

**SUBDIVISION
LETTER OF CREDIT AGREEMENT**

THIS AGREEMENT, executed in triplicate between _____, hereinafter referred to as "DEVELOPER", _____, hereinafter referred to as "BANK", and the **City of South Burlington**, herein after referred to as "MUNICIPALITY".

WITNESSETH:

WHEREAS, DEVELOPER has received final plat approval No. _____ dated _____ from the MUNICIPALITY's Development Review Board for the development of a subdivision consisting of _____ lots with related improvements, in a development to be known as "_____", as depicted on and in accordance with the specifications as set forth on the final plat entitled "_____", dated _____, last revised _____, prepared by _____, and recorded at Map Slide _____ of the Land Records of the City of South Burlington (the "Final Plat" herein);

WHEREAS DEVELOPER is required by said approvals, at its own expense, to complete the construction of the development site in accordance with the plans approved by the Development Review Board;

WHEREAS the parties to the Agreement wish to establish a mechanism to secure the obligations of the DEVELOPER for the work as set forth below; and

WHEREAS the BANK executes this Agreement solely in the capacity of issuer of a Letter of Credit hereinafter specified.

NOW, THEREFORE, the parties hereby covenant and agree as follows:

1. DEVELOPER will, at its own expense, complete the following construction as depicted and in accordance with the Final Plat (herein referred to as the "Improvements"):
 - a. _____
 - b. _____
2. DEVELOPER shall replace or repair any defective or improper work or materials which may be identified as such by the MUNICIPALITY within two (2) years after acceptance of the improvements set forth in Paragraph 1 by the MUNICIPALITY (hereinafter the "Warranty Period"). For the purpose of this Agreement "acceptance" shall be deemed to have occurred when the MUNICIPALITY's legislative body has voted to accept ownership of all the improvements required by this Agreement and applicable deeds of conveyance have been recorded in the Land Records of the City of South Burlington.
3. Upon "acceptance," the CITY shall provide DEVELOPER and BANK written notice of acceptance.
4. For the guarantee of DEVELOPER's performance of all requirements hereunder set forth, DEVELOPER has caused the BANK to issue its Irrevocable Letter of Credit in favor of the MUNICIPALITY, the original of which is attached to the MUNICIPALITY's copy of this Agreement, and a copy of which is attached to the DEVELOPER's copy of this Agreement. During the term of this Agreement, DEVELOPER shall cause the attached Letter of Credit to be renewed at least thirty (30) days before the maturity date thereof. Failure of the DEVELOPER to deliver evidence of such renewal to MUNICIPALITY thirty (30) days prior to the date of expiration of said Letter of Credit shall constitute a default of the terms of this Agreement.

5. Upon "acceptance," as defined above in Paragraph 2, the sum required to secure DEVELOPER's obligations under this Agreement shall be reduced to \$_____ and the BANK may reduce the amount of the Letter of Credit by \$_____. Nothing herein shall relieve the DEVELOPER from the obligation to pay any additional costs, if actual costs exceed the amount secured by the Letter of Credit, after the time of acceptance. Following the reduction contemplated in this paragraph 5, the sum of \$_____ shall remain secured by the Letter of Credit until completion of the Warranty Period set forth in Paragraph 2 or until Bank is instructed, in writing, by MUNICIPALITY to disburse some or all of that sum to MUNICIPALITY, pursuant to Paragraph 6, below.
6. Said Irrevocable Letter of Credit provides that the drafts drawn under said Letter of Credit must be accompanied by a written statement signed by a duly authorized agent of the MUNICIPALITY, stating that in the judgment of the MUNICIPALITY, the DEVELOPER is in default under the terms of this Agreement, and that the funds to be drawn pursuant to the draft are in payment for, or in anticipation of payment for materials, labor and services required for completion of the Improvements, or the repair or replacement thereof. Payment of each draft will be made at sight when presented to the BANK by the MUNICIPALITY, the payment limited only by the aggregate amounts presented in relationship to the maximum amount of the Letter of Credit.
7. If DEVELOPER shall be in default of this Agreement for seven (7) days because of its failure to provide evidence of renewal of the Letter of Credit, required in paragraph 4 above, MUNICIPALITY may notify BANK of such default and request payment of the remaining balance available on said Letter of Credit. Such notice shall be provided in accordance with Paragraph 5, above, with the exception that the MUNICIPALITY shall be under no obligation to provide a statement that the funds to be drawn are in payment for, or in anticipation of payment for materials, labor and services required for completion of the Improvements, or the repair or replacement thereof. All funds drawn pursuant to this paragraph shall be held in escrow by the MUNICIPALITY for the remaining duration of this agreement. At the termination of this Agreement, the MUNICIPALITY shall refund all remaining amounts held in escrow, less any funds retained in payment for, or in anticipation of payment for materials, labor and services required for completion of the Improvements, or the repair or replacement thereof. In the event any funds are withheld by MUNICIPALITY, it shall provide DEVELOPER with a written statement stating that the retained funds were retained in payment for, or in anticipation of payment for materials, labor and services required for completion of the Improvements, or the repair or replacement thereof.
8. The DEVELOPER and MUNICIPALITY hereby agree that the sum of _____ (\$_____) shall be sufficient to secure DEVELOPER'S obligations under this Agreement but shall not relieve DEVELOPER from the obligation to pay any additional costs, if actual costs exceed the above-stated cost. Nothing herein shall relieve the DEVELOPER from the obligation to pay any additional costs, if actual costs exceed the amount secured by the Irrevocable Letter of Credit, after the time of acceptance.
9. The MUNICIPALITY will promptly submit to the DEVELOPER a copy of any draft it submits to the BANK. The consent of the DEVELOPER to payment of said draft by BANK to the MUNICIPALITY under said Letter of Credit shall not be required.
10. The MUNICIPALITY shall not file with the BANK a statement of default until ten (10) days after notice has been sent by it to the DEVELOPER by certified mail, return receipt requested, setting forth its intention to do so.
11. All funds drawn on the BANK by the MUNICIPALITY pursuant to the Letter of Credit shall

be used solely by the MUNICIPALITY for the purpose of completing construction of the Improvements or the repair or replacement thereof. Any work contracted for by the MUNICIPALITY pursuant hereto shall be let on a contractual basis, or on a time and material basis, or shall be performed by the MUNICIPALITY's own work force and equipment, or shall be accomplished in such other manner as in the judgment of the MUNICIPALITY shall accomplish the work more expeditiously and economically, consistent with good construction practices.

12. If payments are made by the BANK to the MUNICIPALITY pursuant to said Letter of Credit, and it later develops that a portion of the monies drawn are in excess of the MUNICIPALITY's needs, any such excess amount shall be refunded by the MUNICIPALITY to the BANK, to be credited by said BANK to the Letter of Credit.
13. This Agreement and said Letter of Credit shall terminate and shall be of no force and effect upon completion of the Warranty Period described in Paragraph 2, above. If the MUNICIPALITY has not delivered any written notice to the DEVELOPER of any defective or improper work or materials related to the Improvements within the Warranty Period, or if notice has been given and the defective work or materials have been corrected by the DEVELOPER to the reasonable satisfaction of the MUNICIPALITY, the MUNICIPALITY shall forthwith notify the BANK in writing that the Letter of Credit may be cancelled, and shall return the original Letter of Credit to the BANK, and the DEVELOPER shall be released from all obligations hereunder.
14. Upon request of DEVELOPER, but only at the sole discretion of the MUNICIPALITY, the MUNICIPALITY may agree to reduce the amount of said Letter of Credit required hereunder if the MUNICIPALITY believes that the full amount of said Letter of Credit is no longer necessary to protect its interest, and shall notify the BANK in writing of such reduction in the amount of the Letter of Credit.
15. The BANK may not modify the Letter of Credit without first receiving written consent to the modification by the MUNICIPALITY.
16. DEVELOPER hereby agrees to indemnify and hold BANK harmless from all claims, causes of action or liability of any kind arising out of this Agreement or the issuance by BANK of this Letter of Credit, including attorney's fees, as long as BANK follows the terms and conditions outlined in said Letter of Credit.
17. This agreement shall be binding on all parties hereto and their respective heirs, executors, administrators, successors, and assigns.

DATED at _____, Vermont, this ____ day of 20 ____.

IN THE PRESENCE OF: _____

Witness

By: _____
Duly Authorized Agent

IN THE PRESENCE OF: _____

Witness

By: _____
Duly Authorized Agent

IN THE PRESENCE OF:

CITY OF SOUTH BURLINGTON

Witness

By: _____
Duly Authorized Agent

SON10-018 5-11-10 FORM INFRASTRUCTURE LOC AGR
5/11/10