements have been completed, request a bond release and submit a \$1,645.00 release fee and a \$185.00 fee for as-built plans. (See Loudoun County’s website for documents/information: [LC Street Acceptance / Bond Release](#)).

Documents required:

- | | |
|---------------------------|---|
| 1) Release request letter | 2) Items Requested on Public Street Acceptance OR |
| 3) Fees | Items requested on Private Street/Site Plan/Proffer Release Checklist |

If after reviewing the website links above you have further questions or need clarifications, please contact:

Contact Infrastructure Compliance Team for PSAP Questions	
Contact:	Issue:
Rick Hoffman / 703-737 8625 richard.hoffman@loudoun.gov	PSAP Submission

Contact Infrastructure Compliance Team for RELEASE and REDUCTION Questions	
Contact:	Issue:
Ilona McGee / 571-258-3216 ilona.mcgee@loudoun.gov	Project Manager Assignments
Coleman Hutton / 703-737-8486 coleman.hutton@loudoun.gov	Street Acceptance Process

Contact Bonds Management Team for Extension, New Owner Substitution, or Surety Substitution Questions	
Contact:	
Michael Baggett – project names beginning with A-D	703-771-5043 / michael.baggett@loudoun.gov
Will Himel – project names beginning with E-O	703-737-8765 / will.himel@loudoun.gov
Diana Larson – project names beginning with P – Z	703-771-5345 / diana.y.larson@loudoun.gov
Bonds Information Line	703-737-8942 / bonds@loudoun.gov

COMMONLY MADE ERRORS

- The Agreement must be dated on or prior to the date of the Corporate Surety Bond or Letter of Credit.
- Application name and number must be correct and agree across all documents.
- Common Typos on the Rider/Continuation/Verification Certificate for application types (ex.: SPTL versus STPL, APAP versus CPAP).
- The Corporate Surety Bond or Letter of Credit Number must be filled in on Agreement.
- Owner of the property must be party to the Performance Agreement even if the Corporate Surety Bond is provided by a different entity or party.
- Incorrect or Missing Dates on the Consent to Extension.
- Notary Attestation cannot be before the date of the agreement.
- Signers' names must agree exactly across all documents (signature block and notary).
- Corporate Surety Bond Number must be on the upper left corner of the face of the bond and in the upper right corner of each subsequent page of the bond.
- Power of Attorney should be dated the same date as the Consent to Extension and/or the Bond Rider.
- Not using the EXACT template language if re-typed.