

**APPENDIX 8-1**

**PERFORMANCE BOND**

Amount: \_\_\_\_\_

Bond No. \_\_\_\_\_

CONTRACTOR (Name and Address):

SURETY (Name and Address):

OBLIGEE (Name and Address):

SUBDIVISION IMPROVEMENTS: TO BE COMPLETED AS PER THE DOCUMENTS IDENTIFIED ON EXHIBIT 1-B ATTACHED HERETO AND MADE A PART HEREOF AND IN ACCORDANCE WITH THE SCHEDULE OF SUBDIVISION IMPROVEMENTS CONTAINED THEREIN.

DESCRIPTION (Name and Location):

DATE:

CONTRACTOR AS PRINCIPAL

SURETY

Company \_\_\_\_\_

Company \_\_\_\_\_

Signature \_\_\_\_\_

Signature: \_\_\_\_\_

Name and Title \_\_\_\_\_

Name and Title: \_\_\_\_\_

Address \_\_\_\_\_

Address: \_\_\_\_\_

(SEAL)

(SEAL)

(Any additional signatures appear on page 2.)

(FOR INFORMATION ONLY Name, Address and Telephone):

AGENT OR BROKER:

1. The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Obligee for the completion of the Subdivision Improvements in a timely manner.
2. If the Contractor completes the Subdivision Improvements, the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Subparagraph 3.1.
3. The Surety's obligation under this bond shall arise after:

3.1 The Obligees has notified the Contractor and the Surety at its address described in Paragraph 10 below that the Obligees is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than 15 days after receipt of such notice to discuss methods of completing the Subdivision Improvements. If the Obligees, the Contractor and the Surety agree, the Contractor shall be allowed to complete the Subdivision Improvements, but such an agreement shall not waive the Obligees's right, if any, subsequently, to declare a Contractor Default; and

3.2 The Obligees has declared a Contractor Default. Such Contractor Default shall not be declared earlier than 20 days after the Contractor and the Surety have received notice as provided in Subparagraph 3.1.

3.3 Simultaneously with a declaration of Contractor Default by the Obligees, or within a reasonable period of time thereafter, the Obligees shall notify the Surety of the actions that the Obligees requires in order to remedy the Contractor Default. Pursuant to the Obligees's instructions, the Surety shall either:

3.3.1 Within 30 days, pay to the Obligees the full amount of the Performance Bond. The Obligees shall thereupon utilize the bond proceeds solely to cause completion of the work or to cause correction of defective work associated with the Subdivision Improvements. Any bond proceeds remaining after the completion of the work or the correction of defective work shall be returned to the Surety by the Obligees; or

3.3.2 Undertake to perform and complete the Subdivision Improvements itself, through its agents or through independent contractors; or

3.3.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Obligees for a contract for performance and completion of the Subdivision Improvements, arrange for a contract to be prepared for execution by the Obligees and the contractor selected with the Obligees's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Subdivision Improvements, and pay to the Obligees the amount of damages as described in Paragraph 5.

3.4 The Obligees's determination of which course of action the Surety must pursue under Paragraph 3.3 in order to remedy a Contractor's Default shall be final.

4. If the Surety does not proceed as provided in Paragraph 3 in a timely manner, the Surety shall be deemed to be in default on this Bond.

5. After the Obligees has terminated the Contractor's right to complete the Subdivision Improvements, then the responsibilities of the Surety to the Obligees shall not be greater than those of the Contractor under the Subdivision Improvements. To the limit of the amount of this Bond, the Surety is obligated without duplication for:

5.1 The responsibilities of the Contractor for correction of defective work and completion of the Subdivision Improvements;

5.2 Any and all legal fees, engineering and design professional fees, and all costs related to the delay, including but not limited to increased labor and material costs resulting from the acts or failure to act on behalf of the Surety pursuant to Paragraphs 3 and 4; and

5.3 Actual damages caused by delayed performance or non-performance of the Contractor.

6. The Surety shall not be liable to the Obligee or others for obligations of the Contractor that are unrelated to the Subdivision Improvements. No right of action shall accrue on this Bond to any person or entity other than the Obligee or its heirs, executors, administrators or successors.

7. The Surety hereby waives notice of any change, including changes of time, to the Subdivision Improvements or to related subcontracts, purchase orders and other obligations.

8. Any action, legal or equitable, under this Bond shall be brought only in the Circuit Court of Illinois in the judicial circuit in which the contract is to be performed. Such action must be brought within four years after the Surety refuses or fails to perform as required by the Obligee in Paragraph 3.

9. In the event the Surety fails to perform its obligations hereunder in a timely manner, the Obligee may commence legal proceedings in a court of competent jurisdiction in the location where the Subdivision Improvements are situated, and the Surety shall be responsible for the payment of all the Obligee's attorneys' fees and costs incurred in such proceeding, which attorneys' fees and costs shall be in addition to, and not limited in any manner by, the principal amount of this Bond.

10. Notice to the surety, the Obligee or the Contractor shall be mailed or delivered to the address shown on the signature page.

## 11. DEFINITIONS

11.1 Subdivision Improvements: Those improvements identified in Exhibit I-B attached hereto.

11.2 Contractor Default: Failure of the Contractor, which has neither been remedied nor waived.

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

Company \_\_\_\_\_

Signature \_\_\_\_\_

Name and Title \_\_\_\_\_

Address \_\_\_\_\_

(SEAL)

SURETY

Company: \_\_\_\_\_

Signature: \_\_\_\_\_

Name and Title: \_\_\_\_\_

Address: \_\_\_\_\_

(SEAL)