



PERFORMANCE AGREEMENT

This Agreement, made and entered into this ___ day of _____, 20____, by and between

_____ (hereinafter called "Developer"); and

THE CITY COUNCIL OF THE CITY OF CHARLES TOWN, JEFFERSON COUNTY, WEST VIRGINIA,
a body politic (hereinafter called "Council").

WHEREAS, in consideration of the approval by the City of the plat, plans, and profiles of the Site Plan known as " _____ " designated as application number _____, and any and all revisions thereof however such revisions may be re-designated (the "Plans"), and the City not requiring the following work to be completed prior to the approval of the said Site Plan, the Developer, its successors and assigns agrees to complete the following work within _____ months from the date hereof:

1. To construct all physical improvements as shown on the approved Plans and in accordance with applicable provisions of the City of Charles Town Subdivision and Zoning Ordinances governing such Plans (with Ordinances to take precedence over Plans in the event of conflict), including, but not limited to, the placement of survey monuments, the construction of an adequate storm drainage and storm water management system both on the subject property and on adjacent properties as needed, the construction of vehicle and pedestrian travel ways in accordance with current standards of the City, and the submission of as-built plans for all such improvements; and
2. To provide adequate supervision on the project site during the installation of all required improvements and a responsible superintendent or foreman together with one (1) set of approved Plans on the project site at all times when work is being performed; and
3. To construct the improvements in such a manner that they will be reasonably acceptable to the applicable property owners' Association or such other entity that will be responsible for the permanent operation and maintenance of the improvements, to make prompt application to the City and the Association or such other entity for acceptance of such improvements, and diligently to pursue and carry out all actions reasonably necessary to achieve such acceptance; and
4. To maintain dust control on the project site at all times; and
5. To provide for the adequate control of erosion and sedimentation by temporary and permanent control practices and measures which will be implemented during all phases of clearing, grading, and construction; and
6. To provide and maintain convenient, safe, unobstructed, all-weather access to all those premises which are occupied by owners or occupants other than the Developer or its agents, until such premises are accessible via travel ways that have been built in accordance with the Plans as approved by the City and accepted for permanent maintenance and operation by the said Association or other entity and promptly to repair any deterioration or damage to completed work for which partial but not complete reduction in the amount of the security has been approved; and
7. To install all traffic warning and regulatory signs and devices required by the approved Plans during construction and to maintain said signs and devices in an operable condition until the (a) travel-ways have been accepted for maintenance and operation by the said Association or other entity or the subsequent owners of all the property abutting the travel-ways or (b) City is otherwise satisfied

Form: Performance Agreement

regarding the provisions for permanent maintenance. All traffic signs shall be kept in proper position, clean, and legible at all times. Damaged signs shall be replaced immediately. Special care shall be taken to see that weeds, shrubbery, construction materials, and snow are not allowed to obscure the face of any sign; and

8. To maintain control on the project site at all times so that mud is not tracked out of the project by vehicle tires and deposited on adjacent streets of the state system, or such other travel ways as may be adjacent to the project site; and
9. To completely control and prevent any untreated stormwater from discharging from any stormwater management facility installed or constructed on the property. Stormwater management construction inspection shall utilize the final approved plans and specification for compliance. In addition, the inspection shall comply with Section 1334.02, Erosion and Sediment Control Standards.

It is agreed and understood that final approval of completed work can only be given by the Subdivision Administrator of the City of Charles, Jefferson County, West Virginia, after inspection by the staff of the City of Charles Town or a Professional Engineer.

It is agreed and understood that in the event the Developer shall default in its obligations under this Agreement and it becomes necessary for the City to institute legal proceedings to enforce compliance with said obligations or to obtain reimbursement for costs incurred in fulfilling said obligations on behalf of the Developer, the Developer shall pay all reasonable attorney's fees and all other costs that may reasonably be incurred.

Developer hereby provides security in the form of a **cash escrow** deposit in the amount of \$ _____, which funds are to be made available to the City upon default or breach of any of the terms and conditions of this Agreement by the Developer. The said deposit is delivered herewith by certified check or cashiers check (issued by a bank satisfactory to the County), receipt of which is hereby acknowledged by the City. Such amount shall be placed in an escrow account with the City Accounting Manager until drawn upon by the City or returned to Developer as provided herein and in the Bonding Policy of the City of Charles Town, West Virginia. All interest accruing on this account shall be paid to the same party to whom the principal is paid, except that, in any event, five percent (5%) of any interest accrued may be retained by the Treasurer to cover the cost of administering the account. The Developer hereby ratifies and reaffirms its agreement that the said funds deposited as cash escrow are available to the City on default of this Agreement. This paragraph shall not be construed in any manner as a waiver of any right of the City to enforce the obligations of this Agreement against the Developer or its successors and assigns.]

[OR]

Developer hereby provides security in the form of a **[Letter of Credit] [Corporate Surety Bond]** in the amount of \$_____, which funds are to be made available to the City upon default or breach of any of the terms and conditions of this Agreement by the Developer. Such [Bond] [Letter of Credit] Numbered_____ is attached hereto and made a part hereof, and the Developer hereby ratifies and reaffirms its agreement that the said funds represented by the [Bond] [Letter of Credit] are available to the City on default of this Agreement. This paragraph shall not be construed in any manner as a waiver of any right of the City to enforce the obligations of this Agreement against the Developer, its successors and assigns.]

If the [Bond] [Letter of Credit] provided to the City pursuant to the preceding paragraph becomes not an acceptable form of surety or security, whether as a result of the failure of the issuing [Bank] [Surety Company] to achieve and maintain the rating required by the City's duly adopted Bonding Policy or as a result of any other failure of such [Bond] [Letter of Credit] to satisfy any of the other criteria established by said Bonding Policy for acceptable forms of surety or security, then the Developer shall, upon request of the Subdivision Administrator, promptly provide a substitute surety or security satisfactory to the City. Failure of the Developer to furnish such substitute surety or security within sixty (60) days after the Administrator mails such request to the Developer by certified mail with return receipt requested shall constitute a default and a failure to perform in accordance with this Agreement and a failure to discharge its obligations under this Agreement, such that the City may, thereafter, without further notice, call upon such [Bond] [Letter of Credit] for payment in accordance therewith.

The undersigned warrants that this Agreement is made and executed pursuant to authority properly granted by the [partnership agreement] [charter, bylaws and action of the Board of Directors] [articles of organization, operating agreement or majority vote of the members] of the Developer.

IN WITNESS WHEREOF, the Developer has caused its name and seal to be affixed hereto, by _____, its duly authorized representative.

[PRINT NAME OF PERSON SIGNING FOR DEVELOPER]

Attorney

Developer: _____

[TYPE OR PRINT NAME OF DEVELOPER]

By: _____(SEAL)

[SIGNATURE]

Title: _____

[TYPE OR PRINT]

STATE OF WEST VIRGINIA
COUNTY OF _____, to wit:

I, the undersigned Notary Public, in and for the jurisdiction aforesaid, do hereby certify that _____ as _____ of _____

_____, whose name is signed to the foregoing Agreement, appeared before me and personally acknowledged the same in my jurisdiction aforesaid.

GIVEN under my hand and seal this ____ day of _____, 20__.

My commission expires: _____

Notary Public

Notary Registration Number: _____

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the City has caused this Agreement to be executed, under seal, in its behalf, and its seal affixed.

THE CITY COUNCIL OF
CHARLES TOWN, WEST VIRGINIA

APPROVED AS TO FORM:

By: _____ (seal)

Name: _____

Title: _____

STATE OF WEST VIRGINIA

COUNTY OF _____, to wit:

I, the undersigned Notary Public, in and for the jurisdiction aforesaid, do hereby certify that _____ as, on behalf of the CITY COUNCIL OF THE CITY OF CHARLES TOWN, WEST VIRGINIA, whose name is signed to the foregoing Agreement, appeared before me and personally acknowledged the same in my jurisdiction aforesaid.

GIVEN under my hand and seal this ____ day of _____, 20 ____.

My commission expires:

Notary Public: _____

Notary Registration Number:
