



SITE DEVELOPMENT PERFORMANCE BOND FORM

Know all men by these presents, that we, _____ (name), hereinafter referred to as "Principal", and _____ (surety), a corporation duly authorized as a Surety company to transact business in the Commonwealth of Virginia, hereinafter referred to as "Surety", hereto recite and declare that this Bond No: _____, executed on _____ (month and day), _____ (year) and:

1. We are held and firmly bound to Board of Supervisors of Roanoke County, Virginia, a political subdivision of the Commonwealth of Virginia, (hereinafter called the "Obligee" or the "County"), in the sum of \$_____ in good and lawful money of the United States of America, to be paid to the County, its successors or assigns, for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by this bond, and we hereby waive the benefits of our homestead exemptions as to this obligation.

2. The condition of this Bond is that if the Principal shall in every respect perform all of its obligations under the "Agreement" dated _____ (month, day, year), between _____ (name), Principal, and the County for the project known as: _____, (collectively the "Project") upon a certain tract of land in Roanoke County, more particularly described as follows:

NAME OF PROJECT: _____

PROJECT NUMBER: _____

PREPARER OF PLAN: _____

PLAN DATE: _____

RECORD OWNER(S) OF LAND: _____

with a completion date of _____ (month, day, next year) which will be one year from the date of this Agreement and is incorporated herein by reference, then this Bond shall be void; otherwise, the Bond shall continuously remain in full force and effect until discharged in accordance with its terms.

3. If the Principal shall, in the sole judgment of the County, faithfully perform each and every obligation and agreement fully and satisfactorily as set forth under the Project specifications then this obligation shall be terminated; provided, however, that such termination shall not occur until Principal or Surety has given Obligee written notice of full performance under the terms.

4. It shall be the duty of the Principal to notify the Surety of any revisions to the plans, profiles, and specifications of the Project. Unless otherwise provided for herein:

(A) Surety expressly waives any right to receive notice, review or approve any revisions to the plans, profiles and specifications referred to in the Agreement. No such revision or alteration in the work required to meet County or Commonwealth of Virginia standards shall in any way affect the obligation of the Surety under this Bond.

(B) By signature hereto, the Surety consents to any extension of time granted to the Principal, to permit performance or the obligations of the Agreement this Bond secures, whether or not Surety receives notice of same, provided such additional period shall not exceed the original period allowed for performance in the Agreement without notice to and consent by the Surety.

5. 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 the default shall be deemed to have occurred prior to the expiration of such period if, in the sole judgment of the Director of the Department of Development Services, the Principal has:

- (1) abandoned the performance of its obligations under the Agreement; or,
- (2) renounced or repudiated its obligations under the Agreement; or,
- (3) clearly demonstrated through insolvency, bankruptcy, dissolution, or otherwise, that its obligations under the Agreement cannot be completed within the time allotted under the Agreement.

6. In the event of default by the Principal, as defined in Paragraph 5 of this Bond, the Director of the Department of Development Services shall give written notice of such default to the Principal, with a copy to the Surety. Upon such default and notice, the Surety shall elect either of the following options:

(A) Within 30 days of receipt of the default notice, Surety shall pay over to the County the full face value sum of the Bond, or such lesser amount as may be specified by the Director of the Department of Development Services, in his sole discretion, and be relieved of further liability under this Bond. If this option is selected by Surety, the County will take over or re-let all or any part of the work required by the Agreement but not completed, and will complete the same to the extent of available funds. The costs and expenses of completing the work shall include all items set forth in paragraph 6(B) of this Bond. If Bond funds are not sufficient to complete work, then the County may proceed against the Principal for any difference. If there

are any funds left which are not necessary for completion of the work, the County will return this excess to Surety within 30 days after work is completed; or,

(B) Within 30 days of receipt of the default notice, Surety shall give written notice to the County that it will assume the Agreement according to its terms and provisions within 180 days of said notice, the time remaining under the Performance Agreement, or such other term as may be approved by the Director of the Department of Development Services. In the event that Surety elects this option and then fails to faithfully perform all or any portion of the work, then the County may proceed as provided in Paragraph 6 of this Bond.

7. Should Surety fail to elect either option in Paragraph 6 within 30 days of receipt of default notice, or having elected option (B), should thereafter fail to perform, then in either event the County may elect among the procedures set forth in this Paragraph, in any combination. Prior to exercising its rights hereunder, the County shall first serve written notice of its intention to proceed under this Paragraph 6 upon Principal and Surety, which shall have the effect of terminating whatever rights Principal and Surety, or either, may have to perform further work on the project. Thereafter the County may:

(A) Take over or re-let all or part of the work not completed and complete the same for the account and at the expense of the Principal and Surety, who shall be jointly and severally liable to the County for the costs incurred at completion, including all items set forth in Paragraph 6(B) of this Bond as the measure of damages; the actual cost to Obligee, as evidenced by the written statement of the Director of the Department of Development Services, shall be conclusive upon Principal and Surety as to the quantum of damages; or

(B) Bring suit, action or proceeding to enforce the provisions of this Bond. In such event, it is expressly agreed and understood that, regardless of the date of the breach of the underlying Agreement or the obligations of this Bond, the measure of damages recoverable shall be the cost of completion and/or correction of work required by the Agreement as of the earliest of the following 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 the delay occasioned by litigation, or other proceedings necessary to enforce the provisions of this Bond, and by delays by Surety under Paragraph 5(B) of this Bond.

(C) Should the County elect to complete the Project, the County shall not be bound by the Principal's approved construction plans if unforeseen conditions require the County to

deviate from the approved Project plans. Such deviations shall be reasonable with regard to costs, time, and exigency, and shall be at the sole discretion of the County. Provided, however, that the Principal will submit to the Surety, for Surety's review and approval, any such revisions that:

- (1) Add additional subdivision lots;
- (2) Grants the Principal any extensions of time beyond the original term date;
- (3) Increases the cost of the remaining construction and improvements under the Project terms by more than ten-percent (10%) of the original sum of the bond amount herein, as established by the estimate of the Principal; provided, however, that the Surety shall be in all cases conclusively bound by the estimate rendered by the Principal to the County as to the costs of such revisions. In the event that revisions are made without approval of Surety as required in this subparagraph, Surety shall be released from any liability for that part of such revision which is in excess of ten-percent (10%) of the original sum of the Bond herein; provided, however, that any such revision made without review and approval of Surety as required in this subparagraph shall not otherwise operate as a release or discharge of Surety in any way.

8. The failure or refusal of the County to take any action or proceeding to enforce any remedy, or exercise any right under the Project, acting in good faith upon the belief that the same is permitted under this Bond shall not in any way constitute a waiver by the County, nor shall it in any way release the Principal, Surety, either or both (including their respective heirs, executors, administrators, successors, and assigns), from liability under this Bond.

9. Nothing in this Bond shall be construed as creating an obligation upon the County to pay or the completion or correction of the work guaranteed under the provisions of this Bond.

10. In any action or proceeding initiated in connection with this Bond, and any and all obligations arising hereunder, the venue shall be the County of Roanoke, State of Virginia. The parties agree that the Bond shall be governed by the laws of the Commonwealth of Virginia, exclusive of its conflicts of law rules.

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

12. Approval of this Bond by the County shall be deemed acceptance without further notice to the Principal, and/or Surety.

13. All notices sent to the Principal, and Surety shall be sent to the addresses set forth herein, unless said parties send immediate written notice to the County of any changes thereto. Failure of the aforementioned parties of any such changes will be deemed a waiver of any notice requirements. Any notices to the County shall be sent by Certified Mail, return receipt

requested, addressed to the Director of the Department of Development Services, P.O. Box 29800, Roanoke, Virginia, 24018; provided, however, that any notices required by Virginia Code §49-25 shall be provided via Certified Mail, return receipt requested, to both the Chairman of the Board of Supervisors and the County Attorney at P.O. Box 29800, Roanoke, Virginia 24018; or subsequent notice of which is given as provided herein.

IN WITNESS whereof, the said _____
(Principal), and _____ (Surety) have caused this
instrument to be executed and sealed by their respective duly authorized officers this
_____ day of _____, _____.

PRINCIPAL

Type of Organization

Legal Name of Organization:

State of Incorporation

Address

Address

Authorized Signature(s):

By _____ (SEAL)

By: _____ (SEAL)

Type Name and Organization Title

Type Name and Organization Title

ACKNOWLEDGEMENT OF PRINCIPAL

State of _____

County/City of _____

I, _____, Notary Public in and for the State and County/City aforesaid, do hereby certify that _____, whose name is signed to the foregoing bond, this day personally appeared before me in my State and County/City aforesaid and acknowledged the same.

Given under my hand this _____ day of _____, _____.

Notary Public: _____ My commission expires: _____

Notary Public Printed Name: _____

CORPORATE SURETY

Type of Organization

Legal Name of Organization

Liability Limit

Authorized Signature(s):

By: _____ (SEAL)

Type Name and Organization Title

Surety: _____

Bond No.: _____

Local Insurance Company: _____

Local Insurance Contact Name: _____

Local Insurance Email: _____

Local Insurance Address: _____

ACKNOWLEDGEMENT OF CORPORATE SURETY

State of _____

County/City of _____

I, _____, Notary Public in and for the State and County/City aforesaid, do hereby certify that _____, whose name is signed to the foregoing bond, this day personally appeared before me in my State and County/City aforesaid and acknowledged the same.

Given under my hand this _____ day of _____, _____

Notary Public: _____ My commission expires: _____

Notary Public Printed Name: _____

Accepted:

BOARD OF SUPERVISORS OF ROANOKE
COUNTY, VIRGINIA

Approved as to the Amount of the Bond:

Approved as to Form:

Tarek Moneir,
Director of Development Services

County Attorney's Office