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BK 11, 11, PG 694

This Document Prepared By:  
FRANKLIN, DENNEY, WARD & LAWSON, P.L.C.  
Waynesboro, Virginia

Plat filed in Plat Book 1, Page 3920, 3921, 3922, 3923, 3924, 3925

**THIS AGREEMENT** made and entered into this 26th day of March, 1999, by and between **W. BOUTROS AND COMPANY**, a Virginia corporation, party of the first part, hereinafter referred to as "Developer," and **THE COUNTY OF AUGUSTA, VIRGINIA**, party of the second part, hereinafter referred to as "County."

\*\*\*\* WITNESSETH \*\*\*\*

**WHEREAS**, Developer is the owner of certain real estate situate in Wayne District, Augusta County, Virginia, containing 31.5219 acres, which is a portion of the real estate conveyed to the Developer by deed of Wafaiey R. Boutros and Jocelyne Boutros, his wife, dated February 22, 1989, of record in the Augusta County Circuit Court Clerk's Office in Deed Book 962, Page 250, a portion of which is to be developed as Emerald Hills Subdivision, Section 4; and

**WHEREAS**, Developer has submitted to the County a plat for Emerald Hills Subdivision, Section 4, containing 31.5219 acres, which plat delineates one "detention easement" to handle an anticipated increase of storm water run-off. The term "Subdivision" shall hereinafter refer to "Emerald Hills Subdivision, Section 4"; and

**WHEREAS**, Developer desires that the roads in the subdivision be taken into and be made a part of the Secondary Highway System of the Commonwealth of Virginia, and be maintained by the Department of Transportation; and

**WHEREAS**, the Department of Transportation will not accept any new road in new subdivisions into the Secondary System of Highways until there shall be a continuous drainage easement from such road to natural watercourses or an executed agreement with the appropriate governing body, whereby the local governing body

assumes the responsibility for the future maintenance and operation of an alternate method determined by the Commonwealth as satisfactory for handling the storm drainage; and

**WHEREAS**, both the Developer and the County acknowledge that this standard is desirable to assure safe thoroughfares for the traveling public, with maximum security to neighboring land owners; and

**WHEREAS**, the County had adopted a general policy regarding the handling of storm waters resulting from development occurring in Augusta County which permits the use of on-site storm water detention facilities, provided such facilities are designated to the prescribed criteria and the Developer, its successors and assigns, is obligated to construct, maintain and operate such facilities until ninety-five percent (95%) of all land in the watershed to be developed has been built upon and made ready for residential occupancy; and

**WHEREAS**, in consideration of the approval by the County of the Subdivision and the willingness of the County to assume the responsibility for the future maintenance and operation of the said facilities, the Developer has agreed on behalf of itself and its successors and assigns to assume the obligation of constructing, maintaining and operating such facilities until ninety-five percent (95%) of the Subdivision has been subdivided into lots and has been built upon and made ready for residential occupancy.

For purposes of this Agreement the term "Developer or its successors or assigns shall mean the party of the first part and its successors in title to the above-described real state, excluding individual purchasers of lots in said subdivision.

**NOW THEREFORE**, in consideration of the premises and of the mutual covenants hereinafter stipulated to be kept and performed, it is agreed between the parties hereto as follows:

**A. THE DEVELOPER OR ITS SUCCESSORS AND ASSIGNS SHALL:**

1. Construct or cause to be constructed, at no cost to the County, an adequate on-site storm water detention facility to intercept the peak storm water run-off expected to recur on an average of once every twenty-five (25) years, and emergency spillways based on a 100 year frequency storm from the roads and other areas within the property of the Developer.

2. Maintain or cause to be maintained at no cost to the County, the on-site water detention facility noted in Paragraph 1 above, so as to permit it to function as designed and in such a manner as not to result in nuisances, health or safety hazards, or damage by reason of increased drainage, to property in the area to be affected.

3. Secure all rights of way or right of way easements necessary to cover the construction and maintenance of the detention facility noted in Paragraph 1 above, and to have its construction completed prior to the request for the addition of the streets in the Subdivision into the Secondary System of Highways.

4. Indemnify and hold harmless the County from any and all claims for taking and/or damaging under Article 1, Section II of the Revised Constitution of Virginia of property of any and all landowners who might be adversely affected by drainage which exists the boundaries of the Subdivision.

5. Indemnify and hold harmless the County from any and all costs or expenses incurred as a result of the denial, settlement and/or litigation of such claims for taking and/or damages for drainage from the Subdivision.

6. Reimburse the County for repairs to roadways damaged as a result of the lack of an adequate design and/or proper maintenance to the on-site storm water detention facility for the Subdivision.

7. The Developer agrees not to undertake any future development in the watershed upstream of this proposed detention facility prior to provisions, as are mutually agreed upon by the County and the Developer, being made to adequately provide for the anticipated increased run-off caused by such future development.

8. Notwithstanding any provisions in this Agreement which may appear to be to the contrary, the county shall not be deemed to have assumed any liabilities, expenses or costs of the landowner or the Developer with respect to liabilities to or claims by third parties which may result from any lack of an adequate design or proper maintenance of the on-site storm water detention facility for the Subdivision.

9. The Developer and its successors and assigns, hereby assume the obligation of constructing, maintaining and operating the on-site storm water detention and storage basin and related facilities until ninety-five (95%) of the Subdivision has been subdivided into lots and has been built upon and made ready for residential occupancy.

10. The Developer agrees to impose an obligation on the Emerald Hills Homeowner's Association, Inc. and the individual lot owners to keep plant growth in the drainage easements and in the detention easement mowed so that it never exceeds fifteen inches (15') in height, and further to impose an obligation on the Emerald Hills Homeowner's Association, Inc to similarly maintain the detention easement in Section 3, Emerald Hills Subdivision. Such obligations shall be covenants running with the land and shall inure to the benefit of the County and shall permit the County, in the event of the Association's or owner's failure to comply, to enter said lot and mow the plant growth. In such event, the cost or expense thereof shall be chargeable to and paid by said Association or lot owners and may be collected by the County as taxes and levies are collected.

**B. THE COUNTY SHALL:**

After ninety-five percent (95%) of the land in the Subdivision has been subdivided into lots and has been built upon and made ready for residential occupancy, the County shall have full responsibility for maintenance and operation of the facilities and the Developer relieved of all future liability and/or obligation thereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year above written:

W. BOUTROS AND COMPANY

BY: Wafaiey R. Boutros (SEAL)  
Wafaiey R. Boutros, President

COUNTY OF AUGUSTA, VIRGINIA

BY: [Signature] (SEAL)

STATE OF VIRGINIA, AT LARGE

CITY/COUNTY OF Augusta, To-Wit:

The foregoing instrument was acknowledged before me this 1<sup>st</sup> day of April, 1999, on behalf of W. Boutros & Company by Wafaiey R. Boutros, President.

My commission expires: Sept. 30 2002.

Michael H. Comer  
Notary Public

BK 1414 PG 699

STATE OF VIRGINIA, AT LARGE

CITY/COUNTY OF Augusta, To-Wit:

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of April, 1999, on behalf of the County of Augusta, Virginia, by Dale K. Cobb, Director of Community Development

My commission expires: Sept. 30, 2003

Michael H. Comer  
Notary Public

State Tax	039	\$	_____	VIRGINIA: In the Clerk's Office of the
County Tax	213	\$	_____	Circuit Court of Augusta County, Va.
Transfer Fee	212	\$	_____	<u>April 5</u> 19 <u>99</u> this
Clerk's Fee	301	\$	<u>86.00</u>	writing was admitted to record at
St. Library	145	\$	<u>7.00</u>	<u>1:32</u> o'clock <u>P.</u> M. and the
Tech. Fund	106	\$	<u>21.00</u>	Tax imposed by Section 58.1-802 of the
State Tax	038	\$	_____	Code of Virginia in the amt. of
Local Tax	220	\$	_____	\$ _____ has been paid.
TOTAL		\$	<u>114.00</u>	TESTE: JOHN B. DAVIS, CLERK
				By: <u>Karen J. Ridley</u> , Dep. Clerk