

PROPERTY TAX ID _____
BUSINESS TYPE _____
(from W&S Rules & Regulations Appendix B)

LEED REDUCED CAPACITY FEE AGREEMENT

THIS LEED REDUCED CAPACITY FEE AGREEMENT (“Agreement”), made this ____ day of _____, 20__, by and between **Frederick County, Maryland**, a body corporate and politic of the State of Maryland, its successors and assigns (**the “County”**) and _____, (**the “Customer”**), its heirs, successors and assigns,

WITNESSETH THAT, WHEREAS, the Customer is the owner of all that parcel of land situate in the _____ Election District, Frederick County, Maryland, and being more particularly described on Exhibit A, which is attached hereto and incorporated herein by reference (the “Property”), and

WHEREAS, the Customer’s building or buildings located on the Property (the “Building”) has/have received Leadership in Energy and Environmental Design (“LEED”) certification from the U. S. Green Building Council as evidenced by _____; and

WHEREAS, the latest version of LEED (version 3 established in 2009) consists of nine (9) categories of rating systems; the New Construction and Major Renovations (NC) rating category is focused on prerequisites and credits within seven (7) topics, and the only topic relevant to this Agreement is Water Efficiency; and

WHEREAS, the Customer’s Building has obtained LEED certification that included points earned for WE Prerequisite 1: Water Use Reduction for a 20% capacity reduction, and WE Credit 3: Water Use Reduction for a capacity reduction of _____ percent (___%) (“LEED Certification for Water Efficiency”), which has qualified the Customer’s Building for reduced Capacity Fees as described in the Frederick County Water and Sewer Rules and Regulations, and

WHEREAS, there is a presumption that buildings having LEED Certification for Water Efficiency will require less water and sewer capacity than similar non-LEED certified buildings and place less of a demand on the County’s water and sewer system (e.g., treatment plant, pumping stations, interceptors, etc.) and that this Customer will be allocated less capacity (and therefore be charged lower Capacity Fees); and

WHEREAS, in consideration of the reduced Capacity Fees, the Customer has agreed to maintain the LEED Certification for Water Efficiency for the life of the Building, and will show proof of continuing LEED Certification for Water Efficiency by having LEED audits performed for the Building every three (3) years, and

WHEREAS, the Customer has agreed that, if any audit shows that the Building no longer meets the criteria for a LEED Certification for Water Efficiency at the same level as the initial certification, the Customer will pay to the County the difference between the reduced

Capacity Fees paid by the Customer due to LEED certification and the Capacity Fees originally paid by the Customer for the Building.

NOW THEREFORE, for and in consideration of the reduced Capacity Fees for the Building and in further consideration of the mutual promises, covenants and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, the County and the Customer, its heirs, successors and assigns, hereby agree as follows:

1. The recitals as stated above are hereby incorporated by reference into this Agreement.
2. On or about _____, 20__, the Customer paid _____ Dollars (\$_____) in Capacity Fees for the Building. The Customer acknowledges that, as of the date hereof, the Building has received LEED Certification for Water Efficiency for a capacity reduction of _____ percent (___%), and, due to that certification, is eligible for a refund to reflect the reduced rate for these Capacity Fees as shown in Appendix B of the County's Water and Sewer Rules and Regulations. Therefore, the Customer has qualified for a refund of a portion of the Capacity Fees paid.
3. The Customer hereby acknowledges receipt of a refund of Capacity Fees paid in the amount of _____ Dollars (\$_____) (the "LEED Reimbursement").

[ALTERNATE Section 3 for PPF Loan recipients: The Customer hereby acknowledges and agrees that, because the Customer has received a PPF Loan for Capacity Fees paid, the LEED reimbursement amount of _____ Dollars (\$_____) (the "LEED Reimbursement") shall be paid to the Customer after payment in full of the PPF Loan and any other amounts due under the PPF Loan Agreement has been received.]

4. The Customer agrees to obtain a LEED Water Efficiency audit ("Audit") for the Building every three (3) years from the date of this Agreement and to provide a copy of the Audit to the County's Division of Utilities and Solid Waste Management ("DUSWM") within five (5) business days of receiving the Audit results. The Customer shall send a copy of the Audit to:

Division of Utilities and Solid Waste Management
4520 Metropolitan Court
Frederick, MD 21704
Attn: Office of Finance and Administration

5. If the Customer fails to obtain any required Audit, or if the results of the Audit show that the Building no longer satisfies the criteria for the LEED Certification for Water Efficiency at the same level as the initial certification, then the Customer shall have sixty (60) days from the date that the Audit was received by or due to the County to correct the Audit issues and provide written confirmation of same to the County.
6. If the Customer fails to correct the Audit issues as described above in Section 4, or otherwise fails to meet its obligations under this Agreement, then the full amount of the LEED

Reimbursement shall be due and payable to the County. The County will send written notice of the amount due for the LEED Reimbursement, and the due date for repayment, to the Customer.

7. If repayment of the LEED Reimbursement is not received by the County within 30 days of the date of the County's written notice, then the amount of the LEED Reimbursement will be added to the Customer's water bill. Failure to pay the LEED Reimbursement thereafter could result in the termination of water service to the Building and/or sale of the Property at a County Tax Sale.

8. Any failure or delay by the County in enforcing any obligation, or exercising any right or remedy, under this Agreement does not constitute a waiver of that obligation, right or remedy.

9. The addition of fixtures that are eligible for reduced Capacity Fees due to LEED Certification for Water Efficiency to the Building subsequent to the date of this Agreement shall require an addendum to this Agreement, which must be signed by all parties and all persons or entities with an interest in the Property.

10. Any notices required under this Agreement shall be sent to the County at the address above in Section 3. Any notices required to be sent to the Customer shall be sent to:

11. This Agreement represents the entire agreement between the parties with respect to the matters contained herein. Any amendments to these terms must be in writing and signed by both parties.

12. The terms and conditions of this Agreement shall run with the land, and inure to the obligation and benefit of the heirs successors and assigns of the parties hereto.

13. This Agreement shall be recorded among the Land Records of Frederick County and the obligations of the Customer shall run with the land.

14. The Customer hereby agrees to include a copy of this Agreement with any contract of sale for the Property or Building.

WITNESS

CUSTOMER NAME

By: _____
Name:
Title:

ATTEST

FREDERICK COUNTY, MARYLAND, a body corporate and politic

_____ By: _____
Jan H. Gardner, County Executive

STATE OF MARYLAND, COUNTY OF FREDERICK, TO WIT:

I HEREBY CERTIFY that on this _____ day of _____, 20____, before me, the Subscriber, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared _____, [title] of _____, a Maryland _____, and acknowledged the foregoing instrument to be the act of _____, and he made oath in due form of law that he is the [title] of _____, and is duly authorized to make this acknowledgement on its behalf.

WITNESS my hand and Notarial Seal.

Notary Public

My Commission Expires:_____

STATE OF MARYLAND, COUNTY OF FREDERICK, TO WIT:

I HEREBY CERTIFY that on this _____ day of _____, 20____, before me, the Subscriber, a Notary Public in and for the State and County aforesaid, duly commissioned and qualified, personally appeared Jan H. Gardner, who acknowledged herself to be the County Executive of Frederick County, Maryland, a body corporate and politic, and that she, as such County Executive, being authorized so to do, executed the foregoing Agreement for the purposes therein contained, by signing the name of the body corporate and politic by herself as County Executive.

WITNESS my hand and Notarial Seal.

Notary Public

My Commission Expires:_____

EXHIBIT A
PROPERTY DESCRIPTION