

COUNTY OF YORK



POSTPONED LANDSCAPING AGREEMENT (WITH SURETY)

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",

WITNESSETH:

WHEREAS, the Owner owns a certain parcel of land located in the County, hereinafter referred to as the "Property", identified as _____; and

WHEREAS, the Property is being developed by the Owner in accordance with the site plan entitled " _____ " and approved by the County on _____, 20__; and

WHEREAS, because of weather and/or climate related conditions the landscaping for the subject development has not been completed; and

WHEREAS, the Owner has completed or has entered into agreements approved by the County to complete all other aspects of the development and, in accordance with §24.1-241(e) of the Zoning Ordinance desires to request a Certificate of Occupancy and to postpone the required landscaping until favorable weather conditions allow it to be completed; and

WHEREAS, the Owner agrees to complete on or before the ____ day of _____, 20__, the required landscaping hereinafter referred to as the "Improvements", shown on the approved site plan; and

WHEREAS, the Owner has submitted to the County herewith (circle one of the following) sufficient letter of credit, cash, or a certified check, in the amount of \$ _____, hereinafter referred to as the "Surety", securing the timely 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 Certificate of Occupancy for the development upon the execution of this Agreement and provided that the Code requirements have been met.

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 fulfillment of all other Code requirements, it will approve the issuance of a Certificate of Occupancy. 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 and before the ____ day of _____, 20____, complete the Improvements to the satisfaction of and to the standards and specifications indicated on the approved site plan.

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 by the date specified in paragraph 2 above the Improvements to the satisfaction of the County and to the standards and specifications indicated on the approved site plan.

b. The insolvency of, appointment of a receiver for, or the filing of a voluntary or involuntary petition in bankruptcy against or by the Owner.

c. The commencement of a foreclosure proceeding of a lien against the Property or its conveyance in lieu of foreclosure.

d. 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, 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 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.

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 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. 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.

9. This Agreement shall be binding upon the Owner and the Owner's representatives, heirs, successors and assigns.

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

INDIVIDUAL OR INDIVIDUALS

OWNER:

_____ (SEAL)

_____ (SEAL)

CORPORATION

Attest:

By: _____ (SEAL)
President (Attach 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