

**CITY OF WEST RICHLAND
RESOLUTION NO. 31-21**

**A RESOLUTION OF THE CITY OF WEST RICHLAND, WASHINGTON,
AUTHORIZING THE MAYOR TO SIGN AND EXECUTE A SECURITY AND
IMPROVEMENT AGREEMENT.**

WHEREAS, the City Council has adopted Ordinance No. 14-00 codified as West Richland Municipal Code Section 16.16.370 that allows performance bonds in lieu of construction at the City Council's discretion; and

WHEREAS, WRMC 16.16.370 further states that that in lieu of the construction of the required improvements prior to final platting, the City Council may enter into a contract with a developer to construct the required improvements at a later date with a performance bond or other security in an amount and with surety conditions satisfactory to the City; and

WHEREAS, Thomas and Karen Cowan have requested that the City approve the final plat of the Cowan Short Plat and request to submit a performance bond for the remaining required improvements; and


WHEREAS, an estimated cost of the construction of the required improvements has been prepared and has been approved by the City Engineer; and

NOW, THEREFORE, THE CITY COUNCIL FOR THE CITY OF WEST RICHLAND, WASHINGTON, does hereby resolve as follows:

Section 1. The City Council of West Richland, Washington, authorizes the Mayor to sign and execute the Security and Improvement Agreement as shown in Exhibit A.

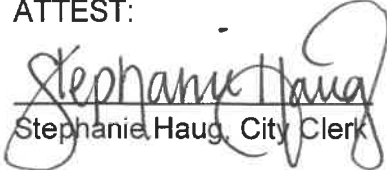
BE IT FURTHER RESOLVED that this resolution shall take effect immediately.

PASSED BY THE CITY COUNCIL OF THE CITY OF WEST RICHLAND, WASHINGTON, this 17th day of August, 2021.



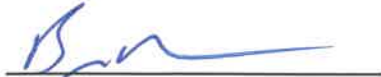
Mayor/CEO Brent Gerry

ATTEST:



Stephanie Haug, City Clerk

APPROVED AS TO FORM:



Bronson Brown, City Attorney

SECURITY AND IMPROVEMENT AGREEMENT

THIS SECURITY AND IMPROVEMENT AGREEMENT (“Agreement”) is made and entered into on this 17th day of August 2021 by and between the **City of West Richland**, a Washington municipal corporation (“City”), and Thomas A. & Karen Cowan a developer seeking final plat approval of the Cowan Short Plat (“Developer”). City and Developer are referred to collectively as the “Parties.”

I. RECITALS

WHEREAS, pursuant to Chapter 16.04 of the West Richland Municipal Code (WRMC), Developer has filed with the City an application for final plat approval of the Cowan Short Plat (the “Project”); and

WHEREAS, Cowan Short Plat was given preliminary plat approval by the Community Development Director on November 12, 2020, subject to the conditions of approval listed in the Notice of Decision File No.: SP 2020-08, and the applicable state and local development regulations in existence at the time; and

WHEREAS, RCW 58.17.170 provides that final plat approval shall be given by the City when the City finds that the subdivision proposed for final plat approval conforms to all terms of the preliminary plat approval, and that said subdivision meets the requirements of RCW 58.17, other applicable state laws, and any local ordinances in effect at the time of preliminary plat approval; and

WHEREAS, under circumstances where the improvements and land division work required by the WRMC and the conditions of approval are not complete prior to a developer’s application for final plat approval, RCW 58.17.130 and WRMC 16.16.370 allow a developer to comply with the conditions of approval by entering into a secured agreement with the City to complete the improvements and land division work within a period of time specified by the City; and

WHEREAS, pursuant to WRMC 16.04.130, upon receipt of a final plat application, the City Engineer or his designee is required to review the plat to determine whether minimum improvements have been provided for as described by the WRMC. If minimum improvements are lacking, the plat shall be rejected; and

WHEREAS, in consideration of final plat approval for the proposed Project by the City prior to completion of improvements, Developer desires to enter into this Agreement whereby Developer promises to install and complete, at its sole expense, all public improvement work required by the City for the proposed Project. Developer has secured this Agreement by improvements security required by WRMC 16.16.370; and

WHEREAS, improvement plans and related specifications for the construction, installation and completion of the improvements identified herein have been prepared by the Developer, approved by the City, and are on file in the City’s Public Works Department. Said improvement plans and

related specifications are incorporated herein by this reference.

NOW, THEREFORE, in consideration of the approval by the City of the Final Plat of Cowan Short Plat, Developer and City agree as follows:

II. AGREEMENT

1. DEVELOPER'S OBLIGATION TO CONSTRUCT IMPROVEMENTS

- a. At its sole expense, Developer shall, in compliance with state law, the construction plans approved by the City on August 2, 2021, and all applicable City standards, furnish, construct, install and guarantee the improvements described in the Cowan Short Plat, the West Richland Municipal Code, and the conditions of approval (the "Improvements").
- b. Developer shall acquire and dedicate, or pay the cost of acquisition of, all rights-of-way, easements and other real property for the construction or installation of the improvements, free and clear of all liens and encumbrances.
- c. Subject to any time extensions granted in accordance with Section 4, Developer shall complete all Improvements within nine (9) months of the effective date of the agreement; provided, however, that if the City Engineer reasonably determines that accelerated construction of the Improvements is essential in order to protect the public health, welfare and safety, including, without limitation, providing for the orderly subdivision of the surrounding area, the City Engineer shall give Developer not less than fifteen (15) calendar days' prior written notice to commence or accelerate installation and construction of improvements, or any portion thereof. The notice shall describe the work to be done by the Developer, the time within which the work will commence, and the period within which the work will be completed. All or any portions of said Improvements may be required to be constructed or completed at a specified time.
- d. If improvements to be constructed by Developer include monumentation, such monumentation shall be installed no later than thirty (30) days after the City's acceptance of all other Improvements pursuant to Section 2. As used herein, "monumentation" shall mean the setting of survey monuments and tie points in accordance with the Revised Code of Washington and West Richland Municipal Code, and the delivery to the City Engineer of tie notes for said points.
- e. Developer shall, at its sole expense, replace or repair all existing and newly constructed public improvements, public utility facilities, and surveying or subdivision monuments which are destroyed or damaged as a result of any work under this Agreement. Any such replacement or repair shall be subject to the approval of the City Engineer or his designee.
- f. Until any category of Improvements is accepted by the City, Developer shall be responsible for the care and maintenance of such improvements and shall bear all risks of loss or damage to said improvements. Neither City, nor its officers, agents and employees, shall have any liability for any accident, loss or damage to the Improvements prior to their

completion and acceptance by the City.

- g. Developer shall, at its sole expense, obtain all necessary permits and licenses for the construction and installation of the Improvements, give all necessary notices, and pay all fees required by the federal, state, county, town or improvement district and all taxes required by law.
- h. Not less than fifteen (15) days prior to commencement of work on the Improvements, Developer shall give written notice to the City Engineer of the date fixed for such commencement of work in order that the City Engineer shall have adequate time to schedule all necessary inspections.

2. INSPECTION OF WORK AND FINAL ACCEPTANCE

- a. Developer shall at all times maintain proper facilities and safe access for inspection for the Improvements by the City Engineer or his designee.
- b. Upon completion of the work on all or any category of the Improvements specified in Schedule A, the Developer may request a final inspection by the City Engineer or his designee. If the City Engineer determines that all or any specified category of the Improvements have been completed in accordance with this Agreement and in compliance with the Improvement Plans and all applicable City standards, then the City Engineer or his designee shall certify the completion of such Improvements.
- c. No building permits shall be issued until International Fire Code health and safety standards have been met.
- d. Developer understands and agrees that no certificates of occupancy for homes to be constructed on the lots located within Cowan Short Plat will be issued by the City of West Richland Building Department until the minimum improvements identified in Schedule A are inspected and accepted by the City Engineer or his designee. Developer shall include this notice of restriction in all contracts for sale of lots within Cowan Short Plat to homebuilders until the restrictions of this subsection d. are no longer applicable.

3. GUARANTEE AND WARRANTY OF THE IMPROVEMENTS

- a. If, within a period of one (1) year following the acceptance by the City of the last of the Improvements specified in Schedule A, any Improvements or part of any Improvements furnished, installed or constructed by the Developer, or any of the work performed under this Agreement, fails to comply with any requirements of this Agreement, or the Revised Code of Washington, West Richland Municipal Code, or the Improvement Plans and related specifications, the Developer shall, without delay and without cost to the City, repair, replace, or reconstruct any defective or otherwise unsatisfactory part or parts of the Improvements.
- b. Should the Developer fail or refuse to act promptly or in accordance with subparagraph a above, or should the exigencies of the situation require repair, replacement or

reconstruction to be undertaken before the Developer can be notified, then the City may, at its discretion, make the necessary repairs or replacements or perform the necessary reconstruction. If the Developer's improvement security does not cover the total cost of such repair, replacement or reconstruction, the Developer shall reimburse the City for any excess costs incurred.

- c. The security furnished for the Developer's obligation to construct and install the Improvements described herein shall not be reduced below five percent (5%) unless and until a warranty bond is posted for the warranty period.

4. TIME EXTENSIONS

- a. Upon a showing of the Developer of good cause, the date of commencement of work on the Improvements, or the duration of the Completion Period, may be extended by the City Engineer, with the written concurrence of the Community Development Director. As used herein, "Good Cause" may include, without limitation, delay resulting for an act of the City, acts of God or force majeure; and strikes, boycotts or similar job actions by employees or labor organizations which prevent the conduct of the work.
- b. A time extension may be granted without notice to any surety or sureties of the Developer and shall not affect the validity of this Agreement nor release the surety or sureties on any bond given as an improvement security pursuant to this Agreement.
- c. As a condition of any time extension provided for herein, the City Engineer, with the written concurrence of the Community Development Director, may require the Developer to furnish new or modified improvement security guaranteeing performance of this Agreement, as extended, in an increased amount necessary to compensate for any projected increase in the Estimated Total Cost of Improvements, as determined by the City Engineer.

5. IMPROVEMENT SECURITY

- a. Prior to the City's execution of this Agreement, Developer shall provide as security to the City an amount equal to one hundred fifty percent (150%) of the Estimated Total cost of the Improvements, Grading and Monumentation as set forth in Schedule A and in accordance with established City policy. With this security, the form of which shall be subject to City's prior approval, the Developer assures faithful performance under this agreement and guarantees the Improvements for one (1) year after the completion and acceptance of the last of such Improvements against any defective workmanship or material or any unsatisfactory performance pursuant to Section 3 hereof.
- b. Modifications of the Improvement Plans and related specifications, and modification of the Improvements, not exceeding five percent (5%) of the original Estimated Total Cost of Improvements, shall not relieve or release any improvement security furnished by Developer pursuant to this Agreement. If any such modifications exceed five

percent (5%) of the Estimated Total Cost of the Improvements, Developer shall furnish additional improvement security for performance and guarantee, and for payment, as required by subparagraph a. above, for one hundred fifty percent (150%) of the revised Estimated Total Cost of the Improvements.

6. REDUCTION OR RELEASE OF IMPROVEMENT SECURITY

- a. Partial release or reductions in the Developer's improvement security may be authorized prior to the City's acceptance of all Improvements required hereunder, as provided in this section.
- b. Upon acceptance of all or any specified category of the Improvements, and upon request of the Developer, the improvement security may be reduced or released as follows:
 - i. Security for Performance and Guarantee: Security may be released incrementally following the completion and documentation of the completion of work and approval by the City Engineer or his designee. Securities will be released incrementally in conformance with Schedule A and only upon completion of all improvements in a related category of Schedule A. Unless the Developer submits a warranty bond (where applicable) or additional security in an amount equal to five percent (5%) of the Estimated Total Cost of the Improvements, security shall not be reduced or released in an amount greater than ninety-five percent (95%) of the total security amount thereof prior to the expiration of the one (1) year guarantee and warranty period specified in Section 3.a. nor until any claims filed during the one (1) year warranty period have been settled.
- c. If Developer's obligations relating to any Improvements, such as the water system or sewer system, are subject to the approval of another governmental agency, the City shall not release the improvement security therefor until the obligations are performed to the satisfaction of such other governmental agency. Such agency shall have two (2) months after Developer's performance of the obligation to register its satisfaction or dissatisfaction. If at the end of that period it has not registered its satisfaction or dissatisfaction, it shall be conclusively deemed that the Developer's performance of the obligation was satisfactorily completed.

7. INDEMNIFICATION OF CITY BY DEVELOPER

- a. Neither the City, nor its officers, agents and employees, shall be liable or responsible for any accident, injury, loss, or damage to either property or person attributable to or arising out of the construction or installation of the Improvements. Developer shall indemnify, hold harmless and defend the City, its officers, agents and employees, from and against any and all losses, claims, costs, expenses, liabilities, damages, actions, causes of action and judgments, including reasonable attorneys' fees, arising out of or attributable to Developer's performance under this Agreement.
- b. Developer's obligations under this section are not conditioned or dependent upon the City, or its officers, agents and employees who prepared, supplied or reviewed any

Improvement Plans or related specifications in connection with the Project Improvements, or has insurance or other indemnification covering any of these matters.

- c. Developer's obligation to indemnify, hold harmless and defend the City shall extend to injuries to persons and damages to or alleged taking of property resulting from the design or construction of the Project, and the Improvements required herein, and shall likewise extend to adjacent property owners asserting claims based upon the diversion of waters caused by the Developer's design or construction of public drainage systems, streets, and other public facilities or improvements. The City's acceptance of the Improvements shall not constitute an assumption by the City of any responsibility or liability for any damage or alleged taking of property referenced herein. City shall not be responsible or liable for the design or construction of the Project or the Improvements constructed or installed pursuant to the approved Improvement Plans or the Final Plat, unless the particular Improvement design was required by the City over the written objection of the Developer, which objection stated that the Improvement design was potentially dangerous or defective and set forth an alternative design.

8. OWNERSHIP OF IMPROVEMENTS

Ownership of all or any category of the Improvements constructed and installed by the Developer pursuant to this Agreement shall vest in the City (or other specified governmental agency) upon acceptance of Improvements by the City (or other specified governmental agency).

9. DEFAULT AND BREACH BY THE DEVELOPER AND REMEDIES OF THE CITY

- a. Upon the occurrence of any of the following events, the Developer shall be deemed to be in default under this Agreement:
 - i. Subject to any time extensions granted in accordance with Section 4, failure to commence construction and installation of the Improvements by the commencement date set forth herein;
 - ii. Failure to correct or cure any defect in the Improvements during the one (1) year guarantee and warranty period as required in Section 3.a.;
 - iii. Subject to any time extensions granted in accordance with Section 4, failure to perform substantial construction work, after commencement of work on the Improvements, for a period of thirty (30) days after written notice from the City;
 - iv. Insolvency, appointment of a receiver, or the filing of any petition in bankruptcy, whether voluntary or involuntary, and such is not cured or discharged within a period of thirty (30) days;
 - v. Commencement of a foreclosure action against the Project or any portion thereof, or any conveyance by the developer in lieu or in avoidance of foreclosure; or

- vi. Failure to perform any other obligations in accordance with the terms and provisions of this Agreement within thirty (30) days after written notice from the City.
- b. City reserves to itself all remedies available to it at law or in equity for any breach of Developer's obligations under this Agreement. City shall have the right, without limitation of other rights or remedies, to draw upon or utilize any improvement security furnished hereunder to mitigate City's damages in the event of Developer's default.
- c. Developer acknowledges that the Estimated Total Costs and improvement security amounts set forth herein may not reflect the actual cost of construction or installation of the Improvements, and consequently, City's damages for Developer's default shall be measured by the cost of completing the required Improvements. If the damages incurred by the City in taking over the completing of the Improvements exceeds the principal amount of the improvement security, then the Developer shall reimburse the City in the amount of such excess damages.
- d. City may, without liability for doing so, take possession of, and utilize in completing the Improvements, such materials, appliances, plant and other property belonging to Developer as may be on the site of the work and necessary for the performance of the work. Developer hereby consents to entry by the City and its forces, including contractors, upon any real property in the Project owned by the Developer or by any assignee of this Agreement, in the event the City elects to maintain or complete the work on the Improvements following Developer's default.
- e. Developer acknowledges and agrees that, upon approval of the Final Plat, City will confer substantial rights upon the Developer, including the right to sell, lease or finance lots within the Subdivision, and that such approval constitutes the final act necessary to permit the division of land within the Subdivision. As a result, City will be damaged to the extent of the cost of construction or installation of the Improvements upon Developer's failure to perform its obligations under this Agreement. Developer further acknowledges that any determination as to whether a reversion to acreage or rescission of approval of the Final Plat constitutes an adequate or necessary remedy for Developer's default shall be within the sole discretion of the City.
- f. The City's failure to take an enforcement action with respect to a default, or to declare a default or breach, shall not be construed as a waiver of that default or breach or any subsequent default or breach of the Developer.
- g. If City sues to compel Developer's performance of this Agreement, or to recover damages or costs incurred in completing or maintaining the work on the Improvements, Developer agrees to pay all attorneys' fees and other costs and expenses of litigation incurred by the City in connection therewith, even if the Developer subsequently resumes and completes the work.

10. RELATIONSHIP OF THE PARTIES

Neither Developer, nor any of the Developer’s contractors, employees or agents, are or shall be deemed to be agents of the City in connection with the performance of Developer’s obligations under this Agreement.

11. ASSIGNMENT

- a. Developer shall not assign this Agreement without the prior written consent of the City. Any attempted or purported assignment in violation of this subparagraph a. shall be null and void and shall have no force or effect.

The City hereby consents to the assignment of the Developer’s rights and obligations under this Agreement to Green Plan Construction, LLC, which is purchasing Lots 1, 2, 3 and 4 of the Cowan Short Plat and will construct and install the improvements. Green Plan Construction, LLC will provide the bond to guarantee the construction and installation of improvements.

- b. The sale or other disposition of the Subdivision shall not relieve Developer of its obligations hereunder. If Developer intends to sell the Project, or any portion thereof, to any other person or entity, the Developer may request a novation of this Agreement and substitution of improvement security. Upon the City’s approval of the novation and substitution of improvement security, the Developer may request a release or reduction of the improvement security furnished pursuant to this Agreement.

12. NOTICES

- a. All notices required or provided for in this agreement shall be in writing and delivered in person or by mail, postage prepaid, and addressed as follows:

If to the City: West Richland City Engineer
 3100 Belmont Boulevard
 West Richland, WA 99353

If to the Developer: Thomas A. & Karen Cowan
 4501 Tamarack Rd
 West Richland, WA 99353

With a copy to: Green Plan Construction, LLC
 101 North Morain Street
 Kennewick, WA 99336
 Attn: Stan Nuxall

- b. Notice shall be effective on the date that it is delivered in person, or, if mailed, on the date of deposit in the United States mail.

13. ENTIRE AGREEMENT

This agreement constitutes the entire Agreement of the parties with respect to its subject matter. All modifications, amendments, or waiver of any terms of this Agreement shall be in writing and signed by the duly authorized representatives of the parties. In the case of the City, the duly authorized representative, unless otherwise specified herein, shall be the City Engineer.

14. SEVERABILITY

The provisions of this Agreement are severable. If any portion of this Agreement is held invalid by a court of competent jurisdiction, the remainder of the Agreement shall remain in full force and effect.

15. GOVERNING LAW

This Agreement shall be governed by the laws of the State of Washington.


16. EFFECTIVE DATE OF THE AGREEMENT

This Agreement shall be and become effective as of the date of recordation of the Cowan Short Plat, and shall remain in effect until expiration of the one (1) year warranty found in Section 3; provided, however, that Section 7 shall survive expiration of this Agreement.

[Signature pages to follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers, thereto duly authorized, as of the dates set forth below their respective signatures.

DEVELOPER – Thomas A. & Karen Cowan:
RESPONSIBLE PARTY


By: Thomas A. Cowan
Its: Owner
Date: Aug 5, 2020

CITY OF WEST RICHLAND


Brent Gerry, Mayor

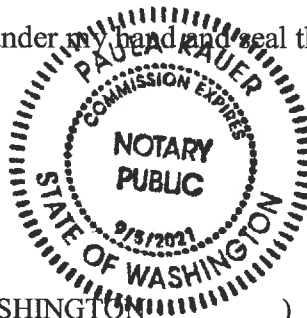
Approved as to Form:


Bronson Brown, City Attorney

STATE OF WASHINGTON)
) ss.
COUNTY OF BENTON)

I, the undersigned, a notary public in and for the State and County aforesaid, do hereby certify that Thomas A. Cowan, owner, known to me to be the same person whose name is subscribed to the foregoing **Security and Improvement Agreement**, appeared before me this day in person and acknowledged that, pursuant to his/her authority, he/she signed the said Agreement as his/her free and voluntary act on behalf of Thomas A. & Karen Cowan for the uses and purposes therein stated.

Given under my hand and seal this 5th day of August, 2021.

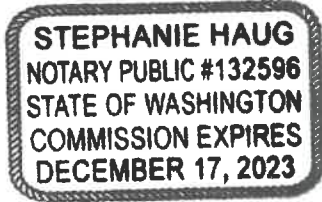


Paula Krauer
Notary Public
Residing at: Benton City, WA
My commission expires 9/5/2021

STATE OF WASHINGTON)
) ss.
COUNTY OF BENTON)

I, the undersigned, a notary public in and for the State and County aforesaid, do hereby certify that **West Richland Mayor, Brent Gerry**, known to me to be the same person whose name is subscribed to the foregoing **Security and Improvement Agreement**, appeared before me this day in person and acknowledged that, pursuant to his authority, he signed the said Agreement as his free and voluntary act on behalf of the City of West Richland for the uses and purposes therein stated.

Given under my hand and seal this 17 day of August, 2021.



Stephanie Haug
Notary Public
Residing at: Kennelwick, WA
My commission expires 12/17/23

Schedule A