

PUBLIC WORKS AGREEMENT

THIS PUBLIC WORKS AGREEMENT (this "Agreement") executed this 20th day of October, 2022, and effective as of October 20, 2022 (the "Effective Date"), by and between THE PRESERVE AT WYE MILLS PROPERTY OWNERS ASSOCIATION, INC., a Maryland corporation (the "POA" or "Transferor"), and TALBOT COUNTY, MARYLAND, a political subdivision of the State of Maryland (the "County" or "Transferee"), to the use of the TALBOT COUNTY DEPARTMENT OF PUBLIC WORKS, acting in its capacity as the Controlling Authority ("DPW" or the "Controlling Authority").

WITNESSETH:

WHEREAS, pursuant to a Shared Sanitary Facility Agreement (the "SSFA") by and between Dolvin's Farm, LLC ("Dolvin's Farm"), the POA, the Talbot County Health Department (the "Approving Authority"), and DPW dated March 16, 2004 and recorded among the Land Records of Talbot County, Maryland at Liber M.A.S. No. 1231, folio 912, Dolvin's Farm and the POA established a shared sanitary facility (the "Facility") for the benefit of the lots in The Preserve at Wye Mills subdivision (the "Preserve") in accordance with Chapter 152 (Shared Sanitary Facilities) of the Talbot County Code (the "Code"); and

WHEREAS, the SSFA provides for the construction, start-up, operation, monitoring, and continuity of the Facility; and

WHEREAS, the Facility is currently owned and operated by the POA; and

WHEREAS, the POA has raised concerns with the County and DPW regarding the state of the Facility due to a lack of maintenance and operation by the POA's contract operators; and

WHEREAS, the Facility's existing rotating biological contactor system (the "RBC") was designed to comply with biological nutrient removal standards of 10 mg/l of total nitrogen, with effluent being disposed of through spray irrigation; and

WHEREAS, the RBC has been unable to comply with the Facility's discharge permit issued by the Maryland Department of the Environment ("MDE") since 2006 or 2007 due to extremely low flows and a poor engineering design; and

WHEREAS, MDE has advised the parties that the County would be eligible for grant funding to upgrade and replace the RBC with a new enhanced nutrient removal membrane bio-reactor wastewater system if the County were to acquire the Facility; and

WHEREAS, the County Engineer has evaluated and confirmed the feasibility of the County's acquisition of the Facility, to the use of the DPW as the Controlling Authority as defined by § 152-5 of the County Code; and

WHEREAS, on March 8, 2022, the County Council of Talbot County (the "County Council") introduced Resolution No. 326 to amend the Talbot County Comprehensive Water and Sewer Plan (the "CWSP") to authorize the County's acquisition of the Facility in accordance with Md. Code Ann., Envir. § 9-1110, Code of Maryland Regulations ("COMAR") Title 26, Subtitle 04, Chapter 05, § 152-12(C) of the County Code, and Section 9 of the SSFA; and

WHEREAS, the County Council adopted Resolution No. 326 on April 26, 2022; and

WHEREAS, MDE finally approved Resolution No. 326 as modified on or about June 15, 2022, upon which the provisions thereof were incorporated into the CWSP pursuant to Md. Code Ann., Environment § 9-507; and

WHEREAS, Transferee desires to acquire substantially all of the tangible assets that are used by Transferor in the operation of the Facility, along with the real property upon which the Facility is located, (collectively, the "Assets"), which are more fully described in Exhibit A attached hereto and incorporated herein by reference as if fully set forth; and

WHEREAS, Transferor desires to transfer the Assets to Transferee; and

WHEREAS, Transferor owns all of the Assets.

NOW, THEREFORE, THIS AGREEMENT, WITNESSETH, that each of the parties hereto, in consideration of the mutual covenants and agreements herein contained, do hereby agree as follows:

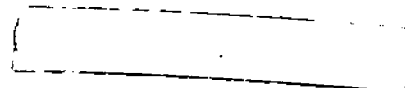
1. Recitals. The recitals set forth above are incorporated herein and made a substantive part hereof.
2. Transfer. Subject to the terms and conditions hereof, in consideration of the covenants of Transferee contained herein, Transferor hereby agrees to transfer, and Transferee hereby agrees to acquire, all of the Assets. Except as otherwise expressly provided in this Agreement, Transferee shall not assume any of Transferor's obligations or liabilities.
3. Closing. The transaction contemplated herein shall close at the County Office, 11 N. Washington Street, Easton, Maryland 21601 on or before October 31, 2022, at such time mutually agreed upon by the parties hereto (such time and date being herein referred to as the "Closing Date").
4. Transfer Costs. Transferor shall pay all taxes, costs, and fees incurred in this transaction as the result of the transfer of the Assets. Such costs shall be paid from the repair, replacement, and reimbursement fund described in Section 13 herein.
5. Consent Agreement. Contemporaneously with the execution of this Agreement, Transferor and MDE have entered into a Consent Agreement which, in pertinent part, mandates certain structural upgrades, repairs, and operational requirements for the Facility. Notwithstanding



any provision in the Consent Agreement to the contrary, Transferor shall retain responsibility for any monetary penalties or judgments assessed by MDE for violations occurring prior to the Closing Date.

6. Representations and Warranties of Transferor. Transferor hereby represents and warrants to Transferee on the date hereof and on the Closing Date that:

- (a) Transferor has good and marketable title to the Assets.
- (b) The Assets are free and clear of all claims, liens, and encumbrances except as expressly otherwise provided in this Agreement and, upon the closing of the transaction contemplated hereby, Transferee will own such assets free and clear of all claims, liens, and encumbrances, other than as may have been created by or through Transferee.
- (c) There are no taxes of any kind, nature, or description due and owing, the nonpayment of which would result in a lien upon the Assets.
- (d) There are no judgments of any court of record of the State of Maryland, or any federal or other court, or any administrative action, which may constitute in any way, or result in, a lien upon the Assets.
- (e) Transferor is a corporation duly and validly organized and existing and in good standing under the laws of the State of Maryland.
- (f) There are no suits or administrative actions pending or, to the knowledge of Transferor, threatened against Transferor arising out of the business of Transferor except as expressly provided in this Agreement.
- (g) Pursuant to § 152-12(C) of the County Code, the provisions hereof shall run with and bind Lots 1 through 67 ("Lots 1-67"), the parcels identified as Reserved Lands for Open Space C, Reserved Lands for Open Space D, Reserved Land "J" for Community Shared Sanitary Facilities Area, Reserved Land for Storm Water Management Parcels E, F, G, H, and I, and the road beds (collectively, the "Subject Properties") as shown on a plat recorded among the Plat Records of Talbot County, Maryland at Liber M.A.S. No. 81, folio 394, entitled "FCA 02-06 & Final Subdivision Plan for The Preserve at Wye Mills in the Fourth Election District Tax Map 1 Grid 23 Parcel 23 Talbot County, Maryland" prepared by Lane Engineering, Inc. (the "Subdivision Plat"). Every individual or entity who now owns or hereafter acquires any right, title, or interest into any or all of the Subject Properties is and shall be conclusively deemed to have consented and agreed to the provisions of this Agreement, whether or not any reference hereto is made in the instrument by which such individual or entity acquired their interest therein. Notwithstanding the foregoing, Transferor shall cause any applicable restrictive covenants applicable to the Preserve to be duly amended to reflect the provisions hereof, with any such amendments to be approved by Transferee prior to recordation. Transferee may also cause this Agreement to be recorded among the Land Records of Talbot County, Maryland. A list of the current owners of Lots 1-67 is attached hereto as Exhibit B and incorporated herein by reference as if fully set forth.



(h) Transferor has corporate and other authority to enter into this Agreement. This Agreement and all transactions contemplated hereby have been duly authorized and approved by all corporate action required by the governing documents of Transferor and under State law, and the transactions contemplated hereby will not result in the violation, modification, or acceleration of any of the terms and provisions of Transferor's Articles of Incorporation or any amendment thereto, its By-Laws or any indenture, loan agreement, lease, or other agreement to which it may be a party, including but not limited to the restrictive covenants applicable to the Preserve, except as expressly authorized herein.

(i) Prior to the Closing Date, Transferor shall make no agreements nor assume any liabilities or undertakings affecting the Assets for which Transferee may be responsible without Transferee's prior written consent and after full disclosure. Transferee shall be permitted to participate in any and all discussions, negotiations, hearings, or other proceedings or meetings concerning structural and/or operational requirements relating to the future operation of the Facility.

7. Covenants of Transferor. Transferor hereby covenants to Transferee that:

(a) Transferor shall cooperate with and assist Transferee in obtaining any and all licenses and permits required for Transferee's operation of the Facility in substantially the same manner in which it is operated on the date hereof by Transferor. This includes Transferor's consent to the operation by Transferee under Transferor's license(s) and/or permit(s) to the full extent permitted by law and this Agreement until such time as Transferee obtains its own federal, State, and other operational permits, licenses, and all other required authorizations.

(b) Transferor shall pay all obligations arising out of Transferor's conduct of business relating to the Facility prior to the Closing Date, regardless of when any claim for any such obligation may be asserted.

(c) Transferor shall conduct its business with diligence and in the normal and regular manner as heretofore conducted, from the date hereof, to and including the Closing Date, and so that, among other things, the representations and warranties contained in this Agreement will be true and correct at and as of the Closing Date, and the conditions to be satisfied by Transferor on or prior to the Closing Date shall have been satisfied. Except as provided to the contrary elsewhere in this Agreement, between the date hereof and the Closing Date, with respect to its business Transferor shall:

(i) Not encumber any of the Assets, not dispose of any of the Assets except in the ordinary course of business, and, except in the ordinary course of business for the sale and replacement of inventory, not enter into any transaction or make any commitment relating to the Assets or business which may be binding on Transferee after the Closing Date without the prior written consent of Transferee, except as required by the Consent Agreement;



(ii) Permit employees, accountants, attorneys, and other representatives of Transferee to have reasonable access to the Facility properties, books of account, contracts, member lists, tax returns, and other documents, data, and records, and to furnish to Transferee all information with respect to the Facility, and copies of any such records and documents as Transferee may reasonably request;

(iii) Not take any action or fail to take any action without the prior written consent of Transferee, which would or might cause any representation or warranty made herein not to be true on the Closing Date or impair Transferor's ability to carry out its obligations under this Agreement;

8. Covenants of Transferee. Transferee hereby covenants to Transferor that, effective as of the Closing Date:

(a) Subject to all applicable statutes, rules, regulations, and all federal, State, and local rules, regulations, and requirements, and to the transfer or issuance of all required permits, licenses, and authorizations, Transferee shall assume operation of the Facility and shall continue to provide sewer service to the current members and all other residents of the Preserve.

(b) Transferee shall be solely responsible for all maintenance, upkeep, and operation of the Facility.

(c) Transferee shall take all action reasonably required to finance any and all improvements to the Facility by applying for low-cost/low-interest loans and grants to the extent the same are or may be available, and by applying for other financing or making capital outlays for such improvements, the cost of which shall be borne by the current and future residents of the Preserve subdivision, who shall become customers of Transferee, and amortized through sewer service charges, connection charges, and/or other fees, rates, and charges provided by law.

9. Documents of Transfer. Transferor agrees to execute and deliver to Transferee any documents deemed reasonably necessary by Transferee to consummate the transfer of the Assets to Transferee or, after the Closing Date, to carry out the purposes of this Agreement including, but not limited to, a Contract for Purchase and Sale of Real Property, deed, Articles of Transfer, Bills of Transfer, and Assignments. Transferor shall be responsible for any and all costs associated with the recordation of any such documents in the Land Records of Talbot County, Maryland.

10. Survival of Representations. The representations and warranties (Section 6) and covenants (Sections 7 and 8) contained in this Agreement shall remain in full force and effect after the closing of the transaction contemplated hereby and shall not be merged into the documents of transfer described in Section 9 hereof.

11. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the respective parties, their legal representatives, successors, and assigns.

12. Transferee's Assumption of Contracts. On the Closing Date, Transferor shall provide Transferee with a list of all of Transferor's current operating contracts (the "Contract List"). The Contract List shall include the service to be performed, the schedule of such service, and the rates charged. On the Closing Date, Transferee shall assume Transferor's obligations for the specific services set forth in the Contract List and Transferor shall assign to Transferee all of Transferor's rights with respect to the same. Transferee's liability shall be limited to the available funds available in or borrowed by an enterprise fund established to operate the Facility as set forth in Section 14 below.

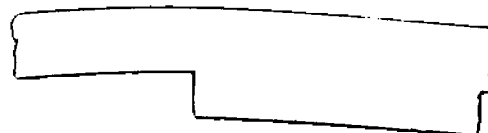
13. Repair, Replacement, and Reimbursement Fund. The owners of Lots 1-67 shall each pay to Transferee one thousand two hundred dollars (\$1,200.00) to establish a repair, replacement, and reimbursement fund to address critical pieces of equipment within the Facility and to reimburse Transferee for any sums due and owing from Transferee under the provisions of this Agreement. Such amount shall be paid in two (2) installments of six hundred dollars (\$600.00) each, with the first installment to be paid to Transferee within ninety (90) days from the Closing Date and the second installment to be paid to Transferee within one hundred eighty (180) days from the Closing Date.

14. Operation and Maintenance Fee.

(a) Each of Lots 1-67 that are improved and connected to the Facility shall be assessed an operation and maintenance fee of one hundred fifty dollars (\$150.00) on a monthly basis commencing on the first day of the month occurring after the Closing Date or upon connection, whichever is later, with all such funds being applied to the operation and maintenance costs of the Facility. This monthly operation and maintenance fee shall be subject to adjustments from time to time as the County deems necessary and appropriate to ensure the proper operation and maintenance of the Facility.

(b) Pursuant to Section 4(b) of the July 2, 2021 Memorandum of Understanding and Agreement for Reimbursement of Costs of Preliminary Engineering Report between the parties, Transferee shall be reimbursed for the costs of the Preliminary Engineering Report prepared by Rauch, Inc., as more fully described therein, from the operation and maintenance fees described in subsection (a) hereinabove to the extent any such costs are not covered through State funding.

15. Liens Against Real Estate. In accordance with the provisions of Chapters 148 and 152 of the County Code, all charges, levies, and assessments provided for in this Agreement shall be a lien or charge against the real property served or benefited and shall be levied, collected, and enforced and shall have the same priority and right, bear the same interest and penalties, and in every respect be treated as County real estate taxes. The provisions of this Section shall be supplementary to, but do not supersede, any applicable provisions of the County Code regarding rates, fees, assessments, and other charges to be imposed.



16. Conditions Precedent to the Obligations of Transferee to Close. The obligation of Transferee to close this transaction and to perform its other covenants and agreements pursuant to the terms and conditions of this Agreement are subject to the fulfillment as of the Closing Date of each of the following conditions precedent, any or all of which may be waived in writing by Transferee. In the event any of the following conditions are not satisfied or waived by Transferee prior to or on the Closing Date, this Agreement, at the option of Transferee, shall be null and void.

(a) Each of the representations and warranties of Transferor contained in this Agreement shall have been true in all material respects on the date hereof, and shall be true in all material respects as of the Closing Date.

(b) All corporate and other proceedings of Transferor in connection with the execution, delivery and performance of this Agreement, the consummation of the transactions contemplated hereby, and the transfer of the Assets and all documents and instruments incident thereto, shall be satisfactory in form and substance to Transferee, and Transferee shall have received all such documents and instruments, or copies thereof, as may be reasonably requested.

(c) All of the machinery and equipment included in the Assets shall be in substantially the same condition as exists on the effective date of this Agreement as first set forth above.

17. Miscellaneous.

(a) This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Maryland.

(b) The section headings contained herein are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

(c) This Agreement sets forth the entire agreement and understanding of the parties in respect of the transactions contemplated hereby and supersedes all prior agreements, arrangements, and understandings relating to the subject matter hereof.

(d) All of the terms, covenants, representations, warranties, and conditions of this Agreement shall be binding upon, and inure to the benefit of and be enforceable by, the parties hereto and their respective legal representatives, successors, and assigns. The parties represent to one another that they have the full power and authority to enter into this Agreement and that all actions necessary for the proper execution hereof have been taken.

(e) Transferee and Transferor shall pay all of their own expenses incurred in connection with the authorization, negotiation, preparation, execution, and performance of this Agreement and the transactions contemplated hereunder, including, without limitation, all fees and expenses of their respective agents, representatives, counsel, and accountants.



(f) Nothing contained herein is intended to or shall be construed so as to limit the remedies which any party hereby may have against any other party hereto in the event of a breach of any representation, warranty, or agreement made under or pursuant to this Agreement, it being intended that any remedies shall be cumulative and not exclusive.

(g) Any notice, request, or other communication to be given by any party hereunder shall be in writing and shall be sufficiently given if, and deemed to have been given when, delivered personally or sent by registered or certified mail, postage prepaid, addressed to such party as follows:

If to Transferor:

Phil Jackson, President
The Preserve at Wye Mills Property Owners Association
13495 Rustling Oaks Drive
Wye Mills, MD 21679

If to Transferee:

Talbot County, Maryland
Attn: County Manager
11 N. Washington Street
Easton, Maryland 21601

With copy to:

Talbot County Office of Law
Attn: County Attorney
11 N. Washington Street
Easton, Maryland 21601

and

Talbot County Department of Public Works
Attn: County Engineer
215 Bay Street, Suite 6
Easton, Maryland 21601

(h) This Agreement shall not be amended, modified, or cancelled, nor shall any of the provisions hereof be waived, except by a written instrument executed by the parties hereto, or in the case of a waiver, by the party waiving compliance.

(i) The failure of any party at any time or times to require performance of any provisions hereto shall in no manner affect the right at a later time to enforce the same.



(j) No waiver by any party of any provision or of any breach of any provisions of this Agreement, whether by conduct or otherwise, in any one or more instances shall be deemed to be construed as a further and continuing waiver of such provision or breach or of any other provision or breach.

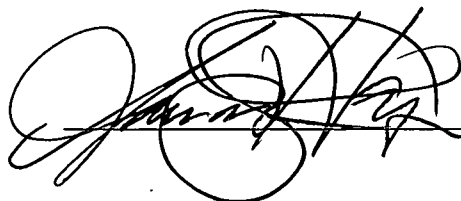
(k) The provisions hereof are deemed to be severable, and the invalidity of any provision or part of any provision of this Agreement shall not render invalid the remainder of such provision or any other provision of this Agreement.

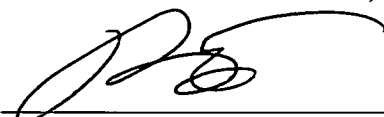
(l) This Agreement may be executed simultaneously in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or portable document format ("PDF") shall be as effective as delivery of an original.

IN WITNESS WHEREOF, the parties hereto have duly executed and affixed their respective seals to this Agreement on the day and year first above written.

WITNESS:

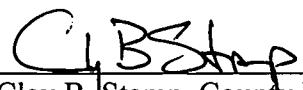
THE PRESERVE AT WYE MILLS PROPERTY
OWNER'S ASSOCIATION, INC.

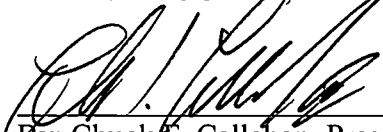


 (SEAL)
By: Phil Jackson, President

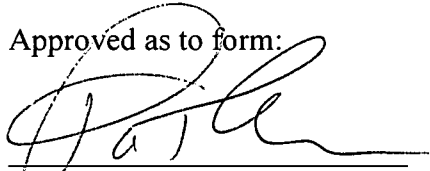
WITNESS/ATTEST:

TALBOT COUNTY, MARYLAND


Clay B. Stamp, County Manager

 (SEAL)
By: Chuck F. Callahan, President

Approved as to form:


Patrick W. Thomas, County Attorney





Kathleen M. Duvall, Clerk
Circuit Court for Talbot County
11 N. Washington St., Suite 16
Easton, Maryland 21601

License and Recording
410-822-2611 Ext. 4

LR - Agreement
Recording Fee 20.00
Name: Preserve Wye
Mills Prop
Owners/Talbot Co
Ref:
LR - Agreement
Surcharge 40.00
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SubTotal:	60.00
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Total:	60.00

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