

STATE OF SOUTH CAROLINA
COUNTY OF _____

TWO-YEAR WARRANTY AGREEMENT FOR PUBLIC INFRASTRUCTURE WITH BOND

This Warranty Agreement is made and entered into this _____ day of _____, 20____, by and between the City of Charleston, a municipal corporation organized under the laws of the State of South Carolina (hereinafter referred to as "the City"), and

(hereinafter referred to as “Developer”) with its principal place of business being

WHEREAS, Developer has undertaken to develop and construct certain public infrastructure, including, but not limited to, streets, sidewalks, curbing, gutters, and drainage structures (hereinafter referred to as the "Improvements") in and for

Development, Improvements more particularly shown on the final as built plans entitled

prepared by _____ dated _____ day of _____, 20_____
(hereinafter referred to as "As Builts"); and

WHEREAS, Developer wishes to have the above said Improvements dedicated to the public and accepted by the City for maintenance. These Improvements have been built in accordance with City standards, and a condition of the City accepting the Improvements for maintenance is that the Developer agrees to assume warranty responsibility for these Improvements for a period of two years from the date of acceptance. The date of acceptance shall be the date of a complete Final Inspection by the City accepting all the Improvements without further action required by the developer or 30 days after submission of a complete dedication package which has been approved in its entirety by the Public Service Department, which ever event occurring first being the date of acceptance; and

WHEREAS, the City has inspected the Improvements, has approved the Final Plat, and is recommending to City Council the acceptance of the public Improvements as shown on the approved As Builts.

NOW THEREFORE, for and in consideration of having the Improvements accepted by the City, and for other good and sufficient consideration, the receipt of which is hereby acknowledged by the parties hereto, Developer enters into this Agreement with the City, guaranteeing that Developer shall comply with the following requirements regarding the Improvements as follows:

1. Developer warrants that it shall, for a period of two years from the date of the acceptance of the above-referenced Improvements (hereinafter referred to as the "Warranty Period"):

- A. Take every reasonable precaution to protect the Improvements from damage by avoidable harm; Developer shall not be responsible for damages to the Improvements caused by utilities or others.
- B. Repair and correct all defects, including latent defects, in the Improvements on account of workmanship or materials or otherwise at no cost to the City which are or should be discovered during the Warranty Period, and;
- C. Provide all traffic control and safety measures, including but not limited to police officers, flaggers and advance warning signs in accordance with the latest version of the Manual on Uniform Traffic Control Devices (MUTCD) at his or her own expense, and;
- D. Save and hold harmless the City, its officers, agents and employees from any and all claims for damage to persons or property or death, including legal fees and costs associated therewith, sustained as a result of any defect in the Improvements or lack of maintenance thereof or any negligent act or omission by the Developer, its employees, agents, contractors and subcontractors arising out of this Warranty Agreement, and;
- E. Save and hold harmless the City, its officers, agents and employees from any and all claims for damage to persons or property or death, including legal fees and costs associated therewith, occurring during any Developer repair of a defect or maintenance of the Improvements, and;

2. If in the sole judgment of the City Engineer or her designee, repairs to the above-referenced Improvements become necessary as a result of a defect at any time during the Warranty Period or after the Warranty Period if the defect or defects are discovered within the expiration of the two-year Warranty Period, said repairs shall be made by the Developer at the Developer's expense upon written notice from the City Engineer or her designee. Developer shall take out and remove all inferior or defective work and materials found in any of the Improvements and replace the same with good and acceptable materials approved by the City to bring the Improvements into compliance with the As Builts. Repaired Improvements shall be warranted for a period of two years from the date the Repaired Improvements are accepted by the City Engineer.
3. If Developer fails to make repairs within 60 days of receipt the City's written notice, the City may elect to make such repairs, the Developer shall reimburse the City for all expenses associated with such repairs no later than forty-five (45) days from demand for reimbursement from the City.
4. If during the two-year Warranty Period, the City Engineer or her designee determines that any of the Improvements, including drainage improvements need emergency maintenance in order to comply with federal, state or local water quality regulations, or if the City Engineer or her designee determines that any street or drainage or other infrastructure Improvements require emergency repairs in order to protect the public health, safety or welfare, then the City Engineer or her designee may demand in writing of Developer that such repairs or maintenance be completed within fifteen (15) calendar days from receipt of such demand notice from the City. Should the Developer fail to complete such maintenance or repairs of such Improvements within fifteen (15) calendar days of receipt of such demand notice from the City, then the City may perform such

emergency maintenance or complete such emergency repairs to the Improvements and Developer shall be responsible for the costs of any such repairs or maintenance to the Improvements performed by the City and shall reimburse the City for all expenses associated with such repairs no later than forty-five (45) days from receipt of a demand for reimbursement from the City.

5. As a condition of this Agreement, the Developer shall provide a bond, attached hereto and incorporated herein as Exhibit A, in a form acceptable to the City for the benefit of the City (hereinafter the "**Warranty Bond**"). The Warranty Bond shall contain the following terms:

- A. The amount of the Warranty Bond shall be _____ Dollars and ____/100 (\$_____), which represents ten percent (10%) of the cost of the constructed Improvements as shown on the As Builts approved by the city engineer and as verified by an independent cost estimate for the construction of the Bonded Improvements prepared by_____, attached hereto and incorporated by reference herein as Exhibit B. The Warranty Bond shall either be provided by a reputable Federal Treasury Department approved bonding company with at least a rating of A minus or in another form acceptable to the City.
- B. The Developer shall authorize the City to draw against the Warranty Bond upon presentation of a statement signed by an authorized officer of the City that the Developer has failed to maintain or repair the Improvements as required under this Agreement.
- C. In the event the City performs maintenance or repairs to the Improvements, the Developer hereby agrees to give the City access to the approved As Built drawings for the Project and to draw against the Warranty Bond to pay for the necessary maintenance or repairs to the Improvements. If necessary, the Developer shall cause the Warranty Bond to be extended by the Surety of the Warranty Bond, in order to provide the Surety or the City with sufficient time in which to complete the maintenance or repairs to the Improvements and draw against the Warranty Bond to pay for such maintenance or repairs in accordance with this Agreement.
6. During the Warranty Period, should the cost of the maintenance or repairs to the Improvements exceed the Warranty Bond, the City may, after providing a written demand for repairs pursuant to Section 3 above, proceed with the repairs or maintenance of the Improvements and subsequently draw upon the Warranty Bond and demand such costs in excess of the Warranty Bond be paid by the Developer. Should Developer not pay such costs within forty-five (45) days of the City's written demand therefor, the City shall be entitled to recover such costs from the Developer, including attorney's fees and costs, in a court of competent jurisdiction in Charleston County, South Carolina.
7. The parties hereto shall execute the original agreement with all attached original exhibits. The original shall be filed in the office of the Clerk of Council for the City of Charleston.
8. Developer agrees that during the Warranty Period, Developer shall advise the City in writing of any change in its address, contact information or corporate status.
9. Developer assures that it is financially stable, solvent and is fiscally capable of completing any repairs, maintenance or other work to the Improvements that may become necessary pursuant to the terms of this Warranty Agreement.

IN WITNESS WHEREOF, the City of Charleston, South Carolina, and Developer have hereunto set their respective hands and seals the day and year hereinafter set forth.

WITNESSES:

DEVELOPER / OWNER

Witness #1

Name

Witness #2

Date

WITNESSES:

CITY OF CHARLESTON

Witness #1

By: Thomas F. O'Brien
Its: Public Service Director

Witness #2

Date
