

ANCILLARY AGREEMENT
(Sidewalks)

THIS ANCILLARY AGREEMENT-SIDEWALKS (AGREEMENT), made this ____ day of _____, 20____, by _____ and _____ between _____, party of the first part, hereinafter referred to as “the Owner,” and the City of Suffolk, Virginia a municipal corporation, party of the second part, hereinafter referred to as “the City.”

WHEREAS, the Owner has caused to be subdivided into lots, a certain tract or parcel of land situated in the _____ Borough of the City of Suffolk, Virginia, as shown on a certain plat entitled _____, dated _____, made _____ by _____ (“Subdivision”), and has previously entered into an Subdivision Agreement with bond dated _____, (“Prior Bond”) guaranteeing the installation of physical improvements as required by the Suffolk Unified Development Ordinance (U.D.O.); and

WHEREAS, the construction of certain improvements, specifically sidewalks (“Sidewalks”), as shown on the approved development plan for the Subdivision, and as required by the above-mentioned Agreement and the U.D.O., have not yet been completed; and

WHEREAS, said Owner is willing to execute an Ancillary Agreement with surety to guarantee the installation of said Sidewalks; and

WHEREAS, the City is willing to release the Prior Bond in accordance with the terms and conditions stated herein.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH: That for and in consideration of the mutual covenants and agreements contained herein, the parties hereto agree as follows:

1. The said Owner hereby covenants and agrees that the Sidewalks will be installed within 24 months of the date of this Agreement or when seventy-five (75%) of home construction has been completed on the recorded lots, whichever comes first, as required by the Suffolk Department of Public Works, and further agrees to comply with all provisions of the U.D.O. as it relates to the subject development. The said Owner further agrees that it will provide the City with a bond or cash deposit in the amount of \$_____ Dollars (“Ancillary Bond”) to guarantee the installation of said Sidewalks for said period of time to guarantee faithful compliance with all the provisions of the U.D.O.; should the above amount not be sufficient to complete said Sidewalks, the Owner agrees to pay a sum necessary for completion to the City on demand.

2. Upon its receipt of the Ancillary Bond required by this Agreement, the City hereby agrees to the release of the Prior Bond entered into by the Owner dated _____.

3. It is mutually understood and agreed that in the event the Owner fails to complete the Sidewalks provided hereinabove within the time designated, the City may complete or cause

the same to be completed, and the Owner, as principal and/or surety, shall be jointly and severally liable to pay the City the entire cost necessary to complete said Sidewalks.

4. It is further understood by the parties to this Agreement that that in the event the Owner fails to complete the Sidewalks described hereinabove within the time designated for phase _____ of the Subdivision that the City may, at its option, collect the total cost for the completion of the Sidewalks from the principal and/or surety prior to the actual construction of same, which cost is to be determined by estimates prepared by the Department of Public Works of the City of Suffolk. In the event the estimated cost is greater than the cost necessary to complete the construction, the City will refund to the Owner and/or surety the difference.

5. In the event that the Owner defaults in any of the terms of this Agreement, the City shall have the right to refuse the issuance of building permits and/or to withhold all City services in the Subdivision.

6. It is mutually understood and agreed that if the Owner shall faithfully execute all applicable requirements of the U.D.O. and the provisions of this Agreement with respect to the installation of the Sidewalks, then the Ancillary Bond shall be released by the City to the Owner.

7. This Agreement shall be deemed to be a Virginia contract and shall be governed as to all matters of validity, interpretations, obligations, performance, or otherwise, exclusively by the laws of the Commonwealth of Virginia, and all questions arising with respect thereto shall be determined in accordance with such laws. Regardless of where actually delivered and accepted, this Agreement shall be deemed to have been delivered and accepted by the parties in the Commonwealth of Virginia.

8. Any and all suits for any claims or for any breach or dispute arising out of this Agreement shall be maintained in the appropriate court of competent jurisdiction in the City of Suffolk or the United States District Court for the Eastern District of Virginia, Norfolk Division.

9. The Owner shall not assign its rights and duties under this Agreement without the prior written consent of the City.

10. If any part, term, or provision of this Agreement, shall be found by a court of competent jurisdiction to be legally invalid or unenforceable, then such provision or portion thereof, shall be performed in accordance with applicable laws. The invalidity or unenforceability of any provision or portion of the Agreement shall not affect the validity of any other provision or portion of the Agreement.

[SIGNATURE PAGES FOLLOW]

WITNESS the following signatures and seals:

OWNER:

Title: _____

ATTEST:

STATE OF _____,

CITY/COUNTY OF _____, to-wit:

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

Notary Public

My commission expires:

CITY OF SUFFOLK, VIRGINIA

BY _____
City Manager

ATTEST:

City Clerk

STATE OF VIRGINIA,
CITY OF _____, to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____,
20____, by _____, City Manager and
_____, City Clerk/Deputy City Clerk.

Notary Public

My commission expires:

Approved as to form:

City Attorney

KNOW ALL MEN BY THESE PRESENTS, that _____, with its principal office at _____, as Principal, and _____, organized under the laws of the State of _____, and having its principal office in the City of _____, State of _____, as Surety, are held and firmly bound unto the City of Suffolk, Virginia, in the sum of \$_____ lawful money of the United States of America, for the payment of which well and truly to be made we bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.

The conditions of this obligation is such that, whereas the Principal has entered into an Agreement with the City of Suffolk, Virginia, dated the ____ day of _____, 20____, relating to all physical improvements in the subdivision plat of _____ therein fully set forth, a copy of which is attached hereto as a part of thereof.

NOW THEREFORE, if the said Principal shall well and truly perform each and every provision of the said Agreement, then this obligation to be void, otherwise to remain in full force and effect.

IN WITNESS WHEREOF, the said _____, Principal, has signed and sealed this bond, and the said _____, Surety, has caused the same to be signed in its name and its corporation seal to be hereto affixed and attested by its duly authorized Attorney in Fact, this ____ day of _____, 20 ____.

By: _____

Title

ATTEST:

Secretary

By: _____
Attorney in Fact