

LETTER OF CREDIT AGREEMENT

This Agreement (the "Agreement") is dated as of the ____ day of _____, 20__ and is entered into by and among _____ (the "Developer") and THE CITY OF CONCORD, a North Carolina Municipal Corporation ("Concord");

WITNESSETH:

WHEREAS, Developer is required to meet certain requirements of the ordinances of Concord;

WHEREAS, the Developer has elected to guarantee its performance in meeting said requirements by providing a Letter of Credit subject to the terms and conditions of this Agreement and as allowed by the Ordinances of the City of Concord.

NOW THEREFORE, in consideration of ten dollars and other valuable consideration, the Developer and Concord agree as follows:

- 1. Developer Requirements:
 - a. The Developer is required to construct or cause to be constructed certain improvements on that property located at:
_____.
 - b. The required improvements consist of: DETAILED DESCRIPTION – ATTACH PLANS IF NECESSARY OR APPROPRIATE
_____.
 - c. The cost of the required improvements is estimated as \$_____.
- 2. Default: Any or all of the following shall be considered a default under this Agreement:
 - i. Developer fails to substantially complete the above described improvements on or before _____.
 - ii. Improvements do not meet standards specified in the City’s ordinances and/or adopted Technical Standards, the North Carolina State Building Code, or this Agreement.
 - iii. Ownership of the property changes without the new property owner specifically assuming the obligation to install the improvements in accordance with this Agreement.
- 3. Requirements for Provider of Letter of Credit. The Bank providing the Letter of Credit shall:
 - a. Be licensed by the North Carolina Commissioner of Banks, if a state-chartered bank or listed as an active bank on the list published by the Office of the Comptroller of Currency of the United States if a national or international bank; and
 - b. Have not less than \$50 million in assets.
- 4. Letter of Credit Requirements: The Developer shall provide a Letter of Credit that meets the following requirements:
 - a. The original Letter of Credit with original signatures shall be provided. No photo copies, faxed copies, email copies, or other copies shall be accepted.
 - b. The Letter of Credit shall be irrevocable.
 - c. It is a condition of this Letter of Credit that it shall be deemed automatically extended without amendment for an additional one year period from the present or any future expiration date unless at least sixty (60) days prior to any such expiration date the bank shall notify the City in writing by overnight courier service, that the bank elects not to extend this letter of credit for any such additional period.

- d. The Letter of Credit shall state that the Bank shall, upon notice of Developer default, act as promptly as possible and not later than 10 days from the date of such notice. Notice of Default shall consist of a written statement from the City that the Developer is in default and shall not require any further proof of such default.
- e. Presentation at any local office of the Bank shall be accepted by the Bank. Bank shall also accept faxed presentation to a fax number that shall be included on the Letter of Credit.
5. Nature of Duties. Concord and/or the Agent shall have no duties or responsibilities except those expressly set forth in this Agreement. Concord shall not, by reason of this Agreement, be deemed to have a fiduciary relationship with the Developer; and nothing in this Agreement, expressed or implied, is intended to or shall be so construed as to impose upon Concord any obligations except as expressly set forth herein. Developer expressly acknowledges that Concord has not made any representations or warranties to the Developer and that no act by Concord hereafter taken, shall be deemed to constitute any representation or warranty by Concord to the Developer or to any other person or entity.
6. Benefit. This Agreement is made and entered into for the sole protection and benefit of Concord and the Developer, and their successors and assigns, and no other person or persons shall have any right to action hereon or rights to the Letter of Credit at any time.
7. Assignment. The terms hereof shall be binding upon and inure to the benefit of the heirs, successors, assigns, and personal representatives of the parties hereto; provided, however, that neither party shall assign this Agreement or any of its rights, interests, duties or obligations hereunder without the prior written consent of the other party, and that any such assignment (whether voluntary or by operation of law) without said consent shall be void.
8. Amendments. This Agreement shall not be amended except by a written instrument signed by all parties hereto.
9. Governing Law and Jurisdiction. This Agreement and all matters relating thereto shall be governed by and construed and interpreted in accordance with the laws of the State of North Carolina. Each of the parties hereby submits and agrees to the jurisdiction of the courts of Cabarrus County, North Carolina and agrees that the other parties may, at their respective option, enforce their respective rights under the Agreement in such courts.
10. Entire Agreement. This Agreement contains the entire Agreement and understanding between the parties with respect to the subject matter hereof and supersedes all preexisting and/or oral agreements between them respecting the subject matter hereof. All representations and promises made by a party to another party whether in writing or orally are understood by the parties to be merged into this Agreement.
11. Savings Clause. Invalidation of any one or more of the provisions of this Agreement shall in no way affect any of the other provisions hereof, which shall remain in full force and effect.
12. Execution in Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument, and in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

IN WITNESS, WHEREOF, the parties have executed this Agreement under seal as of the date first above written.

CONCORD:

THE CITY OF CONCORD, NORTH CAROLINA

By: _____
City Manager

Attest:

City Clerk

Approved as to Form:

City Attorney

DEVELOPER:

_____, LLC

By: _____
_____, Manager/Member

_____ COUNTY
STATE OF _____

I, _____, a Notary Public in and for _____
County and State of _____, do hereby certify that _____,
as Manager/Member of _____, personally appeared
before me this day and acknowledged to me that he/she is the Manager/Member and that
he/she has authority to sign on behalf of _____ and _____ that
he/she voluntarily signed the foregoing document for the purpose stated therein.

WITNESS my hand and Notarial Seal this the _____ day of _____, 20__.

My Commission Expires: _____ Notary Public