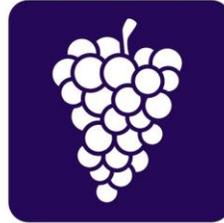


New Kent

C O U N T Y • V I R G I N I A



A GREAT PLACE TO GROW

E&S PERFORMANCE BOND

BETWEEN

(Surety)

AND

THE NEW KENT COUNTY, VIRGINIA BOARD OF SUPERVISORS

DATE:	
TAX MAP NO. OR SUBDIVISION NAME:	
AMOUNT OF SECURITY:	
BOND NUMBER:	

**NEW KENT COUNTY
E&S PERFORMANCE BOND
SUMMARY OF IMPROVEMENTS**

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____
11. _____
12. _____
13. _____
14. _____
15. _____
16. _____
17. _____
18. _____
19. _____
20. _____
21. _____
22. _____
23. _____
24. _____
25. _____

**NEW KENT COUNTY
PERFORMANCE BOND**

BOND NO:		DATE BOND EXECUTED:	
PRINCIPAL(s): Legal name(s)	DATE BOND EXPIRES:		
	AMOUNT OF BOND (IN U.S. DOLLARS)		
	Million(s)	Thousand(s)	Dollar(s) Cents
SURETY(IES): Legal Name	TYPE OF AGREEMENT:		Erosion and Sediment Performance Agreement
	AGREEMENT DATE:		
	PLAT NAME:		
	PLAT NO. AND DATE:		
	PERFORMANCE COMPLETION DATE (see attached Exhibit A):		Termination of the 'Stabilization Period'
Virginia Registered Agent: Name: _____ Address: _____ _____ _____			

KNOW ALL MEN BY THESE PRESENTS, that we, the Principal and Surety hereto recite and declare that:

1. We are held and firmly bound to the obligee Board of Supervisors of New Kent County, Virginia (the "County"), in the sum written above in lawful money of the United States of America, to be paid to the County, its successors or assigns, for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by this Bond.
2. The condition of this Bond is that if the Principal shall in every respect perform all of its obligations under the Agreement identified above (the "Agreement") which Agreement is attached hereto as Exhibit A and is incorporated herein by reference, then this Bond shall be void; otherwise, the Bond shall continuously remain in full force and effect until discharge in accordance with its terms. A Summary of the Improvements and the dates by which they must be completed is attached here as Exhibit B and incorporated herein; provided, however, that the Agreement shall at all times take precedence over Exhibit B and any discrepancy shall be resolved in favor of the Agreement.
3. (a) The Surety expressly waives any right to receive notice, review, or approve any revisions to the plans, profiles and specifications referred to in the Agreement. No such revision or

alteration in the work undertaken that is required to meet County or State standards shall in any way affect the obligation of the Surety under this Bond.

- (b) By signature hereto, the Surety consents to any extension of time granted to the Principal to permit performance of the obligations of the Agreement this Bond secures, whether or not Surety receives notice of same, provided such additional period shall not exceed the original period allowed for performance in the Agreement.
4. In the event of default by the Principal, as set forth in the Agreement, the Director shall give written notice of such default to the Principal and the Surety. Upon receipt of Notice, the Surety shall elect with thirty (30) days one of the following options:
- (a) Tender payment to the County of the full face value sum of the Bond or such lesser amount as may be specified by the Director, in his sole discretion. If this option is selected:
 - (1) the Surety will be relieved of further liability under this Bond; and
 - (2) the County will take over or will let all or any part of the work required by the Agreement but not completed, and will complete the same to the extent of available funds. The costs and expenses of completing the work shall include the costs of consultants, engineers, and other professionals as well as legal fees and costs necessary to enforce the provisions of this bond; or
 - (b) Give written notice to the County that it will assume the obligations of the Principal and will complete the Improvements set forth in the Agreement according to its terms and provisions within the time remaining under the Agreement, or within 180 days of said notice whichever occurs later. The Surety may only arrange for the Developer to complete the Improvements with the consent of the County. Any contractor engaged by the Surety to complete the Improvements must be licensed in the Commonwealth of Virginia and in New Kent County and approved by the Director. If the Surety fails to faithfully perform all or any part of the work or unnecessarily delays all or any part of the work, the County may proceed as provided in Paragraph 6 of this Bond.
5. Should Surety not proceed as provided in Paragraph 4 above within 30 days of receipt of default notice, or having elected option (b) in Paragraph 4, should thereafter fail to perform, the County may without further notice to Surety elect to:
- (a) Take over or let all or any part of the work not completed and complete the same for the account and at the expense of the Principal and Surety, who shall be jointly and severally liable to the County for the costs incurred in completion, including all items set forth in Paragraph 6(b) of this Bond as the measure of damages; the actual cost to obligee, as evidenced by the written statement of the Director, shall be conclusive upon Principal and Surety as to the quantum of damages; and/or
 - (b) Bring suit, action, or proceedings to enforce the provisions of this Bond. In such event, it is expressly agreed and understood that, regardless of the date of breach of the Principal or the Surety's failure to fulfill the obligations of this Bond, the measure of damages recoverable shall be the cost of completion and/or correction of the work required by the Agreement including the ten percent (10%) administrative fee to the County for administering the completion of the Improvements as of the earliest of the following three dates:

- (1) when the work is actually completed and/or corrected to local and state approval and acceptance;
 - (2) final judgment of a court of competent jurisdiction;
 - (3) two years from the expiration of the underlying Agreement or last extension thereof.
6. It is further expressly agreed and understood that the measure of damages is set forth in the Agreement. The cost of completion and/or correction of the work required under the Agreement, and the ten percent (10%) Default Administration Fee provided in Section II, paragraph 4 of the Agreement, the expenses attributable to litigation costs, costs necessary to enforce the provisions of this bond, attorney's fees, procurement costs, and any cost increases arising from delay occasioned by litigation, or other proceedings necessary to enforce the provisions of this Bond, and by delays by Surety under its obligations under this Bond.
 7. Should the Surety determine that the bond will not be renewed, Surety hereby agrees to submit notice of non-renewal to the County within forty-five (45) days of the expiration of the bond.
 8. The parties hereby submit to the personal jurisdiction and venue that any claims, causes of action or disputes arising out of, relating to or concerning this Bond shall have jurisdiction and venue only in the Circuit Court of New Kent County.
 9. The Surety is licensed to do business in, and operates a place of business in, the Commonwealth of Virginia. Evidence of such licensure is attached hereto as Exhibit C.
 10. If any provision of this Bond is held to be illegal, invalid, or unenforceable, or is found to be against public policy for any reasons, such provision shall be fully severable and this Bond shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never been part of this Bond, and the remaining provisions of this Bond shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision, or by its severance from this Bond.
 11. Whenever notice is required, it shall be deemed given if mailed registered, return receipt requested, in the names and to the addresses given below; provided, however, that notice of change of address shall be effective if given in accordance with this paragraph.

SURETY

COUNTY

Director of Community Development
 P.O. Box 150
 12007 Courthouse Circle
 New Kent, Virginia 23124

IN WITNESS WHEREOF, the parties hereto have caused this Bond Agreement to be executed as of the day and year set forth above.

PRINCIPAL

Type of Organization:

State of Incorporation:

Legal Name and Address:

_____ (SEAL)

Signature(s):

BY: _____

Name

Title

Phone #

ACKNOWLEDGMENT OF PRINCIPAL

COMMONWEALTH OF VIRGINIA

County of New Kent, to wit:

_____, acknowledged the foregoing instrument before me this ____ day
of _____, 20____.

_____ (SEAL)

Notary Public

My Commission Expires: _____

Notary Number: _____

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

CORPORATE SURETY

State of Incorporation:

Legal Name and Address:

_____ (SEAL)

Signature(s):

BY: _____

Name

Title

ACKNOWLEDGMENT OF CORPORATE SURETY

COMMONWEALTH OF VIRGINIA

County of New Kent, to wit:

_____, acknowledged the foregoing instrument before me this ____ day of

_____, 20____.

_____ (SEAL)

Notary Public

My Commission Expires: _____

Notary Number: _____

Attach valid Power of Attorney