

# SET-ASIDE AGREEMENT

<b>SET-ASIDE ACCOUNT #</b>	<b>DATE SET-ASIDE EXECUTED:</b>			
<u>PRINCIPALS(s)</u> Legal name(s)	PLAN NAME: PLAN NO.: AGREEMENT DATE: PERFORMANCE DATE:			
SURETY(IES)	<b><u>SET-ASIDE AMOUNT</u></b>			
	Million(s)	Thousand(s)	Hundred(s)	Cents
<b>FDIC or FSLIC Insured</b>				

THIS AGREEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, among \_\_\_\_\_ (hereinafter called "Surety/Lender") BOARD OF COUNTY SUPERVISORS OF PRINCE WILLIAM COUNTY, VIRGINIA, a body politic (hereinafter called the "County") and \_\_\_\_\_ (hereinafter called "Principal/Borrower").

WHEREAS, Principal as the developer of certain land located in Prince William County, Virginia, identified above by Plan name (hereinafter called the "Development"), applied for and received County's approval of a final plat of the Development, prepared by Principal and dated \_\_\_\_\_, 20\_\_\_\_, (hereinafter called the "Plat"); and

WHEREAS, County's approval of the Plat was conditioned upon the owner and developers of the Development making certain improvements in and to the Development; and

WHEREAS, Principal has agreed with the County pursuant to a certain agreement dated as of the date hereof between Principal and County (hereinafter called the "Performance Agreement") to complete the remaining unfinished improvements, which Performance Agreement is attached hereto and made a part hereof; and

WHEREAS, Surety/Lender has agreed with Principal, among other things, to advance or lend funds to Principal for the purpose of paying for the cost of completing the improvements required by the County under the attached Performance Agreement and the County has requested that funds for such completion be made available to the County in the event Principal fails to make the improvements required by the Performance Agreement;

NOW, THEREFORE, the parties hereto in consideration of the mutual covenants and conditions hereinafter set forth, do hereby agree as follows:

1. Principal does hereby irrevocably assign to Surety/Lender for the benefit of the County, the sum of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) (hereinafter called the "Completion Fund") from the loan to be made available to Principal by Surety/Lender to be held by Surety/Lender as security for the completion of the improvements provided for in the attached Performance Agreement.

2. Surety/Lender hereby agrees that, subject to County approval as hereinafter provided, it will disburse the Completion Fund solely to pay for the completion of the required physical improvements in the Development as set forth in the Performance Agreement attached hereto, and until said work has been fully accomplished will expend the said Completion Fund for no other purpose.

3. Surety/Lender and Principal shall notify the Prince William County, Director of Department of Development Services in writing of the proposed expenditures from the Completion Fund and of the purpose for which the funds are to be expended. County shall approve or disapprove within thirty (30) days proposed expenditure from the Completion Fund. In the event County fails to act within thirty (30) days after written notification of a proposed expenditure from the Completion Fund, the expenditure shall be deemed approved; provided, however, that the balance of said fund shall not be reduced below any amount or percentage specified in the Prince William County Bonding Policy. If Principal fails to complete the improvements as provided for under the Performance Agreement, the balance of the Completion Fund shall be made available by Surety/Lender to the County upon receipt of notice from the Director of Department of Development Services that Principal has defaulted in performance of said Performance Agreement. The County shall use the balance of the Completion Fund to complete the unfinished improvements in accordance with the Performance Agreement and the County shall in fact complete said improvements to the extent of such fund.

Payment by Surety/Lender and acceptance and application of the Completion Fund by the County shall not operate to discharge Principal of liability for cost of any improvements not so completed by County, nor from deficiency judgment for any amounts expended beyond the Completion Fund for discharge of Principal's obligations. Neither shall it operate to discharge direct or consequential damages caused by Principal's default.

4. Upon completion and acceptance of the improvements described in the Performance Agreement, the balance of any amount of the Completion Fund held by Surety/Lender shall be fully released from any claim of the County.

5. Whenever notice is required, it shall be deemed given if mailed registered, return receipt requested, in the names and to the addresses given below; provided, however, that notice of a change in address shall be effective if given in accordance with this paragraph. Notice to the County shall be given in accordance with this Paragraph 5 to the Director, Department of Development Services, Attn: Bond Administrator, 5 County Complex Court, Suite 180 Prince William, Virginia 22192 or changed address notice of which is given as provided herein.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day, month and year set forth above.

**PRINCIPAL**

Type of Organization:

\_\_\_\_\_

Legal Name and Address:

\_\_\_\_\_ (SEAL)

State of Incorporation:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Signature(s):

BY: \_\_\_\_\_

Name

\_\_\_\_\_

Title

**ACKNOWLEDGMENT OF PRINCIPAL**

STATE OF \_\_\_\_\_:

COUNTY OF \_\_\_\_\_, to wit:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of

\_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_

(name of person signing above)

\_\_\_\_\_

(title)

\_\_\_\_\_

Notary Public

My commission expires \_\_\_\_\_

**SURETY/LENDER**

State of Incorporation:

Legal Name and Address:

\_\_\_\_\_

\_\_\_\_\_ (SEAL)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Signature(s):

BY: \_\_\_\_\_

Name

\_\_\_\_\_

Title

**ACKNOWLEDGMENT OF SURETY**

STATE OF \_\_\_\_\_:

COUNTY OF \_\_\_\_\_, to wit;

The foregoing instrument was acknowledged before me this \_\_\_\_ day  
of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_  
(name of person signing above)  
\_\_\_\_\_  
(title)

\_\_\_\_\_  
Notary Public My commission expires \_\_\_\_\_

**BOARD OF COUNTY SUPERVISORS OF PRINCE WILLIAM COUNTY, VIRGINIA**

By: \_\_\_\_\_  
Chairman

ATTEST:

\_\_\_\_\_  
Clerk to the Board

STATE OF VIRGINIA

COUNTY OF PRINCE WILLIAM, to wit:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by \_\_\_\_\_ and \_\_\_\_\_, Chairman and Clerk, respectively, of the Board of County Supervisors of Prince William County, Virginia.

\_\_\_\_\_  
Notary Public

My commission expires \_\_\_\_\_

Updated 4/20/09