

LATENT DEFECT INDEMNIFICATION AGREEMENT
PRIVATE STREETS

This Agreement, made this ____ day of _____, 20__, by and between _____ (Developer), and the Board of Supervisors of Loudoun County, Virginia, a body politic, (County), witnesseth:

WHEREAS, in consideration of the release of all of the agreement and performance bonds of _____, *{name of "Developer" as shown in the agreement & bond being released}*, dated _____, *{date(s) of the agreement & bond being released}*, by the County, the Developer, its successors and assigns, does hereby agree as follows:

1. Developer agrees that the streets, curb, gutter, drainage facilities, utilities, and other public improvements constructed as shown on the original plans and specifications, CPAP/STPL _____, approved by the County on _____, and the as-built plans and specifications, received by the County on _____ for the _____, subdivision, shall be maintained in good repair, including the correction of all defects and damages so as to keep such streets and facilities open for safe and convenient public usage for a period of fifteen (15) months beginning on the date of acceptance of this agreement by or on behalf of the Chairman of the Board of Supervisors.

2. Determination of whether all damages and defects to the streets, curb, gutter, drainage facilities, utilities, and other public improvements, have been corrected so as to return such improvement to an acceptable condition, shall be made by the Director of Building and Development, or his designated agent (Director).

3. The Developer agrees that any Surety Bond, Letter of Credit, or other form of surety which guarantees the performance of these conditions, shall remain in full force and effect until at least thirty (30) days after the end of the fifteen (15) month period as indicated in paragraph 1.

4. Developer hereby agrees to provide security in the amount of _____, in the form of Cash/Corporate Surety Bond/Letter of Credit issued by _____, which funds are to be available to the County upon default or breach of any of the terms and conditions of this Agreement by the Developer. Such Bond/Letter of Credit # _____ is attached and made a part hereof and the Developer hereby ratifies and reaffirms its agreement that such funds are available to the County on default of this Agreement. If such security is provided in the form of cash, such amount is deposited herewith in the form of a **CERTIFIED CHECK** (or cashiers check issued by a bank satisfactory to the County) payable to the County to be held by the Treasurer of the County of Loudoun as agent for the benefit of the County, and this account and all interests accruing on it shall be held by the County to be applied to the completion of the work and all obligations described in this Agreement, or to be returned

to the Applicant upon completion of such work and obligations in a manner satisfactory to the Director; provided, however, that five percent (5%) of any interest accrued upon such account may be retained by the Treasurer to cover the costs of administering the account.

This paragraph 4 shall not be construed in any manner as a waiver of any right of the County to enforce the obligations of this Agreement against the Developer, their heirs, successors, and assigns.

5. Nothing herein shall be construed so as to hold the County liable for any failure to perform or enforce the obligation of the Developer.

6. 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 County 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, Developer agrees to pay all reasonable attorney's fees and all other costs that may reasonably be incurred.

Name of Developer

By: _____(SEAL)

Title: _____

STATE OF _____
COUNTY OF _____, to wit:

I, the undersigned, a Notary Public of and for the County and State aforesaid, whose commission expires the ____ day of _____, 20____, do hereby certify that _____, whose name is signed to the foregoing Latent Defect Indemnification Agreement, this day acknowledged the same before me in my County aforesaid.

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

Notary Public

My Commission Expires: _____
My Notary Registration Number: _____

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

COUNTY OF LOUDOUN

By: _____(SEAL)
Chairman, Board of Supervisors

STATE OF VIRGINIA
COUNTY OF LOUDOUN, to-wit:

I, the undersigned, a Notary Public of and for the County and State aforesaid, whose commission expires the ____ day of _____, 20____, do hereby certify that _____, on behalf of the Chairman of the Board of Supervisors of Loudoun County, Virginia, whose name is signed to the foregoing Latent Defect Indemnification Agreement, this day acknowledged the same before me in my County aforesaid.

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

Notary Public

My Commission Expires: _____

My Notary Registration Number: _____

Please complete the below contact information in reference to the attached agreement and submit this with your completed agreement and bond packet.

Project Name: _____

Bond Number: _____

Please provide contact information for the PRINCIPAL/CO-PRINCIPAL of the bond:	Please provide contact information for the Developer/ Owner. This individual will keep the Performance Agreement/Bond current with Loudoun County:
Name:	Name(s):
Title:	Title(s):
Address:	Address(es):
Phone No:	Phone No(s):
Email:	Email(s):

Thank you for your help.
Bonds Management Team

For more Information:

Email: bonds@loudoun.gov

www.loudoun.gov/bonds

QUICK REFERENCE FOR PERFORMANCE BOND PROCESS WITH LOUDOUN COUNTY

Now that your agreement has been accepted by Loudoun County, its life has begun and may consist of Bond Maintenance prior to Bond Release.

This is only the beginning. You are not done.

Per [Facilities Standards Manual \(FSM\)](#) Section 8.302, “If construction of the subject project is not completed within the initial Performance Agreement term (12, 24, or 36 months), the performance bond amount may require *adjustment* (increase in bond amount) and subsequent *reconsideration* (new owner or surety substitution) and review by the Bond Committee”.

Until the Bond Committee recommends approval or release of the bond, the performance agreement must be extended every year with a new set of completed extension documents and a \$300.00 extension fee per year(s) extended. (See [FSM](#) Section 8.305.E for release requirements).

To keep your agreement *current* (not expired and out of default), you may need to take one or more of the following actions:

- 1) ***When would I need an Extension Agreement?*** This is the most common action that needs to be taken every year in order to keep your agreement current. Submit the required completed extension documents and a \$500.00 fee per year. Except for the 1st extension, all extensions are for one (1) year.

Please note, when extending a State Maintained Roads Agreement, a Preliminary Street Acceptance Package is also required. (See [Checklist for Preliminary Street Acceptance Package \(aka PSAP\)](#)).

Documents required:

- | | | |
|---------------------------|-------------------------|-------------------------------------|
| 1) Extension Agreement | 2) Consent to Extension | 3) Rider/Letter of Credit Amendment |
| 4) Extension Request Form | 5) Fee | |

Please note, if your agreement is not extended by the expiration date, your agreement will be in DEFAULT (No reduction, release, permits, or inspections for project will be authorized) (See Loudoun County’s website for documents/information: [LC Perf Agree Extension](#)). Per [FSM](#) Section 8.305.B, submit an extension agreement approximately sixty (60) days prior to the agreement expiration. Upcoming expiration letters are generally emailed to owner/developer ninety (90) days from the expiration date of the agreement.

- 2) ***When would I need a New Owner Substitution?*** If the ownership of the property has changed, request a New Owner Substitution.

Please note, if the original agreement is expired, the agreement is in DEFAULT. When submitting a New Owner Substitution agreement on an expired performance agreement, a \$500.00 fee is required, per year(s) in default, to bring the expired agreement current. (See Loudoun County’s website for documents/information: [LC Substitutions](#)).

Documents required:

- | | |
|--------------|--|
| 1) Agreement | 2) Bond (Preferred Collateral Discussion: Cash, Letters of Credit, Surety Bonds) |
|--------------|--|

- 3) ***When would I need a Surety Substitution?*** If the bank or surety company no longer meets the requirements of [FSM](#) Section 8.303, request a Surety Substitution. (See Loudoun County’s website for documents/information: [LC Substitutions](#))

Documents required:

- | | |
|--------------|--|
| 1) Agreement | 2) Bond (Preferred Collateral Discussion: Cash, Letters of Credit, Surety Bonds) |
|--------------|--|

- 4) ***When would I need a Reduction?*** If you have completed 30% of the improvements, request a bond reduction and submit a \$1,215.00 fee. (See Loudoun County’s website for documents/information: [LC Reductions](#)).

Documents required:

- | | | | |
|-----------------------------|-------------------------|---------|------------------------------|
| 1) Reduction request letter | 2) Bond Unit Price List | 3) Fees | 4) Geo-tech certified letter |
|-----------------------------|-------------------------|---------|------------------------------|

- 5) ***When would I need a Release?*** If improvements have been completed, request a bond release and submit a \$1,645.00 release fee and a \$185.00 fee for as-built plans. (See Loudoun County’s website for documents/information: [LC Street Acceptance / Bond Release](#)).

Documents required:

- | | |
|---------------------------|---|
| 1) Release request letter | 2) Items Requested on Public Street Acceptance OR |
| 3) Fees | Items requested on Private Street/Site Plan/Proffer Release Checklist |

If after reviewing the website links above you have further questions or need clarifications, please contact:

Contact Infrastructure Compliance Team for PSAP Questions	
Contact:	Issue:
Rick Hoffman / 703-737 8625 richard.hoffman@loudoun.gov	PSAP Submission

Contact Infrastructure Compliance Team for RELEASE and REDUCTION Questions	
Contact:	Issue:
Iona McGee / 571-258-3216 ilona.mcgee@loudoun.gov	Project Manager Assignments
Coleman Hutton / 703-737-8486 coleman.hutton@loudoun.gov	Street Acceptance Process

Contact Bonds Management Team for Extension, New Owner Substitution, or Surety Substitution Questions	
Contact:	
Michael Baggett – project names beginning with A-D	703-771-5043 / michael.baggett@loudoun.gov
Will Himel – project names beginning with E-O	703-737-8765 / will.himel@loudoun.gov
Diana Larson – project names beginning with P – Z	703-771-5345 / diana.y.larson@loudoun.gov
Bonds Information Line	703-737-8942 / bonds@loudoun.gov

COMMONLY MADE ERRORS

- The Agreement must be dated on or prior to the date of the Corporate Surety Bond or Letter of Credit.
- Application name and number must be correct and agree across all documents.
- Common Typos on the Rider/Continuation/Verification Certificate for application types (ex.: SPTL versus STPL, APAP versus CPAP).
- The Corporate Surety Bond or Letter of Credit Number must be filled in on Agreement.
- Owner of the property must be party to the Performance Agreement even if the Corporate Surety Bond is provided by a different entity or party.
- Incorrect or Missing Dates on the Consent to Extension.
- Notary Attestation cannot be before the date of the agreement.
- Signers' names must agree exactly across all documents (signature block and notary).
- Corporate Surety Bond Number must be on the upper left corner of the face of the bond and in the upper right corner of each subsequent page of the bond.
- Power of Attorney should be dated the same date as the Consent to Extension and/or the Bond Rider.
- Not using the EXACT template language if re-typed.