

DECLARATION OF COVENANTS AND EASEMENT

THIS DECLARATION OF COVENANTS AND EASEMENT made this ____ day of _____, 20 __, by _____, (hereinafter referred to as the "Covenantor", which shall included, for purposes of this Declaration Covenantor's successors and assigns, or subsequent landowners individually) to and for the benefit of the County of Isle of Wight and its successors and assigns, hereinafter referred to as the "County."

WITNESSETH:

WHEREAS, the County is authorized and required to regulate and control the disposition of storm and surface waters within Isle of Wight County as set forth in Chapter 14A and Appendix B-1 of the Isle of Wight County Code (the "Ordinances") and other applicable federal, state and local laws; and

WHEREAS, the County is authorized to grant certain exceptions to the Ordinances, as more clearly set forth in the Ordinances.

WHEREAS, the Covenantor is the owner of certain lot(s), parcel(s), or tract(s) of land (the "Property") more particularly described as:

Tax Map Parcel(s) _____

Lot(s) or Tract(s) _____

Address(s) _____

_____ and _____

WHEREAS, the Covenantor has constructed or will construct certain improvements on the Property which will alter either the Resource Protection Area (RPA) buffer area or extant storm and surface water conditions on both the Property and adjacent lands (the "Affected Area"); and

WHEREAS, in order to accommodate and regulate these anticipated changes in the Affected Area, the Covenantor desires to install and maintain, at its expense, a storm and surface water management facility and system, together with related upstream and downstream drainage facilities (collectively, the "Drainage Facilities") more particularly described and shown on plans titled _____ and dated _____, and attached hereto as Exhibit A; and

WHEREAS, the County has reviewed and approved these plans subject to the

execution and recordation of this Declaration of Covenants in the Isle of Wight County Circuit Court Clerk's Office.

NOW, THEREFORE, in consideration of the benefits received by the Covenantor as a result of the County's approval of its plans, Covenantor, with full authority to execute deeds, deeds of trust, other covenants, and all rights, title and interest in the Property does hereby covenant with the County as follows:

1. Covenantor shall install and perpetually maintain, at its sole expense, the above-referenced Drainage Facilities in strict accordance with the plan approval granted by the County.

2. Covenantor shall, at its sole expense, make such changes or modifications to the Drainage Facilities as may, in the County's discretion, be determined necessary to reasonably maintain and operate the Drainage Facilities in accordance with the specifications included in the plans which have been reviewed and approved by the County. This includes all pipes and channels built to convey water to the facility, as well as all structures, improvements and vegetation provided to control the quantity and quality of the water. "Reasonably maintain" is herein defined as keeping the Drainage Facilities in good working condition so that these facilities are performing their design functions.

3. Covenantor shall inspect the Drainage Facilities and submit an inspection report annually. The inspection shall cover the Drainage Facilities and associated landscaping. Deficiencies shall be noted in the inspection report. Inspection and maintenance of the Drainage Facilities shall be in accordance with the plan approval granted by the County. The required inspections, the frequency of inspections, maintenance requirements and the frequency and cost of maintenance for all components of the Drainage Facilities shall be in accordance with the approved plan, attached hereto as "Exhibit A." Annually, Covenantor shall submit an inspections report and maintenance log to the County to evidence compliance with said plan.

4. The County, its agents, employees and contractors, along with any other oversight state agencies, as well as the Virginia Department of Transportation ("VDOT"), shall have a perpetual right of ingress and egress over the Property and the right to inspect the Drainage Facilities, at reasonable times and in a reasonable manner, in order to insure that the Drainage Facilities are being properly maintained and are continuing to perform in an adequate manner. Such right of ingress and egress may also be used by the County and VDOT for the purpose of any maintenance work that the County or VDOT deems necessary or required.

5. The Covenantor agrees that should it fail to correct any defects in the Drainage Facilities, or shall fail to maintain the Drainage Facilities in accordance with the approved design standards and with applicable laws and regulations, within ten (10) days from the issuance of written notice (except in the event of emergency, in which case no notice shall be required), the County and VDOT are each authorized to enter the Property to make all repairs, and to perform all maintenance, construction and reconstruction the County or VDOT deems necessary or as may be identified in the

annual inspection report. It is expressly understood and agreed that the County and VDOT are under no obligation to maintain or repair said Drainage Facilities, and in no event shall this Declaration of Covenants be construed to impose any such obligation on the County or VDOT. In the event the County or VDOT, pursuant to this Declaration of Covenants, performs work of any nature, or expends any funds in the performance of said work for labor, use of equipment, supplies, materials and the like, the Covenantor and its successors and assigns, or if there is no successor or assign and Covenantor has ceased to exist, then all subsequent landowners served by the Drainage Facilities in equal shares, shall reimburse the County or VDOT upon demand for the cost of said repairs and maintenance incurred by the County or VDOT within thirty (30) days of receipt thereof for all actual costs incurred by the County or VDOT hereunder. Such costs may be placed on the property tax bills of said property and collected as ordinary taxes, as determined by the County at its sole discretion.

6. Covenantor shall indemnify, save harmless and defend the County and VDOT from and against any and all claims, demands, suits, liabilities, losses, damages and payments including attorney fees claimed or made by persons not parties to this Declaration against the County or VDOT that are alleged or proven to result or arise from the Covenantor's construction, operation, or maintenance of the Drainage Facilities that are the subject of this Declaration of Covenants.

7. The covenants contained herein shall run with the land and the Covenantor further agrees that whenever the property shall be held, sold or conveyed, it shall be subject to the covenants, stipulations, agreements and provisions of this Declaration, which shall apply to, bind and be obligatory upon the Covenantor hereto, its administrators, executors, heirs, successors and assigns and any other successors in interest, including any homeowner's association, and if no such homeowner's association, to each individual landowner having an interest in the Property.

8. The Covenantor shall promptly notify the County when the Covenantor or its assigns legally transfer any of the Covenantor's responsibilities for the Drainage Facilities. The Covenantor shall supply the Department of Planning and Zoning and the Engineering Division of the County of Isle of Wight, Isle of Wight Courthouse, 17140 Monument Circle, Post Office Box 80, Isle of Wight, Virginia 23397, with a copy of any document of transfer, executed by both parties and a copy of this document acknowledged by both parties. Upon the County's receipt of the document of transfer, the conveying owner of the Property shall be released from all liability arising under this Declaration subsequent to the date of the conveyance, but such conveying owner shall remain liable for any and all obligations that accrue prior to such date.

9. The provisions of this Declaration shall be severable and, if any phrase, clause, sentence or provision is declared unconstitutional, or the applicability thereof to the Covenantor or its assigns is held invalid, the remaining provisions of this Declaration shall not be affected thereby.

10. This Declaration shall be recorded at the Clerk's Office of the Circuit Court of Isle of Wight County, Virginia at Covenantor's expense.

11. In the event that the County shall determine at its sole discretion at any future time that the Drainage Facilities are no longer required, then the County shall at the request of the Covenantor execute a release of this Declaration which the Covenantor shall record at its expense.

12. For purposes of enforcement of the obligations, duties and responsibilities imposed upon the Covenantor by this Declaration and by the County's Ordinances and other applicable federal, state and local laws, the Covenantor acknowledges that the Isle of Wight County administrator charged with enforcing the Isle of Wight County Ordinances shall be the agent of the County.

[SIGNATURES APPEAR ON FOLLOWING PAGES.]

IN WITNESS WHEREOF, the parties hereto have executed this Declaration of Covenantor as of the ____day of _____, 20__.

COVENANTOR:

[PRINT COMPANY NAME]

By: _____

Name: _____

Title: _____

STATE OF VIRGINIA
COUNTY OF ISLE OF WIGHT, to-wit: _____

The foregoing instrument was acknowledged before me by _____, as
_____ of _____, this _____ day of _____
, 20__.

My commission expires: _____

Registration Number: _____

Notary Public

[Notary Seal]

COUNTY:

The County of Isle of Wight, Virginia

By: _____

Name: _____

Title: _____

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

The foregoing instrument was acknowledged before me by _____, as
_____ of the County of Isle of Wight, Virginia, this _____ day of
_____, 20__.

My commission expires: _____

Registration Number: _____

Notary Public

[Notary Seal]

Approved as to Form:

(County Attorney Signature)

Prepared by: Isle of Wight County Attorney