

# TOWN OF SMITHFIELD

## STORM WATER MANAGEMENT/BMP MAINTENANCE AGREEMENT

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_, hereinafter referred to as the “developer,” and the TOWN OF SMITHFIELD, a Virginia municipal corporation, hereinafter referred to as the “Town”.

### WITNESSETH:

WHEREAS, the developer is the owner of certain parcel of land located in the Town identified as Tax Map Number \_\_\_\_\_, and having the address of: \_\_\_\_\_ hereinafter referred to as the “Property”, and

WHEREAS, the Property is being developed by the Developer into a project known and designated as \_\_\_\_\_, and has prepared a site plan for the said development dated \_\_\_\_\_, 20\_\_\_\_, hereinafter called the “Plan”, which has been approved by the Town, and is on file in the office of the Department of Planning, Engineering & Public Works for the Town, and is incorporated herein by reference; and

WHEREAS, the Town requires that on-site stormwater management/BMP facilities be constructed and adequately maintained by the Developer, its successors and assigns;

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

1. The on-site stormwater management/BMP facilities shall be constructed by the Developer, its successors and assigns, in accordance with the plans and specifications identified in the Plan.
2. The Developer, its successors and assigns (Homeowner’s Association), shall maintain the stormwater management/BMP facilities in good working condition, acceptable to the Town, so that they are performing their design functions.
3. The Developer, its successors and assigns, at its sole expense hereby agrees to cause the stormwater management/BMP facilities to be inspected by a professional engineer licensed to practice as such by the Commonwealth of Virginia, at such regular intervals as deemed necessary by the Town. Such inspections shall either determine that the stormwater management/BMP facilities continue to meet the design specifications as shown on the Plan or else indicate what corrective measures must be taken to return the facilities to the original design specifications as shown on the Plan. The Developer, its successors and assigns, shall provide a written copy of the inspection certified by the professional engineer to the Town. The Town shall make the final determination of the need for and extent of corrective measures and the Town shall in no way be bound by the inspection or recommendations of the professional engineer.

4. The Developer, its successors and assigns, hereby grants permission to the Town, its authorized agents and employees, to enter upon the Property, and to inspect the stormwater management/BMP facilities whenever the Town deems necessary. The purpose of the inspection is to assure safe and proper functioning of the facilities. The inspection shall cover the entire facilities, berms, outlet structures, pond areas, access roads, etc. When deficiencies are noted, the Town shall give the Developer, its successors and assigns, copies of the inspection report with findings and evaluations.

5. The Town may order in writing the Developer, its successors and assigns, to take any corrective measures which the Town deems necessary to maintain the stormwater management/BMP facilities in good working order. In the event the Developer, its successors and assigns, fails to maintain the stormwater management/BMP facilities in good working condition acceptable to the Town, the Town may enter upon the Property and take whatever steps it deems necessary to maintain said stormwater management/BMP facilities and charge the costs of the repairs to the Developer, its successors and assigns. This provision shall not be construed to allow the Town to erect any structure of a permanent nature on the land of the Developer outside of an easement belonging to the Town. It is expressly understood and agreed that the Town 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 Town.

6. The Developer, its successors and assigns, will perform maintenance in accordance with the maintenance scheduled for the stormwater management/BMP facilities including sediment removal as outlined on the approved Plan.

7. In the event the Town, pursuant to this Agreement, performs work of any nature, use of equipment, supplies, materials, and the like, the Developer, its successor and assigns, shall reimburse the Town upon demand, within thirty (30) days of receipt thereof for all costs incurred by the Town hereunder.

8. The Developer, its successors and assigns, shall indemnify and hold harmless the Town and its agents and employees for any and all damages, accidents, casualties, occurrences or claims which might arise or be asserted against the Town for the construction, presence, existence or maintenance of the stormwater management/BMP facilities by the Developers, its successors and assigns. In the event a claim is asserted against the Town, its agents or employees, the Town shall promptly notify the Developers, their successors and assigns, and they shall defend at their own expense, any suit based on such claim. If any judgment or claims against the Town, its agents or employees shall be allowed, the Developer, its successors and assigns shall pay all costs and expenses in connection therewith.

9. This shall be recorded with the land records of Isle of Wight County, Virginia, and shall constitute a covenant running with the land, and shall be binding on the Developer and the Developer's successors and assigns.

WITNESS the following signatures and seals:

DEVELOPER:

\_\_\_\_\_  
(Signature) (SEAL)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Title)

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF \_\_\_\_\_, to-wit:

I do hereby certify that \_\_\_\_\_, whose name is signed to the foregoing agreement bearing date of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_ has acknowledged the same before me in the jurisdiction aforesaid this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

TOWN OF SMITHFIELD

By: \_\_\_\_\_  
(Signature) Director of Planning, Engineering & Public Works

COMMONWEALTH OF VIRGINIA  
COUNTY OF ISLE OF WIGHT, to-wit:

I do hereby certify that \_\_\_\_\_, as Director of Planning, Engineering, and Public Works whose name is signed to the foregoing agreement bearing date of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, has acknowledged the same before me in the jurisdiction aforesaid this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Town Attorney