# MAINTENANCE/PERFORMANCE [CHOOSE ONE]

# IRREVOCABLE LETTER OF CREDIT NO. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Loc. Number

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date

**BENEFICIARY:**

## Forsyth County, Georgia

**Attention: Director, Department of Engineering**

**110 East Main Street**

## Cumming, Georgia 30040

Dear Director of Engineering:

We hereby issue irrevocable letter of credit no. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter referred to from time to time as the ”Credit”) in favor of Forsyth County, Georgia, at the request and for the account of:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DEVELOPER

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

STREET ADDRESS

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

CITY STATE ZIP

up to the aggregate sum of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ U. S. dollars ($\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_), expiring as described below, available for payment at sight against Forsyth County, Georgia’s draft(s) drawn in part or in whole on [NAME OF INSTITUTION] (referred to herein as “bank,” “we” or “us”) by Forsyth County, Georgia.

Any draft drawn under this credit and bearing the following verbiage shall be honored: “THE AMOUNT OF $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ IS HEREBY DRAWN UNDER IRREVOCABLE LETTER OF CREDIT NO. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, ISSUED BY [NAME OF INSTITUTION], ON [DATE] FOR FAILURE OF [NAME OF DEVELOPER] TO COMPLY WITH THE TERMS OF ITS UNDERTAKING WITH FORSYTH COUNTY, GEORGIA.”

This Credit in favor of Forsyth County, Georgia (sometimes referred to herein as “you”) shall secure any liability that has accrued to or is uncured by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Developer”) to Forsyth County, Georgia as a result of Developer’s failure, regarding [NAME OF PROJECT] more particularly described in the “Final Plat” recorded in the real estate records of the Clerk of the Superior Court of Forsyth County at Plat Book\_\_\_\_\_, Page \_\_\_\_\_, to [CHOOSE ONE] □ construct; or □ maintain; all streets, rights-of-way, water lines, sewer lines, sidewalks, and drainage facilities (“Infrastructure”) shown on said Final Plat in accordance with all applicable federal and state laws and with all applicable Forsyth County regulations and ordinances, including but not limited to the Forsyth County Unified Development Code, as well as the indemnification and maintenance agreement between the Developer and the County and the Forsyth County Construction Standards and Specifications in force as of the date of said approval and on file with and available from the Forsyth County Department of Engineering. Whether the Developer has failed to satisfy the above requirements shall be determined in the good faith discretion of the Director of the Forsyth County Department of Engineering or his/her designee, and in the absence of the Director of the Department of Engineering, in the good faith discretion of the Forsyth County Manager or his/her designee.

We hereby agree with you that any draft drawn under and in compliance with the terms of this Credit will be duly honored on presentation in person or by mail at our office at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, at any time as determined appropriate by Forsyth County, Georgia in its sole discretion, but not later than the close of business on or before the Expiration Date (as hereinafter described).

Except as stated herein, this undertaking is not subject to any condition or qualification. The obligation of the bank under this Credit shall be the individual obligation of the bank, which is in no way contingent upon reimbursement with respect thereto.

No right of action shall accrue on account of this Credit for the use or benefit of any individual, partnership, corporation, or other entity, other than Forsyth County, Georgia.

It is understood that we shall be liable for the default of the Developer in fully discharging any liability on its part accruing within the terms, conditions and obligations of this Credit.

This Credit is effective immediately and, unless terminated on an earlier date by your Notice of Termination (as hereinafter defined) or by presentation of a complying draw hereunder, **expires at 5:00 p.m. prevailing local time on the earlier of: 1) three (3) years from the date of this Credit; or 2) upon both: a) the County’s written determination regarding the applicable punchlist that all items of Infrastructure are complete and can be released; and b) the County’s issuance to Developer of a release letter regarding this Credit,** at our office at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, or if such day is not a day on which we are open for the transaction of letter of credit business (a “Business Day”), on the next succeeding Business Day.

This Credit may be terminated in its entirety prior to any expiration date if, at any time you provide us with a certificate appropriately completed in the form of Annex A (the “Notice of Termination”) along with the original Credit.

It is a further condition of this Credit that any interruption of the bank’s conduct of business caused by an act of God, riot, civil commotion, insurrection, war or other cause beyond the bank’s control, or by any strike or lockout, will automatically extend the expiration date hereof by the period of the interruption.

In the event any action or proceedings are initiated with respect to this Credit, the parties agree that the venue shall be Forsyth County, State of Georgia.

Should any proceedings be necessary to enforce this Credit, Forsyth County, Georgia shall be allowed to recover any reasonable attorney’s fees in addition to other sums found due not to exceed the dollar amount of the Credit.

It is agreed that this letter of credit shall be governed by and construed in accordance with the laws of the State of Georgia.

This Credit shall not be assigned to others without the prior, express written consent of Forsyth County, Georgia.

Should you have occasion to communicate with us regarding this Credit, kindly direct your communication to the attention of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, making specific reference to our letter of credit number above.

This Credit is subject to and governed by the “Uniform Customs and Practice for Documentary Credits” (2007 Revision), International Chamber of Commerce (Publication No. 600) and to the Uniform Commercial Code (§§ 11-5-101 *et seq.* of the Official Code of Georgia) and the other laws of the State of Georgia.

Bank:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

Its:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Print Name Signed Above

SEAL

(OR ATTACH CERTIFIED EXTRACT OF AUTHORITY)

ANNEX A

NOTICE OF TERMINATION

[NAME, ADDRESS]

Regarding \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Standby Letter of Credit No:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Credit”),

The undersigned, the duly authorized representatives of Forsyth County Georgia (the “Beneficiary”) certify that the Beneficiary has determined that the Credit shall be terminated in its entirety as evidenced by its execution of this Certificate

As a result, effective as of the date of this Certificate the Maximum Stated Amount shall be permanently reduced to US $0.00 and action shall be taken to immediately so permanently terminate the Credit.

We confirm that the termination of the Credit is as a result of: 1) the Developer’s completion of: (a) the applicable punch list so that all items of Infrastructure are complete and can be released; and b) the County’s issuance to Developer of a release letter regarding this Credit; or 2) the County’s decision to terminate the Credit, for any reason whatsoever, prior to the Credit’s expiration, in the County’s sole discretion.

Enclosed herewith is the original of the Credit.

Unless otherwise provided herein, capitalized terms which are used and not defined herein shall have the meaning given each such term in the Credit.

**IN WITNESS WHEREOF**, this Certificate has been duly executed and delivered on behalf of the Beneficiary by its duly authorized representatives as of this [ ] day of [ ], [ ].

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| By: |  |
| Name: |  |
| Title: |  |
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| By: |  |
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