

## Appendix C - Model Development Agreement

Each development agreement must be carefully crafted to ensure compliance with the *Williston Development Bylaw*. This model and the accompanying annotations are a starting point.

### -- Development Agreement --

This is an agreement between the Town of Williston (the Town) and (owner's name), (the Developer), the owner of (project name) (the Development), together known as the parties to this agreement.

**1. What is the purpose of this agreement?** The purpose of this development agreement, which is required by Section 7.1.5 of the *Williston Development Bylaw*, is to set forth in detail when and in accord with what plans and standards the Developer will construct or install the required improvements in the Development. This development agreement also addresses the inspection of those required improvements and establishes how the Developer will guarantee that the promised improvements are in fact made.

**2. What is the term of this agreement?** The term of this agreement begins when it is signed by the Town Manager and ends at the time the last promise is fulfilled by either of the parties. The Town Manager's signature will follow approval of the final plans for the Development by the Williston Development Review Board. This agreement must be signed by the Town Manager and recorded before an administrative permit for work on the Development will be approved.

**When does the developer sign?** The developer must provide a signed copy of the proposed development agreement with the final plans when they are submitted for review by the DRB.

**3. On what consideration is this agreement based?** The basis for this development agreement is the approval of the final plans submitted in compliance with the Williston Development Review Board's approval of Discretionary Permit \_\_\_\_ - \_\_\_\_\_. It is understood that the scope of this agreement is confined to the required improvements that are shown on the approved final plans (see Item 4, below) and listed in Attachment A of this agreement. This development agreement is not intended to address other conditions of approval.

**Could a development agreement address other conditions of approval?** It is possible that the town and a developer could use a development agreement to address conditions of approval that are not related to required improvements. That possibility is not anticipated in this model, but the language above could be revised and additional items addressing other types of conditions of approval could be added to a development agreement.

**4. Are the approved final plans for the development part of this agreement?** Yes.

**4.A. the Simple Version:** The final plans of the Development, as approved by the Williston Development Review Board on (date) are hereby incorporated into this agreement by reference. It is understood that those approved final plans are binding on the Developer and the Town, and that this creates a vested right for the Developer, as provided by WDB 2.2. It is also understood that only the minor changes in plans permitted by WDB 5.6 are permitted without renegotiation of this development agreement.

OR

**4.B. the Phased Version:** The final plans of the Phase/s I/I-n, approved by the Williston Development Review Board are hereby incorporated into this agreement by reference. It is understood that those approved final plans are binding on the Developer and the Town, and that this creates a vested right for the Developer, as provided by WDB 2.2. It is further understood that the final plans for additional phases of the Development will be submitted to the Williston Development Review Board for review in accord with the following schedule:

Phase	Final Plans to be Submitted Between earliest date	latest date
III	1-May-10	1-May-11
IV-V	1-May-12	1-May-13

The blanks in this table are filled in to provide an example.

Changes in this schedule will require renegotiation of this development agreement, as provided for below. Finally, it is also understood that only the minor changes in plans permitted by WDB 5.6 are permitted without renegotiation of this development agreement.

**5. What improvements are covered by this agreement?** All proposed improvements that were approved by the Williston Development Review Board in its approval of Discretionary Permit \_\_\_ - \_\_\_\_\_ and its subsequent approval of the final plans for the Development are covered by this development agreement. Those improvements are listed in Attachment A which includes cost estimates for each proposed improvement.

**6. Which construction standards apply to the improvements covered by this agreement?** Construction or installation of the improvements listed in Attachment A shall be in accord with all applicable standards of the *Williston Development Bylaw* and the *Williston Public Works Standards*, including the state or national standards referenced in those documents, as they existed on the date the application for Discretionary Permit \_\_\_ - \_\_\_\_\_ was deemed complete by the town.

**7. When must the improvements shown on the final plans and listed in Attachment A be made?**

*the Simple Version:* All improvements shown on the approved final plan and listed in Attachment A must be made before a certificate of compliance will be issued. A temporary certificate of compliance may be requested, as provided by WDB 7.3.3.

OR

*the Phased Version:* Discretionary Permit \_\_\_ - \_\_\_\_\_ permits the Development to be constructed in (number) phases, which are shown on (reference to the map of phases from the approved final plans). Attachment A has also been organized by phase so that the list and the costs of the improvements to be made in each phase are clear. It is understood that all improvements shown on the approved final plan and listed in Attachment A for each phase must be complete before a certificate of compliance will be issued for that phase. A temporary certificate of compliance may be sought as provided by WDB 7.3.3, but any such certificate will be clearly conditioned on completion of the required improvements as provided by this development agreement.

**8. Will inspections be required?** Yes. All work covered by this development agreement is subject to inspection by the Town, as provided by WDB 7.1.7 and the *Williston Public Works Standards*.

**8.A By the Town.** It is understood that the signature of the Developer on this agreement constitutes permission for representatives of the Town to enter onto the private property of Developer for the purpose of completing these inspections. The Developer further agrees to provide the Town with entry into locked areas and to arrange for safe inspections of potentially hazardous sites. The Developer will also, at his/her expense, provide the opportunity for the Town to discuss work on the required improvements with contractors, designers, and employees retained by the Developer.

**8.B Scheduling Inspections.** A final inspection schedule consistent with the *Public Works Standards* will be set at the pre-construction meeting, the date, time, and place for which will be set by mutual agreement of the Town and the Developer.

8.C. By the Applicant. The Developer will provide (weekly, bi-weekly, monthly – insert a time frame here) reports of inspections conducted by (list who – engineers, architects, landscape architects, etc.) to the Administrator and/or DPW.

**9. Will as-built drawings be required?** Yes. As-built drawings must be provided to the Town as required by WDB 7.1.9 and the *Williston Public Works Standards*.

**10. What happens if the Developer fails to construct or install the improvements covered by this agreement in a timely manner?** As provided by WDB 7.1.6.3, if the Developer fails to construct or install the improvements listed in Attachment A within the time frames established by this development agreement, the Town may use the securities provided in accord with 12 and 13, below, to complete the required improvements. If any funds remain in the escrow account after the Town has completed the required improvements, those funds will be returned to the Developer.

**12. What securities must be provided to guarantee the completion of improvements that will become the property of the Town or another public agency?** In accord with WDB 7.1.6.1, the Developer agrees to provide security by depositing funds equal to 110% of the estimated cost of constructing or installing the improvements that are to become publicly owned in an escrow account before an administrative permit for any work on the Development is approved. Attachment B provides details on the amount, name and location of the escrow account. That Attachment also provides details on how funds may be released as work proceeds, is inspected, and is found to be complete by the Town. It is understood, however, that at least one-third of the funds deposited shall be retained in escrow and returned only after a certificate of compliance is issued. It is further understood, that interest earned on the escrow account shall be retained in the account to reflect the inflating cost of the improvements and to be used by the Town in case of default.

**13. What securities must be provided to guarantee completion of improvement that will remain in private ownership?** In accord with WDB 7.1.6.2, the Developer agrees to provide security by providing an irrevocable letter of credit, posting a performance bond, or depositing funds in escrow equal to 10% of the estimated cost of constructing or installing the improvements that are remain in private ownership before an administrative permit for any work on the Development is approved. Attachment C provides details on the amount, name and location of the escrow account. It is understood, however, that the letter of credit, performance bond, or funds placed in escrow will be returned only after a certificate of compliance is issued. It is further understood, that interest earned on an escrow account shall be retained in the account to reflect the inflating cost of the improvements and to be used by the Town in case of default.

**17. Must securities for phased developments be provided for the entire development or by phase?** Securities for phased developments will be provided by phase.

**15. What happens to vested rights if the Town must complete required improvements?** They may disappear. As provided by WDB 7.1.2.9, if the Town is required to use a guarantee to complete required improvements, the Town may declare this agreement void, thereby cancelling all vested rights granted by the Town's approval of the discretionary permit and the final plans. In its sole discretion, the Town may instigate a renegotiation of this agreement by informing the Developer of its intention to do so within 180 days after the failure to initiate, implement, or complete a phase as scheduled.

**16. May this agreement be re-negotiated?** The parties to this development agreement are committed to its provisions. They recognize, however, that changes in regulatory or technical practices could necessitate changes in this development agreement. Neither party is obliged to renegotiate the terms of this development agreement, but if both parties agree to pursue changes, those changes shall be proposed in writing, either as an amendment to this agreement or as an entirely new draft development agreement. All proposed changes must be approved by the Williston Development Review Board and signed by the Town Manager following that approval.

**17. Is this agreement binding on successors and assigns?** Yes. This development agreement runs with the land to which it applies. It is binding on the Developer and the Developer's successors, heirs, and assigns, and on the Town's and the Town's successors and assigns. If either party learns that an assignment, sale, conveyance, foreclosure, lease, or any other event is likely to change the identity of any party, that party shall provide written notice to the other party within 48 hours of such change, and shall provide the other party with copies of all documents relating to the transfer of interest in the Development.

**18. At what address may the Developer be contacted when a formal notice must be given, as required by this agreement?** The Developer's address is (full mailing address). This address constitutes the official contact for the Developer until the Developer provides a changed address in writing and that change is acknowledged by the Town. All notices required by this agreement will be sent to this address.

**19. Is this agreement governed by the laws of Vermont?** Yes, this agreement is governed by Vermont statute and case law.

Dated this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, at Williston, Vermont.

\_\_\_\_\_  
Town Manager, Town of Williston

Dated this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, at Williston, Vermont.

\_\_\_\_\_  
Duly-appointed Agent of Developer