

AGREEMENT / PERFORMANCE GUARANTY

THIS AGREEMENT made this _____ day of _____, 20____
by and between _____, party
of the first part, hereinafter called Principal(s), and the BOARD OF COUNTY
SUPERVISORS OF CULPEPER COUNTY, VIRGINIA, party of the second part,
hereinafter call Board.

WITNESSETH:

IN CONSIDERATION OF the approval by the Board through its designee,
of a subdivision plat/construction plan for a project known as (Name) _____

Principal, for himself, and his heirs, personal representatives, assigns, or other
successors in interest, agrees to construct and install all of physical
improvements and facilities shown on the approved plans and profiles, and
approved revisions thereof, within _____ months of the date hereof.

PRINCIPAL FURTHER AGREES:

- To comply with all the requirements of the Culpeper County Code.
- That no construction or improvement required hereunder shall be considered complete until it is accepted by the County or State agency which is to have ultimate responsibility for its maintenance. The Principal further agrees to be responsible for all maintenance and deterioration of the physical improvements and facilities until such acceptance.
- To install all erosion controls in accordance with the approved plans. The developer further agrees to be responsible for all maintenance of such controls and to be responsible for damages on or off site resulting from failure to do so, and to provide such additional controls as reasonable in the County's discretion required to prevent damages on or off site.
- To provide a performance guaranty with surety satisfactory to the County (letter of credit / check / cash), in accordance with the County's adopted Performance Guaranty Policy, to secure performance of this agreement.
- To indemnify and hold harmless the County from all loss or damage to property, or injury or death of any and all persons, or from any suits, claims, liability or demands in connection with the physical improvements

and facilities however caused, arising directly or indirectly from construction, failure to maintain or use of such improvements prior to final acceptance.

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

PERFORMANCE GUARANTY

PRINCIPAL(S): Legal Name(s)	PLAN NAME:			
	AGREEMENT DATE:			
	PERFORMANCE DATE:			
SUM OF BOND				
	Million(s)	Thousand(s)	Hundred(s)	Cent(s)

KNOW ALL MEN BY THESE PRESENTS, that the Principal hereto recites and declares that:

1. It is held and firmly bound to the obligee Board of Supervisors of Culpeper County, Virginia (hereinafter called County), in the sum written above in lawful money of the United States of America, to be paid to the County, its successors or assigns, for the payment whereof Principal binds itself, its heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by the guaranty.

2. The condition of this guaranty is that if the Principal shall in every respect perform all of its obligations under the Agreement above, then this guaranty shall be void; otherwise, the guaranty shall continuously remain in full force and effect until discharged in accordance with its terms.

3. Default shall be deemed to have occurred on the part of the Principal if Principal shall fail to complete its obligations under the Agreement within the time set forth therein or any extensions thereof: and default shall be deemed the time occurred prior to the expiration of such period if, in the judgment of the Zoning Ordinance/Department of Development (Administrator), the Principal has:

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

4. In the event of default by the Principal, as defined in Paragraph 3, and upon written notice to the Principal, the County may elect among the procedures set forth in this Paragraph, in any combination. The County may:

- (a) Draw the full Letter of Credit/cash and take over or relet all or any part of the work not completed and complete the same for the account and at the expense of the Principal, who shall be liable to the County for the costs incurred in completion, including all items set forth in Paragraph 4(b) of the guaranty as the measure of damages; the actual cost to obligee, as evidenced by the written statement of the Administrator, shall be conclusive upon Principal as to the quantum of damages; or
- (b) Bring suit, action or proceeding to enforce the provisions of this guaranty. In such event, it is expressly agreed and understood that, regardless of the date of breach of the underlying Agreement or of the obligations of this guaranty, the measure of damages recoverable shall be the cost of completion and/or correction of the work required by the Agreement as of the earliest of the following three dates:
 - (1) When the work is actually completed and/or corrected to local and state approval and acceptance;
 - (2) Final judgment of a court of competent jurisdiction;
 - (3) Two years from the expiration of the underlying Agreement or last extension thereof.

It is further expressly agreed and understood that the measure of damages shall include in addition to the direct cost of completion or repair, expenses attributable to litigation costs, attorney's fees, procurement costs, and any cost increases arising from delay occasioned by litigation, or other proceedings necessary to enforce the provisions of this guaranty.

5. In any action or proceeding initiated in connection with this guaranty, and any and all obligations arising hereunder, the venue shall be the County of Culpeper, Commonwealth of Virginia.

6. If any one or more of the provisions of the guaranty are determined to be illegal or unenforceable by a court of competent jurisdiction, all other provisions shall remain effective.

7. Whenever notice is required, it shall be deemed given if mailed registered, return receipt requested, in the names and to the addresses given below; provided, however, that notice of change of address shall be effective if given in accordance with this paragraph. Any notice to the County shall be so given to the Administrator, 302 North Main Street, Culpeper County, Virginia 22701, or subsequent address notice of which is given as provided herein.

IN WITNESS WHEREOF, the parties hereto have caused this Performance Guaranty Agreement to be executed as of the day and year set forth above.

Type of Organization

PRINCIPAL
Legal Name and Address:

(SEAL)

Signature(s):

By: _____
Name

Title

ACKNOWLEDGEMENT OF PRINCIPAL

STATE OF _____:

COUNTY OF _____, to wit:

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

Notary Public

My Commission Expires: _____

ZONING ADMINISTRATOR

Department of Development

Culpeper County, VA

By: _____

Zoning Administrator

ACKNOWLEDGEMENT OF ZONING ADMINISTRATOR

STATE OF _____:

COUNTY OF _____, to wit:

The foregoing instrument was acknowledged before me this ____ Day of _____, 20____, by _____ and _____, Zoning Administrator of the Department of Development of Culpeper County, Virginia.

Notary Public

My Commission Expires: _____

Approved as to form: _____, Culpeper County Attorney