

This document was prepared by:
Albemarle County Attorney
County of Albemarle
401 McIntire Road
Charlottesville, Virginia 22902

Parcel ID 055E0-01-00-000A1

This instrument is exempt Circuit Court Clerk's fees under *Virginia Code* § 17.1-266.

AGREEMENT FOR THE MAINTENANCE OF SIDEWALKS

THIS AGREEMENT ("Agreement"), dated this ___ day of _____ 20____, is by and between **MARCH MOUNTAIN PROPERTIES, L.L.C.**, a Virginia limited liability company (the "Company"), Grantor, whose address is 1005 Heathercroft Circle, Suite 100, Crozet, Virginia 22932, and the **COUNTY OF ALBEMARLE, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (the "County"), Grantee, whose address is 401 McIntire Road, Charlottesville, Virginia 22902.

WITNESSETH :

WHEREAS, the Company and Old Trail Community Association, Inc., a Virginia non-stock corporation (the "Association"), executed a Declaration of Covenants and Restrictions of Old Trail dated December 10, 2004, which is of record in the Clerk's Office of the Circuit Court of Albemarle County, Virginia in Deed Book 2887, page 336 (as amended and supplemented from time to time, the "Declaration").

WHEREAS, the Company is the Declarant and the primary developer of the Old Trail subdivision, as such terms are defined in the Declaration;

WHEREAS, the pedestrian sidewalks within the Old Trail subdivision are either within the public road right-of-way or within perpetual easements accessible to the public (collectively, the "Sidewalks");

WHEREAS, pursuant to 24 VAC 30-92-120.I of the Secondary Street Acceptance Requirements of the Virginia Department of Transportation ("VDOT"), pedestrian facilities necessary to satisfy the public benefit requirements may be located outside of VDOT's right-of-way and documents regarding the arrangements providing for the maintenance of such pedestrian facilities shall be provided to VDOT prior to the transfer of jurisdiction over the streets to VDOT;

WHEREAS, the County has entered into a certain agreement with VDOT titled “Pedestrian Facilities Located Outside of Secondary Highway System Right-of-Way Agreement for County of Albemarle,” (hereinafter, the “VDOT Agreement”) which agreement is attached hereto and incorporated herein by reference; and

WHEREAS, within the Old Trail subdivision, the Company agrees to assume all County responsibilities, obligations and liabilities under the VDOT Agreement, including (but not limited to) the installation and maintenance of the Sidewalks.

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:

1. Neither the County nor VDOT has any responsibility or liability associated with the Sidewalks.

2. Within the Old Trail subdivision, the Company assumes all responsibilities, obligations, and liabilities of the County under the VDOT Agreement, including (but not limited to):

i. The Company assumes the burden and all costs of inspection, construction, maintenance, and future improvements to the Sidewalks within the Old Trail subdivision shall be provided from sources other than those administered by the County and/or VDOT.

ii. The Company shall maintain the Sidewalks within the Old Trail subdivision in substantially the same condition that they were in when they were installed and approved by the County. As used herein, “maintenance” or any derivative thereof includes maintenance, replacement, reconstruction and the correction of defects or damage.

3. The Company indemnifies, defends, and holds harmless the County for any and all liabilities arising under the VDOT Agreement within the Old Trail subdivision.

4. The parties expressly do not intend by execution of this Agreement to create in the public, or any member thereof, any rights as a third party beneficiary, or to authorize anyone not a party hereto to maintain a suit for any damages pursuant to the terms or provisions of this Agreement. In addition, this Agreement is not to be construed as an indemnification against third party claims.

5. The Company's obligation to maintain the Sidewalks within the Old Trail subdivision as provided in this Agreement runs with the land in perpetuity and is binding on the Owner and its successors and assigns, including, without limitation, the Association. All references in this Agreement to the "Company" include the Company's successors and assigns.

6. The Association shall budget for the maintenance of the Sidewalks as a "capital component," pursuant to *Virginia Code* § 55.1-1826.

7. No public agency, including VDOT and/or the County, is or will be responsible for maintaining the Sidewalks.

8. The Company hereby grants permission to the County, its authorized agents and employees, to enter upon the Properties (as such term is defined in the Declaration) to inspect the Sidewalks when deemed necessary by the County. The County will provide the Company copies of the inspection findings and (if necessary) a directive to maintain the Sidewalks.

9. The Company must notify the County in writing at least ten (10) days prior to the assignment or transfer of this Agreement.

10. This Agreement will be recorded among the land records of the Circuit Court of the County of Albemarle, Virginia, constitute a covenant running with the land, and be binding on the Company, its successors and assigns.

11. This Agreement may be modified in writing by mutual agreement of all parties.

12. This Agreement represents the entire agreement of the parties hereto concerning the subject matter hereof, and supersedes all prior understandings, whether oral or written.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, each party hereto has caused this Agreement to be executed in its name and on its behalf by its duly authorized officer as of the date, month, and year first hereinabove written.

MARCH MOUNTAIN PROPERTIES, L.L.C.,
a Virginia limited liability company

By: _____

Name: _____

Title: Manager

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF _____ to-wit,

The foregoing instrument was acknowledged before me this ___ day of _____
20____, by _____ as Manager of March Mountain
Properties, L.L.C, a Virginia limited liability company.

Notary Public

My Commission Expires: _____

Commission No.: _____

COUNTY OF ALBEMARLE, VIRGINIA

By: _____
Jeffrey B. Richardson, County Executive

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF _____ to-wit,

The foregoing instrument was acknowledged before me this ___ day of _____
20____, by Jeffrey B. Richardson, County Executive, on behalf of the County of Albemarle,
Virginia.

Notary Public

My Commission Expires: _____

Commission No.: _____

APPROVED AS TO FORM:

By: _____
County Attorney