

STATE OF SOUTH CAROLINA  
COUNTY OF YORK

**PERFORMANCE, LABOR  
and MATERIALS AGREEMENT**  
**Trinity Townes at Tega Cay Phase 3**

THIS PERFORMANCE, LABOR and MATERIAL AGREEMENT (the "Agreement") is made and entered into as of the \_\_\_\_ day of August, 2020 between TRINITY POINT DEVELOPMENT, LLC (the "Obligor") and the CITY OF TEGA CAY, a South Carolina municipality (the "Obligee" and at times the "City"). At times herein, the Obligor and Obligee are collectively referred to as the "parties" or individually as a "party".

**Statement of Purpose**

Obligor has requested that it be granted final plat approval by the City for the subdividing and improving of a tract of land known as "**Trinity Townes at Tega Cay Phase 3**", further described on the plat titled "**Trinity Townes at Tega Cay Phase 3**", prepared by Metrolina Land Surveying, Inc. dated November 11, 2019, and last revised on June 24, 2020, and submitted to the City in regards to said development, attached hereto as **Exhibit A**, which is incorporated herein by reference as a part hereof (the "Final Plat"). As a condition precedent to the granting of the above described Final Plat approval by the City, the Obligor is required to furnish a Performance, Labor and Material Agreement as herein provided.

NOW THEREFORE, in consideration of the mutual promises herein contained, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereto agree as follows:

A. Labor, Materials, Equipment.

1. The Obligor binds itself, its successors and assigns, to the City to pay for labor, materials and equipment furnished for use in completing the infrastructure improvements described in **Exhibit A** and **Exhibit B** attached hereto, incorporated herein by reference as a part hereof ("Improvements").
2. If Obligor, or any contractor or subcontractor of said Obligor, its successors and assigns, fails to pay for any of the Improvements or performance of the work to be done, or for any work labor done thereon of any kind in, on or about the Improvements, upon demand by the City the Obligor will pay the same, and also in case suit is brought upon this Agreement, the City's reasonable attorney's fees, and other expenses reasonably incurred by the City.
3. Upon receipt of written notice of a claim for the payment for materials, equipment or work done, the Obligor shall promptly and at the Obligor's expense take the following actions:
  - a. Send an answer to the claimant, with a copy to the City and to Truist Bank (the "Issuing Bank"), stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.

- b. Within 30 days pay or provide a payment bond for the disputed amount.
- c. Pay undisputed amounts within 30 days of receipt.
- d. In the event that Obligor fails to perform any of the above obligations, the Issuing Bank shall have the right to cure any such failure within the above described 30 day periods.

B. Performance, Completion of Improvements.

1. If the Obligor completes the Improvements, on or before April 15th, 2021, this obligation shall cease and be void, otherwise it shall remain in full force and effect until such Improvements are completed, and the Obligor binds itself to said Obligees, that the Improvements shall be completed in accordance with this Agreement.

2. If Obligor does not construct the Improvements as herein specified on or before April 15th, 2021, then the Obligor shall immediately tender payment to the Obligees in the amount required to complete the Improvements, and also in case suit is brought upon this Agreement, the City's reasonable attorney's fees, and other expenses reasonably incurred by the City.

C. Miscellaneous.

1. No City Liability. The City shall not be liable for payment of any costs or expenses of any claimant under this Agreement, and shall have under this Agreement no obligations to make payments to, given notices on behalf of, or otherwise have obligations to claimants under this Agreement.

2. Waiver. The Obligor hereby waives notice of any change, including changes of time, to the Final Plat, related subcontracts, purchase order and other obligations.

3. No Obligation to Proceed Before Collection on LOC. No provision of this Agreement, or any other agreement between the parties, shall be interpreted to require the Obligees to proceed against the Obligor before first proceeding to collect from the Letter of Credit issued by Truist Bank, attached hereto, and incorporated herein by reference, as **Exhibit C.**

4. Notice. Notice to the City or the Obligor shall be mailed or delivered to the addresses as follows:

If to City of Tega Cay (Obligee):

City of Tega Cay  
7725 Tega Cay Drive  
Tega Cay, SC 29708  
Attn: Charlie Funderburk

If to Trinity Point Development, LLC (Obligor): Trinity Point Development, LLC  
7302 Musselburg Ct.  
Charlotte, NC 28277

All notices, demands and requests which may be given or which are required to be given hereunder by either party to the other must be in writing. All such notices, demands and requests shall be sent by certified mail, return receipt requested, postage prepaid, or by overnight courier service (e.g., Federal Express), or by personal delivery, or by facsimile, and addressed as provided above, or to such other address as a party may specify by duly given notice.

Notices, demands and requests when given in the manner aforesaid through the mail will be deemed sufficiently served, given, or received for all purposes hereunder three (3) days after the date such notice, demand or request is properly deposited with the United States Postal Service, or if sent by overnight courier service, on the first business day after same is deposited with the overnight courier service with instructions to deliver the next business day, or if delivered in person or sent by facsimile, on the date of personal delivery or date of facsimile. Each party shall notify the other of any change in address.

5. Memorandum of Agreement. Obligor agrees that, at the request of the City, Obligor will promptly execute and deliver a Memorandum of Agreement in recordable form sufficient to provide record notice of this Agreement, and City shall be entitled to record such Memorandum of Agreement with the York County Clerk of Court. If Obligor does not promptly respond to such request, Obligor consents to City's unilateral execution and filing of such memorandum. If such a memorandum has been filed by the City, upon completion of the Obligor's obligations hereunder, City shall promptly execute and record a memorandum evidencing such completion and release from obligations hereunder.

6. Assignment. The Obligor may not assign its obligations hereunder without the written consent of the City, which consent shall be in the City's sole discretion.

7. Authority. The person or persons executing this Agreement on behalf of Obligor represent, covenant and warrant to City as of the date Obligor delivers this Agreement that: (a) Obligor is duly constituted, in good standing and qualified to do business in the State of South Carolina, (b) Obligor will file when due all forms, reports, fees and other documents necessary to comply with applicable laws, and (c) the signatories signing on behalf of Obligor have the requisite authority to bind Obligor pursuant to Obligor's organizational documents.

8. Benefits and Binding Effect. The provisions of this Agreement shall inure to the benefit of, and shall be binding upon, the parties hereto and their respective heirs and permitted successors and assigns, as may be applicable.

9. Run with Property. The terms and conditions of this Agreement, until satisfied, shall run with the Property.

10. No Presumption. No presumption shall be created in favor of or against Obligor or Obligee with respect to the interpretation of any term or provision of this Agreement due to the fact that this Agreement was prepared by or on behalf of one of said parties.

11. Severability. The invalidity or unenforceability of any one or more phrases, sentences, causes or provisions of this Agreement shall not affect the validity or enforceability of the remaining portions of this Agreement or any part thereof.

12. Jurisdiction. This Agreement shall be construed, interpreted, enforced and governed by and under the laws of the State of South Carolina, without regard to its principles of conflicts of law. Each party to this Agreement hereby irrevocably agrees that any legal action or proceeding arising out of or relating to this Agreement or any of the agreements or transactions contemplated hereby must be brought in the courts of York County, in the State of South Carolina and hereby expressly submits to the personal jurisdiction and venue of such courts for the purposes thereof and expressly waives any claim of improper venue and any claim that such courts are an inconvenient forum.

13. Writing Required. No change, amendment, qualification, cancellation or waiver hereof shall be effective unless in writing and executed by both parties hereto.

14. Time of the Essence. Time is of the essence with respect to all time periods and dates set forth herein.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their officers thereunto authorized this \_\_\_\_ day of August, 2020.

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_

OBLIGOR

Trinity Point Development, LLC

\_\_\_\_\_  
By: \_\_\_\_\_

Its: \_\_\_\_\_

OBLIGEE

City of Tega Cay

\_\_\_\_\_  
By: Charlie Funderburk

Its: City Manager

