

DEVELOPMENT AGREEMENT
GLOUCESTER COUNTY, VIRGINIA

THIS AGREEMENT, made this ____ day of _____, 20____, by and between _____, (list full legal names of all owners of record, state of incorporation if incorporated, type of partnership if a partnership, or marital status if individual) hereinafter referred to as the "Owner," and the COUNTY OF GLOUCESTER, Virginia, a political subdivision of the Commonwealth of Virginia, hereinafter referred to as the "County."

WITNESSETH:

WHEREAS, the Owner owns a certain parcel of land located in the County, described generally as _____, hereinafter referred to as the "Property," having acquired the same by instrument(s) of record in the Clerk's Office of the Circuit Court of Gloucester County, Virginia, in Deed Book _____, page _____ or Instrument Number _____ (fill out whichever is applicable); and

WHEREAS, the Property is being developed by the Owner into the project known as "_____", and the Owner has caused [a plat, dated _____, 20____, to be prepared by _____, which plat the Owner desires to admit to record in the Clerk's Office of the Circuit Court of Gloucester County, Virginia, hereinafter referred to as the "Plat"] [or] [development plans dated _____, 20__ to be prepared by _____ which plat the Owner desires to execute] ; and

WHEREAS, the Owner agrees to construct on or before the ____ day of _____, 20____, all physical improvements, hereinafter referred to as the "Improvements," shown on the development plans labeled "_____" _____", dated _____, and approved by the County on _____, and such other plans and specifications for development approved by the County, all of which documents are on file in the County's Planning and/or Codes Compliance Departments, are incorporated by reference, and are hereinafter collectively referred to as the "Plans"; and

WHEREAS, the Owner has submitted to the County herewith either a sufficient letter of credit, cash, certified check, or a bond in the amount of \$_____, hereinafter referred to as the "Surety," securing the timely construction and completion of the improvements and performance of the terms and conditions of this Agreement; and

WHEREAS, the County has agreed that it will approve the final plat and/or plans of said development and if necessary authorize recordation upon the execution of this Agreement.

NOW, THEREFORE, WITNESSETH THIS AGREEMENT: That for and in consideration of the premises and the covenants and agreements herein contained, the parties hereto agree as follows:

1. The County agrees that, upon proper execution of this Agreement by the Owner and receipt of the Surety and receipt of the deeds and/or documents described in Paragraph 9 below, it will approve the Plat for recordation and/or issue necessary permits for construction. [Surety (letters of credit, cash, certified checks, or bonds) must

be completed in conformance with the instructions provided by the Planning Department, be approved by the County Attorney as to form, content, and issuing institution, and be acceptable as to amount, effective period, and otherwise to the County Administrator. Letters of credit and bonds shall be in effect for a minimum period of sixty (60) days beyond the date for completion of the Improvements.]

2. The Owner agrees, without cost to the County, to construct and complete the Improvements to the satisfaction of, and to the standards and specifications of, the County and all other governmental agencies or authorities having jurisdiction over the Improvements, including, but not limited to, the Virginia Department of Transportation, on or before the _____ day of _____, 20____.

3. The County may enter upon the Property to complete the Improvements and may draw on the Surety in any of the following events:

a. The Owner fails to complete the Improvements by the date specified in Paragraph 2 above.

b. The Owner fails to complete the Improvements by the date specified in Paragraph 2 above to the satisfaction of, and to the standards and specifications of, the County and all other governmental agencies or authorities having jurisdiction over the Improvements, including but without limitation, the Virginia Department of Transportation.

c. The Owner fails to commence construction of the Improvements at least _____ days prior to the date specified in Paragraph 2 above.

d. The insolvency of, appointment of a receiver for, or the filing of a voluntary or involuntary petition in bankruptcy against or by the Owner.

e. The commencement of a foreclosure proceeding against the Property or its conveyance in lieu of foreclosure.

f. The Owner breaches any of the terms and conditions of this Agreement.

4. In the event that the County draws on the Surety, it may use such funds to complete the Improvements or cause them to be completed. The Owner shall be liable to the County for any and all costs of completing the Improvements which shall be in excess of the Surety. It is the purpose and intent of the parties that the amount of the Surety shall be sufficient to defray not only the anticipated cost of completing or having completed the Improvements but also unanticipated cost overruns, the cost incurred by the County in drawing on the Surety, an administrative fee in the amount of \$5,000.00 or five (5) percent of the amount of the cost of completing the Improvements, whichever sum is greater, and any and all other reasonable costs which the County has incurred or may conclude, in its sole discretion, are to be incurred to meet Owner's obligations under this Agreement. The Owner hereby acknowledges that an administrative fee in the above amount is reasonable compensation to the County for its costs in drawing on the Surety and, when necessary, causing the Improvements to be completed.

5. The Owner acknowledges and agrees that the County is under no obligation to give any notice to the Owner of its intent to draw on the Surety in any of the events specified in this Agreement; nor is the County under any obligation to draw upon the surety or to work on or complete the Improvements.

6. The County shall, upon drawing on the Surety, deposit the same in an interest-bearing account to the extent not needed to cover expenditures made or

reasonably anticipated to be made in the near future, but the County shall have no responsibility to deposit or maintain any such funds in such an account. Upon completion of the Improvements and all of Owner's other obligations under this Agreement, as determined by the County, and payment of all expenses incurred by the County in connection therewith, any unexpended funds, including any interest earned thereon, shall be returned to the Owner.

7. The County shall not be liable to the Owner or to any third party for the manner in which the Improvements are completed, any delay in effecting completion, the fact that the cost of completion is in excess of or less than the amount made available by drawing on the Surety or any part thereof, or that the County has drawn down the entire amount of the Surety even though it subsequently develops that the entire amount was not required to carry out the provisions of this Agreement.

8. The Owner acknowledges that the County is under no obligation to extend the time herein provided for completion of the Improvements by the Owner. However, in the event that the County unilaterally agrees in writing to do so, such writing shall, without more and without formal execution of any other agreement by the parties, constitute such an extension, and all of the terms of this Agreement shall continue in effect for the duration of such extension insofar as they are not inconsistent with the terms of the extension; provided, however, that no extension shall be effective until or unless the Owner furnishes to the County a new or amended Surety acceptable to the County if requested by the County. The County may require that the amount of the Surety be increased if an extension is permitted.

9. The Owner agrees to execute and deliver to the County a deed of easement, approved as to form by the County Attorney, conveying to the County those easements identified on the Plat or Plans as easements running to the County. The Owner also agrees to execute and deliver to the County a deed, approved as to form by the County Attorney, conveying fee simple title, with general warranty, to the County those areas, such as pump station sites or well lots, that are to be conveyed to the County, and to provide the County at Owners' expense an Owner's title insurance policy issued by a company acceptable to the County Attorney, containing no exceptions as to title which are not acceptable to the County Attorney, and in such amount as may be determined reasonable and appropriate by the County Administrator. The Owner further agrees to execute and deliver to the County and/or record any restrictive covenants or other documents required by the County.

10. It is mutually understood and agreed that if the Owner shall faithfully execute all requirements of this Agreement and all relevant laws and regulations and shall indemnify, protect, and save the County, its officers, agents, and employees harmless from all loss, damage, expense, or cost by reason of any claim made or suit or action instituted against the County, its officers, agents, or employees on account of or in consequence of any breach on the part of the Owner, all of which the Owner hereby covenants to do, then the aforementioned Surety shall be released by the County to the Owner; provided, however, that release of the Surety shall not in any way or to any extent release, diminish or otherwise reduce any obligation or liability of the Owner provided in this Agreement.

11. The Owner does further hereby agree to indemnify, protect and save the County, its officers, agents, and employees harmless from and against all losses and physical damages to property, and bodily injury or death to any person or persons, which may arise out of or be caused by the construction, maintenance, presence or use of the streets, utilities and public easements required by, and shown on, the Plans and /or the Plat until such time as the said streets, utilities and public easements shall be accepted as a part of the County's systems, or those of its agencies, or the State System of Secondary Highways, as the case may be.

12. It is mutually understood and agreed that approval of the Plat or the Plans shall not, by such approval alone, be deemed to be an acceptance by the County or other applicable agency of any street, alley, public space, sewer or other physical improvements shown on the Plat or the Plans for maintenance, repair or operation thereof, and that the Owner shall be fully responsible therefor and assume all of the risks and liabilities therefor, until such time as the County or other applicable agency has formally accepted them. Upon acceptance of the Improvements, Owner agrees to execute a maintenance and indemnifying bond, guaranteeing the materials and workmanship of the Improvements for one year, which bond shall also be executed by corporate surety.

13. The Owner shall, with regard to any Improvement to be conveyed to the County or any agency thereof:

- a. Furnish the County permanent, reproducible "as built" drawings of such Improvements as digital files in a format acceptable to the County and two (2) sets of paper prints, in a form satisfactory to the County; and

b. Notify the Subdivision Agent and Zoning Administrator prior to the conduct of any required test or final inspections of the Improvements; and

c. Furnish, through Owner's engineer, test reports prepared by an independent testing laboratory in accordance with the ACI Code for any structural concrete installed in the subdivision, and furnish a manufacturer's certification that all pipe installed in the subdivision meets applicable ASTM specifications; and

d. Be responsible for and bear all costs required by the Virginia Department of Transportation for inspections and/or testing of any roadway, drainage way or other facility shown on the Plans to be accepted by such Department.

14. The Owner warrants that there are no deeds of trust of record pertaining to the Property other than the ones identified below:

Amount of Deed of Trust	Note Holder	Date of Deed of Trust	List all Trustees	Deed Book, Page	Instrument #
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- 1.
- 2.
- 3.

15. The Owner shall be entitled to periodic partial and final complete release of the Surety pursuant to, and if Owner complies with, the provisions of §15.2-2245, Code of Virginia (1950), as amended, and, in the case of a partial release, furnishes the County with new Surety in the reduced amount, if required by the County.

16. This Agreement shall be binding upon the Owner and the Owner's successors and assigns.

17. Owner agrees, upon notification in writing by the County at any time after recordation of the Plat, that if an error has been discovered in such Plat, to record, at Owner's expense, an amended or corrected Plat, or other document acceptable to the County, to correct the error.

IN WITNESS WHEREOF, the parties hereto have affixed their signatures and seals:

OWNER:

INDIVIDUAL OR INDIVIDUALS *(type in names)*

_____(SEAL)

_____(SEAL)

CORPORATION *(type in name of corporation)*

Attest:

By:_____(SEAL)
(type in name) President (or name and another title)

(Attach copy of corporate resolution authorizing execution)

(type in name) Secretary

PARTNERSHIP *(type in name of partnership)*

By:_____(SEAL)
(type in name) General Partner

Approved as to form:

County Attorney

COUNTY OF GLOUCESTER, VIRGINIA

By: _____
County Administrator