

**STORMWATER MANAGEMENT FACILITIES
MAINTENANCE AGREEMENT**

THIS STORMWATER MANAGEMENT FACILITIES MAINTENANCE AGREEMENT made this ____ day of _____, 20____ by _____ (the “Covenantor,” and for indexing purposes “Grantor” (individual, partnership, association, corporation, LLC)); the CITY OF SUFFOLK, a municipal corporation of the Commonwealth of Virginia, (the “City”, and for indexing purposes “Grantee”); _____, (the “Noteholder”, and for indexing purposes “Grantor”), and _____ (the “Trustee”, and for indexing purposes “Grantor”).

WITNESSETH:

WHEREAS, the City is authorized and required to regulate and control the disposition of storm and surface waters as set forth in Title 62.1, Chapter 3.1 of the Code of Virginia, as amended (the “Act”), the City of Suffolk Unified Development Ordinance, as amended (the “Ordinance”) and the Code of the City of Suffolk, as amended (the “City Code”); and

WHEREAS, the Covenantor is the owner and is seized in fee simple of a certain tract or parcel of land more particularly described on Exhibit “A” attached hereto (the “Property”); and

WHEREAS, Covenantor desires to construct certain improvements on the Property which will alter existing storm and surface water conditions on both the Property and adjacent lands; and

WHEREAS, in order to accommodate and regulate these anticipated changes in existing storm and surface water flow conditions, the Covenantor desires to build and maintain at Covenantor’s expense a storm and surface water management facility and system (the “Facility

Acct. No. _____ Prepared by: _____
(must be owner or attorney)

and System”) with associated maintenance, impoundment, and access easements, more particularly described as _____ and shown on plans on file with the Department of Planning of the City of Suffolk, Virginia, which are hereby incorporated herein by reference (the “Site Plan”), referenced by Planning Number _____, and further identified graphically by plan sheet included on Exhibit “B” attached hereto, and the approved Stormwater Practices Maintenance Document, attached hereto as Exhibit “C”; and

WHEREAS, the City has reviewed and approved the Site Plan subject to the execution of this Agreement.

NOW, THEREFORE, in consideration of the benefit received and to be received by the Covenantor, its successors and assigns, as a result of the City’s approval of the Site Plan, the Covenantor hereby covenants and agrees with the City as follows:

1. At their sole expense, the Covenantor, its successors and assigns, shall construct and perpetually maintain the Facility and System in strict accordance with the Site Plan and any amendments thereto which have been approved by the City, the Ordinance and the Act.

2. At their sole expense, the Covenantor, its successors and assigns, shall make such changes or modifications to the Facility and System as may be determined as reasonably necessary by the City to ensure that the Facility and System is properly maintained and continues to operate as originally designed and approved.

3. At reasonable times and in a reasonable manner as provided in Section 62.1-44.15:37 of the Act and Section 31-611 of the Ordinance, and Chapter 35 of the Code, the City, its agents, employees and contractors, shall have the right of ingress and egress over the Property and the right to inspect the Facility and System in order to ensure that

the Facility and System is being properly maintained, is continuing to perform in an adequate manner and is in compliance with the Act, the Ordinance, the Code and Site Plan and any amendments thereto approved by the City.

4. Should either the Covenantor or its successors and assigns, fail to correct any defects in the Facility and System within the time specified in a written notice from the City that the Covenantor or its successors and assigns has/have failed to maintain the Facility and System in accordance with the approved design standards and/or the Site Plan and in accordance with the law and applicable regulations of the Act, the Code and the Ordinance, the City may pursue such remedies as provided by law, including, but not limited to, such civil and criminal remedies set forth in Section 62.1-44.15:48 of the Act and in Section 35-51 of the Code.

5. The Covenantor, its successors and assigns, shall indemnify, hold harmless and defend the City from and against any and all claims, demands, suits, liabilities, losses, damages and payments, including reasonable attorney fees claimed or made against the City that are alleged or proven to result or arise from the Covenantor's, its successors' and/or assigns', construction, operations or maintenance of the Facility and System.

6. This Agreement and the covenants and agreements contained herein shall run with the title to the land and whenever the Property shall be held, sold, conveyed or otherwise transferred, it shall be subject to the covenants, stipulations, agreements and provisions of this Agreement which shall apply to, bind and be obligatory upon the Covenantor hereto, its successors and assigns, and shall bind all present and subsequent owners of the Property described herein.

Initially, the Covenantor is solely responsible for the performance of the obligations required hereunder and, to the extent permitted under applicable law, the payment of any and all fees, fines, and penalties associated with such performance or failure to perform under this Agreement. Notwithstanding any provisions of this Agreement to the contrary, upon the recordation of a deed or other instrument of sale, transfer or other conveyance of fee simple title to the Property or any portion thereof (a "Transfer") to a third party (the "Transferee"), the Covenantor shall be released of all of its obligations and responsibilities under this Agreement accruing after the date of such Transfer to the extent such obligations and responsibilities are applicable to that portion of the Property included in such Transfer, but such release shall be expressly conditioned upon the Transferee assuming such obligations and responsibilities by recorded written agreement for the benefit of the City. Such written agreement may be included in the Transfer deed or instrument, provided that the Transferee joins in the execution of such deed or instrument. A certified copy of such deed, instrument or agreement shall be provided to the City. The provisions of the preceding three sentences shall be applicable to the original Covenantor and any successor Transferee who has assumed the obligations and responsibilities of the Covenantor under this Agreement as provided above.

7. Nothing herein shall be construed to prohibit a transfer by the Covenantor to subsequent owners and assigns.

8. The provisions of this Agreement shall be severable and if any phrase, clause, sentence or provision is declared unconstitutional, or the applicability thereof to the Covenantor, its successors and assigns, is held invalid, the remainder of the Covenant

shall not be affected thereby. This Agreement shall be interpreted under the laws of the Commonwealth of Virginia.

9. _____, the Noteholder, being the holder of a note or notes secured by a lien on the Property through a deed of trust dated _____, from _____ to _____ and _____, Trustees, either of whom may act, recorded in the Clerk's Office of the Circuit Court of the City of Suffolk, Virginia (the "Clerk's Office") as Instrument # _____ (the "Deed of Trust"), joins in the execution of this Agreement to evidence its consent to the provisions hereof and to direct the Trustee to execute same for subordination purposes. At the direction of the Noteholder, the Trustee joins herein to subordinate the lien of the Deed of Trust, and the Noteholder and the Trustee hereby acknowledge and agree that the lien of the Deed of Trust is hereby subordinated to this Agreement, the covenants created or set forth herein and all of the rights of the City hereunder.

10. This Agreement shall be recorded in the Clerk's Office of the Circuit Court of the City of Suffolk, Virginia.

11. In the event that the City shall determine at its sole discretion at any future time that the Facility and System is no longer required, then at the request of the Covenantor, its successors and/or assigns, the city shall execute a release of this Agreement which the Covenantor, its successors and/or assigns, shall record in the aforesaid Clerk's Office, at its/their expense.

12. This Agreement shall be deemed to be a Virginia contract and shall be governed as to all matters whether of validity, interpretations, obligations, performance or

otherwise exclusively by the laws of the Commonwealth of Virginia, and all questions arising with respect thereto shall be determined in accordance with such laws. Regardless of where actually delivered and accepted, this Agreement shall be deemed to have been delivered and accepted by all parties in the Commonwealth of Virginia.

13. Any and all suits for any claims or for any and every breach or dispute arising out of this Agreement shall be maintained in the appropriate court of competent jurisdiction in the City of Suffolk.

14. This Agreement shall not be modified except by written instrument executed by the City and the owner(s) of the Property at the time of modification, and no modification shall be effective until recorded in the Clerk's Office.

[SIGNATURE PAGES ATTACHED]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

OWNER/COVENANTOR:

Owner / Covenantor's Name

BY: _____

TITLE: _____

ATTEST:

By: _____
Name Title

OWNER ACKNOWLEDGEMENT

STATE OF _____
CITY OF _____, to wit:

I, _____, a Notary Public in and for the City and State aforesaid, do hereby certify that _____ (name), _____ (title), of _____ (name of corporation, partnership, individual, assoc.), whose name as such is signed to the foregoing Agreement, has acknowledged the same before me in my City and State aforesaid. He/She is personally known to me or has produced _____ identification.

GIVEN under my hand this _____ day of _____, 20_____.

Notary Public

My Commission Expires: _____
Notary Registration No. _____

CITY SIGNATURES / NOTARY CERTIFICATION

ATTEST:

CITY OF SUFFOLK, VIRGINIA

Signature – City Clerk

City Manager/Authorized Designee of City Manager

APPROVED AS TO CONTENT:

APPROVED AS TO FORM:

Signature – Department of Public Works

Signature – City Attorney

CITY’S ACKNOWLEDGEMENT

STATE OF VIRGINIA
CITY OF SUFFOLK, to wit:

I, _____, a Notary Public in and for the City and State aforesaid, do hereby certify that _____ City Manager/Authorized designee of the City Manager Pursuant to §2-1 of the City Code, whose name is signed to the foregoing Agreement, bearing date the ____ day of _____, 20____, has acknowledged the same before me in my City and State aforesaid. He/She is personally known to me.

Given under my hand this _____ day of _____, 20____.

Notary Public

My Commission Expires: _____
Notary Registration No.: _____

STATE OF VIRGINIA
CITY OF SUFFOLK, to wit:

I, _____, a Notary Public in and for the City and State aforesaid, do hereby certify that _____, City Clerk for the City of Suffolk, Virginia, whose name is signed to the foregoing Agreement, bearing date the ____ day of _____, 20____, has acknowledged the same before me in my City and State aforesaid. He/She/They is/are personally known to me.

GIVEN under my hand this _____ day of _____, 20____.

Notary Public

My Commission Expires: _____
Notary Registration No. _____

NOTEHOLDER SIGNATURE/NOTARY CERTIFICATION

Noteholder

BY: _____
Name Title

ATTEST:

By: _____
Name Title

NOTEHOLDER ACKNOWLEDGEMENT

STATE OF _____
CITY OF _____, to wit:

I, _____, a Notary Public in and for the City and State aforesaid, do hereby certify that _____ (name), _____ (title), whose name is signed on behalf of _____ (noteholder), and as such are signed to the foregoing Agreement, have acknowledged the same before me in my City and State aforesaid. He/She is personally known to me or has produced _____ identification.

GIVEN under my hand this _____ day of _____, 20____.

Notary Public

My Commission Expires: _____
Notary Registration No. _____

TRUSTEE SIGNATURE/NOTARY CERTIFICATION

Trustee (for noteholder)

Trustee (for noteholder)

TRUSTEE ACKNOWLEDGEMENT

STATE OF _____
CITY OF _____, to wit:

I, _____, a Notary Public in and for the City and state aforesaid, do hereby certify that _____, Trustee, and _____, Trustee, whose name(s) as such is/are signed to the foregoing Agreement, has/have acknowledged the same before me in my City and State aforesaid. He/She/They is / are personally known to me or has/have produced _____ identification.

Given under my hand this _____ day of _____, 20____.

Notary Public

My Commission Expires: _____
Notary Registration No. _____