

COUNTY OF JAMES CITY, VIRGINIA

SILTATION AGREEMENT

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_, and all successors in interest, a corporation ("Developer"), and the County of James City, Virginia, ("County"), and \_\_\_\_\_, ("Agent") the County's Administrator of the Erosion and Sediment Control Ordinance.

WITNESSETH:

WHEREAS, Developer, desires approval of plans by the Agent for the County, for a project known as \_\_\_\_\_, located at \_\_\_\_\_, which plans include provision of siltation and erosion control measures as required by Chapter 8 of the Code of the County, and

WHEREAS, County desires to ensure the installation, maintenance and adequate performance of such control measures,

NOW THEREFORE, for and in consideration of the foregoing premises and the following terms and conditions, and in further consideration of the approval of the aforesaid plans by the County and the issuance of permits for the work proposed to be done thereunder the parties hereto agree as follows:

1. Developer has either:
  - a. deposited with Agent, and Agent by this execution hereof acknowledges that he holds, the sum of \_\_\_\_\_ dollars (\$\_\_\_\_\_) in escrow under and subject to the terms of this agreement, or;
  - b. has furnished the County an irrevocable letter of credit or bond with corporate surety, whose terms and conditions are acceptable in substance and in form to the County Attorney, in the sum of \_\_\_\_\_ dollars (\$\_\_\_\_\_), which letter of credit or bond is under and subject to the terms of this agreement.

The deposit, letter of credit or bond (collectively "Security Instrument") is designed to insure performance of the Developer's obligations and to insure reimbursement to the County in the event that it performs work or causes work to be performed pursuant to this Agreement and plans approved by and on file with the County.

2. In the event measures for the control of siltation and/or erosion as provided for on the plans referred to herein, or on any approved revision thereof, are not constructed at or prior to the occurrence of any rainstorm or other phenomena actually causing any siltation or erosion, County or its authorized agent shall have the right to enter upon Developer's property and construct such measures or do such other work as may be necessary to prevent further erosion or siltation, provided that County shall first give notice in writing to Developer or his superintendent of its intent so to do.

3. In the event measures for the control of siltation and/or erosion have been constructed, but fail, through overload and/or inadequate maintenance, to perform the function for which they were intended, County or its authorized agent, may in like manner to paragraph 2 above, enter to perform such reconstruction or maintenance as may be necessary to restore performance in accord with the plans, or approved revisions thereof, upon giving notice in writing to Developer or his superintendent of its intent so to do.

4. In the event there occurs siltation and/or erosion from the property covered by the plans referred to herein in sufficient quantity adversely to affect downstream drainage, or travel on any street, road, highway or other public way, then County may take such steps as may be necessary to restore functions to the affected drainage or travel way.

5. a. In the event County determines work shall be performed or causes to be performed work of any nature, including labor, use of equipment, and materials, under the provisions of paragraphs 2, 3 and 4 above, either by County staff, or other contractor, Agent shall draw and disburse to County on its order such sum or sums as may be requested, provided, however, that Agent's liability so to disburse shall be limited to the undistributed balance in its hands of:

1. the escrow amount, or
2. the letter of credit, or
3. the bond

Such surety may be drawn in total, if at the time the surety is to expire, if all improvements or any portion thereof are not complete and surety has not been adequately extended or replaced to ensure completion of the improvements. In addition, the County may draw a Security Instrument in the event it is not renewed or amended to remain in effect at least 10 days prior to its expiration. A notice that such draw has been made shall be delivered or mailed by County to Developer.

b. In the event the County calls, collects or otherwise draws on the Security Instrument pledged under this agreement, Developer agrees to either pay, or have the County use the proceeds of the draw to pay, a reasonable administrative fee of \$35.00 plus any costs actually incurred by the County in drawing on the Security

Instrument. The charge for an administrative fee plus costs shall apply regardless of whether the County later accepts a renewal or amendment of the Security Instrument.

6. In the event Agent makes disbursement pursuant hereto, Developer agrees to deposit within ten (10) days of such disbursement, an amount sufficient either:

- a. to restore escrow amount to its original balance as shown in paragraph 1; or
- b. to furnish an additional letter of credit in the amount of the draft; or
- c. to secure such additional bonds as to restore same to its original balance as shown in paragraph 1.

7. It is expressly agreed by all parties hereto that it is the purpose and intent of this Agreement to ensure the installation, maintenance, and performance of measures provided for on approved plans or revisions thereof, for the control of siltation and erosion, and for the restoration of function of facilities for drainage or vehicular travel if such facilities are adversely affected in their function by siltation or erosion from the property the subject of such plans. This Agreement shall not be deemed to create or affect any liability of any party hereto for any damage alleged to result from or be caused by erosion or siltation.

8. It is expressly agreed by the parties hereto that either:

- a. the escrow amount shall be held by Agent unless distributed in accordance with paragraph 5 above, or paid to County as part of the cost to complete improvements required by ordinance and/or agreement, or released in writing by County, through its Agent, or
- b. the letter of credit or bond shall be held by Agent unless distributed in accordance with paragraph 5 above, or paid to County as part of the cost to complete improvements required by ordinance and/or agreement, or released in writing by County, through its Agent.

IN WITNESS WHEREOF, the parties hereto, being first duly authorized, have affixed their signatures on the date first above written.

ATTEST: Owner: \_\_\_\_\_(SEAL)  
(Print Name and Title)

\_\_\_\_\_ B Y : \_\_\_\_\_  
(Signature)

Approved as to form: COUNTY OF JAMES CITY, VIRGINIA

\_\_\_\_\_ BY: \_\_\_\_\_  
County Attorney County Agent