

Agreement No.: _____
Agreement Name: _____
Bond Amount: _____

WARRANTY SURETY BOND

This Warranty Surety Bond (“Warranty Bond”) is dated _____, 202__ and given by _____ (“Developer”), of _____ (“Principal”), and _____, a surety licensed in the State of Delaware, of _____ (“Surety”), to the Sussex Conservation District, a governmental subdivision of the State of Delaware (“District”).

WHEREAS, Principal has, by written agreement (Agreement No. _____) dated _____ (“Agreement”), and through plans and specifications as approved by District, agreed to provide materials, labor, construction administration, and construction inspection necessary for drainage construction, erosion and sedimentation control facilities, and/or other improvements to Developer, as deemed necessary by District. Said Agreement is incorporated herein by reference; and

WHEREAS, Principal is required pursuant to the terms of said Agreement to furnish performance security pursuant to said Agreement, in the amount of Ten Percent (10%) of the original performance bond posted pursuant to said Agreement, or Twenty-Five Thousand Dollars (\$25,000.00), whichever is greater; and

NOW THEREFORE, Principal and Surety are held and firmly bound unto District in the penal sum of _____ Dollars (\$_____) lawful money of the United States, for the payment of which Principal and Surety hereby jointly and severally bind themselves, their respective successors and assigns. This Warranty Bond shall be subject to the following terms and conditions:

1. The condition of this obligation is such that if the materials and labor performed pursuant to the Agreement remain free from defects in materials and workmanship and shall continue to effectively function and endure without the need for repair or replacement for a period of two (2) years from the completion and approval thereof, or until One Hundred Percent (100%) of the site is at the point of Final Stabilization, as defined by the Delaware Sediment and Stormwater Regulations (*7 Del. Admin. Code* § 5101), which ever should occur first (the “Warranty Period”), then the obligations created hereunder shall be void, but otherwise this obligation shall remain in full force and effect.

2. If during the Warranty Period hereunder Principal 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 the 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 the Principal and Surety at their respective last known addresses, District may declare Principal to be in default, and claim payment under this

Agreement No.: _____
Agreement Name: _____
Bond Amount: _____

Bond for the cost of repairing and/or replacing the defective improvements called for under the Agreement, along with any and all costs and expenses incurred in doing so, including, but not limited to, reasonable attorney's fees.

3. This Bond shall not be subject to cancellation by Principal or Surety for any reason until such time as the Warranty Period has expired, and all defects and claims for which District provided notice to Developer during the Warranty Period have been corrected to the satisfaction of District. Provided the Warranty Period has expired, there are no known and uncorrected defects to the materials and workmanship subject hereto, and Principal is not otherwise in breach of this Warranty Bond or the underlying Agreement, then this Bond shall be released.

4. District reserves the right, in its sole discretion, to accept a substitute bond in the place hereof, at which point this Warranty Bond shall be released.

5. There shall be no partial release from this Warranty Bond, and Principal and Surety shall remain fully liable for the entirety of their obligations under this Warranty Bond until its complete discharge.

6. Principal and Surety shall jointly and severally indemnify and save harmless District as well as its officers, employees, agents and representatives thereof, from all claims, liabilities, losses, costs, damages, and expenses (including reasonable attorney's fees) arising out of or relating to any breach and/or performance of the Agreement. Principal and Surety 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 any claim. Principal and Surety hereby acknowledge and agree to fully and promptly pay all individuals or entities providing materials or performing labor related to the Agreement and to ensure that any and all amounts owed by them (either individually or collectively) or by any party involved for said labor and materials are duly settled.

7. The obligations hereunder shall survive foreclosure, sale, assignment, conveyance or transfer of the real property or the Agreement, or both, which is the subject of this Warranty Bond. In the event of such foreclosure, sale, assignment, conveyance or transfer, this Warranty Bond shall be released by District only upon the submission of replacement security satisfactory, as determined by District in its sole discretion, or in the event the full and complete performance of the Agreement and all conditions of this Warranty Bond have been fulfilled.

8. In the event that District and Principal agree to changes in the scope of obligations called for under the Agreement, the obligations of the Surety hereunder shall not be released or otherwise affected, noting, however, that the liability of the Surety shall not exceed the face amount of the Warranty Bond herein posted.

Agreement No.: _____
Agreement Name: _____
Bond Amount: _____

IN WITNESS WHEREOF, Principal and Surety have caused this Warranty Bond to be executed on its behalf and by its duly authorized representative as the day and year first above written.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

PRINCIPAL:

ATTEST: _____

_____ (SEAL)

Print Name: _____

Title: _____

SURETY:

ATTEST: _____

_____ (SEAL)

Print Name: _____

Title: _____