

INFRASTRUCTURE COMPLETION BOND

Name of Development requiring Infrastructure Completion (the "Project"):

Name and Number of Approved Site or Subdivision Plan for the Project ("Required Infrastructure"):

Date of Site/Subdivision Plan Approval:

Estimated Date by which the Obligation (as defined below) will be Completed ("Estimated Completion Date"):

Name of Principal (Name of Developer):

Address and Phone Number of Principal:

The Principal is organized and existing under the laws of the following State:

Name, address, and telephone number of Surety home office (must be authorized to do business in North Carolina):

Name, address, and telephone number of Surety's N. C. Resident Agent:

Amount of Infrastructure Completion Bond (in words and figures) ("Bond"):

DOLLARS

(\$ _____)

Bond number: _____

Date of Execution of this Bond: _____

Obligee: TOWN OF CARY, a North Carolina municipal corporation.

* * * * *

KNOW ALL PERSONS BY THESE PRESENTS, that we, the **PRINCIPAL AND SURETY** above named, are held and firmly bound unto the above named Obligee, hereinafter called the Obligee, in the penal sum of the amount stated above for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal has applied for final plat approval of the land development known as Project prior to completion of the Required Infrastructure in accordance with the applicable requirements of the Town of Cary Code of Ordinances, Town of Cary Land Development Ordinance (“LDO”), Town of Cary Standard Specifications and Details, Town of Cary Policies and Standard Procedures, the approved subdivision and/or site plan, and the Town of Cary’s requirements for total acceptance of infrastructure (collectively “Town Requirements”). Principal, acknowledging its obligation to complete Required Infrastructure in accordance with Town Requirements, including successful completion of the one (1) year correction period (collectively, “Obligation”), desires to provide a bond for the benefit of the Obligee to guarantee its Obligation. In the event the Surety becomes bankrupt, dissolves, or ceases to exist or function as a surety, Principal shall procure a replacement bond to guarantee its Obligation.

NOW THEREFORE, if the Principal shall well and truly construct and complete its Obligation (including any and all approved modifications to the site plan that may hereafter be made, notice to the Surety of such modifications being hereby waived) by a date no later than 180 days after the Estimated Completion Date, it being stipulated that time is of the essence, such completion being evidenced solely by issuance from Obligee of a “Certificate of Completion” letter in substantially the form attached hereto as Attachment 1, then this bond obligation is void, otherwise it shall remain in full force and virtue.

In the event Principal is in default by failing to fully and properly complete its Obligation, as evidenced by issuance from Obligee of a “Letter of Default” in substantially the form attached hereto as Attachment 2, Obligee shall provide notice to Principal (“Notice”) and Surety and Surety will (a) within fifteen (15) days of date of such Notice, take over and assume completion of said Obligation, or (b) with Obligee’s written consent, pay the Obligee the cost of completion of Required Infrastructure. If option (b) is consented to by Obligee, and should the Obligee and Surety not agree as to the cost of

completion, the same shall be fixed by the Obligee taking bids in accordance with the requirements of N.C.G.S. 143-129 for the completion of the Obligation. The lowest responsive, responsible bid received shall be deemed the cost of completion. The Surety will make such payment within ten (10) days after the cost of completion shall have been so determined.

Principal and Surety agree that (i) this Bond is fully binding on Surety whether or not the Principal executes this Bond; (ii) any and all estimates or calculations prepared to establish the penal sum above is extrinsic to this Bond and may not be used in any way to limit or reduce the obligations of the Principal or Surety under this Bond; and (iii) neither Surety nor Principal shall assert as a defense that the Required Improvements are not necessary or are not authorized by law. This Bond shall be deemed made in Wake County, North Carolina. This Bond shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this Bond shall be the North Carolina General Court of Justice, in Wake County. Such actions shall neither be commenced in nor removed to federal court. This requirement for forum and venue shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this subsection.

Each individual signing this Bond has the right and power to do so and bind Principal or Surety, as appropriate, to the obligations set forth herein and each individual does so warrant that he/she has such authority.

IN WITNESS WHEREOF, the above-bound parties have each executed this Bond under their several seals on the date of execution indicated above, the name and corporate seal of each corporate party being hereto affixed, pursuant to authority of its governing body.

(name of Principal)

- Attachment 1 – Total Acceptance Letter**
- Attachment 2 – Letter of Default**
- Attachment 3 – Notice to Principal and Surety**

[Execution by Principal when the Principal is a corporation]

By: _____
Title of officer: _____

(Affix Principal's corporate seal.)

[Execution by Principal when the Principal is a limited liability company]

By: _____

Manager of Principal

[Surety's execution]

(name of Surety)

(signature of attorney in fact)
(Affix Surety's corporate seal.)

(Instructions to Surety and Principal: If you use a raised corporate seal, press hard enough to make it legible.)

ACKNOWLEDGMENT OF DEVELOPER'S EXECUTION OF
INFRASTRUCTURE COMPLETION BOND

[Acknowledgment when the Developer (the Principal) is a corporation]

State of _____ County of _____

I, a notary public in and for the aforesaid county and state, certify that _____ personally appeared before me this day and stated that he or she is

(~~strike through the inapplicable~~): chairperson/ president/ chief executive officer/ vice-president/ assistant vice-president/ treasurer/ chief financial officer of

_____, a corporation, and that by authority duly given and as the act of the corporation, he or she signed the foregoing Infrastructure Completion Bond and the corporate seal was affixed to said instrument(s). This the _____ day of _____, 20_____.

My commission expires: _____
Notary Public

[Acknowledgment when the Developer (the Principal) is a limited liability company]

State of _____ County of _____

I, _____, a notary public for said county and state, certify that _____ (1) appeared before me this day, (2) stated that he or she is a manager of

_____, a limited liability company, (3) acknowledged that the foregoing Infrastructure Completion Bond carry on the company's business in the usual way, and (4) acknowledged the due execution of the Infrastructure Completion Bond on behalf of the company.

This the _____ day of _____, 20_____.

My commission expires: _____
Notary Public

ACKNOWLEDGMENT OF SURETY'S EXECUTION OF
INFRASTRUCTURE COMPLETION BOND

State of _____ County of _____

I, _____, a notary public in and for said county and state, certify that _____ personally appeared before me this day and acknowledged that he or she is Attorney in Fact for

_____, the Surety named in the foregoing Infrastructure Completion Bond, in which bond the Obligee is the Town of Cary, and that he or she executed said bond, under the seal of the Surety, on behalf of the Surety.

This the _____ day of _____, 20_____.

My commission expires: _____
_____ Notary Public

Attachment 1 – Total Acceptance Letter



FACILITIES,
CONSTRUCTION,
& FIELD SERVICES
DEPARTMENT

Subject: **Project Name:**
TOC Project #:

Dear _____ :

The Town of Cary hereby recognizes that all infrastructure improvements intended to be dedicated to and maintained by the Town of Cary, as shown on the attached summary of quantities sheet for the above referenced project, have successfully completed the one-year corrections period.

The date of final acceptance is _____, 2016. If you should have questions, please do not hesitate to call.

Sincerely,

Blank
Infrastructure Field Services Technician

Attachment 2 – Letter of Default



FACILITIES,
CONSTRUCTION,
& FIELD SERVICES
DEPARTMENT

Subject: **Letter of Default**
Project Name:
TOC Project #:

Dear _____ :

The Required Improvements listed on Attachment 1 (see attached) located at the [Project] and required as part of Obligation under Bond _____ (Attachment 2), have not been fully and properly completed as required.

If you have any questions about this matter, please contact me at (919) _____.

Sincerely,

Name:

Title:

Attachment 1 – Required Improvements not completed
Attachment 2 – Bond

Attachment 3 – Notice to Principal and Surety



Subject: Notice to Principal and Surety
Project Name:
TOC Project #:

Dear _____ :

Pursuant to Bond _____ (Attachment 1), this letter serves as Notice to Principal and Surety that Principal is in default by failing to fully and properly complete its Obligation, as evidenced by issuance from Obligee of a "Letter of Default" (Attachment 2). Therefore, Surety shall, within fifteen (15) days of the date of this Notice, take over and assume completion of said Required Infrastructure.

If you have any questions about this matter, please contact me at (919) _____.

Sincerely,

Name:
Title:

Attachment 1 – Bond
Attachment 2 – Letter of Default