



Development Services Center
22 Lincoln Street – 3rd Floor
Hampton, VA 23669

LANDSCAPE INSTALLATION (PERFORMANCE) AGREEMENT

_____ *Project*

_____ *Site Plan No.*

_____ *Address*

_____ *LRSN*

THIS LANDSCAPE INSTALLATION (PERFORMANCE) AGREEMENT (this "Agreement"), made this _____ day of _____, 20__ by and between THE CITY OF HAMPTON, VIRGINIA, a municipal corporation of the Commonwealth of Virginia (the "City") and _____ (the "Developer").

WITNESSETH:

WHEREAS, Developer is the owner and/or developer of a parcel of land located in the City of Hampton, Virginia and more fully defined on Site Plan No. _____;

WHEREAS, the said parcel of land has been improved by Developer as designated on the Site Plan identified herein;

WHEREAS, the City, pursuant to Chapter 35.1 of the City Code, requires the submission and approval of a landscape plan;

WHEREAS, Developer has submitted a landscape plan dated _____ ("Landscape Plan") that has been approved pursuant to the letter from the Planning Department attached hereto as Exhibit "A", but Developer has not completely installed all improvements as indicated on the Landscape Plan; and

WHEREAS, pursuant to Section 35.1-49(D) of the City Code, Developer is required to enter into a performance agreement accompanied by a performance bond to ensure compliance with all relevant provisions of Chapter 35.1 and to complete all improvements required on the Landscape Plan within six (6) months of issuance of the certificate of occupancy ("CO").

AGREEMENT

NOW, THEREFORE, in consideration of the premises, covenants, and agreements, Developer agrees as follows:

1. **Developer's Obligations.** Developer covenants (a) the improvements will be implemented in accordance with and at the same location as shown on the approved Site Plan and Landscape Plan; (b) to comply with all relevant provisions of Chapter 35.1 of the City Code; (c) to complete all work within six (6) months of issuance of the CO; (d) to secure and maintain a performance bond subject to approval by the Planning Director or his authorized designee as to amount and the City Attorney as to form and legal sufficiency, to cover all necessary costs and expenses that may be incurred or expended by the City to enforce this Agreement, *i.e. (identify one)*:

- (a) **Irrevocable Letter of Credit** issued by _____ dated _____ in the amount of \$_____;
- (b) **"Cash" Escrow**, Check No. _____, dated _____, in the amount of \$_____; or
- (c) **Surety Bond** from _____ dated _____, in the amount of \$_____.

("Bond"), a copy of which is attached hereto as Exhibit "B".

2. **Reduction of Bond.** If upon issuance of the CO a portion of the required improvements in the Landscape Plan has been completed, the Planning Director or his authorized designee may reduce the amount of the Bond to an amount sufficient to ensure completion of all improvements not already in place.

3. **Release of Cash Bond.** In the event Developer posts a cash escrow, the cash deposit or any unused portion thereof shall be refunded to Developer within thirty (30) days after the Planning Director or his authorized designee accepts the installations in writing.

4. **Term.** Developer agrees to install all improvements as required on the Landscape Plan within six (6) months of issuance of the CO. This Agreement becomes effective on the date the CO is issued and shall remain in effect until the Bond is specifically released, in writing, by the Planning Director or his authorized designee ("Term"). Additionally, prior to release of the Bond, Developer must execute a Landscape Maintenance Agreement and supply a new form of bond as required therein, or the Planning Director or his authorized designee may approve the conversion of the existing performance bond into a maintenance bond.

5. **Default.** Developer shall be in default for (i) failure to install the landscape improvements pursuant to the Landscape Plan and as herein agreed; (ii) failure to secure and maintain the Bond for the Term of this Agreement; and/or (iii) violation of any term of this Agreement.

6. **Remedies.** In the event Developer is in default, the City shall provide Developer written notice of such default by registered or certified mail, return receipt requested, at the address set forth in Paragraph No. 7 herein. Developer shall have ten (10) days from the date such notice is deemed given in which to cure the default or present a reasonable timeframe to be approved by the Planning Director or his authorized designee, in their sole discretion, of when the default will be cured. If Developer fails to do so, the City may draw upon the Bond to the extent required for payment of any costs

incurred by the City under this Agreement. The City also shall have the right to seek any remedies available at law or in equity. The rights and remedies provided by this Agreement are cumulative and not exclusive of any other rights and remedies provided by law. Notwithstanding the foregoing, the City may install the improvements if it determines that conditions present a threat to public safety. The cost of such emergency installation shall be charged to Developer.

7. **Notices.** A notice, communication, or request under this Agreement by the City or Developer shall be sufficiently given or delivered if dispatched by either (a) registered or certified mail, return receipt requested, postage prepaid, (b) nationally recognized overnight delivery service (next business day service), or (c) hand delivery (if receipt is evidenced by a signature of the addressee or authorized agent), and addressed as follows:

If to Developer: Name:
 Address:

 Phone:

If to the City: Attn: Michael Anaya
 Development Services Center
 City of Hampton
 22 Lincoln Street – 3rd Floor
 Hampton, VA 23669

Any notice, communication, or request so sent shall be deemed to have been “given” (a) as of the next business day after being sent if sent by a nationally recognized express mail service, (b) as of the fifth (5th) business day after being sent if sent by registered or certified mail or (c) upon receipt if sent by hand delivery. Any party may change its address for notice purposes by giving written notice thereof to the other parties, except that such change of address notice shall not be deemed to have been given until actually received by the addressee thereof.

8. **Amendment.** This Agreement may not be amended or modified except by prior written agreement executed by authorized representatives of the Developer and the City.

9. **Non-Assignment.** Developer shall not assign the rights granted under this Agreement without the prior written consent of the City, except assignment of rights and assumption of liabilities hereunder may be made to purchasers in a sale or other transfer of all or any portion of the property or to a lender secured by a deed of trust encumbering the property without the consent of the City so long as the instrument evidencing such assignment of rights and assumption of liabilities is recorded in the Office of the Clerk of the Circuit Court of the City of Hampton and a copy of the recorded instrument is provided to the Land Development Services Center.

10. **Waiver.** Waiver by the City or failure of the City to take action with respect to any breach of any term, covenant, or condition contained herein shall not be deemed a waiver of such term, covenant, or condition.

11. **Binding Effect.** The covenants and conditions contained herein, subject to the provisions as to assignment and transfer, shall apply to and bind the heirs, successors, executors, administrators, and assigns of Developer.

12. **Governing Law / Venue.** This Agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Virginia; and all questions with respect to any of the provisions herein shall be instituted, maintained, and contested in a court of competent jurisdiction in the City of Hampton, Virginia.

13. **Severability.** If for any reason any provision in this Agreement is held to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement. This Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been a part of the Agreement.

14. **Headings.** The headings contained herein are provided for convenience only and shall not be used in interpreting or construing this Agreement.

15. **Entire Agreement.** Except as otherwise provided herein, all existing agreements and contracts, both verbal and written, between the parties are superseded by this Agreement. This Agreement, including any addenda, attachments, and references, constitute the entire agreement between the parties.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the signatories covenant they have the authority to bind the parties hereto as evidenced by their affixed signatures on the dates indicated.

DEVELOPER (*attach additional signature pages if needed*):

Date: _____

By: _____

Name:
Title:
Address:

Phone:

Date: _____

By: _____

Name:
Title:
Address:

Phone:

Date: _____

By: _____

Name:
Title:
Address:

Phone:

THE CITY OF HAMPTON, VIRGINIA:

Date: _____

By: _____
City Manager / Authorized Designee

Name:
Title:

Approved as to form and legal sufficiency: Approved as to content:

By:

Senior Assistant City Attorney

By:

Planning Director / Authorized Designee