

INSPECTION & MAINTENANCE AGREEMENT
FOR STORMWATER MANAGEMENT PRACTICES

[Company or Development]

This Agreement for Inspection and Maintenance for Storm Water Management Practices (hereinafter the "Agreement") is made on the _____ day of _____, 2012 by and between _____ (hereinafter the "Owner"), and the City of Aurora (hereinafter the "City") for the mutual benefit of the City, the Owner and/or the entities or individuals who now, or in the future, own real estate located within the Property (as defined below).

WHEREAS, the Owner is *[Type of Company]* located in Aurora, Portage County, Ohio, the legal description for such real property being attached hereto as Exhibit 'A' (hereinafter the "Property"); and

WHEREAS, pursuant to Section 1107.08 of the Codified Ordinances of the City of Aurora ("Aurora Code"), the City requires a storm water maintenance agreement to be executed for the Property; and

WHEREAS, Owner agrees to cause to be constructed on the Property Storm Water Management Facilities ("Storm Water Management Facilities") as shown, described and identified on the attached Exhibit 'B' and incorporated herein by reference; and

NOW, THEREFORE, for and in consideration of the mutual covenants and undertakings of the parties, and in order to comply with Chapter 1175 of the Code, titled Comprehensive Storm Water Management, the parties hereby agree as follows:

1. DEFINITIONS: As used in this Agreement, the following terms shall have the designated meanings:
 - (a) Storm Water Management Facility(ies): Those certain storm water management facilities and all associated appurtenances on the Property, which are depicted in Exhibit 'B' attached hereto.
 - (b) Property: *[Identify Property]*
 - (c) Owner: *[Identify Owner]*

2. FINAL INSPECTION REPORTS AND AS-BUILT CERTIFICATION: The Owner agrees to certify in writing to the City within thirty (30) days of construction of the Storm Water Management Facilities that the Storm Water Management Facilities are constructed in accordance with the approved plans and specifications as depicted in Exhibit 'B'. The Owner further agrees to provide to the City "As Built" certifications of the locations of each Storm Water Management Facility and the drainage areas served by each Storm Water Management Facility.

3. MAINTENANCE:
 - (a) Owner agrees to maintain in perpetuity the Storm Water Management Facilities in accordance with this Agreement and sections 1107.08 and 1175.05 of the Aurora Code.
 - (b) Owner shall contract for, or otherwise cause the Storm Water Management Facilities located on the Property to be inspected and maintained, and repaired, as necessary, to ensure their original designed function, including, but not limited to the following:

- (1) Stormwater Pond Maintenance. To be completed MONTHLY.
 - (A) Remove floating debris.
 - (B) Remove woody vegetative growth from pond area including embankments.
 - (C) Remove trash and/or accumulated sediment.
 - (D) Remove obstructions in orifices and/or outlets.

- (2) Stormwater Pond Maintenance. To be completed ANNUALLY.
 - (A) Repair erosion to outfall or spillway.
 - (B) Repair and/or replace damaged structures, such as catch basins, risers, pipes, and headwalls.
 - (C) Repair animal burrows and/or other leaks in the dam structures.
 - (D) Remove debris from overflow spillway and grates.
 - (E) Mow embankments and remove woody vegetation on embankments.
 - (F) Inspect and remove invasive plants.
 - (G) Dredge pond on a 3-7 year cycle or as necessary to retain design capacity.

- (3) Infiltration Trench Maintenance. To be completed MONTHLY.
 - (A) Remove debris and or sediment from inlet and outlet pipes.
 - (B) Minimize heavy equipment, including mowers, in the vegetated areas to reduce compaction.
 - (C) Check observation wells 72 hours after rain events twice a year to ensure dewatering between storms is taking place at the facility. Repair as necessary to ensure functionality.
 - (D) Repair washed-out/damaged check dams.

- (4) Infiltration Trench Maintenance. To be completed ANNUALLY.
 - (A) Remove sediment in sediment traps and pretreatment swales
 - (B) Check and remove any tree cover over trenches.
 - (C) Remove any aggregate (soil/mineral based) deposits.

- (5) Bioretention Area Maintenance. To be completed MONTHLY.
 - (A) Minimize heavy equipment, including mowers, in the vegetated areas to reduce compaction.
 - (B) Remove and replace any diseased or dead plant material. If specific species are not successful in the bioretention area, replace as appropriate to ensure full vegetation as designed.

- (6) Bioretention Area Annual Maintenance. To be completed ANNUALLY.
 - (A) Replace mulch at a depth of no greater than 3” and cover the entire area.
 - (B) Remove compacted mulch prior to new mulch placement.
 - (C) Repair any areas that have eroded.
 - (D) Ensure cell is dewatering within 1.66 days or 40 hours as required by the Ohio EPA and not bypassing facility. Repair as necessary to ensure functionality.

- (7) Maintenance Plans for all Storm Water Management Practices with decentralized design criteria shall be drawn up to comply with the latest edition of the Ohio Department of Natural Resources Division of Soil and Water Conservation “Rainwater and Land Development Manual”.
 - (c) Owner agrees to provide the City semi-annual reports documenting any inspections, maintenance and/or repairs made on the Storm Water Management Facilities ("Report"). The Reports shall be due to the City on or before May 1st and November 1st of each year, or within sixty (60) days

from a written request of the City. In no event shall Owner be obligated to issue more than two (2) Reports in a year. The Reports are to contain the following information relative to the inspection, maintenance and/or repair:

- (a) Date of inspections, maintenance and/or repairs;
- (b) Person(s) conducting the inspections, maintenance and/or repairs;
- (c) Summary of the inspections, maintenance and/or repairs;
- (d) Any recommendations for future maintenance and/or repairs;

(d) In the event that Owner dissolves, goes out of business for any reason or fails to maintain, contract for or cause to be inspected and maintained or make all necessary repairs to the Storm Water Management Facilities, then the successor Owner(s) shall be responsible, jointly and severally, for Owner's obligations herein forth.

- 4. **CHANGES:** Owner shall not eliminate or make structural changes or modifications to the Facilities without prior written approval from the City.
- 5. **ACCESS:** Owner shall hereby grant to the City access to the Storm Water Management Facilities in perpetuity to conduct inspections for verifying that the Storm Water Management Facilities are being maintained.
- 6. **EASEMENTS:** If necessary, the Owner agrees to grant the City a non-exclusive easement on the Property to access the Storm Water Management Facilities as by required by the City of Aurora Engineer for inspections and maintenance pursuant to Aurora Code Section 1175.11.
- 7. **REQUIRED ACTION:** Upon notification by the City of maintenance problems that require correction, the specific corrective actions shall be taken by Owner within a reasonable time frame as determined by the City pursuant to Aurora Code Section 1175.13. In the event that the Owner dissolves, goes out of business for any reason or fails to undertake the necessary specific corrective actions within a reasonable time frame pursuant to Aurora Code Section 1175.13, then the successor Owner(s) shall be responsible, jointly and severally, for Owner's obligations herein forth.
- 8. **ENFORCEMENT:** If required corrective actions identified in the City's inspection reports are not made within the specified time period, the City is authorized to enter upon the Storm Water Management Facilities and perform the corrective actions. Except in the event of an emergency, the City shall provide written notice to Owner along with a reasonable cure period prior to entry and corrective action by the City. The City shall be reimbursed by Owner for all associated expenses incurred within 10 days of receipt of invoice from the City.
- 9. **FUNDING:**
CHOOSE ONE OF THE FOLLOWING:

For a residential development:

Owner shall be responsible for any fee, cost or expense associated with the operation, modification, maintenance, repair or replacement of any Storm Water Management Facility. Pursuant to its Declaration, Owner shall charge an assessment for the purpose of fulfilling the funding obligations of this Agreement to any Lot or Living Unit in the Property. In the event that Owner dissolves, goes out of business for any reason or fails to assess any Lot or Living Unit owner, then the successor Owner(s) shall be responsible, jointly and severally, for Owner's obligations herein set forth.

-or-

For a commercial or industrial development:

Owner shall be responsible for any fee, cost or expense associated with the operation, modification, maintenance, repair or replacement of any Storm Water Management Facility. In the event that Owner dissolves, or goes out of business for any reason, then the successor Owner(s) shall be responsible, jointly and severally, for Owner's obligations herein set forth.

10. **ASSESSMENT**: In the event the City exercises its right to undertake corrective action in conformity with Paragraph 7 of this Agreement, it shall invoice the Owner, Association, or Lot or Living Units owners, as the case be, for all of the actual costs to the City to perform such corrective action which is the responsibility of the Owner, Association or Lot or Living Units owners under this Agreement. The Owner, Association, or Lot or Living Units owners shall have 90 days to pay to the City the amounts due to the City under this paragraph for performance under this Agreement. In the event of the failure to pay the City the amounts due to the City within 90 days as is forth in the invoices, Owner, on behalf of themselves and their successors and assigns, agree to an assessment of the invoiced amounts. The Aurora City Council may then pass a resolution certifying the amount due as shown on the invoices and requesting the amount due be placed on the tax duplicate of each property for the corrective action taken by the City. Said Resolution shall be forwarded to the Portage County Auditor. The benefited real estate owned by the Owner, Association, or Lot or Living Units owners, as their interests appear, shall then be encumbered by an assessment which collected in the same fashion as other taxes collected by Portage County Auditor.
11. **RELEASE**: Owner shall release the City from all damages, accidents, casualties, occurrences or claims that might arise or be asserted against the City from the construction, presence, existence or maintenance of the Storm Water Management Facilities. The parties hereto expressly do not intend the execution of this Agreement to create in the public, or any member thereof, any rights as a third party beneficiary or to authorize anyone not a party hereto to maintain a suit for any damages pursuant to the terms of this Agreement.
12. **RECORDING**: This Agreement shall be recorded in the Portage County Recorder's Office and incorporated by reference in any applicable Master Warranty Deed, Declaration of Condominium, or the like, or other document evidencing deed restrictions on the Property.
13. **BINDING EFFECT**: This Agreement shall be binding upon, and shall inure to benefit of the parties hereto and their successors and assigns; provided however, upon a sale or transfer of the Property, the owner of the Property, including without limitation the Owner, shall be released from any and all liabilities and obligations under this Agreement which accrue from and after the date of transfer. The Owner, and its successors and assigns, shall only be obligated hereunder so long as it or they own fee simple title to the Property or any portion thereof. This Agreement shall run with the land and shall be binding upon future owners thereof.
14. **NOTICES**: Any notice permitted or required to be given pursuant to the terms of this Agreement shall be deemed properly given if either hand-delivered or mailed by certified U.S. mail, return receipt requested, or sent by overnight courier requiring signature of receipt, to the following addresses:

IF TO OWNER:

[Address 1]
[Address 2]
[Address 3]

IF TO CITY:

Department of Law
City of Aurora
130 South Chillicothe Road
Aurora, OH 44202

A party hereto may change its address for purpose of Notice hereunder by giving written notice to the other party pursuant to requirements of this Section 12.

IN WITNESS WHEREOF, the parties have caused this Inspection and Maintenance Agreement to be signed by duly authorized persons.

By: _____

Title:

STATE OF OHIO
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2012

NOTARY PUBLIC

The City of Aurora

By: _____

Title: Mayor

STATE OF OHIO
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2012
by _____, the Mayor for the City of Aurora.

NOTARY PUBLIC