

STORMWATER MANAGEMENT FACILITIES INSTALLATION, INSPECTION & MAINTENANCE AGREEMENT

THIS STORMWATER MANAGEMENT FACILITIES INSTALLATION, INSPECTION & MAINTENANCE AGREEMENT (“Stormwater Agreement”/”Agreement”), dated _____, 20__, for identification, is made by and between _____ [insert full name of Owner and Virginia State Corporation Commission Number for a corporation] (“Landowner”) and the City of Staunton, Virginia, a Virginia municipal corporation, located at 116 West Beverley Street, Staunton, Virginia 24401, (“City”), collectively “the Parties”.

1. Recitals.

- 1.1. Landowner is the owner of certain real property, more particularly described as _____ [insert legal description of property and parcel identification number], evidenced by deed recorded in the City of Staunton Circuit Court Clerk’s office as Deed Book/Page _____ (the “Property”);
- 1.2. Landowner is proceeding, or has already proceeded, to build on and develop the Property;
- 1.3. “City” refers to the City, its officials, employees, agents or designees;
- 1.4. The Site Plan/Subdivision Plan entitled _____ [insert plan name], prepared by _____ and dated _____, and any revisions (the “Plan”), and is incorporated by reference into this Agreement, and as approved or to be approved by the City, provides for conveyance, detention and/or treatment of stormwater;
- 1.5. The City and Landowner, and on behalf of administrators, executors, assigns, heirs and any other successors in interests, including any applicable property owners’ association or entity, agree that the health, safety and welfare of the residents of the City require that Stormwater Management (SWM) facilities be constructed and maintained, including in accordance with Division I of Title 13 of the Staunton City Code or successor provisions;
- 1.6. The approximate locations of specific SWM facilities included on the Plan are shown on the attached (indicate by X):
 - _____ Copy of City-approved final subdivision plat of Property, or
 - _____ City-approved scaled exhibit drawing of the Property;
- 1.7. The City requires that SWM facilities as shown on the Plan be constructed and adequately maintained by the Landowner, successors and assigns, including any

applicable property owners association or entity;

1.8. To the extent not inconsistent with defined terms in this Agreement, the words or terms used in this Agreement shall have the same meaning as in Division I of Title 13 of the Staunton City Code;

1.9. The affidavit annexed to this Agreement is incorporated into this Agreement; and

1.10. These recitals are deemed an integral part of this Agreement.

2. Stormwater Management Construction. The SWM facilities shall be installed/constructed by Landowner, in accordance with the plans and specifications identified on the Plan. Landowner, successors and assigns, and any applicable property owners' association or entity in existence or to be created shall be and are bound by this Agreement (all herein referred to as "Landowner"). If Landowner is extant, any notices or permission required may be made solely to or by Landowner but shall remain effective and binding as to the successors, assigns and any applicable property owners association or entity separately and collectively as Landowner.
3. Design Review. Landowner, by execution of this Agreement, acknowledges that Landowner has reviewed with the identified licensed design engineer on the Plan the specifics of the Plan and understands the function and maintenance requirements of all SWM facilities, including but not limited also to riparian buffers, provided for on the Plan. Landowner and successors in interest shall maintain a copy(s) of the Plan through the duration of ownership.
4. Long-term, Ongoing Responsibility. Landowner agrees to provide for the long-term responsibility for and maintenance of the SWM facilities and other technologies (e.g. grass swells, Best Management Practices (BMPs), etc.) specified to manage the quality and quantity of runoff in accordance with Staunton City Code Title 13 and 9 VAC 25-870-112, or successor provisions.
5. Stormwater Management Maintenance. Landowner shall maintain and keep in proper operation at all times the SWM facilities shown on or required by the Plan. These include but are not limited to: all pipes and channels built to convey stormwater to the facility(ies), as well as all structures, improvements and vegetation provided to control the quantity and quality of the stormwater. Landowner shall comply with all maintenance requirements in the Staunton City Code Title 13 and the Virginia Administrative Code 9 VAC 25-870, or successor provisions.
6. Maintenance Schedule. Landowner shall perform the work necessary to keep the SWM facilities in good working order. In the event a maintenance schedule for the SWM facilities (including sediment removal) is outlined on the approved Plan, that schedule shall be strictly followed as shall all other aspects of the plan.

7. Records. Pursuant to Staunton City Code Title 13 or successor provisions, Landowner shall make and keep complete and accurate records of the installation of the SWM facilities and of all maintenance and repairs and shall retain the records for at least five (5) years. Copies of all plans and specifications and maintenance and repair records shall be provided to the City upon the completion of any work. These records shall be made available promptly to the City, through its City engineer or designee, during inspection of the facilities and as otherwise upon request.
8. Landowner Failure to Maintain. If Landowner fails to maintain the SWM facilities in good working condition acceptable to the City at all times, the City may, after notice, enter upon the Property and take whatever steps it determines necessary in its sole discretion to correct deficiencies identified in the inspection report or otherwise evident and to charge the full costs, including but not limited to professional and other fees, related to such repairs to the Landowner. The City may pursue any enforcement measures in accordance with Title 13 of the Staunton City Code, 9 VAC 25-870-116, and or the State Water Control Law (Virginia Code, Title 62.1, Chapter 3.1) or other equivalent law or regulation, or successor provisions in effect with respect to SWM. The City shall not erect any structure of permanent nature on the land of the Landowner outside of the easement(s) for the SWM facilities. It is expressly understood and agreed that under this Agreement the City is under no obligation to maintain or repair such facilities, and in no event shall this Agreement be read, applied, construed, or interpreted to impose any such obligation(s) on the City.
9. Inspections by Landowner. Landowner shall conduct regular periodic inspections of the SWM facilities and prepare an inspection report at least annually. The purpose of the inspections is to assure and to document safe and proper functioning of the facilities. The annual inspection report shall cover the entire facilities, including but not limited to berms, outlet structure, pond areas, access roads, etc. Deficiencies and any necessary repairs shall be noted in detail in the inspection reports. Inspection reports shall be kept by the Landowner on file on the Property or other location specifically identified to the City for at least five (5) years. Landowner shall furnish copies of such reports to the City, as required by this Agreement, including when requested.
10. City Inspection(s) of SWM Facilities.
 - 10.1. Landowner hereby grants permission to the City to enter upon the Property and to inspect the SWM facilities whenever the City deems necessary in its sole discretion. When reasonably possible, the City shall attempt to notify Landowner prior to entering the Property, but prior notification is not required. The City shall provide to Landowner copies of the inspection report(s) and of any directive from the City outlining any necessary repairs or maintenance required to the SWM facilities, including a date by which such necessary repairs or maintenance shall be completed.
 - 10.2. Further, Landowner grants permission to the City to enter upon the Property, upon prior written notification from the City, to install, operate, and maintain at the City's sole expense equipment desired to monitor intermediate points on the

Property, and within the SWM facility(ies). No entry or access to the Property by the City pursuant to this subsection will unreasonably interfere with Landowner's use or operation of the Property, unless the City determines there are emergency or exigent circumstances.

11. Other Requirements. Landowner shall comply with all other applicable requirements in the Staunton City Code and the Virginia Administrative Code 9 VAC 25-870, or successor provisions.
12. Indemnification.
 - 12.1. This Agreement imposes no liability of any kind whatsoever on the City and Landowner shall indemnify, defend and hold the City harmless from any and all liability in the event the SWM facilities fail to operate properly at all times in strict accordance with this Agreement.
 - 12.2. Landowner shall indemnify, defend and hold harmless the City, its officials, employees and agents for any and all damages, accidents, casualties, occurrences or claims and suits and actions of any nature which might arise or be asserted against the City related to any installation, maintenance and repairs by Landowner and repairs, construction or corrective actions performed by the City to bring the facilities into full compliance with all applicable codes and design standards due to Landowner's failure to comply strictly with this Agreement.
 - 12.3. In the event a claim based upon the foregoing subsections is asserted against the City, the City shall promptly notify Landowner, who shall defend, at their own expense, any suit based on such claim. The City, in its sole discretion, may choose to defend the City. If, as a result of a claim, any judgment against the City is entered, Landowner shall pay all associated costs and expenses, including attorney's and other professional fees.
13. Recordation. This Agreement shall be recorded among the land records of the City, and shall constitute a covenant running with the land, and shall be binding on Landowner, administrators, executors, assigns, heirs and any other successors in interests, including any applicable property owners' association or entity.
14. Controlling Law. This Agreement shall be governed by the laws of the Commonwealth of Virginia.
15. Forum Selection. Any disputes related to this Agreement or the relationship between Landowner and the City shall be filed and resolved in the General District or Circuit Court of the City of Staunton.
16. Severability. If any provision of this Agreement is found to be illegal, invalid, or unenforceable, that shall not affect the validity or enforceability of any other provision of this Agreement.

- 17. Captions. The captions used in this agreement are merely convenient references. They do not constitute substantive provisions or modify the meaning otherwise of the Agreement.
- 18. No Third-Party Beneficiary. This Agreement is not intended to and shall not be construed to create any third-party beneficiary.
- 19. Modification. This Agreement may only be modified upon the written consent of all Parties.

LANDOWNER

Name

 Entity, an entity authorized to do
 Business in Virginia

Address

Date

COMMONWEALTH OF VIRGINIA

City/County of _____, to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by _____,

 Notary Public

ID # _____

My commission expires: _____

APPROVED BY:

City Manager or designee

Date

COMMONWEALTH OF VIRGINIA

City/County of _____, to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____, 20____,
by _____,

Notary Public

ID # _____

My commission expires: _____

AFFIDAVIT

AFFIANT, first being duly sworn, states as follows:

1. I am a Manager of _____, L.L.C., a manager-managed Virginia Limited Liability Company (the "LLC").

2. I make this affidavit in support of my execution of a stormwater management agreement on behalf of _____, LLC, and the City of Staunton, Virginia.

3. The Articles of Organization of the LLC that are in effect on the date of this affidavit are incorporated herein by reference and have not been amended.

4. There are no limitations on a Manager's authority in the current Operating Agreement or otherwise that would prohibit, nullify, void, or otherwise invalidate the execution, any provision or binding effect of the deed of easement and maintenance agreement.

5. As of the date hereof, the LLC continues to exist and has not been dissolved for any reason, including but not limited to the bankruptcy of any Member of the LLC or the LLC itself, or the death, resignation, or expulsion of any LLC Member.

6. I acknowledge that this statement is under oath and subject to the full penalties of law.

Affiant

COMMONWEALTH OF VIRGINIA
City/County of _____, to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____, 20____,
by _____,

Notary Public

ID # _____
My commission expires: _____