

CITY OF COLUMBUS, INDIANA
SUBDIVISION IMPROVEMENT AGREEMENT
(Performance Security for Public Improvements)

Section A - General Provisions

1. **Parties:** The parties to this subdivision improvement agreement ("the agreement") are as follows:

_____ ("the developer")
(developer's complete business name)

and

the City of Columbus, Indiana ("the city").
2. **Effective Date:** The effective date of this agreement will be the date that this agreement is signed and accepted by the City of Columbus Board of Public Works & Safety ("the board"). In no instance shall the board accept an agreement which has not previously been signed by the developer.

Section B - Recitals

WHEREAS, the developer seeks permission to subdivide property within the city to be known as:

_____ ("the subdivision"); and
(complete subdivision name, including section, as titled on the final plat)

WHEREAS, the city seeks to protect the health, safety, and general welfare of the community by requiring the completion of various improvements related to the subdivision and limiting the harmful effects of substandard subdivisions; and

WHEREAS, the purpose of this agreement is to protect the city from the cost of completing subdivision improvements itself and is not executed for the benefit of materialmen, laborers, or others providing work, services, or material to the subdivision or for the benefit of lot or home buyers in the subdivision; and

WHEREAS, the mutual promises, covenants, and obligations contained in this agreement are authorized by state law and the city's Subdivision Control Ordinance;

THEREFORE, the parties hereby agree as follows:

Section C - Developer's Obligations

1. **Improvements:** No improvements in this subdivision shall be commenced before this agreement has been executed. After the agreement is executed, the developer will construct and install, at his/her own expense, those on-site subdivision improvements listed in Exhibit A attached hereto and incorporated herein by this reference ("the improvements"). Prior to its incorporation into this document, Exhibit A shall be reviewed by the City Engineer ("city engineer") for verification that the list of improvements and estimated costs are acceptable.

The developer's obligation to complete the improvements will arise upon signing of this document by the City, will be independent of any obligations of the City contained herein, and will not be

conditioned on the commencement of building construction in the development or sale of any lots or improvements within the Subdivision.

2. **Security:** To secure the performance of their obligations under this contract, the developer will deposit with the city on or prior to the effective date, a financial guarantee acceptable to the city. The guarantee for this subdivision consists of the following:

A financial guarantee from:

_____ (full name of financial institution providing the security)

in the amount of:

\$ _____ (security amount)

This amount being 125% of the estimated construction cost of the public improvements. The financial guarantee is Exhibit B attached to and incorporated into this agreement.

The developer shall be responsible for maintaining the required performance security until the public improvements are accepted by the city. The developer's responsibility includes providing renewed or replacement security to the city a minimum of 30 days prior to the expiration of any existing security for the subdivision. Any renewed or replaced security shall be accompanied by an updated cost estimate, upon which the city engineer may base a request to increase in the security amount. In no instance shall this obligation be interpreted as prohibiting the reduction of security as improvements are completed consistent with the provisions of the Subdivision Control Ordinance and the policies of the city engineer and the board.

3. **Standards:** The developer will construct the improvements according to the construction plans for the subdivision approved by the city engineer as consistent with the Subdivision Control Ordinance and other adopted requirements of the city. The construction plans are attached to and incorporated in this agreement as Exhibit C.
4. **Maintenance Guarantees:** The developer shall warrant that the improvements, each and every one of them, will be free from defects for a period of time (the "maintenance period") specified by the board, at the time the city accepts the improvements. The developer shall provide maintenance guarantees in the amount of 25% of the value (indicated on Exhibit A as the construction cost) of the completed improvements. The maintenance period shall generally equal the 1 year minimum established by the Subdivision Control Ordinance. However, based on a recommendation from the city engineer in response to unique site and/or construction circumstances, the board may specify a maintenance period of up to 5 years. The developer shall be responsible for maintaining the required maintenance guarantees for the time period specified by the Board. The developer's responsibility includes providing renewed or replacement guarantees to the city a minimum of 30 days prior to the expiration of any existing guarantees. These guarantees shall run to the board or to the city utilities department, as applicable.
5. **Preconstruction Meeting:** Prior to beginning any improvements, the developer and the licensed professional responsible for the improvement plans shall meet on the site with representatives of the city engineer and the city utilities department to discuss the installation of improvements and inspection schedules.

6. **Commencement and Completion Periods:** The developer will complete the improvements, each and every one of them, within 2 years from the effective date of this agreement (the "completion period"). The developer will not cease construction activities for any period of more than 60 consecutive days (the "abandonment period") without written authorization to do so from the city engineer. The developer shall notify the city engineer at least 48 hours before commencing any improvements, and shall notify the city utilities department at least city 48 hours before commencing any sewer or water improvements. Extensions to the completion period may be granted by the city engineer consistent with the provisions of the Subdivision Control Ordinance.
7. **As-Built Plans:** After completion of all the improvements and prior to the acceptance of the improvements by the board, the developer shall provide the city 3 copies of drawings showing the actual locations of all installed street system improvements, sanitary and storm sewer improvements, water mains, fire hydrants, valves and subs, monuments and markers, street signs, street lights, drainage facilities and other installed permanent improvements. These as-built plans shall be certified by a registered professional engineer or land surveyor. One copy of these plans shall be submitted to the city engineer, one copy to the city utilities department, and one copy shall be submitted to the city fire department.
8. **Certification:** The developer shall be responsible for the stakeout, inspection, and certification of the completion of the improvements in accordance with Exhibit C. The improvements will not be accepted by the board until such certification has been made.
9. **Compliance with Law:** The developer will comply with all relevant laws, ordinances, and regulations in effect at the time of this agreement when fulfilling his obligations under this agreement.

Section D - City's Obligations

1. **Inspection and Certification:** The city will inspect the improvements as they are constructed in accordance with the installation and inspection schedule referred to in Section C, item 5 above.
2. **Notice of Defect:** The city will provide timely notice to the developer whenever inspection reveals that an improvement does not conform to the standards and specifications shown on Exhibit C or is otherwise defective. The developer will have 30 days from the issuance of such notice to cure or substantially cure the defect. The city may not declare a default under this agreement during the 30-day cure period on account of any such defect unless it is clear that the developer does not intend to cure the defect. The developer will have no obligation to cure defects in or failure of any improvement found to exist after the maintenance guarantee expires.
3. **Acceptance for Maintenance:** The city may accept for purposes of maintenance only any validly certified improvement within 30 days of the developer's certification that the improvement was completed in compliance with Exhibit C. The city's acceptance for maintenance is expressly conditioned upon the presentation by the developer of a policy of insurance, where appropriate, for the benefit of the city showing that the developer owns the improvement in fee simple and that there are no liens, encumbrances, or other restrictions on the improvements unacceptable to the city in its reasonable judgment.
4. **Use of Proceeds:** The city will use funds drawn under any performance security and/or maintenance guarantees only for the purposes of completing the improvements or correcting defects or failures of the improvements.

Section E - Miscellaneous Provisions

1. **Events of Default:** The following conditions, occurrences, or actions will constitute a default by the developer during the completion period:
 - a. Developer's failure to schedule and hold the required preconstruction meeting.
 - b. Developer's failure to give the required prior notice of commencement of improvements.
 - c. Developer's failure to adhere to the agreed upon construction schedule.
 - d. Developer's failure to complete construction of the improvements within 2 years of the effective date of this agreement or obtain the necessary extensions to this time frame.
 - e. Developer's failure to cure the defective construction of any improvement within the applicable cure period.
 - f. Developer's failure to perform work on the improvements for a period of more than 60 consecutive days without prior approval.
 - g. Developer's insolvency, the appointment of a receiver for the developer or the filing of a voluntary or involuntary petition in bankruptcy respecting the developer.
 - h. Foreclosure of any lien against the property or a portion of the property or assignment or conveyance of the property in lieu of foreclosure.
2. **City's Rights Upon Default:** When any event of default occurs, the city may invoke any legal, equitable, or special remedy for the enforcement of this agreement. These remedies are cumulative in nature, except during the maintenance period, in which case the City's only remedy will be to draw funds under the maintenance guarantees.
3. **Indemnification:** The developer hereby expressly agrees to indemnify and hold the city harmless from and against all claims, costs, and liability of every kind and nature, for injury or damage received or sustained by any person or entity in connection with, or on account of the performance of work at the subdivision site and elsewhere pursuant to this agreement. The developer further agrees to aid, defend, and indemnify the city in the event that the city is named as a defendant in an action concerning the performance of work pursuant to this agreement except where such suit is brought by the developer. The developer is not an agent or employee of the city.
4. **Waiver:** No waiver of any provision of this agreement will be deemed to be, or constitute a waiver of any other provision, nor will it be deemed to be, or constitute a continuing waiver unless expressly provided for by a written amendment to this agreement signed by both city and developer; nor will the waiver of any default under this agreement be deemed a waiver of any subsequent default or defaults of the same type. The city's failure to exercise any right under this agreement will not constitute the approval of any wrongful act by the developer or the acceptance of any improvement.
5. **Amendment or Modification:** The parties to this agreement may amend or modify this agreement only by written instrument executed on behalf of the city by the board and by the developer or his authorized representative. Such amendment or modification will be properly notarized before it may be effective.
6. **Attorney's Fees:** Should either party be required to resort to litigation, arbitration, or mediation to enforce the terms of this agreement, the prevailing party, plaintiff or defendant, will be entitled to costs, including but not limited to reasonable attorney's fees and expert witness fees, from the opposing party. If the court, arbitrator, or mediator awards relief to both parties, each will bear its own costs in their entirety.
7. **Vested Rights:** The city does not warrant by this agreement that the developer is entitled to any other approval(s) that may be required by the city.

8. **Third Party Rights:** No person or entity who or which is not a party to this agreement will have any right of action under this agreement, except that if the city does not exercise its rights within 60 days following an event of default, a purchaser of a lot or structure in the subdivision may bring an action in mandamus to compel the city to exercise its rights.
9. **Scope:** This agreement constitutes the entire agreement between the parties and no statement(s), promise(s), or inducement(s) that is/are not contained in this agreement will be binding on the parties.
10. **Time:** For the purpose of computing the abandonment and completion periods and time periods for city action, such times in which war, civil disasters, natural disasters, or extreme weather conditions occur or exist will not be included if such times prevent the developer or city from performing their obligations under the agreement.
11. **Severability:** If any part, term, or provision of this agreement is held by the courts to be illegal or otherwise unenforceable, such illegality or unenforceability will not affect the validity of any other part, term, or provision, and the rights of the parties will be construed as if the part, term, or provision was never part of the agreement.
12. **Benefits:** The benefits of this agreement to the developer are personal and may not be assigned without the express written approval of the city. Such approval may not be unreasonably withheld, but any unapproved assignment is void. Notwithstanding the foregoing, the burdens of this agreement are personal obligations of the developer and also will be binding on the heirs, successors, and assigns of the developer. There is no prohibition on the right of the city to assign its rights under this agreement.
13. **Notice:** Any notice required or permitted by this agreement will be deemed effective when (a) personally delivered in writing or (b) three days after notice is deposited with the U.S. Postal Service, postage prepaid, certified, and return receipt requested, and addressed as follows:

if to the city:

City of Columbus
 Attn: City Engineer
 123 Washington St.
 Columbus, IN 47201

if to the developer:

(developer name)

(developer street address)

(developer city, state, zip code)

14. **Recording:** Either the developer or the city may record a copy of this agreement in the office of the Recorder of Bartholomew County, Indiana.
15. **Immunity:** Nothing contained in this agreement constitutes a waiver of the city's sovereign immunity under any applicable state law.

16. **Personal Jurisdiction and Venue:** Personal jurisdiction and venue for any civil action commenced by either party to this agreement whether arising out of or relating to the agreement or any exhibit attached to this agreement will be deemed to be proper only if such action is commenced in the Circuit or Superior Court in Bartholomew County. The developer expressly waives his/her right to bring such action in or to remove such action to any other court, whether state or Federal.

Section F – Acceptance

Signed and accepted by the undersigned as developer this _____ day of _____, 20____.

Signed: _____

Printed: _____

State of Indiana

SS:

County of _____

Subscribed and sworn to me this ____ day of _____, 20____.

Notary Public

My Commission expires: _____.

Signed and accepted by the City of Columbus Board of Public Works & Safety this _____ day of _____, 20____.

_____, Mayor

_____, Member

_____, Member

Attested by:

_____, Clerk-Treasurer