



20080514-0033382
 Pages: 26 F: \$293.00
 05/14/08 02:58:50 PM
 T20080020281
 Michael E. Kozikowski
 New Castle Recorder MISC

Tax Parcel No: 08-060.10-001

Prepared by: Michael Bennett/
 John Gysling

Return to:
 County Attorney &
 New Castle County
 Department of Law
 Government Center
 87 Reads Way
 New Castle, DE 19720

LAND DEVELOPMENT IMPROVEMENT AGREEMENT

THIS AGREEMENT made this 8th day of May, 2008, by and between **Peter J. and Carol Saia** (hereinafter referred to as "DEVELOPER") and NEW CASTLE COUNTY (hereinafter referred to as "COUNTY"), a political subdivision of the State of Delaware.

WHEREAS, DEVELOPER desires to construct a development known as **1115 Capitol Trail** (hereinafter referred to as "DEVELOPMENT"), Application No. **2007-0327-S**, situate **Mill Creek Hundred**, New Castle County, State of Delaware, as shown on the proposed **Record Plan to subdivide property for recordation and future development** (hereinafter referred to as "PLAN") such PLAN to be recorded in the Office of the Recorder of Deeds in and for New Castle County. The recorded PLAN and any County approved and recorded revision thereof, shall be incorporated as an integral part of this Agreement.

WHEREAS, in addition to the PLAN, the New Castle County Code ("Code") requires DEVELOPER to provide additional construction plans for all required improvements to COUNTY for review and approval. Such additional plans may include but are not limited to design standards and specifications for sanitary sewer, sediment and erosion control, stormwater management, general grading/lines and grades, landscaping, lighting, parking, and private streets. The approved plans, and any County approved revision thereof, shall collectively be referred to as the "construction plans" and shall be incorporated as an integral part of this Agreement.

WHEREAS, COUNTY requires that all developments in New Castle County be designed and constructed so as to conform to all applicable provisions of federal, state and COUNTY law, and all provisions, design standards, and specifications of the PLAN and construction plans.

26

Revised 2/07
 CC,Sr./GOH

WHEREAS, DEVELOPER is required to construct certain improvements, such as monuments, sanitary sewer, stormwater management and drainage structures, lighting, landscaping, bufferyards, sidewalks, curbing, paving, private streets, as well as other improvements to ensure adequate infrastructure in DEVELOPMENT. To ensure: (1) all such improvements are maintained and completed according to acceptable standards, (2) property or open space is transferred to the appropriate party, and (3) adequate performance guarantees are available to secure the completion and transfer of the improvements, COUNTY and DEVELOPER desire to enter into this Agreement and set forth the obligations of each party.

WHEREAS, this Agreement consists of the following provisions: PART I – SITE IMPROVEMENTS, PART II - SANITARY SEWER, PART III - PERFORMANCE GUARANTEE, and PART IV - GENERAL PROVISIONS.

NOW THEREFORE, IT IS AGREED, by and between the parties hereto, in consideration of the mutual promises and benefits contained herein, that:

PART I - SITE IMPROVEMENTS

A. **Construction.** DEVELOPER, at his or her expense and at no cost to COUNTY, shall construct all improvements in or related to DEVELOPMENT. Such construction shall: (1) conform to the PLAN and construction plans in all respects; (2) be designed in accordance with New Castle County design specifications; (3) comply with the requirements of the Code; and (4) comply with any and all other applicable laws, rules, and regulations.

B. COUNTY shall review required plans and submissions for compliance with the Code and COUNTY design criteria. COUNTY shall, in good faith, make available all information it controls and determines is necessary for the design and construction of the required improvements.

C. **Maintenance of improvements.** DEVELOPER shall be responsible for maintaining all improvements, and property designated for the construction of improvements, located within DEVELOPEMENT in a safe and sanitary condition, and in compliance with all standards. DEVELOPER shall be legally and financially responsible for maintaining improvements, until such time: (1) such improvement is legally transferred in accordance with the procedures existing for such transfer to the party designated in the Code or on the PLAN for the maintenance or ownership of said improvement, and (2) all other requirements for relieving DEVELOPER of maintenance, as stated in this Agreement, the Code, or other applicable laws, rules, and regulations, are satisfied. Developer's maintenance duties include but are not limited to:

1. The removal of snow from streets until acceptance of the street by DelDot.

2. The maintenance of all open space and common facilities until the improvements are inspected and approved by COUNTY, title is transferred according to applicable Code provisions, and, if the open space is designated as private, the organization charged with maintenance of the property is under the control of the homeowners.

D. **Transfer of improvements.** DEVELOPER shall transfer good and marketable title, clear of all liens and encumbrances, to those improvements designated on the PLAN, the Code, or this Agreement, to the party designated as owner of said improvements. Such transfer shall occur at the time specified in this Agreement, the Code, other applicable laws, rules, or regulations, for

such transfer. No transfer of title may occur until the improvement is inspected and approved by the appropriate COUNTY official, and all other requirements for such transfer are satisfied.

E. Drainage and Stormwater Management. In connection with drainage, the DEVELOPER, at his or her expense, shall:

1. Provide COUNTY all necessary or required surveys, plans, profiles, cross sections, and easement drawings required for the construction plans. The designs and plans shall conform to the requirements of COUNTY.

2. Submit all plans required by the Delaware Department of Transportation ("DelDOT") for its approval, including plans concerning dedicated public streets.

3. Convey to COUNTY all necessary on-site easements, in addition to those provided in the PLAN, and any necessary off-site easements, except those easements for common natural watercourses.

F. Stormwater management. In connection with stormwater management, the DEVELOPER, at his or her expense, shall:

1. Collect on-site runoff and dispose of it to the point of discharge into the common natural watercourse of the drainage area, or to such other point approved by COUNTY.

2. Construct required off-site improvements from the DEVELOPMENT to the approved point of discharge.

3. Construct stormwater management facilities as required by COUNTY, and maintain such facilities until the time stated in Part I, Section C.2.

4. Provide adequate improvements for up-stream runoff through DEVELOPMENT, such improvements shall be designed in accordance with the County drainage code.

G. General grading/lines and grades. In connection with grading, the DEVELOPER, at his or her expense, shall:

1. Properly grade each lot in DEVELOPMENT and receive COUNTY's approval prior to the issuance of a certificate of occupancy for the affected lot.

2. Properly grade the open space and common facilities and receive COUNTY's approval prior to the issuance of seventy-five percent (75%) of the building permits for the lots shown on the PLAN.

H. Sediment and erosion control.

1. In connection with sediment and erosion control, the DEVELOPER, at his or her expense, shall be responsible for constructing and maintaining sediment and erosion controls as required by COUNTY and in accordance with the Delaware Erosion and Sediment Control Handbook.

2. COUNTY shall issue no building permits until such time that all required perimeter erosion and sediment controls (including, but not limited to, silt fences, perimeter

dikes, sediment traps) are installed by DEVELOPER pursuant to the construction plans, and accepted and approved by COUNTY. Building permits will not be issued for lots that contain erosion and sediment control structures, other than silt fences, until such time as COUNTY has approved the removal of that structure.

I. In addition to the foregoing provisions, DEVELOPER or any other party involved in land disturbing activities, as defined in 7 Del. C. §4002(3), at the DEVELOPMENT site shall comply with 7 Del. C. §4001 et seq. and New Castle County Code Chapter 12. COUNTY may cause proceedings to commence against violators of 7 Del. C. §4001 et seq. pursuant to 7 Del. C. §4015, or may institute administrative and/or other proceedings consistent with Chapter 12 of the Code.

J. In addition to the specific rights and obligations that are contained in the foregoing, DEVELOPER and his or her successors and/or assigns shall comply with all applicable COUNTY ordinances, federal, and state laws, and the orders and directives of all COUNTY and state agencies.

K. **Lighting, landscaping, sidewalks, curbing, and bufferyards.** DEVELOPER, at his or her expense, shall install required sidewalks, curbing, lighting, and landscaping on individual building lots, including landscaping within easements, prior to the issuance of the certificate of occupancy for said lot.

L. **Open space and common facilities.** DEVELOPER, at his or her expense, shall construct the open space and common facilities, including installation of abutting sidewalks and curbing, and transfer title to the appropriate party by the issuance of seventy-five (75) percent of the building permits for lots shown on the PLAN. Before open space and common facilities can be transferred, COUNTY must inspect and approve, in writing, the condition of the improvements. Any transfer must be made in conformance with all Code provisions.

M. **Monuments.** DEVELOPER shall include an amount not less than three hundred (\$300.00) dollars in the performance guarantee for each required monument. All monuments must be installed, at DEVELOPER's expense, and a professional land surveyor registered in Delaware must certify the installation prior to the time designated in Chapter 40, Article 20 Section 520 (G)(2) of the Code.

N. **Private streets.** DEVELOPER, at his or her expense, shall install any private street prior to the issuance of the first certificate of occupancy of any lot in DEVELOPMENT.

O. **Inspection and acceptance of improvements.** The COUNTY shall provide for the inspection of required improvements during construction and insure their satisfactory maintenance and completion.

1. All improvements must be inspected and the condition thereof approved by COUNTY pursuant to the applicable Code provisions and procedures adopted thereto. Any COUNTY approval shall be in writing.

2. Upon completion of improvements, DEVELOPER shall forward a written request for inspection to the designated COUNTY official. DEVELOPER shall provide all plans, such as as-built drawings, and documents requested by COUNTY to conduct the inspection. Additionally, all required inspection fees must be paid prior to the inspection. COUNTY

representatives shall inspect the improvement and notify DEVELOPER of the condition of such improvement.

3. Unless another time is stated in this Agreement or the Code, all improvements shown on the PLAN or construction plans shall be constructed by DEVELOPER, inspected, and approved by COUNTY, and transferred where applicable, prior to the time a certificate of occupancy or use is issued for any structure on any lot shown on the PLAN. If the improvements affect only one lot, the improvements must be constructed, inspected, approved, and transferred where applicable, prior to issuance of a certificate of occupancy or use for said lot.

4. COUNTY shall not accept any dedication of an improvement until written approval of the condition of the improvement is issued to DEVELOPER and title is transferred to COUNTY according to the provisions of the Code and this Agreement.

5. The General Manager shall assign such inspectors, as may be necessary to inspect site work and ensure construction and maintenance is in accordance with the specifications depicted on the PLAN, construction plans, and the Code.

P. **Acceptance by Escrow Funds.** Whenever, by reason of the season of the year, or other extraordinary circumstance beyond the control of DEVELOPER, any required improvement cannot be completed, COUNTY may issue a temporary certificate of occupancy, provided there is no danger to health, safety, or welfare upon accepting a cash escrow or letter of credit in an amount of one hundred fifty (150) percent of the cost of completing said improvement. DEVELOPER shall execute an agreement with COUNTY and provide the above surety to secure the completion of the improvement. In no case shall a permanent certificate of occupancy be issued until improvements are completed, approved by COUNTY, and transferred to the appropriate party (if applicable). The performance guarantee covering such improvement shall remain in full force and effect.

Q. **Failure to complete or maintain improvements.**

1. **Site management corrective measures.** Failure of DEVELOPER, or his or her site contractor, to properly and promptly install and maintain drainage structures, stormwater management facilities, sanitary sewers, sediment and erosion controls, or other site management measures required by COUNTY, shall result in the following:

a. Notwithstanding any notification provisions in this Agreement, COUNTY, through the General Manager of the Department of Land Use ("General Manager") shall list deficiencies and endeavor to notify DEVELOPER that the deficiencies must be corrected within the specified time. Such notice may be effected by the most expeditious method as decided by the General Manager, including but not limited to, fax, hand delivery, regular mail, certified mail, or telephone. COUNTY, through the General Manager, may notify DEVELOPER in advance of any proposed action, but failure of COUNTY to do so will not affect DEVELOPER's or COUNTY's rights or obligations hereunder.

b. Notwithstanding other remedies available in this Agreement, failure to achieve compliance by the date specified shall be cause for COUNTY to take such action as it determines appropriate, including but not limited to: (1) suspension of issuance of certificates of occupancy or use for all structures covered by this Agreement, (2) refusal to issue new building permits for the DEVELOPMENT, and (3) the right to correct the deficiencies and draw all costs from the performance guarantee. If there is not complete compliance within seven (7) days of the

date specified in the notification, COUNTY may issue A STOP WORK order on all building permits issued to DEVELOPER for the DEVELOPMENT. The determination as to whether there is complete compliance with the notification rests with COUNTY.

c. If there is not complete compliance with the notification within thirty (30) days of the date specified in the notification, the COUNTY may issue A STOP WORK order on all building permits issued to DEVELOPER in New Castle County. The determination as to whether there is complete compliance with the notification rests solely with COUNTY and shall be made in good faith.

d. The strictures relative to building permits and certificates of occupancy stated above shall not be lifted until all deficiencies have been satisfactorily remedied as determined by COUNTY.

2. **Demand for completion of improvements.** Under the conditions noted below, COUNTY may demand that improvements be installed or constructed prior to the time designated in the Code or this Agreement for installation or construction. COUNTY shall provide DEVELOPER with a written demand that the improvements enumerated in the notice must be constructed within the time designated in the notice. If DEVELOPER fails to meet the terms of completion by the time designated in the notification, COUNTY may use the proceeds from the performance guarantee to perform any work reasonable to install or construct the improvement and to transfer title to the property if appropriate. COUNTY may demand the construction and installation of improvements if:

a. It appears, or COUNTY has reason to believe, that DEVELOPER does not intend to complete the improvements within a reasonable time. In a residential development, it shall be deemed an unreasonable delay if COUNTY does not issue a building permit or a certificate of occupancy for DEVELOPMENT for a period exceeding six (6) months; and

b. The delay in the installation or construction of the improvements affects persons residing in DEVELOPMENT who purchased a home or lot in DEVELOPMENT with constructive or actual notice that such improvement would be available in said DEVELOPMENT for use and enjoyment of the lot owners.

3. **Deteriorating or unsafe conditions.** If the condition of an improvement in DEVELOPMENT presents a health, safety, or welfare risk, COUNTY may take immediate corrective action without notice to DEVELOPER. COUNTY may use the proceeds from the performance guarantee to perform any work necessary to remove or correct the condition.

R. **Fees.** DEVELOPER shall be responsible for the payment of all fees associated with the construction, maintenance, and transfer of improvements as well as all other fees required by the Code including, but not limited to:

1. **Maintenance Escrow.** In residential subdivisions, DEVELOPER shall place funds as required by Chapter 40, Article 27, Section 310(B) of the Code in an interest-bearing escrow account. The funds must be deposited in the account within a reasonable time following settlement of each lot. The account must be completely funded prior to the issuance of seventy-five (75) percent of building permits in DEVELOPMENT.

2. **Residential Stormwater Management Facility Fund.** In residential subdivisions, DEVELOPER shall pay funds as required by Chapter 40, Article 27, Section 310(C)(1) of the Code to COUNTY for the purpose of residential stormwater management facility maintenance. This amount shall be paid to COUNTY prior to the issuance of seventy-five (75) percent of the building permits in DEVELOPMENT.

3. **Impact fees.** DEVELOPER shall pay all required impact fees for each lot or use prior to the issuance of a certificate of occupancy for that lot or use. No certificate of occupancy or use shall be issued until all impact fees are paid for that lot or use.

4. **Inspection fees.** DEVELOPER shall be responsible for all costs incurred by COUNTY for inspection of improvements. Such fees include but are not limited to any sewer inspection fees listed in Part II of this Agreement and open space and common facilities inspection fees. Any inspection of the open space and common facilities after the first inspection shall result in a fee of five hundred dollars (\$500.00) payable to New Castle County prior to any reinspection.

S. **Phasing.** If the Plan is delineated by phasing, each separate phase shall be considered a separate Plan for the purpose of completion and transfer of improvements incorporated into that particular phase.

PART II. SANITARY SEWER

SEWER AGREEMENT FOR APPLICATION NO. 2007-0327-S

LAND DEVELOPMENT KNOWN AS: 1115 Capitol Trail

DEVELOPER: Peter & Carol Saia

LOCATION: Mill Creek Hundred, New Castle County, Delaware

A. In connection with the sanitary sewer system for DEVELOPMENT, including laterals, gravity sanitary sewers, pump stations, force mains, and associated components and appurtenances (the "System"), DEVELOPER, at his or her expense, shall:

1. Construct the System according to the PLAN and related construction plans. Such construction shall: (1) conform to the PLAN and the construction plans in all respects; (2) be designed in accordance with all state and COUNTY design specifications including the "New Castle County Standard Specifications for Construction" and the standards of the Delaware Department of Natural Resources and Environmental Control ("DNREC"); and (3) comply with any and all applicable laws, rules, and regulations.

2. **Be solely responsible for the construction, operation and maintenance of all on-site sanitary sewer proposed by this DEVELOPMENT.**

3. Prior to the issuance of each certificate of occupancy for any structure in DEVELOPMENT, complete construction of the section of the System downstream from any such structure, receive all necessary COUNTY approvals.

4. Protect the COUNTY's sanitary sewer system ("County System") from accidental or deliberate discharges of stormwater or ground water from any portion of DEVELOPER's system that is connected or designed to be connected to the COUNTY System.

5. Not connect roof down spouts, foundation drains, sump pumps, area drains, storm sewers, combined sewers or appurtenances thereto, or any sewer or device carrying or discharging storm water, surface water, ground water or cooling water to the COUNTY System.

6. Submit to COUNTY, for approval, all necessary System plans and profiles as well as easements and rights-of-way drawings needed for the construction and maintenance of the System. County shall determine the format of submittals.

7. Provide the required number of drawings to COUNTY to enable County to apply to the appropriate state agency for necessary permits. County may apply to the DeIDOT if a franchise or permit is required and to DNREC for any necessary permits and authorizations. COUNTY may also direct DEVELOPER to forward plans to DNREC or DeIDOT for issuance of the necessary permits. DEVELOPER shall be responsible for all permit fees. No construction shall commence until DNREC issues the Authorization to Construct under the Laws of the State of Delaware, with a WPCC State Permit Number to COUNTY, and until DeIDOT issues any required permits. COUNTY assumes no responsibility for any cost incurred by DEVELOPER in the event DNREC or DeIDOT does not grant final approval.

8. Include in all deeds to the properties in DEVELOPMENT, a covenant running with the land requiring the property owners to pay to COUNTY a sewer service charge as established by COUNTY pursuant to applicable standards.

9. After completion of the System, supply to COUNTY one set of drawings on reproducible sheets acceptable to COUNTY and three sets of paper prints showing the System as-built. COUNTY may also require submittal in a specified electronic format.

10. Pay, when due, all charges specified in Part II of this Agreement.

B. The COUNTY shall:

1. Permit connection of the System as depicted on the PLAN and related construction plans to the County System in accordance with the terms and conditions of Part II of this Agreement.

C. **Industrial User Permits.** DEVELOPER's failure to obtain an industrial user permit (if applicable) pursuant to the Code, shall render Part II of this Agreement null and void.

D. **Release.** As required by State law, DEVELOPER hereby agrees to release the County, its officers, employees and agents from all liability or damage which may in any manner result to the premises by reason of a sewer connection.

E. **Modification.** Part II of this Agreement can be only amended or modified in writing, signed by DEVELOPER and the General Manager of the Department of Special Services.

F. **Assignability.** This sanitary sewer capacity commitment shall not be assignable except with the written consent of the County Executive.

G. **Effective Date/Duration.** Part II of this Agreement shall become effective upon execution and recordation of the Agreement. Part II of the Agreement shall be in effect for the life of the PLAN and shall automatically expire upon occurrence of either of the following: 1) completion of construction of the DEVELOPMENT, including approval and acceptance by the COUNTY of all related sanitary sewer infrastructure, or 2) sunseting or any other expiration or invalidation of the PLAN.

H. **Sewer Connection Charges.** In connecting to the COUNTY System, DEVELOPER shall pay connection charges (lateral fees and capital recovery fees) for the DEVELOPMENT as provided herein, based on an average daily flow of six hundred (600) gallons per day ("gpd"). **Payment must be made by paying one half (½) of the applicable sewer connection charges for each unit as outlined in paragraph three (3) below prior to the issuance of each building permit and paying the other one half (½) prior to the issuance of each certificate of occupancy.**

1.	Total Lateral Fees (LF):		Fee
	2 connections @ \$101.00/connection		\$202.00
2.	Total Capital Recovery Fees (CRF):		
	Code	Calculation	Fee
	WWTP	600 gpd @ \$2.40/gpd	\$1,440.00
	Total Capital Recovery Fee (CRF): \$1,440.00		

3. **Fee Breakdown Per Unit:**
Unit: 1
Flow Rating: 300 gpd
Description: Single family dwelling

<u>Code</u>	<u>Calculation</u>	<u>Fee</u>
WWTP	300 gpd @ \$2.40/gpd	\$720.00
1 connections @ \$101.00/connection		\$101.00

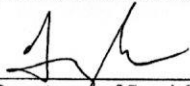
Total for Unit = \$821.00

4. **Total Sewer Connection Charge = LF + CRF =**

$$\begin{array}{r}
 \$ \quad 202.00 \quad + \quad \$ \quad 1,440.00 \quad = \quad \$1,642.00 \\
 \text{(LF)} \qquad \qquad \qquad \text{(CRF)}
 \end{array}$$

I. **Inspection Fee.** DEVELOPER shall reimburse COUNTY for the cost incurred by COUNTY for inspecting the System. The inspection fee shall be based on \$2.50 per linear foot of pipe to be inspected, as shown on the DEVELOPMENT's sewer construction plans. The total cost of this inspection fee will be determined at the time of final approval of the DEVELOPMENT's sewer construction plans. This inspection fee is a one-time charge, and payment in full must be made prior to PLAN approval and prior to the start of any site work.

RECOMMENDED APPROVAL of this Part II:



 Department of Special Services General Manager
 Date 4/30/08

PART III - PERFORMANCE GUARANTEE

A. To guarantee that improvements are maintained and completed as required herein, DEVELOPER shall provide a performance guarantee and SURETY in a form acceptable to COUNTY and in an amount approved by COUNTY. All improvements shall be subject to said performance guarantee.

B. **Proceeds Available.** The entire amount stated in the performance guarantee shall be provided to COUNTY prior to PLAN approval. Twenty percent (20%) of the entire performance guarantee amount shall be available to COUNTY upon recordation of PLAN and twenty percent (20%) shall be available to COUNTY during the warranty against defects period. The amount determined applicable for each PHASE shall be available to COUNTY at such date a pre-construction meeting for that PHASE is held. If a pre-construction meeting is not held for that PHASE, the amount determined to be applicable for that PHASE shall be available at such time the first building permit is issued for the PHASE. If a PLAN is not PHASED, the PLAN shall be treated as if it were one (1) PHASE. It shall be DEVELOPER'S sole responsibility to notify the bank, surety, or other party that the amount determined to be applicable for a particular PHASE is available to COUNTY. COUNTY shall have no responsibility to notify any party and COUNTY's rights to collect SURETY proceeds shall not be affected in any way if the bank, surety, or other party is not notified.

C. DEVELOPER shall maintain this performance guarantee and a SURETY in the required sum and in accordance with this Agreement. If DEVELOPER fails to maintain the SURETY in the required amount, DEVELOPER shall be considered in violation of this Agreement.

D. **Amount.** DEVELOPER shall provide SURETY, the amount of which shall be based on either method 1 or 2 below. Twenty percent (20%) of the entire performance guarantee amount shall serve as security for a warranty against defects period.

1. **Square footage or per lot/unit formula:**

Non-Residential: \$2.00 per square foot of gross floor area = \$2.00 x =

Residential:

Attached homes or condominiums: \$2,500.00 per lot or unit = \$2,500.00 x

Single family detached homes: \$3,500.00 per lot = \$3,500.00 x 2 = **\$7,000.00**

Warranty against defect amount: \$1,166.00

Total performance guarantee: \$7,000.00

2. **Cost estimate approach:** DEVELOPER'S engineer, as defined in the Chapter 40, Article 33 of the Code shall submit a signed and sealed cost estimate to COUNTY of all improvements. The estimate must specifically list each improvement or category of improvement and state the amount applicable to that improvement or that category of improvement. The form and amount estimate must be approved and accepted by COUNTY. The approved engineer's cost estimate shall be attached to this Amendment and shall be made part of the LDIA. The

SURETY shall be in an amount equal to one hundred twenty (120%) percent of the engineer's cost estimate.

Approved estimate:

Warranty against defects:

Total performance guarantee:

E. The form of the SURETY shall be a letter of credit, certified check, performance bond, or other acceptable surety as determined by the County Attorney, a copy of which is attached to this Agreement and shall be incorporated herein.

F. The performance guarantee and SURETY shall be provided for all improvements collectively. However, the amounts stated in the attached "Land Development Improvement Agreement Information Sheets" for each PHASE shall be available to COUNTY as stated herein. If there is only one (1) PHASE, the amount stated in paragraph D titled "Amount" shall be available as stated in Paragraph B, titled "Proceeds Available."

G. **Calling SURETY.** COUNTY may collect the proceeds of the SURETY if (1) improvements have not been maintained, completed, corrected, or transferred within the time specified in this Agreement, otherwise required by the Code, or as provided by the COUNTY in writing and (2) COUNTY has complied with applicable notice provisions of this Agreement.

H. **SURETY bond.** If a bond is provided as the form of SURETY, COUNTY shall give DEVELOPER and surety company written notice of its intention to demand payment under the bond. If DEVELOPER has not corrected deficiencies or completed its obligations under the Agreement by the date specified in the aforesaid notification or the time otherwise designated by the COUNTY for completion, COUNTY may demand from surety company, that amount necessary, as determined by County, to complete the improvements. If DEVELOPER fails to transfer title to property shown on the PLAN to be owned by COUNTY, or other party designated for the maintenance of common facilities and open space, COUNTY may demand from surety company, all costs associated with the transfer of title, including but not limited to, the payment of outstanding state and COUNTY taxes and other costs necessary to establish good and marketable title. Any notification provisions provided above shall be waived in cases where COUNTY must take immediate corrective action in the interest of health, safety, and welfare.

I. **Letter of credit.** If a letter of credit is provided as the form of surety, the following provisions apply to draws made under the letter of credit.

1. (a) A draw may be made under the Letter of Credit by COUNTY pursuant to this Section 1 (a "Section 1 Draw") in the event of a breach under this Agreement by DEVELOPER which is not cured in accordance with this Agreement and which breach COUNTY cures and for which COUNTY, its designee, incurs costs and expenses with respect to such cure.

A Section 1 Draw may be made by presenting to the bank issuing the Letter of Credit (the "Issuing Bank"), in accordance with the Letter of Credit:

(i) A statement from the General Manager bearing reference to the Letter of Credit and specifying, in general terms, the reason for COUNTY's draw.

(ii) A copy of the Letter of Credit.

2. (a) A draw may be made under the Letter of Credit by COUNTY pursuant to this Section 2 (a "Section 2 Draw") in the event that the Issuing Bank gives COUNTY notice that it intends to terminate the Letter of Credit and DEVELOPER has not delivered to COUNTY a substitute or replacement for the Letter of Credit with substantially similar terms within sixty (60) days prior to the expiration date of the Letter of Credit.

(b) A Section 2 draw may be made by presenting to the Issuing Bank, in accordance with the Letter of Credit:

(i) An affidavit signed by the General Manager bearing reference to the Letter of Credit in the amount then available under the Letter of Credit and specifying that the draw has been made as a result of the Issuing Bank's failure to extend the term of the Letter of Credit; and

(ii) a copy of the Letter of Credit.

3. (a) All references to the Letter of Credit shall include any and all letters of credit that are substituted for or replace the original Letter of Credit.

(b) All references to the Issuing Bank shall include financial institutions issuing letters of credit which are substituted for or replace the original Letter of Credit.

J. In the event COUNTY incurs costs in excess of the amount of the performance guarantee in completing or maintaining said improvements, DEVELOPER agrees to pay COUNTY, upon demand, such amount sufficient to pay all costs incurred relating to said improvements.

K. **Reduction of SURETY amount.** When all improvements in a PHASE are completed, inspected, approved, and title transferred if applicable, DEVELOPER may request, in writing, to the General Manager, that the SURETY amount required by this performance guarantee for that particular PHASE, be reduced by the amount allocated for that PHASE. The General Manager may allow a reduction in the SURETY in an amount COUNTY deems appropriate but in no case shall a reduction be greater than that amount allocated for the PHASE. However, at all times that this performance guarantee is required to be effective, the amount available under the SURETY shall be no less than twenty (20) percent of the total amount of the performance guarantee. This provision does not create a right in DEVELOPER to receive a reduction in the amount of the performance guarantee.

L. **Warranty against defects.** Twenty percent of the entire performance guarantee shall serve as a warranty that all improvements are free from defects for a period of three (3) years after the later: (1) of the date of COUNTY's inspection and acceptance of the final improvement to be constructed, or (2) the date of the transfer of title to the final improvement to be transferred. COUNTY agrees to notify DEVELOPER upon COUNTY's discovery of any defect within the three-year warranty period. DEVELOPER must remedy said defect within thirty (30) days after notification from COUNTY. If the defect requires more than thirty (30) days to correct, the General Manager may grant DEVELOPER additional time to correct said defect. DEVELOPER must commence corrective action within the stated additional period and continue to work diligently to complete the repair work. Such agreement must be in writing and signed by the General Manager. If DEVELOPER fails to meet the warranty obligations in a timely manner, COUNTY, or its designee, may perform any work reasonable to correct the defect. COUNTY

shall draw upon the performance guarantee to pay for all costs and expenses relating to correction or completion of the improvement. COUNTY is not limited to the warranty amount to correct discovered defects. DEVELOPER shall be responsible for any costs incurred to correct defects in excess of the amount available under the warranty amount of the performance guarantee and shall pay COUNTY upon demand any such additional costs.

M. **Release of performance guarantee.** Upon written request from DEVELOPER, after all improvements are inspected, approved, and transferred where applicable, COUNTY shall, within a reasonable amount of time, release that amount of the SURETY that is not reserved for warranty against defects. At such time as the County inspects, approves, and transfers, if applicable, all of the improvements identified on the PLAN, the warranty against defects period for the PLAN shall commence.

N. **Release of warranty amount.** Upon written request from DEVELOPER, and if COUNTY has not noticed defects to DEVELOPER, that amount of the SURETY reserved for warranty against defects shall be released after (3) three years of the date the warranty against defects period commenced.

OWNER COMPANY

2000 FIRST STATE BOULEVARD
FIRST STATE INDUSTRIAL PARK
WILMINGTON, DE 19804-0008
TEL: 302.633.5900
FAX: 302.429.3099
E-MAIL: LAMBERT@NEWCASTLE.COM

CONTRACTOR

NEW CASTLE REGIONAL OFFICE
130 E 21ST AND W-98 RD
NEWARK, DE 19714
TEL: 302.454.4282

CONCRETE POWER DELIVERY (CAS)

P.O. BOX 231
850 KING STREET
NEWARK, DE 19714
TEL: 302.429.3099

BELL ATLANTIC

180 SHREE BOULEVARD
SUITE 2100 19141
NEWARK, DE 19714
TEL: 610.280.5547

SITE DATA

OWNER: PETER AND CAROL SAM
ADDRESS: 320 HIGHER DRIVE
PARCEL # PARCEL 2A BLDG
TAX MAP 5A.3 BLDG A, PARCEL 1
GROSS PARCEL AREA: 78,726 SQ FT (1,807.9 ACRES)
NET PARCEL AREA: 12,127 TO 10,449 ACRES
TOTAL NUMBER OF LOTS PROPOSED: 2 LOTS
TOTAL NUMBER OF DWELLING UNITS
PROPOSED: TWO DWELLING UNITS

ZONING DATA

ZONING DISTRICT: NC6.5
CURRENT LAND USE - PRIVATE UNDEVELOPED LOT
PROPOSED LAND USE - SINGLE FAMILY RESIDENCE
LOT NO. LOT AREA LOT WIDTH SHEET YARD SIDE YARD REAR YARD
1 10,925+ 85.63 25 6 6
2 6,493+ 114.88 25 23 23
* NOTE: PROTECTED RESERVATION AREAS AND STEEP SLOPES HAVE BEEN SHOWN FROM THE NET AREA OF THE INDIVIDUAL LOTS

NEW CASTLE COUNTY NOTES

1. ANY AREA DESIGNATED FOR THE PROTECTION AS A NATURAL RESOURCE PURSUANT TO CHAPTER 40 OF THE NEW CASTLE COUNTY CODE IS HEREBY PROTECTED BY A CONSERVATION EASEMENT THAT SHALL RUN IN PERPETUITY FOR THE BENEFIT OF NEW CASTLE COUNTY. ANY AREA DESIGNATED AS A NATURAL STATE EXCLUSIVE OF ANY RECREATION REQUIRED BY THE COUNTY CODE REQUIRED BY THIS PLAN AND THE NEW CASTLE COUNTY CODE SHALL BE SUBJECT TO THE LAND DEVELOPMENT IMPROVEMENT AGREEMENT (LDA), AND THE PERFORMANCE GUARANTEE INCORPORATED THEREIN AND FOR NEW CASTLE COUNTY STATE OF DELAWARE, OR _____ AT INSTRUMENT NO _____
2. THIS PLAN IS SUBJECT TO THE IMPACT FEE PROVISIONS OF CHAPTER 40, ARTICLE 14 OF THE NEW CASTLE COUNTY CODE, AS MAY BE AMENDED BY NEW CASTLE COUNTY COMMISSIONS ON THIS SITE, EXCEPT WHERE NECESSARY TO CONSTRUCT BUILDINGS, PARKING ACCESSWAYS, RECREATIONAL FACILITIES, DRAINAGE FACILITIES AND UTILITIES. SUCH IMPROVEMENTS SHALL BE PRESERVED AND PROPERLY PROTECTED DURING CONSTRUCTION AND SEGMENT CONTROL, AND STOPWATER DRAINAGE SHALL BE PROVIDED IN ACCORDANCE WITH THE DELAWARE SEGMENT CONTROL CODE. CRITICAL NATURAL AREAS, THIS SITE DOES NOT CONTAIN ANY CRITICAL NATURAL AREAS.

JUSTIFICATION OF SEWER SINGLE FAMILY HOME SITE AVERAGE DAILY FLOWS

- A) 200 GPD DAILY FLOW/SINGLE FAMILY
 - B) DURING 24 HOUR PERIOD 10 HOURS PER DAY (DURING 14 HOURS OF PEAK FLOW) 100 GPD PER HOUR CALCULATED USE ONLY APPROX.
 - C) 200 GPD/HOUR PER HOUR
 - D) FOR TWO LOTS 600 GPD
- SINGLE FAMILY HOME SITE PEAK DAILY FLOWS**
- A) DURING 24 HOUR PERIOD 10 HOURS PER DAY (DURING 14 HOURS OF PEAK FLOW) 100 GPD PER HOUR CALCULATED USE ONLY APPROX.
 - B) 200 GPD/HOUR PER HOUR
 - C) 200 GPD/HOUR PER HOUR
 - D) FOR TWO LOTS 600 GPD

GENERAL NOTES

1. THE PROPOSED PLAN WAS RELOCATED TO SUBGRADE THE SAID LOT IN TO TWO RAKESH BATA ASSOCIATES, P.A., ENVIRONMENTAL, RESEARCH & CONSULTING, INC. DATED OCTOBER 25, 2001. THE UNPAVED SURFACE OF THE WHITE CLAY SEWER WAS CLASSIFIED AS PROPERTY IS NOT WITHIN FEMA 100-YEAR FLOOD PLAIN.
2. WATER SUPPLY IS SUBJECT TO THE APPROVAL OF THE DELAWARE DEPARTMENT OF PUBLIC HEALTH SANITATION CONTROL AND THE DELAWARE DEPARTMENT OF PUBLIC HEALTH SANITATION CONTROL AND THE DELAWARE DEPARTMENT OF PUBLIC HEALTH SANITATION CONTROL AND THE DELAWARE DEPARTMENT OF PUBLIC HEALTH SANITATION CONTROL.
3. SEWER: NEW CASTLE COUNTY - SEWER IS SUBJECT TO THE APPROVAL OF THE NEW CASTLE COUNTY DEPARTMENT OF PUBLIC HEALTH SANITATION CONTROL AND THE DELAWARE DEPARTMENT OF PUBLIC HEALTH SANITATION CONTROL AND THE DELAWARE DEPARTMENT OF PUBLIC HEALTH SANITATION CONTROL.
4. FLOODING: THE PROPOSED DEVELOPMENT SHALL BE DESIGNED TO ACCOMMODATE THE ANTICIPATED FLOODING CAUSED BY THIS ADDITIONAL DEVELOPMENT. NEW CASTLE COUNTY HAS COMPLETED AN IMPROVEMENT AGREEMENT FOR THIS DEVELOPMENT. THE OWNER OF THIS PROPERTY, HIS SUCCESSORS OR ASSIGNS, SHALL BE RESPONSIBLE FOR AN EXPANSION SEWER SERVICE RESERVATION PROTECTION AREA MAP DATED MAY OF 2001. THIS SITE IS NOT WITHIN THE MAP.
5. NO OBSTRUCTIONS SHALL BE PERMITTED TO BE REMOVED PRIOR TO ANY LAND DISTURBING ACTIVITY. CONTRACTOR CANNOT UNDER ANY CIRCUMSTANCES EXCEED THE DELIMITED BOUNDARIES LAST DATED MARCH 27, 2007, OR AS LATER AMENDED AND APPROVED IN WRITING BY THE DEPARTMENT OF LAND USE IS HEREBY CONSIDERED TO BE A PART OF THE RECORD. ANY INDIVIDUAL LOT FOR A PERIOD OF ONE YEAR AFTER A LOT IS SOLD FOR PURPOSES OF COMPLETING OVERALL SITE PREPARE AND/OR LANDSCAPING REQUIREMENTS, AS DIRECTED BY NEW CASTLE COUNTY. THIS SHOWN DISPOSITION OR SUBSTANTIAL IMPROVEMENT TO RESIDENTIAL AND NONRESIDENTIAL STRUCTURES SHALL HAVE THE LOWEST FLOOD INCLUDING DESIGNATED ELEVATED NOT LESS THAN THE ELEVATION OF THE ADJACENT FLOODPLAIN (100-YEAR FLOOD) AND BE ADJACENT TO A FLOODPLAIN.
6. THERE ARE NO LIMITATIONS FOR A DWELLING WITH BASEMENTS ACCORDING TO SDMA - NOTES NEW CASTLE COUNTY SOIL SURVEY FOR THE MAJOR-CRITICAL (M3) SOIL TYPE. THE REMAINING WALL MUST BE AT A MINIMUM TWO FEET FROM THE PROPERTY LINE.

Certification of Plan Accuracy
I, _____ a duly licensed professional engineer with a duly registered professional seal, certify that I am the author of the plan and that I am a duly licensed professional engineer with a duly registered professional seal, and that I am the author of the plan and that I am a duly licensed professional engineer with a duly registered professional seal.

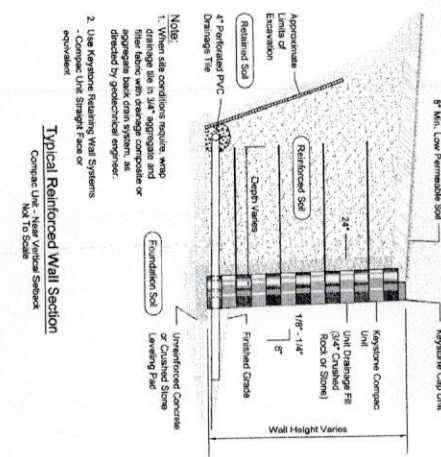
Certification of Ownership
We, Peter and Carol Sam, the undersigned, hereby certify that we are the owners of the property shown in the plan and that we are duly licensed professional engineers with a duly registered professional seal, and that we are the authors of the plan and that we are duly licensed professional engineers with a duly registered professional seal.

Certification of Plan Approval
I, _____ a duly licensed professional engineer with a duly registered professional seal, certify that I am the author of the plan and that I am a duly licensed professional engineer with a duly registered professional seal.

Certification of Land Use
I, _____ a duly licensed professional engineer with a duly registered professional seal, certify that I am the author of the plan and that I am a duly licensed professional engineer with a duly registered professional seal.

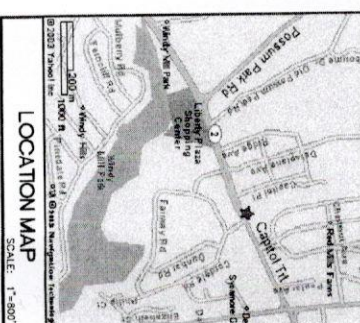
Certification of Sewer
I, _____ a duly licensed professional engineer with a duly registered professional seal, certify that I am the author of the plan and that I am a duly licensed professional engineer with a duly registered professional seal.

Certification of Flood
I, _____ a duly licensed professional engineer with a duly registered professional seal, certify that I am the author of the plan and that I am a duly licensed professional engineer with a duly registered professional seal.



NOTE:
1. When site conditions require, wrap drainage tie in 3" x 6" aggregate and separate back-cast concrete with deformed bars, clean system, as designed by geotechnical engineer.
2. Use KeyStone Retaining Wall Systems - Composite Unit straight face or equivalent.

TYPICAL REINFORCED WALL SECTION
Composite Unit - New Vertical Shearlock
N1 to Scale



NO.	REVISION	BY	DATE
1	FOR ALL DIMENSIONS COMPLY WITH 2007/		

DESIGNED BY	PAUL S. BATA, P.E.
CHECKED BY	PAUL S. BATA, P.E.
DATE	09/27/2007
SCALE	1" = 30'

APPROVED BY	TOM BISHOP, P.E.
DATE	09/27/2007

PROJECT NO.	PSL-2003.1
FILE NAME	PAUL-DP1
SHEET	9-BET
OF	1

APPLICATION NUMBER
20070327

RECORD PLAN FOR THIS CAPITOL TRAIL GRADING PLAN

115 Capitol Trail - Mill Creek Hundred
Newark, Delaware 19711
New Castle County, Delaware

PAUL S. BATA, P.E.
320 HIGHER DRIVE
NEWARK, PENNSYLVANIA 19387
TEL: 610.564.8908 FAX: 610.564.0746

PAUL S. BATA, P.E.
320 HIGHER DRIVE
NEWARK, PENNSYLVANIA 19387
TEL: 610.564.8908 FAX: 610.564.0746

PNC Bank, National Association
Trade Service Operations,
3rd Floor
500 First Avenue
Pittsburgh, PA 15219
Mail Stop: P7-PFSC-03-T

Swift: PNCCU33
Telephone: 1-800-682-4689



DATE: APRIL 17, 2008

BENEFICIARY:
NEW CASTLE COUNTY
SEE COMPLETE NAME AND ADDRESS BELOW
NEW CASTLE DE 19720

APPLICANT:
PAUL SALAMONE
345 BEAUMONT ROAD
DEVON, PA 19333

AMENDMENT TO IRREVOCABLE STANDBY LETTER OF CREDIT

OUR REFERENCE: 18109134-00-000
AMENDMENT NUMBER: 1

WE HEREBY AMEND OUR IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER
18109134-00-000 AS FOLLOWS:

BENEFICIARY'S NAME AND ADDRESS:
NEW CASTLE COUNTY
GENERAL MANAGER
DEPARTMENT OF LAND USE
87 READ'S WAY
NEW CASTLE COUNTY GOVERNMENT CENTER
NEW CASTLE, DE 19720
ATTN: MICHAEL BENNETT

RECEIVED
APR 21 2008
DEPT. OF LAND USE

DELETE:

WE HEREBY ESTABLISH OUR IRREVOCABLE STANDBY LETTER OF CREDIT NO.
18109134-00-000 IN FAVOR OF NEW CASTLE COUNTY, AT THE REQUEST OF AND
FOR THE ACCOUNT OF PAUL SALAMONE (DEVELOPER), FOR AN AMOUNT OR AMOUNTS
NOT TO EXCEED, US\$7,000.00 (SEVEN THOUSAND AND 00/100 UNITED STATES
DOLLARS).

SUBSTITUTE:

WE HEREBY ESTABLISH OUR IRREVOCABLE STANDBY LETTER OF CREDIT NO.
18109134-00-000 IN FAVOR OF NEW CASTLE COUNTY, AT THE REQUEST OF PETER
J. AND CAROL SAIA (DEVELOPER), FOR AN AMOUNT OR AMOUNTS NOT TO EXCEED,
US\$7,000.00 (SEVEN THOUSAND AND 00/100 UNITED STATES DOLLARS).

DELETE:

"PAUL SALAMONE HAS FAILED TO COMPLY WITH THE TERMS OF THE LAND
DEVELOPMENT IMPROVEMENT AGREEMENT WITH NEW CASTLE COUNTY FOR
APPLICATION NO. 2007-0327S PERTAINING TO 1115 CAPITOL TRAIL. THEN AND
IN SUCH CASE PNC BANK, NATIONAL ASSOCIATION IS AUTHORIZED TO PAY TO NEW
CASTLE COUNTY SUCH PORTION OR ALL OF SAID PROCEEDS THAT MAY BE
NECESSARY TO SECURE COMPLETION. NEW CASTLE COUNTY REQUESTS THE
PAYMENT OF (INSERT AMOUNT)."

PNC Bank, National Association
Trade Service Operations
3rd Floor
500 First Avenue
Pittsburgh, PA 15219
Mail Stop: P7-PFSC-03-T

Swift: PNCCUS33
Telephone: 1-800-682-4689



SUBSTITUTE:

"DEVELOPER HAS FAILED TO COMPLY WITH THE TERMS OF THE LAND DEVELOPMENT IMPROVEMENT AGREEMENT WITH NEW CASTLE COUNTY FOR APPLICATION NO. 2007-0327S PERTAINING TO 1115 CAPITOL TRAIL. THEN AND IN SUCH CASE PNC BANK, NATIONAL ASSOCIATION IS AUTHORIZED TO PAY TO NEW CASTLE COUNTY SUCH PORTION OR ALL OF SAID PROCEEDS THAT MAY BE NECESSARY TO SECURE COMPLETION. NEW CASTLE COUNTY REQUESTS THE PAYMENT OF (INSERT AMOUNT)."

DELETE:

"THE COUNTY HAS RECEIVED NOTIFICATION THAT YOU INTEND TO TERMINATE THE LETTER OF CREDIT AND PAUL SALAMONE HAS NEITHER OBTAINED A LETTER OF CREDIT IN REPLACEMENT OR SUBSTITUTION THEREOF NOR COMPLETED THE IMPROVEMENTS AS REQUIRED."

SUBSTITUTE:

"THE COUNTY HAS RECEIVED NOTIFICATION THAT YOU INTEND TO TERMINATE THE LETTER OF CREDIT AND THE DEVELOPER HAS NEITHER OBTAINED A LETTER OF CREDIT IN REPLACEMENT OR SUBSTITUTION THEREOF NOR COMPLETED THE IMPROVEMENTS AS REQUIRED."

PLEASE SIGNIFY YOUR CONSENT TO THIS AMENDMENT BY SIGNING THE ATTACHED CONSENT TO THIS AMENDMENT AND RETURNING THE SAME DIRECTLY TO US BY MAIL OR COURIER OR TO THE ADVISING BANK FOR THEIR TRANSMISSION TO US. YOUR IMMEDIATE ATTENTION TO THIS MATTER IS REQUIRED IN ORDER THAT MAY COMPLETE OUR RECORDS.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.


PNC BANK, NATIONAL ASSOCIATION
GLOBAL TRADE SERVICE OPERATIONS

PNC Bank, National Association
Trade Service Operations
3rd Floor
500 First Avenue
Pittsburgh, PA 15219
Mail Stop: P7-PFSC-03-T

Swift: PNCCUS33
Telephone: 1-800-682-4689



CONSENT TO AMENDMENT

IN REFERENCE TO AMENDMENT NUMBER 1:

WE HEREBY CONSENT TO THE TERMS AND CONDITIONS OF THIS AMENDMENT.

WE HEREBY DO NOT CONSENT TO THE TERMS AND CONDITIONS OF THIS AMENDMENT.

WE FURTHER CERTIFY THAT THE UNDERSIGNED IS AUTHORIZED TO EXECUTE THIS AGREEMENT

NEW CASTLE COUNTY

BY: 

DATE: 4-22-08

PNC Bank, National Association
Trade Service Operations
3rd Floor
500 First Avenue
Pittsburgh, PA 15219
Mail Stop: P7-PFSC-03-T

Swift: PNCCUS33
Telephone: 1-800-682-4689

BENEFICIARY:
NEW CASTLE COUNTY
SEE COMPLETE NAME AND ADDRESS BELOW
NEW CASTLE DE 19720

APPLICANT:
PAUL SALAMONE
345 BEAUMONT ROAD
DEVON, PA 19333



IRREVOCABLE STANDBY LETTER OF CREDIT

OUR REFERENCE: 18109134-00-000
AMOUNT: USD \$7,000.00
ISSUE DATE: MARCH 26, 2008
EXPIRY DATE: MARCH 26, 2009
EXPIRY PLACE: OUR COUNTERS

BENEFICIARY'S NAME AND ADDRESS:
NEW CASTLE COUNTY
GENERAL MANAGER
DEPARTMENT OF LAND USE
87 READ'S WAY
NEW CASTLE COUNTY GOVERNMENT CENTER
NEW CASTLE, DE 19720

ATTN: MICHAEL BENNETT

WE HEREBY ESTABLISH OUR IRREVOCABLE STANDBY LETTER OF CREDIT NO. 18109134-00-000 IN FAVOR OF NEW CASTLE COUNTY, AT THE REQUEST OF AND FOR THE ACCOUNT OF PAUL SALAMONE (DEVELOPER), FOR AN AMOUNT OR AMOUNTS NOT TO EXCEED, US\$7,000.00 (SEVEN THOUSAND AND 00/100 UNITED STATES DOLLARS).

THIS LETTER OF CREDIT IS SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

1. **EFFECTIVE DATE:** MARCH 26, 2008.
EXPIRATION DATE: MARCH 26, 2009, SUBJECT TO AUTOMATIC EXTENSIONS DESCRIBED BELOW.

2. THIS LETTER OF CREDIT IS AVAILABLE BY SIGHT DRAFT(S) BEING PRESENTED TO PNC BANK, NATIONAL ASSOCIATION, 500 FIRST AVENUE, THIRD FLOOR, P7-PFSC-03-T, PITTSBURGH, PA 15219 ATTN: STANDBY L/C UNIT (HEREINAFTER "BANK"). ALL DRAFTS DRAWN UNDER THIS LETTER OF CREDIT MUST BEAR THE CLAUSE "DRAWN UNDER PNC BANK, NATIONAL ASSOCIATION LETTER OF CREDIT NO. 18109134-00-000 DATED MARCH 26, 2008."

3. THE SIGHT DRAFT SHALL BE ACCOMPANIED BY THE FOLLOWING STATEMENT PURPORTEDLY SIGNED BY THE NEW CASTLE COUNTY GENERAL MANAGER OF THE DEPARTMENT OF LAND USE, OR HIS OR HER DESIGNEE STATING:

"PAUL SALAMONE HAS FAILED TO COMPLY WITH THE TERMS OF THE LAND DEVELOPMENT IMPROVEMENT AGREEMENT WITH NEW CASTLE COUNTY FOR APPLICATION NO: 2007-0327S PERTAINING TO 1115 CAPITOL TRAIL. THEN AND IN SUCH CASE PNC BANK, NATIONAL ASSOCIATION IS AUTHORIZED TO PAY TO NEW CASTLE COUNTY SUCH PORTION OR ALL OF SAID PROCEEDS THAT MAY BE

PNC Bank, National Association
Trade Service Operations
3rd Floor
500 First Avenue
Pittsburgh, PA 15219
Mail Stop: P7-PFSC-03-T

Swift: PNCCU533
Telephone: 1-800-682-4689



NECESSARY TO SECURE COMPLETION. NEW CASTLE COUNTY REQUESTS THE PAYMENT OF (INSERT AMOUNT)."

4. IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT WILL BE AUTOMATICALLY EXTENDED FOR PERIODS OF NINETY (90) DAYS EACH FROM THE PRESENT OR ANY FUTURE EXPIRATION DATE, UNLESS WE (1) NOTIFY YOU IN WRITING BY REGISTERED MAIL, OR COURIER SERVICE, AT LEAST NINETY (90) DAYS PRIOR TO SUCH EXPIRATION DATE THAT WE ELECT NOT TO FURTHER EXTEND THIS LETTER OF CREDIT AND (2) NOTIFY YOU IN WRITING BY REGISTERED MAIL, OR COURIER SERVICE, FOLLOWING THE EXPIRATION DATE STATED IN THE NOTICE THAT THIS LETTER OF CREDIT HAS TERMINATED (EFFECTIVE AS OF THE CLOSE OF BUSINESS ON THE DATE OF DELIVERY OF THE SECOND WRITTEN NOTICE) IN ACCORDANCE WITH ITS TERMS, WHICH SECOND NOTICE SHALL CONTAIN A COPY OF THE FIRST SUCH NOTICE.

5. UPON YOUR RECEIPT OF SUCH FIRST NOTICE REFERRED TO ABOVE, YOU MAY DRAW ON THIS LETTER OF CREDIT BY PRESENTING YOUR SIGHT DRAFT TO US FOR AN AMOUNT UP TO THE UNUSED BALANCE OF THIS LETTER OF CREDIT ON OR BEFORE THE THEN RELEVANT EXPIRATION DATE ACCOMPANIED BY THE FOLLOWING STATEMENT PURPORTEDLY SIGNED BY THE NEW CASTLE COUNTY GENERAL MANAGER OF THE DEPARTMENT OF LAND USE, OR HIS OR HER DESIGNEE STATING:

"THE COUNTY HAS RECEIVED NOTIFICATION THAT YOU INTEND TO TERMINATE THE LETTER OF CREDIT AND PAUL SALAMONE HAS NEITHER OBTAINED A LETTER OF CREDIT IN REPLACEMENT OR SUBSTITUTION THEREOF NOR COMPLETED THE IMPROVEMENTS AS REQUIRED."

6. EXCEPT AS STATED ABOVE, NO MODIFICATIONS OR REVOCATIONS MAY BE MADE BY THE UNDERSIGNED TO THIS LETTER OF CREDIT WITHOUT THE EXPRESS WRITTEN APPROVAL OF THE GENERAL MANAGER OF THE DEPARTMENT OF LAND USE, OR HIS OR HER DESIGNEE.

7. PARTIAL DRAWINGS ARE PERMITTED.

8. WE HEREBY AGREE THAT DRAFTS DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT WILL BE HONORED ON DUE PRESENTATION AND DELIVERY OF DOCUMENTS, WHICH MAY BE DONE BY FIRST CLASS MAIL, FACSIMILE, IN PERSON, OR BY ANY OTHER REASONABLE BUSINESS PRACTICE, ON OR PRIOR TO THE EXPIRATION, OR ANY EXTENSION THEREOF, OF THE LETTER OF CREDIT.

DRAWINGS UNDER THIS LETTER OF CREDIT MAY BE PRESENTED BY FACSIMILE TRANSMISSION TO (412) 762-5960 OR (412) 705-0966 PROVIDED THAT THE BENEFICIARY'S STATEMENT INCLUDES A CERTIFICATION THAT THE ORIGINAL DRAWING DOCUMENTS ARE BEING FORWARDED TO US BY OVERNIGHT COURIER OR FIRST CLASS MAIL. IN SUCH EVENT IT IS ONLY REQUIRED THAT THE FACSIMILE TRANSMISSION IS RECEIVED BY US ON OR BEFORE THE EXPIRY DATE, AND PAYMENT WILL BE EFFECTED AGAINST RECEIPT OF THE FACSIMILE TRANSMISSION IN COMPLIANCE WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT.

10. EXCEPT AS OTHERWISE STATED HEREIN, THE LETTER OF CREDIT IS SUBJECT TO THE "UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (2007 REVISION) INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 600."

PNC Bank, National Association
Trade Service Operations
3rd Floor
500 First Avenue
Pittsburgh, PA 15219
Mail Stop: P7-PFSC-03-T

Swift: PNCCUS33
Telephone: 1-800-682-4689

Page 2 of 3 18109134-00-000



PNC BANK, NATIONAL ASSOCIATION
GLOBAL TRADE SERVICE OPERATIONS

PART IV - GENERAL PROVISIONS

A. **Notice.** All notices and approvals to be given by one party to the other under this Agreement shall be in writing, mailed or delivered as follows:

1. To DEVELOPER: Address as noted on DEVELOPER's signature page

or to such other person at such other address designated by notice sent to COUNTY. If a current address for DEVELOPER is not on file with the Department of Land Use, COUNTY agrees to use reasonable efforts to locate DEVELOPER's business address. If DEVELOPER's address cannot be located, COUNTY shall have no duty to notify DEVELOPER of violations of this Agreement.

2. To COUNTY: General Manager
Department of Land Use
87 Reads Way
Government Center
New Castle, DE 19720

or to such other person at such address designated by notice sent to Developer. Publication of a change of address for the Department of Land Use in any newspaper of general circulation shall also serve as notice by the Department of a change of address.

Mailed notices shall be sent by United States certified or registered mail, postage prepaid, return receipt requested. Such notice shall be deemed to have been given upon receipt of written notice unless said receipt is refused or otherwise not accepted. In such event notice shall be deemed to have been given upon posting in the United States mail or delivery by reputable overnight courier such as Federal Express.

B. **Enforcement.** In addition to any rights stated in this Agreement, including the right to draw proceeds from the performance guarantee, if DEVELOPER fails to complete said improvements in conformance with this Agreement or violates or fails to perform any term or provision of this Agreement, COUNTY has the right to suspend the issuance of building permits and certificates of occupancy or use for DEVELOPMENT until DEVELOPER is no longer in violation of this Agreement. COUNTY may also pursue any remedy available under Chapter 40, Article 31 of the Code. In addition to the remedies herein stated, COUNTY may seek any relief available at law or equity including declaratory relief, equitable relief, specific performance and monetary damages, including attorney's fees associated with the enforcement of this Agreement incurred by COUNTY.

If COUNTY violates or fails to perform any term or provision of this Agreement, DEVELOPER shall be limited to a cause of action for mandamus. DEVELOPER agrees that in no event shall COUNTY be liable for damages under any basis whatsoever, including but not limited to any State or Federal constitutional or statutory basis.

C. **Right of Entry.** DEVELOPER shall allow COUNTY representatives access to all parts of DEVELOPMENT during construction. Additionally, in the event DEVELOPER fails or declines to complete the required improvements in accordance with the provisions herein contained, DEVELOPER hereby grants unto New Castle County, its agents, assigns, and designees the right, privilege and authority to enter DEVELOPMENT in order to complete the improvements. In the event COUNTY, its agents, assigns, or designees, undertakes to complete

the improvements as set forth above, all expenses of completion shall be charged against and drawn from the performance guarantee if not reimbursed by the DEVELOPER within the time designated herein or otherwise provided by COUNTY.

D. **Insurance Coverage.** DEVELOPER and 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 following minimum coverages. The named insured shall be DEVELOPER, the site contractor, and COUNTY. The name of the DEVELOPMENT must be included on the certificate of insurance. Building permits shall not be issued until insurance certificates are provided to the County. The insurance certificates shall be required at the pre-construction meeting. If insurance lapses for any reason, building permits and certificates of occupancy shall not be issued until insurance is in force.

1. Bodily Injury Liability - \$500,000 for a person with an aggregate limit of 1,000,000 per occurrence;
2. Property Damage Liability - \$500,000;
3. "x", "c", & "u" hazards coverage (site contractor(s) only) (explosion, collapse and underground).

E. **Administrative appeal.** DEVELOPER shall have the right of appeal to the General Manager prior to the initiation of any punitive action under the terms of this Agreement. Any such appeal must be taken within three (3) business days of the date of the action being taken.

F. **Binding effect & obligations upon sale and transfer.**

1. Successors in interest. This Agreement is for the benefit of COUNTY and DEVELOPER. Except as otherwise provided in Part II, it shall be binding upon the respective parties to it and upon their successors and assigns. DEVELOPER has the duty to inform any such successors or assigns of the obligations under this Agreement. Successor shall include any person, firm, corporation or other entity that owns, legally or equitably, any land within the DEVELOPMENT but shall not include persons or entities purchasing a home or lot for the purpose of residing in said home or leasing the property to persons residing in said home. DEVELOPER must notify COUNTY upon the sale or transfer of any interest in the DEVELOPMENT to any other party or parties. DEVELOPER must inform COUNTY of the identity of the new party or parties obligated by the terms of this Agreement. COUNTY must receive such written notice within thirty (30) days of any sale or transfer.

2. Homebuilders and General Contractors. Any registered homebuilder or general contractor who engages in construction activity in DEVELOPMENT is subject to the enforcement provisions set forth in this Agreement. DEVELOPER has the duty to provide notice to any such registered homebuilder or general contractor performing construction activity in this DEVELOPMENT of the contents of this Agreement by providing any such registered home builder or general contractor with a copy of the Agreement prior to any construction activity. The DEVELOPER shall provide the COUNTY with a copy of such correspondence within three (3) business days of the origination of such correspondence.

G. **Third party rights.** Nothing herein creates any rights in third parties to enforce the provisions of this Agreement.

H. **Cooperation: Challenges to validity of Agreement.** In the event of any legal or equitable action or other proceeding instituted by any person or entity challenging the validity of any provision of this Agreement, DEVELOPER shall indemnify and save COUNTY and its officers, agents, and employees harmless against all claims for damages to persons or property including any and all costs, expenses, attorney's fees, and liability incurred by COUNTY for any reason including negligence arising out of this Agreement, challenge to the validity of this Agreement, whether the same proceeds to judgement or not. COUNTY may, at its sole discretion, participate in the defense of any such action but in no way shall such participation relieve DEVELOPER of its obligation under this Section.

I. **Hold Harmless and Indemnification.** COUNTY, its officers, agents, employees, and representatives are to be held harmless from liability for damage or claims for personal injury including death and property damage which may arise from the direct or indirect operations of DEVELOPER or those of its contractors, subcontractors, agents, employees, or other persons acting on his or her behalf which relate to DEVELOPMENT. Upon COUNTY's request, DEVELOPER agrees to and shall defend COUNTY, its officers, agents, employees, and representatives from actions for damages caused or alleged to have been caused by reason of DEVELOPER's activities in connection with DEVELOPMENT. DEVELOPER hereby agrees to indemnify COUNTY against all claims, expenses, and liability as a result of loss or injury arising out of or in connection with construction of DEVELOPMENT or any required improvement thereon.

J. **Waiver.** COUNTY shall not be deemed to waive any rights unless such waiver is in writing and signed by the General Manager of the Department that has jurisdiction to exercise such right.

K. **Modification or Amendment.** This Agreement may not be terminated, modified or amended in any way without the written consent of the General Manager of the Department of Land Use.

L. **Vested Rights.** Execution of this Agreement shall not be deemed to create any vested rights of DEVELOPER. Delaware common law doctrine of vested rights shall determine vested rights of DEVELOPER.

M. **Entire Agreement.** This Agreement, in addition to any referenced plans, estimates, performance guarantees, and attachments, represents the entire agreement between the parties.

N. **Severability.** Any illegal or unenforceable provision of this Agreement shall be severed and shall not render invalid the remaining portions of this Agreement.

O. **Immunity.** This Agreement shall not be deemed to waive COUNTY's statutory or common law immunity.

P. **Sunsetting.** If the PLAN is subject to review pursuant to any sunset provisions of the Code, this Agreement shall become null and void and a new Agreement shall be required.

Q. **Effective Date.** This Agreement shall be of no force or effect until PLAN is recorded in the Office of the Recorder of Deeds in and for New Castle County Delaware, following all necessary COUNTY Departmental approvals and where required by the Code, New Castle County Council adopts a resolution approving PLAN. The effective date of this Agreement shall be the recordation date of PLAN.

R. **Signature.** This Agreement may be executed in counterparts.

S. **Supremacy Clause.** In case of a conflict between the language of Land Development Improvement Agreement and language contained on Plan, the language on the Plan shall be controlling.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement.

SIGNATURE PAGES FOLLOW

DEVELOPER/OWNER:

Carol Saia Peter Saia

By: _____ (SEAL)

CAROL SAIA / PETER J. SAIA OWNER
Print Name and Title

Attest: Jamcha Filippi

Developer's Mailing Address: 345 Beaumont Rd, Denville, PA 19333

If Developer is not the legal owner of DEVELOPMENT at time of execution of this Agreement, all legal and equitable owners must 1) be made a party to this Agreement by being named in the first paragraph of this Agreement and 2) execute this Agreement. Alternatively, a Power of Attorney must be attached to the signature page of this Agreement granting Developer the authority to execute this Agreement on behalf of the legal owners.

STATE OF DELAWARE)
) ss.
COUNTY OF NEW CASTLE)

BE IT REMEMBERED, that on this 1 day of April, 2008, did personally come before me, the Subscriber, a Notary Public in and for the State and County aforesaid, Carol Saia / Peter Saia, on behalf of 1115 Capital Farm known to me personally to be such, and acknowledge this Indenture to be his act and deed of themselves.

GIVEN under my Hand and Seal of Office, the day and year aforesaid:

[Signature]
Notary Public

Vincent Antonini
(Print Name)

My commission expires: _____

DEPT. OF LAND USE ATTACH ADDITIONAL SIGNATURE PAGES AS NEEDED

APR 02 2008

RECEIVED

Notarial Seal
Vincent Antonini, Notary Public
Newtown Twp., Delaware County
My Commission Expires June 21, 2011

NEW CASTLE COUNTY

DEPARTMENT APPROVAL:

Chet Z Bob
General Manager, Department of Land Use

FOR NEW CASTLE COUNTY:

By Christopher Coons (SEAL)
County Executive

STATE OF DELAWARE)
) ss.
COUNTY OF NEW CASTLE)

BE IT REMEMBERED, that on this 8th day of May, 2008, did personally come before me, the Subscriber, a Notary Public in and for the State and County aforesaid, Christopher A. Coons, New Castle County Executive, known to me personally to be such, and acknowledge this Indenture to be his act and deed of New Castle County, Delaware.

GIVEN under my Hand and Seal of Office, the day and year aforesaid:

Janet D. DeLuca
Notary Public

Janet D. DeLuca
(Print Name)

My commission expires: 1/27/2011

