

**PUBLIC IMPROVEMENTS BOND**

**RECEIVED**

**MAR 21 2019**

*Town of Warrenton*

FOR TOWN USE ONLY:

Project name: Winchester Chase  
Plan number: SDP 2018-05  
Developer: Winchester Chase Development LLC

BOND NUMBER: 2416555

\* \* \* \* \*

AMOUNT: \$ 1,961,237

**BOND**

*KNOW ALL MEN BY THESE PRESENTS*, that we/I Winchester Chase Development, LLC,  
as Principal(s), and Great American Insurance Company, an Ohio

(place of incorporation) corporation, authorized to do business in the Commonwealth of  
Virginia, having its principal office and place of business at 301 E Fourth Street, Cincinnati, OH 45202

as Surety(ies), do hereby give surety bond to and jointly and severally hold and firmly bind  
ourselves and our respective successors and assigns unto the Town of Warrenton, Virginia, its

successors and assigns (hereinafter called "Obligee" or "Town") in the full and just sum of  
One million, nine hundred sixty-one thousand  
two hundred thirty-seven DOLLARS (\$ 1,961,237 ), lawful money of the United States  
of America, for the payment of such sum.

*THE CONDITION OF THIS OBLIGATION IS SUCH* that if the Principal(s) shall in every  
respect perform all of the obligations of Principal(s) under a certain Contract between  
Principal(s) and the Town, dated January 29, 2019, relating to Town of Warrenton Plan  
Number SDP-2018-05 and a project which is known as Winchester Chase, in accordance with all of  
the terms and conditions of said Contract, at the times and in the manner in said Contract

specified, said Contract and all plans, plats, profiles, specifications and other documents and matters incorporated in said Contract by reference being hereby incorporated in this Bond by reference (all of which is hereinafter called the "Contract"), then this obligation shall be void; otherwise, this obligation shall continuously remain in full force and effect until formally released in writing by the Town, subject, however, to the following terms and conditions:

1. By execution of this Bond, Principal(s) and Surety(ies) hereby irrevocably acknowledge that the contract between Principal(s) and the Town has been fully and properly executed by the Principal(s) and by the Town and that the terms, conditions and provisions of the contract are those obtaining at the time of the execution of the Contract by the Town. In so acknowledging, Principal(s) and Surety(ies) hereby expressly waive any and all defenses which it (or they) may have to liability under the Contract and/or this Bond in relation to the matters acknowledged.

2. Surety(ies) hereby further expressly acknowledge that this Bond is submitted as an inducement and as a substantial portion of the consideration to the Town in connection with the Town's Contract with the Principal(s).

3. Surety(ies) hereby grant Principal(s) full authority to agree on Surety(ies)'s behalf to any and all revisions which may be hereafter made to the Contract between the Principal(s) and the Town (including revisions made to the plans, plats, profiles, specifications and/or other documents and matters referred to in the Contract) whether or not such revisions are made in writing, and to that end, and for such purposes, Surety(ies) do hereby appoint Principal(s) and Principal(s)'s representatives do act as agent on Surety(ies)'s behalf, and Surety(ies) hereby expressly agree that any consent given by Principal(s) or Principal(s)'s representatives to revisions of the Contract shall be effective and binding upon Surety(ies) even though such

consent be given by Principal(s) or Principal(s)'s representatives (a) without indication that Principal(s) or Principal(s)'s representative is acting on Surety(ies) behalf in addition to acting on Principal(s)'s behalf, and/or (b) without intent to act on behalf of Surety(ies); provided, however, that no such change(s) or revisions(s) to the Contract shall be binding upon Surety(ies) beyond the extent to which the totality of such changes and revisions increases the costs of performance under the Contract by an amount in excess of twenty percent (20%) of the face amount of this Bond, and provided further that, except as is otherwise expressly provided in this Bond, Surety(ies) shall in no event be liable to the Obligee in a sum in excess of the face amount of this Bond.

Notwithstanding any duty of the Principal(s) to notify Surety(ies) of (a) revisions made to the Contract between the Principal(s) and the Town (including revisions made to the plans, plats, profiles, specifications and/or other documents and matters referred to in the Contract) whether or not such revisions are made in writing, and (b) of any extension of time permitted or allowed, whether actively or passively, the Principal(s) by the Town beyond the period provided for in the Contract for completion of Principal(s)'s obligations under the Contract, Surety(ies) expressly waive any and all rights to be notified of such matters by the Obligee. Surety(ies) hereby further expressly waive any and all rights of Surety(ies) may have to raise any such extensions of time and/or any above-authorized revisions as a defense to Principal(s)'s and/or Surety(ies)'s liability to the Obligee in any litigation which may arise in relation to this Bond.

4. A default may be declared by the Town to have occurred on the part of the Principal(s) at any time that Principal(s) have failed to complete and/or satisfy any of its obligations under the Contract within the time set forth in the Contract, and furthermore, a default may be declared by the Town to have occurred prior to such time, if, in the sole judgment

of the Town Director of Public Works, the Principal(s) are not performing Principal(s)'s obligations in a satisfactory manner or has:

- a. Abandoned the performance of its obligations under the Contract or any revision thereof approved by the Town, or
- b. Renounced or repudiated its obligations under the Contract or any revisions thereof approved by the Town, or
- c. Demonstrated through insolvency or otherwise that Principal(s)'s obligations under the Contract, or any revisions thereof approved by the Town, cannot or will not be completed within the time allotted under the Contract.

5. In the event a default by Principal(s) has been declared by the Town, the Planning Director shall mail or deliver written notice of default to Surety(ies) and shall deliver or mail a copy of same to the Principal(s). In the event such notice is given to Surety(ies), Surety(ies) shall within fifteen (15) days of receipt of the notice of default (a) deliver written notice to the Planning Director and to the Town Manager stating whether or not Surety(ies) will assume responsibility for performance of the obligations of the Principal(s) under the Contract, and (b) commence work on-site in performance of Principal(s)'s obligations under the Contract, if Surety(ies) elect to assume responsibility for performance of the obligations of Principal(s) under the Contract. Should the Town Director of Public Works or the Town Manager fail to receive written notice from Surety (ies) or should Surety (ies) fail to commence work onsite in performance of Principal's obligations under the Contract within said fifteen (15) day period, the Town may thereafter proceed as though Surety (ies) had elected not to assume the responsibilities of the Principal(s) under the Contract. Should Surety(ies) timely deliver notice

stating that Surety(ies) elects to assume responsibility for performance of the obligations of Principal(s) under the Contract and timely commences work on—site, Surety(ies) shall satisfy and complete all of Principal(s)'s obligations under the terms of the Contract and shall be bound by all terms the Contract in like manner as though Surety(ies) were the Developer under the Contract, except that Surety(ies) shall satisfy and complete all of the Principal(s)'s obligations within one hundred eighty (180) days of the Town's receipt of notice from Surety(ies) or within the time allowed under the Contract, whichever is the greater time period. In the event Surety(ies) does perform all of Principal(s)'s obligations under the Contract and such is accomplished within the aforestated applicable time period, Surety(ies) shall have no further liability to the Obligee under this Bond other than to the extent to which the Developer remains liable to the Town under the Contract; provided further, however, that if the Surety(ies) timely elects to assume the obligations of Principal(s) and timely commences work on-site, but thereafter, in the sole judgment of the Town Director of Public Works, fails to faithfully perform all or any part of those obligations or unnecessarily delays in performing any or all of those obligations, then the Town may proceed in like manner as if Surety(ies) had notified the Town of its election not to assume the obligations of the Principal(s) under the Contract.

In the event of untimely notice to the Town of Surety (ies)'s election to assume responsibility for performance of the obligations of Principal(s) under the Contract and/or in the event of Surety (ies)'s untimely commencement of work on-site, the Town may waive the aforestated 15 day requirements, but in no circumstance shall the Town be considered required to do so absent strict compliance by Surety (ies) with the 15 day requirements. In the event the Town does waive the 15 day requirements, then Surety(ies)'s notice and commencement of work on-site shall be deemed to have been timely effected on the date notice is actually received by the Planning

Director of Surety(ies)'s election to assume responsibility for performance of Principal(s)'s obligations under the Contract . Should Surety (ies) elect not to assume the responsibilities of the Principal(s) under the Contract, the Town may elect to take any of the following actions or any combination thereof:

- a. The Town may terminate any and all rights of Principal(s) and/or Surety (ies) and their respective agents and assigns to perform further work on the subject property and may revoke or suspend any and all permits theretofore issued by the Town permitting development of the property.
- b. The Town may take over and/or re-let all or any part of the work required under the Contract which is not completed and complete the same for the account and at the expense of the Principal(s) and Surety(ies), who shall be jointly and severally liable to the Town for damages determined in accordance with the measure of damages set forth in the Contract and for the Town's reasonable attorney's fees and the Town's costs in connection with any litigation; threatened or instituted, which arises in connection with the Contract or this Bond; provided, however, that Surety(ies)'s liability to the Town shall in no case be greater than the sum of this Bond except to the extent that the Town's reasonable attorney's fees, costs in connection with litigation, and interest accrued in favor of the Town on the damages sustained by the Town prior to and after judgment, when added to Surety(ies)'s other liability under this Bond, exceed the sum of this Bond; or
- c. Within the statute of limitations period applicable to this Bond, said period commencing from the Principal(s)'s default or from the time Surety(ies) last performed obligations of the Principal(s) under the Contract, whichever is the

latter, the Town may bring suit, action or proceeding to enforce this Bond. In any such action, suit or proceeding, it is expressly agreed that the amount of damages recoverable by the Town shall be determined in accordance with the provisions of subparagraph (b) above (i.e., Subsection (b) of paragraph number 5 of this Bond).

6. Principal(s) hereby irrevocably and expressly agree and authorize Surety(ies), upon notice of default given by the Town, and all personnel of Surety(ies) and all other persons acting on behalf of or under authority or direction of Surety(ies), to enter upon and to remain upon Principal(s)'s property for the purpose of inspecting, evaluating, performing and/or correcting Principal(s)'s performance or non-performance of Principal(s)'s responsibilities, obligations, undertakings or duties under the contract between the Principal(s) and the Town; and Principal(s) hereby further irrevocably and expressly agree not to hinder or obstruct Surety(ies) or any such other persons in accomplishing any such purposes; provided, further, however, that this paragraph shall in no way be construed as limiting in any way any other rights of Surety(ies) and/or of the Town to enter upon, remain upon or perform inspections or work upon Principal(s)'s property.

7. No failure of the Town to declare, or to timely declare, a default shall operate in any way to release either Principal(s) or Surety(ies) from liability under the contract and/or this Bond so long as legal proceedings brought by the Town in connection with this bond and/or Contract are brought within applicable statutory time periods.

8. The failure or refusal of Obligee to take any action, proceeding or step to enforce any remedy or exercise any right of Obligee under the Contract or this Bond and/or the taking of any action, proceeding or step by Obligee, acting in good faith upon the belief that the same is permitted by the provisions Of the Contract or this Bond or by law, shall not in any way release

Principal(s) or Surety(ies), or either of them, or their respective heirs, executors, administrators, successors or assigns from liability under this Bond.

9. No agreement between the Obligee and Surety(ies) , or any of them, or their respective heirs, executors, administrators, successors, or assigns shall in any way release the Principal(s) from any of the Principal(s)'s obligations under the Contract between Principal(s) and Obligee, except to the extent the Surety(ies) have satisfied the obligations of Principal(s) to the Obligee.

10. The Obligee, Principal(s) and Surety (ies) intend that each and every provision of this Bond be valid and binding upon them and expressly agree to abide thereby.

11. If any suit, action or proceeding is initiated in connection with this Bond or any matters related thereto, the venue thereof shall be the County of Fauquier, Commonwealth of Virginia, and it is further understood and agreed that this Bond shall be governed by the law of the Commonwealth of Virginia both as to interpretation and performance.

12. All notices sent to the Principal(s) and Surety (ies) may be sent to the addresses set forth on the signature page of this Bond unless said Principal(s) and Surety (ies) notify the Planning Director and the Town Manager in writing of a change of address, making specific reference in such notice to this Bond and to the Contract between Obligee and Principal(s). If the addresses of any Principal(s) or Surety (ies) change, the Principal(s) and Surety (ies) shall immediately notify the Planning Director and the Town Manager in writing of such change. Failure to notify the Planning Director and the Town Manager of any change in address is deemed to be a waiver of any requirement of notice by Obligee under this Bond to the Principal(s) and/or Surety (ies). All written notice to the Town required under this Bond shall be sent by certified mail and addressed to the Planning Director and a copy thereof shall also be sent



by certified mail to the Town Manager, provided, however, that any notice that may be required pursuant to Section 49-25 of the Code of Virginia shall also be delivered to the Town Attorney and to the Mayor of the Town.

13. Whenever in this Bond reference is made to any person, party, official, body, or other entity, said reference shall be deemed to refer also to the successor(s), assign(s), heir(s), executors, administrators, and/or personal representative(s) of such person, party, official, body or other entity.

14. If any one or more of the provisions, clauses or terms of this Bond or of the Contract are found to be illegal or unenforceable or not valid and binding in any respect or circumstance, this Bond and the Contract shall remain in full force and effect in all other respects and circumstances.

15. Approval of this Bond by the Town shall be deemed acceptance by the Town without further notice to the Principal(s) or to Surety (ies).

*IN WITNESS OF ALL OF WHICH* the parties hereto have caused this agreement and Bond to be signed and sealed as of this 19 day of March, 2019.

PRINCIPAL:



(SEAL)

[Name] Jeffery K. Rizer, Managing Member  
Winchester Chase Development, LLC

475 Winchester Street, Warrenton, VA 20186

[Address]

(SEAL)

[Name]

[Address]

\_\_\_\_ (SEAL)  
[Name]

\_\_\_\_ (SEAL)  
[Name]

\_\_\_\_  
[Address]

\_\_\_\_  
[Address]

SURETY:

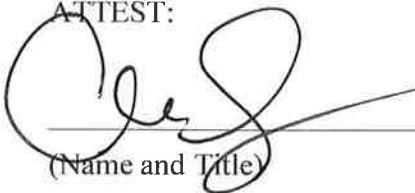
Great American Insurance Company

(Name)

301 E. Fourth Street, Cincinnati, OH 45202

(Address)

ATTEST:

  
(Name and Title)

BY: Neil Biller (SEAL)  
(Name and Title)

Chelsea Souza, VA Resident Agent

[Print or Type Name & Title]

Neil Biller, Attorney-in-Fact

[Print or Type Name & Title]

STATE OF Virginia,  
City  
~~COUNTY~~ OF Richmond, to-wit:

I, Laurie Ann Daugherty, a Notary Public in and for the State and County  
aforesaid, do certify that the foregoing instrument was acknowledged before me this 19th day  
of March, 2019 by Neil Biller,  
as attorney-in-fact on behalf of Great American Insurance Company.

GIVEN under my hand and seal this 19th day of March; 2019.



NOTARY PUBLIC

My Commission Expires: April 30, 2020

Serial No.: 7528807



STATE OF Virginia,  
COUNTY OF Fauquier, to-wit:

I, Christine Minor, a Notary Public in and for the State and County  
aforesaid, do certify that the foregoing instrument was acknowledged before me this 20 day  
of march, 2019, by Jeffery K. Rizer,  
as managing member on behalf of Winchester Chase Development, LLC.

GIVEN under my hand and seal this 20 day of march, 2019.

Chr mp  
NOTARY PUBLIC

My Commission Expires:  
Serial No.:



STATE OF \_\_\_\_\_,  
COUNTY OF \_\_\_\_\_, to-wit:

I, \_\_\_\_\_, a Notary Public in and for the State and County  
aforesaid, do certify that the foregoing instrument was acknowledged before me this \_\_\_\_\_ day  
of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_,  
as attorney-in-fact on behalf of \_\_\_\_\_.

GIVEN under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

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

My Commission Expires:  
Serial No.:

# GREAT AMERICAN INSURANCE COMPANY®

Administrative Office: 301 E 4TH STREET • CINCINNATI, OHIO 45202 • 513-369-5000 • FAX 513-723-2740

The number of persons authorized by  
this power of attorney is not more than FIVE

No. 0 20564

## POWER OF ATTORNEY

**KNOW ALL MEN BY THESE PRESENTS:** That the GREAT AMERICAN INSURANCE COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Ohio, does hereby nominate, constitute and appoint the person or persons named below, each individually if more than one is named, its true and lawful attorney-in-fact, for it and in its name, place and stead to execute on behalf of the said Company, as surety, any and all bonds, undertakings and contracts of suretyship, or other written obligations in the nature thereof; provided that the liability of the said Company on any such bond, undertaking or contract of suretyship executed under this authority shall not exceed the limit stated below.

Name	Address	Limit of Power
BRANDON PULLIAM	NEIL BILLER	ALL
JOYCE D. BARRETT	CAROLYN MULLENAUX	\$10,000,000
VERONICA J. FOX	RICHMOND VIRGINIA	

This Power of Attorney revokes all previous powers issued on behalf of the attorney(s)-in-fact named above.

IN WITNESS WHEREOF the GREAT AMERICAN INSURANCE COMPANY has caused these presents to be signed and attested by its appropriate officers and its corporate seal hereunto affixed this 30TH day of SEPTEMBER, 2014.

Attest

GREAT AMERICAN INSURANCE COMPANY



*Stephen C. Beraha*  
Assistant Secretary

*David C. Kitchen*  
Divisional Senior Vice President

STATE OF OHIO, COUNTY OF HAMILTON - ss:

DAVID C. KITCHIN (877-377-2405)

On this 30TH day of SEPTEMBER, 2014, before me personally appeared DAVID C. KITCHIN, to me known, being duly sworn, deposes and says that he resides in Cincinnati, Ohio, that he is a Divisional Senior Vice President of the Bond Division of Great American Insurance Company, the Company described in and which executed the above instrument; that he knows the seal of the said Company; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by authority of his office under the By-Laws of said Company, and that he signed his name thereto by like authority.



Shelle Clontz  
Notary Public, State of Ohio  
My Commission Expires 08-09-2015

*Shelle Clontz*

This Power of Attorney is granted by authority of the following resolutions adopted by the Board of Directors of Great American Insurance Company by unanimous written consent dated June 9, 2008.

**RESOLVED:** That the Divisional President, the several Divisional Senior Vice Presidents, Divisional Vice Presidents and Divisional Assistant Vice Presidents, or any one of them, be and hereby is authorized, from time to time, to appoint one or more Attorneys-in-Fact to execute on behalf of the Company, as surety, any and all bonds, undertakings and contracts of suretyship, or other written obligations in the nature thereof; to prescribe their respective duties and the respective limits of their authority; and to revoke any such appointment at any time.

**RESOLVED FURTHER:** That the Company seal and the signature of any of the aforesaid officers and any Secretary or Assistant Secretary of the Company may be affixed by facsimile to any power of attorney or certificate of either given for the execution of any bond, undertaking, contract of suretyship, or other written obligation in the nature thereof, such signature and seal when so used being hereby adopted by the Company as the original signature of such officer and the original seal of the Company, to be valid and binding upon the Company with the same force and effect as though manually affixed.

## CERTIFICATION

I, STEPHEN C. BERAHA, Assistant Secretary of Great American Insurance Company, do hereby certify that the foregoing Power of Attorney and the Resolutions of the Board of Directors of June 9, 2008 have not been revoked and are now in full force and effect.

Signed and sealed this

19

day of

March

2019



*Stephen C. Beraha*  
Assistant Secretary

**TOWN OF WARRENTON  
PUBLIC IMPROVEMENTS CONTRACT**

FOR TOWN USE ONLY:

**RECEIVED**

**MAR 21 2019**

**Town of Warrenton**

Project name: Winchester Chase  
Project number: SDP # ~~18-04~~ 18-05  
Letter of Credit Number: \_\_\_\_\_  
OR Bond Number: 2410555  
Amount: 1,961,237.00  
Developer: Winchester Chase Development LLC  
State of Organization: Virginia  
Type of Entity: LLC  
Address: 475 Winchester St  
Warrenton VA 20186

Completion Date: 4-15-20

\* \* \* \* \*

THIS CONTRACT, dated this 21 day of March 2019, by and between the undersigned Developer ("Developer"), and the TOWN OF WARRENTON, VIRGINIA, ("Town").

WITNESSETH:

IN CONSIDERATION of the approval by the Town, through its designee, of a subdivision plat/site plan/construction plan, for the project identified above, hereinafter referred to as the "Plan", the Developer agrees as follows:

1. To construct and install all of the improvements and facilities shown on the approved plans, specifications and profiles, or revisions thereof, all of which are incorporated herein and made a part of this Contract by reference, which are located on land belonging to or to be conveyed to the Town or another public body or in public rights-of-way or easements running to or to run to the Town or another public body or which relate to drainage for the project.

2. That all of the construction and installation of all of the facilities and improvements required by this Contract shall be completed by the Completion Date defined above.

3. To provide and maintain proper grading, drainage, and siltation and erosion control on all of the property to which the Plan relates until such time as all of said property is stabilized; to provide for reforestation of all of the property to which the subdivision Plan relates and of all public properties affected by development of the project, in accordance with all applicable ordinances and regulations of the Town, and to perform all landscaping shown on the Plan, in a manner judged satisfactory by the Town Director of Public Works; and to promptly restore, repair and/or replace, as is judged appropriate in the discretion of the Town Director of Public Works, any and all damage caused to existing Town public utilities in connection with development relating to the above-referenced Plan.

4. That the methods and materials used in the construction and installation of the improvements and facilities and all of the other work required by this Contract will conform to most current Town of Warrenton standards and specifications, to the most current Town design and construction standards (as published and referred to as the Town Public Facilities Manual), and to the Virginia Department of Highways and Transportation road and bridge specifications, all of which are incorporated herein and made a part of this Contract by reference. In case of conflict between those standards and specifications, the Town standards and specifications will control, and if there is no applicable Town standard or specification, the most stringent of those standards and specifications referred to in this paragraph will control.

5. To comply with all applicable Town ordinances, state and federal laws and governmental regulations, all of which are incorporated herein and made a part of this Contract by reference.

6. That all required improvements and facilities and all other work undertaken in connection with this Contract will be constructed, installed, implemented, and maintained in a workmanlike manner.

7. That the Town's decision as to the acceptability of the types, quantities and qualities of materials and the quality of workmanship shall be conclusive and final unless said decisions are in violation of applicable law or are arbitrary and capricious.

8. That the Town has the right to inspect all work performed in connection with this Contract and that Town personnel shall have the right to enter upon and remain upon Developer's property at any time for the purposes of inspection and/or evaluation of Developer's performance under this Contract, and that, in the event of Developer's breach of this Contract, personnel of the Town and every other person(s) acting on behalf of the Town Director of Public Works, or acting in connection with work to be performed on the property under the authority or direction of the Town Director of Public Works, shall have full authority to enter upon and to remain upon Developer's property for the purposes of inspecting, evaluating, and/or correcting performance and/or nonperformance of Developer's responsibilities, obligations, undertakings and/or duties under this Contract.

9. That changes to the plans, profiles and specifications may be made only by revision of the plans with written approval of either the Town Planning Director or Town Director of Public Works, or their designee, or in accordance with applicable provisions of the Town ordinances. In no event, however, shall the fact that changes acquiesced in or consented to by authorized representatives of the Town be made without such written approval operate to discharge or release or have any other impact upon any letter of credit, bond, surety or any other security or performance guarantee provided the Town in connection with this Contract.

10. That issuers of letters of credit and all others who provide security or performance guarantees in connection with this Contract, excepting sureties providing performance bonds, affirmatively consent to and waive notice of any and all changes to the plans, profiles and specifications and/or to this Contract and to any and all extensions of this Contract in advance. Sureties providing performance bonds in connection with this Contract shall be governed and bound by all other provisions of this Contract and by all other provisions of their bonds provided in connection with this Contract, and if Developer submits a performance bond as the security or performance guarantee in connection with this Contract, Developer shall be likewise governed and bound.

11. That all changes to the plans, profiles and specifications required by the Town for

the purpose of complying with applicable law or for the purpose of attaining standards of the Virginia Department of Highways and Transportation or the Town Public Facilities Manual will be accepted, complied with and performed.

12. To notify the Town Public Works Department, in writing, at least three (3) days before the beginning of any construction and to attend a pre-construction meeting between the Developer and the Director of Public Works or his designee prior to commencing any construction.

13. To provide adequate supervision on the site at all times that construction or installation of required improvements or facilities is underway and to have a responsible foreman or superintendent and one complete set of approved plans, profiles and specifications, including all revisions thereof, available at the site at all times that work is being performed.

14. To maintain dust control on the site at all times until such time as the entire site has been stabilized.

15. To not permit occupancy of any dwelling unit and to not transfer ownership of any dwelling unit to any person(s) anticipating immediate occupancy thereof until the Director of Public Works is satisfied that streets, off-street parking and other facilities have been installed to the extent necessary to service the dwelling and until an occupancy permit has been issued by the Zoning Administrator.

16. To provide and maintain clean, safe and adequate vehicular and pedestrian all-weather access including, but not limited to, snow removal, ice control and dust control, from all occupied dwellings to either a Town-maintained street or to a public highway in the primary or secondary highway system.

17. To comply with all requirements of the Town and other governmental units in order that all streets and other improvements and facilities in or on or proposed to be in or on public properties, rights-of-way or easements will be accepted by the Town of Warrenton or other governmental unit which is to have ultimate responsibility for its maintenance, and, upon completion of the required work, construction, installations, facilities and improvements, to make



prompt application for acceptance by the Town and/or other governmental unit which is to have ultimate responsibility for its maintenance. It is agreed that the Town shall have no duty to approve or accept any such work, construction, installations or improvements prior to such time as the Director of Public Works determines, in his sole discretion, that such work, construction, installations or improvements will not be likely to be damaged during the course of other work which is anticipated to be performed in conjunction with proposed development of the property.

18. That with respect to all work and activities undertaken by the Town which the Town would not have undertaken to have performed absent a breach by Developer of this Contract or undertaken by the Town as a consequence or result of Developer's breach of this Contract: a) all Town personnel involved in such work and/or activities shall be deemed to be employees of Developer for purposes of assessing liability for their acts, and to that end Developer agrees to indemnify and/or hold harmless the Town for any and all such damage(s) as may occur, whether such damage(s) be sustained by Developer, the Town, and/or by any other person(s) or entity(ies), and b) the Town shall have no liability to Developer and Developer agrees to indemnify and/or hold harmless the Town with respect to any and all damage(s) sustained by Developer, the Town, and/or any other person(s) or entity(ies) regardless of whether such damage(s) result from activities of or work performed by Town personnel or by other person(s) or entity(ies) acting under the authority or direction of the Town.

19. That the Town Director of Public Works may stop all or any part of the work at the site at any time that he, in his sole discretion, determines that work is not being performed in accordance with this Contract or that any of the terms of this Contract have not or are not being complied with. Failure of the Town Director of Public Works to do so shall, however, in no way be construed to imply approval of the work or compliance with or proper performance of this Contract.

20. To be responsible for all maintenance of and correction of deterioration in the work, construction, installations, improvements, and facilities required under this Contract until the improvements and facilities are accepted by the governmental unit(s) which are to have

ultimate responsibility for maintenance, and, towards that end, no facility or improvement shall be considered complete until it is accepted by the governmental unit which is to have ultimate responsibility for its maintenance.

21. To execute and file with the Town a properly executed letter of credit, bond or cash escrow identified above, in the amount identified above, in a form which is acceptable to the Town Attorney and secured by a source satisfactory to the Town Council. It is expressly agreed that if such security or performance guarantee is not submitted to the Town within forty-five (45) days of the Town's execution of this Contract, then this Contract shall, at the option of the Town, be rendered null and void in like manner as if this Contract had never been executed by the parties hereto and no agreement had ever been reached by the parties hereto.

22. That notwithstanding approval of the facilities and improvements as built and/or acceptance by the Town of the facilities and improvements, including offsite facilities and improvements, no approval or acceptance by the Town of any facility or improvement, and no release by the Town of any security or performance guarantee supplied to the Town by Developer in connection with this Contract, shall be considered binding upon the Town for the purposes of any determination as to whether Developer has fulfilled Developer's obligations to the Town under this Contract, and that this proviso is for the purpose of assuring, and it is hereby agreed, that the correction of any omissions or defects in the work and/or correction of any work performed in any unworkmanlike or faulty manner or contrary to the terms of this Contract be performed by and at the expense of Developer.

23. That all releases of Developer and any security or performance guarantee provided for by any sureties for the faithful performance of the work required by this Contract shall be governed by the Town ordinances.

24. That failure of Developer to maintain any security or performance guarantee in full force and effect during the entire term of this Contract or any extensions thereof shall be deemed to be a breach of this Contract at the option of the Town.

25. Whenever in this Contract reference is made to any person, party, official, body,

or other entity, said reference shall be deemed to refer also to the successor(s), assign(s), heir(s), executor(s), administrator(s), and/or personal representative(s) of such person, party, official, body, or other entity.

26. That if any clause or portion of this Contract is found not to be valid and binding in any respect or circumstance, this Contract shall continue in full force and effect in all other respects and circumstances.

27. That no other agreement(s) to which the Town is a party shall in any way be construed as impairing or diminishing the obligations and duties to the Town arising under this Contract or arising under any security or performance guarantee provided the Town in connection with this Contract.

28. That, regardless of when a breach of this Contract occurs, the measure of damages recoverable by the Town against Developer and/or surety, issuer of a letter of credit, or other provider of security or other performance guarantee, shall include: a) the costs of completion and/or correction of the work required by this Contract as of the earlier of the following two (2) dates: (i) when the work is actually performed; or (ii) date of trial, b) an additional amount in the sum of ten percent (10%) of the aforesaid costs of completion and/or correction, said sum being to compensate the Town for its resulting increased supervisory and administrative burden, c) costs of maintenance and costs of corrections resulting from deterioration prior to public acceptance of the required facilities and improvements, d) interest accruing at the rate of ten percent (10%) compounded annually on each expense incurred by the Town as a consequence of Developer's breach of this Contract, commencing from the various times such expenses are paid by the Town, plus any and all interest charges incurred by the Town on expenses incurred by the Town as a consequence of Developer's breach of this Contract, and e) the Town's reasonable attorney's fees and its costs expended in connection with any litigation, threatened or instituted, which may arise in connection with this Contract and/or any security or performance guarantee provided the Town in connection with this Contract.

THE PARTIES INTEND that each provision of this Contract be valid and binding upon each and all of them and expressly agree to abide by all terms of this Contract and agree that all matters pertaining to this Contract shall be governed by the law of Virginia.

IN WITNESS of which the parties hereto sign and seal this Contract:

DEVELOPER:

Winchester Chase Development LLC  
[NAME]

475 Winchester St

Warrenton VA 20182  
[ADDRESS]

ATTEST:

Jeffery Rizer  
[NAME, TITLE]

BY: [Signature] (SEAL)  
[NAME, TITLE]

COMMONWEALTH OF VIRGINIA

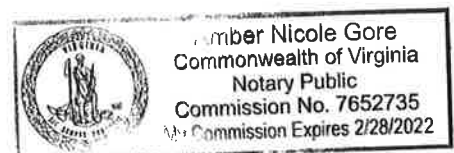
COUNTY OF Fauquier to-wit:

I, Amber Gore, a Notary Public in and for the jurisdiction aforesaid, do certify that the foregoing instrument was acknowledged before me this 21<sup>st</sup> day of March, 2009, by Jeffery Rizer of Winchester Chase Development, a LLC corporation.

Given under my hand and seal this 21<sup>st</sup> day of March, 2009.

[Signature]  
NOTARY PUBLIC

My commission expires: 02/28/2022.




TOWN OF WARRENTON, VIRGINIA

APPROVED AS TO FORM:

  
Town Attorney

ATTEST:

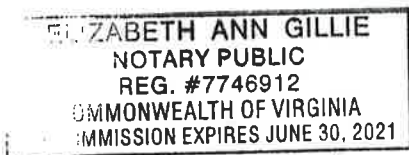
  
Town Clerk

By:  (SEAL)  
Town Manager

COMMONWEALTH OF VIRGINIA  
COUNTY OF Fauquier to-wit:

I, Elizabeth Gillie, a Notary Public in and for the jurisdiction aforesaid, do certify that the foregoing instrument was acknowledged before me this 4 day of April, 2009, by Brandie Schaeffer, acting in capacity as Town Manager of the Town of Warrenton, Virginia, a municipal corporation.

Given under my hand and seal this 4 day of April, 2009



  
NOTARY PUBLIC

My commission expires: June 30, 2021

