

STORMWATER MANAGEMENT/BMP FACILITIES MAINTENANCE AGREEMENT

(VERSION 12/2022)

THIS AGREEMENT, made and entered into this ____ day of _____, 20____, by and between _____ (insert full name of Owner(s)) hereinafter called the “Landowner”, and the BOARD OF SUPERVISORS OF THE COUNTY OF FREDERICK, VIRGINIA, hereinafter call the “County.”

WITNESSETH, that

WHEREAS, the Landowner is the owner of certain real property described as

(insert County of Frederick tax map/parcel identification number(s)) as recorded by deed in the land records of the County of Frederick, Virginia as Deed Book _____, Page _____, or as Instrument Number _____, hereinafter called the “Property”;

WHEREAS, the Landowner is proceeding to build on and/or develop the Property; and WHEREAS, the Site Plan/Subdivision Plan/Stormwater Plan known as _____ (insert name of plan), hereinafter called the “Plan”, which is expressly made a part hereof, as approved or to be approved by the County, provides for detention and/or retention of stormwater within the confines of the Property; and

WHEREAS, the County and the Landowner, its successors and assigns, including any homeowner’s association, agree that the health, safety, and welfare of the residents of the County of Frederick, Virginia, require that on-site stormwater management/BMP facilities be constructed and maintained on the Property; and

WHEREAS, the County requires that on-site stormwater management/BMP facilities as shown on the Plan be constructed and adequately maintained by the Landowner, its successors and assigns, including any homeowner’s association.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants contained herein, and the following terms and conditions, the parties hereto agree as follows:

The on-site stormwater management/BMP facilities shall be constructed by the Landowner, its successors and assigns, in accordance with the approved plans and specifications. The locations of any BMPs/stormwater management facilities are denoted in Exhibit A. If the Plan utilizes conserved open space to manage stormwater, such open space is depicted in Exhibit B. The Landowner shall not build or permit to be built any structures within nor shall the Landowner make or permit any material land disturbance to the open space area depicted in Exhibit B, including for the purpose of constructing stormwater management/BMP facilities.

The Landowner, its successors and assigns, including any homeowner's association, shall adequately maintain the stormwater management/BMP facilities. This includes all pipes and channels built to convey stormwater to the facility, as well as all structures, improvements, and vegetation provided to control the quantity and quality of the stormwater. Adequate maintenance is herein defined as good working condition so that these facilities are performing their design functions. The Landowner, its successors and assigns, including any homeowners' association, shall maintain the stormwater management/BMP facilities in accordance with the schedule set forth in the Maintenance Plan, which is attached hereto as Exhibit C, and incorporated herein by reference.

The Landowner, its successors and assigns, shall inspect the stormwater management/BMP facility and submit an inspection report at least every five (5) years. The purpose of the inspection is to assure safe and proper functioning of the facilities. The inspection report shall cover the entire facilities, berms, outlet structure, pond areas, access roads, etc. Deficiencies shall be noted in the inspection report. The inspection shall be performed by an individual who meets the qualifications as outlined in §143-210, Frederick County Code.

The Landowner, its successors and assigns, hereby grant permission to the County, its authorized agents and employees, to enter upon the Property and to inspect the stormwater management/BMP facilities whenever the County deems necessary. The purpose of inspection is to follow-up on reported deficiencies and/or to respond to citizen complaints. The County shall provide the Landowner, its successors and assigns, copies of the inspection findings and a

directive to commence with the repairs if necessary. The County shall attempt to notify the Owner of the inspection and the Owner shall be afforded the opportunity to accompany the County during the inspection.

In the event the Landowner, its successors and assigns, fails to maintain the stormwater management/BMP facilities in good working condition acceptable to the County, the County may enter upon the Property and take whatever steps necessary to correct deficiencies identified in the inspection report and to charge the costs of such repairs to the Landowner, its successors and assigns. This provision shall not be construed to allow the County to erect any structure of permanent nature on the land of the Landowner outside of the easement for the stormwater management/BMP facilities. It is expressly understood and agreed that the County is under no obligation to maintain or repair said facilities, and in no event shall this Agreement be construed to impose any such obligation on the County.

The Landowner, its successors and assigns, will perform the work necessary to keep these facilities in good working order as appropriate. In the event a maintenance schedule for the stormwater management/BMP facilities (including sediment removal) is outlined on the approved plans, the schedule will be followed.

In the event the County pursuant to the Agreement, performs work of any nature, or expends any funds in performance of said work for labor, use of equipment, supplies, materials, and the like, the Landowner, its successors and assigns, shall reimburse the County upon demand, within thirty (30) days of receipt thereof for all actual costs incurred by the County hereunder.

This Agreement imposes no liability of any kind whatsoever on the County and the Landowner agrees to hold the County harmless from any liability in the event the stormwater management/BMP facilities fail to operate properly.

This Agreement shall be recorded among the land records of the County of Frederick, Virginia, and shall constitute a covenant running with the land, and shall be binding on the Landowner, its administrators, executors, assigns, heirs and any other successors in interests, including any homeowner's association.

This agreement shall be governed by the laws of the Commonwealth of Virginia.

Any disputes arising from or as a result of this Agreement shall be resolved in the Circuit Court for the County of Frederick, Virginia or the Federal District Court in Harrisonburg.

If any provision of this Agreement is found to be illegal, invalid, or unenforceable, that shall not affect the validity or enforceability of any other provision of this agreement.

Individual/Company/Corporation/Partnership Name (Seal)

By: _____

(Type Name)

(Type Title)

STATE OF _____

COUNTY/CITY OF _____

The foregoing was acknowledged before me this _____ day of _____, 20____,
by _____(name of person signing document), as, if
applicable, _____ (title on behalf of corporation or entity) of
_____ (name of corporation or entity), on behalf of the
entity.

Notary Public

My Commission Expires: _____

Notary Registration Number: _____

COUNTY OF FREDERICK, VIRGINIA

By: _____

(Type Name)

(Type Title)

STATE OF _____

COUNTY/CITY OF _____

The foregoing was acknowledged before me this _____ day of _____, 20____,
by _____ (name of person signing document), as, if
applicable, _____ (title on behalf of corporation or entity) of
_____ (name of corporation or entity), on behalf of the
entity.

Notary Public

My Commission Expires: _____

Notary Registration Number: _____

Approved as to form: _____

County Attorney