

BARTHOLOMEW COUNTY, INDIANA
SUBDIVISION IMPROVEMENT AGREEMENT
FOR PRIVATE ACCESS EASEMENT
(Performance Security for Private Improvements)

Section A - General Provisions

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

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

and

Bartholomew County, Indiana ("the county").

2. **Effective Date:** The effective date of this agreement will be the date that this agreement is signed and accepted by the Bartholomew County Board of Commissioners ("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 county to be known as:

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

WHEREAS, the county 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 county 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 county'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 County Engineer ("county 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 county, will be independent of any obligations of the county 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 county on or prior to the effective date, a financial guarantee acceptable to the county. 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 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 private improvements are acceptable to the county. The developer's responsibility includes providing renewed or replacement security to the county a minimum of 30 days prior to the expiration of any existing security for the subdivision. Any renewed or replaced surety shall be accompanied by an updated cost estimate, upon which the county engineer may base a request to increase 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 county engineer and the board.

3. **Standards:** The developer will construct the improvements according to the construction plans for the subdivision approved by the county engineer as consistent with the Subdivision Control Ordinance and other adopted requirements of the county.
4. **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 county engineer to discuss the installation of improvements and inspection schedules.
5. **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 county engineer. The developer shall notify the county engineer at least 48 hours before commencing any improvements. Extensions to the completion period may be granted by the county engineer consistent with the provisions of the Subdivision Control Ordinance.
6. **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 - County's Obligations

1. **Inspection and Certification:** The county will inspect the improvements as they are constructed in accordance with the installation and inspection schedule referred to as Section C, item 5 above.
2. **Notice of Defect:** The county will provide timely notice to the developer whenever inspection reveals that an improvement does not conform to the standards and specifications or is otherwise defective. The developer will have 30 days from the issuance of such notice to cure or substantially cure the defect. The county 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. **Use of Proceeds:** The county 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, only within the dedicated right of way.

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. **County's Rights Upon Default:** When any event of default occurs, the county may invoke any legal, equitable, or special remedy for the enforcement of this agreement. These remedies are cumulative in nature.
3. **Indemnification:** The developer hereby expressly agrees to indemnify and hold the county 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 county in the event that the county 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 county.
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 county 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 county'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 county 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 county does not warrant by this agreement that the developer is entitled to any other approval(s) that may be required by the county.
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 county 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 county 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 county 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 county 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 county. 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 county 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 county:

Bartholomew County Highway Department
Attn: County Engineer
2452 State Street
Columbus, IN 47201

if to the developer:

(developer name)

(developer street address)

(developer city, state, zip code)

14. **Recording:** Either the developer or the county 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 county'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 Bartholomew County Board of Commissioners this _____ day of _____, 20____.

Paul Franke

Larry Kleinhentz

Carl Leinhoop

Attested by:

Barbara J. Hackman, County Auditor