

THE TOWN OF OCCOQUAN
314 Mill Street, P. O. Box 195, Occoquan, Virginia 22125
703-491-1918 • 703-491-4962 (Fax)



**PERFORMANCE AGREEMENT
EROSION AND SEDIMENT CONTROL**

THIS PERFORMANCE AGREEMENT (“Agreement”), is made this ___ day of _____, 20____, by and between _____ (“Developer”), and the Town of Occoquan (“Town”).

WITNESSETH:

WHEREAS, Developer, desires approval of a subdivision plat, site plan or construction plan for a project known as: _____ having Plan Number _____ (“Approved Plan”), which Approved Plan does include provision of siltation and erosion control measures as required by the Policies and Ordinances of the Town of Occoquan and the Commonwealth of Virginia; and

WHEREAS, Town has determined the cost of the aforesaid siltation and erosion control measures to be _____ (\$ _____); and

WHEREAS, Town desires to ensure the installation, maintenance and adequate performance of such control measures;

NOW, THEREFORE, for and in consideration of the foregoing premises, the following terms and conditions, and in further consideration of the approval of the aforesaid plans by Town and issuance of permits for the work proposed to be done as shown on the Approved Plan within ___ months of the date of this Agreement (“Performance Agreement Expiration Date”), the parties agree as follows:

1. Developer has provided guarantee funds to Town in the form of one of the following:

a. Cash deposit with the Town of Occoquan, receipt # _____

b. Letter of Credit

Name of Institution: _____

Letter of Credit Number: _____

c. Performance Bond

Name of Surety: _____

Town Bond Number: _____

2. If the parcels covered by the Approved Plan, or any parcels adjacent to or downstream therefrom, have been cleared, used, maintained or impacted by the Developer's work in violation of the Town or State Erosion Control laws and regulations, the Town shall have the right to utilize the guarantee funds and to enter upon the Developer's property or any property adjacent or downstream therefrom and construct such measures or do such other work as may be necessary to prevent further erosion or siltation and to remedy

any outstanding violations of Town or State Erosion and Sediment Control laws and regulations provided that the Town shall first give notice in writing to the Developer or his superintendent of its intent so to do.

3. In the event that measures for the control of siltation and/or erosion have been constructed, but fail, through overload and/or inadequate maintenance, to perform the function for which they were intended, Town shall have the right to utilize the guarantee funds and enter to perform such reconstruction or maintenance as may be necessary to restore performance in accord with the Approved Plan, or approved revisions thereof, upon giving notice in writing to Developer or his superintendent of its intent so to do.

4. In the event there occurs siltation and/or erosion from the property covered by the Approved Plan in sufficient quantity adversely to affect downstream drainage, or travel on any street, road, highway or other public way, then Town shall have the right to utilize the guarantee funds and take such steps as may be necessary to restore functions to the affected drainage or travelway.

5. In the event Town performs work of any nature, including labor, use of equipment, and materials, under the provisions of paragraphs 2, 3 or 4 above, either by force account or contract, the Town shall provide an invoice to the Developer.

6. In the event the Town draws on any guarantee funds, Developer agrees to deposit within 10 days of such disbursement, an amount sufficient to restore the guarantee funds to their original balance. Failure to make such deposit shall result in the suspension of all building permits associated with the Approved Plan.

7. It is expressly agreed by all parties hereto that it is the purpose and intent of this agreement to ensure the installation, maintenance, and performance of measures provided for on the Approved Plan or revisions thereof or as required by Town or State Erosion and Sediment Control laws and regulations, for the control of siltation and erosion, and for the restoration of function of facilities for drainage or vehicular travel if such facilities are adversely affected in their function by siltation or erosion from the property that is the subject of such plans. A subsequent maintenance bond or other form of guarantee may be required.

8. The full or partial release of any guarantee funds shall be in accordance with state law.

9. The permanent mailing address of the Developer shall be included in this Agreement and it is expressly agreed hereto that Town shall be notified not less than 10 days prior to Developer changing its address.

10. The posting of a bond or other form of guarantee shall not in any way limit the liability of Developer in the event of a breach of this Agreement by Developer.

This Agreement shall be signed by an authorized individual or individuals who has the legal authority to bind the organization signed for; such as Partners of a Partnership or Joint Venture, President or Vice President of a Corporation and Member or Manager of a Limited Liability Company. For any person signing in a representative capacity (e.g., an attorney-in-fact), notarized evidence of authority must be furnished.

IN WITNESS of which the parties have signed and sealed this Agreement.

**NO FURTHER TEXT ON THIS PAGE
SIGNATURE PAGES FOLLOW**

Town Bond No.: _____

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DEVELOPER

Type of Organization:

(e.g., Corporation, Partnership, Limited Liability Company, etc.) _____

State of Incorporation: _____

Legal Name: _____

Address: _____

By: _____ **Its:** _____

Signature

Title

Print Name: _____ **Telephone No.:** _____

Developer's E-Mail: _____

ACKNOWLEDGMENT OF DEVELOPER

STATE OF _____

COUNTY OF _____: to wit:

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

(Name of Person Signing Above)

Notary Public My Commission expires:_____

Notary I.D. Number: _____

Town Bond No.: _____

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TOWN OF OCCOQUAN

By: _____ *Signature* **Its:** _____ *Title*

ACKNOWLEDGMENT OF TOWN

STATE OF _____

COUNTY OF _____: to wit:

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

(Name of Person Signing Above)

Notary Public My Commission expires: _____

Notary I.D. Number: _____

APPROVED AS TO FORM
TOWN ATTORNEY
