

TOWN OF LA PLATA
PUBLIC WORKS AGREEMENT

THIS PUBLIC WORKS AGREEMENT NO. ____-____ made this ____ day of _____, 20____, by and between _____, (hereinafter called **Developer/Owner**); _____ (hereinafter called "**Lienholder**"); and TOWN OF LA PLATA, a municipal corporation of the State of Maryland, (hereinafter called "**Town**").

WHEREAS, Developer/Owner is the developer of a _____ known as _____ ("the _____"), plats of which are recorded, or are to be recorded among the Land Records of Charles County, Maryland, such _____ to be developed on lands of **Developer/Owner** shown on the plats, such land hereafter referred to as the "**Property**". A copy of the proposed final plat(s), including the Owner's dedication of public improvements and facilities to public use, is attached to this Agreement as Exhibit(s) ____ and incorporated by reference; and

WHEREAS, the Property is all or part of that land described in a Deed dated _____, 20____, recorded among the Land Records of Charles County, Maryland in Book _____, page _____, and identified as Parcel _____ on Charles County Tax Map No. ____; and

WHEREAS, Developer/Owner is required to enter into a Public Works Agreement before approval of the aforementioned plat(s) by the Town; and/or prior to the issuance of any grading permits or building permits for said project; and

WHEREAS, the Town is preparing to approve the final plats and permits for the said project; and

WHEREAS, the Developer/Owner desires to enter into this Public Works Agreement and the Town has agreed to the same under the below listed terms and conditions:

WITNESSETH: That for and in consideration of the foregoing recitals, which are a material part of this Agreement and not merely prefatory, and the mutual promises and conditions herein contained, the parties do hereby agree as follows:

1. Developer/Owner guarantees to complete in a timely manner all the on-site and off-site improvements and facilities in and for the aforementioned project in conformance with all standards and specifications promulgated by the Town in effect at the date of the execution of this Agreement, or as may from time to time be amended, as shown, or described in plat notes, on the aforementioned plats and as listed in this Agreement, including all attachments and exhibits.

2. a.) Except as otherwise provided herein, Developer/Owner shall complete construction of the aforementioned public improvements in and for the aforementioned project on or before _____, 20____, in a timely and satisfactory fashion in accordance with:

I.This Agreement;

II.The plans for construction of such improvements approved, or to be approved, by the Town and to be maintained on file with the Town and which are incorporated into this agreement by reference. A summary of plans approved by the Town as of the date of this Agreement are listed on Exhibit ____ attached to this Agreement and incorporated by reference;

III.Any other schedules, terms or conditions imposed by the Town in conjunction with approval by the aforementioned plat(s), and as may be shown on such plat(s) or described in notes on such plats;

IV.The maintenance bond, irrevocable letter of credit, or a certified check for a ten percent (10%) maintenance warranty referred to in paragraph 20 of this Agreement is to be furnished upon completion of the improvements and before

the release of the performance bond or irrevocable letter of credit referred to in paragraph 3;

V. The terms and conditions of any Annexation Agreement or site plan applicable to the Property and Subdivision.

- b.) Security for completion of all improvements to be constructed under this Agreement shall be provided by the Developer/Owner by posting a performance security in the form of surety bond (written to be non-cancellable without the Town's prior written consent), irrevocable letter of credit (written to be automatically renewable unless cancelled by the Town), or certified check, in an amount not less than \$_____ (collectively the "**Security**"), which shall include payment security for the payment of all contractors and materialmen.
- 3. Developer/Owner agrees to install and convey all off-site sewer improvements to the Town before the first use and occupancy permit is issued.
- 4. Developer/Owner agrees to building, to Town Standards, all infrastructures as depicted on said plat(s), both on-site and off-site, as part of the public improvements to said property.
- 5. Upon written demand of the Town, the Developer/Owner agrees to promptly repair any Town street damaged as a result of the construction of said project.
- 6. If Developer/Owner fully and properly performs all the construction of public improvements and facilities required under this Agreement and

conveys good and marketable title, free and clear of liens and encumbrances (except such as may be approved by the Town), to all portions of the property, whether or not dedicated to public use but which are intended to be conveyed to the Town within the time specified, and satisfies all timely and properly filed claims of contractors and materialmen according to law, and all warranty and maintenance periods have been completed, then the guarantees and security hereunder shall expire and the Developer/Owner shall be released from this Agreement and the security returned to the issuer.

7. If Developer/Owner fails to construct the required improvements within the time specified herein and in accordance with the above-described plans and specifications or fails to make appropriate and effective corrective action after written notice by the Town of noncompliance or otherwise fails to perform this Agreement in any manner whatsoever, then the Town shall have the right to enforce the guarantee under this Agreement and may in its sole and absolute discretion decline to accept or maintain any roads or improvements until the Developer/Owner fully completes construction of same. All claims from subcontractors and materialmen against the Developer/Owner, when and if received by the Town, shall be referred to the surety, who shall be responsible for the payment of same if properly made; and, if there is no surety, Town shall have the right to obtain or reserve any funds or security available or in its hands pending final acceptance of the public improvements in order to assure payment of any valid claims of subcontractors or materialmen.

8. In the event of default in the Developer/Owner's performance under this Agreement, the Town shall give Developer/Owner and the Developer/Owner's surety, if any, written notification of the default. Within sixty (60) days of the giving of this notice, the surety shall either:

(a) Complete the required public improvements in conformance with the original plans and specifications within a time specified by the Town (provided reasonable extensions shall be granted by the Town as a result of delays reasonably caused by adverse weather conditions); or

(b) Pay to the Town, a sum established by the Town to defray the cost to the Town for engineering, inspection, overhead and administration as well as direct production expenses arising out of the failure of the Developer/Owner to complete said improvements as required by the Agreement and to be necessary for the Town to complete said improvements.

9. The failure of the surety to make an affirmative election within the sixty (60) day period set forth in paragraph 8, shall constitute an election to pay to the Town the sum contained in the demand by the Town. Failure of the surety to complete the required improvements within the time period specified by the Town upon election to do so shall result in forfeiture of the full penalty of the security to the Town.

10. The Town shall, with its demand upon Developer/Owner and surety, include an estimate of the costs to the Town for engineering, inspection, overhead and administration as well as all direct production expenses arising out of the failure of the Developer/Owner to complete the improvements required by the terms of this Agreement and which may be necessary for the Town to complete. Any delay in the payment of the estimate by the surety shall accrue interest from the date of Town's demand at the rate of eight percent (8%) per annum.

11. The estimate contained in the demand by the Town as set forth in paragraph 10 shall be conclusively presumed to be correct and, in the event of legal action by or between the Town, the Developer/Owner and/or the surety arising out of or under this Agreement or under the surety deposit, this estimate shall constitute the stipulated and agreed measure of damage to be awarded to

the Town in such action without the necessity of further proof of such damages; and interest shall be awarded to the Town from the date payment of the estimate was first due.

12. After completion of all work, additional Town costs incurred in the course of completing the work, over and above the estimate, including all Town costs for engineering, inspection, overhead, and other administrative costs shall be paid by the surety within thirty (30) days of demand by the Town for such additional amounts. Any delay in such payment of additional costs shall also bear the interest from the date of the Town's demand at the rate of eight percent (8%) per annum.

13. In the event the actual cost of completion is less than the estimate, any excess of the estimate over costs paid by the surety shall be returned to the surety after completion of all work; provided, however, any interest paid by the surety for late payment shall not be included in the calculation of this excess payment and shall not be recoverable by the surety.

14. In the event the Town in its sole, absolute and unfettered discretion designates or obtains the services of an independent contractor or consulting engineer or other expert to assist in or perform the estimate of the cost described in the foregoing paragraphs, the cost of such service shall be included in the costs to be paid by the surety within thirty (30) days of the demand by the Town and are expressly understood and agreed to constitute costs necessary for the completion of the required public improvements.

15. If there is no surety, and after notice to the Developer/Owner as provided in paragraph 8, the Town may proceed to complete the required improvements using any security or other funds available for that purpose. Upon completion of all work, additional Town costs incurred in the course of completing the work, over and above the estimate, including all Town costs for engineering, inspection, overhead, and other administrative costs shall be paid by the Owner/Developer within thirty (30) days of demand by the Town for such additional amounts.

Any delay in such payment of additional costs shall also bear the interest from the date of the Town's demand at the rate of eight percent (8%) per annum.

16. The Town, in its sole discretion, may reduce the amount of the security posted or extend the time for performance by Developer/Owner if the Developer/Owner:

- (a) Makes application to the Town for a reduction or extension, as applicable;
- (b) Provides justification and any required documentation including new security; if applicable, to support the application; and
- (c) Agrees that all other terms and conditions of the Public Works Agreement shall remain in full force and effect.

17. (a) The Developer/Owner shall be responsible for maintaining public access on all streets, roads, and rights of way on the property in accordance with standard Town policies where certificates of occupancy have been issued and the streets, roads, and rights of way have not been accepted by the Town.

(b) The Town may take any necessary action to maintain public access on streets, roads and rights of way on the property if the Developer/Owner fails to do so and the Developer/Owner shall reimburse the Town for any attendant costs.

18. Developer/Owner shall provide to the Town revisions to the original mylar drawings reflecting as-built conditions upon completion of installation of all public improvements covered by this Public Works Agreement. As-built drawings shall be submitted to and accepted by the Town, along with Little Miller Letter and Contractor's Waiver of Rights, prior to acceptance of the work.

19. In addition to any recovery under the guarantees set forth in this Agreement, the Developer/Owner shall nevertheless remain liable to the Town for any additional costs as may necessarily be incurred in order to complete the required improvements herein described in accordance with the applicable plans and specifications.

20. The ten percent (10%) maintenance warranty described in paragraph 2(IV) of this Agreement shall cover a period of at least ten (10) years from the time of acceptance of the work by the Town. The maintenance security shall:

(a) Guarantee and secure the correction of any defect in materials or workmanship furnished for such improvements; and

(b) Guarantee against any damage to such improvements by reason of settling of ground, base or foundation thereof; and

(c) Guarantee against any damage to Town streets resulting from construction activities, as stated in paragraph 5 of this Agreement.

It shall be the Developer/Owner's obligation to respond and take corrective action within ten (10) working days on any rework or corrective actions brought to the Developer/Owner's attention by the Town during the maintenance period as defined herein. If the Developer/Owner does not initiate corrective action as required, the Town may take any action necessary to correct construction deficiencies and damage to installations attributed to the Developer/Owner which may occur during the maintenance period, and all costs of same shall be recouped from the security that has been provided. As a condition of accepting any roads installed under this Agreement, the Town may require Owner/Developer to provide further security to guarantee against damage to such roads that may result from construction equipment that may use the roads for access in order to undertake development or construction work in other parts of the Subdivision or Property not subject to this Public Works Agreement.

21. Security provided by Owner/Developer to fulfill Developer/Owner's obligations under this Agreement shall not be released by the Town until after the Town accepts all final completion inspections, the Owner/Developer has completed all necessary dedications and conveyance of public improvements and facilities to the Town, the Owner/Developer has provided the Town with as-built drawings for all public improvements and facilities for which

the Town has accepted dedication, and all warranty and maintenance periods have been completed.

22. Developer/Owner and surety hereby waive all right of appeal as to the issue of necessity and requirement for construction and installation or maintenance of any public improvements shown on the plans and specifications which are made part of this Agreement.

23. Developer/Owner and surety also understand that issuance of building permits as a result of this Agreement are subject to possible interruption or suspension by reason of state or federal action such as a moratorium imposed for environmental health reasons and said parties further understand that by execution, there is not created or granted in any manner a vested right of any party to have access to public water or wastewater facilities.

24. Developer/Owner and surety also understand that any public water or wastewater capacity to be created by the expansion of current facilities or construction of new facilities may be contingent upon the availability of state and federal funds for the water and sewer programs. They agree that the Town shall not be responsible to provide sewer allocations due to the inability of the Town to obtain in a reasonable time, rights of way necessary for construction of water and sewer projects or for Federal or State action, including operational moratoria, which may suspend, delay or otherwise affect an allocation. Further, they understand that any allocation of capacity is not assignable or transferable from one development or subject to another.

25. Nothing contained in this Agreement shall be construed to waive the right of the Town to exercise its guarantee against the Developer/Owner and/or surety on the performance bond or any other security or to assign the right to recover pursuant to same as herein provided in whole or part.

26. All notices between the parties shall be mailed by certified first class mail, sent by recognized overnight delivery service (FedEx, UPS, DHL, etc.), or hand-delivered. For the

purpose of this Agreement, the mailing or sending of notice to any below listed party at the address designated shall conclusively constitute notice to that party as of the date of the mailing or presentation to the delivery service. Should the address of any party which is entitled to receive notice change, it is the responsibility of the party making such change to notify all other parties to this Agreement. Also, the parties agree that service of process, if required by any litigation between the parties as a result of this Agreement, may be made upon the parties below:

TO THE TOWN:

Town Manager
Town of La Plata
305 Queen Anne Street
P.O. Box 2268
La Plata, Maryland 20646-1038

TO THE DEVELOPER:

TO THE OWNER:

TO THE LIENHOLDER:

27. All notes contained on the final approved plat(s) for the aforementioned project are hereby incorporated into, and made a part of this Agreement, as if fully set forth herein.

28. This contains the complete and final Agreement between the parties and no representations, whether written or oral, not herein contained, shall be considered part of this Agreement.

29. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Maryland, exclusive of any principles governing choice or conflicts of law, and any action brought by and between the parties shall be brought exclusively within the Circuit Court for Charles County located in La Plata, Maryland.

30. Developer/Owner also hereby declares that, from and after the date of this Agreement, the Property shall be held, conveyed, encumbered, sold, leased, rented, used, occupied and improved subject to such covenants, conditions, restrictions, easements, obligations and equitable servitudes as are set forth in this Agreement, all of which covenants, conditions, restrictions, easements, obligations, and equitable servitudes shall be deemed to run with and bind to the Property and be binding on the parties hereto, and their respective heirs, personal representatives, successors and assigns, as appropriate, and shall not be construed merely as personal obligations or covenants of any of the parties; and shall be for the benefit of the Town, its successors and assigns, and enforceable by it at law or in equity.

31. In the event that the performance of this Agreement is secured by a bond executed by a surety, then such surety, by execution of the performance bond referencing this Agreement, or by written acknowledgment that such bond guarantees the obligations of this Agreement, shall be bound by the obligations imposed upon a surety by this Agreement.

32. The Lienholder joins in this Agreement for the purpose of subordinating its interest in the land, easements and/or rights herein described from the operation and effect of any Deed of Trust, Mortgage and/or lien which it may hold upon the Developer/Owner's property; however, retaining such rights as Trustees, Mortgagees and/or Lienholders in and to the remainder of the property not affected by this Agreement.

33. The Owner joins in this Agreement for the purpose of consenting to and agreeing to be bound by its terms and consenting to the construction of the improvements provided for by this Agreement.

34. In the event that the Town is required to bring an action to enforce its rights under this Agreement, if the Town prevails in such action, the Court shall award to the Town its reasonable attorney's fees, costs and expenses incurred in enforcing its rights under this Agreement.

35. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, all of which, taken together, constitute but one agreement.

WITNESS the signatures of:

ATTEST:

DEVELOPER/OWNER

By: _____ (SEAL)

Name: _____

Title: _____

ATTEST:

LIENHOLDER

By: _____ (SEAL)

Name: _____

Title: _____

ATTEST:

TOWN OF LA PLATA

By: _____ (SEAL)

Name: _____

Title: Town Manager

STATE OF _____, COUNTY OF _____, TO WIT:

I HEREBY CERTIFY, that on this _____ day of _____, 20____, before the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared _____, _____ of _____, Developer, and, being duly authorized to do so, acknowledged the foregoing Agreement to the act of said _____.

AS **WITNESS** my hand and Seal Notarial.

Notary Public

My Commission Expires: _____

STATE OF _____, COUNTY OF _____, TO WIT:

I HEREBY CERTIFY, that on this _____ day of _____, 20____, before the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared _____, _____ of _____, Owner, and, being duly authorized to do so, acknowledged the foregoing Agreement to the act of said _____.

AS **WITNESS** my hand and Seal Notarial.

Notary Public

My Commission Expires: _____

STATE OF _____, COUNTY OF _____, TO WIT:

I HEREBY CERTIFY, that on this _____ day of _____, 20____, before the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared _____, _____ of _____, Lienholder, and, being duly authorized to do so, acknowledged the foregoing Agreement to the act of said _____.

AS **WITNESS** my hand and Seal Notarial.

Notary Public

My Commission Expires: _____

STATE OF MARYLAND, COUNTY OF CHARLES, TO WIT:

I HEREBY CERTIFY, that on this _____ day of _____, 20____, before the subscriber, a Notary Public of the State of Maryland, in and for Charles County, Maryland, personally appeared _____, Town Manager of the Town of La Plata, a municipal corporation of the State of Maryland, and, being duly authorized to do so, acknowledged the foregoing Agreement to be the act of said municipal corporation.

AS **WITNESS** my hand and Seal Notarial.

Notary Public

My Commission Expires: _____

EXHIBIT A

Proposed Final Plats

EXHIBIT B

Summary of Approved Development Plans