

DEVELOPMENT PERFORMANCE AND MAINTENANCE AGREEMENT

TO: CITY OF DUNWOODY COMMUNITY DEVELOPMENT DEPARTMENT

PROJECT NAME: _____

DEVELOPMENT PERMIT NO. _____ FINAL PLAT NUMBER _____

DISTRICT: ____ LAND LOT: _____ STREET ADDRESS: _____

A final inspection of this development has been completed. This is to provide assurance that the below-signed property owner, or its administrators, executors, successors, heirs, or assigns of this development agrees to the following as a condition precedent to the approval of any applicable Final Subdivision Plat or the issuance of any Certificate of Occupancy for the development.

1. PERFORMANCE AND PERFORMANCE SURETY:

All required performance elements have been met and no performance bond is required.

All required performance elements have not been met and a performance bond is required. A detailed listing of these performance issues is attached hereto as Exhibit "A," along with the projected completion dates and a copy of the required performance surety.

2. MAINTENANCE

The owner hereby warrants to the City that all newly completed street improvements, water and sewer lines, appurtenances, stormwater infrastructure, sidewalks, stormwater facilities, wall, berms and required landscaping within the development shall be maintained in compliance with the minimum standard requirements of the City in force as of the date of this agreement, provided that this warranty shall apply only in such instances of non-compliance with such standard requirements as to which the City shall have given written notice to the property owner, or its administrators, executors, successors, heirs, or assigns on or before the date of _____, 20_____, said date being 12 calendar months from the date of development approval for all improvements listed herein.

3. MAINTENANCE SURETY

a. STREET IMPROVEMENTS AND DRAINAGE FACILITIES:

The owner agrees to furnish the City a letter of credit, or other good and sufficient surety acceptable to the City in the sum of \$_____, representing ten (10%) percent of the estimated cost of street improvements and drainage facilities, in guarantee of the faithful maintenance required under Section 2, MAINTENANCE, above.

b. LANDSCAPING (for subject facility with landscaping improvements already completed):

The owner agrees to furnish the City a Warranty Letter; in guarantee of the faithful maintenance required under Section 2, MAINTENANCE, above.

4. INDEMNIFICATION

The owner hereby agrees to indemnify the City and its agents and employees and hold the City and its agents and employees harmless from any and all damages which the City may suffer and from any and all liability, claims, including interest thereon, demands, attorney's fees and costs of defense, or judgments against it, arising from errors or omissions in the design or construction of the development or from the effects of storm water flows onto, from, or across any and all lands as a result of the development, and owner expressly agrees to defend against any claims brought or actions filed against the City where such claim or action involves in whole or in part, the subject of the indemnity contained herein whether such claims or actions are rightfully or wrongfully brought or filed. This indemnification shall commence upon the date of this agreement and shall continue in full force and effect for a period of 10 years thereafter.

5. SEVERABILITY

If any section, subsection, sentence, clause, or phrase of this agreement shall be declared or otherwise adjudged unconstitutional or void, the validity of the remaining portions of this agreement shall not be affected thereby, it being the intent of City of Dunwoody in adopting this agreement that no portion or provision of this agreement shall become inoperative or fail by reason of the unconstitutionality or invalidity of any section, subsection, sentence, clause, phrase, or provision of this agreement.

6. ASSIGNMENT OF LIABILITY

The owner hereby agrees that any assignment or transfer of the provisions of Section 4, INDEMNIFICATION, above, in whole or in part, to any successor in title or other person, shall be approved by the City of Dunwoody and recorded with the Clerk of the Superior Court of DeKalbCounty. A copy of said legal instrument, as recorded, shall be filed with the Community Development Department.

OWNER / CORPORATE REPRESENTATIVE:

Date: _____ 20 _____

Signature: Notary Public OR Corporate Secretary Signature

Print Name & Title: _____

Address: _____

(Corporate Seal) Phone:_____

DEVELOPMENT PERFORMANCE AND MAINTENANCE AGREEMENT

EXHIBIT A -LIST OF WORK TO BE PERFORMED

PROJECT NAME: _____

DEVELOPMENT PERMIT NO. _____ FINAL PLAT NO. _____

A performance bond has been posted for each of the following work, in an amount representing 110 percent of the estimated cost of construction of the required work. A copy of the cost estimate is also attached for each of the following items:

1. Bond Amount: _____ **Projected Date of Completion:** _____

Detailed description of work covered: _____

Surety Company: _____

Insurance Agent/ Attorney-in-Fact: _____

Insurance Company: _____ Address: _____

_____ Phone: _____

_____ Email: _____

2. Bond Amount: _____ **Projected Date of Completion:** _____

Detailed description of work covered: _____

Surety Company: _____

Insurance Agent/ Attorney-in-Fact: _____

Insurance Company: _____ Address: _____

_____ Phone: _____

_____ Email: _____

3. Bond Amount: _____ **Projected Date of Completion:** _____

Detailed description of work covered: _____

Surety Company: _____

Insurance Agent/ Attorney-in-Fact: _____

Insurance Company: _____ Address: _____

_____ Phone: _____

_____ Email: _____

(SAMPLE FORM -PREPARE ON COMPANY LETTERHEAD)

CERTIFICATE OF CORPORATE RESOLUTION

(ATTACHMENT "C")

I, _____, hereby certify the following:

That I am the duly elected and authorized Secretary of _____ (hereinafter referred to as the "corporation"), a corporation organized and incorporated to do business under the laws of the State of _____;

That said corporation has, through lawful resolution of the Board of Directors of the corporation, duly authorized and directed _____, in his or her official capacity as _____ of the corporation, to enter into and execute the attached document(s) referenced in the Development Performance and Maintenance Agreement prepared by the City of Dunwoody a political subdivision of the State of Georgia.

That the foregoing resolution of the Board of Directors has not been rescinded, modified, amended or otherwise changed in any way since the adoption thereof, and is in full force and effect on the date hereof.

IN WITNESS WHEREOF, I have set my hand and corporate seal, this being the _____ day of _____, 20_____.

(CORPORATE SEAL) (CORPORATE SECRETARY)

(NOTARY SEAL) (NOTARY PUBLIC)

(SAMPLE FORM -(PREPARE ON BANK LETTERHEAD))

SURETY AGREEMENT FOR PERFORMANCE LETTER OF CREDIT

(ATTACHMENT "D")

DATE: _____

SUBJECT: SURETY AGREEMENT FOR PERFORMANCE (LETTER OF CREDIT)

PROJECT NAME: _____

WORK COVERED: _____

To Whom It May Concern:

This is to advise that _____, as Surety, is holding at the request of _____, as Principal, the amount of \$_____ lawful money of the United States of America, as an assignment that the subject facility will be constructed in accordance with the City of Dunwoody regulations and further that this money will not be released until such time that we are notified in writing by the City of Dunwoody Community Development Department that the work has been properly and satisfactorily completed in accordance with the City of Dunwoody for the project executed by the Principal on _____.

This is also to advise that if the Principal should fail to perform within _____ months, this party as Surety shall be liable in payment to City of Dunwoody the amount of the cost of the needed improvements; provided, however, the cost is not to exceed the amount held as an assignment.

Sincerely,

Signature

Typed or Printed Name

Title

(SAMPLE FORM -PREPARE ON BANK LETTERHEAD)

SURETY AGREEMENT FOR MAINTENANCE LETTER OF CREDIT

(ATTACHMENT "E")

DATE: _____

SUBJECT: SURETY AGREEMENT FOR MAINTENANCE (LETTER OF CREDIT)

PROJECT NAME: _____

WORK COVERED: _____

To Whom It May Concern:

This is to advise that _____, as Surety, is holding at the request of _____, as Principal, the amount of \$ _____, lawful money of the United States of America, as an assignment that the subject facility will be maintained in accordance with the City of Dunwoody regulations and further that this money will not be released until such time that we are notified in writing by the City of Dunwoody Community Development Department that the work has been properly and satisfactorily completed in accordance with the Development Performance and Maintenance Agreement for the project executed by the Principal on _____.

This is also to advise that if the Principal should fail to perform within _____ months, as stipulated in the said agreement, this party as Surety shall be liable in payment to the City of Dunwoody the amount of the cost of the needed repairs providing, however, the cost is not to exceed the amount held as an assignment.

Sincerely,

Signature

Typed or Printed Name

Title

(SAMPLE FORM-PREPARE ON COMPANY LETTERHEAD)

SURETY AGREEMENT FOR MAINTENANCE BOND

(ATTACHMENT "F")

KNOW ALL MEN BY THESE PRESENTS: That we _____ of _____ County, State of _____ as Principal and _____ as Surety, are held and bound unto the City of Dunwoody, Georgia in the sum of \$ _____, lawful money of the United States of America, for the payment whereof well and truly to be made, we bind ourselves, our heirs, executors, successors and assigns, jointly and severally, firmly by these presents.

The condition of the foregoing obligation is such that

WHEREAS, said final plat is to be approved by the Director of the City of Dunwoody Community Development Department subject to ratification by the City of Dunwoody, under the terms that a bond is required of said Principal and good and sufficient surety payable to the City of Dunwoody and conditioned that the Principal shall well and truly maintain all streets, right-of-ways, and drainage facilities shown on said Final Plat in accordance with standard requirements of the City of Dunwoody in force as of the date of said approval; and

WHEREAS, the Principal has entered into a Development Performance and Maintenance Agreement with the City of Dunwoody, dated _____, _____, in which the Principal agrees and warrants, that as a condition precedent to approval of the plat subdividing certain property of the Principal entitled _____, all streets shown on said plat and all drainage facilities shall be maintained in accordance with the standards aforesaid for a period of _____ months; and

WHEREAS, this agreement shall be governed by the laws of the State of Georgia.

NOW THEREFORE, if the Principal shall well and truly perform the terms and conditions of said contract, then this obligation shall be void, otherwise, to remain in full force and effect. Upon failure of the Principal in the performance of the terms and conditions of said contract, then the Surety shall be liable in payment to City of Dunwoody of a sum not to exceed \$ _____, for the cost of completing the terms and conditions set forth under the contract entered by the Principal with the City of Dunwoody.

SIGNED, SEALED & DELIVERED THIS _____ day of _____, 20____, in the presence of:

ATTEST: PRINCIPAL: _____

Notary Public or Corporate Secretary Signature

Address: _____

Phone: _____

ATTEST: SURETY: _____

Notary Public or Corporate Secretary Signature of President or Attorney-In-Fact

Print Name and Title _____

Address: _____

Phone: _____

(SAMPLE FORM -PREPARE ON COMPANY LETTER)

SURETY AGREEMENT FOR PERFORMANCE BOND

(ATTACHMENT "G")

KNOW ALL MEN BY THESE PRESENTS: That we _____ of _____ County, State of _____ as Principal and _____, a Corporation organized under the laws of the State of _____ and duly authorized to transact business in the State of Georgia, as Surety, are held and bound unto the City of Dunwoody, Georgia as Obligee in the sum of \$ _____, the lawful money of the United States, for the payment whereof well and truly to be made, the Principal and Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has agreed to construct _____, the subject facility, which is was permitted in accordance to the City of Dunwoody regulations for Permit Number _____. This bond shall remain in full force and effect for a period of _____ months from its date of execution, and that this money will not be released until such time that we are notified in writing by the City of Dunwoody Community Development Department that the work has been properly and satisfactorily completed in accordance with the Development Performance and Maintenance Agreement for the project executed by the Principal on _____.

NOW THEREFORE, if the Principal shall well and truly perform the terms and conditions of said contract, then this obligation shall be void, otherwise, to remain in full force and effect. Upon failure of the Principal in the performance of the terms and conditions of said contract, then the Surety shall be liable in payment to the City of Dunwoody of a sum not to exceed \$ _____, for the cost of completing the terms and conditions set forth under the contract entered by the Principal with the City of Dunwoody.

SIGNED, SEALED & DELIVERED THIS _____ day of _____, 20____, in the presence of:

ATTEST: PRINCIPAL: _____

Notary Public or Corporate Secretary Signature

(Corporate Seal) Print Name and Title: _____

Address: _____

Phone: _____

ATTEST: SURETY: _____

Notary Public or Corporate Secretary Signature of President or Attorney-In-Fact

Print Name and Title _____

Address: _____

Phone: _____