

7/18/86 Co. Atty

34571

PUBLIC WORKS AGREEMENT NO. F-81-18

"FLANDERS Section One" (4 sheets)

THIS AGREEMENT, made this 28 day of April, 1986, by and between THE COUNTY COMMISSIONERS OF CARROLL COUNTY, MARYLAND, a body corporate and politic of the State of Maryland (hereinafter referred to as "County"), and RAYMOND T. MURPHY and PATRICIA W. MURPHY, his wife, or assigns, (hereinafter referred to as "Owners"), witnesseth:

WHEREAS, Owners are seeking to have a proposed subdivision plat finally approved by the Planning Commission of Carroll County; and

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WHEREAS, Carroll County Planning Commission requires Owners to enter into a written agreement wherein Owners agree, inter alia, to construct and maintain certain public improvements; and

WHEREAS, the Owners have obtained a contract to perform the construction of the required improvements from a contractor qualified by the County to perform the required work for a total of \$403,653.51; and

WHEREAS, in order to settle pending litigation between the Owners and the County, the County, pursuant to a letter from J. Jeffrey Griffith, of September 27, 1983, a copy of which is attached hereto, have agreed to give the Owners the same treatment as previous Owners/Developers, namely Jenkins-Blum Developers (Hilltop Subdivision), Piney Run Associates (Piney Run Village), and Sanzo-Rubino & Associates Limited Partnership (Oklahoma Subdivision), for reimbursement of offsite sewer and water installation and construction; and

WHEREAS, Owners and County have consented and agreed to enter into this Agreement believing it to be to their mutual benefit, which Agreement is intended to be recorded among the Land Records of Carroll County at County's expense.

NOW, THEREFORE, in consideration of the premises and of the covenants hereinafter set forth, County and Owners, for themselves, their respective successors and personal representatives, do hereby mutually covenant, promise and agree as follows:

1. Owners shall, within one (1) year from the date of execution of this Agreement by County, construct or cause to be constructed all of the improvements (hereinafter "Improvements") as set forth in detail on the drawings entitled "Flanders Section One" sheets 1 of 9 through 9 of 9 and "Flanders Section One Water and Sewer Extensions W-66 and S-73" sheets 1 of 4 through 4 of 4 (hereinafter referred to as "Drawings") on file with Carroll County Department of Public Works. The rights-of-way and easements appurtenant thereto are laid out and shown on a plat entitled "FLANDERS Section One" (4 sheets) intended to be recorded among the Land Records of Carroll County (hereinafter referred to as "Record Plat"). The recitals set forth above are incorporated herein as part of this Agreement.

2. Owners shall construct Improvements in accordance with the specifications set forth in "General Specifications and Standards for Highway and Street Design and Construction"; "Hydraulic Criteria for Design of Highways, State of Maryland Bureau of Highway Design"; "Storm Water Management Ordinance Nos. 22A and 22B"; "Grading and Sediment Control Ordinance No. 5 of Carroll County"; "Maryland Sediment Control Law"; "1983 Maryland Standards and Specifications for Soil Erosion and Sediment Control"; and "Regulations, Standard Specifications and Design Details for Water and Sewage Construction".

3. Owners shall proceed with construction of Improvements in accordance with normal inspection procedures employed by County. Concurrently herewith, Owners have paid County \$26,844.27, representing an agreed inspection and administration fee. It is the intent of the parties that the Owners will pay the actual, reasonable cost of inspection on the water and sewer phase of this project which is estimated to be

\$16,264.50 (which sum has been paid to County as part of the agreed inspection and administrative fee mentioned in the previous sentence) upon seventy-five (75) days of construction. Should the actual, necessary costs for the water and sewer inspection fee be different from the estimate, Owners agree to pay County for any deficit and County agrees to refund to Owner any excess within thirty (30) days of the receipt by County of a final invoice for the inspection.

4. Owners shall retain legal title to all Improvements until completion of Improvements, at which time Owners shall request final inspection from the County. Upon final approval by County, Owner shall present to County, at Owners' expense, a deed conveying unto County, in fee simple, all Improvements to be conveyed to County as shown on Drawings, released from encumbrances. Owners will submit with said deed a Certificate of Title signed by an attorney licensed to practice law in the State of Maryland, certifying to County that Owners then holds good and merchantable title. If Owners comply with this Agreement, County shall, at that time, accept deed for such Improvements. County may, however, reject the deed for violation of this Agreement or any other reason required by law, but such rejection shall not be arbitrarily made.

5. Should Owners breach any of the provisions of this Agreement, County may treat this Agreement and the recording of said Record Plat as an irrevocable offer to convey unto County Improvements to be conveyed to County as shown on Drawings, binding on Owners' successors in title to Improvements.

6. Owners agree to obtain all easements reasonably necessary for the construction and maintenance of Improvements, in form and cost satisfactory to County. The parties understand and agree that all such necessary easements, except for the easement through the property belonging to Mr. Feezer, have been obtained by County. The County agrees that County shall assist the Owner in obtaining the easement from Mr. Feezer.

7. Owners shall furnish to the County a Bond or Letter of Credit in a form satisfactory to County in the amount of \$387,643.86, running to County as obligee thereunder, and conditioned upon the faithful performance of this Agreement and further conditioned upon the payment by Owner of all charges, liens, and indebtedness incurred in, by reason of, or due to the making of such Improvements or the execution of this Agreement. In addition, Owners have paid County \$59,675.00 in cash, in substitution for \$59,675.00 required under Paragraph No. 16 hereof, as a bond, running to the County as obligee thereunder and conditioned upon the faithful performance of this Agreement and further conditioned upon the payment by Owners of all charges, liens and indebtedness incurred, by reason of, or due to the making of so much of the improvements as are offsite and which are referred to in Paragraph No. 16 hereof. The County agrees to provide the Owners with a list of all outstanding charges known to County at the time of execution of this Agreement.

8. Owners shall maintain Improvements (including snow removal) at Owners' expense until they are accepted by County.

9. Upon breach of this Agreement by Owners, County may make or complete the Improvements and the Owners shall be liable for the reasonable and necessary cost thereof including actual damages incurred by County as a result of Owners' breach.

10. Owners shall indemnify and hold harmless County from any and all claims, actions, and demands whatsoever arising from the making of Improvements by Owners.

11. Owners warrant that Owners hold fee simple title to the property shown on Record Plat and that all parties having any right or interest of record in said property have joined herein. Owners present, herewith, a Certificate of Title signed by an attorney licensed to practice law in the State of Maryland covering a period of at least sixty (60) years prior to the date of said Certificate certifying to County that Owners then holds good and merchantable title.

12. The undersigned, whether mortgagees, judgment holders, or other lien holders, if any, join herein for the purpose of consenting for themselves and those claiming under them to the provisions of Paragraph Nos. 5, 14, and 17 hereof and agree that any sale or conveyance made as a result of their respective mortgages, judgments, or liens shall be made subject to the provisions of this paragraph. Such consent shall in no way require any such parties to perform the obligations or assume the liabilities of Owners hereunder.

13. This Agreement may not be assigned without the prior written consent of County which said consent shall not be unreasonably withheld.

14. Owners, for themselves, their personal representatives, successors or assigns, grant County, its agents and employees, an irrevocable right to enter upon those portions of Flanders Subdivision property upon which Improvements are to be constructed hereunder.

15. The provisions of this Agreement shall not be deemed merged in the execution and delivery by Owners to County of a deed for the Improvements but shall survive in full force and effect, nor shall County thereby be deemed to have waived any of its rights at law or in equity against Owners, except as specifically set forth herein.

16. Concurrently herewith, Owners have paid to the County \$59,675.00 representing area connection charges for the connection of the property identified in Drawings to the County's Water and Sewer System or has posted a Cash Bond in the amount of \$59,675.00 pursuant to Paragraph No. 7 hereof. Notwithstanding any other provision of this Agreement or of the Cash Bond, the County shall refund to the Owners from the Cash Bond posted pursuant to Paragraph No. 7 hereof in the amount of \$59,675.00 and in substitution for the required water and sewer connection charges an amount equal to the sums paid by the Owners for all construction costs, engineering costs during construction, necessary inspection expenses and costs, and County overhead

charges for the offsite extension along Brangles Road of the 12" water transmission line and appurtenances and the 8" sewer transmission line including any necessary easements or rights of way, and appurtenances including laterals to the property lines of existing houses along Brangles Road which are to be served by these water and sewer lines, respectively, as those costs are incurred and as evidenced by a certification by the engineer inspecting the project that those costs have been incurred and rightfully due. In addition thereto, should the said water and sewer area connection charges not fully reimburse the Owners for the extensions of the water and sewer lines, County shall pay to the Owners all such area connection charges collected by the County from third party water or sewer users of water and sewer services dependent upon the extension of the water or sewer lines and appurtenances in accordance with this Agreement. These credits and payments shall cease when the Owners have received reimbursement for the full amount of such sums, or a period of ten (10) years from completion of the said water and sewer lines and appurtenances has lapsed, whichever shall first occur. The Owners shall provide the County with paid invoices which represent all payments made by the Owners for the construction of the aforesaid extension.

17. Owners, for themselves, their personal representatives, successors or assigns, hereby consents to the levy of front foot benefit assessment charges upon the properties in the amounts, classifications, for the footage, and at the rates set forth on Schedule "A" (which is attached hereto and by reference incorporated herein). Owners bind themselves, their personal representatives, successors and assigns, to pay the front foot benefit assessment charges upon the terms and conditions set forth in Schedule "A".

18. The Owners and County, for themselves, their personal representatives, successors and assigns, hereby release each other, their agents, officers and employees, their personal representatives and assigns, from all claims, existing as of the date of this Agreement, known or unknown, in any manner arising

from the subdivision of this property and of the making of this Agreement, including, but not limited to, all claims, as aforesaid, which have been raised or could be raised in a lawsuit currently pending in the Circuit Court for Carroll County, entitled The County Commissioners of Carroll County, a body corporate and politic of the State of Maryland, vs. Raymond T. Murphy and Patricia W. Murphy, his wife, Case No. 25171 Law, which suit the County agrees to dismiss upon the filing of the Record Plat for the "Flanders" Subdivision, as aforesaid, among the Land Records of Carroll County. This Release does not affect rights created by this Agreement or which result from its breach.

AS WITNESS the hands and seals and/or corporate name of the parties hereto the day and year first hereinbefore written.

THE COUNTY COMMISSIONERS OF CARROLL COUNTY, MARYLAND, a body corporate and politic of the State of Maryland,

ATTEST:
Virginia R. Black
Virginia R. Black, Clerk

John L. Armacost (SEAL)
John L. Armacost, President

J. Jeffrey Griffith (SEAL)
J. Jeffrey Griffith
Vice-President

William V. Lauterbach, Jr. (SEAL)
William V. Lauterbach, Jr.
Secretary

Mrs. L. Haines
Witness:
Mrs. L. Haines
Witness:

County
Raymond T. Murphy (SEAL)
Raymond T. Murphy

Patricia W. Murphy (SEAL)
Patricia W. Murphy

Owners

Approved as to legal sufficiency:
Charles W. Thompson, Jr.
Charles W. Thompson, Jr.
County Attorney

Key Federal Savings and Loan Association
BY John O. Davis
Executive Vice President

STATE OF MARYLAND, COUNTY OF CARROLL, to wit:

I HEREBY CERTIFY that on this 13th day of May, 1986, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared JOHN L. ARMACOST, J. JEFFREY GRIFFITH, and WILLIAM V. LAUTERBACH,

JR., who acknowledged themselves to be the President, Vice-President, and Secretary, respectively, of THE COUNTY COMMISSIONERS OF CARROLL COUNTY, MARYLAND, a body corporate and politic of the State of Maryland, and that they, as such President, Vice-President, and Secretary, respectively, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the body corporate and politic by themselves as President, Vice-President, and Secretary, respectively.

Witness my hand and Notarial Seal.

W. R. Black
Notary Public
My Commission expires 7/1/86

STATE OF MARYLAND, COUNTY OF CARROLL, to wit:

I HEREBY CERTIFY that on this 28th day of April, 1986, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared RAYMOND T. MURPHY and PATRICIA W. MURPHY, his wife, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument and severally acknowledged that they executed the same for the purposes therein contained.

Witness my hand and Notarial Seal.

Terri L. Haines
Notary Public
My Commission expires _____

TERRI L. HAINES
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires July 1, 1986

STATE OF MARYLAND, COUNTY OF BALTIMORE, TO WIT:

I HEREBY CERTIFY, that on this 12th day of _____ before me, the subscriber, a Notary Public of the State of Maryland and county aforesaid, personally appeared John J. Davis the Executive Vice President of Key Federal Savings and Loan Association in the aforesaid capacity, known to me to be the person whose name is subscribed to the within instrument and he acknowledged the foregoing instrument to be his act as said President and the act of said _____ corporate.

Witness my hand and notarial seal.

Andrew R. Chapman
Notary Public

My Commission expires
July 1, 1986

CARROLL COUNTY MARYLAND

225 N. Center Street
Westminster, Maryland 21157

WESTMINSTER 301-848-4500
BALTIMORE 301-876-2085

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Charles W. Thompson, Jr.
COUNTY ATTORNEY

Clark R. Shaffer
DEPUTY COUNTY ATTORNEY

September 27, 1983

Dr. Raymond T. Murphy
2523 Uniontown Road
Westminster, Maryland 21157

Dear Dr. Murphy:

We have been discussing this government's policy relating to offsite sewer extensions with you for some time now. In an effort to get to the bottom of this issue, I recently sat down with staff members to get a thorough review of the situation. Specifically, I instructed Clark Shaffer, Deputy County Attorney, to review for me certain prior public works agreements whereby the County agreed to reimburse developers for offsite sewer extensions. The public works agreements we reviewed were as follows:

1. Public Works Agreement with Jenkins-Blum Developers for Hilltop Subdivision;
2. Public Works Agreement with Piney Run Associates for Piney Run Village Planned Unit Development; and
3. Public Works Agreement between Sanzo-Rubino & Associates Limited Partnership for Oklahoma.

Those public works agreements involved situations where the developer deposited money in advance to pay for the offsite sewer work and was "reimbursed" for this expense by being given credit against area connection charges due when his plat was recorded. The developer was then given further reimbursement, to the extent of the cost of offsite improvements, for any area connection charge collected as a result of the offsite water extension within ten (10) years.

You will receive the same treatment. Because, as I am told, you anticipate recording your plat at the same time as the offsite improvements are accomplished, your credit will be immediate whereas the other developers waited years (in some cases) to receive their credit. You will receive credits only for lots which you record because area connection charges are due only for recorded lots.

With regard to the acquisition of easements, it is our position, as stated in the attached copy of the minutes of one of our meetings, that we will reimburse you based on appraisal figures for the easement which remains. You are responsible for obtaining the easement. If you need technical assistance or if you feel our participation in negotiations is necessary, I have instructed Clark Shaffer to offer his assistance. That is, we will cooperate but we will not assume responsibility for obtaining the easement.

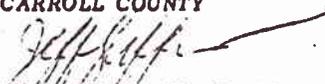
Dr. Raymond T. Murphy
September 27, 1983
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I have discussed this matter with my colleagues and I can assure you that this is our final statement on the matter. I believe that we have made you a fair and equitable offer equivalent to arrangements we have made with other parties in the past. I wish you luck with your development.

Very truly yours,

THE COUNTY COMMISSIONERS
OF CARROLL COUNTY


J. Jeffrey Griffith, Vice-President

JJG/jbl

encl. (1)

c.c.: Clark R. Shaffer, Esq., Deputy County Attorney

Edmund R. Cueman, Director, Department of Planning

Wayne E. Lewns, Chief, Bureau of Utilities

assessment levied by the Board on Lot 25 of Hemlock Subdivision, Section B, at 2. His protest was reviewed by the Board and the Department of Public Works. Upon motion of Mr. Griffith, second by Mr. Lauterbach, the Board unanimously approved a change in the front-foot assessment by proclaiming it as a corner lot under the Board's current policy. The Board, likewise, waived the interest due on the unpaid assessment invoice as presented to the Board. The motion, changing the method of assessment, is effective February 1, 1983 and not retroactive.

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2. The Board, upon motion of Mr. Armacost, second by Mr. Griffith, unanimously authorized the Department of Public Works and the County Attorney to proceed with legal acquisition of the property on Stone Road from Mr. Marshall White as set forth in the Public Works memo dated January 31, 1983.
3. The Board, upon motion of Mr. Lauterbach, second by Mr. Griffith, authorized the Bureau of Vehicle Maintenance to acquire a new bucket for the 660 Gradall and authorized the funding thereof to be provided from the Bureau's Equipment Replacement budget.
4. The following Notices of Intent to Purchase Property were read by the Director of Public Works:
 - a. Bessie V. Englar owning property on Pleasant Valley Road - right-of-way - 0.09 acre - no consideration.
 - b. Paul N. Barrett and Mary Z. Barrett, his wife - right-of-way containing 1.19 acres - revertible easement containing 1.1583 acres and a perpetual easement containing 0.0098 acre - Pleasant Valley Road - no consideration.
5. Mr. Griffith reintroduced a previous motion made on January 18, 1983 pertaining to authorizing Dr. Murphy to be credited for off-site water and sewer construction costs on Brangles Road, east of Flanders Subdivision, providing such credits were derived from area connection charges from those lots in the Flanders Subdivision development as well as other third party users of the line and further provided that such credits would not be provided by the County beyond a 10-year period, effective upon completion of the off-site water and sewer facilities by Dr. Murphy. The motion further provided that Dr. Murphy be liable for acquisition of the right-of-way subject to reimbursement of an amount which is limited to that shown by a bona fide appraisal for water and sewer facilities. Further, that the County be held harmless by Dr. Murphy as a result of this motion or other actions relative to previous actions of the County. The Board asked that this motion be incorporated along with other details in a Public Works Agreement to be executed by Dr. Murphy prior to the authorization of any extension of public water and sewer facilities.

Motion carried - according to Chuck Thompson, Virginia Lewis & George Grier, all of whom were present
TAX DIFFERENTIAL COMMITTEE RECOMMENDATION:

Commissioner Griffith presented a recommendation of the Municipal Tax Differential Committee which related to a recommendation for a proposed 4c differential tax guarantee to the municipalities of Carroll County was proposed to be considered in the current session of the General Assembly. Following a discussion at which County Attorney Thompson and Director of Administration and Finance Curfman were present, it was moved by Mr. Armacost, seconded by Mr. Lauterbach, that the matter not be recommended by the County Commissioners for the current year. Commissioner Griffith supported the Committee recommendation.

MASON-DIXON EROSION CONTROL AREA:

The Board, upon the recommendation of the Soil Conservation District of Carroll County, agreed to support the Board in its recommendation to support the Mason-Dixon Erosion Control Area as a means of lending further support to the County's agricultural programs.

RECEIVED IN
CIRCUIT COURT
CARROLL CO. MD.
SEP 15 1983

SEP 15 1983

COUNTY ATTORNEY