

AGREEMENT

THIS AGREEMENT is made this 25th day of November 1991, by and between the Town of Cape Charles, Virginia, a municipal corporation of the Commonwealth of Virginia, (the "Town"), and Bayshore Concrete Products Corporation, a Virginia corporation ("Bayshore").

WHEREAS, Bayshore is the owner of property (the "Bayshore Property") located in Northampton County that is immediately adjacent to the southwestern boundary of the Town;

WHEREAS, the Town has filed a Petition on or about May 1, 1991, in the Circuit Court of Northampton County, pursuant to Va. Code §§ 15.1-1032 et seq., seeking to annex the area proposed for annexation ("A.P.A.").

WHEREAS, the Bayshore Property is not included within the A.P.A. but was recommended for annexation by the Commission on Local Government in its report dated February 1991;

WHEREAS, Bayshore has intervened as a party defendant in the pending action and has previously informed the Court of its opposition to annexation of the Bayshore Property; and

WHEREAS, based on the terms of this Agreement, Bayshore is amenable to annexation of the Bayshore Property into the Town in the pending action, but strictly on the condition that the Town is awarded annexation of the A.P.A.

NOW THEREFORE, for and in consideration of the following mutual covenants and agreements, the receipt and accuracy of which are hereby acknowledged, the parties agree as follows:

1. Bayshore agrees to withdraw its opposition to annexation of the Bayshore Property in the pending action and to file a pleading therein within one business day, if possible, of the signing of this Agreement informing the Court that Bayshore withdraws its objection to the annexation of the Bayshore Property, as recommended by the Commission on Local Government, and will acquiesce thereto, contingent strictly upon the Court's also awarding annexation of the A.P.A.

2. The Town agrees to enact a machinery and tools tax ordinance prior to execution of this Agreement. Said ordinance will tax machinery, tools, equipment and other business personal property of businesses ("Business Property") similar to Bayshore's at twenty-five percent (25%) of the Business Property's "assessed value" as reported to the Town from time to time by the Commissioner of Revenue of Northampton County, and at a rate of one dollar (\$1.00) per one hundred dollars (\$100.00). It is expressly understood and acknowledged that the "assessed value" of such "Business Property," as determined by the Commissioner of Revenue of Northampton County and reported to the Town, is twenty-five percent (25%) of the original cost of the property placed in service during the five calendar years immediately preceding any tax year and ten percent (10%) of the original cost of property placed in service more than five years before any tax year. For purposes of this paragraph, "placed in service" shall mean that such property is purchased by Bayshore and either used by Bayshore or located on Bayshore's property.

3. The Town agrees that if awarded annexation of the Bayshore Property, the Town, in accordance with § 15.1-1047.1 of the Code of Virginia and commencing the first year following the effective date of annexation, will enact an ordinance to tax Bayshore's real

property at a rate of eighty percent (80%) of the tax rate otherwise applicable to real property in the Town. The Town further agrees that for a period of ten (10) years following the effective date of annexation, it shall review annually the non-revenue producing governmental services offered to Bayshore, as compared to other areas of the Town, and shall establish annually a lower real estate tax rate applicable to the Bayshore Property as long as then warranted by that section. It is expressly understood and agreed that upon the effective date of annexation, Bayshore and the Bayshore Property shall be provided all non-revenue producing services offered by the Town, with the exception of the following: (a) curb and gutter; (b) street lights; and (c) street maintenance of the access road into the Bayshore Property. During the ten (10) year period following the effective date of annexation, the Town agrees to extend: (a) curb and gutter; (b) street lights; and (c) street maintenance of the access road into Bayshore, all in the same manner as such services are provided to other businesses in the Town. The Town's obligations herein shall be expressly contingent upon the acceptance of the access road leading up to the Bayshore Property by the Virginia Department of Transportation (VDOT) and the capability of the Town to provide such services. The Town further agrees that any adjustment of Bayshore's real estate tax rate above eighty percent (80%) of the tax rate otherwise applicable to real property in the Town during the ten (10) year period following the effective date of annexation shall be directly related to and contingent upon the extension of one or more of the three above-mentioned governmental services or the extension of new and presently unavailable non-revenue producing governmental services which the Town may provide to its residents after the effective date of annexation. Notwithstanding the above, if garbage collection service is

requested of the Town by Bayshore prior to the acceptance of the above-referenced access road, the Town shall extend such revenue producing service to Bayshore at the same charge and in the same manner such service is provided to other businesses in the Town.

4. The Town agrees and acknowledges that there are no existing public sewer or public water lines within one hundred (100) feet of the Bayshore Property. The Town further agrees that if awarded annexation of the Bayshore Property the Town will not extend public sewer or public water service lines to within 100 feet of Bayshore's property line within ten years following the effective date of annexation unless a bonafide health emergency exists. ^{or unless so ordered by the Annexation Court. RB / 4} It is expressly understood and agreed, however, that Bayshore shall have the option, upon one year's written notice, of connecting to the Town's sewer or water systems, subject to the following conditions: (a) that the Town has sufficient capacity at the time of such request safely to provide public sewerage service or water service to the Bayshore Property; (b) that Bayshore bear the cost of extending utility lines to the Bayshore Property for such purposes; (c) that the sewer and/or water lines installed together with the necessary utility and maintenance easements over said lines are dedicated to the Town; and (d) all sewer and water connections must be approved in advance by the Town for compliance with applicable health and engineering requirements.

5. The Town shall fully cooperate with Bayshore, to the extent permitted by law, in consulting with VDOT officials and others to provide that any relocation or modification of existing highway or rail access to the Bayshore Property will continue to result in a safe and convenient rail and highway access into the Bayshore Property.

6. This Agreement and all provisions contained herein, except paragraphs 1 and 2, shall be contingent upon the Court approving annexation of the Bayshore Property into the Town in the pending annexation action.

7. This agreement shall be binding upon the Town and Bayshore to the fullest extent permitted under Virginia law and shall be enforceable in both law and equity. By entering into this agreement, the Town pledges its good faith and intent to honor its representations to Bayshore set forth herein.

8. This Agreement may be recorded by either party at its expense in the Clerk's Office of Northampton County, by indexing it in the name of both Bayshore Concrete Products Corporation and the Town of Cape Charles, Virginia.

TOWN OF CAPE CHARLES,
a municipal corporation

By Richard Barton Town Manager

STATE OF VIRGINIA)

COUNTY/CITY OF Northampton)

) TO WIT:
)

The foregoing was subscribed and sworn to before me, the undersigned Notary Public, in and for the aforesaid jurisdiction, by Richard Barton on behalf of the Town of Cape Charles, a municipal corporation, this 22ND day of November 1991.

Barbara A. Shannon
Notary Public

My commission expires: 9-30-95.

BAYSHORE CONCRETE PRODUCTS CORPORATION

By Karl J. Schmid
KARL J. SCHMID
VICE PRESIDENT

STATE OF VIRGINIA)
) TO WIT:
COUNTY/CITY OF Newmarket)

The foregoing was subscribed and sworn to before me, the undersigned Notary Public, in and for the aforesaid jurisdiction, by Karl J. Schmid, on behalf of Bayshore Concrete Products Corporation this 25 day of Nov. 1991.

Luca S. Kuntz
Notary Public

My commission expires: April 30, 1994.