

C O U N T Y O F Y O R K

DEVELOPMENT AGREEMENT

THIS AGREEMENT, made this _____ day of _____, 20__ by and between _____, (give full legal name or names, state of incorporation if incorporated, type of partnership if a partnership, or marital status if individual) hereinafter referred to as the "Developer," and the COUNTY OF YORK, Virginia, a political subdivision of the Commonwealth of Virginia, hereinafter referred to as the "County,"

W I T N E S S E T H:

WHEREAS, the Developer is the owner/developer (indicate which) of a certain parcel of land located in the County, bearing Assessor's Parcel Number(s) _____ hereinafter referred to as the "Property;" and

WHEREAS, the Property is being developed by the Developer into a project known as "_____", and the Developer has caused a site plan, dated _____, to be prepared by _____, which plan was approved by the County on _____, 20__; and

WHEREAS, the Developer agrees to construct in accordance with all County requirements on or before the ____ day of _____, 20__ all physical improvements, hereinafter referred to as the "Improvements", shown on the above-described site plan, and such other plans and specifications for development of the project as have been approved by the County, all of which are on file in the County's Division of Development Services, are incorporated by reference, and are hereinafter collectively referred to as the "Plans"; and

WHEREAS, the Developer has submitted to the County herewith (circle one of the following) sufficient letter of credit, cash, or an official check, in the amount of \$_____, hereinafter referred to as the "Surety", securing the timely construction and completion of the Improvements and performance of the terms and conditions of this Agreement; and

WHEREAS, the County has agreed that it will issue a Land Disturbing Activity Permit and Building Permit for the said development upon execution of this Agreement and submission to the County of the Surety.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH: That for and in consideration of the premises and the covenants and agreements herein contained, the parties hereto agree as follows:

1. The County agrees that, upon proper execution of this Agreement by the Developer and receipt of the Surety, it will issue Land Disturbing Activity and Building permits for the work to be undertaken pursuant to the Plans. If the Surety is a letter of credit, it must be in the form attached as Exhibit A and completed in conformance with the instructions attached thereto, approved by the County Attorney as to form, content and issuing institution, and acceptable as to amount, effective period, and otherwise to the County Administrator. Letters of credit shall be in effect for a minimum period of sixty (60) days beyond the date for completion of the Improvements.

2. The Developer agrees that the Developer will, without cost to the County, on or before the ___ day of _____ 20__, construct and complete the offsite Improvements to the satisfaction of and to the standards and specifications of the County and all other governmental agencies or authorities having

jurisdiction over the Improvements, including, but without limitation, the Virginia Department of Transportation. Developer shall not occupy or permit to be occupied the Property until the Improvements are completed.

3. The County may enter upon the Property to complete the Improvements and may draw on the Surety in the following events:

- a. The Developer fails to complete the Improvements by the date specified in paragraph 2 above.
- b. The Developer fails to complete by the date specified in paragraph 2 above the Improvements to the satisfaction of and to the standards and specifications of the County and all other governmental agencies or authorities having jurisdiction over the Improvements, including but without limitation, the Virginia Department of Transportation.
- c. The insolvency of, appointment of a receiver for, or the filing of a voluntary or involuntary petition in bankruptcy against or by the Developer.
- d. The commencement of a foreclosure proceeding of a lien against the Property or its conveyance in lieu of foreclosure.
- e. Developer breaches any of the terms and conditions of this Agreement.

4. In the event that the County draws on the Surety, it may use such funds to complete the Improvements or cause them to be completed. The Developer shall be liable to the County for any and all costs of completing the Improvements which shall be in excess of the Surety. It is the purpose and intent of the

parties that the amount of the Surety shall have been determined to be sufficient to defray not only the anticipated cost of completing or having completed the Improvements but also unanticipated cost overruns, the cost incurred by the County in drawing on the Surety, an administrative fee in the amount of \$5,000.00, or five (5) percent of the amount of the cost of completing the Improvements, whichever sum is greater, and any and all other reasonable costs which the County has incurred or may conclude, in its sole discretion, are to be incurred. The Developer hereby acknowledges that an administrative fee in the above amount is reasonable compensation to the County for its costs in drawing on the Surety and, when necessary, causing the Improvements to be completed.

The Developer acknowledges and agrees that the County is under no obligation to give any notice to the Developer of its intent to draw on the Surety in any of the events specified in this Agreement.

5. The County shall, upon drawing on the Surety, deposit the same in an interest-bearing account to the extent not needed to cover expenditures made or reasonably anticipated to be made in the near future, but the County shall have no responsibility to deposit or maintain any of such funds in an account at the maximum interest available. Upon completion of the Improvements, as determined by the County, and payment of all expenses incurred by the County in connection therewith, any unexpended funds, including any interest earned thereon, shall be returned to the Developer.

6. The County shall not be liable to the Developer or to any third party for the manner in which the Improvements are

completed, any delay in effecting completion, the fact that the cost of completion is in excess of or less than the amount made available by drawing on the Surety or any part thereof, or that the County has drawn down the entire amount of the Surety even though it subsequently develops that the entire amount was not required to carry out the provisions of this Agreement.

7. The Developer acknowledges that the County is under no obligation to extend the time herein provided for completion of the Improvements by the Developer. However, in the event that the County unilaterally agrees in writing to do so, such writing shall, without more and without formal execution of any other agreement by the parties, constitute such an extension, and all of the terms of this Agreement shall continue in effect for the duration of such extension insofar as they are not inconsistent with the terms of the extension; provided, however, that no extension shall be effective until or unless the Developer furnishes to the County a new or amended Surety acceptable to the County if requested by the County. The County may require that the amount of the Surety be increased if an extension is permitted.

8. It is mutually understood and agreed that if the Developer shall faithfully execute all requirements of this Agreement and all relevant laws and regulations, and shall indemnify, protect and save the County, its officers, agents and employees harmless from all loss, damage, expense or cost by reason of any claim made or suit or action instituted against the County, its officers, agents or employees on account of or in consequence of any breach on the part of the Developer, all of which the Developer hereby covenants to do, then the afore-

mentioned Surety shall be released by the County to the Developer; provided, however, that release of the Surety shall not in any way or to any extent release, diminish or otherwise reduce any obligation or liability of the Developer provided in this Agreement.

9. The Developer does further hereby agree to indemnify, protect and save the County, its officers, agents, and employees harmless from and against all losses and physical damages to property, and bodily injury or death to any person or persons, which may arise out of or be caused by the construction, maintenance, presence or use of the streets, utilities and public easements required by, and shown on, the Plans until such time as the said streets, utilities and public easements shall be accepted as a part of the County's systems, or those of its agencies, or the State System of Secondary Highways, as the case may be.

10. It is mutually understood and agreed that approval of the Plans shall not, by such approval alone, be deemed to be an acceptance by the County or other applicable agency of any street, alley, public space, sewer or other physical improvements shown on the Plans for maintenance, repair or operation thereof, and that the Developer shall be fully responsible therefore and assume all of the risks and liabilities therefore, until such time as the County or other applicable agency has formally accepted them. Upon acceptance of any of the improvements to be dedicated to the County, Developer agrees to execute a maintenance and indemnifying bond, guaranteeing the materials and workmanship of the improvements

for one year, which bond shall also be executed by corporate surety.

11. The Developer shall, with regard to any Improvement to be conveyed to the County or any agency thereof:

- a) When requested by the County, furnish the County permanent, blackline, reproducible "as built" drawings of such Improvement on 0.003 inch polyester film, in a form satisfactory to the County; and
- b) Notify the County prior to the conduct of any required test or final inspections of the Improvement; and
- c) Furnish, through Developer's engineer, test reports prepared by an independent testing laboratory in accordance with the ACI Code for any structural concrete installed in the subdivision, and furnish a manufacturer's certification that all pipe installed in the subdivision meets applicable ASTM specifications; and
- d) Be responsible for and bear all costs imposed upon the County by the Virginia Department of Transportation for inspections and/or testing of any roadway, drainageway or other facility shown on the Plans to be accepted by such Department.

12. This Agreement shall be binding upon the Developer and the Developer's successors and assigns.

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

DEVELOPER:

* * * * *

INDIVIDUAL OR INDIVIDUALS

_____ (SEAL)

_____ (SEAL)

* * * * *
CORPORATION

Attest:

By: _____ (SEAL)
President (Attach copy
of corporate resolution
authorizing execution)

Secretary

* * * * *
PARTNERSHIP

By: _____ (SEAL)
General Partner

* * * * *

Approved as to form:

County Attorney

COUNTY OF YORK, Virginia

By: _____
County Administrator

11/04/98

(PUT ON BANK LETTERHEAD)

IRREVOCABLE LETTER OF CREDIT NO. (1)

_____ (2) _____

County of York
c/o Mr. Neil A. Morgan
County Administrator
P. O. Box 532
Yorktown, Virginia 23690

Re: _____ (3) _____ (13) _____

Gentlemen:

We hereby establish our Irrevocable Letter of Credit No. __ (1) __ in your favor, for the account of _____ (3) _____, available by your drafts drawn at sight on us up to the aggregate amount of _____ (4) _____, each such draft accompanied by the following document:

Your written statement certifying that _____ (3) _____ has defaulted in the performance of the terms and conditions of _____ (5) _____ Agreement with you, dated the __ (6) __ day of __ (6) __, 20__ (6) __, and that you are, in consequence, entitled to the amount of the accompanying draft.

All drafts drawn under this letter of credit must be marked "Drawn under __ (7) __ Letter of Credit No. __ (1) __ dated __ (2) __".

This credit is valid until _____ (8) _____ and drafts drawn hereunder, if accompanied by document as specified above, will be honored if presented on or before that date to _____ (9) _____ at _____ (10) _____ or, if said bank is not doing business at that address, then to any other address or location of said bank or its successor.

Except as otherwise expressly stated herein, this credit is subject to the "Uniform Customs and Practice for Documentary Credits", fixed by International Chamber of Commerce Publication No. 500, 1993 revision.

Very truly yours,
_____ (7) _____

By: _____ (11) _____

_____ (12) _____

- (1) Number assigned to letter of credit by bank.
- (2) Date issued.
- (3) Name of person, corporation, or partnership submitting letter of credit.
- (4) Amount of letter of credit written in words and numerals, i.e., Fifty thousand and no/100 dollars (\$50,000.00).
- (5) Insert "his", "her", "its" or "their", as appropriate.
- (6) Date shown on agreement.
- (7) Name of bank.
- (8) Expiration date of letter of credit.
- (9) Name and address of bank.
- (10) Address of bank or branch thereof where letter of credit is to be presented. No letter of credit will be acceptable unless it may be presented at a bank office in York County or James City County or in the City of Newport News, Hampton, Williamsburg, Norfolk, Virginia Beach, Chesapeake, or Richmond.
- (11) Signature of authorized officer of bank.
- (12) Title of authorized officer of bank.
- (13) Name of project.