

## **STORMWATER MANAGEMENT/BMP FACILITIES MAINTENANCE AGREEMENT**

THIS AGREEMENT, made and entered into this \_\_ day of \_\_\_\_\_, 2016, by and between **EAST VILLAGE, LLC**, a Virginia limited liability company (hereinafter, "East Village"), **MARCH MOUNTAIN PROPERTIES, L.L.C.**, a Virginia limited liability company (hereinafter, "March Mountain Properties"), and the **BOARD OF SUPERVISORS OF ALBEMARLE COUNTY, VIRGINIA** (hereinafter, the "County").

### **W I T N E S S E T H**

**WHEREAS**, the County is the owner of certain real property known as Old Trail Park. Two portions of said Park are shown on the following plat as "SGA VAR" (hereinafter, the "County Property"):

Plat entitled "Plat Showing New Stormwater Management Easements and ACSA Sanitary Sewer Easements TMP 055E0-01-00-000H0 Old Trail Park Old Trail Subdivision White Hall Magisterial District Albemarle County, Virginia" dated June 20, 2016, last revised August 30, 2016, prepared by Roudabush, Gale & Associates, Inc., which plat is of record in the Clerk's Office of the Circuit Court of Albemarle County, Virginia prior hereto (the "Park Plat").

**WHEREAS**, East Village is the owner of the following property (hereinafter, the "East Village Property"):

All that certain tract or parcel of land with improvements thereon and appurtenances thereto situated in Albemarle County, Virginia, containing 23.710 acres, more or less, shown as Parcel "EV" on a plat entitled "Subdivision of TMP 55E-01-A1 Being The Proposed East Village of Old Trail Village Subdivision White Hall Magisterial District Albemarle County, Virginia" by Roudabush, Gale & Associates, Inc., dated April 25, 2016, of record in the Clerk's Office of the Circuit Court of Albemarle County, Virginia in Deed Book 4789, page 372 (hereinafter, the "East Village Plat").

**WHEREAS**, March Mountain Properties is the owner of that certain property adjacent to the East Village Property as shown on the East Village Plat (hereinafter, the "March Mountain Properties Property");

**WHEREAS**, March Mountain Properties and the County are parties to that certain Storm Water Management/BMP Facilities Maintenance Agreement providing for the construction and maintenance of the stormwater facility within the easement shown on the Park Plat as "SWM-X VAR", which Agreement is of record in the Clerk's Office of the Circuit Court of Albemarle

County, Virginia in Deed Book 3955, page 1-10 (hereinafter, the “Prior Maintenance Agreement”);

**WHEREAS**, the parties hereto desire that this Agreement supersede and replace the Prior Maintenance Agreement;

**WHEREAS**, East Village is proceeding to build on and develop the East Village Property pursuant to a Site Plan/Subdivision Plan known as **Old Trail Village Blocks 10, 16, 17, 18 & 30**;

**WHEREAS**, the Water Protection Ordinance (WPO) Plan described as **2016-00009 Stormwater Management Plan** (hereinafter called the “Plan”), which is expressly made a part hereof, as approved or to be approved by the County, provides for detention of stormwater within the confines of the County Property;

**WHEREAS**, the County, East Village and March Mountain Properties, their respective successors and assigns, including any homeowners association, agree that the health, safety, and welfare of the residents of Albemarle County, Virginia, require that on-site stormwater management/BMP facilities be constructed and maintained on the County Property; and

**WHEREAS**, the County requires that the stormwater management/BMP facilities as shown on the Plan be constructed and adequately maintained by East Village and March Mountain Properties (hereinafter, the “Developers”), their respective successors and assigns, including any homeowners 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:

1. This Agreement supersedes and replaces the Prior Maintenance Agreement.
2. The on-site and adjacent stormwater management/BMP facilities shall be constructed by the Developers, their respective successors and assigns, in accordance with the plans and specifications identified in the Plan.
3. The Developers, their respective successors and assigns, including any homeowners 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.

4. The Developers, their respective successors and assigns, shall inspect the stormwater management/BMP facility and submit an inspection report annually. The purpose of the inspection is to assure safe and proper functioning of the facilities. The inspection shall cover all the facilities, including berms, outlet structure, pond areas, and access roads. Deficiencies shall be noted in the inspection report.

5. The Developers, their respective successors and assigns, hereby grant permission to the County, its authorized agents and employees, to enter upon the East Village Property and the March Mountain Properties Property 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 Developers, their respective successors and assigns, copies of the inspection findings and a directive to commence with the repairs if necessary.

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

7. The Developers, their respective 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.

8. In the event the County pursuant to this 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 Developers, their respective 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.

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

10. This Agreement shall be recorded among the land records of Albemarle County, Virginia, and shall constitute a covenant running with the land, and shall be binding on East Village and March Mountain Properties, their respective administrators, executors, assigns, heirs and any other successors in interests, including any homeowners association.

**SIGNATURE PAGES IMMEDIATELY FOLLOW**

**WITNESS** the following signatures and seals:

**EAST VILLAGE, LLC,**  
a Virginia limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: Manager

**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 \_\_\_\_\_ 2016,  
by \_\_\_\_\_ as Manager of East Village, LLC, a Virginia limited  
liability company, and as Manager of March Mountain Properties, L.L.C., a Virginia limited  
liability company.

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

My Commission Expires: \_\_\_\_\_

Commission No.: \_\_\_\_\_

**COUNTY OF ALBEMARLE**

By: \_\_\_\_\_(SEAL)  
Thomas C. Foley, County Executive

**APPROVED AS TO FORM:**

\_\_\_\_\_  
County Attorney

COMMONWEALTH OF VIRGINIA  
COUNTY OF ALBEMARLE to wit:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_ 2016, by Thomas C. Foley, County Executive of Albemarle County, Virginia.

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

My Commission expires: \_\_\_\_\_

Commission No.: \_\_\_\_\_