

PERFORMANCE AGREEMENT

THE STATE OF TEXAS §
 §
COUNTY OF CAMERON §

This Agreement is made this _____ day of _____, 2003, by and between Cameron County Drainage District Number One (the "District"), and _____, (individually and collectively, the "Developer").

I.

RECITALS

1.01. Developer is the owner of that certain land located in Cameron County, Texas which is more particularly described in Exhibit A, attached hereto and made a part hereof for all purposes (the "Property").

1.02. Developer seeks to subdivide the property and to cause certain improvements to the property in accordance with the requirements requested by the District in conformance with its policies and other applicable regulations.

1.03. The purpose of this Agreement is to protect the District from the expense of completing the improvements which Developer has agreed to make, and to provide security to the District that Developer will complete the improvements with accordance with the terms of this Agreement.

II.

DEVELOPER'S OBLIGATIONS

2.01. Developer agrees to construct and install, at Developer's expense, all offsite and onsite improvements, and to perform such other actions

as are specifically listed on Exhibit B attached hereto and incorporated herein for all purposes (the “Improvements”). All improvements shall be constructed in accordance with the requirements imposed by the District and, pursuant to the requirements, procedures, plans, and specifications filed with and approved by the District prior to commencement of such Improvements and subject to the inspection, certification, and acceptance by District. All improvements must be identified in detail on the plans and specifications. The plans and improvements shall detail such items as size and types of materials. Similarly, all profiles must be shown and all design calculations must be provided concurrent with the submission of such plans and specifications.

III.

COMPLETION

3.01. Unless a different time period is specified by the District for a particular Improvement in Exhibit B, all improvements shall be completed no later than one (1) year after the effective date of this Agreement (the “Completion Date”). Upon completion of each of the Improvements, the Developer agrees to provide the District a complete set of construction plans for the Improvements, certified “as built” by the engineer responsible for preparing the approved improvement plans and specifications.

IV.

WARRANTY

4.01. The Developers warrants that the Improvements instructed by Developer or its employees, agents, contractors, or licensee will be free from

defects for a period of one (1) year from the date the District accepts dedication of such completed Improvements (“the Warranty Period”). Developer agrees to repair any damage to the Improvements before or during the Warranty Period due to private construction of related activities.

V.

RIGHTS-OF-WAY AND EASEMENTS

5.01. Developer agrees that it shall grant and convey to District all rights-of-way and easements deemed as necessary by the District to accommodate the Improvements. All rights-of-way and easements must be conveyed to the District at the time of execution of this Agreement as follows:

- a. A plat recorded in the Cameron County Deed Records; and
- b. Signed and executed easements to District recorded in the Cameron County Deed Records and delivered to the District.

VI.

PROOF OF OWNERSHIP OF PROPERTY

6.01. Developer will present to the District, prior to execution to this Agreement, a title report or attorney’s opinion stating that the Developer has the right to transfer such easement or right-of-way to the District. Any deed of trust agreement or lien holders to the Property must also execute the same right-of-way or easement agreement. All recorded plats must have lien holders’ approval statement certifications.

VII.

INDEMNIFICATION

7.01. Developers hereby expressly indemnifies and holds the District and its officers, employees and agents harmless from and against all claims, demands, causes of action, costs, and liability of every kind and nature, including reasonable attorney's fees for the defense of such claims and demands, arising from (a) any default under or in violation of any federal, state or local statute, regulation and order; or, (b) any breach on the part of Developer of any provision of this agreement; or, (c) from any act of negligence of the Developer or Developer's agents, contractors, employees, tenants or licensees in the construction of Improvements. Developer further agrees to aid and defend the District, if the District is named as a defendant in any action arising from any breach on the part of Developer of any provision in this Agreement, or from any act of negligence of Developer or Developer's agents, contractors, employees, tenants or licensees in the construction of the Improvements. The Developer is not an employee or agent of the District.

VIII.

NOTICE OF DEFECT

8.01. The District will provide notice to the Developer whenever inspection reveals that an improvement is not constructed or completed in accordance with the standards and specifications, or for health or safety reasons. The cure period may be shortened to no less than five (5) days, and the District

may declare a default under this Agreement if not satisfied that the defect is cured after the cure period. Any cure period should be reasonable in relation to the nature of the default.

IX.

SECURITY

9.01. In order to guaranty its performance under this Agreement, Developer agrees to cause to be issued in favor the District an irrevocable, stand-by letter of credit in the amount of _____ Dollars (\$_____), which amount is the estimated total cost of constructing each of the Improvements as shown on Exhibit B.

X.

CONDITIONS OF DRAW AND SECURITY

10.01. The District may draw upon the financial guarantees posted in accordance with the provisions of the foregoing paragraph due to Developer's failure to construct the Improvements in accordance with the terms of this Agreement.

10.02. The District shall provide written notice of Developer's failure to instruct in the Improvements, in whole or in part, and shall specifically detail the nature of the default. Said notice shall show "that the District intends to draw under the guaranty if the defaults are not cured by the Developer during the cure period established by the District Manager." In the event that such failure remains uncured by Developer, then District may proceed to draw upon the financial guarantees and shall utilize such monies to complete the Improvements or to

cure the Developer's defaults. The Developer hereby grants to the District, its successors, assigns, agents, contractors and employees a non-exclusive right and easement to enter the Property, any easement or other right-of-way, for the purpose of constructing, maintaining and repairing such Improvements.

XI.

RELEASE UPON COMPLETION

11.01. Upon acceptance of all Improvements, the District agrees to complete, execute and deliver to Developer a release releasing the Developer and the Developer's heirs, successors and assigns, and the Property from all provisions of this Agreement, except those contained in Paragraph IV pertaining to warranties.

XII.

TRANSFER OF OWNERSHIP AND ASSUMPTION OF SERVICE

MAINTENANCE

13.01. If, in the opinion of the District, the construction of such Improvements does not meet the standards set forth in the construction documents or Developer is in violation of any municipal ordinance, District policy, or other applicable law or regulation, or if Developer is in default of this Agreement or any other agreement with the District, or if there is litigation pending regarding this Agreement or other Improvements, the District may not accept the Improvements for ownership or maintenance.

IN WITNESS WHEREOF, the parties set their hands in agreement the day and year first above written.

CAMERON COUNTY DRAINAGE DISTRICT
NUMBER ONE

By: _____
Scott C. Fry, General Manager

DEVELOPER:

By: _____

Title: _____

This instrument was acknowledged to before me, a Notary Public, on this _____ day of _____, 2003, by Scott C. Fry, as general manager of Cameron County Drainage District No.1.

Notary Public, State of Texas

This instrument was acknowledged to before me, a Notary Public, on this _____ day of _____, 2003, by _____, as _____, for _____ (Developer).

Notary Public, State of Texas

