

BARLEY WOODS WATER AND SEWER
COST SHARE AGREEMENT

THIS AGREEMENT, made this ____ day of _____, 2017, by and between BARLEY WOODS, LLC a Virginia limited liability company ("DEVELOPER"), and the COUNTY OF SPOTSYLVANIA, VIRGINIA, a political subdivision of the Commonwealth of Virginia ("COUNTY") (DEVELOPER and COUNTY referred to collectively as the "PARTIES").

WHEREAS, the DEVELOPER owns a certain tract of land located in Spotsylvania County, shown on the County Tax Map as Tax Map Parcel TM-12-A-31 (the "Property"), on which it intends to construct a residential development known as Barley Woods (the "Project"); and,

WHEREAS, Bay Design Group prepared for the plans, dated August 18, 2014, with the latest revision dated April 2, 2015, titled "Barley Woods P14-0005 Proposed Sanitary Sewer Layout Plan" (the "Sanitary Sewer Layout Plan"). The Sanitary Sewer layout Plan includes two thousand one hundred linear feet (2,100'), more or less, of eight inch (8") SDR-35 sewer line extension which, upon its completion, will remove the adjacent Five Mile Road pump station from service (the "Sewer Line"); and also includes three hundred and ninety linear feet (390'), more or less, of twelve inch (12") ductile iron waterline with the required fittings and hydrant to extend the waterline from the Barley Woods development gated entrance on the DEVELOPER controlled Property adjacent to Five Mile Road to the north corner of the Property (the "Water Line"), which will prevent the future disturbance of the proposed landscaping along Five Mile Road and also will provide service to other properties; and

WHEREAS, said Sanitary Sewer Layout Plan, together with the Sewer Line project cost proposal titled "Barley Woods Sanitary breakdown," and the Water Line project cost proposal, titled "Barley Woods Waterline County Portion" (collectively the "Proposals"), are attached hereto as Exhibits A, B, and C, respectively, and incorporated into this Agreement by reference; and

WHEREAS, as part of the development of the Project, the Developer has submitted an application for and received a site plan approval to construct the public facilities to serve the Project; and

WHEREAS, the COUNTY desires to enter into this Agreement to substantially upgrade the water and sewer facilities necessary for the Project so as to expand the County's water system and reduce long term maintenance within the sewer system, not only to the Project but to other public and private developments (residential and/or commercial) in the surrounding area pursuant to the County's approved Water/Sewer Master Plan. Constructing the Water Line as part of this Project prevents the County from disturbing the completed development in the future to accomplish this scope of work. Failure to extend the Water Line during the construction of the Barley Woods project would result in an exponential cost increase to Spotsylvania County resulting from the need to demolish and reconstruct infrastructure and improvements on the Property, including buildings, parking lots, landscaping buffers, sidewalks, stormwater facilities and dry utility infrastructure. The Sewer Line removes from service the current sanitary sewer pump station along Five Mile Road and provides gravity sewer to the existing regional pump station, reducing long term maintenance costs to Spotsylvania County; and

WHEREAS, the DEVELOPER desires to enter into this Agreement to avoid the disturbance to its completed Project that would be necessary in the future if the upgrades were not made as part of this Project.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH: That for and in consideration of the premises and the covenants and agreements set out herein, the DEVELOPER and the COUNTY agree as follows:

A. Project and Costs:

The DEVELOPER and the COUNTY set forth herein their respective obligations to obtain, perform, and bear the cost of the engineering, construction and installation of the sewer utilities as shown on the Sanitary Sewer Layout Plan and the Proposals. The phrase "Cost and Expense" shall include, without limitation, all direct and indirect costs of the engineering, construction, installation, and other work indicated, specifically to include all construction stakeout, permitting, and payment of all fees. The DEVELOPER and the COUNTY agree to promptly undertake and complete the following water and sewer service improvements:

1. The DEVELOPER agrees to construct, and COUNTY hereby agrees to permit the DEVELOPER or his agents to construct the Sewer Line, which includes twenty one hundred feet (2,100') of eight inch (8") SDR-35 PVC sewer line, and the

Water Line, which includes three hundred and ninety feet (390') of twelve inch (12") ductile iron waterline.

2. The COUNTY's obligation with respect to the Cost and Expense for the Sewer Line shall be NINETY ONE THOUSAND EIGHT HUNDRED FIFTY NINE DOLLARS AND TWENTY FIVE CENTS (\$91,859.25) (the "Sewer Line Cost"). The County's payment of the Sewer Line Cost as set forth hereinafter shall fully satisfy and discharge its obligation with respect to the Sewer Line.
3. The COUNTY'S obligation with respect to the Cost and Expense of the Water Line shall be FORTY FOUR THOUSAND SIX HUNDRED FORTY DOLLARS AND EIGHTY FIVE CENTS (\$44,640.85) (the "Water Line Cost"). The COUNTY'S payment for the Water Line Cost as set forth hereafter shall fully satisfy and discharge its obligation with respect to the Water Line.
4. The COUNTY shall pay the Sewer Line Cost and the Water Line Cost within thirty (30) days of its acceptance of the DEVELOPER'S dedication of the completed improvements.
5. DEVELOPER shall pay all of the Cost and Expense of the Sewer Line and the Water Line not paid by the COUNTY pursuant hereto. The DEVELOPER shall be responsible for all connection and other fees that may be required.

B. General Provisions:

1. All contractors utilized by the DEVELOPER in performing any work on the Project shall be approved by the COUNTY prior to issuance of the approved site plan for construction of the Project.
2. DEVELOPER agrees to indemnify, protect and hold harmless the COUNTY, its officers, agents, and employees from and against all losses and damage to property and bodily injury or death to any person or persons, which may arise directly or consequentially from the construction, maintenance and presence of the public facilities constructed by DEVELOPER, its subcontractors, agents or employees, until such time as such facilities are fully accepted by the COUNTY.
3. To insure the indemnification of the COUNTY against liability arising out of the construction of the public facilities by the DEVELOPER, DEVELOPER shall obtain public liability insurance in the minimum amount of \$1,000,000.00 for

bodily injury and \$500,000.00 for property damage, including underground property, per occurrence, or other equivalent insurance coverage as approved by the COUNTY, and attach hereto a copy of the certificate demonstrating that the DEVELOPER is covered on this Project by such insurance. The certificate shall include a governmental endorsement thereto naming the COUNTY, its officers agents and employees, as additional insureds and shall be issued by an insurance company licensed to do business within the Commonwealth of Virginia. Such insurance shall include Worker's Compensation and Employer's Liability as follows:

Coverage A - per Statutory Requirement;

Coverage B - minimum of \$100,000.00 per occurrence

Coverage C - minimum of \$100,000.00/\$100,000.00 Accident and/or Disease.

If vehicles are to be used on COUNTY-owned property, the insurance shall include comprehensive automobile coverage in the minimal amount of \$500,000.00 per occurrence bodily injury, and \$100,000.00 per occurrence property damage.

Lapse, cancellation or termination in any manner of coverage prior to the completion and acceptance of the water facilities shall constitute a violation of this Agreement.

4. During the performance of this Agreement, the DEVELOPER agrees to (i) provide a drug-free workplace for the DEVELOPER'S employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the DEVELOPER'S workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the DEVELOPER that the DEVELOPER maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

5. Pursuant to Virginia Code Section 2.2-4354, as amended, the DEVELOPER covenants and agrees to:
 - A. Within seven (7) days after receipt of any amounts paid to the DEVELOPER under the Agreement, (i) pay any subcontractor who provides goods or services associated with this Agreement for its proportionate share of the total payment received from the COUNTY attributable to the work under the Agreement performed by such subcontractor, or (ii) notify the COUNTY and the subcontractor, in writing, of its intention to withhold all or part of the subcontractor's payment and the reason therefore;
 - B. Provide its federal employer identification number or social security number, as applicable, before any payment is made to the DEVELOPER under the Agreement;
 - C. Pay interest at the legal rate or such other rate as may be agreed to in writing by the subcontractor and the DEVELOPER on all amounts owed by the DEVELOPER that remain unpaid after seven (7) days following receipt by the DEVELOPER of payment from the COUNTY for work performed by the subcontractor under the Agreement; and
 - D. Include in its contracts with any and all subcontractors the requirements of A, B, and C above.
6. The DEVELOPER providing services under this Agreement represents and warrants to the COUNTY that it is:
 - A. Conforming to the provisions of the Civil Rights Act of 1964, as amended, as well as the Virginians with Disabilities Act, the Americans with Disabilities Act and Section 2.2-4311 of the Virginia Fair Employment Contracting Act of 1975, as amended, and the Virginia Human Rights Act, as amended;
 - B. Not employing illegal alien workers or otherwise violating the provisions of the Immigration Reform and Control Act of 1986 and Virginia Code 2.2-4311.1, as amended;

- C. Complying with federal, state and local laws and regulations applicable to the performance of the goods and services procured; and
 - D. In full compliance with the Virginia Conflict of Interests Act.
 - E. Not employing any employee who is a registered sex offender and shall enforce the same restriction upon all subcontractors and agents of DEVELOPER. Prior to starting work and quarterly during performance of the work, the DEVELOPER shall check the Virginia State Police Sex Offender Registry to verify sex offender status of all employees and agents of DEVELOPER and subcontractors who are employed by the DEVELOPER or subcontractor. Notwithstanding any other provision of this Agreement, materially false statements by the DEVELOPER about the sex offender status of its employees or agents shall be grounds for immediate termination of this Agreement.
7. It is mutually understood and agreed that approval of the Plans shall not be deemed, by such approval alone, to be an acceptance by the COUNTY or other applicable agency of any public facility or other physical improvements for maintenance, repair or operation thereof, and that the DEVELOPER shall be fully responsible therefor and assume all of the risks and liabilities therefor, until such time as the COUNTY or other applicable agency has formally accepted such facilities or other physical improvements. The Developer guarantees the materials and workmanship of the improvements for a minimum period of one year from the date of formal acceptance by the County as fully and finally completed.
8. Any and all improvements constructed with regard to the Project on real property other than the Property shall be the property of the COUNTY without any requirement for dedication by the DEVELOPER.
9. All public improvements provided pursuant to this Agreement shall be fully warranted by the DEVELOPER to be free from defects and suitable for their particular purposes for a period of one (1) year from the date of their final acceptance by the COUNTY as fully and finally completed.

10. This Agreement shall be binding upon the DEVELOPER, its successors and assigns.
11. In the event either party to this Agreement shall fail to comply with the provisions of this Agreement, the aggrieved party shall have available to it all remedies at law or in equity, to enforce the terms of the Agreement or to obtain compensation for damages resulting from any default.
12. The phrase "eight inch (8") sewer line" shall include, without limitation, eight inch (8") pipe material, casing material, manholes all installed to the satisfaction of the COUNTY in easements platted and dedicated to the COUNTY, in accordance with the Plans, the provisions of Chapter 22 of the Spotsylvania County Code, all standards and specifications for sewer systems required by Spotsylvania County, and the regulations and requirements of all other governmental agencies having jurisdiction over such facilities.
13. The phrase "12 inch (12") water line" shall include, without limitation, twelve inch (12") pipe material meeting all standards and specifications for water systems required by Spotsylvania County, and the regulations and requirements of all other governmental agencies having jurisdiction over such facilities.
14. The DEVELOPER and the COUNTY agree that the improvements described above shall be installed within one (1) year from the date of this agreement. Time is of the essence.
15. No change order or extra to any work to be paid for by the COUNTY will be enforceable unless and until agreed to in writing by both parties. The COUNTY agrees to make all decisions and requests for change orders in a timely manner.

(Remainder of Page Intentionally Left Blank)

IN WITNESS WHEREOF, the parties hereto have affixed their signatures:

BARLEY WOODS, LLC:

By: 

CH CONSTRUCTION, LLC, MANAGER

By: ROGER A. GLOVER, III, in his capacity as
Manager of CH Construction, LLC

COUNTY OF SPOTSYLVANIA, VIRGINIA

By: _____

MARK B. TAYLOR
COUNTY ADMINISTRATOR

APPROVED AS TO FORM:


COUNTY ATTORNEY