



County of Powhatan, Virginia
Department of Community Development
Performance Agreement
Road and Transportation Improvements

THIS PERFORMANCE AGREEMENT (the “Agreement”) is entered into _____, 20____, by _____
_____ (the “Developer”), and POWHATAN COUNTY, VIRGINIA (the “County”) in order to assure performance by the Developer.

IN CONSIDERATION OF the approval by the County, through its agent, of a subdivision, preliminary plat, final plat, or site plan (the “Approved Plan”) titled “ _____,” by _____, dated _____, the Developer for itself and its personal representatives, assigns, and other successors in interest, agrees to construct, install, and complete all public and private infrastructure (the “Improvements”) necessary to comply with all statutory and other requirements, including all provisions of the Virginia Code, the Powhatan County Code of Ordinances, all rules and regulations adopted pursuant to those statutes, and ordinances, agreements, and proffers, and/or conditions imposed at the time of rezoning or subdivision approval (collectively, 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 the Approved Plan. The Approved Plan is incorporated in this Agreement only to the extent that it meets the Requirements at the time of construction. Improvements shall be completed within _____ months of the date of recordation of the Approved Plan, or upon the occupancy or use by humans of any of the structures in the development directly served by the Improvements, whichever occurs first (the “Completion Date”). Extensions of time for completion may be granted by the Director of Community Development or his designee (the

“Director”) in accordance with the Powhatan County Code of Ordinances, and regulations and procedures of the County.

If, in the opinion of the Director, the approved plans are inadequate to ensure that construction and development will conform to the Requirements, then the Developer, upon request of the Director, shall submit revised plans conforming to the Requirements and shall construct and complete the Improvements in accordance with the required 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 Improvements so as to comply.

THE DEVELOPER FURTHER AGREES:

1. To be responsible for having the streets and Improvements within any dedicated right-of-way accepted by the Virginia Department of Transportation (VDOT) into the state system of highways.
2. To comply with all requirements of VDOT for acceptance and, upon completion of the required work, to make prompt application for acceptance by VDOT.
3. To maintain all streets and Improvements until such time as they are accepted by VDOT and to promptly request inspections, file applications, and take any other actions required for the purpose of effecting acceptance or approval of completed improvements by the appropriate governmental entity.
4. To furnish the County with a maintenance and indemnifying bond with surety to secure such maintenance in accordance with the Powhatan County Code of Ordinances and the Virginia Code. Such maintenance shall include, but not be limited to, on-going repairs, storm water drainage, and maintenance of all-weather access, including snow removal and ice control, from all occupied structures to a public right-of-way in the state system. This maintenance and indemnifying bond shall be maintained until such time as all streets and Improvements are accepted by VDOT.
5. To provide and maintain security satisfactory to the County to secure performance of this Agreement. A security instrument shall be provided and maintained in the form of cash escrow, irrevocable letter of credit, or performance bond in the amount of \$ _____ (the “Security”), which is equal to at least one-hundred and ten

percent (110%) of the estimated full cost of completing the Improvements, as required by the Powhatan County Code of Ordinances.

If all Improvements are not completed within thirty (30) days prior to the expiration date of the Security, the Developer shall provide a new security instrument on that date. In this event, the Director may require the amount of the required security to be updated to reflect cost increases over time.

The Developer may submit to the Director a written request for partial release or a final complete release of the Security, as follows:

- (i.) *First Partial Release:* Upon completion of fifty percent (50%) of the Improvements, the Developer may request release of up to thirty percent (30%) of the Security's value. The requestor shall furnish a detailed cost estimate of the remaining work, together with a projected timetable of completion. The requestor shall also provide a certificate of completion from a Professional Engineer that states that to the best of his/her knowledge the percent of work completed was performed in strict conformity with approved plans, revisions or in accordance with as-built plans submitted therewith, and that the work meets all applicable standards
- (ii.) *Second Partial Release:* Upon approval of a resolution by the Board of Supervisors requesting acceptance of the roadway improvements into the state system of highways, the Developer may request release of up to eighty percent (80%) of the Security's value, provided that a licensed engineer certifies that the roadway has been completed in accordance with the Approved Plan and VDOT specifications; and
- (iii.) *Full Release:* Upon acceptance of the roadway improvements into the state system of highways, the Developer may request a final complete release of the Security. The release of the Security shall not in any way nor to any extent release, diminish, or otherwise reduce any obligation or liability of the Developer to third parties. For the purpose of final release, the term "acceptance" means: when the public facility is accepted by and taken over for operation and maintenance by VDOT.

6. To assign to the County all property rights necessary for the County's completion of the Developer's obligations under this Agreement in the event of default by the Developer; or, to pay all costs of acquisition of such property rights. A default shall be deemed to have occurred on the part of the Developer if the Developer fails to complete its obligations under this Agreement within the specified time, or prior to the expiration of such period, if the Developer has:
 - (i) abandoned the performance of its obligations under this Agreement;
 - (ii) renounced or repudiated its obligations under this Agreement; or
 - (iii) demonstrated through insolvency, inaction, or otherwise, that its obligations under this Agreement cannot be completed within the time allotted under this Agreement.
7. 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 Improvements, however caused, including those arising directly or indirectly from construction, failure to maintain, or use of such improvements prior to final acceptance.
8. 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 Powhatan County Code of Ordinances, including the Zoning Ordinance and Subdivision Ordinance of Powhatan County, 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 the 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 performance under this Agreement shall be filed and maintained in the courts of Powhatan 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 Powhatan 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 Powhatan County Code of 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.

APPROVED AS TO FORM:	
_____	_____
Powhatan County Attorney	Date

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

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

Legal Name(s) and 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
COUNTY OF POWHATAN, to-wit:

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____.

My commission expires: _____

Notary Public

COMMONWEALTH OF VIRGINIA
COUNTY OF POWHATAN, to-wit:

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____.

My commission expires: _____

Notary Public

POWHATAN COUNTY, VIRGINIA
Director of Planning
3834 Old Buckingham Road, Suite F
Powhatan, Virginia 23139

Signature: _____ (SEAL)

Director of Planning or Designee

COMMONWEALTH OF VIRGINIA
COUNTY OF POWHATAN, to-wit:

The foregoing instrument was acknowledged before me this _____ day of
_____, 20____, by _____.

My commission expires: _____

Notary Public