

Name of Development – _____

**HANOVER COUNTY, VIRGINIA
PLANNING DEPARTMENT**

**PERFORMANCE AGREEMENT
ZONING ORDINANCE REQUIREMENTS**

THIS AGREEMENT is entered into _____, 20____, by _____

_____, ("the Developer"), and HANOVER COUNTY, VIRGINIA ("the County").

IN CONSIDERATION OF the approval by the County, through its Agent, of a subdivision plat titled " _____", by _____, dated _____, 20____, ("the Plat"), Developer for itself and its personal representatives, assigns, or other successors in interest, agrees to install all required street buffers, street trees, pedestrian paths, street lights and related landscaping ("the Improvements") identified on the Plat, the conceptual plan approved with Rezoning case C-____ - ____ (Am. ____-____), the construction plans approved in connection with the subdivision, in compliance with the Hanover County Zoning Ordinance("the Requirements").

The Developer shall install the Improvements in a timely manner, as provided for in the Hanover County Zoning Ordinance.

The Developer shall maintain the Improvements in conformance with the Requirements referred to above and in conformance with approved plans and revisions. Approved plans are incorporated in this Agreement only to the extent that they meet requirements of the applicable ordinances.

If, in the opinion of the Planning Director ("the Director"), the approved plans are inadequate to ensure that installation and maintenance will be in conformance with the Requirements, the Developer, upon request of the Director, shall submit revised plans conforming to the Requirements and shall maintain the Improvements in accordance with the revisions. If in the opinion of the Director, the installation or maintenance does not conform to the plans or the Requirements, the Developer shall,

upon the Director's request, reinstall and be responsible for maintenance in accordance with the Requirements, so as to comply.

DEVELOPER FURTHER AGREES:

1. To provide and maintain security issued by a financial institution satisfactory to the County to secure performance of this Agreement. The security shall be provided and maintained in the form of a cash bond or letter of credit in an amount and with content acceptable to the Director and in a form acceptable to the County Attorney. The amount shall consist of all costs necessary to construct and complete the Improvements (based on unit prices for new construction or installation) plus ten percent (10%) of that figure for administrative costs which may be incurred by the County should the Developer fail to perform as required and the County must access the funds in the cash bond or letter of credit to complete the Improvements. Evidence of continuing validity of the security shall be provided to the County upon request. In the event the Developer is not in compliance with the Requirements on the date which is thirty days prior to the expiration of any bond or letter of credit, the Developer shall provide substitute security documents on that date, or shall be deemed to be in default and shall pay the full cost of completion of the Improvements, including any reasonable administrative costs incurred by the County.

2. The County, by written notice to the Developer of default in performance of the obligations set out in this Agreement, may terminate whatever rights the Developer may have to perform further work. The County, its employees and agents shall, in the event of default, have all rights necessary to enter the subject property for the purpose of completing the obligations or the Developer shall be responsible for the acquisition and costs of acquisition of such rights.

3. A default shall be deemed to have occurred on the part of the Developer if Developer fails to complete its obligations under this Agreement within the specified time or any extensions; or prior to the expiration of such period, if in the judgment of the Director, the Developer has:

- (a) abandoned the performance of its obligations under the Agreement; or,
- (b) renounced or repudiated its obligations under the Agreement; or,
- (c) demonstrated through insolvency, inaction, or otherwise, that its obligations under the

Agreement cannot be completed within the time allotted under the Agreement.

4. The Developer shall not be deemed to be in compliance with the terms of this Agreement unless the Developer has installed and maintained the Improvements in accordance with the

Requirements, as determined by the County. The Developer agrees to make application to the County for inspection of the Improvements to determine compliance, in accordance with procedures adopted by the Planning Director.

5. In the event of default, the Developer shall be responsible for payment of administrative costs of ten percent (10%) of the cost of construction or correction of the Improvements, in addition to the cost of construction. The cost of construction or correction shall include all functions, goods and services, and design and engineering work necessary to construct Improvements conforming to the Requirements.

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

7. This Agreement shall be administered and interpreted in accordance with the laws of the Commonwealth of Virginia. Any actions arising out of this Agreement shall be filed and maintained in the District Court or Circuit Court of Hanover County, Virginia.

8. That the purpose and effect of this Agreement is to secure the installation and maintenance of all Improvements in accordance with the Requirements. The County does not waive or modify any provision or requirement of applicable statutes, ordinances, rules or regulations by this Agreement. Any approved plan or revision referred to 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.

9. 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 required by this Agreement, however caused, including those arising directly or indirectly from performance of these obligations, or failure to perform, by the Developer, prior to final acceptance.

10. The failure or refusal of 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 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.

Any notice required by this Agreement shall be effective if given by registered or certified mail, return receipt requested, to Developer in the name and at the address given below; provided that change of address shall be effective if given in accordance with this paragraph. Any notice to the County shall be given to the Director, Planning Department, Post Office Box 470, Hanover, Virginia 23069-0470. The Developer agrees to notify the County immediately of any change of legal status or of address.

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

DEVELOPER

Legal Name(s): _____
(Print or Type) _____

Type of Organization: Individual _____ Sole Proprietorship _____
[check one] Partnership _____ Corporation: _____
Other [identify]_ _____

Telephone Number: () _____

Signature: _____(SEAL)

Name(Print or type): _____

Title: _____

Physical address of Developer (if P.O. Box address is provided above):

COMMONWEALTH OF VIRGINIA,
CITY/COUNTY OF _____, to-wit:

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

Notary Public

My commission expires: _____
Registration number: _____

DEVELOPER

Legal Name(s): _____

(Print or Type) _____

Type of Organization: Individual _____ Sole Proprietorship _____
[check one] Partnership _____ Corporation: _____
Other [identify]_ _____

Telephone Number: () _____

Signature: _____ (SEAL)

Name(Print or type): _____

Title: _____

Physical address of Developer (if P.O. Box address is provided above):

COMMONWEALTH OF VIRGINIA,
CITY/COUNTY OF _____, to-wit:

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

Notary Public

My commission expires: _____
Registration number: _____

HANOVER COUNTY, VIRGINIA

By: _____(SEAL)
Director of Planning or Designee

COMMONWEALTH OF VIRGINIA,
COUNTY OF HANOVER, to-wit:

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

Notary Public

My commission expires: _____
Registration number: _____