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Water Protection Program

SETTLEMENT AGREEMENT

This Settlement Agreement is made by and among the Missouri Attorney General's Office ("Attorney General"), the Missouri Department of Natural Resources ("Department"), and Lexington Flint Hill, Inc. ("Lexington Flint Hill"). This agreement is deemed to be executed on the date this document is signed and dated by the Department.

WHEREAS, the Department director or his designee, on behalf of the Missouri Clean Water Commission, administers the provisions of the Missouri Clean Water Law, Chapter 644, RSMo (as amended).

WHEREAS, Lexington Flint Hill owns and is conducting land disturbance activities at a tract of land that is planned for a subdivision, known as Lexington Subdivision. Land disturbance activities include, but are not limited to, grubbing, grading, excavating or otherwise destroying or disturbing the root zone. Lexington Flint Hill is a Missouri Close Corporation that is registered and in good standing with the Missouri Secretary of State. The tract of land is 74.13 acres in size (approximately 57 acres disturbed), with the legal description Land Grant No. 00413 in St. Charles County, Missouri. The site was previously operated pursuant to the conditions and requirements of Missouri State Operating Permit (MSOP) No. MO-RA07126, and is currently operated pursuant to the conditions and

requirements of MO-RA10147, which expires February 7, 2022. The receiving stream for stormwater runoff from the site is a tributary to Dry Branch and Dry Branch, a Class C water body.

WHEREAS, On December 7, 2015, Department staff conducted an investigation and compliance inspection of the site after receiving an environmental concern that a retention basin at the construction site was discharging cloudy water offsite. During the inspection, staff observed that a portion of sediment fence and a rock check dam in the southwest area of the site failed and documented a trail of sediment from the failed rock check dam into a tributary to Dry Branch. Staff followed the tributary to Dry Branch to the confluence with Dry Branch and noted that the streambed and some banks in the area were filled with sediment. Along the southern boundary of the disturbance, staff observed areas where sediment fence was topped and improperly installed. Along the southeastern boundary of the disturbance, staff observed portions of sediment fence that were improperly installed and topped. Staff documented a path of sediment deposits from the site into the tributary to Dry Branch. Staff reviewed site inspection records and noted that the inspection records did not contain information about where land disturbance activities had taken place and were continuing and when

corrective actions were made to deficiencies in Best Management Practices (BMPs) noted on the reports.

WHEREAS, on February 5, 2016, the Department issued Notice of Violation (NOV) No. SL160004 to the Lexington Flint Hill for violations documented during the December 7, 2015, inspection.

WHEREAS, on April 4, 2016, Department staff conducted an inspection of the site and noted that storm sewer inlets did not have adequate BMPs and observed cloudy water entering an inlet, that portions of sediment fence had been undercut and had significant holes in the southeast corner of the site; that there were sediment deposits in the tributary to Dry Branch downgradient of this portion of damaged sediment fence; that along the southern border of the disturbance, a segment of sediment fence that had been undercut and was no longer toed in to the ground; that there was sediment accumulation along the other side of the sediment fence in this segment and sediment accumulation along the southern border of the site. Staff reviewed site inspection records and found that not all site inspections were conducted within seven days. Staff noted that the inspection records did not contain dates that corrective actions were taken to repair deficient BMPs.

WHEREAS, on July 5, 2016, the Department issued NOV No. SL160158 to the Lexington Flint Hill for violations documented during the April 4, 2016, inspection.

WHEREAS, sediment is a “water contaminant” and Dry Branch and its tributaries are “waters of the state” as defined in Section 644.016(24) and Section 644.016(27), RSMo.

WHEREAS, causing pollution of the tributary to Dry Branch and Dry Branch, waters of the state, or placing or causing or permitting to be placed a water contaminant in a location where it is reasonably certain to cause pollution of waters of the state is a violation of Sections 644.051.1(1) and 644.076.1, RSMo.

WHEREAS, discharging a water contaminant into waters of the state, which reduced the quality of such waters below the Water Quality Standards established by the Missouri Clean Water Commission, is a violation of Sections 644.051.1(2) and 644.076.1, RSMo, and 10 CSR 20-7.031(4)(A), 10 CSR 20-7.031(4)(C), and 10 CSR 20-7.031(4)(G).

WHEREAS, failing to install and maintain adequate BMPs for erosion and sediment control as required by MSOP No. MO-RA07126 is a violation of Section 644.076.1, RSMo, and 10 CSR 20-6.200.

WHEREAS, failing to conduct adequate weekly and after rainfall event site inspections as required by MSOP No. MO-RA07126 violated Section 644.076.1, RSMo.

WHEREAS, Section 644.076.1, RSMo, makes it unlawful to violate the Missouri Clean Water Law promulgated pursuant thereto and establishes civil penalties of up to \$10,000 per day per violation.

WHEREAS, the Attorney General is authorized to institute, in the name and on behalf of the State, all civil proceedings at law or in equity necessary to protect the rights and interests of the State under § 27.060 RSMo, and § 644.076 RSMo of the Missouri Clean Water Law authorizes the Attorney General to bring an action for civil penalties and injunctive relief under the Missouri Clean Water Law at the request of the Department's director.

WHEREAS, the Department, the Attorney General, and Lexington Flint Hill (the "Parties") mutually desire to resolve all claims that the State could bring in a civil action against Lexington Flint Hill based upon the violations cited in NOV Nos. SL160004 and SL160158.

WHEREAS, the Parties enter this Settlement Agreement to terminate this controversy for the purpose of avoiding the expense and uncertainty associated with bringing a civil action to trial.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the Parties agree as follows:

1. The provisions of this Agreement shall apply to and be binding upon the parties executing this Agreement, their agents, subsidiaries, affiliates, and lessees, including the officers, agents, servants, corporations and any persons acting under, through, or for the parties agreeing hereto. The Parties agree that by entering this Settlement Agreement, Lexington Flint Hill is not admitting liability for the violations cited in NOV Nos. SL160004 and SL160158. This Settlement Agreement shall not be deemed to be an admission of liability for any purpose whatsoever.

2. The Parties hereby agree to a civil penalty of \$20,000.00. The Parties further agree that \$8,000.00 of this civil penalty will remain suspended on the condition that there are no further violations of Missouri Clean Water Law or regulations during a two-year period from the date of execution of this Settlement Agreement. Lexington Flint Hill agrees to pay the \$12,000.00 up-front civil penalty by check made payable to the "*State of Missouri (St. Charles County)*" and mailed along with the Settlement Agreement to: Collections Specialist,

Missouri Attorney General Office, P.O. Box 899, Jefferson City, MO 65102-0889 and postmarked within five business days of December 4, 2017. In the event the Department documents pollution of the tributary to Dry Branch or Dry Branch attributable to Lexington Flint Hill or a violation of the water quality standards for these water bodies attributable to Lexington Flint Hill within the two-year period, Lexington Flint Hill agrees to pay the suspended portion of the penalty within 15 days of written demand by the Attorney General, by certified check made payable and delivered in the manner provided for payment of the up-front civil penalty. Payment of the suspended portion of the penalty does not preclude the Department from seeking additional penalties for violations that occur and are documented by the Department within the two-year period.

3. Lexington Flint Hill agrees to comply with all terms, conditions and requirements of MO-RA10147.

4. In addition to complying with the permit, Lexington Flint Hill agrees to submit to the Department copies of site inspection reports described in Paragraph 15 under "Requirements" in the permit until either MSOP No. MO-RA10147 is terminated, or the Department notifies Lexington Flint Hill of an earlier end-date for submitting such

reports. Lexington Flint Hill shall begin submitting the site inspection reports within 60 days of the effective date of this Settlement Agreement, and every 30 days thereafter. Lexington Flint Hill shall submit the reports by mail or email to:

David Davison  
Missouri Department of Natural Resources  
Water Protection Program  
P.O. Box 176  
Jefferson City, MO 65012-0176  
[David.Davison@dnr.mo.gov](mailto:David.Davison@dnr.mo.gov)

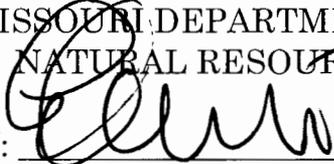
5. The Department and the Attorney General agree not to bring or cause to be brought any civil action against Lexington Flint Hill for penalties arising out of the above-referenced claimed violations of the Missouri Clean Water Law and/or regulations referred to in NOV Nos. SL160004 and SL160158, except that the Department may bring or cause to be brought an action to enforce the terms of this agreement.

6. The terms stated herein constitute the entire and exclusive agreement of the parties hereto. There are no other obligations of the parties, be they express or implied, oral or written, except those which are expressly set out in this Settlement Agreement. The terms of this Settlement Agreement supersede all previous memoranda of understanding, notes, conversations, and agreements whether express or implied. This Settlement Agreement may not be modified orally.

IN WITNESS WHEREOF, the parties hereto have executed this

agreement as follows:

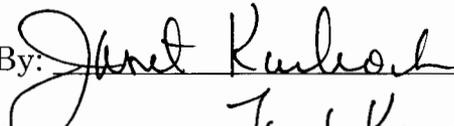
MISSOURI DEPARTMENT OF  
NATURAL RESOURCES

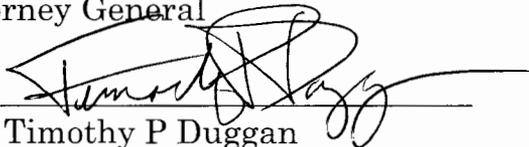
BY:   
Ed Galbraith, Director  
Division of Environmental Quality

DATE: 12/17/17

LEXINGTON FLINT HILL, INC.

JOSHUA D. HAWLEY  
Attorney General

By:   
Printed Name: Janet Karrenbrock

BY:   
Timothy P Duggan  
Assistant Attorney General

TITLE: member

DATE: 12/8/17

DATE: 12-4-17