



Electric and Water Infrastructure Agreement

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DIRECTIONS

- **ELECTRIC AND WATER INFRASTRUCTURE AGREEMENT (PAGES 1- 13) - SIGN AND HAVE WITNESSED BOTH ORIGINAL PUBLIC WORK’S AGREEMENTS. RETURN ONE ORIGINAL TO THE TOWN.**
- **IRREVOCABLE LETTER OF CREDIT (PAGES 14-15) - HAVE YOUR FINANCIAL INSTITUTION COMPLETE THE IRREVOCABLE LETTER OF CREDIT USING THE FORM PROVIDED. RETURN THE IRREVOCABLE LETTER OF CREDIT WITH THE ELECTRIC AND WATER INFRASTRUCTURE AGREEMENT.**
- **PERFORMANCE BOND (PAGES 16 & 17) - HAVE YOUR FINANCIAL INSTITUTION COMPLETE THE PERFORMANCE BOND USING THE FORM PROVIDED. RETURN THE PERFORMANCE BOND WITH THE ELECTRIC AND WATER INFRASTRUCTURE AGREEMENT.**
- **BOND RIDER (PAGE 18)**
- **DEPOSIT AGREEMENTS (PAGES 19) - SIGN AND HAVE ATTESTED THE APPROPRIATE DEPOSIT AGREEMENT. RETURN IT WITH THE ELECTRIC AND WATER INFRASTRUCTURE AGREEMENT AND IRREVOCABLE LETTER OF CREDIT OR PERFORMANCE BOND. THE CHECK SHOULD BE MADE PAYABLE TO “MUNICIPAL SERVICES COMMISSION”.**
- **PARTIAL RELEASE OF LETTER OF CREDIT (PAGE 20) – FOR MSC USE ONLY.**
- **NOTICE OF COMPLETION OF OBLIGATIONS OF PERFORMANCE BOND (PAGE 21) – FOR MSC USE ONLY.**
- **FINAL RELEASE OF LETTER OF CREDIT (PAGE 22) – FOR MSC USE ONLY.**
- **CERTIFICATE OF DEFAULT (PAGE 23) – FOR MSC USE ONLY (IF NECESSARY).**
- **NOTICE OF DEFAULT (PAGE 24) – FOR MSC USE ONLY (IF NECESSARY).**
- **APPLICATION FOR REDUCTION OF LETTER OF CREDIT WORKSHEET (PAGES 25-26) - IS TO BE COMPLETED AND SUBMITTED TO THE MSC WHEN YOU REQUEST A REDUCTION IN YOUR IRREVOCABLE LETTER OF CREDIT.**

REMINDER – YOUR FINAL PLAN WILL NOT BE RELEASED UNTIL THE ELECTRIC AND WATER INFRASTRUCTURE AGREEMENT; IRREVOCABLE LETTER OF CREDIT; AND DEPOSIT AGREEMENT IS SUBMITTED.



ELECTRIC AND WATER INFRASTRUCTURE AGREEMENT

Municipal Services Commission of the City of New Castle

THIS AGREEMENT, made this ____ of _____ **20**____ by and between the Municipal Services Commission of the City of New Castle, a municipal corporation of the State of Delaware, hereinafter referred to as "the MSC", and _____, hereinafter referred to as "the Owner".

WHEREAS, the City Council of the City of New Castle, DE, under the authority and provisions enacted by law, agreed to the subdivision and/or development (the "Project") of land owned by Owner within the City of New Castle located at _____ (Tax Parcel No. _____) (the "Land") pursuant to development plans (the "Development Plans"); and

WHEREAS, In conjunction with this process, the MSC will accept certain infrastructure improvements of benefit to the public to be placed on the Land as a part of the Project; and

WHEREAS, the Owner, upon approval of the plans for the Project, shall be required to enter into a Extension of Service agreement with the MSC and post the approved Letter of Credit for the Project.

NOW, THEREFORE, in consideration of the premises and mutual covenants of the parties hereto, they do hereby covenant and agree with each other, and for their respective heirs, personal representatives, successors and assigns, as follows:

Article 1. Construction of Public Improvements

Owner shall construct or cause to be constructed, at the Owner's expense all public improvements and appurtenances including but not limited to all Electric and Water infrastructure facilities in the manner set forth in accordance with the MSC's standards, specifications, accompanying plans, utility/construction and engineering plans hereinafter referred to as "the Utility Plans", heretofore approved by the MSC attached hereto as Exhibit A, and in strict accordance with the ordinances, resolutions, specifications, regulations and standards of the MSC, as well as all other applicable laws. Owner shall be responsible for the timely payment of any and all fees, including, but not limited to obligations due under this Agreement.

In the event construction is not completed within twelve (12) months of the date of this Agreement, then all of such improvements and Utility Plan shall be updated, if necessary, in order to comply with current ordinances, resolutions, specifications and regulations.

The Owner shall maintain and operate all Electric and Water Infrastructure improvements and appurtenances at the Owner's expense until the same are accepted by the MSC as set forth in Article 5 and conveyed by deed to the MSC.

The Owner shall grant permanent easements to the MSC for the Land upon which the electric and water infrastructure is placed as set forth in the Utility Plan to the extent such improvements are not contained in the right-of-way/easements for the roadway and shall obtain the permanent easements and releases required if the electric and water infrastructure abuts or traverses land of persons other than the person holding legal title to the lands of the subdivision and/or development, at the Owner's expense, and to obtain from the owner of the lands so abutted or traversed full releases from all damages which may change in grade, construction, or otherwise, all improvements, and such releases shall insure to the benefit not only of the owner of the subdivision but to the MSC as well.

The Owner shall not be required to provide the MSC an easement for connection of electric services from the road right-of-way stop to the meter on any individual lot, and such connections shall be governed and addressed with separate agreements between the MSC and the individual lot owner.

The Owner shall construct and/or otherwise provide, in accordance with the Development Plans and Utility Plans, all street lighting, street name signage, other specified signage and traffic control devices, and pay all costs of electricity for street lighting and other electricity consuming facilities until conveyance by deed to the MSC; Services will not be turned on or meters installed at individual units or locations until the Owner applies for service and all service lines have been inspected and approved by the MSC.

Owner or any site contractor(s) shall obtain and keep in force, until the successful completion of this Agreement, Contractors' Comprehensive General Liability Insurance including Contractual Liability Insurance with the below-referenced minimum coverages. The named insured shall be the Owner, the Owner's site contractor(s), the City of New Castle, and the MSC. The name of the Development must be included on the certificate of insurance. Construction shall not commence until insurance certificates are provided to the MSC. The insurance certificate shall be required no later than the pre-construction meeting. If insurance lapses for any reason, the City and/or the MSC will coordinate with the agency having jurisdiction to ensure certificates of occupancy shall not be issued until insurance is in force.

- a. Bodily Injury Liability - \$1,000,000 per person with an aggregate limit of \$3,000,000 per occurrence;
- b. Property Damage Liability - \$3,000,000;
- c. Hazards coverage (site contractor(s) only) (explosion, collapse, and underground);
- d. Excess or Umbrella Liability - \$5,000,000.

PRECONSTRUCTION MEETING

A PRECONSTRUCTION MEETING SHALL BE SCHEDULED BY THE OWNER/DEVELOPER TO BE CONVENED AT LEAST TWO (2) WEEKS PRIOR TO BEGINNING ANY CONSTRUCTION WORK. AT A MINIMUM, THE MEETING SHALL BE ATTENDED BY THE FOLLOWING PARTIES:

**OWNER
PRIME CONTRACTOR
SUBCONTRACTOR(S)
MSC WATER DEPARTMENT
MSC ELECTRIC DEPARTMENT**

Article 2. Letter of Credit or Performance Bond

Owner shall, in accordance with the terms and conditions set forth herein, post a letter of credit from an approved financial institution in the form attached hereto or a performance bond and in an amount equal to the total construction costs of all Electric and Water Infrastructure improvements and appurtenances proposed herein, as determined by the MSC after review of estimate of construction cost provided by Owner.

The Letter of Credit posted shall provide that it shall not expire for a period of one year and shall automatically renew and not expire unless 90 days prior to expiration date, the MSC is notified by certified mail that the financial institution issuing the same has elected not to renew the Letter of Credit. All fees associated with the Letter of Credit, including any renewal fees, shall be borne by the Owner. The Performance Bond posted shall provide that Owner shall perform all work in accordance with the stated terms and conditions of the Electric and Water Infrastructure Agreement, including but not limited to all obligations until such time as all public improvements are conveyed to the MSC and the MSC accepts dedication. The Performance Bond shall also expressly state that the Owner is liable for any and all attorney fees and expenses associated with a default as identified within Article 8 of this Agreement, and that the Owner is obligated to inform the surety of any material change subsequent to the issue of a Performance Bond. The surety of any Performance Bond shall agree to sign a waiver wherein the MSC is not obligated to inform the surety of any material changes incurred by the Owner subsequent to the issuance of a Performance Bond. All fees associated with the Performance Bond shall be borne by the Owner.

The Letter of Credit or Performance Bond shall be conditioned upon:

A) the construction and installation or causing to be constructed or installed, in strict accordance with the final Utility Plan(s) approved by the MSC and in strict accordance with the MSC standards, specifications and regulations of all improvements, including but not limited to Electric and Water Infrastructure, and any other improvements shown on the Utility Plan(s) approved by the MSC;

B) the warranty that said improvements shall be constructed and installed in accordance with the Utility Plan(s) approved by the and in accordance with the standards, specifications and regulations of the MSC;

C) the warranty that the maintenance of all improvements in strict accordance with the Utility Plan(s) approved by the MSC and shall be the responsibility of the Owner until such time as the MSC accepts said improvements and said improvements are conveyed by deed to the MSC in accordance with Article 5 herein; and

D) the faithful performance of this Agreement.

Article 3. Letter of Credit or Performance Bond - Release or Reduction

The MSC may release to the Owner, if requested, certain amounts pledged under the Letter of Credit or Performance Bond for the construction of the Electric and Water Infrastructure improvements and appurtenances completed by the Owner, as determined, inspected and approved by the MSC, and set forth in the Partial Release of Letter of Credit or Performance Bond prepared by the MSC. Requests for reduction of the Letter of Credit or Performance Bond shall be made by Owner in writing by submission of the application for reduction of Letter of Credit or Performance Bond worksheet attached hereto. Any and all requests for reduction of a Letter of Credit or Performance Bond shall be considered and reviewed in conjunction with the Owner's annual written report submission identified within Article 1 of this Agreement. The Request for Partial Release of Letter of Credit or Performance Bond shall specify the construction completed and the amount requested to be released under the Letter of Credit or Performance Bond. Any reduction of a Letter of Credit or Performance Bond is within the sole discretion of the MSC. The amount released shall not exceed seventy-five percent 75% of the approved construction cost estimate for the items(s), as provided in the construction cost estimates provided as set forth herein.

In no event shall a Letter of Credit or Performance Bond be reduced below Twenty-Five Per cent (25%) of the aggregate principal amount of the Letter of Credit or Performance Bond until acceptance by the MSC and conveyance by deed to the MSC as set forth in Article 5 herein.

Article 4. Inspection of Electric and Water Infrastructure Improvements

ANY CONSTRUCTION WORK REQUIRED PURSUANT TO THE APPROVED SITE PLAN, SUBDIVISION, ELECTRIC AND WATER INFRASTRUCTURE AGREEMENT AND/OR ELECTRIC OR WATER SERVICE AGREEMENT WHICH IS CONSTRUCTED OR INSTALLED WITHOUT THE MSC INSPECTOR'S APPROVAL SHALL BE REMOVED AND REPLACED BY OWNER AT OWNER'S SOLE EXPENSE, WHETHER IT MEETS THE REQUIREMENTS OR NOT.

The Owner shall permit the MSC and its Agents (hereinafter referred to as "Agents") full access to the project/development to review and inspect the Electric and Water Infrastructure improvements prior to the time such improvements are covered and permit

the MSC the full and unrestrained use of any and all engineering, construction and associated Plans relating to the project/development, to complete the constructions of the Electric and Water Infrastructure improvements as deemed necessary by the MSC at Owner's cost if Owner does not complete the same. For the purpose of this document, the term "Agents" means MSC Engineer, MSC Electric Department, MSC Water Department, MSC employees, Planning Consultants, or any other individual or entity directed to act on behalf of the MSC in association with the project/development.

In the case of commercial development, the Owner shall provide access to the MSC and Agents during all construction for inspection purposes. The Owner shall be responsible to pay any and all fees payable to the MSC and Agents for any and all inspections upon demand. A deposit shall be made upon execution of this Agreement as set forth in the attached Deposit Agreement. The Owner further agrees that if the actual costs exceed the amount of the deposit paid to the MSC, Owner agrees to pay any additional costs upon presentation of an invoice. No services will be turned on or meters installed at any location for the project until all fees due and payable to the MSC and Agents are paid by Owner.

In the case of residential development, the Owner shall provide access to the MSC and Agents during all construction for inspection purposes. The Owner shall be responsible to pay any and all fees payable to the MSC and Agents for any and all inspections upon demand. A cash deposit as determined by the MSC or its Agents based upon the total inspection costs for the project shall be made upon execution of this Agreement as set forth in the attached Deposit Agreement. The cash deposit shall be held by the MSC in a non-interest bearing escrow account. Owner shall be presented with a copy of an invoice for fees or costs due and payable to the MSC and Agents for inspection or review associated with inspection for the project by the MSC and Agents. Owner shall pay said invoice to the MSC within 10 days of receipt of the invoice. Any amounts not paid by Owner within thirty (30) days of Owner's receipt of the invoice shall be deducted from the escrow deposit account. Until the escrow account is replenished in full, MSC and its Agents will not complete any further work, including but not limited to inspections, reviews, or other consideration by the MSC and Agents. No services will be turned on or meters installed for the project until all fees due and payable to the MSC and Agents are paid by Owner. After all final inspections have been completed and the MSC and Agents have determined that all of the required Electric and Water Infrastructure improvements have been constructed in strict accordance with the Plans as approved by the MSC and in strict accordance with the standards, regulations and specifications of the MSC and dedication has occurred, the MSC shall refund any monies held in said escrow account to Owner.

Owner shall construct all Electric and Water Infrastructure improvements to the satisfaction of the MSC and in accordance with the Utility Plans.

The MSC shall complete a preliminary inspection of all improvements at the time of completion of said improvements and prior to release of any amounts pledged under the Letter of Credit or Performance Bond in accordance with Article 3 herein.

If at the time of preliminary inspection, the MSC finds that any of the required Electric and Water Infrastructure improvements have not been constructed in strict accordance

with the Utility Plans as approved by the MSC and in strict accordance with the standards, regulations and specifications of the MSC and other applicable laws, the MSC shall notify Owners to correct any deficiencies within thirty (30) days weather permitting. If said deficiencies are not corrected within thirty (30) days weather permitting of the date of notice from the MSC, the conditions of the Letter of Credit posted shall be deemed to be in default and Owner authorizes the MSC to notify the Financial Institution that the obligations guaranteed by the Letter of Credit are in default and the Letter of Credit should be forfeited to the MSC.

If Owner has posted a Performance Bond and if at the time of preliminary inspection, the MSC finds that any of the required Electric and Water Infrastructure improvements have not been constructed in strict accordance with the Utility Plans as approved by the MSC and attached hereto as Exhibit A and in strict accordance with the standards, regulations and specifications of the MSC, the MSC shall notify Owners to correct any deficiencies within thirty (30) days weather permitting. If said deficiencies are not corrected within thirty (30) days weather permitting of the date of notice from the MSC, the MSC shall notify the surety that the surety has (10) ten business days to respond to the MSC's notice of default by undertaking to complete or correct the work requested by the MSC or pay the MSC to complete or correct the work. If no action is taken by the surety within 10 business days, the MSC shall enforce any remedy available and shall be entitled to complete or correct the work at the sole expense of the Owner and/or surety.

The MSC shall complete a final inspection of all improvements at the time of request for conveyance by the Owner to MSC by deed of all improvements.

If at the time of final inspection, the MSC finds that any of the required Electric and Water Infrastructure improvements have not been constructed in strict accordance with the Plans as approved by the MSC and attached hereto as Exhibit A and in strict accordance with the standards, regulations and specifications of the MSC, the MSC shall notify Owners to correct any deficiencies within thirty (30) days. If said deficiencies are not corrected within thirty (30) days of the date of notice from the MSC, the conditions of the Letter of Credit posted shall be deemed to be in default and Owner authorizes the MSC to notify the Financial Institution that the obligations guaranteed by the Letter of Credit are in default and the Letter of Credit should be forfeited to the MSC.

If Owner has posted a Performance Bond and if at the time of final inspection, the MSC finds that any of the required Electric and Water Infrastructure improvements have not been constructed in strict accordance with the Plans as approved by the MSC and attached hereto as Exhibit A and in strict accordance with the standards, regulations and specifications of the MSC, the MSC shall notify Owners to correct any deficiencies within thirty (30) days weather permitting. If said deficiencies are not corrected within thirty (30) days weather permitting of the date of notice from the MSC, the MSC shall notify the surety that the surety has (10) ten business days to respond to the MSC's notice of default by undertaking to complete or correct the work requested by the MSC or pay the MSC to complete or correct the work. If no action is taken by the surety within 10 business days, the MSC shall enforce any remedy available and shall be entitled to complete or correct the work at the sole expense of the Owner and/or surety.

Owner shall fully pay all inspection fees to the MSC prior to MSC's acceptance of Water and Electric Infrastructure Improvements.

Article 5. Conveyance of Improvements

Upon expiration of the one (1) year from the date of the final inspection and approval by the MSC of the Electric and Water Infrastructure Improvements, the Owner shall convey by deed, in the manner and form approved by the MSC Attorney, at the expense of the Owner, all the Electric and Water Infrastructure improvements, and appurtenances including but not limited Electric and Water Infrastructure and any other improvements in strict accordance with the final Utility Plan(s) approved by the MSC., along with the associated rights-of-way and/or easements. If, as determined solely by the MSC, any repairs are needed prior to the conveyance of the Electric and Water Improvements, Owner shall, at its sole expense, cause such repairs to be made, subject to review by the MSC. Notwithstanding the foregoing, in emergency situations as determined solely by the MSC, the MSC may, but is not required to, make repairs at Owner's sole cost and expense. In addition, at the time of the conveyance, Owner shall:

A) cause the Owner's engineer/surveyor or other designated representative to submit one (1) digital and three (3) paper copies of Professional Engineer certified reproducible "as built" engineering drawings, along with all technical manuals, spare parts, manufacturer(s) specifications, or other technical information required and approved by the MSC, for all Electric and Water Infrastructure improvements prior to the conveyance of those improvements to the MSC;

B) verify in writing that the layout of the line and grade of all improvements is in accordance with the utility plans approved by the MSC; and

C) cause submission of a title insurance policy or title search certified by an attorney duly licensed to practice law in the State of Delaware approved by the MSC Attorney indicating that the improvements are completed and are free of all liens and encumbrances.

Article 6. Authorization to start extension of service

THE MSC WILL NOT AUTHORIZE THE EXTENSION OF SERVICE WORK IN THE ABSENCE OF A LETTER OF CREDIT, PERFORMANCE BOND OR OTHER DEPOSIT REQUIRED BY THIS AGREEMENT AND DEPOSIT IN FULL FORCE AND EFFECT.

Under no circumstances shall the Owner start construction on the final ten percent (10%) of the lots in a subdivision or if ten percent (10%) is less than two (2) lots, for the final two (2) lots, until all Electric and Water Infrastructure improvements have been completed and a preliminary inspection in accordance with Article 4 has been completed and any and all deficiencies have been corrected in accordance with Article 4.

IN ADDITION, CONSTRUCTION SHALL NOT START FOR THE FINAL TEN PERCENT (10%) OF THE LOTS IN A SUBDIVISION OR IF TEN PERCENT (10%)

IS LESS THAN TWO (2) LOTS, FOR THE FINAL TWO (2) LOTS, UNTIL OWNER PROVIDES VERIFICATION TO THE MSC THAT THE LETTER OF CREDIT OR PERFORMANCE BOND PREVIOUSLY ISSUED WILL REMAIN IN FULL FORCE AND EFFECT FOR A PERIOD OF TWO (2) YEARS FROM THE DATE OF SATISFACTORY PRELIMINARY INSPECTION BY THE MSC.

Article 7. Failure to Complete Construction

In the event Owner fails to complete construction of the Electric and Water Infrastructure improvements required herein within twelve (12) months from the date of this Agreement, or as otherwise expressly provided in this Agreement, any and all balance remaining pledged in the Letter of Credit shall be forfeited to the MSC to complete the Electric and Water Infrastructure improvements and/or any amount in connection with a Performance Bond shall be deemed to be due and payable to the MSC. The MSC may agree to extend this Agreement. Notwithstanding any provision herein to the contrary, Owner shall be solely responsible for the cost to complete the Electric and Water Infrastructure Improvements.

Article 8. Miscellaneous

Default

In the event of any default and/or breach by the Owner of any of the terms and conditions herein, the Owner (and any and all sureties, indemnities, or other parties liable to the MSC for construction of improvements and/or fees) shall be obligated, in addition to any other remedies available to the MSC, to reimburse the MSC for all attorney fees, court and litigation costs, engineering and inspection fees, expert witness fees and costs, reports and investigations conducted by expert witnesses, permits, bonds, insurance and any and all expenses, whatsoever, incurred by the MSC with regard to the completion of any and all Electric and Water Infrastructure improvements and any and all litigation costs incurred by the MSC. Nothing within this provision shall be interpreted to limit the MSC's authority or ability to pursue relief through the enforcement of a bond or letter of credit indicated within this Agreement. In the event of a breach by the MSC of this Agreement, Owner shall be limited to a cause of action for mandamus.

Duration

This Agreement shall remain in effect and binding on all parties for a period of one (1) year from the date of execution. Failure to obtain an extension of this Agreement from the MSC within the duration of this Agreement shall be a material default of this Agreement.

Notices

All notices shall be in writing and shall be delivered in person or transmitted by certified mail.

Notices sent to Property Owner will be addressed to:

Notices sent to the MSC will be addressed to:

**General Manager
Municipal Services Commission
P. O. Box 208
New Castle, Delaware 19207-0208**

Governing Law

This Agreement shall be governed by and construed, interpreted, and enforced in accordance with the laws of the State of Delaware.

Binding on Successors

This Agreement shall be binding on, and inure to the benefit of, each of the parties and their respective heirs, personal representatives, successors, assigns, sureties, indemnities, and insurance carriers.

Execution in Counterparts

This Agreement may be executed in any number of counterparts, by facsimile, photocopy, or original signature, with the same effect as if signatures to each such counterpart were part of the same instrument. Each copy of this Agreement that is executed in counterpart shall be deemed to be an original.

Enforcement of this Agreement

Any action seeking to enforce the terms of this Agreement shall be brought in the State of Delaware, and each party to this Agreement consents to the jurisdiction and venue of each action in New Castle County, Delaware.

Severability

Should any provision of this Agreement subsequently be held to be illegal, invalid, or unenforceable under any present or future laws or judicial decisions, such provision shall be fully severable from the remainder of this Agreement, the remaining provisions shall not be affected thereby, and shall continue to be enforceable to the full extent permitted by law, and, in lieu of such illegal, invalid, or unenforceable provision, there shall be added a substitute provision as similar in terms as may be possible that is legal, valid,

and enforceable.

Attorney Fees

In the event of litigation to enforce the terms of this Agreement, the Owner and any and all sureties, indemnities, or other parties liable to the MSC for construction of improvements and/or fees shall pay to the MSC the amount of any and all attorneys' fees, court costs, witness fees, expert witness fees and work, and all expenses of a lawsuit incurred by the MSC.

Gender

Unless the context otherwise requires, whenever used in this Agreement, the singular shall include the plural, the plural shall include the singular, and the masculine gender shall include the neuter and feminine gender, and vice-versa.

Authority to Contract

Each party warrants and represents that it has full power and authority to enter into this Agreement and to perform its obligations, including any fiscal obligations, under this Agreement.

Assignment

This Agreement may not be assigned without the prior written consent of both parties.

Waiver

The failure on the part of any party to enforce its rights as to any provision of this Agreement shall not be construed as a waiver of its rights to enforce such provisions in the future.

Attachments

All attachments to this Agreement shall be numbered, beginning with "Letter A", and shall be appended and incorporated into this Agreement, and shall contain the project/development name, reference article and Owner's signature.

Expiration

This Agreement will expire on the _____ day of _____, 20_____.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, to be effective on the day and year first above written.

Attest: Municipal Services Commission of the
City of New Castle DE

Witness BY: _____(SEAL)
Scott L Blomquist,
General Manager

Owner BY: _____(SEAL)

Printed Name/Title

Legal Sufficiency

I hereby certify as to form and legal sufficiency of this Agreement.

MSC Attorney Date _____

MSC Administrator's Sufficiency

I hereby certify that the public improvements and appurtenances herein described, if constructed in accordance with the plans and specifications approved by the MSC of New Castle DE, are sufficient and adequate for the occupancy of this project/development. I estimate the sum of _____ **Dollars and No Cents (\$_____ .00)** for the total costs to complete all the public improvements described in this Agreement, at the time this Agreement is executed.

Scott L Blomquist Date _____
GENERAL MANAGER



IRREVOCABLE LETTER OF CREDIT

Name and Address of Financial Institution:

NAME:

ADDRESS:

TELEPHONE NUMBER:

FACSIMILE NUMBER:

CONTACT PERSON:

LOC No.

Amount

Expiration

Inspection Deposit

Bank Name

Account No.

Check No.

Amount

* * * * *

_____ hereby issue an irrevocable letter
(FINANCIAL INSTITUTION)

of credit in favor of the Municipal Services Commission of the City of New Castle in the aggregate principal sum of _____ and ____ Cents (\$____,____.____) to insure the construction and/or installation of all public improvements in strict accordance with the Plan(s) approved by the MSC of New Castle DE and to the satisfaction of the Municipal Services Commission and maintenance of all improvements until such time as the Commission accepts said improvements and said improvements are conveyed by deed to the Commission for the proposed project/development known as _____, located at _____, New Castle, Delaware, on lands owned by the Owner.

This irrevocable Letter of Credit will only be reduced by the sums set forth in a Partial

Release of Letter of Credit in the form attached hereto and executed by the General Manager of the Municipal Services Commission of the City of New Castle DE. The sum of _____ Dollars and ___ Cents(\$____,____.____) or sums remaining after Releases is available by draft of the Municipal Services Commission of the City of New Castle DE by presentation of a Certificate of Default in the form attached hereto and executed by the General Manager.

At no time shall the sum of _____ Dollars and _____ Cents (\$____), representing Twenty Five Per Cent (25%) of the aggregate principal amount of this Letter of Credit be released from this Letter of Credit until presentation of Final Release of Letter of Credit in the form attached hereto and executed by the General Manager of the Municipal Services Commission of the City of New Castle DE

It is a condition of this Irrevocable Letter of Credit that it shall be deemed automatically renewed without amendment for one (1) year from the present expiration date or any future expiration date unless ninety (90) days prior to such expiration date the Mayor and Commissioners are notified by certified mail that the herein financial institution has elected not to renew this Letter of Credit by any such additional period.

Drafts drawn hereunder must be drawn and negotiated on or before _____ and must be presented to the following address:

_____.

_____ hereby agrees that the drafts
(FINANCIAL INSTITUTION)
drawn in accordance with the terms of this Letter of Credit, accompanied by the documents herein specified, will be duly honored upon due presentation to the drawee or by any bona fide holder thereof.

This Letter of Credit is neither negotiable nor assignable.

Attest:

BY:

Printed Name/Title



PERFORMANCE BOND	WATER & ELECTRIC PUBLIC IMPROVEMENTS	Project:	Date of PWA & WSA: Address:
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KNOW ALL MEN BY THESE PRESENTS, that we _____, Hereinafter called PERMITTEE, and _____, a corporation incorporated under the laws of the State of Delaware, hereinafter called SURETY, are firmly bound unto the Municipal Services Commission of the City of New Castle, DE (the "MSC") in the sum of _____ and No Cents (\$_____.00) Dollars, to be paid to the MSC or its assigns, upon the conditions set forth below. This bond is binding on ourselves, our personal representatives, successors, and assigns, jointly and severally.

WHEREAS, it is a condition of the MSC'S execution of the Electric and Water Infrastructure Agreement (the "EWIA") the approval and issuance of the permit referenced above that a bond or other instrument be issued for the benefit of the MSC, guaranteeing performance of the work described in the EWIA and permit and as may be required by law.

WHEREAS, the PERMITTEE shall perform all work according to the stated terms and conditions of the EWIA, including but not limited to all obligations until the conveyance of all public improvements in accordance with the terms of the EWIA. "Work" as defined in this performance bond shall be construed as any and all obligations of the PERMITTEE within the underlying EWIA including, but not limited to, completion of the required improvements, payment of all attorney fees, court costs, engineering and inspection fees, expert witness fees and costs, reports and investigations conducted by expert witnesses, creation of "as-builts", costs of dedication, permits, bonds, insurance and any and all expenses, whatsoever, incurred by the MSC with regard to the completion of any and all public improvements and any and all litigation costs incurred by the MSC.

WHEREAS the Permittee is obligated to inform the Surety of any material change subsequent to the issuance of this Performance Bond, and the Surety fully and completely releases the MSC from any duty to inform the Surety of any material change regarding the Permittee subsequent to the issuance of this Performance Bond. Further, the Surety waives any and all defenses, if any, that it may have against the MSC for its failure to inform the Surety of any material changes regarding the Permittee subsequent to the issuance of this Performance Bond.

NOW THEREFORE, the condition of this obligation is such that, providing that the PERMITTEE shall perform all work according to the stated terms and conditions of the above referenced permit, EWIA, and comply with all requirements of law, then this obligation shall be null and void. But in the event that the PERMITTEE fails to complete the work in accordance with the terms and conditions of the permit, EWIA, and applicable law, then upon written notice of default from the MSC or its designee to the PERMITTEE and the SURETY, the SURETY shall promptly take

one of the following actions:

1) Undertake to complete or correct the work, as defined within this Performance Bond, or arrange for its completion or correction at its sole expense; or

2) Pay the MSC to complete or correct the work, as defined within this Performance Bond, up to the full penal sum of the bond.

If the SURETY does not respond within ten business days after receiving the MSC'S notice of default, the MSC shall be entitled to enforce any remedy available to the MSC, including completing or correcting the work and seeking reimbursement from the SURETY, up to the full penal sum of the bond.

SEALED WITH OUR RESPECTIVE SEALS AND DATED THIS _____ DAY OF _____, 20_____.

ATTEST:

Witness Signature

Permittee Signature (SEAL)

Witness Signature

Permittee (printed name)

Title

Insurance Company
Address/Phone/Fax/E-Mail:

Name of Surety

Bond Number

Agency/Address/Phone/Fax/E-mail:

Attorney-in-Fact Signature (SEAL)

Printed Name: _____



BOND RIDER NO. _____

To be attached to and form a part of Performance Bond No. _____,
Dated _____ day of _____, 20_____, _____ as
Principal, and _____, as Surety, in favor of the Municipal Services
Commission of the City of New Castle, Delaware, as Obligee.

It is understood and agreed that the Bond is changed or revised in the
particulars as indicated below:

Bond Amount is amended as follows:

FROM: _____

TO: _____

Said Bond shall be subject to all its terms, conditions, and limitations, except as herein
expressly modified. This Bond Rider shall become effective _____.

IN WITNESS WHEREOF _____ has caused its corporate seal to
be hereunto affixed this _____ day of _____, 20_____.

WITNESS / ATTEST:

SURETY:

By: _____ (SEAL)

Name: _____

Title: _____



DEPOSIT AGREEMENT

THIS AGREEMENT, made this ____ day of _____, **20**_____, by and between the Municipal Services Commission of the City of New Castle DE (hereinafter referred to as "MSC") and _____ (hereinafter referred to as "Owner").

WHEREAS, the Owner has executed an Electric and Water Infrastructure Agreement which will require a deposit to offset costs incurred by the MSC for engineering inspection fees; and

WHEREAS, Owner has agreed to pay these costs associated with these expenses.

WHEREFORE, in consideration of the premises and covenants herein contained, the Owner agrees to reimburse the MSC for its costs as set forth above. A deposit of _____ (_____) is hereby deposited with the MSC, the purpose of which is to insure payment of said costs associated with attorney's fees, the preliminary, final and any other necessary reviews and/or inspections by the MSC of all Electric and Water Infrastructure improvements associated with proposed project/development known as

_____ located at _____; and it is further

AGREED, that if the actual costs exceed the amount of the deposit provided to the MSC, Owner agrees to pay any additional costs upon presentation of an invoice for the same; and it is further

AGREED, that if additional costs are not paid upon presentation of an invoice for the same, no construction authorizations for the project shall issue until all fees due and payable to the MSC are paid by Owner; and it is further

AGREED, that said deposit shall be deposited in a non-interest bearing account and any excess shall be refunded to the Owner upon the conclusion of the project.

IN WITNESS WHEREOF, the parties hereto have set their respective hands and seals to this Agreement, the day and year first herein written.

ATTEST: _____ Municipal Services Commission of the City of New Castle, DE

By: Scott L Blomquist,
General Manager

ATTEST: _____ OWNER:
BY: _____



PARTIAL RELEASE OF LETTER OF CREDIT

TO:

Re: Letter of Credit Number: _____

Date:

The Municipal Services Commission hereby authorize the

Release of the amount of _____

(\$ _____) from the Letter of Credit for the Project/Development known

as _____

as part of the improvements in accordance with the Electric and Water Infrastructure Agreement have been constructed and/or installed.

Attest:

Municipal Services Commission of the
City of New Castle DE

By: Scott L Blomquist,
General Manager



NOTICE OF COMPLETION OF OBLIGATIONS OF PERFORMANCE BOND

TO:

Re: Performance Bond Number: _____

Date:

The Municipal Services Commission of the City of New Castle DE hereby notifies _____ (\$ _____, _____ .00) that all improvements in accordance with the Electric and Water Infrastructure Agreement have been constructed and/or installed, the MSC has accepted said improvements and said improvements have been conveyed to the MSC by deed in accordance with the Electric and Water Infrastructure Agreement and the obligations of the above Performance Bond have been satisfied.

Attest:

Municipal Services Commission of the
City of New Castle, DE

By: Scott L Blomquist,
General Manager



NOTICE OF COMPLETION - FINAL RELEASE OF LETTER OF CREDIT

TO:

Re: Letter of Credit Number: _____

Date:

The Municipal Services Commission of the City of New Castle, DE hereby authorize the

Release of the amount of _____

(\$ _____) from the Letter of Credit for the Project/Development known as _____

as all improvements in accordance with the Electric and Water Infrastructure Agreement have been constructed and/or installed, the MSC has accepted said improvements and said improvements have been conveyed to the MSC by deed in accordance with the Electric and Water Infrastructure Agreement.

Attest:

Municipal Services Commission of the
City of New Castle, DE

By: Scott L Blomquist,
General Manager



CERTIFICATE OF DEFAULT

TO:

Re: Letter of Credit Number: _____

Date:

The Municipal Services Commission of the City of New Castle, DE hereby request the

Release of the amount of _____

(\$ _____) from the Letter of Credit for the Project/Development known

as _____

as improvements in accordance with the Electric and Water Infrastructure Agreement have not been completed to the satisfaction of the MSC in accordance with the Electric and Water Infrastructure Agreement. The Electric and Water Infrastructure Agreement is in default and the sum as set forth above is hereby demanded.

Attest:

Municipal Services Commission of the
City of New Castle, DE

By: Scott L Blomquist,
General Manager



NOTICE OF DEFAULT

TO:

Re: Performance Bond Number: _____

Date:

The Municipal Services Commission of the City of New Castle, DE hereby give notice that _____, Owner/Permittee has failed to comply with the terms and conditions of the Electric and Water Infrastructure Agreement between the MSC and Permittee. The Municipal Services Commission hereby give notice to you as pursuant to Performance Bond Number _____ that the Agreement is in default and in accordance with the terms of the bond, a response must be received by the MSC in 10 business days notifying the MSC if plans to undertake completion of the work or correcting the work requested by the MSC or pay the MSC to complete or correct the work. If no action is taken by the within 10 business days, the MSc shall enforce any remedy available and shall be entitled to complete or correct the work at the sole expense of the Owner and/or .

Attached hereto is the work which has not been completed in accordance with the terms of the Electric and Water Infrastructure Agreement.

Attest:

Municipal Services Commission of the
City of New Castle, DE

By: Scott L Blomquist,
General Manager

LETTER OF CREDIT WORKSHEET

APPLICATION FOR REDUCTION OF LETTER OF CREDIT OR PERFORMANCE BOND WORKSHEET

PROJECT NAME:

SECTION:

PHASE NO:

LETTER OF CREDIT OR PERFORMANCE BOND NO: _____

REQUEST NUMBER: _____

DATE OF THE REQUEST: _____ FOR WORK PERFORMED FROM: _____ TO _____

1	2	3	4	5	6	7
DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED FROM PREVIOUS APPLICATION	WORK COMPLETED THIS PERIOD	TOTAL COMPLETED TO DATE (3 + 4)	% COMPLETED (5 ÷ 1)	BALANCE TO FINISH (1-5)
	\$	\$	\$	\$	\$	\$
Sheet 1 of 2						

DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED FROM PREVIOUS APPLICATION	WORK COMPLETED THIS PERIOD	TOTAL COMPLETED TO DATE (3 + 4)	% COMPLETED (5 ÷ 1)	BALANCE TO FINISH (1-5)
	\$	\$	\$	\$	\$	\$
Sheet 2 of 2						

The undersigned Owner certifies that to the best of the Owner’s knowledge, information and belief the work conveyed by this Application for Reduction has been completed in accordance with the approved plats or accompanying plans, construction and engineering plans.

Owner’s Signature: _____ Date: _____

Print Owner’s Signature: _____