

## PUBLIC WORKS AGREEMENT

THIS PUBLIC WORKS AGREEMENT made \_\_\_\_\_, by and between COMMISSIONERS OF ST. MARY'S COUNTY, a body corporate and politic of the State of Maryland, (hereinafter the "County") and \_\_\_\_\_ a \_\_\_\_\_ (hereinafter the "Developer" or "Principal").

WHEREAS, Developer intends to record an approved plat of subdivision titled \_\_\_\_\_, dated \_\_\_\_\_, prepared by \_\_\_\_\_, (hereinafter the "Plat") among the Land Records of St. Mary's County, Maryland; and

WHEREAS, it is a requirement for approval of the Plat that Developer execute an agreement to complete all improvements (hereinafter the "Improvements") in accordance with the Plat and the St. Mary's County Subdivision Ordinance, the St. Mary's County Road Ordinance and the St. Mary's County Stormwater, Grading, Erosion and Sediment Control Ordinance and all standards and specifications therein and adopted pursuant thereto (hereinafter the "Ordinances") and deliver security to assure the completion of the Improvements and performance of all of Developer's obligations under the agreement,

NOW THEREFORE, in consideration of the mutual promises and consideration contained herein, the receipt and sufficiency of which is hereby acknowledged, BE IT AGREED, that:

1. The Developer agrees to complete Improvements required by the Ordinances and the Plat, in accordance with the approved plats, plans, road profiles, cross sections and storm drainage plans, and in accordance with the Ordinances, on or before \_\_\_\_\_. All such plats, plans, profiles, cross sections and storm drainage plans approved by the Department of Land Use and Growth Management and the Department of Public Works & Transportation (hereinafter "Plans") are maintained on file with the Departments and are incorporated herein by reference and made a part hereof.

2. The Developer has furnished as security for the performance of Developer's obligation hereunder \_\_\_\_\_ in the amount of \_\_\_\_\_ (\$XXX,XXX.00) which said token of financial responsibility shall be released or returned to the Developer if and when the required Improvements are satisfactorily and timely completed by the Developer; but, in the event said Improvements are not so completed, said guarantee shall indemnify the County against loss or expense incurred by reason of the failure of the Developer to complete said Improvements. In no event shall the liability of the issuer of a surety bond exceed the face amount of the surety bond. Such liability shall not extend beyond the termination date set forth in the surety bond, unless such date is extended by the County and both the principal and surety agree in writing to said extension.

3. The time for completion of the Improvements may be extended by the County, provided the amount of the security is in sufficient amount to insure completion of the Improvements as determined by the County and further provided that both the Developer and any surety issuer of a letter of credit agree in writing to said extension.

4. It is a condition of the guarantee securing this Agreement that if the Developer fully and properly performs all of the construction required and conveys good title to the same by the date specified, then the guarantee shall then and there expire and the Developer and any surety or issuer of a letter of credit shall be released from further obligation under this Agreement, but should the Developer fail to construct the required Improvements within the time specified herein or as required herein, or fail to convey any roadbed or easement as herein provided, or fail to take appropriate and effective corrective action within thirty (30) days after written notification by the County of noncompliance during or after the construction of the said Improvements, or otherwise fail to perform Developer's obligations under this Agreement, then the County shall have the right to require indemnification as to loss or expense incurred by the County by reason of the failure of the Developer to perform Developer's obligations under this Agreement, and also shall have the right to refuse to take over or to maintain any such roads and other improvement until the same is fully completed by or on behalf of the Developer; or, at its option, the County may record a deed for any easement herein described and enter into and upon same for the purpose of constructing required improvements.

5. In the event of default by the Developer in performance of Developer's obligations under this Agreement, or violation of any permit issued to the Developer, the County shall give the Developer and any surety or issuer of a letter of credit, written notification of said default, and any surety shall, within thirty (30) days of such notice, elect in writing: (a) to complete the required Improvements in accordance with the Plans and Ordinances within such reasonable period as the County may specify; or (b) indemnify the County against loss or expense arising out of the failure of the Developer to complete said improvements as required by the terms of this Agreement. If there is no surety, or if the surety fails to take the required corrective action, any construction or conveyancing privileges granted to the Developer may be suspended by the County until completion of the required improvements.

6. The Developer must obtain and deliver to the County all construction easements necessary for the construction and completion of the Improvements required hereunder. An easement agreement shall be in a form approved by the County and shall provide that the easement inure to the benefit of the County in the event of default by the Developer.

7. Should the Improvements required hereunder not be started within one (1) year after execution of this Agreement and diligently pursued, construction or conveyancing privileges granted to Developer may be suspended by the County until a new Agreement shall be executed incorporating therein any changes, increased guarantees or conditions as may be required by the County.

8. Compliance with the maintenance provisions of the Ordinances is required. If the Developer fails to comply with the maintenance provisions of the Ordinances once construction has begun, any construction or conveyancing privileges granted to the Developer may be suspended by the County.

9. The Developer, notwithstanding recovery under any surety bond or letter of credit or forfeiture of cash, shall remain liable to the County for such additional costs as may be incurred in order to complete the Improvements required hereunder in accordance with the Plans and Ordinances.

10. The Developer has delivered to the County a Certificate of Title in form satisfactory to County certifying that fee simple title to the parcels of land and streets, together with all easements, to be conveyed to the County is vested in the Developer, and that such title is marketable and good of record, free of liens, superior easements, restrictions, covenants or other encumbrances, at the time of recordation of the subdivision plat, or alternatively, the County has agreed to accept a conveyance subject to one or encumbrances.

11. The Developer covenants and undertakes to convey to the County, in fee simple by deed, satisfactory to the County and containing a special warranty and covenant of further assurances, the following described parcels of land, streets and easements:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

as shown and described on the approved Plat to be recorded among the Land Records of St. Mary's County, Maryland. Being part of the lands conveyed by \_\_\_\_\_ to \_\_\_\_\_ by deed dated \_\_\_\_\_ and recorded among the Land Records of St. Mary's County, Maryland, in Liber No. \_\_\_\_\_ Folio No. \_\_\_\_\_.

12. The Developer consents to the appointment of a trustee by the Circuit Court for St. Mary's County, Maryland, to do any act which the Developer is obligated to do hereunder upon the failure or refusal of the Developer to do such act.

13. **COVENANT NOT TO CONVEY:** The Developer covenants not to convey any lot, tract or parcel shown and described on the plat without the prior written consent of the County unless and until and while the County is in possession of security acceptable to the County to assure that the Developer fully and properly performs all of the construction required herein and conveys good title to the same as may be required herein.

14. The Developer's obligations hereunder shall be covenants that run with the land, and shall bind the heirs, assigns and successors in interest of the Developer, and shall not merge in any deed of conveyance; provided, however, that no bona fide purchaser for value of any lot acquired with the intention to maintain a primary residence thereon shall be bound or liable for any obligation or covenant of the Developer undertaken or assumed herein.

15. Nothing herein shall be construed to waive the right of the County to maintain a suit against the Developer, or any heir, assign or successor in interest of the Developer (except as expressly provided herein), or surety or issuer of a letter credit, or to assign in whole or in part the right to recover under the indemnity herein provided.

16. Developer agrees that the Circuit Court for St. Mary's County, Maryland, shall have exclusive jurisdiction over any action brought to declare or enforce any right under this Agreement, and consents to the exercise of personal jurisdiction over the Developer by the Circuit Court for St. Mary's County, Maryland. **THE DEVELOPER WAIVES ANY RIGHT TO A JURY TRIAL.**

ATTEST:

\_\_\_\_\_ By: \_\_\_\_\_ [SEAL]  
Name:  
Title:

ATTEST: Commissioners of St. Mary's County

\_\_\_\_\_ By: \_\_\_\_\_ [SEAL]  
John Deatrick, P.E., AICP, LEED BD+C, Director  
Department of Public Works & Transportation

STATE OF MARYLAND, ST. MARY'S COUNTY TO WIT:

I HEREBY CERTIFY that on \_\_\_\_\_, before the subscribed, a Notary Public of the State of Maryland, in and for St. Mary's County, personally appeared \_\_\_\_\_, who being \_\_\_\_\_, and being authorized to do so, acknowledged the foregoing Agreement to be the act of the Developer.

AS WITNESS my hand and Seal Notarial.

\_\_\_\_\_ [SEAL]  
Notary Public  
My Commission Expires: \_\_\_\_\_

STATE OF MARYLAND, ST. MARY'S COUNTY TO WIT:

I HEREBY CERTIFY that on \_\_\_\_\_, before the subscriber, a Notary Public of the State of Maryland, in and for St. Mary's County, personally appeared John Deatrick, who being Director of the St. Mary's County Department of Public Works & Transportation, and, as such, being authorized to do so, acknowledged the foregoing Agreement to be the act of the Commissioners of St. Mary's County.

AS WITNESS my hand and Seal Notarial.

\_\_\_\_\_[SEAL]  
Notary Public  
My Commission Expires: \_\_\_\_\_

**ACKNOWLEDGEMENT OF SURETY**

The \_\_\_\_\_ Company, Bond No. \_\_\_\_\_, is identified as part of the Public Works Agreement between \_\_\_\_\_ and the Commissioners of St. Mary's County dated \_\_\_\_\_.

SURETY:

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to form and legal sufficiency:

\_\_\_\_\_  
David Weiskopf, Acting County Attorney