

**SUBDIVISION CONSTRUCTION
AGREEMENT**
(Construction and Maintenance)

This Agreement is made and entered into as of the ____ day of _____, 20__, between _____ (hereinafter referred to as "Owner") and Chatham County, Georgia (together with its designated agents and representatives hereinafter referred to as "Chatham County").

W I T N E S S E T H, T H A T:

WHEREAS, plans and specifications for the proposed subdivision known as _____ have been reviewed by Chatham County and found to meet its minimum standards for construction; and

WHEREAS, Owner has not completed construction of the Subdivision Improvements; and

WHEREAS, Owner desires to record a Subdivision Plat prior to completion by Owner, approval and acceptance by Chatham County of the Subdivision Improvements;

NOW, THEREFORE, for and in consideration of Chatham County's agreement to allow the recording of a Subdivision Plat for the Subdivision prior to completion, approval and acceptance of the Subdivision Improvements, ten dollars (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner and Chatham County agree as follows:

**I.
DEFINITIONS**

- 1.1 Completion Cost shall be the estimated cost to complete construction of the Remaining Improvements by the Completion Date. Chatham County and Owner shall determine the Completion Cost after considering a detailed estimate itemizing the cost of the Remaining Improvements, including a copy of the bid schedule with unit prices, as provided by Owner's engineer, who shall be registered in the State of Georgia as a Professional Engineer, and after estimating cost figures for the construction and installation of comparable improvements.
- 1.2 Completion Date shall be the date by which Owner agrees to complete construction of the Remaining Improvements in accordance with the Plans and Specifications, in compliance with all applicable laws, rules and regulations, and in a manner reasonably acceptable to Chatham County. The Completion Date must be approved by Chatham County and may be extended by Chatham County pursuant to the terms hereof.

- 1.3 Dedicated Improvements shall refer to the Subdivision Improvements listed in Section 6.1 that if completed by the Owner and approved and accepted by Chatham County will be maintained by Chatham County.
- 1.4 Initially Held Lots shall refer to 50% of the total buildable lots subdivided initially that shall be held from recording. An escrow retaining the held lots under a single parcel shall be dedicated at the time of recording and known as Parcel _____ of the _____ Subdivision in Chatham County.
- 1.5 Initially Recorded Lots shall refer to 50% of the total buildable lots subdivided initially that may be recorded.
- 1.6 Other improvements shall refer to the Subdivision Improvements listed in Section 6.2 that are not to be maintained by Chatham County.
- 1.7 Plans and Specifications shall refer to those plans and specifications designed by the Owner's engineer and found to meet Chatham County's minimum standards for construction, as amended and revised from time to time with the approval of Chatham County, for the construction of streets, utilities and other infrastructure in the Subdivision. A complete set of said Plans and Specifications is on file with Chatham County and is incorporated herein by reference.
- 1.8 Remaining Improvements shall refer to the Subdivision Improvements that are neither complete nor found by Chatham County to meet the minimum requirements of the Plans and Specifications, as well as the applicable County ordinances and regulations as of the date hereof.
- 1.9 Required Inspections shall refer to those inspections required by Chatham County Engineering Policy for County approval and acceptance of the Subdivision Improvements.
- 1.10 Security shall refer to initially held lots or cash deposit in favor of Chatham County for the purpose of securing Owner's obligations hereunder as more particularly described in Sections 2.3 and 3.3 hereof.
- 1.11 Subdivision shall refer to a subdivision known as _____ located or to be located in Chatham County, Georgia on property of Owner more particularly described on Exhibit A attached hereto and made a part hereof by this reference.
- 1.12 Subdivision Improvements shall refer to the streets, utilities and other infrastructure for the Subdivision as described in the Plans and Specifications and listed in Sections 6.1 and 6.2 hereof.

- 1.13 Subdivision Plat shall refer to the final subdivision plat for said Subdivision as approved by Chatham County for recording in the Chatham County, Georgia Real estate records.
- 1.14 Subdivision Value shall refer to the cumulative appraised value of the total buildable lots.
- 1.15 Total Buildable Lots shall refer to the _____ lots that make up the entire subdivision.

**II.
CONSTRUCTION**

- 2.1 COMPLETION OF WORK. Owner hereby agrees, at its sole cost and expense, to complete construction of the Remaining Improvements in accordance with the Plans and Specifications, in compliance with all applicable laws, rules and regulations, and in a manner reasonably acceptable to Chatham County on or prior to the Completion Date. The Completion Date shall be _____ days from the date hereof. Owner further agrees that it is its responsibility to request all Required Inspections in a timely fashion in order to complete construction on or prior to the Completion Date.
- 2.2 COMPLETION COST. Chatham County and Owner agree that the Completion Cost as of the date hereof is \$_____.
- 2.3 COMPLETION SECURITY. At least two weeks prior to the date of the regular meeting of the Chatham County Commissioners when the Subdivision Plat is scheduled to be approved for recording, the Owner shall secure its obligations under Section 2.1 hereof by providing to Chatham County, simultaneously herewith, one of the following:

Please initial one:

Owner Chatham County

- _____ (1) Owner shall withhold 50% of the total buildable lots from being recorded until all Subdivision Improvements are completed by Owner and approved by the County; or
- _____ (2) Owner shall deposit cash, in escrow with Chatham County in an amount equal to the Completion Cost of the Remaining Improvements. Said funds shall be held for a minimum term

ending at least sixty (60) days after the Completion Date, but Chatham County shall have no obligation to release said funds until the Remaining Improvements have been completed by Owner and approved by Chatham County. The Owner shall not be entitled to any interest that may accrue on the funds while held in escrow by Chatham County.

In the event that Owner satisfies its obligations under Section 2.1 hereof, said Security shall be canceled or returned to Owner by Chatham County within thirty (30) days after approval of the Remaining Improvements.

**III.
MAINTENANCE WARRANTY**

- 3.1 MAINTENANCE WARRANTY. Upon completion by Owner and approval by Chatham County of the Subdivision Improvements, Owner guaranties the Subdivision Improvements to Chatham County for a period of twelve (12) months from the date of approval, against failures, faults and/or deficiencies in materials or workmanship according to the standards contained in the Chatham County Engineering policies, as amended from time to time, and the standards of construction relevant in Chatham County, Georgia. This warranty does not cover damage resulting from a malfunction of equipment or lines for water and sanitary sewage provided by Chatham County.

- 3.2 SUBDIVISION VALUE. Owner and Chatham County agree that the cumulative appraised value of the Subdivision is \$ _____.

- 3.3 MAINTENANCE SECURITY. At least two weeks prior to the date of the regular meeting of the Chatham County Commissioners when the completed Subdivision Improvements are scheduled to be approved, the Owner shall secure its obligations under Section 3.1 hereof by providing to Chatham County, simultaneously herewith, one of the following:

Please initial one:

Owner Chatham County

- _____ (1) Owner shall withhold 10% of the total buildable lots from being recorded until all Subdivision Improvements are inspected and accepted by Chatham County and a minimum period of not less than twelve (12) months after the Completion Date; or

_____ (2) Owner shall deposit cash, or other instruments readily convertible into cash at face value that are acceptable to Chatham County, in escrow with Chatham County in an amount equal to ten percent (10%) of the Subdivision Value. Said funds shall be held for a minimum term ending at least twelve (12) months after approval by Chatham County of the Subdivision Improvements, but Chatham County shall have no obligation to release said funds until the Subdivision Improvements have been finally approved and accepted by Chatham County.

Since it will not be possible to predict the exact date of approval prior to completion of the Remaining Improvements, the maintenance security will be for a sufficient term initially if it is valid for twelve (12) months after the agreed upon Completion Date. If approval of the Remaining Improvements occurs after said Completion Date, said approval shall not be granted until sufficient maintenance security is provided.

3.4 REMOVAL OF SECURITY. At the end of said twelve (12) month warranty period, in the event that Owner satisfies its obligations under Section 3.1 hereof, said Security shall be canceled or returned to Owner by Chatham County within thirty (30) days after expiration of the Maintenance Warranty.

IV. CHATHAM COUNTY OBLIGATIONS

4.1 SUBDIVISION PLAT. Upon final execution of this Agreement by Owner and Chatham County, and the provision to Chatham County of adequate Security (i.e. performance security and maintenance security), as provided above, Chatham County agrees to approve the Subdivision Plat for recording in the records of the Office of the Clerk of the Superior Court of Chatham County, Georgia.

4.2 ACCEPTANCE OF SUBDIVISION IMPROVEMENTS. Upon the expiration of the Maintenance Warranty period, provided Owner is not in default hereunder, Chatham County agrees to accept the dedication of the Dedicated Improvements for maintenance purposes.

V. DEFAULT

5.1 EVENTS OF DEFAULT. The following shall be considered events of default ("Events of Default") under this agreement:

(1) The Remaining Improvements are not completed by the Owner to the

reasonable satisfaction of Chatham County on or prior to the Completion Date.

- (2) The Subdivision Improvements are not constructed in accordance with the Plans and Specifications.
- (3) Owner abandons or vacates construction of the Subdivision Improvements for a period of more than ninety (90) days during the term of this Agreement, unless said abandonment is caused by fires, floods, storms, accidents or Acts of God, and Chatham County reasonably believes that the Remaining Improvements cannot be completed by the Completion Date;
- (4) Owner fails to correct to the reasonable satisfaction of Chatham County any failure, fault or deficiency in the Subdivision Improvements pursuant to the Maintenance Warranty contained herein within sixty (60) days after written notice from Chatham County to Owner to correct such failure, fault or deficiency.
- (5) Owner fails to maintain a valid maintenance security.
- (6) Owner fails to record the remaining 10% of the total buildable lots.
- (7) Owner alters the number of total buildable lots.
- (8) Owner initiates a subsequent phase before the Completion Date of this Subdivision.

5.2 REMEDIES UPON DEFAULT. In the event any Event of Default occurs, Chatham County shall have all or any of the following rights and remedies:

- (1) Chatham County may, in its sole discretion, extend the Completion Date or allow additional time for the Owner to correct any Event of Default. If necessary in such case, the Owner shall obtain an extension or renewal of the Security so that the term or expiration date is at least sixty (60) days after the Completion Date, as extended, or any deadline imposed by Chatham County for correction of the Event of Default. If the Owner fails to obtain such extension or renewal at least thirty (30) days prior to the termination or expiration date of said Security, Chatham County may call or collect said Security, as provided below, notwithstanding any such extension of the Completion Date or time to complete correction of said Event of Default in order to protect its Security.

- (2) If the Security is the initially held lots or the remaining 10% of the total buildable lots, Chatham County may immediately and without notice to the Owner, place lien on the initially held lots or the remaining 10% of the total buildable lots, for the sole and absolute discretion of Chatham County, available within Parcel _____ of the _____ Subdivision in Chatham County to be utilized in any manner that it deems appropriate.
- (3) If the Security is a cash deposit held in escrow by Chatham County, Chatham County may immediately and without notice to Owner, pay the full amount or any partial amount, in the sole and absolute discretion of Chatham County, to Chatham County to be utilized in any manner that it deems appropriate.
- (4) Notwithstanding the Security, Chatham County may proceed directly against the Owner to collect the Completion Cost, any amounts in excess of the Completion Cost required to complete the Subdivision Improvements or reimburse Chatham County for potential liability arising out of Owner's default hereunder, fifty percent (50%) of the Completion Cost as liquidated damages to Chatham County, and all costs and expenses arising out of said default and the remedy thereof, including reasonable attorney's fees and court costs.
- (5) Any other right or remedy available at law or in equity.

**VI.
SUBDIVISION IMPROVEMENTS**

6.1 DEDICATED IMPROVEMENTS TO BE MAINTAINED BY CHATHAM COUNTY. The following improvements are intended to be accepted by Chatham County for maintenance: _____

_____.

6.2 OTHER IMPROVEMENTS NOT TO BE MAINTAINED BY CHATHAM COUNTY. The following improvements are not intended to be maintained by Chatham County: _____

_____.

**VII.
NOTICE**

7.1 Every notice, demand, consent, approval or other document or instrument required or permitted to be served upon or given to any party hereto shall be in writing and shall be sent by nationally recognized overnight courier service or in registered or certified form, postage prepaid, return receipt requested, and if addressed as follows shall be deemed received upon delivery if sent by overnight courier service or three (3) days after being sent by certified mail:

Chatham County:

Owner:

Chatham County
Department of Engineering
P.O. Box 8161

Savannah, GA 31416-8161

or to such other address as either party may direct from time to time by written notice forwarded in accordance herewith.

IN WITNESS WHEREOF, authorized representatives of Chatham County and Owner have executed this Agreement under seal the day and year written above.

Signed, sealed and delivered this
____ day of _____,
20__ in the presence of:

CHATHAM COUNTY, GEORGIA

By: _____
Its: _____

Unofficial Witness

Notary Public

My Commission Expires:

[NOTARIAL SEAL]

Signed, sealed and delivered this
_____ day of _____,
20__ in the presence of:

OWNER:

By: _____
Its: _____

Unofficial Witness

Notary Public

My Commission Expires:

[NOTARIAL SEAL]