Stormwater Warranty Agreement

Agreement Number _____
Permit Number _____

THIS WARRANTY is made this _____ day of _____, 20___, by _____, Developer ("Developer"), and acknowledged by ANNE ARUNDEL COUNTY, MARYLAND, a body corporate and politic of the State of Maryland ("County").

WHEREAS, Developer has filed an application for a grading permit, Permit No. _____, and is the developer of a subdivision known as _____; and

WHEREAS, the Developer was required to install one or more Best Management Practice(s) ("BMP") in accordance with the grading permit; and

WHEREAS, the BMP(s) as shown in attached exhibit A will be owned or maintained by the Homeowner's Association known as, or to be known as _____ ("HOA"); and

WHEREAS, the Developer has submitted as-built plans and as-built certifications to the Department of Inspections and Permits (the "Department") in accordance with § 16-4-302(a) of the Anne Arundel County Code ("Code"); and

WHEREAS, Developer is required by § 16-4-302(c) of the Code to provide this Warranty. NOW, THEREFORE, in consideration of the conditions contained in this Warranty, the Developer hereby provides this warranty and agrees as follows:

1. For a period of two years after the date of the Department's final approval of the as-built plans, or as that period is extended as provided herein, the Developer warrants and guarantees that any BMP to be owned or maintained by the HOA complies with the approved grading permit and the approved as-built plans and as-built certification, and all applicable law and regulations. The Developer shall be responsible for any repairs or restoration of any BMP to be owned or maintained by the HOA, other than for routine maintenance and upkeep, as required by this Warranty, the approved grading permit and the final

approved as-built plans and as-built certification, and all applicable law and regulations. The issuance of a permit or any inspection, repair, suggestion, approval, or acquiescence of any person affiliated with the County does not relieve the Developer from the warranty or any other term or condition of this Warranty. Routine maintenance and upkeep shall be the responsibility of the HOA.

2. During the Warranty Period, the County shall inspect any BMP owned or maintained by the HOA. The inspection shall include all required elements of a maintenance inspection described in the latest version of the County Stormwater Practices and Procedures Manual. If the Department determines that any a repair or restoration to any BMP owned or maintained by the HOA is required, other than routine maintenance and upkeep, a written notice shall be issued to the Developer. The notice shall include deficiencies, other than routine maintenance and upkeep, to be corrected by the Developer including any repair and restoration required by the Developer ("Developer Required Repair").

3. The Developer shall make any Developer Required Repair in accordance with this Warranty within the time provided in a written demand from the County. If the Developer does not initiate corrective action as required, the County may take any appropriate action necessary in accordance with the County Code as it may be amended from time to time, and this Warranty.

4. The Warranty shall be extended for one additional year beyond the two year period if the Developer is issued a Developer Required Repair notice from the Department during the two-year warranty period ("Extended Warranty Period"). The Extended Warranty Period shall only apply to the BMP(s) cited in the Department's written notice.

5. The Warranty shall be extended for an additional one year beyond the Extended Warranty Period if the Developer is issued a Developer Required Repair notice from the Department during the Extended Warranty Period.

6. The Maximum Warranty period shall not exceed four years.

7. The Developer affirms that it has reserved a right of entry on any property upon which there is any BMP to be owned or maintained by the HOA. The Developer affirms that it has provided the HOA with an estimate of BMP maintenance costs, which is also attached hereto as Exhibit B.

8. This Warranty is accompanied by a performance and completion security (Exhibit C). The amount of the security is $_____, which is equal to the construction costs as estimated at the time of issuance of the grading permit for any BMP that will be owned or maintained by the HOA.

9. All security required by this Warranty shall be in the form of a_____cash deposit (including a certified or cashier's check),_____irrevocable letter of credit, or_____bond from a surety acceptable to the County.

10. If the warranty is extended beyond the original two-year warranty period and if the Department determines that a partial release of the security will not impair implementation ofthis Warranty, the Department may allow a partial release, not to exceed 75% of the total security required by this Warranty. To request reduction, the Developer shall file an application with the County; provide justification and any required documentation, including new or additional security if the County so requires; and agree that all other terms and conditions of this Warranty shall remain in full force and effect.

11. If the Developer fails to make any Developer Required Repair as directed by the Department, the security shall be forfeited to the County. If the County's cost to complete the work to repair or restore a BMP, for any Developer Required Repair, is greater than the amount of the security, the Developer agrees to reimburse the County for any and all additional costs incurred to complete, restore, or repair any BMP, for any Developer Required Repair, owned or maintained by the HOA, including all County administrative costs; independent contractor, consulting engineer, or other expert fees; attorneys' fees; and pre-judgment interest at the rate of 6% per year.

12. The Developer shall be released from the terms of this Warranty when the security is fully released in accordance with § 16-4-302 (c) (8); the security is forfeited to the County in accordance with the terms of this Warranty and § 16-4-302(c) (7); or upon expiration of the warranty period, as it may be extended in accordance with the terms herein. The forfeiture provision contained in paragraph 11 and the Code survives an expiration of the warranty period if the security has not been released.

13. All notices between the parties shall be mailed by first class mail, electronic transmission, or hand-delivered to the addresses listed below. For purposes of this Warranty, the date of notice to any

party at the address listed below shall conclusively constitute notice to that party. If the address of any party changes, the party shall notify all parties to this Warranty in writing.

TO THE COUNTY:

Director, Anne Arundel County Department of Inspections and Permits 2664
Riva Road, Second Floor - MS 6202
Annapolis, Maryland 21401

TO THE DEVELOPER:

14. This document and its attachments contain the complete and final Warranty between the parties and representations, whether written or oral, not contained in this Warranty shall not be part of this Warranty.

15. The laws of the State of Maryland shall govern this Warranty.

16. This Warranty may not be assigned without prior written approval from the County and, as a condition of approval, the County may require the execution of a new Warranty. This Warranty shall inure to the benefit of and be binding on the parties and their heirs, personal representatives, legal representatives, successors, and approved assigns.

17. The parties agree that this Warranty constitutes a contract under seal and that they intend the twelve-year statute of limitations period as set forth in Maryland Courts and Judicial Proceedings Code Annotated § 5-102 to apply to this Warranty.

18. This Warranty may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same document.

WITNESS OR ATTEST:

_____

Type name of business entity, if applicable.

By: _____(SEAL)
DEVELOPER
Type Name: _____
Type Title: _____
Date: _____

ANNE ARUNDEL COUNTY, MARYLAND

BY:_____

_____
(SEAL)

Christine M. Anderson, Chief Administrative Officer

APPROVED FOR FORM AND LEGAL SUFFICIENCY ANNE ARUNDEL COUNTY, MARYLAND GREGORY J. SWAIN, COUNTY ATTORNEY

_____ _____

Office of Law Date

RETURN TO THE DEPARTMENT OF INSPECTIONS AND PERMITS - MS 6201

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