

CASH DEPOSIT AND PERFORMANCE AGREEMENT

This Cash Deposit and Performance Agreement (*Agreement*) is made this ____ day of _____, _____ by and between _____ (*Owners*), the Board of County Commissioners of Washington County, Maryland, a body corporate and politic and a political subdivision of the State of Maryland (*Board*).

RECITALS

The Owner has requested to construct the following described stormwater management facility (*SWM Facility*):

Subdivision/Project Name/Section or Phase: _____

Recorded Plat No. /Deed Reference: _____

Name, Number or Location of Stormwater Management Facility: _____

The Stormwater Management Ordinance for Washington County, Maryland (*Ordinance*) requires that security be provided to insure completion of the above described construction in accordance with the terms of the Ordinance, the construction plans approved by the Deputy Director - Land Development Engineering of Washington County, dated _____ (*Plans*), and in a manner that is in conformance with Washington County (*County*) standards and specifications established and adopted by the Board and in effect at the time of the execution of this Bond.

Further, the Ordinance requires that the construction of the SWM Facility be completed within twenty four (24) months from the date of the execution of this Bond.

NOW THEREFORE, in consideration of the covenants, conditions and agreements, hereinafter expressed, the parties agree as follows:

1. **Deposit.** As security for the performance of the covenants, conditions and agreements, hereinafter expressed, Owner shall deposit to the Board upon the execution of this Agreement the amount of _____ Dollars (\$_____) in lawful money of the United States of America (*Deposit Amount*)

2. **Performance.** Owner shall construct the SWM Facility in accordance with the terms of the Ordinance, the construction plans approved by the Deputy Director - Land Development Engineering of Washington County, dated _____ (*Plans*), and in a manner that is in conformance with Washington County (*County*) standards and specifications established and adopted by the Board. Such construction of the SWM Facility shall be completed within twenty four (24) months from the date of the execution of this Agreement. If the Owner faithfully performs all obligations relating to the construction of the SWM Facility as indicated in the Ordinance, the Plans, and herein, and shall fully indemnify and save harmless the Board from all costs and damages which the Board may suffer by reason of the failure of the Owner to do and shall fully reimburse and repay the Board all reasonable outlays and expense which the Board may incur by reason of such failure, then the Deposit Amount shall be returned to the Owner without interest.

3. **Failure to Perform.** If the Owner fails to perform all obligations relating to the construction of the SWM Facility as indicated in the Ordinance, the Plans, and herein, does not fully indemnify and save harmless the Board from all costs and damages which the Board may suffer by reason of the failure of

the Owner to do so, or does not fully reimburse and repay the Board all reasonable outlays and expense which the Board may incur by reason of such failure, then the Deposit Amount shall be forfeited to the Board in the amount equal to all costs and damages which the Board may suffer by reason of the failure of the Owner to: (i) perform all obligations relating to the construction of the SWM Facility as indicated in the Ordinance, the Plans, and herein, (ii) indemnify and save harmless the Board from all costs and damages which the Board may suffer by reason of any failure of the Owner, or (iii) fully reimburse and repay the Board all reasonable outlays and expense which the Board may incur by reason of any such failure. Any remaining amount shall be returned to the Owner without interest.

4. Default. In the event of any default or violation of the Ordinance, Plans, or other standards and specifications on the part of the Owner, written notice of the particular facts showing the date and nature of such default shall be provided to the Owner by registered mail. If the Owner fails to cure the default within thirty (30) days of notice of such default or violation, the County shall be permitted to immediately take over and assume completion of the construction of the SWM Facility through its agents, employees or contractors and shall be permitted to recover damages and expenses directly from the Owner or against the Deposit Amount.

5. Release. The obligations of this Agreement shall not be released until such time as the construction of the SWM Facility is approved by the Deputy Director - Land Development Engineering of Washington County.

6. Right of Entry. The Owners hereby grants to the Board, its agents, employees and contractors the right of entry at reasonable times and in a reasonable manner for the purpose of inspecting, operating, installing, constructing, reconstructing, maintaining, or repairing the SWM Facility.

7. Suit: No suit or action may be maintained in relation to this Agreement unless it shall have been instituted within three (3) years from the date that this Agreement is released.

8. Assignment. This Agreement shall not be assignable and transferable by Owner without the prior written approval and consent of the Board.

9. Notice. All notices and correspondence under or regarding this Agreement or any provisions hereof shall be in writing and shall be hand-delivered or sent postage prepaid by either (i) United States mail, certified, return receipt requested, or (ii) for delivery the next business day with a nationally recognized express courier:

To the Owner at:

Name: _____

Street : _____

City, State, Zip: _____

To the County at:

Deputy Director - Land Development Engineering
Washington County Engineering Department
80 W. Baltimore Street
Hagerstown, Maryland 21740

and

County Attorney's Office
100 West Washington Street, Suite 202
Hagerstown, Maryland 21740

10. Laws of Maryland. This Agreement was made and entered into in the State of Maryland and is to be governed by and construed under the laws of the State of Maryland.

11. Recitals. The Recitals are hereby incorporated into this Agreement as substantive provisions.

12. Entire Agreement: Modification. This Agreement constitutes the entire agreement and understanding of the parties. There are no other promises or other agreements, oral or written, express or implied between the parties other than as set forth in this Agreement. No change or modification of, or waiver under, this Agreement shall be valid unless it is in writing and signed by authorized representatives of the Owner and the Board

13. Severability. If any provision of this Agreement shall be determined to be invalid or unenforceable, the remaining provisions of this Agreement shall not be affected thereby, and every provision of this Agreement shall remain in full force and effect and enforceable to the fullest extent permitted by law.

14. Waiver. Neither party's waiver of the other's breach of any term, covenant or condition contained in this Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition in this Agreement.

15. Survival. The covenants contained herein or liabilities accrued under this Agreement which, by their terms, require their performance after the expiration or termination of this Agreement shall be enforceable notwithstanding the expiration or other termination of this Agreement.

16. Counterparts/Execution. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A facsimile or photocopy of a signature of a party shall constitute an original signature, fully binding the party for all purposes.

17. Successors Bound. This Agreement shall be binding on and shall inure to the benefit of the successors, assigns, heirs and legal representatives of the parties hereto.

WITNESS our hands and seals this _____ day of _____, 20 _____.

OWNER/DEVELOPER:

FOR INDIVIDUALS/PARTNERSHIPS/LIMITED LIABILITY COMPANIES

Witness:

By

(Signature) _____ (SEAL)
(Title) _____

(Signature) _____ (SEAL)
(Title) _____

FOR CORPORATIONS

Attest:

President (Signature) _____ (SEAL)

Vice-President or Secretary (Signature) _____ (SEAL)

Owner/Developer Individual Name: _____
(Please Print/Type)

Company Name: _____

Phone No.: _____

Address: _____

Approved & accepted by:

Deputy Director - Land Development Engineering

Approved as to form and legal sufficiency:

John Martirano, County Attorney

Approved & accepted by:

Real Property Administrator