

Agreement No: _____
Agreement Name: _____

AGREEMENT

THIS AGREEMENT (“Agreement”), dated this ____ day of _____, 202__, by and between **Sussex Conservation District**, a governmental subdivision of the State of Delaware, having a principal business address of 23818 Shortly Road, Georgetown, DE 19947, its successors or assigns (“District”),

- AND -

_____ (Developer’s Name), having an address of _____ (Address) (“Developer”) (collectively, the “Parties”).

RECITALS

WHEREAS, Developer is the record owner of certain real property located in Sussex County, Delaware and identified as Sussex County tax district, map and parcel number _____, and being further described as _____ (“Property” and/or “Site”); and

WHEREAS, Developer has submitted a sediment and stormwater plan for development of _____ (the “Project”) on the Property; and

WHEREAS, Developer is seeking to have District issue a notice to proceed letter (the “Notice to Proceed Letter”) for sediment and stormwater plan approval (hereinafter the “Plan Approval”) for development of the Project on the Property;

WHEREAS, in accordance with the *Sussex County Code*, *7 Delaware Code* Chapter 40, and *7 Del. Admin. Code* § 5101 (collectively, “Delaware Sediment and Stormwater Regulations”), District has established requirements for performance and warranty guarantees to be posted prior to the issuance of said Plan Approval and after completion and approval of the Improvements (as defined herein), respectively;

NOW THEREFORE, in consideration of the promises and mutual covenants herein contained, the Parties hereto agree as follows:

1. The recitals above are hereby incorporated into the body of this Agreement by reference as if set forth at length herein.

2. Subject to the terms of Paragraph 4 of this Agreement Developer shall complete or cause to be completed construction of all of required sediment and erosion control and stormwater management improvements, as required and approved by District (collectively “Improvements”) within sixty (60) months from Plan Approval (“Completion Deadline”) unless otherwise extended in writing by the Parties hereto. Design and construction work required for the satisfactory

Agreement No: _____
Agreement Name: _____

completion of Improvements, as determined by District in its sole discretion, shall be the sole responsibility of the Developer or its designee, successors, or assigns.

3. The sequence of events necessary for the progression and completion the Improvements shall be specified on the approved Plans (as defined herein and shown on Exhibit “B”). During the pendency of the Project, at least once a year Developer shall file with District a written progress report. Said progress report shall include, at a minimum, a report on the progress of Improvements actually made and shall advise District of any action required by District for Developer to complete the Improvements.

4. Developer may request, in writing to District, an extension of the Completion Deadline no less than sixty (60) days and no more than ninety (90) days prior to the expiration of the Completion Deadline. At a minimum, any written request for extension of the Completion Deadline must include: (1) a detailed statement as to the reasons causing delayed completion of Improvements; and (2) a revised proposed schedule for completion of Improvements. Acceptance or denial of any request for extension shall be in the sole discretion of District. All requests for extension shall be made in accordance with the Delaware Sediment and Stormwater Regulations.

5. Developer shall construct all Improvements in accordance with the specifications set forth in the approved Plans and any and all applicable laws, rules, regulations, and polices, including but not limited to those set forth in the Delaware Sediment and Stormwater Regulations and by the Department of Natural Resources and Environmental Control (“DNREC”) and/or District. Construction of the Improvements shall be subject to review and approval by District construction reviewers. Developer shall be responsible for all review costs.

6. To ensure the full and faithful performance of all covenants and conditions set forth herein, Developer does hereby deposit with the District a(n):

_____	Cash Performance Bond; or	Initials: _____
_____	Performance Bond; or	Initials: _____
_____	Letter of Credit (Performance LOC)	Initials: _____

Performance Security in the amount of _____ Dollars (\$_____) shall be deposited with the District to guarantee satisfactory construction and completion of the Improvements, as more particularly shown on the drawing and plans attached as Exhibit B, as may be amended from time to time subject to Developer’s receipt of District’s written approval (“Plans”). The form of the above-referenced document(s) shall be approved by District.

7. The amount of Performance Security is equal to One Hundred Fifty Percent (150%) of the cost shown on the detailed cost estimate prepared at the sole expense of the Developer and approved by District. Said detailed cost estimate is attached as Exhibit A and incorporated herein

Agreement No: _____
Agreement Name: _____

by reference. The Performance Security shall be deposited with the District within ____ (#) days of the execution of this Agreement. If it is discovered that there are any errors or omissions in the design documents after the Performance Security has been posted, and those errors or omissions result in increased construction costs, then Developer hereby warrants that it shall promptly bring such errors or omissions to the attention of District and shall promptly post such additional Performance Security in an amount equal to the increased construction costs. In the event that the amount of the cost of Improvements increases for reasons other than errors or omission in design documents and after the Performance Security has been posted, then Developer shall promptly notify District in writing of the cost increase and shall promptly post such additional Performance Security in an amount equal to the increased construction costs. The Parties also hereby acknowledge and agree that the Performance Security may, upon written request of Developer and approval by District, be reduced in proportion to the amount of Developer's actual cost for completion of Improvements, however, at no time shall the Performance Security be less than Fifty Thousand Dollars (\$50,000.00). In the event of an increase or decrease in the amount of the Performance Security, the obligations and liabilities of Developer under this Agreement shall be increased (or decreased as the case may be) and extended to cover the adjusted amount of security and all references to the Performance Security shall be deemed to refer to the adjusted amount. The Parties further agree that any such increase or decrease in the amount of Performance Security shall be memorialized in writing and signed by the Parties hereto in a separate written agreement or addendum to this Agreement. In the event of a reduction in the amount of Performance Security, the new security agreement or addendum to this Agreement shall be in effect prior to release of the previously held security.

8. Developer agrees, upon District's request, to promptly provide District with complete information regarding the identity of any and all professionals providing services relating to the performance and completion of Improvements.

9. If Developer does not complete or cause to be completed all Improvements by the Completion Deadline, then District may, upon written notice to Developer, draw upon all or any portion of Performance Security as District may determine necessary in its sole discretion for completion of Improvements, and may retain any or all excess funds held as Performance Security for the payment of District's expenses and reasonable attorney's fees in connection with the performance and completion of Improvements. Developer acknowledges and accepts that any default by Developer hereunder shall trigger, at the election of the District, a forfeiture of the Performance Security to the District. Notwithstanding anything contained herein to the contrary, if, prior to the completion of the Improvements, Developer fails to renew any Performance Security provided hereunder not later than forty-five (45) days prior to the expiration of said Performance Security, then District may, in its sole discretion, retain or call the Performance Security for the permitted uses hereunder.

10. The exercise of the District's rights to draw all or any part of the monies held as Performance Security shall not eliminate the Developer's liability for any expenses actually incurred above and beyond the Performance Security amount. Developer shall remain liable to the District for the full and total cost of any and all of the Improvements not completed by the Completion Deadline.

11. Performance Security will be released in accordance this Agreement and the Delaware Sediment and Stormwater Regulations. A full or partial release of Performance Security shall not occur until District's completion of a final field inspection of the completed Improvements, after submission and approval of the post construction verification documents showing the Improvements as built, and after written confirmation by the design engineer that construction was accomplished in accordance with the approved Plans.

12. Any changes to Plans must be in writing and must be approved in advance by District.

13. Developer agrees to obtain, at Developer's sole expense, all easements which are reasonably necessary for the construction and maintenance of Improvements.

14. Upon completion of Improvements, Developer shall obtain from its contractors, all relevant subcontractors, and any others having provided labor and/or materials for the construction of the Improvements that could give rise to a lien in their favor, a standard release of lien document stating that the Project and all Improvements have been satisfactorily completed within the terms and conditions of their contract, and that the Property is free and clear of any and all liens, claims, security interests and/or encumbrances in favor of said party. A copy of said release of liens shall be provided to District upon request by District.

18. To ensure that the work performed pursuant to this Agreement shall remain free from defects in materials and workmanship and shall continue to effectively function and endure without the need for repair or replacement, Developer shall, upon completion of all the Improvements and the final stabilization of at least Seventy-Five Percent (75%) of the Site, deposit with the District one or more of the following: a Cash Warranty Bond, a Surety Warranty Bond, or a Letter of Credit (Warranty LOC) (collectively "Warranty Security"). Said Warranty Security shall be in an amount equal to Ten Percent (10%) of the value of the original Performance Security or Twenty-Five Thousand Dollars (\$25,000.00), whichever is greater. The Warranty Security shall remain in full force and effect until One Hundred Percent (100%) of the Site has reached the point of Final Stabilization (as defined in the Delaware Sediment and Stormwater Regulations), or for two (2) years from the completion and approval of the Improvements by the District and in accordance with the Delaware Sediment and Stormwater Regulations, whichever should occur sooner ("Warranty Period"), after which the full Warranty Security shall be released.

19. If during the Warranty Period Developer fails, after being provided written notice from District, to promptly make full, complete and satisfactory repair and/or replacement, as required by District, of any and all materials and workmanship performed pursuant to this Agreement, or fails to indemnify and save harmless District from any loss or damages arising from Developer's failure to have provided materials and workmanship free from defect for the entire Warranty Period, then, upon written notice to Developer at its last known address, the District may declare the Developer to be in default, and may claim payment of all or any part of the Warranty Security for the cost of repairing and/or replacing the defective Improvements, along with any and all costs and expenses in doing so, including, but not limited to, reasonable attorney's fees.

20. The exercise of District's rights to draw all or any part of the Warranty Security shall not eliminate the Developer's liability for any expenses actually incurred above and beyond the Warranty Security. Developer shall remain liable to the District for the full and total cost of any and all repairs and/or replacements required by the District during the Warranty Period, and shall remain further liable to the District for any and all costs and expenses, including, but not limited to, reasonable attorney's fees, incurred by the District in addressing Developer's breach hereunder.

23. Upon any breach of this Agreement by Developer, Developer shall be liable to the District for all costs and expenses, including but not limited to, reasonable attorney's fees the District may incur as a result of said breach. As noted elsewhere herein, the District may retain all or any portion of the balance of any Performance Security or Warranty Security for the payment of any expenses incurred.

24. Developer shall indemnify and hold harmless District, its officers, employees, agents and representatives from any and all claims, liabilities, losses, costs, actions, damages, suits and demands (including reasonable attorney's fees), of any nature, arising from or relating to any breach of this Agreement and/or in the performance, completion and construction of Improvements. Developer shall promptly notify District of any claim or potential claim that could give rise to an indemnification obligation under this clause and shall cooperate fully with District in the defense or settlement of a claim.

25. None of the obligations imposed upon Developer hereunder shall be assignable by Developer, whether by conveyance of a part of or all of the Property upon which the Improvements are to be constructed or otherwise. The terms of this Agreement shall remain binding upon Developer regardless of whether or not the Developer has a legal interest in the Property.

26. The District's policies and Delaware Sediment and Stormwater Regulations are incorporated herein by reference, and together with the terms of the Agreement, contain the entire understanding of the Parties and may not be modified or amended unless in writing signed by the Parties hereto.

Agreement No: _____
Agreement Name: _____

27. This Agreement shall be governed by, interpreted and enforced in accordance with the laws of the State of Delaware, and Owner hereby consents to the jurisdiction of the Courts of the State of Delaware, and the venue of Sussex County, Delaware.

28. This Agreement shall be binding upon and shall insure to the benefit of the Parties and their respective heirs, personal representatives, successors, and assigns.

29. Time shall be of the essence for this Agreement.

30. The undersigned have all necessary corporate power and authority to execute and deliver this Agreement and to consummate the transaction contemplated hereunder. The Developer warrants that the execution and delivery of this Agreement does not and will not violate the terms or conditions of Developer's formation documents, bylaws, any judicial or administrative order or process, or any agreement or instrument to which Developer is a party or by which it is bound. This Agreement has been duly and effectively authorized by all necessary corporate actions.

31. This Agreement may be signed in counterparts.

Agreement No: _____
Agreement Name: _____

IN WITNESS WHEREOF, each of the Parties hereto, has caused this Agreement to be executed under Seal on the day and year noted below.

Witness:

Sussex Conservation District

By:

_____(SEAL)
By: David Baird, District Coordinator

Witness:

Developer

By:

_____(SEAL)
By:

Agreement No: _____
Agreement Name: _____

**EXHIBIT A
(COST ESTIMATE)**

Agreement No: _____
Agreement Name: _____

EXHIBIT B
(DRAWINGS AND PLANS)