

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

THIS AGREEMENT, made this ____ day of _____,
20____, by and between _____

_____,
(list full legal names of all owners of record, state of
incorporation if incorporated, type of partnership if a
partnership, or marital status if individual) hereinafter
referred to as the "Owner", 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 Owner owns a certain parcel of land located in
the County, hereinafter referred to as the "Property", having
acquired the same by instrument(s) of record in the Clerk's
Office of the Circuit Court of York County, Virginia, in Deed
Book(s) _____, page(s) _____/Instrument No. _____; and

WHEREAS, the Property is being subdivided by the Owner into
the subdivision known as " _____",
and the Owner has caused a plat of subdivision, dated _____,
20____, to be prepared by _____,
which plat the Owner desires to admit to record in the Clerk's
Office of the Circuit Court for the County of York, Virginia,
hereinafter referred to as the "Plat"; and

WHEREAS, the Owner agrees to construct, in accordance with
the time limits set forth in this Agreement, all physical
improvements, hereinafter referred to as the "Improvements",
shown on the site development plan labeled
" _____",
dated _____, revised _____, and approved

by the County on _____, and such other plans and specifications for development of the subdivision approved by the County, all of which documents 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 Owner has submitted to the County herewith (circle one of the following) sufficient letter of credit, cash, bond, cashier's check, 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 approve the final plat of said subdivision and authorize its recordation upon the execution of this Agreement.

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 Owner and receipt of the Surety and receipt of the deeds described in Paragraph 8 below, it will approve the Plat for recordation. 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 Owner agrees that the Owner will, without cost to the County, on or before the ___ day of _____, 20 , construct and complete 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.

The County will be willing to consider the Owner's request for extensions of this Agreement and the above-noted performance date in increments not exceeding 12 months each. The County's consent to annual extensions of this Agreement shall not be unreasonably withheld provided that:

- a. the Owner shall continuously provide the County with Surety in an adequate amount as determined by the County to allow completion of the Improvements in the event of Owner's default, and
- b. the Owner, as of the date of any such extension, remains actively engaged in the completion of construction of the Improvements.

The Owner shall be responsible for any and all plan revisions and field changes required by the County or submitted by the Owner's consultant or agent. Owner further agrees that if any such revisions or changes require an increase in the required amount of bond or other Surety, the Owner will provide such increase in bond or other Surety upon demand by the County. In addition, the County shall have the right periodically to review the progress of the work and determine whether the amount of Surety is adequate to allow the County to complete the work in the event of a default by Owner, and demand an increase in the amount of the bond or other Surety, which Owner shall provide.

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

- a. The Owner fails to complete the Improvements by the date specified in paragraph 2 above.
- b. The Owner 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 Owner fails to commence construction of the Improvements at least 90 days prior to the date specified in paragraph 2 above.
- d. The insolvency of, appointment of a receiver for, or the filing of a voluntary or involuntary petition in bankruptcy against or by the Owner.
- e. The commencement of a foreclosure proceeding of a lien against the Property or its conveyance in lieu of foreclosure.
- f. Owner fails to provide an increase in the amount of the bond or other Surety demanded by the County within 30 days of a written demand for such increase.
- g. Owner 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 Owner 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 Owner 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 Owner acknowledges and agrees that the County is under no obligation to give any notice to the Owner 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 Owner.

6. The County shall not be liable to the Owner 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. It is expressly agreed and understood that, regardless of the date of breach of this Agreement, the measure of damages recoverable shall be the cost of completion and/or correction of the work required by this Agreement as of the earliest of the following three dates:

- a. When the work is actually completed and/or corrected to local and state approval and acceptance;
- b. Final judgement against the Owner in a court of competent jurisdiction;
- c. Two years from the expiration of this Agreement or last extension thereof.

It is further expressly agreed and understood that the measure of damages shall include in addition to the direct cost of completion or repair, expenses attributable to litigation costs, attorney's fees, procurement costs, and any cost increases arising from delay occasioned by litigation or other proceedings necessary to enforce the provisions of this Agreement.

7. The Owner acknowledges that the County is under no obligation to extend the time herein provided for completion of the Improvements by the Owner. 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 Owner 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. The Owner agrees to execute and to deliver to the County a deed of easement, approved as to form by the County Attorney, conveying to the County those easements identified on the Plat as easements running to the County. The Owner also agrees to execute and to deliver to the County a deed, approved as to form by the County Attorney, conveying fee simple title, with general warranty, to the County those areas, such as pump station sites or well lots, that are to be conveyed to the County, and to provide the County at Owners' expense an owner's title insurance policy issued by a company acceptable to the County Attorney, containing no exceptions as to title which are not acceptable to the County Attorney, and in such amount as may be determined reasonable and appropriate by the County Administrator.

9. It is mutually understood and agreed that if the Owner 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 Owner, all of which the Owner hereby covenants to do, then the aforementioned Surety shall be released by the County to the Owner; 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 Owner provided in this Agreement.

10. The Owner 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 and the Plat 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 Secondary System of State Highways, as the case may be.

11. It is mutually understood and agreed that approval of the Plat 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 Plat or the Plans for maintenance, repair or operation thereof, and that the Owner shall be fully responsible therefor and assume all of the risks and liabilities therefor, until such time as the County or other applicable agency has formally accepted them.

12. Upon completion of the Improvements, other than public roads, the Owner shall apply to the Subdivision Agent for final inspection of them and approval for acceptance. After approval of the Improvements by the Agent, Surety shall be maintained for an additional period of one year in the amount of five (5) percent of the cost of the Improvements, other than public roads or any other Improvement for which the materials or workmanship are otherwise guaranteed for a period of at least one year. During this one year period, Owner shall correct any defects in materials or workmanship in the installation of the Improvements. In the event Owner fails to do so after being

requested to do so by the County, the County may draw on the Surety in order to affect such corrections.

13. The Owner 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 Subdivision Agent prior to the conduct of any required test or final inspections of the Improvement; and
- c. Furnish, through Owner'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.

14. The Owner warrants that there are no deeds of trust of record pertaining to the Property other than the ones identified below:

| <u>Amount of Deed of Trust</u> | <u>Note Holder</u> | <u>Date of Deed of Trust</u> | <u>List all Trustees</u> | <u>Instrument Number</u> |
|------------------------------------|--------------------|----------------------------------|------------------------------|------------------------------|
|------------------------------------|--------------------|----------------------------------|------------------------------|------------------------------|

1.

2.

3.

15. The Owner shall be entitled to periodic partial and final complete release of the Surety pursuant to and if Owner complies with provisions of § 15.2-2245, Code of Virginia (1950), as amended, and, in the case of a partial release, furnishes the County with new Surety in the reduced amount, in the case of a bond.

16. This Agreement shall be binding upon the Owner and the Owner's successors and assigns.

17. Owner agrees, upon notification in writing by the County at any time after recordation of the Plat, that if an error has been discovered in such Plat, to record, at Owner's expense, an amended or corrected Plat, or other document acceptable to the County, to correct the error.

18. The County agrees that if no work has commenced for any Improvements per the approved Plans referenced herein, and no Parcel depicted on the recorded Plat has been sold/conveyed, the County will release the Surety to the Owner or its designee, provided that the following conditions have been satisfied:

- a. The Owner vacates the recorded Plat in accordance with *Sec. 20.5-32. Vacation of plats, Sec. 20.5-13 (c). Fees,* and all other applicable sections of the *York County Subdivision Ordinance.*
- b. All costs associated with the vacation of the recorded Plat shall be borne by the Owner.

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

OWNER:

INDIVIDUAL OR INDIVIDUALS

_____ (SEAL)

_____ (SEAL)

CORPORATION

Attest:

By: _____ (SEAL)

President, (Attached copy of corporate resolution authorizing execution)

Secretary

PARTNERSHIP

By: _____ (SEAL)

General Partner

LIMITED LIABILITY COMPANY

By: _____

Title: _____

Approved as to form:

County Attorney

COUNTY OF YORK, Virginia

By: _____
County Administrator

(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.