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Prepared by:
Wilson, Halbrook & Bayard, P.A.
107 West Market Street
PO Box 690
Georgetown, Delaware 19947
ATTN: Dennis Schrader, Esq.
Return to:
Town of Bridgeville
101 N. Main Street
Bridgeville, Delaware 19933
ATTN: Bonnie Walls, Manager

DEVELOPMENT IMPROVMENTS AND SERVICES AGREEMENT

This Development Improvements and Services Agreement made this 10th day of November, 2003, by and between the Commissioners of Bridgeville, a municipal body corporate of the State of Delaware ("Town") and Passwaters Farm LLC, a Delaware limited liability company ("Developer").

DEVELOPMENT IMPROVEMENTS AND SERVICES AGREEMENT

This Development Improvements and Services Agreement made this 10th day of November, 2003, by and between the Commissioners of Bridgeville, a municipal body corporate of the State of Delaware ("Town") and Passwaters Farm LLC, a Delaware limited liability company ("Developer").

RECITALS

A. The Developer is the owner and/or contract purchaser of certain lands situated in the Town ("Property") and being more particularly described and depicted by the plat entitled "Development Improvements and Services Agreement Area", dated November 7, 2003, attached hereto as Exhibit "A" ("Plat").

B. The Property is located within the Residential Planned Community (RPC) zoning district and has concept plan approval for development as a planned residential community, including 2,000 residential units, an eighteen-hole golf course, clubhouse, and certain commercial development, but is not presently served by public water or sewer facilities.

C. The Town owns and operates water and sewer systems throughout the Town (the "Town System"), although the Property is not presently served by public water or sewer facilities.

D. Developer has requested the permanent allocation of sufficient water and sewer capacity for 2,000 residential units, the golf course and 30,000 gpd of additional sewer and associated water capacity for future commercial/retail/institutional development.

E. The Town desires to allocate water and sewer capacity for the Property and to provide water service from the water transmission facilities and sewage disposal service through its sewage transmission facilities in the vicinity of the Property, provided that the Developer constructs, installs, improves and/or reimburses the Town for the cost of all streets, drainage, stormwater management and water and sewer infrastructure necessary to serve the Development (collectively, the "Improvements"), at no cost to the Town, and, upon acceptance, dedicates certain Improvements to the Town.

F. This Agreement is intended to implement the conclusions and recommendations of the "Town of Bridgeville Wastewater and Water Facility Plan" dated September 2002 and prepared by Davis, Bowen & Friedel, Inc. (the "Facility Plan"), a copy of which is incorporated herein by reference. Subject to technical design and phasing revisions, the parties intend that the off-Property Improvements necessary to provide sufficient water and sewer system capacity for the Property are generally those Improvements identified by the Facility Plan.

G. The Town and Developer desire to enter into this Agreement setting forth the mutual understandings and undertakings regarding the construction and/or financing of certain Improvements and services and for the purchase and guarantee of sewer and water service allocation from the Town for the future development of the Property.

NOW, THEREFORE, in consideration of the foregoing recitals, which are hereby incorporated into and made a part of this Agreement, and the mutual covenants and agreements set forth below, the sufficiency and receipt of which is hereby acknowledged, the Town and Developer hereby agree as follows:

1. Design and Construction of Improvements.

a. General Standards. All Improvements shall be designed and constructed pursuant to and in accordance with applicable Town plans, standards and specifications, such other standards as set forth in this Agreement and to the reasonable satisfaction of the Town Engineer. The Developer shall cause all work on the Improvements to be completed in a good and workmanlike manner.

b. Prosecution of Work. If any work on the Improvements is abandoned, or performed in violation of this Agreement, then the Developer shall promptly act to cause the work to be completed properly.

c. Town Inspections and Approvals. All work on the Improvements shall be subject to inspection and approval by Town representatives at all times. Developer shall reimburse the Town for the costs of necessary inspections. The Town shall provide to the Developer the basis for the costs of any inspections charged to the Developer.

2. Water and Sewer Improvements.

a. General Provisions. All Improvements to the Town's water system that are necessary to serve the Property are referred to as the "Water Improvements." All Improvements to the Town's sewer system that are necessary to serve the Property are referred to as the "Sewer Improvements." The Water Improvements and Sewer Improvements are referred to collectively as the "WS Improvements."

(i) *Developer's Expense*. Except as otherwise set forth in this Agreement, Developer shall be responsible for the costs and expense of design, permitting, construction, installation and inspection of all WS Improvements (including, wells, water mains, valves, fire hydrants, services, firelines, sewage pumping stations, force main, gravity sewer mains, manholes, laterals and other appurtenances) necessary to furnish water supply and sewage disposal service to the Property.

(ii) *Town's Obligations*. Town hereby agrees to take all actions necessary to provide sufficient water and sewer capacity to serve the development of 2,000 residential units, an 18-hole golf course and clubhouse and 30,000 gpd of sewer and associated water capacity for additional commercial/retail/institutional development on the Property. Town shall reserve and allocate such water and sewer capacity for the Property. Town shall permit connection of the Property, in whole or in part, to the Town's System upon payment by Developer of applicable fees and/or reimbursement of Town expenses for WS Improvements, as set forth in this Agreement. To the extent that the WS Improvements are completed in an incremental or phased manner, as contemplated by the Facility Plan, Town shall allocate to the Property the water and sewer service capacity created by such incremental or phased Improvements upon payment by

Developer for such incremental or phased Improvements. The Town shall operate and maintain the WS Improvements after receiving title to them.

(iii) *Construction Inspection*. Developer shall arrange and pay for inspection of all WS Improvements constructed or installed by Developer. The inspector(s) shall be approved in advance by the Town. Inspections shall be conducted during construction and, if applicable, before such WS Improvements are covered by backfill material and buried.

(iv) *Final Inspection and Approval of Water and Sewer Improvements*. Developer shall notify the Town when it believes that any or all of the WS Improvements have been fully and properly completed and shall request final inspection, approval and, where appropriate, acceptance of the WS Improvements by the Town. Such notice and request shall be accompanied by the "as built" drawings of the WS Improvements and by proposed drafts of the documents of title transfer.

(v) *Dedication and Acceptance of WS Improvements*. Following approval by the Town, at the timing set forth by subsections 2(b) and (c) below, the Developer shall dedicate and the Town shall accept such approved WS Improvements.

(vi) *Transfer of Ownership of WS Improvements and Easements to Town*. Upon the approval of, and prior to acceptance of, WS Improvements to be accepted by the Town, Developer shall execute, or cause to be executed, such documents as the Town shall request to transfer ownership of such WS Improvements to, and to evidence ownership of such WS Improvements by, the Town, free and clear of all liens, claims, encumbrances and restrictions unless otherwise approved by the Town in writing. The Developer shall, at the same time, grant to the Town all such reasonable and necessary easements as the Town may require to install, operate, maintain, service, repair and replace the WS Improvements. Upon dedication of certain WS Improvements requiring routine access (other than underground pipe), including, for example, wells, water towers, treatment facilities, and lift or pump stations, Developer shall dedicate to the Town, in fee simple, a reasonably appropriate area of land on which such facilities are located. Ownership by the Town of WS Improvements for connections to residential dwellings shall terminate at the outlet side of each water meter or at the property or easement line for sewerage facilities.

(vii) *Guaranty of WS Improvements*. Developer shall maintain and, as necessary, repair the WS Improvements until the Town accepts such WS Improvements. Additionally, Developer shall assign to the Town a one-year construction guarantee for the correction of all defects and deficiencies in the WS Improvements constructed or installed by Developer and accepted by the Town that occur or become evident within one year after completion of construction. If any such defect or deficiency occurs or becomes evident during such period, then the Developer shall, within 10 days after written demand from the Town to do so, correct it or cause it to be corrected.

b. Water Improvements.

(i) *Developer's Obligations*. All costs and expenses of designing, permitting, constructing and installing all Water Improvements necessary to serve the Property shall be the responsibility of the Developer, including, but not limited to, wells, treatment facilities, pumping stations, storage towers, water mains and meters. Developer shall be responsible for construction of all water distribution systems on the Property. All Water Improvements shall be dedicated to the Town upon completion of construction.

(ii) *Estimated Phasing of Water Improvements*.

1. *Initial Water Improvements*. On or before January 15, 2004, at Developer's expense, Town shall design and commence construction or installation of all Water Improvements necessary to provide water service for development of 1,000 dwelling units and the golf course clubhouse and/or an equivalent amount of commercial development on the Property. It is anticipated that such improvements include, but may not be limited to, drilling of an additional well near existing Town Well 5, installation of generators to provide back-up electricity for Wells 2, 2D, 5 and 5D, and construction of a water main from the Town's existing distribution system, south under Route 13A and along the east boundary of the Property.

2. *Property Water Loop*. Prior to the issuance of the two-hundred fiftieth (250th) residential building permit, Town shall construct at Developer's expense or permit Developer to construct either: (1) a water main loop to connect the southern terminus of the Initial Water Improvements to another location in the Town's existing water distribution system, or (2) an additional well and water tower near the southern boundary of the Property.

3. *Additional Capacity Improvements*. Town shall take such reasonable actions as are appropriate to complete such additional Water Improvements as generally identified by the Facility Plan and as necessary to serve the Property in a timely manner, provided that Developer provides Town sufficient assurances of payment for such Water Improvements.

(iii) *Fees and Charges*.

1. *Water Impact Fee*. In consideration of Developer's commitment to pay all costs and expenses of improving, expanding and extending Town's water system to serve the Property, Town agrees to waive the water impact fees for all development on the Property.

2. *Water Meter Fee*. Developer shall purchase and install all water meters required for development of the Property. Therefore, Town agrees to waive the water meter fees for all water connections on the Property.

3. *Water Tap Fee*. Developer shall pay the water tap fee for each building permit issued for the Property at the generally applicable rate, provided, however, that such fee shall not exceed $100.

4. *Water Use Charges*. Each property connected to the Town's water system shall be responsible for and subject to the Town's normal water use charges.

c. Sewer Improvements.

(i) *Developer's Obligations*. Developer, at its sole cost and expense, shall design, permit, construct and install all Sewer Improvements located on the Property. Sewer Improvements may be dedicated to the Town upon completion of construction, provided that the Developer previously dedicated or concurrently dedicates any downflow portions of the sewer collection system to the Town.

(ii) *Town's Obligations – Off-Property Sewer Improvements*. Town shall design and construct, at Developer's expense, all force mains and collection systems not located on the Property and all improvements to the Town's sewer treatment and/or disposal systems necessary to serve the proposed development (collectively the "Off-Property Sewer Improvements"). Town shall use its best efforts to secure grant and/or loan funding for the Off-Property Sewer Improvements. Town shall take such reasonable efforts as are appropriate to complete such Off-Property Sewer Improvements in a timely manner, provided that Developer provides Town sufficient assurances of payment for such Off-Property Sewer Improvements.

(iii) *Fees and Charges*.

1. *Sewer Impact Fee*. In the event that the Town funds the Plant Improvements using a combination of grants and loans, payable by the Town, at the time of building permit issuance, Developer shall pay a Sewer Impact Fee of Three Thousand Dollars ($3,000.00) for each of the first One-Thousand Four Hundred (1,400) residential units constructed on the Property. Commencing on June 1, 2004, Developer shall pay Town a minimum of Seventy-Five (75) residential unit Sewer Impact Fees per calendar year. Any Sewer Impact Fees paid for which a building permit is not issued shall carry forward to the following year(s) and apply to subsequently issued building permits.

If the Town does not secure adequate grant and/or loan funding for the Plant Improvements, Developer may elect to reimburse the Town for the cost of design, permitting and construction of the Plant Improvements to serve 1,400 units, in which event, Town shall waive the Sewer Impact Fees for the first One-Thousand Four Hundred (1,400) residential units constructed on the Property.

2. The remaining Six Hundred (600) residential units constructed on the Property shall be charged the Sewer Impact Fee, unless the Developer elects, in its sole discretion, to pay the Town the complete cost and expense of designing, permitting and construction of the Plant Improvements necessary to provide sewer capacity for the remaining 600 units. Developer may make such election at any time, and upon receipt of a written notice of Developer's intent to pay for such Plant Improvements, Town shall promptly commence design, permitting and construction of such Plant Improvements.

3. *Sewer Inspection Fee*. Developer shall pay a sewer inspection fee of fifty ($50.00) dollars per residential unit.

4. *Sewer Usage Charges*. Each property connected to the Town's sewer system shall be responsible for and subject to the Town's normal sewer use charges.

3. Transportation Improvements.

a. General Provisions. Town agrees that the Developer shall not be required to provide the Town any payment, performance or maintenance bond for the Transportation Improvements.

(i) *Developer's Design and Construction Obligations*. Developer agrees to design and construct, in accordance with Town standards and specifications, all Transportation Improvements necessary to serve the Development at no expense to the Town.

(ii) *Public and Emergency Services*. Developer grants to the Town a permanent and irrevocable easement over, on, and across the Transportation Improvements for the purposes of enforcing applicable laws and providing public and emergency services to the Development and to adjacent properties.

(iii) *Developer's Maintenance of Transportation Improvements Before Dedication to the Town*. The Developer shall, at its sole cost and expense, maintain, in a good and clean condition at all times, all Transportation Improvements, including all streets, curb and gutter, and parking areas, until such Transportation Improvements are dedicated to and accepted by the Town.

(iv) *Damage to Transportation Improvements*. The Developer shall promptly clean all mud, dirt, or debris deposited on any street, sidewalk, ditch or other Transportation Improvements (whether publicly or privately owned) on the Property by the Developer or any agent of or contractor hired by, or on behalf of, the Developer; and shall repair any damage to any street, sidewalk, ditch or other Improvements (whether publicly or privately owned) that may be caused by the activities of the Developer or any agent of or contractor hired by, or on behalf of, the Developer.

b. Streets. All streets constructed by Developer may be inspected by the Town at any time and shall be inspected by the Town during and/or immediately following application of the final surface course of paving. Streets may be dedicated to the Town at any time, at the Developer's discretion, following application of the final surface course and shall be accepted by the Town, provided that the streets are in good condition, excepting normal wear and tear. Dedication of street right-of-ways shall be subject to reasonable easements granted by Developer to any utility or service provider.

c. Bike Path. On or before issuance of the Three-Hundredth (300th) residential building permit, Developer shall design and construct, at no cost to the Town and in accordance with applicable Town and Delaware Department of Transportation standards, a ten (10) foot wide asphalt bicycle path ("Bike Path"), generally parallel to the Wilson Farm Road along the west boundary of the Property. Upon completion of the Bike Path, Developer shall grant to the Town an easement permitting public use of the Bike Path, subject to the right of the Developer to

regrade and/or realign and reconstruct the Bike Path at any time during the development of the Property. At the Developer's discretion, Developer may dedicate to the Town and the Town shall accept a fee simple interest in the Bike Path.

4. Public Services and Facilities.

Town agrees to take all necessary actions to receive, utilize and/or distribute the property and funds provided by the Developer pursuant to this Section 4.

a. Library Site. Upon request by the Town, and not before the issuance of the Four Hundred Forty-Fifth (445th) residential building permit for the Property, Developer agrees to subdivide and dedicate a site for a new library to the Town. The site will be, at the discretion of Developer, 1.5 to 2.0 acres in size and approximately located in the vicinity of the ballfields at the north end of the Property.

b. Library Fund. Upon issuance of each residential building permit for the Property, Developer agrees to pay One Hundred Dollars ($100.00) to a fund managed by and in the sole discretion of the Town for the expansion, renovation, and/or relocation of the Bridgeville Library.

5. Fire and Emergency Services

a. Fire and Emergency Services Capital Fund Contribution. Upon issuance of each residential building permit for the Property, Developer agrees to pay One Hundred Dollars ($100.00) to a fund managed by and in the sole discretion of the Town for capital expenditures by the Bridgeville Volunteer Fire Co., Inc. and/or other providers of emergency services for the residents of the Town ("Capital Fund").

b. Bridgeville Emergency Services Enhancement Funding Program. In addition to the Capital Fund contribution, Developer shall pay the fee for the Town's generally applicable "Emergency Services Enhancement Funding Program" as established by Ordinance No. A03-3, and as amended from time to time.

6. Miscellaneous.

a. Severability. If any term or provision of this Agreement is found to be invalid, void, or unenforceable, the remaining terms and provisions of this Agreement shall continue in full force and effect and, if possible, the parties shall amend this Agreement so as to effect the original intention of the parties.

b. Time of Essence. Time is of the essence in the performance of all terms and provisions of this Agreement.

c. Term; Assignment. Except as otherwise provided herein, this Agreement shall run with and bind the Property in perpetuity, and shall inure to the benefit of and be enforceable by the Developer and the Town, and any of their respective legal representatives, heirs, successors and

assigns. Developer may assign this Agreement, in whole or in part, without any action or approval by the Town.

d. Amendments. This Agreement may be amended from time to time. No amendments to this Agreement shall be effective unless it is in a written agreement signed by both parties.

e. Notices. All notices and other communications in connection with this Agreement shall be in writing and shall be deemed delivered to the addressee thereof (1) when delivered in person on a business day at the address set forth below or (2) on the third business day after being deposited in any main or branch United States post office, for delivery by properly addressed, postage prepaid, certified or registered mail, return receipt requested, at the address set forth below.

Notices and communications to the Developer shall be addressed to, and delivered at, the following addresses:

Passwaters Farm LLC
c/o Allen & Rocks, Inc.
1960 Gallows Road
Suite 300
Vienna, VA 22182
Attention: Nicholas P.H. Rocks, President

with a copy to:
Miles & Stockbridge, P.C.
101 Bay Street
Easton, MD 21601
Attention: Ryan D. Showalter, Esq.

Notices and communications to the Town shall be addressed to, and delivered at, the following address:

Town of Bridgeville
101 North Main Street
Bridgeville, DE 19933
Attention: President, Town Commissioners

with a copy to:
Wilson, Halbrook & Bayard, P.A.
107 West Market Street
Georgetown, DE 19947
Attention: Dennis L. Schrader, Esq.

By notice complying with the requirements of this Section, each party shall have the right to change the address or addressee or both for all future notices and communications to such party, but no notice of a change of address shall be effective until actually received.

IN WITNESS WHEREOF, the parties have executed and sealed this Agreement on the date set forth above.

WITNESS:

Margaret W. Sipple

COMMISSIONERS OF BRIDGEVILLE

By: Joseph T. Conaway
Joseph T. Conaway,
President

WITNESS:

PASSWATERS FARM LLC

By:

Nicholas P.H. Rocks,
President of Allen & Rocks, Inc.,
Manager

Approved as to form and legal sufficiency:

Dennis Schrader, Esq.
Town Attorney

WITNESS:

PASSWATERS FARM LLC

_____

By: _____
Nicholas P.H. Rocks,
President of Allen & Rocks, Inc.,
Manager

Approved as to form and legal sufficiency:

Dennis Schrader, Esq.
Town Attorney