

Lake Maintenance Agreement

THIS PRESERVATION OF COMMON AREA AND MAINTENANCE AGREEMENT, made and entered into this 10th day of January, 1985, by and between TABB LAKES HOMES ASSOCIATION, INC., a Virginia corporation (herein the "Association") and the COUNTY OF YORK, VIRGINIA, a political subdivision of the State of Virginia (herein "County").

RECITALS:

Tabb Lakes is a residential lot subdivision developed pursuant to the ordinances of the County of York, the overall plan of which is shown on that certain subdivision development plat dated 6/1/84, Rev. 8/21/84, prepared by C. K. Tudor, Engineers, a copy of which is on file with County. The total area of Tabb Lakes as a residential subdivision consists of 167.8 acres, which is divided into single family residential subdivision lots, the public streets as shown on said plan, and an area generally referred to as the "lake" and "open space" (the "Common Area").

Tabb Lakes as a residential subdivision is being developed in stages. The first section is shown on that certain plat entitled, TABB LAKES, SECTION ONE, COUNTY OF YORK, VIRGINIA," prepared by C. K. Tudor Engineers, Inc., dated December 10, 1984, and recorded at Plat Book 10, Pages 91 & 92, in the Clerk's Office for the County of York, Virginia, consists of 87 single family residential subdivision lots and is comprised of 36.57 acres, which includes the lots, public streets and the Common Area.

Simultaneously with the recordation of said first section plat there was recorded that certain "Declaration of Covenants, Conditions and Restrictions," ("Restrictions") dated January 10, 1985, which are recorded at Deed Book 412, Page 262, in the Clerk's Office aforesaid, and the same are incorporated herein by reference thereto. These Restrictions create as covenants running with the residential subdivision provisions for creation of the Association as the entity to maintain the Common Area and the method of assessing the respective lot owners is set forth. In accordance therewith, the Common Area has been heretofore deeded to the Association by deed dated January 10, 1985, recorded at Deed Book 412, Page 276, in said Clerk's Office.

The Common Area, now owned by the Association includes recreational lakes and open spaces which serve as an integral part of the storm water management system for the subdivision in addition to its recreational and aesthetic amenities.

One of the purposes of the Association is to provide proper maintenance of these facilities.

The Association recognizes, for itself and its respective present and future lot owners, and their successors and assigns as such lot owners, that the Common Area contains private facilities solely for the enjoyment and benefit of the lot owners in their capacity as members of the Association.

The Association recognizes, covenants and agrees that storm water from public streets drains into the lake in the Common Area and that neither County nor Virginia Department of Highways is responsible for maintaining drainage systems on private property. Included in the purposes and intent of the within Agreement is for the Association to covenant and agree to bear sole responsibility for the maintenance and improvement of the Common Area, including the storm water detention facilities.

NOW, THEREFORE, for good and valuable consideration, including but not limited to the approval by County of the residential subdivision it is UNDERSTOOD and AGREED as follows:

Not Valid for Disclosure Packages

1. Association hereby agrees to bear sole responsibility for the maintenance and improvement of the Common Area including the storm water detention facilities. The Association further recognizes and agrees that neither County nor the Virginia Department of Highways is responsible for such maintenance in any way whatsoever.

Included within the duties of the Association, and not by way of limitation thereof, the Association shall:

- (a) Maintain close liaison with County's Department of Public Works seeking it's advice and guidance for proper maintenance of the Common Area.
- (b) Retain, from time to time as is reasonably necessary, engineers or other professionals competent in the design or maintenance of storm water facilities for advice and guidance, and not less than annually, obtain a written report from the said engineers or other professionals as to the condition of the storm sewer facilities, together with an itemization of any corrective work needed; a copy thereof shall be sent by the Association to the County on such annual basis.
- (c) Designate from its Board of Directors one (1) member who shall oversee or supervise the maintenance of all storm water facilities in coordination with such engineers or other professionals as may be retained by the Association; the County shall be advised as to the name and address of such member who serves as the liaison person with County.

Such member shall inspect, or cause to be inspected, the entire drainage system on a monthly basis and shall report to the Board of Directors as to any needed preventive maintenance or emergency repairs as may be needed. The Board of Directors shall contract for and fund the necessary maintenance and repairs as reported by such member and also the corrective work needed as reported by the engineer or other appropriate professional pursuant to subparagraph (b) hereinabove.

(d) Prepare a budget no less than ninety (90) days prior to the end of its fiscal year, to establish appropriate assessments for the lot owners to cover the following:

- (1) an amount which will equal the reasonably foreseeable amount of expenses for maintenance of the Common Area during the succeeding year; and
- (2) the proper amount to fund a reserve account which shall be established and maintained to meet any future costs to meet expenses as projected on a five (5) year basis.

In projecting cost for (1) and (2), consideration shall include, without limitation, necessary expenses for sediment accumulation, erosion, condition of the appurtenant structures and pipes, and algae and water quality control. The objective of the reserve fund established under (2) will be to provide funding for any major repairs or extraordinary expenses without the need for increased special or capital assessments of the lot owners.

2. The Association agrees that the general requirements for the maintenance program include without limitation:

- (a) Outflow and Inflow structures and swales
 - remove all blockages and debris
 - repair cracks and spalled surfaces

Not Valid for Disclosure Packages

- correct differential settlement
- correct underseepage or slow erosion
- see that riprap, grasses and landscaping are in place to minimize sedimentation

(b) Emergency spillways

- keep structurally sound and clear
- correct any settlement or heaving to maintain proper crest elevation
- see that spillway is stabilized

(c) The Lakes

- cleaned whenever sedimentation accumulations interfere with function of the facility
- remove weed growth in shallow areas of the pond

(d) Side slopes

- maintain to prevent deterioration, erosion and sedimentation

3. The Association further agrees to establish such other policies as it may from time to time determine as may be needed to insure that the Common Area, including the Lake area and its associated swales and drainage structures, are properly maintained to serve in their dual capacity as a recreational amenity and as a storm water detention facility to the end that the same may be properly maintained so as not to present to the County or any other agency or jurisdiction of this State any cost or problem related thereto.

4. The Association further agrees to hold the County harmless from any and all claims with regard to the construction, maintenance, operation and/or use of the facilities by any and all parties and from time to time to provide the County with continuing proof of liability insurance coverage in the minimum amount of ONE MILLION DOLLARS (\$1,000,000).