

STATE OF GEORGIA            )  
EFFINGHAM COUNTY         )

**DEVELOPMENT AGREEMENT**

This Development Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2022, by and between Greenland Developers, Inc., a Georgia corporation, hereinafter referred to as the “Developer,” and the Effingham County Board of Commissioners, hereinafter referred to as the “County,” the lawfully elected governing authority of Effingham County, a political subdivision of the State of Georgia.

**RECITALS:**

WHEREAS, Developer is the developer of \_\_\_\_\_, hereinafter referred to as the “Project”, a proposed subdivision consisting of approximately 340 residential homes; and

WHEREAS, the Developer desires certain commitments from the County, with regard to (i) transportation and access for the Project via Noel C Conaway Road (Ga Hwy 30) near the opposite side of Noel C. Conway Road from the intersection of Kolic Helmey (hereinafter referred to as the “Intersection”), (ii) the supply of reuse water service for the Project, and (iii) the supply of water and sanitary sewer service and disposal for the Project; and

WHEREAS the County finds that the provision of transportation service to the Project is consistent with and in furtherance of the goals and purposes of the Effingham County Transportation Master Plan and is in the public interest; and

WHEREAS the County finds that the provision of reuse water service to the Project is consistent with and in furtherance of the goals and purposes of the Effingham County Reuse Water Distribution program and is in the public interest; and

WHEREAS the County finds that the provision of water and sewer service to the Project is

consistent with and in furtherance of the goals and purposes of the Effingham County Water and Sewer program and is in the public interest.

NOW, THEREFORE, for an in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and Developer hereby agree as follows:

**WITNESSETH:**

**Section 1. Off-Site Traffic Improvements**

- A. The County has constructed or will construct transportation systems having sufficient capacity to provide transportation access to the Project.
- B. Developer has retained and the County has approved EMC Engineering Services, Inc., a competent professional engineering firm registered in the State of Georgia (the “Design Engineer”), to design and observe the construction of such improvements as are necessary to construct the Intersection to the Project on-site roadway system within said Project, as shown on Exhibit 1, hereinafter referred to as the “Off-Site Traffic Improvements.”
- C. The County has determined, based on the submission of Developer’s Project and the unrelated planned-Intersection improvements described below in subparagraph D, the Intersection needed to serve the Project is a multi-lane transportation Roundabout. The Developer and County agree that the Engineer(s) will design the Intersection to the desired size and the Developer will construct said intersection, with Engineer(s) oversight during construction, at the Developer’s sole expense.
- D. Prior to submission of Developer’s Project, the County was in the planning phase of an improvement to the existing three-legged intersection of Hwy 30 and Kolic-Helmey Road. The Project now requires access to the Intersection, which requires expansion of the Intersection from

three (3) legs to four (4) legs. The County will underwrite the Intersection improvements prior to such expansion (in the amount of three (3) legs) , while the Developer will fund the additional cost to expand the Intersection to four (4) legs, subject to paragraphs H and I below; provided, however, that the County's contribution to the design cost shall not exceed Two Hundred Thousand and 00/100 Dollars (\$200,000.00) and the County's contribution to the construction cost shall not exceed One Million Eight Hundred Thousand and 00/100 Dollars (\$1,800,000.00) (collectively, the "Maximum Traffic Improvement Contribution"), as determined by estimates provided by the Developer's Engineer. These costs may be modified by revision of this Agreement should unknown issues arise during construction.

- E. The Developer has constructed or will construct the Intersection having sufficient capacity to provide transportation access to the Project, as shown on Exhibit 1. The County shall ensure the availability of transportation access at the connection point. The Off-Site Traffic Improvements shall be constructed pursuant to plans approved by the County and appropriate regulatory authorities.
- F. The County will be the applicant to the Georgia Department of Transportation (GDOT) for an encroachment permit for construction of the Intersection. The Developer will prepare the application and associated submittal attachments and assist the County with the submittal to GDOT. The County will pay all fees associated with the permit.
- G. Effingham County will be the applicant for all needed applications for any additional wetland impacts related to intersection improvements.
- H. Effingham County shall be solely responsible for any right of way acquisitions needed to complete the project.

## **Section 2. Off-Site Water Sewer Improvements and Capacity**

- A. The County has constructed or will construct a water and sanitary sewer distribution system having sufficient capacity to provide potable water and sanitary sewer to the Project.
- B. In addition to any obligations set forth in Section 7 or any other provisions under this Agreement, the County shall ensure the availability and sufficient capacity of a water and sanitary sewer distribution system to service the Project's intended use, to include without limitation, a capacity no less than 30 ERUs (as later defined) per month commencing on July 1, 2023, until a maximum number of 340 ERUs are utilized or as otherwise agreed to in writing by the parties.
- C. Developer has retained the Design Engineer to design and observe the construction of such improvements as are necessary to extend the County water distribution and sewer collection systems from the current water distribution and sewer collection terminus to the on-site connection point for the Project in order to distribute water and sewer to and within the Project, as shown on the Preliminary Water and Sewer Plan attached hereto as Exhibit 1, and hereinafter referred to as the "Off-Site WS Improvements" and, together with the Off-Site Reuse Improvements and Off-Site Traffic Improvements, hereinafter collectively referred to as the "County Off-Site Improvements."
- D. The Developer has constructed or will construct water and sewer systems having sufficient capacity to provide water and sewer to the Project, as shown on the Preliminary Water and Sewer Plan attached hereto as Exhibit 1. The County shall ensure the availability of water and sewer services at the connection point. The off-site improvements shall be constructed pursuant to plans approved by the County and appropriate regulatory authorities.

### **Section 3. Off-Site Reuse Water Improvements and Capacity**

- A. The County has constructed or will construct a reuse water system having sufficient capacity to provide reuse water to the Project.
  
- B. In addition to any obligations set forth in Section 7 or any other provisions under this Agreement, the County shall ensure the availability of adequate reuse water service and capacity at the connection point for the Project's intended use to include without limitation, a capacity no less than 30 ERUs (as later defined) per month commencing on July 1, 2023, until a maximum number of 340 ERUs are utilized or as otherwise agreed to in writing by the parties.. The Off-Site Reuse Water Improvements shall be constructed pursuant to plans approved by the County and appropriate regulatory authorities.
  
- C. Developer has retained the Design Engineer to design and observe the construction of such improvements as are necessary to extend the County reuse water distribution system from the current terminus of reuse water distribution to the Project on-site connection point in order to distribute reuse water to and within the Project, as shown on the Preliminary Reuse Water Plan attached hereto as Exhibit 1, hereinafter referred to as the "Off-Site Reuse Water Improvements."
  
- D. The Developer has constructed or will construct the Off-Site Reuse Water Improvements having sufficient capacity to provide sufficient reuse water to the Project, as shown on Exhibit 1. The County shall ensure the availability of reuse water at the connection point. The Off-Site Reuse Water Improvements shall be constructed pursuant to plans approved by the County and appropriate regulatory authorities.

### **Section 4. Maximum County Contributions Adjustments and Payment**

- A. In the event of a “Significant Price Increase” in material cost occurring during the performance of the County Off-Site Improvements through no fault of the Developer, the Maximum County Contributions described above shall be equitably adjusted based on the percentage increase in costs with respect to such material(s). A change in price of an item of material will be considered a “Significant Price Increase” when the price of an item increases or decreases by greater than 20% percent between the dates of the estimates and performance. In order to receive an adjustment to one or more of the Maximum County Contributions, Developer shall share with the County, in writing, Developer’s estimated costs for the relevant materials that it believes may be subject to potential escalation (the “Escalation List”). Prior to purchasing any of the listed materials, the Developer must provide the County with three (3) timely and credible proposals from suppliers as well as a third-party price index such as RS Means, Steel Market Update or the like to confirm the credibility of the proposals. If Developer suffers a Significant Price Increase that cannot be overcome through value engineering, substitutions or early purchasing/warehousing, then the parties agree to adjust the Maximum County Contributions by the increase in material costs indicated in the lowest proposal or price index amount presented to the County. These change orders shall not include overhead or profit mark-ups on the increases from the Developer or any of its materialmen, contractors or subcontractors. Failure to include a material in the initial Escalation List shall be considered a waiver of the right to seek escalation for such materials without the County’s consent. If prices decrease from what was in the Developer’s original cost, the County shall be entitled to a deduct.
- B. Reimbursement for the design and construction costs associated with the County’s portion of the Off-Site Improvements to the Developer shall be in the form of reimbursement of actual costs supported with invoice.

## **Section 5. Inspection, Construction and Dedication of Off-Site Improvements.**

A. Developer shall provide for inspection of the County Off-Site Improvements by the Design Engineer during construction and shall ensure compliance with all County design and construction requirements. Developer shall provide to the County a statement from the Design Engineer certifying, based on the best of his/her information, knowledge, and belief based on periodic observation, that the materials and workmanship, including but not limited to utility relocation, roadway construction, traffic signage, piping, pump systems, structures, appurtenances, and other incidentals associated with road, reuse water, potable water and sanitary sewer infrastructure and improvements that serve the Project, and all related material and work (collectively, the “Infrastructure”), meet the County’s specifications and standards. Developer shall provide two (2) copies, and an electronic file, of “record” drawings of the County Off-Site Improvements signed by the Design Engineer and/or independent inspector. Upon request of the County, the certification shall be substantiated by material affidavits from suppliers, including, as applicable, by test results for utility and stormwater pipe deflection, water and sewer pressure, leaks, water borne bacteria, backfill and roadway compaction, water and sewer flow tests, asphalt/concrete testing, and other tests required by the County. All design, construction, inspection, and other costs incurred to construct the County Off-Site Improvements and connect same to the Project shall be borne by the Developer and reimbursed by the County as stated in Section 2 above. The Developer shall hold the County harmless for and indemnify the County against any and all claims for damages or personal injuries caused by or arising from the faulty or negligent construction of the County Off-Site Improvements.

B. Upon completion of the construction of the County Off-Site Improvements, certification by the Design Engineer, provision of the “record” drawings, and compliance with any other requirements reasonably imposed by the County, the County shall, upon dedication by the Developer and subject to approval of the County, which approval shall not be unreasonably withheld, accept title to and assume responsibility for maintenance and operation of those portions of the County Off-Site

Improvements located within public easements or right-of-ways, up to but not including utilities, signs, and roadway. This dedication shall include all rights, title, and interest that the Developer has in the County Off-Site Improvements and also all easements and/or right-of-way required for the purpose of maintenance thereof.

- C. Developer shall provide to the County a recordable plat(s) showing all public easements and/or rights-of-way that contain roadway and utilities that, are to be owned and maintained by the County. If the Developer fails to provide the recordable plat, the County shall not accept the County Off-Site Improvements, nor issue a Certificate of Occupancy for any building or structure within that phase of the Project.
- D. The County will be responsible for closure of the GDOT encroachment permit and dedication of the Intersection improvements within State Rights-of-way to GDOT.

**Section 6. On-Site Improvements.**

- A. Developer has retained the Design Engineer to design and observe the construction of such improvements as are necessary to extend the County Off-Site Improvements from the County connection points to the Project and to distribute traffic, water, sanitary sewer and reuse water service to and within the Project, hereinafter collectively referred to as the “Project On-Site Improvements.” The Developer shall select a competent contractor for the construction of the Project On-Site Improvements. The Developer shall notify the County of the selection and provide a copy of the contract amount. The County reserves the right to advise the Developer of any prior contractual arrangements between the contractor and County that resulted in default, litigation, and / or poor performance and request consideration of another contractor. The Project On-Site Improvements shall be constructed at Developer’s sole expense. Developer shall ensure that the Project On-Site Improvements are of sufficient capacity to serve the Project.



- B. Developer shall provide for inspection of the Project On-Site Improvements by the Design Engineer during construction and shall ensure compliance with all County design and construction requirements. Developer shall provide to the County a statement from the Design Engineer certifying, based on the best of his/her information, knowledge, and belief based on periodic observation, that the Infrastructure and all related materials and workmanship meet the County's specifications and standards. Developer shall provide two (2) copies, and an electronic file, of "record" drawings of the Project On-Site Improvements signed by the Design Engineer and/or an independent inspector. Upon request of the County, the certification shall be substantiated by material affidavits from suppliers and by applicable test results for deflection, pressure, leaks, bacteria, compaction and flow tests required by the County. All design, construction, inspection, and other costs incurred to construct the Project On-Site Improvements and connect to the County reuse water system shall be borne by the Developer. The Developer shall hold the County harmless for and indemnify the County against any and all claims for damages or personal injuries caused by or arising from the faulty or negligent construction of the Project On-Site Improvements.
- C. Upon completion of the construction of the Project On-Site Improvements, certification by the Design Engineer, provision of the "record" drawings, and compliance with any other requirements reasonably imposed by the County pursuant to Section three (3) of this agreement, the County shall, upon dedication by the Developer and subject to approval of the County, which approval shall not be unreasonably withheld, accept title to and assume responsibility for maintenance and operation of the roads and traffic infrastructure that comprise On-Site Improvements and such water, sanitary sewer and reuse water portions of the Project On-Site Improvements as are located within public easements or right-of-ways, up to but not including individual metering points. This dedication shall include all rights, title, and interest that the Developer has in the Project On-Site Improvements and also all easements and/or right-of-way required for the purpose of maintenance

thereof.

- D. The plans and specifications for the Project On-Site Infrastructure shall be consistent with the County's design standards and ordinances, as well as applicable state and federal regulations at the time of plan approval by the County. The County Representative and the Developer shall coordinate the planning, design, and construction of the Project On-Site Infrastructure to generally adhere to the County's water and sewer master planning for the region.

### **Section 7. Connection Fees; Recurring Water and Sewer Service Fees.**

The County will charge, and the Developer will pay (or cause to be paid), Water Tap-in Fees, Sewer Tap-in Fees, Water Connection Fees, Sewer Connection Fees, Water Re-Use Fees, Water Meter Installation Fees, Water Meter Application Fees, and any other applicable connection charges as are in effect at the time of each such connection, for each connection to the water and sewer system within and serving the Project (collectively, the "Connection Fees"). Such fees shall be levied on a nondiscriminatory, per ERU basis, as applicable, unless metered to account for actual use (*e.g.*, water meters). Such fees shall be paid prior to occupancy. For purposes of this Agreement, the term "ERU" shall mean the number of residential units to which the water demand of a customer is equivalent, where a single-family detached residential unit is assumed to have an average demand of 300 gallons per day. The number of ERUs assigned to a building or structure shall be determined in accordance with the water use load factors established by ordinance of the County; provided, however, that the determination of the number of ERUs for the individual users on the Property shall be made on the same basis as all other users within the County.

### **Section 8. Term; Renewal.**

The initial term of this agreement shall be two (2) years, commencing on \_\_\_\_\_, 2022 and ending on July 1, 2024.

**Section 9. Compliance with Laws.**

Developer shall comply with all existing and future County ordinances, rules, and regulations relating to the connection to and use of the County's transportation systems. Nothing in this Agreement shall limit the right of the County to impose other fees or to create special tax districts to enable the County to recover all costs incurred in providing transportation service to the Property.

**Section 10. Governing Law; Forum Selection.**

This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Georgia. Any action arising from this Agreement shall be filed in the Superior Court of Effingham County.

**Section 11. Entire Agreement.**

This Agreement shall constitute the entire agreement between the parties.

**Section 12. Modification of Agreement.**

Any modification or amendment to this Agreement shall be binding only if reduced to writing and approved and executed by both parties.

**Section 13. No Waiver.**

The failure of either party to this Agreement to insist upon the performance of any of the terms and conditions of this Agreement, or the waiver of any breach of any of the terms and conditions of this Agreement, shall not be construed as thereafter waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.

**Section 14. Effect of Partial Invalidity.**

In the event that any part or subpart of this Agreement is held to be invalid or unenforceable by any

court of competent jurisdiction, the parties agree that the remaining provisions shall be deemed to be in full force and effect.

**Section 15. Paragraph Headings.**

The headings and subheadings within this Agreement are solely for the convenience of the parties and shall not be construed to modify, explain, or aid in the interpretation of this Agreement.

**Section 16. Notices.**

Any notice provided for or concerning this Agreement shall be in writing and shall be deemed sufficiently given upon receipt by certified or registered mail or hand delivery as follows:

If to the County:                      Effingham County Board of Commissioners  
804 S. Laurel Street  
Springfield GA 31329

If to Developer:                      Greenland Developers, Inc.  
Attn: Brett Bennett  
1750 Hwy. 21 N.  
Springfield, GA 31329

With a copy to:                      Bill Glass, Esq.  
Weiner Shearouse Weitz Greenberg & Shawe, LLP  
14 East State Street  
Savannah, GA 31401

**Section 17. Excusable Delay.**

Neither the County nor Developer shall be liable to the other or any successor in interest for any loss, cost, or damage arising out of, or resulting from, non-performance or delayed performance of the terms of this Agreement where such non-performance or delayed performance is the result of circumstances or occurrences beyond the reasonable control of the responsible party (each, a “force majeure”), which, as used herein, shall be deemed to include, non-performance or delayed performance resulting from acts of God, strikes, lockouts, blockades, insurrections, riots, explosions, fire, floods, or any other cause not within the reasonable control of the responsible party. In no event shall the County be held liable to the Developer for consequential damages or economic losses arising from delayed performance; provided, however, that in the event the County fails to timely perform its obligations under this Agreement after written notice of default from the Developer, then Developer shall be entitled to complete the County’s construction obligations hereunder, and, if Developer undertakes to and does complete all or a portion of the County’s construction obligations hereunder be entitled to a reimbursement for the cost of such completion otherwise payable under this Agreement.

**Section 18. Assignment.**

This Agreement may be assigned in whole or in part by the Developer with the prior written approval of the County, which approval shall not be unreasonably withheld, conditioned, or delayed. This Agreement shall bind and inure to the benefit of the parties hereto and their permitted successors and assigns.

**Section 19. Construction of Agreement.**

The parties acknowledge that each party has participated in the negotiation and preparation of this Agreement. This Agreement shall be construed without regard to any presumption or other statute or rule of law requiring construction against the party causing the Agreement to be drafted.

**IN WITNESS WHEREOF** the Developer has executed these presents under seal, and the County

has cause these presents to be executed by its proper officer under seal, affixed, this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

EFFINGHAM COUNTY BOARD OF COMMISSIONERS

By: \_\_\_\_\_  
WESLEY CORBITT, CHAIRPERSON

Attest: \_\_\_\_\_  
STEPHANIE JOHNSON, CLERK

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
NOTARY PUBLIC

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[Signatures continue on the following page.]

GREENLAND DEVELOPERS, INC.

By: \_\_\_\_\_  
WILSON BURNS, PRESIDENT

Attest: \_\_\_\_\_  
JON BURNS, SECRETARY

Sworn to and subscribed before me this  
\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
NOTARY PUBLIC

DRAFT