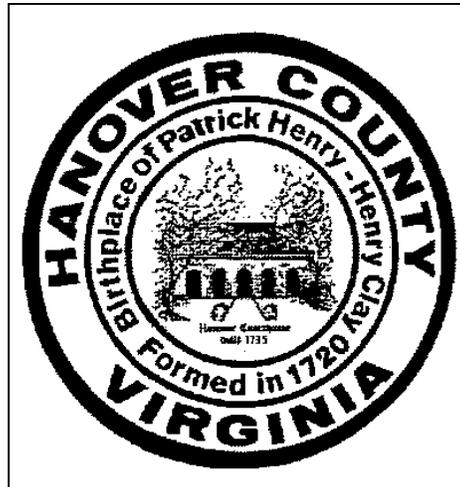


Hanover County

PERFORMANCE AGREEMENT AND SURETY PROCESS FOR SUBDIVISIONS AND SITE PLANS



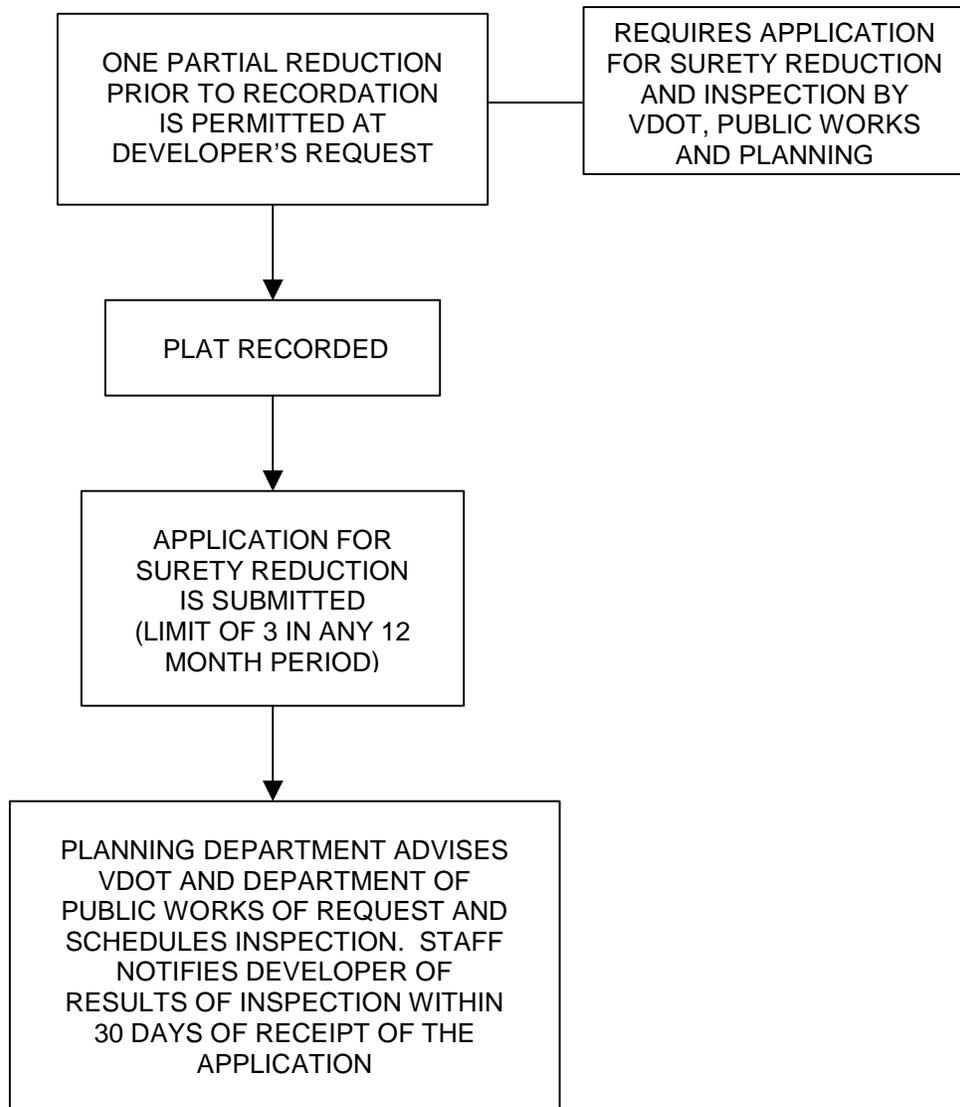
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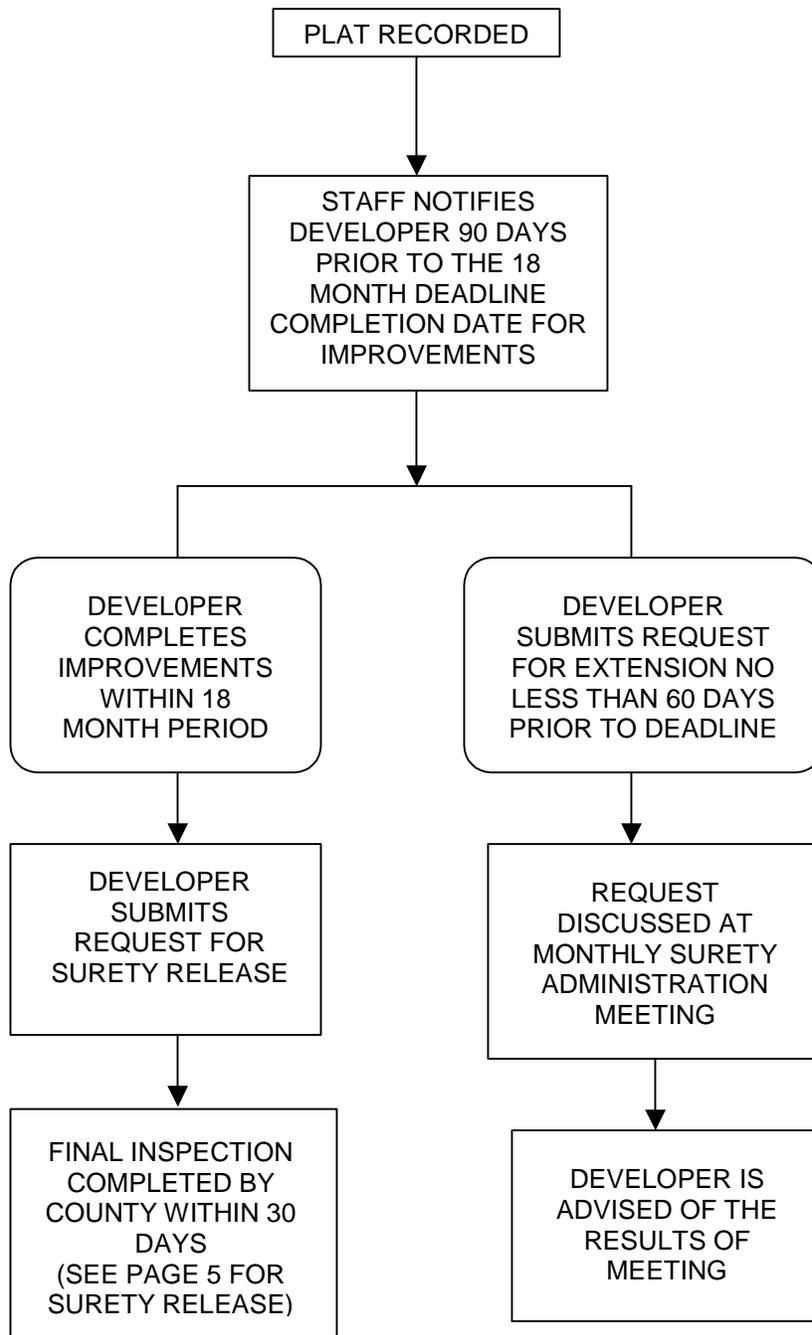
SURETY ADMINISTRATION

PARTIAL SURETY REDUCTION PROCESS



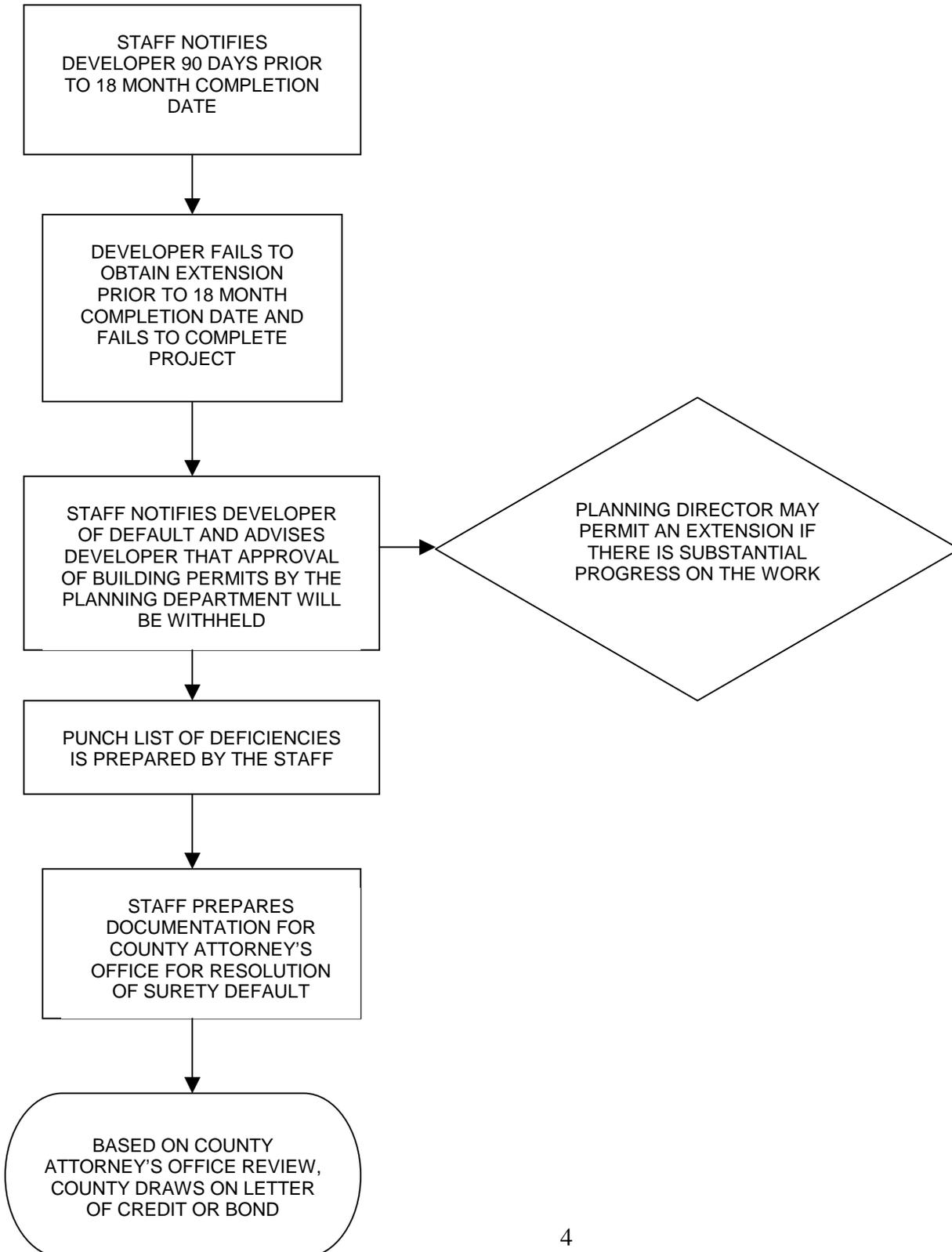
PERFORMANCE AGREEMENT

PROCESS FOR EXTENSION OF DEADLINE



SURETY ADMINISTRATION

DEFAULT PROCESS



SURETY ADMINISTRATION

RELEASE OF SURETY

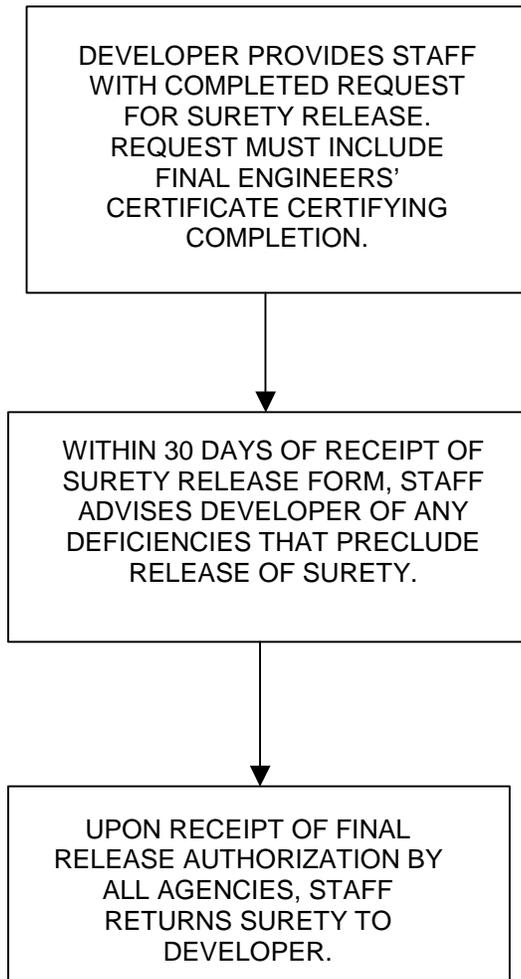


TABLE OF CONTENTS

PERFORMANCE AGREEMENT AND SURETY PROCESS FOR SUBDIVISIONS AND SITE PLANS

I. SUBDIVISION PROCESS PAGE

A.	Summary of Review, Approval and Default Process	2
B.	Partial Reduction of Surety Process	3
C.	Extension Process	5
D.	Expiration of Time Period	6
E.	Release of Surety and Agreement	7
F.	Organization Responsibilities for Construction of Improvements in Defaulted Subdivisions	7

II. SITE PLAN PROCESS

A.	Types of Site Plan Surety	9
B.	Performance Agreements	10
C.	Forms of Surety	10
D.	Procedures	11
E.	Extensions	12
F.	Return of Surety	12

BONDS AND AGREEMENT PROCESS

I. SUBDIVISION PROCESS

A. Summary of Project Review, Approval and Default Process

1. Subdivision Planner receives submission of construction plans.
2. Subdivision Planner routes plans to appropriate reviewing agencies. Established deadline for return of agency comments is forty-five (45) calendar days. Construction Plan Review Meeting is scheduled (first and third Tuesday of the month). Written approval or disapproval must be provided within sixty (60) calendar days of date of filing.
3. Written surety value estimates prepared by the Departments of Public Works and Public Utilities are returned to Subdivision Planner in conjunction with approval of the construction plans.
4. The record plat will be submitted by the developer for review by the Planning Department and other review agencies. Upon completion of this final review, the developer shall be forwarded a bond value establishment letter from the Subdivision Planner outlining necessary surety and any corrections to the record plat. In lieu of the construction of the improvements, the developer may choose to execute a Performance Agreement and provide surety in the amount provided by the Planning Department. The Planning Department can provide the necessary forms for the agreement and surety upon request of the developer. Developer is advised that the review agencies (VDOT, Public Works, Public Utilities) may require bonds, fees, and agreements, administered by the individual departments.
5. Developer submits surety and performance agreement at the time the mylars and plats are submitted for recordation. These items must be submitted concurrently. Subdivision Planner reviews documents. The performance agreement and surety document must follow the format provided by the County. Any document received in which the standard language is modified must be accompanied with written explanation for changes and will require review by the County Attorney's office. The developer is advised that alteration of the standard language will require extra time in the review of the documents. Approved documents will be forwarded to Director of Planning for execution.
6. Principal Planner or designee shall record subdivision plat and performance agreement in Clerk's Office. Following these actions, all information shall be entered into the Master Computer File and the HTE tracking system by the Planning Department.

7. Principal Planner or designee shall review the surety status of subdivisions on a monthly basis in order to identify all surety approaching the eighteen-month completion deadline established by recordation of the plat. Ninety (90) days prior to the completion deadline (15 months after plat recordation), the Principal Planner or designee will notify the developer by certified mail of the eighteen month completion date for all public improvements established by recordation of the plat. Developer is required to respond to the completion deadline notification letter within thirty (30) calendar days by submitting an extension request or asking for final inspection. A Request for Extension Form shall be provided with the notification letter if applicable. The notification letter includes language reiterating the provision of the Subdivision Performance Agreement, which stipulates **building permits shall not be issued unless an extension is granted**. An extension request shall not be processed for subdivisions which have exceeded their eighteen-month completion period deadline except as provided for below. Under special circumstances only, the Planning Director may permit the filing of an extension request after the eighteen-month completion deadline. A special circumstance shall be defined as an unanticipated hardship such as bankruptcy, which affects the developer's ability to manage the project.
8. If no written extension request is received from the developer in response to the notification letter, and the eighteenth month completion period expires without completion of the work, the project will be found to be in default of the Performance Agreement. The developer will be notified by mail of the default status of the subdivision.
9. The developer of a project completed within the eighteen-month completion deadline, or within an extension period granted by the County Administrator, may request release of the surety by completing a Request for Surety Release application form. The request for a surety release must be submitted with a professional engineers' certificate which certifies the project has been built in substantial conformance with the approved construction plans; and, that all public drainage structures have been completed and are located within the recorded right-of-ways or County drainage easements.

B. Partial Reduction of Surety Process

The County of Hanover shall allow for one (1) partial reduction prior to recordation of the Subdivision plat. The reduction request will be used to credit the developer for work completed in order to reduce the surety amount previously established by the County during construction plan review. A site inspection, performed by the County, for road and drainage improvements as well as any proffered amenities shall be made. The inspection is not designed to determine reductions for surety for public utilities. Requests for reductions for public utility work are made directly to the

Department of Public Utilities, and the inspections are made by that department. The Department of Public Utilities will notify the Planning Department in writing of the amount by which surety may be reduced. After recordation of the plat, the developer shall be entitled to no more than three (3) partial releases in any twelve (12) month period. The process for partial reduction of surety is set forth in paragraphs 1 and 2 below:

1. Requests for Partial Reductions (Form: Application for Reduction of Surety) shall be processed within thirty (30) calendar days of receipt of a complete application. Developer provides Principal Planner or designee with an Application for Reduction of Surety requesting partial reduction. Developer **must** submit the following items concurrently *:
 - a. An estimate which calculates and certifies the percentage of bonded items completed. This estimate must bear the signature and seal of a professional surveyor/engineer.
 - b. All information requested on the Application for Reduction of Surety form
 - c. The reduction inspection fee shall be as established in the Fee Schedule adopted by the Board of Supervisors.

*The staff will review the submitted items at the time of submittal. Incomplete requests will not be accepted.

2. Principal Planner, or designee, upon receipt of all written documentation, shall advise the other review agencies of the reduction request and update the HTE tracking system to reflect submittal of the reduction request. The County's reviewing agencies shall inspect the project and forward written reduction estimates to the Principal Planner. Principal Planner shall advise developer, within thirty (30) calendar days of submittal of request of the results of the inspection. Developer will be advised of the amount of reduction and any deficiencies identified during the inspection.
 - a. Principal Planner or designee shall insure that the reduction amounts are entered in the HTE tracking system and in the Master Computer File. No reduction shall exceed eighty (80) percent of the original face value of the surety. No reduction shall be processed unless a minimum of thirty (30) percent of the work is estimated by a professional surveyor/engineer as completed. The Surety Status Form in the HTE tracking system shall reflect the reduction. Virginia Code limits required partial reductions to three (3) per twelve (12) month period.
 - b. Surety for amenities proffered and adopted by the Board of Supervisors through the rezoning process will not be released until all other improvements are completed.

C. Extension Process

1. Developer must submit a Request for Extension form no less than sixty (60) calendar days prior to deadline for completion of public improvements. This request must also include written evidence from the surety company indicating that bonding documents remain valid (including any proposed extension period) and that there has been no attempt to terminate said surety. Failing to file at least sixty (60) days prior to the deadline will result in the rejection of the extension request and initiation of the default process.
2. Extensions of time may be granted by the County Administrator, or his designee after consideration of the following criteria:
 - a. Requirements of Title II, Section 5-6-1.b. of the Hanover County Subdivision Ordinance:
 1. The needs of the occupants of residences in the subdivision for safe and convenience access to their residences;
 2. Deterioration of the roads, drainage, and other improvements completed or partially completed;
 3. The season of the year and the type of work which remains to be completed; and,
 4. The number of residences occupied and the eligibility of the facilities for acceptance by the appropriate State or local agency.
3. The Principal Planner shall be responsible for providing a recommendation to the County Administrator, or his appointed designee, to approve or disapprove an extension request. The extension request will be discussed at the next available Bond Committee meeting after agency review has been completed. Meetings are held the first Tuesday of every month. The Bond Committee shall consist of the following:
 - a. Deputy County Administrator or designee
 - b. Director of Planning or designee
 - c. Principal Planner or designee
 - d. Deputy Director of Planning or designee
 - e. Director of Public Utilities or designee
 - f. Director of Public Works or designee

D. Expiration of 18 month Completion Period and Default Process

1. If the developer determines the required improvements can not be completed within 18 months, an extension must be requested as outlined in Section C above. The subdivision will be considered to be in default if the applicant fails to complete the required improvements or fails to provide an application for an extension of the performance deadline within the required time period for response. Building Permits shall not be issued in the defaulted Subdivision. A certified letter is mailed to the developer notifying same of default. A copy of the letter is also forwarded to the bonding company or financial institution.
2. The Planning Director may permit the developer to file a request for Extension of Performance Agreement after the expiration if it appears there is substantial progress on the part of the developer to complete the project. If there is no such effort on the part of the developer to complete the improvements, the Planning Director will direct the staff to begin the process to obtain the available funds.
3. The review agencies will provide the Principal Planner with a final punch list. The punch list shall consist of deficiencies previously noted through the inspection process. Where no inspection has been requested, review agencies will be responsible for inspecting the project and preparing a final punch list. The punch list, with estimated costs of completion, including administrative and procurement costs, shall be required within fifteen (15) working days of the request.
4. If security is in the form of a **cash bond** or **letter of credit** the Principal Planner shall draw on available funds.
5. If security is in the form of a **performance bond (corporate surety)**, the Principal Planner shall notify County Attorney of default for which funds are not available and provide the following information in order to resolve the bond default status:
 - a. Name of Development
 - b. GPIN reference
 - c. Required date of completion
 - d. Any extensions
 - e. List of bonds, principals, and surety companies and indicate the nature of improvements secured by each document

- f. Copies of all approval letters and warning letters
 - g. Copy of Performance Agreement
 - h. List of incomplete improvements and estimate of cost to complete, including administrative expenses and procurement costs
 - i. Request that available funds be collected by the County Attorney
6. Principal Planner shall notify County Administration upon final disposition of default case.

E. Release of Surety and Agreements

- 1. Developer shall provide Principal Planner or designee with a completed Request for Surety Release application. The developer must include a Final Engineers' Certificate signed and sealed by professional Engineer or Surveyor which certifies the proffered amenities have been completed, and that the project has been constructed in substantial conformance with the approved construction plans. Additionally, the certificate must include language that certifies the public drainage structures are located within recorded rights-of- ways or the County drainage easements.
- 2. Principal Planner or designee shall advise the other review agencies of the request for surety release and update the County's HTE tracking system to reflect submittal of the request. Principal Planner shall advise developer within thirty (30) calendar days of any deficiencies that will not permit release of the surety.
- 3. Upon receipt of all final release authorizations by the reviewing agencies (including the Virginia Department of Transportation), Principal Planner shall return original surety to the developer.
- 4. Principal Planner or designee shall modify Master Computer File and HTE tracking system to reflect completion of the project. Surety Status Form completed to reflect release.

F. Organizational Responsibilities for Construction of Improvements Upon Receipt of Defaulted Surety

- 1. Defaulted Surety -Administrative Phase

- a. Planning Department receives the proceeds from defaulted bond and requests the Treasurer to deposit funds in the Escrow Fund where it will earn interest.
- b. If the estimated project cost, including administrative recovery, is less than the escrow balance, including projected interest earned, then the Department of Public Works shall prepare an appropriation request and the construction completion project is awarded in compliance with County policy then in effect.
- c. As with any other capital project, expenditures and purchase orders are processed; however, all such expenditures, purchase orders and reappropriations must be approved by the Department of Public Works.
- d. Upon completion of the project and final approval by Planning, Public Works, and Public Utilities, administrative costs (25%) will be determined for the applicable project. These costs will be charged to the project and recorded as recovered costs in the General Fund upon preparation of an inter-departmental transfer (IDT) form from Public Works.
- e. A final cost detail of the project will be prepared by the Department of Public Works and reviewed by Finance. Upon review by Finance, a payment voucher will be prepared by the Department of Public Works to remit unencumbered funds, if any related to the project back to the developer.

If estimated project cost, including administrative recovery, is greater than escrow balance, including projected interest earned, then a staff recommendation is made to the Board on how to proceed with the project construction and funding. Upon obtaining sufficient appropriation, the project will proceed in accordance with Step C.

2. Defaulted Surety - Construction Phase

- a. The Department of Public Works shall administer construction phase activities. This shall include the following:
 - 1) Revision, if necessary, of construction plan documents.
 - 2) Preparation of necessary bid documents.

- 3) Administer the work in accordance with Purchasing Department procedures, for projects for which County assumes completion responsibilities.
- 4) Department of Public Works shall oversee project completion and process payments for completed work or portions of work. The Department of Public Works, Department of Public Utilities, and Planning Department shall inspect and accept all improvements. Acceptance letters shall be forwarded to the Principal Planner. "An as-built" plan shall be required by the Department of Public Works and the Department of Public Utilities to reflect work and Department of Public Works shall distribute to all affected agencies.
- 5) The Department of Public Works shall use available funds and otherwise make arrangements for final acceptance by the Virginia Department of Transportation and Department of Public Utilities.

II. SITE PLANS

A. Types of Surety

The Planning Department requires surety for site landscaping and/or paving improvements for developments, to guarantee that required work is completed, prior to an issuance of a certificate of occupancy. Bonds, fees, and agreements may also be required by other review agencies (VDOT, Dept. of Public Works, Dept. of Public Utilities) and will be administered by the individual departments. Surety shall be required by the Planning Department for landscaping and paving in the following instances:

1. Landscaping Completion Surety

If the landscaping required by site plan or other approval cannot be installed or completed prior to Certificate of Occupancy issuance for a project, due to weather or other hardship, a performance bond (Landscape Completion Bond) shall be provided. The bond shall be posted in an amount sufficient to cover the cost (materials and installation) of the required landscaping and shall not exceed a period of six months.

2. Landscaping Maintenance Surety

Prior to issuance of the Certificate of Occupancy, or when the terms of the landscaping completion performance agreement have

been satisfied, a maintenance bond equal to twenty-five (25) percent of the cost of landscaping (materials and installation) shall be posted with the Planning Department to ensure the landscaping was installed properly and remains healthy. The bond can be released at the end of one year, if the landscaping is in compliance with the approved landscape plan and is in healthy condition.

3. Paving Surety

If paving for a project cannot be installed or completed prior to issuance of the Certificate of Occupancy, due to weather or other hardship, the developer shall provide surety for the completion of the improvements. The Department of Public Works must approve the request to bond the improvements; however, the Performance Bond (Completion Bond) shall be posted with the Planning Department. The bond shall not exceed a period of six months.

B. Performance Agreements

A performance agreement, signed by the developer, which guarantees performance of landscaping and/or paving must be submitted with the surety. The Performance Agreement shall be obtained from the Planning Department. A separate performance agreement shall be executed for each obligation; that is, one performance agreement for landscaping, and a separate performance agreement for paving. A new performance agreement shall be executed if the obligation changes; that is, new performance agreement for landscape maintenance, versus landscape completion. The developer must use the performance agreement form as provided by the Planning Department. Any document received in which the standard language is modified must be accompanied with written explanation for changes and will require review by the County Attorney's office. The developer is advised that alteration of the standard language will require extra time in review of the documents.

C. Forms of Surety

A form of surety must be submitted to guarantee that the developer will complete the required work. The Planning Department holds sureties for landscaping and paving, in addition to subdivision improvements referenced above. The following forms of surety may be accepted: cash bond, letter of credit or surety bond. The developer must use the bond forms as provided by the Planning Department. Any document received in which the standard language is modified must be accompanied with written explanation for changes and will require review by the County

Attorney's office. The developer is advised that alteration of the standard language will require extra time in review of the documents.

D. Procedures

Performance agreements and sureties must be submitted and approved by the Planning Department prior to the issuance of a certificate of occupancy. The developer, or his agent, must contact the Planning Department and request the appropriate forms at least one week prior to the request for the certificate of occupancy. Completion bonds may be taken for landscaping or paving, in the event that the work cannot be completed because of seasonal and weather related constraints. Completion bonds are held for six months. At the end of this time period, the work must be completed. Upon completion of the landscaping, the completion bond must be replaced with a one year Maintenance Bond.

1. Landscaping:

Completion bonds may be posted for up to a six-month period, if plantings cannot be completed prior to issuance of the certificate of occupancy. The landscape completion bond shall be for the total amount of landscaping and installation to be provided on site. An executed contract from the landscape contractor must be submitted with the performance agreement and surety, to verify surety amount. The surety amount must be approved by the Planning Department.

2. Landscape Maintenance Bond:

Once the landscaping is completed per the approved landscape plan, a one-year maintenance bond is required. This bond, for 25% of the cost of landscaping materials and installation labor, will be held for one year. A receipt or executed contract from landscape contractor must be submitted with the performance agreement and surety, to verify surety amount. If a completion landscape bond is being held, this bond can be reduced 75% with the remainder to be held for an additional year as the maintenance bond. A new performance agreement must be executed for the maintenance bond amount. After one year, a landscape inspection will be performed and if all landscape is installed and in healthy condition, the surety released.

3. Paving Surety:

If, due to seasonal and weather related constraints, paving cannot be completed prior to the issuance of the certificate of occupancy, the developer may post a Performance Agreement guaranteeing completion of the improvements within a six-month period. This

request shall be approved by the Department of Public Works prior to submittal of the Performance Agreement. An executed contract from the paving contractor must be submitted with the performance agreement and surety in order to verify surety amount.

E. Extensions

An extension may be requested for both landscaping and paving work. The developer must submit an extension request form, detailing the reason why work cannot be completed as scheduled. The Planning Department may grant a thirty-day extension, after review and approval of the extension request.

F. Return of Surety

Upon full compliance with the above referenced landscape and/or paving requirements, the surety will be released. Depending on type of surety, the following will occur:

- a. Cash bond – the developer will receive a check, for his cash bond amount plus interest, after work has been completed and approved.
- b. Surety – developer will receive a letter from the Planning Department, indicating that his site is in compliance and authorizing release of surety. Developer forwards this information to his surety carrier.
- c. Letter of Credit – developer will receive original letter of credit back, with letter from Planning Department indicating that his site is in compliance and authorizing release of Letter of Credit.