

Agreement No: _____
Agreement Name: _____

AGREEMENT

THIS AGREEMENT, dated this ____ day of _____, 20____, by and between **The Sussex Conservation District**, a governmental subdivision of the State of Delaware, having a principal business address of 23818 Shortly Rd., Georgetown, DE 19947, its successors or assigns (hereinafter the “District”),

- AND -

_____, having an address of _____
_____ (hereinafter “Developer”).

RECITALS

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

WHEREAS, Developer is seeking to have the District issue a _____ plan approval (hereinafter the “Plan Approval”) pertaining to the property;

WHEREAS, in accordance with the Sussex County Code, 7 *Delaware Code* Chapter 40, and 7 *Del. Admin. Code* § 5101, the 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, respectively;

WHEREFORE

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

1. The recitals above are material to the terms of this Agreement and are thus incorporated herein by referenced and made a part of the substantive content hereof.
2. Subject to the terms of Paragraph 4 below, Developer shall within _____ (____) months from the date of execution of this Agreement complete construction or cause construction to be completed of all of the required sediment and erosion control and stormwater management improvements and other required improvements (hereinafter referred to collectively as “Improvements”); all as approved by the Sussex Conservation District and as set forth in detail elsewhere herein. All of the design and construction work required for the satisfactory

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completion of the Improvements shall be the responsibility of the Developer or his designee subject to the approval of the District.

3. The sequence of events necessary for the progression of the Improvements to completion shall be as specified on the approved plans. During the pendency of the project, at least once a year Developer shall file with the District a progress report as to the progress actually made and Developer shall advise the District of any action required by the District that may be preventing the progress of the subject project.

4. Not later than Sixty (60) days, but not more than Ninety (90) days prior to the Improvements completion deadline set forth herein, the Developer may request, in writing, that the time for completion of the Improvements be extended. Any written request for extension must provide, at a minimum, a detailed statement as to the reasons causing delay in the completion of the Improvements, and a revised proposed schedule for completion of the Improvements. Acceptance or denial of any request for extension shall be in the sole discretion of the District. All requests for extension shall be subject to the terms of section 3.6 of 7 *Del. Admin. Code* § 5101, as amended.

5. Developer shall construct all Improvements in accordance with the specifications set forth in the approved plans, in accordance with all requirements of the *Delaware Code*; in accordance with all requirements set forth in 7 *Del. Admin. Code* § 5101, and as required by the policies of the Department of Natural Resources and Environmental Control and/or the 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. Developer shall proceed with construction of the Improvements in accordance with the approved plans, and in accordance with all applicable laws, rules, and regulations.

7. 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:

The form of the above-referenced document(s) shall be as approved by the District and its legal counsel, and in the amount of _____ Dollars (\$_____) (hereinafter referred to as the "Performance Security").

8. The amount of the Performance Security has been determined in accordance with a detailed cost estimate prepared at the expense of the Developer, and approved by the District

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Coordinator or their designee; said cost estimate being attached hereto as Exhibit A and incorporated herein by reference. The Performance Security is set at One Hundred Fifty Percent (150%) of the cost shown on the aforementioned cost estimate. The Developer warrants that in the event that errors or omissions are found in the design documents after the Performance Security has been posted, and those errors or omissions result in increased construction costs, then Developer shall promptly bring such errors or omissions to the attention of the District and shall promptly post such additional Performance Security as would be required as a result of the increase in costs.

9. The Performance Security shall be deposited with the District to guarantee satisfactory construction and completion of the Improvements, as more particularly set forth on the drawing and plans collectively identified as Exhibit B hereto (hereinafter the "Plans"). With the District's approval, Plans may be revised from time to time, provided that adequate security, as determined by the District, is available or provided to cover any increased costs.

10. Developer agrees, upon request, to timely provide the District with complete information regarding the identity of any and all engineers, surveyors, contractors, and other similar professionals providing services relating to the Improvements.

11. If Developer does not complete or cause to be completed all of the Improvements called for hereunder within the time set forth in Paragraph 2 above, the District may, upon written notice to Developer, draw upon all or any part of the Performance Security as necessary for the completion of the Improvements, and may retain any or all excess funds held as Performance Security for the payment of the District's expenses and reasonable attorney's fees. 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 the District may, in its discretion, retain or call the Performance Security for the permitted uses hereunder.

12. 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 deadline set forth herein.

13. The parties hereto agree that the total of the Performance Security may, upon the request of the Developer and in the sole discretion of the District, be reduced, through a separate written agreement signed by all parties, in proportion to the amount of the Developer's actual

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completion of the Improvements. A new security and agreement recognizing the reduced amount shall be in place prior to the release of the previously held security, however, at no time shall the Performance Security be less than Fifty Thousand Dollars (\$50,000.00)

14. Performance Securities will only be released in accordance with *7 Del. Admin. Code* § 5101, as amended. A full or partial release of the Performance Security shall not occur until the completion of a final field inspection of the completed work, after submission and approval of the post construction verification documents showing the Improvements as actually constructed, and after written confirmation by the design engineer that construction was accomplished in accordance with the approved plans.

15. Any changes to the Plans noted herein must be in writing and must be approved in advance by the District.

16. Developer agrees to obtain, at Developer's sole expense, all easements which are reasonably necessary for the construction and maintenance of the Improvements. Easements shall be in a form acceptable to the District.

17. At the completion of the Improvements, the 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 has 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 the 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, the 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) (hereinafter 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, or for Two (2) years from the completion and approval of the Improvements by the District, whichever should occur sooner (hereinafter the "Warranty Period"), after which the full Warranty Security shall be released. The term "final stabilization" as used herein shall be defined as stated in the Delaware Sediment and Stormwater Regulations (*7 Del. Admin. Code* § 5101).

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19. If during the Warranty Period the Developer fails, after being provided written notice from the District, to promptly make full, complete and satisfactory repair and/or replacement, as required by the District, of any and all materials and workmanship performed pursuant to this Agreement, or fails to indemnify and save harmless the 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 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 to 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 the District's rights to draw all or any part of the monies held as Warranty Security shall not eliminate the Developer's liability for any expenses actually incurred above and beyond the Warranty Security amount. 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.

21. The amount of the Warranty Security shall not be reduced.

22. The Warranty Security will only be released in accordance with *7 Del. Admin. Code* § 5101, as amended.

23. Upon any breach of this Agreement by Developer, Developer shall be liable to the District for all costs and expenses, including reasonable attorney's fees that 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 or Warranty Security for the payment of the expenses incurred.

24. Developer shall indemnify and hold harmless the District, its officers, employees, agents and representatives from any and all claims, actions, suits and demands, of any nature, arising from or relating to the construction of the Improvements.

25. None of the obligations imposed upon Developer hereunder shall be assignable by Developer, whether by conveyance of a part of 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.

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26. The District's policies along with 7 *Del. Admin. Code* § 5101 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.

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, and successors.

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.

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:

The Sussex Conservation District

By:

_____(SEAL)
By: David Baird, District Coordinator

Witness:

(DEVELOPER)

By:

_____(SEAL)
By:

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**EXHIBIT A
(COST ESTIMATE)**

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EXHIBIT B
(DRAWINGS AND PLANS)