

BERKELEY COUNTY STORM WATER MANAGEMENT MAINTENANCE AGREEMENT

NOW, THEREFORE, in consideration of the benefit received and to be received by

_____, the Covenanter, its successors and assigns, as a result of Site Plan approval by Berkeley County and the undersigned MS4 Permit Holder, the Covenanter hereby covenants and agrees with Berkeley County and the MS4 Permit Holder as follows:

1. At its sole expense, the Covenanter, its successors and assigns, shall construct and perpetually maintain the Storm Water Management Facility and System, constructed at its property identified as _____ (District, Map, Parcel Number and/or Street Address), in strict accordance with the Site Plan and any amendments thereto which have received approval as contemplated above, so as to assure the Quantity and Quality results required by Ordinance and Act.

2. At its sole expense, the Covenanter, its successors and assigns, shall make such changes or modifications to such Facility and System as may be determined to be reasonably necessary by Berkeley County and the MS4 Permit Holder to ensure that the Facility and System is properly maintained and continues to operate as originally designed and approved.

3. At reasonable times and in a reasonable manner as provided in Article VI of the Ordinance, Berkeley County and the MS4 Permit Holder, their agents, employees and contractors, shall have the right of ingress and egress over such Property and the right to inspect the Facility and System in order to ensure that the Facility and System is being properly maintained, is continuing to perform in an adequate manner and is in compliance with the Act, the Ordinance and Site Plan and any amendments thereto approved by Berkeley County and the MS4 Permit Holder.

4. Should the Covenanter, its successors and/or assigns, fail to correct any defects in the Facility and System within the time specified in a written notice from Berkeley County and/or the MS4 Permit Holder that the Covenanter, its successors and assigns has/have failed to maintain the Facility and System in accordance with the approved design standards and/or the Site Plan and in accordance with the law and applicable regulations of the Act and the Ordinance, Berkeley County and/or the MS4 Permit Holder may pursue such remedies as provided by law, including, but not limited to, such civil and criminal remedies as are set forth in Article VII of the Ordinance.

5. The Covenanter, its successors and assigns, shall indemnify, hold harmless, and

defend Berkeley County and the MS4 Permit Holder from and against any and all claims, demands, suits, liabilities, losses, damages, and payments, including reasonable attorney fees claimed or made against Berkeley County and the MS4 Permit Holder that are alleged or proven to result or arise from the Covenanter's, its successors, and/or assigns', construction, operations, or maintenance of the Facility and System.

6. This Agreement and the covenants and agreements contained herein shall run with the title to the land, and whenever the Property shall be held, sold, conveyed or otherwise transferred, it shall be subject to the covenants, stipulations, agreements, and provisions of this Agreement which shall apply to, bind, and be obligatory upon the Covenanter hereto, its successors, and assigns, and shall bind all present and subsequent owners of the Property described herein.

Initially, the Covenanter is solely responsible for the performance of the obligations required hereunder and, to the extent permitted under applicable law, the payment of any and all fees, fines, and penalties associated with such performance or failure to perform under this Agreement. Notwithstanding any provisions of this Agreement to the contrary, upon the recordation of a deed or other instrument of sale, transfer, or other conveyance of title to the Property, or any portion thereof (a "Transfer"), to a third party (the "Transferee"), the Covenanter shall be released from all of its obligations and responsibilities under this Agreement accruing after the date of such Transfer to the extent such obligations and responsibilities are applicable to that portion of the Property included in such Transfer, but such release shall be expressly conditioned upon the Transferee assuming such obligations and responsibilities by recorded written agreement for the benefit of Berkeley County and the MS4 Permit Holder. Such written agreement may be included in the Transfer deed or instrument, provided that the Transferee joins in the execution of such deed or instrument. A certified copy of such deed, instrument or agreement shall be provided to Berkeley County and the MS4 Permit Holder. The provisions of the preceding three sentences shall be applicable to the original Covenanter and any successor Transferee who has assumed the obligations and responsibilities of the Covenanter under this Agreement as provided above. **PROVIDED, THAT,** nothing herein shall be construed so as to relieve the Covenanter and/or its/his/her Surety from contractual obligations through performance bonds, letters of credit, and/or cash surety arrangements which guaranty to Berkeley County, its Planning Commission and/or Engineering Department and/or to the MS4 Permit Holder satisfactory performance of the approved Plans and Plats related hereto.

7. Nothing herein shall be construed to prohibit a transfer by the Covenanter to subsequent owners and assigns.

8. The provisions of this Agreement shall be severable and if any phrase, clause, sentence or provision is declared unconstitutional, or the applicability thereof to the Covenanter, its successors and assigns, is held invalid, the remainder of this Covenant shall not be affected thereby.

9. _____, the Noteholder, being the holder of a note or notes secured by a lien on the Property through a Deed of Trust dated _____, from _____ to _____ and _____, Trustees, either of whom may act, recorded in the land records of the Office of the Clerk of the County Commission of Berkeley County, West Virginia, in Deed Book _____, at page _____, joins in the execution of this Agreement only for the purpose of evidencing its consent to the provisions hereof and to direct the Trustee(s) to execute same for subordination purposes. At the direction of the Noteholder, the Trustee(s) joins herein to subordinate the lien of the Deed of Trust, and the Noteholder and the Trustee(s) hereby acknowledge and agree that the lien of the Deed of Trust is hereby subordinated to this Agreement, the covenants created or set forth herein and all of the rights of Berkeley County and the MS4 Permit Holder hereunder. **PROVIDED, THAT**, the Noteholder shall not be considered as a Transferee for purposes of assumption of obligations of the Covenanter, its successors and assigns but, rather, as a conduit of title from the Covenanter to a purchaser or purchasers of the whole property, **UNLESS**, such Noteholder and/or its Trustee(s) shall sell an individual lot or lots to a third party or third parties, in which case the Noteholder and/or its Trustee(s) shall make such sales only pursuant to the terms of the approved Plans and Plats applicable to the subject property. Should the Noteholder decline to evidence its consent through signature of this Agreement, the Agreement shall remain in full force and effect with regard to the Covenanter, its successors and assigns, MS4 Permit Holder, and Berkeley County.

10. This Agreement shall be recorded in the Office of the Clerk of the County Commission of Berkeley County.

11. In the event that Berkeley County shall determine at its sole discretion at any future time that the Facility and System is no longer required, then at the request of the Covenanter, its successors and/or assigns, Berkeley County shall execute a release of this Agreement which the Covenanter, its successors and/or assigns, shall record in the Clerk's Office, at its/their expense.

12. This Agreement shall be deemed to be a West Virginia contract and shall be governed as to all matters whether of validity, interpretations, obligations, performance or otherwise exclusively by the laws of the State of West Virginia, and all questions arising with respect thereto shall be determined in accordance with such laws. Regardless of where actually delivered and accepted, this

Agreement shall be deemed to have been delivered and accepted by the parties in the State of West Virginia.

13. Any and all suits for any claims or for any and every breach or dispute arising out of this Agreement shall be maintained in the appropriate court of competent jurisdiction in Berkeley County, West Virginia.

14. This Agreement shall not be modified except by written instrument executed by the parties hereto at the time of modification, and no modification shall be effective until recorded in the Clerk's Office.

IN WITNESS WHEREOF, the Covenanter, Noteholder, if any, Berkeley County, and the MS4 Permit Holder have executed this Agreement as of the date first set forth above.

(Covenanter/Owner's Printed Name)

(Signature and Title of Authorized Signatory)

STATE OF _____,
COUNTY OF _____
TO WIT:

On, the ____ day of _____, 20____, before me _____,
(Notary Public)
personally appeared, _____ who represented to me that he/she has full
(Printed Name of Signatory)
authority to sign on behalf of the Covenanter/Owner and did append signature above made
in my presence.

Witness my hand and official seal:

My Commission expires: _____

(Notary Public Signature) (SEAL)

(Printed Name of Noteholder, if any)

(Signature and Title of Authorized Signatory)

STATE OF _____,
COUNTY OF _____
TO WIT:

On, the ____ day of _____, 20____, before me _____,
(Notary Public)
personally appeared, _____ who represented to me that he/she has full
(Printed Name of Signatory)
authority to sign on behalf of the Covenanter/Owner and did append signature above made
in my presence.

Witness my hand and official seal:

My Commission expires: _____

(Notary Public Signature) (SEAL)

(Printed Name of MS4 Permit Holder)

(Signature and Title of Authorized Signatory)

STATE OF _____,
COUNTY OF _____
TO WIT:

On, the ____ day of _____, 20____, before me _____,
(Notary Public)
personally appeared, _____ who represented to me that he/she has full
(Printed Name of Signatory)
authority to sign on behalf of the Covenanter/Owner and did append signature above made
in my presence.

Witness my hand and official seal:

My Commission expires: _____

(Notary Public Signature) (SEAL)

BERKELEY COUNTY COMMISSION

President

STATE OF _____,
COUNTY OF _____
TO WIT:

On, the _____ day of _____, 20____, before me _____,
(Notary Public)
personally appeared, _____ who represented to me that he/she has full
(Printed Name of Signatory)
authority to sign on behalf of the Covenanter/Owner and did append signature above made
in my presence.

Witness my hand and official seal:

My Commission expires: _____

(Notary Public Signature) (SEAL)

Rev: 5/19/17, 10/2/17

IT: 5/26/17, 10/2/17, 1/2/20, 2/28/20, 12/14/22, 12/12/23