

**CITY OF HAMPTON
STATE OF GEORGIA**

RESOLUTION NO. 2023-12

**REQUEST FOR ASSIGNMENT OF RIGHT-OF-WAY IMPROVEMENTS
DEVELOPMENT AGREEMENT**

WHEREAS, the Mayor and Council are the governing body of the City of Hampton, Georgia (“City”); and

WHEREAS, the Mayor and Council is tasked with protecting and promoting the health, safety, morals, and welfare of the citizens of the City of Hampton; and

WHEREAS, a public hearing on the application was conducted by the Mayor and Council on February 11, 2020, pursuant to O.C.G.A. § 33-66-1, et seq. and local ordinances at the Hampton City Hall; and

WHEREAS, on March 11, 2020 the Mayor and Council approved Ordinances No. 508A, 508B, and 510 (collectively, the “Approved Rezoning Ordinance) to allow for the development of a residential subdivision on +/- 248.74 acres of land located in the City of Hampton and being Tax Parcel No. 023-01082000, 041-01023000 and 041-01023001 (the “Subdivision Property”); and

WHEREAS, the City determined pursuant to the Approved Rezoning Ordinances, that the owner/developer shall enter into a Roadway System Improvements Development Agreement with the City of Hampton, prior to the issuance of any land disturbance permits for the subdivision; and

WHEREAS, in order to provide orderly development of the roadway system improvements, the City has negotiated the “Right-of-Way Improvements Development Agreement” (the “Development Agreement”) with Hampton Floyd, LLC (the “Developer”); and

WHEREAS, on May 11, 2021, by a majority vote of the Mayor and Council of the City of Hampton executed the Development Agreement (Resolution 2021-11) with the Developer; and

WHEREAS, in accordance with Paragraph 8 of the Development Agreement the Developer submitted a formal request on February 7, 2023 “Attachment A” to the City of Hampton for the City’s consent on Hampton Floyd LLC assignment of the Development Agreement in its entirety to Gates at Floyd Lake, LLC (the “Assignee”); and

WHEREAS, the Assignee executed the formal request with signature and provided a letter of commitment with performance bond for Floyd Road Improvements “Attachment B” on February 7, 2023; and

WHEREAS, the City Council authorizes the Mayor to consent to the assignment of the Development Agreement from Hampton Floyd, LLC (the “Assignor”) to Gates at Floyd Lake, LLC (the “Assignee”) provided that said assignment is executed and completed under the following conditions:

- The assignment is completed by February 20, 2023 and evidence of such is provided to the City Manager by such date;
- The assignment provides and the Assignee accept that the terms of the Agreement are enforceable against the Assignee; and
- The assignment assigns all of the terms of the Agreement less those that have been completed and accepted by the City (see **Exhibit “C”**).

NOW, THEREFORE BE IT RESOLVED, by a majority vote of the Mayor and Council of the City of Hampton that the assignment of the Development Agreement from the Assignor to the Assignee is hereby agreed to, and that the Mayor is authorized and empowered to execute said consent and any subsequent amendments thereto on behalf of the City of Hampton.

Read and adopted in the Regular meeting of the City of Hampton held on February 14, 2023.

ATTEST:

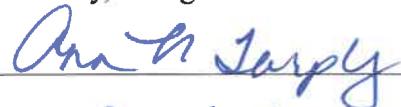


City Clerk

(Seal)



City of Hampton
Henry County, Georgia

BY: 

Ann W. Tarpley

Mayor

Certification

I do hereby certify that the above is a true and correct copy of the Resolution duly adopted by the Council on the date so stated in the Resolution.

I further certify that I am the Clerk of the Council and that said resolution has been entered in the official records of said Council and remains in full force and effect the 14 day of February 2021.


Clerk Signature

Federal Employers Identification #225335

HAMPTON FLOYD, LLC

5755 Dupree Drive, Suite 130
Atlanta, GA 30327

February 7, 2023

BY E-MAIL

City of Hampton
17 East Main Street South
Hampton, GA 30228
ATTN: Mr. Alex Cohilas

RE: Request for Assignment of Right-of-Way Improvements Development Agreement entered into by and between Hampton Floyd, LLC and the City of Hampton with an effective date of May 11, 2021 ("Development Agreement")

Dear Mr. Cohilas:

In accordance with Paragraph 8 of the Development Agreement, please take this letter as a formal request to the City of Hampton for the approval of an assignment of the Development Agreement, and all rights and obligations therein, from Hampton Floyd, LLC, as assignor, to Gates at Floyed Lake LLC, as assignee.

Please let us know if you have any questions or comments.


Sincerely,

ASSIGNOR:


Hampton Floyd, LLC:

By: Pacific Land, LLC, its Manager

By: 
Michael Kiggallon, Manager

By: 
Ray Cunliffe, Manager

By: LRN Development, LLC, its Manager

By: 
Doug Adams, Authorized Representative

(ASSIGNEE SIGNATURE CONTINUED ON THE NEXT PAGE)

ASSIGNEE:

Gates at Lake Floyed LLC:

By: 

Print Name: SOHAIL CHANDHEY

Print Title: MANAGER



"Attachment B"

February 7th, 2023

Mr. Alex Cohillas
City of Hampton
17 East Main Street South
Hampton, GA 30228

RE: The Gates of Floyd Lake

Dear Mr. Cohillas:

RIZ Communities would like to introduce ourselves to the City of Hampton. On July 22, 2022, we purchased the land on which the Gates of Floyd Lake subdivision will be developed under the single purpose entity, Gates at Floyed Lake, LLC. While RIZ Communities is relatively new to building in the City of Hampton, we have built and sold homes throughout the metro Atlanta area including other parts of Henry County. When we first saw Hampton Floyd's vision for the land, we knew that the subdivision would be an amazing addition to the City and we were excited to have the opportunity to complete their vision. We take pride in the homes we build and the communities we create, and The Gates at Floyd Lake will be yet another way for RIZ Communities to show our pride. We look forward to working together with the City over the coming years to develop and build the Gates at Floyd Lake subdivision as has been intended.

In addition to our commitment to the subdivision, we are committed to completing the offsite road improvements that Hampton Floyd agreed to as part of the rezoning of the property and committed to in their development agreement dated May 11, 2021. Specifically, we plan to complete the Floyd Road improvements along with the required rcuts at the intersection of Highway 20 and South Hampton Rd. We are showing our dedication to completing the offsite improvements by delivering to the City an 18-month performance bond in the amount of \$2,980,473.10. In addition to the bond, we are asking for the City's consent to allow the development agreement between the City of Hampton and Hampton Floyd, LLC to be assigned to Gates at Floyed Lake, LLC.

We look forward to working together with the City to solidify our intentions stated above. Thank you for your time, effort, and consideration throughout this process.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Sohail Choudhry', is written over a light blue circular stamp or watermark.

Sohail Choudhry
Owner/Managing Member
Riz Communities
Buyside Capital Advisors, LLC
Gates of Floyed Lake, LLC

"Attachment B.1"

BOND NO.: NGA 2193

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, That we, Byside Capital Advisors, LLC, 5491 Roswell Rd, Suite 100, Atlanta, GA 30342, as Principal, and Merchants National Bonding, Inc., P.O. Box 14498, Des Moines, IA 50306-3498 as Surety, are held and firmly bound unto City of Hampton, 17 E. Main Street South, Hampton, GA 30228 as Obligee, in the penal sum of Two Million Nine Hundred Eighty Thousand Four Hundred Seventy-Three and 10/100 Dollars (\$2,980,473.10) for the payment of which we bind ourselves, our legal representatives, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above bounden principal has been granted approval by the above named obligee for: **Gates at Floyd Lake - Floyd Rd Improvements**

The purpose of this bond is to guarantee payment of any labor or material costs incurred by City of Hampton in the event that the Floyd Road Improvements are not installed.

If the Floyd Rd Improvements have not been completed on or before eighteen (18) months following issuance, City of Hampton may draw upon this bond to the amount set forth above upon presentation to the bank of the following:

1. A Letter from the City Manager stating that the principle has failed to comply with the obligations of the Development Agreement dated May 11, 2021, with regards to making all the required Floyd Road improvements and that the cost of the improvements, equals or exceeds the amount of the bond.
2. A copy of this bond.

NOW, THEREFORE, if Principal shall faithfully satisfy all codes, ordinances and conditions required by the Obligee with respect to the project described above, then this obligation shall be null and void; otherwise, it shall remain in full force and effect.

ANY suit under this bond must be instituted before the expiration of six (6) months from the date on which final inspection and completion of work has been performed.

NO right of action shall accrue on this bond or for the use of any person or corporation other than the Obligee named herein or the heirs, executors, administrators or successors of the Obligee.

SIGNED, SEALED AND DATED this the 6th day of February, 2023.

Byside Capital Advisors, LLC
 By: [Signature] Principal
 Print Name: MANAGER - Sohail Choudhry

Merchants National Bonding, Inc.
 Surety
 By: [Signature]
 Theresa Hintzman, Attorney-in-Fact

MERCHANTS BONDING COMPANY™

POWER OF ATTORNEY

Know All Persons By These Presents, that MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., both being corporations of the State of Iowa, d/b/a Merchants National Indemnity Company (in California only) (herein collectively called the "Companies") do hereby make, constitute and appoint, individually,

Amy Smith; Barbara Duncan; Brook T Smith; Deborah S Nelchler; Jacob Motto; James H Martin; James T Smith; Jason D Cromwell; Jennifer Edwards; Jill Kemp; Kelsy Hoagland; Leigh McCarthy; Lynnette Long; M Lacrosse; Raymond M Hundley; Susan Ritter; Theresa Hintzman; William O Walker

their true and lawful Attorney(s)-in-Fact, to sign its name as surety(ies) and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof, on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

This Power-of-Attorney is granted and is signed and sealed by facsimile under and by authority of the following By-Laws adopted by the Board of Directors of Merchants Bonding Company (Mutual) on April 23, 2011 and amended August 14, 2015 and adopted by the Board of Directors of Merchants National Bonding, Inc., on October 16, 2015.

"The President, Secretary, Treasurer, or any Assistant Treasurer or any Assistant Secretary or any Vice President shall have power and authority to appoint Attorneys-in-Fact, and to authorize them to execute on behalf of the Company, and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof."

"The signature of any authorized officer and the seal of the Company may be affixed by facsimile or electronic transmission to any Power of Attorney or Certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the Company, and such signature and seal when so used shall have the same force and effect as though manually fixed."

In connection with obligations in favor of the Florida Department of Transportation only, it is agreed that the power and authority hereby given to the Attorney-in-Fact includes any and all consents for the release of retained percentages and/or final estimates on engineering and construction contracts required by the State of Florida Department of Transportation. It is fully understood that consenting to the State of Florida Department of Transportation making payment of the final estimate to the Contractor and/or its assignee, shall not relieve this surety company of any of its obligations under its bond.

In connection with obligations in favor of the Kentucky Department of Highways only, it is agreed that the power and authority hereby given to the Attorney-in-Fact cannot be modified or revoked unless prior written personal notice of such intent has been given to the Commissioner-Department of Highways of the Commonwealth of Kentucky at least thirty (30) days prior to the modification or revocation.

In Witness Whereof, the Companies have caused this instrument to be signed and sealed this 8th day of December, 2022.

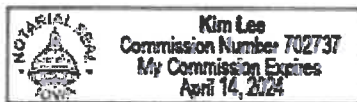


MERCHANTS BONDING COMPANY (MUTUAL)
MERCHANTS NATIONAL BONDING, INC.
d/b/a MERCHANTS NATIONAL INDEMNITY COMPANY

By *Larry Taylor*
President

STATE OF IOWA
COUNTY OF DALLAS ss.

On this 8th day of December 2022, before me appeared Larry Taylor, to me personally known, who being by me duly sworn did say that he is President of MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC.; and that the seals affixed to the foregoing instrument are the Corporate Seals of the Companies; and that the said instrument was signed and sealed in behalf of the Companies by authority of their respective Boards of Directors.



Kim Lee
Notary Public

(Expiration of notary's commission does not invalidate this instrument)

I, William Warner, Jr., Secretary of MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., do hereby certify that the above and foregoing is a true and correct copy of the POWER-OF-ATTORNEY executed by said Companies, which is still in full force and effect and has not been amended or revoked.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Companies on this 6th day of February, 2023



William Warner Jr.
Secretary

“Exhibit C”

The assignment assigns all of the terms of the Agreement less those that have been completed and accepted by the City. The completed and accepted terms include Section 1. (a-f), Section 2. (a)(c), and Section 4 (c) listed below:

1. Preliminary Plan Approval: On or prior to the date of this Agreement, Developer shall submit to the City and to Henry County Department of Transportation (“**HCDOT**”) a preliminary drawing (the “**Preliminary ROW Plan**”) of the required Roadway System Improvements, which plan shall include the following information:

- a. a drawing of the proposed right of way improvements;
- b. the width of the existing right of way;
- c. the owners of the parcels adjacent to the right of way;
- d. the estimated amount of right-of-way, if any, that will need to be acquired to complete the proposed improvements, including any construction easement;
- e. demarcation of the boundaries between the portion of the right of way owned by the City and by Henry County, Georgia (“**Henry County**”); and
- f. proposed striping of right of way, including deceleration and left turn lanes.

2. Land Development Permit Applications.

- a. After the approval of the Preliminary ROW Plan by the Mayor and Council, Developer shall submit to the City land development permit applications (the “**LDP Application**”) for the Roadway System Improvements, which permit applications shall contain construction plans and specifications (the “**Construction Plans**”) prepared by an approved professional engineer, registered in the State of Georgia and proficient in civil engineering that are consistent with the approved Preliminary ROW Plan.
- c. Notwithstanding the foregoing, if the Henry County Department of Transportation does not approve the Preliminary ROW Plan for the portion of Floyd Road owned by Henry County, the City and Developer shall proceed with the construction plans for the Roadway System Improvements on the portion of Floyd Road owned by the City, and such will be deemed to satisfy the Approved Zoning Conditions pertaining to the Roadway System Improvements.

4. Construction.

- c. Developer shall be responsible for contributing Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) (the “**Developer Roundabout Costs**”) towards the East King Floyd Road Roundabout hard construction costs. Contribution to be received by the City prior to the issuance of LDP for the roundabout project. Upon payment of the Development Roundabout Costs, Developer shall be deemed to have satisfied that portion of the Roadway System Improvements.

**ASSIGNMENT AND ASSUMPTION OF
DEVELOPMENT AGREEMENT**

THIS ASSIGNMENT AND ASSUMPTION OF DEVELOPMENT AGREEMENT (this "**Assignment**") is made as of the 17th day of February, 2023, by and between **Hampton Floyd, LLC**, a Georgia limited liability company ("**Assignor**"), and **Gates at Floyed Lake LLC**, a Georgia limited liability company ("**Assignee**").

FOR AND IN CONSIDERATION of the sum of Ten Dollars (\$10.00) and other valuable consideration in hand paid by Assignee to Assignor, and the mutual covenants herein contained, the receipt, adequacy, and sufficiency of the foregoing consideration being hereby acknowledged by the parties hereto, Assignor hereby assigns, transfers, sets over, and conveys to Assignee all of Assignor's right, title and interest in, to and under that certain Right-of-Way Improvements Development Agreement entered into by and between Assignor and the City of Hampton (the "**City**") with an effective date of May 11, 2021 (the "**Development Agreement**").

TO HAVE AND TO HOLD said right, title, and interest unto Assignee, its successors, successors-in-title and assigns, forever, and Assignor does hereby covenant and warrant unto Assignee, its successors, successors-in-title and assigns, that Assignor has made no assignment other than this Assignment of any of the rights of Assignor in or to the Development Agreement.

Assignor further represents and warrants to Assignee that, to the best of Assignor's actual knowledge, Assignor has previously satisfied all of the obligations of the developer under Sections 1, 2(a), 2(c), and 4(c) of the Development Agreement, and this Assignment is intended to assign the entire Development Agreement from Assignor to Assignee, less the aforementioned sections that have already been completed and accepted by the City.

Assignee does hereby accept this Assignment and assumes and agrees to perform all of Assignor's obligations under the Development Agreement from and after the date hereof. Assignee acknowledges that by accepting this Assignment, the terms of the Development Agreement are now enforceable against Assignee.

This Assignment shall be binding upon and inure to the benefit of Assignor and Assignee and their respective heirs, executors, administrators, successors, and assigns. This Assignment may be executed in one (1) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Assignment shall be governed by, and shall be construed in accordance with, the laws of the State of Georgia.

[SIGNATURES COMMENCE ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, Assignor and Assignee have each executed this Assignment as of the date first written above.

ASSIGNOR:

HAMPTON FLOYD, LLC

By: Pacific Land, LLC, a Georgia limited liability company, as its Manager

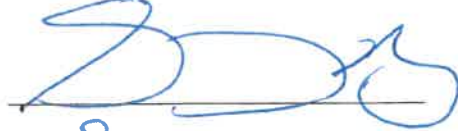
By: 
Raymond W. Cunliffe, Assistant Manager

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

ASSIGNEE:

GATES AT FLOYED LAKE LLC,
a Georgia limited liability company

By:



Print Name:

SONALI CHANDRASEKAR

Print Title:

MANAGER

