



March 28, 2016

Town of Vienna  
127 Center St. S.  
Vienna, VA 22180

Re: Bond Replacement Request  
Parcel 60 Ayrhill Subdivision, PF-60-14-FP

Dear Mr. Gallagher,

The Evergreen companies, LLC desires to replace the existing bond and Subdivision Performance Agreement in place for Parcel 60 Ayrhill Subdivision Plan No. PF-60-14-FP. Enclosed please find the new Subdivision Performance Agreement, the Subdivision Cash/Bond Surety – Completion Agreement and a Letter of Credit issued by Mainstreet Bank in the amount of \$27,900. I have also included a copy of the original approved Forms from Somerville Homes, Inc.

Thank you in advance for your assistance. Please contact me with any questions or additional information that you may require.

Very truly yours,

Amy Boyd Polk  
Land Operations Coordinator

Enclosures A/S



10089 Fairfax Blvd., Fairfax, VA 22030

**IRREVOCABLE LETTER OF CREDIT NO. 1603**

Date of Issuance: March 24, 2016

Town of Vienna, Virginia  
Director of Public Works  
127 Center Street, South  
Vienna, VA 22180

Ladies and Gentlemen:

We hereby authorize the Director, Department of Public Works (hereinafter DPWES), or its agent to draw on us for the account of The Evergreene Companies, LLC, a Virginia limited liability company (the "Developer") up to an aggregate amount of Twenty-Seven Thousand Nine Hundred and 00/100 U.S. Dollars (\$27,900.00) available by your drafts at sight accompanied by certification of the Director, DPWES, that the developer failed to complete the project in accordance with a plan known as Parcel 60, Ayrhill Subdivision, Plan # PF-60-14-FP. This Letter of Credit is irrevocable and unconditional.

We hereby further agree that:

- (a) Drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented at our office located at 10089 Fairfax Boulevard, Fairfax, Virginia 22030 on or before March 24, 2017.
- (b) Funds available under this Letter of Credit shall be paid by us in such amounts and at such times as determined by the Director, DPWES, in his sole discretion, provided that the amount drawn shall not exceed the aggregate amount specified herein.
- (c) We shall have no right, duty, obligation or responsibility to evaluate the performance or non-performance of the underlying contract between our customer and the beneficiary of this Letter of Credit.
- (d) We hereby agree that no change, extension of time, alteration or addition to work to be performed or to the plans and specifications relating to the same, shall in any way affect our obligations under this Letter of Credit, and we hereby waive notice of any such change, extension of time, alteration, or addition, on the understanding that no such change, extension of time, alteration, or addition shall increase the amount of our obligation under this Letter of Credit.
- (e) It is a condition of this Letter of Credit that it will be automatically extended for successive six (6) month periods of time unless thirty (30) days prior to an expiration date we notify the Director, DPWES, in writing by registered mail, that we elect not to renew this Letter of Credit for such additional period.
- (f) Upon receipt by you of such notice of non-renewal or in the event of a default, you may draw hereunder by means of your drafts on us, at sight accompanied by your written certification that you have not released liability under the aforesaid agreement or undertaking and the proceeds of your draft will be used by you to meet eventual payments under your agreement or until your undertaking is satisfied. You will refund to us the amount paid, less any amounts which may have been paid by you in the meantime under this agreement or undertaking. A default shall be deemed

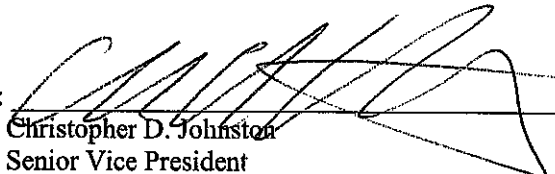


10089 Fairfax Blvd., Fairfax, VA 22030

to have occurred on the part of the Developer whenever, in the sole judgment of the Director, DPWES, the Developer is not diligently and satisfactorily completing the improvement for which the Letter of Credit has been given as security or at the date the underlying agreement, or any extension thereof, expires.

- (g) Except so far as otherwise expressly stated, this Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce in effect on the date of issuance. The amount of any draft drawn hereunder must be endorsed on the reverse side hereof. All drafts must be marked "Drawn under MainStreet Bank Letter of Credit No. 1603 dated March 24, 2016."
- (h) Approval of this Letter of Credit by the Town shall be deemed acceptance without further notice to the bank and/or the Developer.

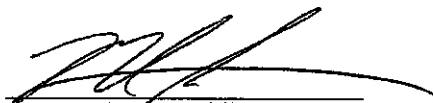
MAINSTREET BANK

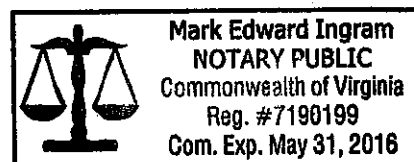
By:  (seal)  
Christopher D. Johnston  
Senior Vice President

STATE OF Virginia  
COUNTY/CITY OF Fairfax :

I, Mark Edward Ingram, a Notary Public in and for the State and County aforesaid, do hereby certify that Christopher Johnston, the Senior Vice President of MainStreet Bank, whose name is signed to the foregoing, this day personally appeared before me in my State and County aforesaid and acknowledged the same.

Given under my hand and seal this 22 day of March, 2016.

  
Notary Public





## SUBDIVISION CASH/BOND SURETY - COMPLETION AGREEMENT

THIS AGREEMENT, made this 24th day of March, 2016 by and between The Evergreene Companies, LLC an ☐ Individual, ☐ Partnership, or ☐ Corporation hereinafter called "Developer", and the TOWN COUNCIL OF VIENNA, VIRGINIA, hereinafter called the "Town":

### WITNESSETH:

WHEREAS, Developer has entered into Subdivision Performance Agreement dated the 24th day of March, 2016 where Developer agreed to construct and install the physical improvements and facilities shown on the approved plans and profiles for a project known as (Name): Parcel 60, Aythill Subdivision

Number: PF-60-14-FP, and Plan

WHEREAS, Town desires to ensure completion of the above development as a condition of the approval of said development:

NOW, THEREFORE, for and in consideration of the foregoing premises and the following terms and conditions, and in further consideration of the approval of the aforesaid plans by the Town and the issuance of permits for the work proposed to be done thereunder, the parties hereto agree as follows:

1. Developer has paid to the Town cash and/or provided a corporate surety or letter of credit, and the Town by execution hereof acknowledges that it holds a bond in the amount of Twenty Seven Thousand nine Hundred dollars (\$27,900.00) under and subject to the terms of this agreement.

2. It is expressly agreed by all parties and it is the purpose and intent of this Agreement to ensure the installation and acceptance of all improvements shown on the approved plans or revisions thereof, and to ensure the satisfaction of any indebtedness caused by failure of Developer to pay required fees to the Town.

3. It is expressly agreed by the parties hereto that all or any portion of the funds shall be used by the Town in the event that all terms and conditions of the Subdivision Performance Agreement have not been fulfilled. It is expressly agreed that no further consent of the Developer to disbursement hereunder shall be required.

4. In the event funds deposited hereunder are not sufficient to obtain completion of the Subdivision Performance Agreement, then the Town may proceed to obtain the balance of funds due in accordance with the terms of the Subdivision Performance Agreement.

5. During the 2-year warrantee period the Developer may substitute a 2-year Maintenance Bond for 10% of the public improvement installation costs or 90% of the funds which are the subject of this Agreement shall be returned to the Developer upon completion and acceptance of the public improvement, leaving 10% on deposit with the Town.

6. The funds, which are the subject of this Agreement or any remaining portion thereof, shall be returned to the Developer or his assignee upon completion of all the terms and condition of the Subdivision Performance Agreement dated 24th day of March, 2016 for the above referenced project.

IN WITNESS of which the Developer signs and seals this Agreement.

Type of Organization:

- ☐ Corporation  
☐ Partnership  
☐ Individual

Legal Name and Address:

The Evergreene Companies, LLC  
3684 Centerview Drive, Suite 120  
Chantilly, VA 20151

By [Signature] (seal)  
(Signature)

Robert Cappellini, President  
(Print or type name and title)

By \_\_\_\_\_ (seal)  
(Signature)

\_\_\_\_\_  
(Print or type name and title)

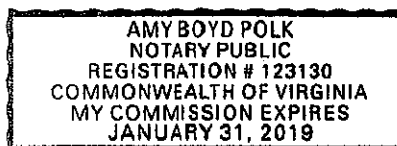
COMMONWEALTH/STATE OF Virginia

CITY/COUNTY Loudan

The foregoing instrument was acknowledged before me this 24th day of March 2016

By [Signature]  
Notary Public

My commission expires: January 31 2019



IN WITNESS of which, the Town has caused this Agreement to be executed on its behalf:

TOWN COUNCIL OF VIENNA, VIRGINIA

By \_\_\_\_\_  
Director of Public Works

STATE OF VIRGINIA  
COUNTY OF FAIRFAX

This \_\_\_\_\_ day of 20 \_\_\_\_\_, appeared before me in my State and County aforesaid,

\_\_\_\_\_, Director, Department of Public Works and acknowledged his signature.

By \_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_, 20 \_\_\_\_\_.

APPROVED AS TO FORM:

\_\_\_\_\_  
TOWN ATTORNEY



## SUBDIVISION PERFORMANCE AGREEMENT

THIS AGREEMENT made this 24<sup>th</sup> day of March, 2016, by and between the party of the first part, hereinafter Developer, and the TOWN COUNCIL OF VIENNA, VIRGINIA, party of the second part, hereinafter called Town,

## WITNESSETH:

IN CONSIDERATION OF the approval by the Town, through its designee, of a subdivision plat/site plan/construction plan for a project known as (Name) Parcel 160, Ayrihill Subdivision Plan No. VF-160-14-FP Developer, for himself, and his heirs, personal representatives, assigns, or other successors in interest, agrees to construct and install all of the physical improvements and facilities shown on the approved plans and profiles, and approved revisions thereof, within 18 (eighteen) months of the date hereof.

## DEVELOPER FURTHER AGREES:

1. To comply with all the requirements of the Town of Vienna Code and the Department of Public Works Standards and Specifications.
2. That if, in the opinion of the Director of Public Works or his agent, the plan, profiles, and revisions thereto, although approved by the Town, are inadequate to ensure that construction and development of the site will be in conformance with the requirements of State Law, the Town Code, all applicable proffered conditions, and the Department of Public Works Standards and Specifications, the Developer, upon request of the Director, shall submit and obtain Town approval of revisions to the plans or profiles showing the changes necessary to bring the site into conformance with State Law, the Town Code, the Department of Public Works Standards and Specifications, and construct and develop the site in accordance with the approved revisions.
3. That if, in the opinion of the Director of Public Works or his agent, offsite drainage improvements are necessary to provide for adequate drainage, the Developer, upon request of the Director, shall submit and obtain Town approval of revisions to the plan or profiles showing the offsite improvement, and construct and develop the improvements in accordance with the approved revision.
4. That if, in the opinion of the Director of Public Works or his agent, the physical improvements and facilities as shown on the approved plan and profiles, or approved revisions thereof, are inadequate to prevent damage to other property, erosion, flooding, or other deleterious effects, the Developer, upon request of the Director, shall take appropriate steps to prevent any such damages to other property, erosion, flooding, or other deleterious effects, and speedily rectify any damages resulting therefrom, whether or not a revision to the plan or profiles delineating the necessary steps has been submitted or approved.
5. That if, upon expiration of the agreement, the Director of Public Works or his agent so directs, the Developer will cease all work on improvements covered by the bond and agreement and /or will remove all material and equipment from the Town easements and dedicated rights-of-way.
6. To provide and maintain all-weather access, including snow removal and ice control, from all occupied dwellings to a public highway in the primary or secondary highway system. The Developer is responsible for providing and maintaining this access for roads within the dedicated right-of-way until the roads are accepted by the Town into the Town's system of highways and the project is released by the Director from bond or other such instrument of security. If the Developer fails to provide and maintain this access, the Town or its assigns has the right to enter upon the property to provide and maintain this access. In the event that the Developer fails to provide and maintain all-weather access as described in this paragraph, or is otherwise in default, the Director may withhold the issuance of any permits to the Developer on this project. In addition, in the event that the Town has performed this work, the Developer shall fully compensate the Town for all documented costs and fees associated and related to the performance of such work.
7. That if, in the opinion of the Director that immediate action is required to secure, correct and/or restore any work, structural failure or similar occurrence that is causing or likely will cause damage or result in a health or safety hazard as a result of the project, the Developer shall fully compensate the Town for all its documented costs and fees directly associated with and related to the performance of such work.
8. That any construction or improvement required under this agreement that is ultimately to be maintained by a governmental entity shall be considered complete when it is accepted by the governmental entity. The Developer further agrees to be responsible for all maintenance and deterioration of the physical improvements and facilities until such improvements are accepted by the applicable governmental entity or until the bond and development agreement are released.
9. When required by the approved subdivision plan, to obtain and maintain until released from this Agreement and any extensions thereof, public liability insurance with Town as an additional named insured, in an amount not less than \$1,000,000 for injury to any one person, nor less than \$1,000,000 on account of any one accident; and property damage insurance in an amount not less than \$100,000 on account of any one accident nor less than \$500,000 for damages on account of all accidents. A Certificate of Insurance for the insurance required by this paragraph must be presented at the time that the agreement is submitted for review and approval.
10. That if any clause or portion of this Agreement is found not to be valid and binding, the remainder shall continue in full force and effect. The parties intend that each provision of this Agreement be valid and binding upon each and all of them, and expressly agree to abide thereby. This Agreement shall not be amended or modified without the written consent of the parties.
11. In the event that any suit, action or proceeding is brought by the Town to enforce any provision of this Agreement, it is expressly agreed and understood that, regardless of when the breach of this Agreement occurs, the measure of damages recoverable shall be the costs of completion and/or correction of the work required by the Agreement as of the earlier of the following two dates:
  - (a) when the work is actually completed and/or corrected to final local and final state approval and acceptance; or
  - (b) date of trial.

It is further expressly agreed and understood that the measure of damages shall include, but shall not be limited to, construction, engineering, surveying, maintenance, deterioration, administration, supervision, reasonable attorney's fees, and any costs associated or related to any litigation of this Agreement and shall be adjusted for inflation.
12. To supply to the Town ☐ Cashier's Check, ☐ Letter of Credit, ☐ Corporate Surety from Mainstreet Bank (Type of security or other guarantee) (Company, bank, lender, etc.)  
in the amount of \$ 27,900.00  
If a corporate surety bond is supplied to the Town, the Developer shall notify the Director if the Best Key rating for the insurance company falls below Class A-VI no later than 45 calendar days after the Best Key rating is reported. The Developer shall, submit and obtain the Director's approval of a replacement agreement with a security that meets the Town's minimum standards for any corporate surety that was provided by an insurance company whose Best Key rating has fallen to Class B-XV or lower. A complete replacement shall be submitted to the Director in accordance with Public Facilities Manual Section 2-802 no later than 45 calendar days after a Best Key rating of B-XV is reported.

## Subdivision Performance Agreement

Project Name: Parcel 60, Ayckhill SubdivisionIN WITNESS of which the Developer signs and seals this Agreement.  
Type of Organization:

- ☐ Corporation  
☐ Partnership  
☐ Individual

Legal Name and Address:

The Evergreen Companies, LLC  
3684 Centerview Dr., #120  
Chantilly, VA 20151

(Signature)

By (seal)

(Signature)

By

(seal)

(Print or type name and title)

Robert Cappellini, President  
(Print or type name and title)

COMMONWEALTH/STATE OF VirginiaCITY/COUNTY LoudounThe foregoing instrument was acknowledged before me this 24th day of March, 2016By Amy Boyd Polk  
Notary PublicMy commission expires: January 31, 2019

AMY BOYD POLK  
NOTARY PUBLIC  
REGISTRATION # 123130  
COMMONWEALTH OF VIRGINIA  
MY COMMISSION EXPIRES  
JANUARY 31, 2019

IN WITNESS of which, the Town has caused this Agreement to be executed on its behalf:

TOWN COUNCIL OF VIENNA, VIRGINIA

By

Director of Public Works

STATE OF VIRGINIA  
COUNTY OF FAIRFAX

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, appeared before me in my State and County aforesaid,  
Director, Department of Public Works and acknowledged his signature.

By \_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_, 20\_\_\_\_.

APPROVED AS TO FORM:

TOWN ATTORNEY