PUBLIC IMPROVEMENTS BOND

FOR TOWN USE ONLY:

Project name: ________________________________
Plan number: ________________________________
Developer: ________________________________

BOND NUMBER: ________________________________

* *

AMOUNT: $ ____________________

BOND

KNOW ALL MEN BY THESE PRESENTS, that we/I ____________________________________, as Principal(s), and ______________________________________, a ______________________ (place of incorporation) corporation, authorized to do business in the Commonwealth of Virginia, having its principal office and place of business at ____________________________, as Surety(ies), do hereby give surety bond to and jointly and severally hold and firmly bind ourselves and our respective successors and assigns unto the Town of Warrenton, Virginia, its successors and assigns (hereinafter called "Obligee" or "Town") in the full and just sum of __________________________ DOLLARS ($__________), lawful money of the United States of America, for the payment of such sum.

THE CONDITION OF THIS OBLIGATION IS SUCH that if the Principal(s) shall in every respect perform all of the obligations of Principal(s) under a certain Contract between Principal(s) and the Town, dated _______________, 201_, relating to Town of Warrenton Plan Number ________ and a project which is known as _____________, in accordance with all of the terms and conditions of said Contract, at the times and in the manner in said Contract specified, said Contract and all plans, plats, profiles, specifications and other documents and matters incorporated in said Contract by reference being hereby incorporated in this Bond by reference (all of which is hereinafter called the "Contract"), then this obligation shall be void; otherwise, this obligation shall continuously remain in full force and effect until formally released in writing by the Town, subject, however, to the following terms and conditions:

1. By execution of this Bond, Principal(s) and Surety(ies) hereby irrevocably acknowledge that the contract between Principal(s) and the Town has been fully and properly executed by the Principal(s) and by the Town and that the terms, conditions and provisions of the contract are those obtaining at the time of the execution of the Contract by the Town. In so acknowledging, Principal(s) and Surety(ies) hereby expressly waive any and all defenses which it (or they) may have to liability under the Contract and/or this Bond in relation to the matters acknowledged.

2. Surety(ies) hereby further expressly acknowledge that this Bond is submitted as an inducement and as a substantial portion of the consideration to the Town in connection with the Town's Contract with the Principal(s).

3. Surety(ies) hereby grant Principal(s) full authority to agree on Surety(ies)'s behalf to any and all revisions which may be hereafter made to the Contract between the Principal(s) and the Town (including revisions made to the plans, plats, profiles, specifications and/or other documents and matters referred to in the Contract) whether or not such revisions are made in writing, and to that end, and for such purposes, Surety(ies) do hereby appoint Principal(s) and Principal(s)'s representatives do act as agent on Surety(ies)'s behalf, and Surety(ies) hereby expressly agree that any consent given by Principal(s) or Principal(s)'s representatives to revisions of the Contract shall be effective and binding upon Surety(ies) even though such

consent be given by Principal(s) or Principal(s)'s representatives (a) without indication that Principal(s) or Principal(s)'s representative is acting on Surety(ies) behalf in addition to acting on Principal(s)'s behalf, and/or (b) without intent to act on behalf of Surety(ies); provided, however, that no such change(s) or revisions(s) to the Contract shall be binding upon Surety(ies) beyond the extent to which the totality of such changes and revisions increases the costs of performance under the Contract by an amount in excess of twenty percent (20%) of the face amount of this Bond, and provided further that, except as is otherwise expressly provided in this Bond, Surety(ies) shall in no event be liable to the Obligee in a sum in excess of the face amount of this Bond.

Notwithstanding any duty of the Principal(s) to notify Surety(ies) of (a) revisions made to the Contract between the Principal(s) and the Town (including revisions made to the plans, plats, profiles, specifications and/or other documents and matters referred to in the Contract) whether or not such revisions are made in writing, and (b) of any extension of time permitted or allowed, whether actively or passively, the Principal(s) by the Town beyond the period provided for in the Contract for completion of Principal(s)'s obligations under the Contract, Surety(ies) expressly waive any and all rights to be notified of such matters by the Obligee. Surety(ies) hereby further expressly waive any and all rights of Surety(ies) may have to raise any such extensions of time and/or any above-authorized revisions as a defense to Principal(s)'s and/or Surety(ies)'s liability to the Obligee in any litigation which may arise in relation to this Bond.

4. A default may be declared by the Town to have occurred on the part of the Principal(s) at any time that Principal(s) have failed to complete and/or satisfy an of its obligations under the Contract within the time set forth in the Contract, and furthermore, a default may be declared by the Town to have occurred prior to such time, if, in the sole judgment

of the Town Director of Public Works, the Principal(s) are not performing Principal(s)'s obligations in a satisfactory manner or has:

a. Abandoned the performance of its obligations under the Contract or any revision thereof approved by the Town, or

b. Renounced or repudiated its obligations under the Contract or any revisions thereof approved by the Town, or

c. Demonstrated through insolvency or otherwise that Principal(s)'s obligations under the Contract, or any revisions thereof approved by the Town, cannot or will not completed within the time allotted under the Contract.

5. In the event a default by Principal(s) has been declared by the Town, the Planning Director shall mail or deliver written notice of default to Surety(ies) and shall deliver or mail a copy of same to the Principal(s). In the event such notice is given to Surety(ies), Surety(ies) shall within fifteen (15) days of receipt of the notice of default (a) deliver written notice to the Planning Director and to the Town Manager stating whether or not Surety(ies) will assume responsibility for performance of the obligations of the Principal(s) under the Contract, and (b) commence work on-site in performance of Principal(s)'s obligations under the Contract, if Surety(ies) elect to assume responsibility for performance of the obligations of Principal(s) under the Contract. Should the Town Director of Public Works or the Town Manager fails to receive written notice from Surety (ies) or should Surety (ies) fail to commence work onsite in performance of Principal's obligations under the Contract within said fifteen (15) day period, the Town may thereafter proceed as though Surety (ies) had elected not to assume the responsibilities of the Principal(s) under the Contract. Should Surety(ies) timely deliver notice

stating that Surety(ies) elects to assume responsibility for performance of the obligations of Principal(s) under the Contract and timely commences work on—site, Surety(ies) shall satisfy and complete all of Principal(s)'s obligations under the terms of the Contract and shall be bound by all terms the Contract in like manner as though Surety(ies) were the Developer under the Contract, except that Surety(ies) shall satisfy and complete all of the Principal(s)'s obligations within one hundred eighty (180) days of the Town's receipt of notice from Surety(ies) or within the time allowed under the Contract, whichever is the greater time period. In the event Surety(ies) does perform all of Principal(s)'s obligations under the Contract and such is accomplished within the aforestated applicable time period, Surety(ies) shall have no further liability to the Obligee under this Bond other than to the extent to which the Developer remains liable to the Town under the Contract; provided further, however, that if the Surety(ies) timely elects to assume the obligations of Principal(s) and timely commences work on-site, but thereafter, in the sole judgment of the Town Director of Public Works, fails to faithfully perform all or any part of those obligations or unnecessarily delays in performing any or all of those obligations, then the Town may proceed in like manner as if Surety(ies) had notified the Town of its election not to assume the obligations of the Principal(s) under the Contract.

In the event of untimely notice to the Town of Surety (ies)'s election to assume responsibility for performance of the obligations of Principal(s) under the Contract and/or in the event of Surety (ies)'s untimely commencement of work on-site, the Town may waive the aforestated 15 day requirements, but in no circumstance shall the Town be considered required to do so absent strict compliance by Surety (ies) with the 15 day requirements. In the event the Town does waive the 15 day requirements, then Surety(ies)'s notice and commencement of work on-site shall be deemed to have been timely effected on the date notice is actually received by the Planning

Director of Surety(ies)'s election to assume responsibility for performance of Principal(s)'s obligations under the Contract . Should Surety (ies) elect not to assume the responsibilities of the Principal(s) under the Contract, the Town may elect to take any of the following actions or any combination thereof:

a. The Town may terminate any and all rights of Principal(s) and/or Surety (ies) and their respective agents and assigns to perform further work on the subject property and may revoke or suspend any and all permits theretofore issued by the Town permitting development of the property.

b. The Town may take over and/or re-let all or any part of the work required under the Contract which is not completed and complete the same for the account and at the expense of the Principal(s) and Surety(ies), who shall be jointly and severally liable to the Town for damages determined in accordance with the measure of damages set forth in the Contract and for the Town's reasonable attorney's fees and the Town's costs in connection with any litigation; threatened or instituted, which arises in connection with the Contract or this Bond; provided, however, that Surety(ies)'s liability to the Town shall in no case be greater than the sum of this Bond except to the extent that the Town's reasonable attorney's fees, costs in connection with litigation, and interest accrued in favor of the Town on the damages sustained by the Town prior to and after judgment, when added to Surety(ies)'s other liability under this Bond, exceed the sum of this Bond; or

c. Within the statute of limitations period applicable to this Bond, said period commencing from the Principal(s)'s default or from the time Surety(ies) last performed obligations of the Principal(s) under the Contract, whichever is the latter, the Town may bring suit, action or proceeding to enforce this Bond. In any such action, suit or proceeding, it is expressly agreed that the amount of damages recoverable by the Town shall be determined in accordance with the provisions of subparagraph (b) above (i.e., Subsection (b) of paragraph number 5 of this Bond).

6. Principal(s) hereby irrevocably and expressly agree and authorize Surety(ies), upon notice of default given by the Town, and all personnel of Surety(ies) and all other persons acting on behalf of or under authority or direction of Surety(ies), to enter upon and to remain upon Principal(s)'s property for the purpose of inspecting, evaluating, performing and/or correcting Principal(s)'s performance or non-performance of Principal(s)'s responsibilities, obligations, undertakings or duties under the contract between the Principal(s) and the Town; and Principal(s) hereby further irrevocably and expressly agree not to hinder or obstruct Surety(ies) or any such other persons in accomplishing any such purposes; provided, further, however, that this paragraph shall in no way be construed as limiting in any way any other rights of Surety(ies) and/or of the Town to enter upon, remain upon or perform inspections or work upon Principal(s)'s property.

7. No failure of the Town to declare, or to timely declare, a default shall operate in any way to release either Principal(s) or Surety(ies) from liability under the contract and/or this Bond so long as legal proceedings brought by the Town in connection with this bond and/or Contract are brought within applicable statutory time periods.

8. The failure or refusal of Obligee to take any action, proceeding or step to enforce any remedy or exercise any right of Obligee under the Contract or this Bond and/or the taking of any action, proceeding or step by Obligee, acting in good faith upon the belief that the same is permitted by the provisions Of the Contract or this Bond or by law, shall not in any way release

Principal(s) or Surety(ies), or either of them, or their respective heirs, executors, administrators, successors or assigns from liability under this Bond.

9. No agreement between the Obligee and Surety(ies) , or any of them, or their respective heirs, executors, administrators, successors, or assigns shall in any way release the Principal(s) from any of the Principal(s)'s obligations under the Contract between Principal(s) and Obligee, except to the extent the Surety(ies) have satisfied the obligations of Principal(s) to the Obligee.

10. The Obligee, Principal(s) and Surety (ies) intend that each and every provision of this Bond be valid and binding upon them and expressly agree to abide thereby.

11. If any suit, action or proceeding is initiated in connection with this Bond or any matters related thereto, the venue thereof shall be the County of Fauquier, Commonwealth of Virginia, and it is further understood and agreed that this Bond shall be governed by the law of the Commonwealth of Virginia both as to interpretation and performance.

12. All notices sent to the Principal(s) and Surety (ies) may be sent to the addresses set forth on the signature page of this Bond unless said Principal(s) and Surety (ies) notify the Planning Director and the Town Manager in writing of a change of address, making specific reference in such notice to this Bond and to the Contract between Obligee and Principal(s). If the addresses of any Principal(s) or Surety (ies) change, the Principal(s) and Surety (ies) shall immediately notify the Planning Director and the Town Manager in writing of such change. Failure to notify the Planning Director and the Town Manager of any change in address is deemed to be a waiver of any requirement of notice by Obligee under this Bond to the Principal(s) and/or Surety (ies). All written notice to the Town required under this Bond shall be sent by certified mail and addressed to the Planning Director and a copy thereof shall also be sent

by certified mail to the Town Manager, provided, however, that any notice that may be required pursuant to Section 49-25 of the Code of Virginia shall also be delivered to the Town Attorney and to the Mayor of the Town.

13. Whenever in this Bond reference is made to any person, party, official, body, or other entity, said reference shall be deemed to refer also to the successor(s), assign(s), heir(s), executors, administrators, and/or personal representative(s) of such person, party, official, body or other entity.

14. If any one or more of the provisions, clauses or terms of this Bond or of the Contract are found to be illegal or unenforceable or not valid and binding in any respect or circumstance, this Bond and the Contract shall remain in full force and effect in all other respects and circumstances.

15. Approval of this Bond by the Town shall be deemed acceptance by the Town without further notice to the Principal(s) or to Surety (ies).

IN WITNESS OF ALL OF WHICH the parties hereto have caused this agreement and Bond to be signed and sealed as of this ______ day of ____________________, _______.

PRINCIPAL:

____________________________ (SEAL)	____________________________ (SEAL)
[Name]	[Name]
____________________________________	____________________________________
[Address]	[Address]

______________________________ (SEAL) ___________________________ (SEAL)

[Name] [Name]

____________________________________ ________________________________

[Address] [Address]

SURETY:

____

(Name)

____

(Address)

ATTEST:

_____________________________________ BY: ____________________________ (SEAL)

(Name and Title) (Name and Title)

_____________________________________ __________________________________

[Print or Type Name & Title] [Print or Type Name & Title]

STATE OF __________________,

COUNTY OF __________________, to-wit:

I, ___________________________________, a Notary Public in and for the State and County aforesaid, do certify that the foregoing instrument was acknowledged before me this ______ day of ___________________________, _______ by _____________________________________, as attorney-in-fact on behalf of _______________________________.

GIVEN under my hand and seal this ________ day of _______________________; _________.

____

NOTARY PUBLIC

My Commission Expires:

Serial No.:

STATE OF ____________________,

COUNTY OF ____________________, to-wit:

I, _____________________________________, a Notary Public in and for the State and County aforesaid, do certify that the foregoing instrument was acknowledged before me this ______ day of ___________________, ________, by ____, as attorney-in-fact on behalf of __________________________________.

GIVEN under my hand and seal this ________ day of _______________, ____________.

____

NOTARY PUBLIC

My Commission Expires:

Serial No.:

STATE OF ____________________,

COUNTY OF ____________________, to-wit:

I, _____________________________________, a Notary Public in and for the State and County aforesaid, do certify that the foregoing instrument was acknowledged before me this ______ day of ___________________, ________, by ____, as attorney-in-fact on behalf of __________________________________.

GIVEN under my hand and seal this ________ day of _______________, ____________.

____

NOTARY PUBLIC

My Commission Expires:

Serial No.: