SUBDIVISION DEVELOPMENT AGREEMENT

THIS AGREEMENT, entered into this the _____ day of _____, 20___, by and between_____ hereinafter referred to as "Developer", and the **County of Washington, Virginia**, a political subdivision of the Commonwealth of Virginia, hereinafter referred to as "County".

W I T N E S S E T H

THAT in and for consideration of the mutual covenants and assurances set forth herein, the Developer and County do hereby agree as follows:

A. Intent of Developer

It is the expressed intention of the Developer to undertake the development of real property located in the County, said property to be known as _____ Subdivision, located in the _____ Magisterial District, hereinafter to be referred to as "Subdivision".

B. Record of Subdivision

The Subdivision intended for development is further described by a proposed final plat of record to be recorded in the office of Clerk of Circuit Court of the County, said plat styled as_____ Subdivision, rendered by _____, Engineers, of _____, _____, dated _____, 20___, and executed by _____ as property owner(s). This final plat has been duly reviewed in preliminary and final form and has been found acceptable for recordation by the County pursuant to the County zoning and subdivision ordinances and other applicable local and state requirements.

C. Improvements to Subdivision

The Developer shall cause the construction and installation of the generally described Improvements to the Subdivision as cited on Attachment A of this Agreement. These Improvements are depicted in detail on the final plat of record and within construction documents produced by _____, Engineers, of _____, _____ styled as _____ Subdivision, dated_____ (revised _____), a copy of which have been filed with the County.

D. Schedule of Improvements

The Developer at his sole expense and responsibility pursuant to the following Schedules shall undertake the Improvements cited on Attachment A of this Agreement:

1. The construction of Improvements pertaining the provision of Public Streets and Roads and Stormwater Detention and Drainage Facilities to the Subdivision shall commence on or after the date of recordation of the final plat of the Subdivision in the Clerk's Office of the Washington County, Virginia Circuit Court and shall be substantially completed on or before_____ (_____) calendar days from the date of recordation.

2. The construction of Improvements pertaining the provision of Public Water to the Subdivision shall commence on or after the date of recordation of the final plat of the Subdivision in the Clerk's Office of the Washington County, Virginia Circuit Court and shall be substantially completed on or before _____ (_____) calendar days from the date of recordation.

3. The construction of Improvements pertaining the provision of Public Sanitary Sewer to the Subdivision shall commence on or after the date of recordation of the final plat of the Subdivision in the Clerk's Office of the Washington County, Virginia Circuit Court and shall be substantially completed on or before _____ (_____) calendar days from the date of recordation.

4. The construction of Other Improvements pertaining to the Subdivision shall commence on or after the date of recordation of the final plat of the Subdivision in the Clerk's Office of the Washington County, Virginia Circuit Court and shall be substantially completed on or before _____ (_____) calendar days from the date of recordation.

The Developer shall forward written certification to the County as to the actual date of recordation of said final plat within 3

County working days.

5. As used herein this Agreement, the terms “substantially completed” or “substantial completion” as applicable to Public Streets and Roads and Stormwater Detention and Drainage Facilities Improvements shall mean when the Improvements are completed in construction to a state and condition where the Virginia Department of Transportation shall provide written confirmation of their eligibility for incorporation into the state system of secondary highways. Alternately, a licensed professional engineer engaged by the Developer at his sole expense and acting on behalf of the Developer shall provide a written certification statement to the County that he has reviewed the design of and inspected such streets and roads during the course of their construction, including design and construction of stormwater drainage infrastructures associated with such streets and roads, materials used in the construction of said roads and drainage system, and the workmanship employed during their construction; and that in his professional estimation such streets and roads and associated drainage systems meet or exceed the requirements of the Virginia Department of Transportation for secondary or subdivision roads so as to make such streets and roads and associated drainage systems acceptable for incorporation into the state system of secondary highways. It is the intent of the Developer to construct all streets and roads and associated drainage systems depicted on the final plat of the Subdivision so as to make same eligible for incorporation into the state system of secondary highways. By entry into this Agreement, the Developer warrants that he has been advised of, understands and agrees to the standards, specifications and conditions under which such streets and roads and associated drainage systems are to be constructed so as to render same acceptable to the Virginia Department of Transportation for incorporation into the state system of secondary highways. The County reserves the right to require independent inspection and verification of such matters, either by agents of the Virginia Department of Transportation or of the County. In the event of dispute concerning substantial completion of streets and roads and associated drainage systems constructed by the Developer pursuant to this paragraph, the County reserves the right to require the Developer to maintain with the County the full value of Surety pursuant to Section E., Paragraph 1. of this Agreement on such streets and roads and associated drainage systems until such time as the Virginia Department of Transportation formally accepts same for incorporation into the state system of secondary highways. With respect to Stormwater Detention and Drainage Facilities not subject to acceptance by the Virginia Department of Transportation, if any, the Developer shall, at the County’s request, provide written certification to the County through a licensed professional engineer engaged by the Developer at his sole expense and acting on behalf of the Developer that the engineer has reviewed the design of and inspected such Facilities during the course of their construction, including materials used in and the workmanship employed during their construction; and that in his professional estimation such Facilities meet or exceed applicable laws, ordinances, regulations and/or accepted professional design standards for such Facilities.

6. As used herein this Agreement, the term “substantially completed” as applicable to Public Water and Public Sanitary Sewer shall mean when the Improvements are completed in construction to a state and condition so as to be eligible for formal submission by the Developer for acceptance, operation and maintenance by the state agency, local government department or agency, or other public authority (hereinafter “public agencies”) which shall be responsible for maintaining and operating such Improvements. Submission of such Improvements for acceptance shall be the sole responsibility of the Developer. Acceptance of such Improvements shall be conditioned upon full compliance with applicable laws, regulations, requirements, stipulations and other conditions promulgated by the involved public agencies. By entry into this Agreement, the Developer warrants that he has been advised of, understands and agrees to the standards, specifications and conditions under which such Improvements are to be constructed so as to render such Improvements acceptable to the involved public agencies.

E. Surety of Developer

The Developer as of the date of this Agreement has provided Surety to the County in the form of [ ]-Irrevocable Letter(s) of Credit [ ]-Performance Bond(s) [ ]-Cash Escrow from _____, business address of _____ in the following amounts, which reflect the actual or truest estimated construction cost value of the Improvements to be undertaken by the Developer, plus a percentage increase not to exceed twenty-five (25%) percent for each type of Improvement as may be required by the County:

1. Improvements pertaining to the provision of Public Streets and Roads and Stormwater Detention and Drainage Facilities to the Subdivision in the aggregate amount of _____Dollars ($_____. 00), this amount reflecting a 15% increase above actual or truest estimated aggregate construction cost value for all Public Streets and Roads and Stormwater Detention and Drainage Facilities to be constructed as part of the Subdivision.

2. Improvements pertaining the provision of Public Water to the Subdivision in the amount of _____Dollars ($_____. 00), this amount reflecting a 15% increase above actual or truest estimated construction cost value.

3. Improvements pertaining the provision of Public Sanitary Sewer to the Subdivision in the amount of _____Dollars ($_____. 00), this amount reflecting a 15% increase above actual or truest estimated construction cost value.

The combined total amount of Surety for all Improvements specified for the Subdivision equals _____ Dollars ($_____. 00).

Where Irrevocable Letters of Credit or Performance Bonds are used as Surety, the terms and conditions of such instruments shall be that approved by the County. Where Irrevocable Letters of Credit or Performance Bonds are used as Surety for Improvements pertaining to the provision of Public Streets and Roads and Stormwater Detention and Drainage Facilities to the Subdivision, the Developer shall select one of the following options (checked):

[ ]-Option 1: The Developer shall post with the County two (2) separate Surety instruments for each individual Public Street or Road in the Subdivision, one instrument in the amount of 82.5% and a second instrument in the amount of 32.5% of the estimated or contractual construction cost of the individual street or road. Upon substantial completion of an individual street or road pursuant to Section D., Paragraph 5. herein, the County shall release the Surety instrument valued at 82.5% pertaining to that street or road to the Developer. Upon acceptance of an individual street or road pursuant to Section F. Paragraph 2. herein, the County shall release the Surety instrument valued at 32.5% pertaining to that street or road to the Developer. Such releases shall occur within 60 days of written confirmation of substantial completion and acceptance.

[ ]-Option 2: The Developer shall post with the County one (1) Surety instrument for each individual Public Street or Road in the Subdivision, or, alternately, one (1) Surety instrument for all streets or roads in the Subdivision, in the amount of 115% of the estimated or contractual construction cost of each or all streets or roads. Upon acceptance of an individual or all streets or roads pursuant to Section F., Paragraph 2. herein, the County shall release the Surety instrument(s) pertaining to such street(s) or road(s) to the Developer within 60 days of written confirmation of acceptance. There shall be no release of Surety at the time of substantial completion.

This Surety is provided to and has been accepted by the County in accordance with the provisions of Chapter 52 of the Code of Washington County, Virginia (2002), as amended.

F. Release of Surety

1. Upon final completion and acceptance of the Improvements pertaining to Public Water, Public Sanitary Sewer and Other Improvements as set out in Section C. of this Agreement, the County shall release Surety to the Developer. For the purpose of final release, the term “acceptance” is deemed to mean when the Improvements are formally accepted by and taken over for operation and maintenance by the state agency, local government department or agency, or other public authority (hereinafter “public agencies”) which is responsible for maintaining and for operating such Improvements upon acceptance. The Developer shall give written notice of completion of all of the Improvements to those public agencies from whom acceptance is required, with copy to the County. In giving this written notice, the Developer shall instruct those public agencies to forward to the County copies of their written responses to the Developer’s notice. Within 60 days of receipt of written notice to the Developer that the public agency has accepted an Improvement(s), the County shall release the Surety pertaining to that Improvement(s) by appropriate written notice to the Developer’s Surety provider, with copy to the Developer.

2. Upon acceptance of the Improvements pertaining to Public Streets and Roads as set out in Section C. of this Agreement, the County shall release any remaining Surety to the Developer. For the purpose of final release of Surety, the term “acceptance” is deemed to mean when the Improvements are formally accepted by and incorporated into the state system of secondary highways by the Virginia Department of Transportation. .

3. In cases where the public agencies cite deficiencies in any Improvements that must be corrected before acceptance, the County shall continue to hold Surety for a period of 90 days. The County shall notify the Developer in writing of nonreceipt of approval and acceptance by the public agency for completed Improvements and may notify the Developer of any specified defects or deficiencies in the construction of the Improvements and suggest corrective measures. If at the end of this 90-day period such corrective measures have not been undertaken, the County may cause forfeiture of Surety at its discretion.

G. Forfeiture of Surety

1. The County may cause forfeiture of the Surety when the Developer has failed to achieve substantial completion of the Improvements within the timeframes specified in Section D. of this Agreement. The County may continue to hold the Surety for a period not to exceed 365 days from the end of the timeframes specified in Section D. at its discretion. Upon forfeiture and receipt of the cash proceeds of the Surety, the County shall undertake to correct the defects in the Improvements as soon as practical. Any remaining proceeds of the Surety after correction of defects and receipt of approval and acceptance of the

Improvements shall be returned to the Developer or his Surety provider within 60 days. For the purposes of this Agreement, the term “defects” shall mean any deficiency in the construction, installation, repair, materials or design of Improvements and related appurtenances, or the failure to appropriately construct or install all such Improvements to the extent required by the final plat of the Subdivision or related construction documents. The Developer shall be held responsible for all such defects.

2. In the event the proceeds of the Surety are insufficient to correct all defects in the Improvements in their entirety, the County is under no obligation to expend additional funds to make such Improvements acceptable, but may do so at the discretion of the Washington County Board of Supervisors. The County, by action of the Board of Supervisors, may file suit against the Developer in a court of competent jurisdiction to cause the Developer to satisfactorily correct the defects in the Improvements or to remit to or reimburse the County its costs to do so. The County’s requirement for and acceptance and use of any forfeited Surety instrument in no way relieves the Developer from responsibilities and liabilities pursuant to Chapter 52 of the Code of the County of Washington, Virginia (2002), as amended.

3. In lieu of the provision of Paragraphs 1. and 2. herein, the County, by action of the Board of Supervisors, may file suit against the Developer to cause the Developer to satisfactorily correct the defects in the Improvements, without recourse to forfeiture of Surety. If suit is filed, the County shall not release any Surety until such suit is settled, including appeal, if any.

4. Any failure on the Developer’s part to maintain Surety as required in full force and effect pursuant to the provisions of this Agreement shall constitute breach of this Agreement.

H. Extension of Schedule of Improvements

Upon written request by the Developer, the County may extend the substantial completion dates set forth in Section D. herein this Agreement. Such request shall be submitted no later than 30 days prior to the date given for substantial completion, along with an explanation of the need for such extension. The County shall grant any request for extension one (1) time for a period not to exceed 90 additional days, or for such lesser amount of time as the Developer may request. Any first request for extension exceeding 90 additional days, or any subsequent extension requests shall be considered on a case-by-case basis by the County, but in no event shall the County grant extension(s) exceeding a total of 365 days.

I. Default of Developer

If at any time the Developer initiates bankruptcy proceedings, fails to proceed diligently or otherwise is legally or financially prevented from proceeding with due diligence in construction of the Improvements specified by this Agreement for any reason whatsoever, the Developer or his legal representative shall immediately serve written notice to the County. Such conditions shall be construed by the County as default of the Developer. Upon receipt of written notice by the Developer of default, the County shall continue to hold Surety for a period of at least 120 days. Where default of the Developer is made known to the County other than by such written notice, the County reserves the right to call for forfeiture of Surety at any time.

J. Amendment to Agreement

This Agreement may be amended as to its terms and conditions by mutual consent of the County and Developer, said amendment(s) to be made part of this Agreement by incorporation of attachments beginning with Attachment 2.

K. Agent of County

The agent of the County for the purposes of this Agreement shall be the County Administrator of Washington County, Virginia or his designee.

L. Addresses for Notification

The mailing address of the County for the purposes of notification requirements of this Agreement shall be:

Office of County Administrator
County of Washington
205 Academy Drive
Abingdon, Virginia 24210

The mailing address of the Developer for the purposes of notification requirements of this Agreement shall be:

_____
_____
_____

The legal identity and mailing address of the Developer's Surety provider for the purposes of notification requirements of this Agreement shall be:

_____
_____
_____

SO AGREED by the undersigned parties as of the date first given.

DEVELOPER:

_____

By: _____

Title: _____

By: _____

Title: _____

COUNTY OF WASHINGTON, VIRGINIA:

By: _____

Title: County Administrator

COMMONWEALTH OF VIRGINIA)
) To -wit:
COUNTY OF WASHINGTON)

The foregoing instrument was acknowledged before me in the jurisdiction aforesaid, this _____ day of _____, 20_____ by Mark K. Reeter, County Administrator of Washington County, Virginia, a political subdivision of the Commonwealth of Virginia, on behalf of the County.

Notary Public_____

My commission expires: _____

STATE OF _____)
) To -wit:
COUNTY/CITY OF_____)

The foregoing instrument was acknowledged before me in the jurisdiction aforesaid, this _____ day of _____, 20_____ by _____ and _____, acting on behalf of _____, as Developer.

Notary Public_____

My commission expires: _____

REVISED 11-05

ATTACHMENT A
SUBDIVISION DEVELOPMENT AGREEMENT

1. Improvements pertaining the provision of Public Streets and Roads and Stormwater Detention and Drainage Facilities to the Subdivision:

Construction of _____ linear feet of _____, with a platted right-of way width of _____ feet and a uniform paved surface of _____ feet in width.

Construction of _____ linear feet of _____, with a platted right-of way width of _____ feet and a uniform paved surface of _____ feet in width.

Construction of _____ linear feet of _____, with a platted right-of way width of _____ feet and a uniform paved surface of _____ feet in width.

Construction of _____ linear feet of _____, with a platted right-of way width of _____ feet and a uniform paved surface of _____ feet in width.

Construction of _____ linear feet of _____, with a platted right-of way width of _____ feet and a uniform paved surface of _____ feet in width.

Construction of _____ linear feet of _____, with a platted right-of way width of _____ feet and a uniform paved surface of _____ feet in width.

Construction of _____ linear feet of _____, with a platted right-of way width of _____ feet and a uniform paved surface of _____ feet in width.

Construction of _____ linear feet of _____, with a platted right-of way width of _____ feet and a uniform paved surface of _____ feet in width.

2. Improvements pertaining the provision of Public Water to the Subdivision:

Installation of public water distribution lines in accordance with the plans and specifications for same within construction documents produced by _____, Engineers, of _____styled as _____, dated_____ (revised _____).

3. Improvements pertaining the provision of Public Sanitary Sewer to the Subdivision:

Installation of public sanitary sewer collection lines and _____ pump station(s) in accordance with the plans and specifications for same within construction documents produced by _____, Engineers, of _____styled as _____, dated_____ (revised _____).

REVISED 11-05