



County of Powhatan, Virginia
Department of Community Development
Performance Agreement
*Site Features other than Roads 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 infrastructure, private infrastructure, and/or landscaping (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 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.
2. 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.
3. Upon completion of the improvements, 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.
4. 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.

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