

Tax Parcel: _____

Prepared by:
Jeffrey S. Miller, VSB 43033
Asst. City Attorney
801 Crawford Street, 6th Floor
Portsmouth, VA 23704

**STORMWATER MANAGEMENT FACILITIES AGREEMENT
City of Portsmouth, Virginia**

THIS AGREEMENT, made and entered into as of the ___ day of January, 2019, by and between _____, a Virginia _____, party of the first part, hereinafter called the "Landowner" and for indexing purposes "Grantor", and the CITY OF PORTSMOUTH, VIRGINIA, a political subdivision of the Commonwealth of Virginia, party of the second part, hereinafter called the "City" and for indexing purposes "Grantee".

WITNESSETH:

WHEREAS, the Landowner is the owner of certain real property described on Tax Map and Parcel number _____, hereinafter called the "Property", it being more particularly described as follows:

INSERT LEGAL DESCRIPTION

WHEREAS, the Landowner as hereinafter used in this Agreement shall be defined as the Landowner and the Landowner's successors and assigns in title; and

WHEREAS, the Landowner is proceeding to build on and develop the Property; and

WHEREAS, the Site Plan known as "_____" having a City file # of _____ (hereinafter called the "Plan"), as approved by the City and which is expressly made a part hereof, provides for the management of stormwater runoff (which may include retention, detention and/or water quality treatment) within the confines of the Property; and

WHEREAS, the City and the Landowner agree that the health, safety, and welfare of the residents of the City of Portsmouth, Virginia, requires an on-site stormwater management facility, hereinafter referred to as the "Facility," be constructed and maintained on the Property; and

WHEREAS, the City requires that an on-site stormwater management facility as shown on the Plan be constructed and properly maintained by the Landowner; and

WHEREAS, a maintenance schedule has been included on the Plan detailing the requirements to perpetually maintain the structural integrity and the proper functioning of the Facility and its components;

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants contained herein, and the following terms and conditions, the Landowner hereby agrees as follows:

1. The Landowner shall construct the required on-site stormwater management Facility at its sole expense and in strict accordance with the approved Plan and associated specifications identified in the Plan, as approved by the City.
2. The Landowner shall insure that the Facility is properly maintained and continues to operate as designated and approved.
3. The Landowner shall, at its sole expense, perpetually provide for the proper maintenance of the Facility and related components. Maintenance of the Facility components shall include but not be limited to all pipes and channels built to convey stormwater to the Facility, all pipes and channels built to convey stormwater from the Facility to the City's stormwater drainage system or other receiving system, and all related structures, improvements, and vegetation provided to control the quantity and quality of the stormwater generated from the Property.
4. The Landowner, at its sole expense, shall have the Facility inspected by a qualified individual on an annual basis and shall provide a written report from the qualified individual to the City Engineering Department regarding the then-current condition of the Facility (the "Reports"). The first said Report shall be due on July 1, 20__ and subsequent reports shall be due each July 1st thereafter. Landowner shall ensure that all maintenance or structural concerns identified in a Report are cured in a timely fashion, and in no event later than the due date of the next annual Report. Any failure to timely provide a Report to the City, or to timely address a maintenance or structural concern contained in the report, shall be a violation of this Agreement and the City's stormwater regulations, and the Landowner may be subjected to penalties (including continuing penalties) provided under the City Code for each such violation.
5. The City, its authorized agents, employees and contractors shall have the perpetual right of ingress and egress over the Property of the Landowner to inspect, at reasonable times and in a reasonable manner, the Facility to insure that the Facility is being properly maintained and is continuing to function as designed and approved by the City. The inspection shall cover the entire Facility and its components such as berms, pipes, outlet structure, pond areas, access roads, vegetated buffer strips, etc. Deficiencies shall be noted in an Inspection Report that shall be provided to the Landowner. Within ten (10) days from the date that the inspection report is provided to the Landowner, the Landowner shall either correct such deficiencies or shall submit a Corrective Action Plan to the City that indicates when and how the repairs will be accomplished. The Landowner shall complete all repairs within thirty (30) days following submittal of a Corrective Action Plan. In the City's discretion, these periods may be reasonably extended if Landowner demonstrates that it is reasonably prosecuting its responsibilities hereunder.

6. In the event the Landowner fails to properly maintain the Facility and related components in accordance with the Plan and any applicable law or regulation or fails to comply with the time frames set forth in paragraph 4 hereinabove to provide a Corrective Action Plan or make the necessary repairs, the City may enter upon the Property to the extent necessary to correct all deficiencies, make all reasonable repairs and to perform all maintenance, construction and reconstruction as required in its inspection report. The City is hereby authorized to charge all costs of such repairs to the Landowner and to any or all persons or entities served by the Facility. This provision shall not be construed to allow the City to erect any permanent structure on the Property outside of the easement for the Facility and related components. It is expressly understood and agreed that the City is under no obligation to routinely maintain or repair said Facility, and in no event shall this Agreement be construed to impose any such obligation on the City.
7. In the event the City, pursuant to this Agreement, performs work of any nature, or expends any funds in performance of said work for labor, use of equipment, supplies, materials, and the like, the City shall then assess the Landowner and/or all landowners served by the Facility and such assessment may be placed on the property tax bills of said Property and collected as ordinary taxes by the City. In collecting such charges, the City shall not be limited to the above remedy, but shall also have available to it all remedies accorded by law for the collection of unpaid debts or for the collection of unpaid stormwater fees and charges.
8. The Landowner hereby agrees to defend, indemnify, keep and hold the City free and harmless from liability on account of injury or damage to person or property growing out of or directly or indirectly resulting from any construction, operation or maintenance of the Facility by the Landowner. In the event that any such suit or proceeding shall be brought against the City, at law or equity, either independently or jointly with the Landowner, the Landowner will defend the City in any such suit or proceeding at the Landowner's sole cost. In the event that any final judgment or decree is obtained against the City in any such suit or proceeding, either independently or jointly with the Landowner, then the Landowner will pay such judgment or comply with such decree with all costs and expenses of whatsoever nature and hold the City harmless.
9. 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 Landowner hereto, its successors and assigns, and shall bind all present and subsequent owners of the Property described herein.
10. Initially, the Landowner 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 conveying Landowner shall be released of all 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. All obligations and duties imposed upon the Landowner as the result of an Inspection Report and/or Corrective Action Plan as set forth in paragraph 5 of this Agreement shall become the duty and obligation of any Transferee of Landowner of the Property or any portion thereof as described in this Agreement.

11. Nothing herein shall be construed to prohibit a transfer of the Property by the Landowner to subsequent owners and assigns.
12. Provisions of this Agreement shall be severable and if any phrase, clause, sentence or provision is declared unconstitutional, or the applicability thereof to Landowner held invalid, the remainder of this Agreement shall not be affected thereby.
13. This Agreement shall be recorded in the Clerk's Office of the Circuit Court of Portsmouth, Virginia at the expense of the Landowner.
14. In the event that the City shall determine, at its sole discretion at any future time, that the Facility is no longer required, then the City shall, at the request of the Landowner, execute a release of this Stormwater Management Facilities Agreement which the Landowner shall record at its expense.
15. In the event of any dispute arising under the provisions of this Agreement, the laws of the Commonwealth of Virginia shall apply and jurisdiction over such dispute shall be in the Circuit Court of the City of Portsmouth.
16. _____, being the holder of a note or notes secured by a lien on the Property through a _____ dated _____ and recorded in the Clerk's Office of the Circuit Court for the City of Portsmouth, Virginia as Instrument Number _____, joins in the execution of this Agreement to evidence its consent to the provisions hereof and to subordinate its lien on the Property to this Agreement and the covenants contained herein.

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

LANDOWNER/COVENANTOR:

By: _____
Name: _____
Title: _____

STATE OF _____
CITY/COUNTY OF _____, to wit:

I, _____, a Notary Public in and for the City/County and State aforesaid, do hereby certify that _____, whose names is signed to the foregoing Agreement on behalf of _____, has acknowledged the same before me in my City/County and State aforesaid. He/she is personally known to me or has produced adequate identification.

GIVEN under my hand this ____ day of _____, 201_.

Notary Public

My Commission Expires: _____
Notary Registration No. _____

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

CITY OF PORTSMOUTH, VIRGINIA

Dr. L. Pettis Patton, City Manager

ATTEST:

City Clerk

APPROVED AS TO CONTENT AND FORM:

Assistant City Attorney

STATE OF VIRGINIA
CITY OF PORTSMOUTH, to wit:

I, _____, a Notary Public in and for the City and State aforesaid, do hereby certify that L. Pettis Patton, Debra Y. White, and Jeffrey S. Miller, City Manager, City Clerk, and Assistant City Attorney, respectively, whose names are signed to the foregoing Agreement on behalf of the City of Portsmouth, Virginia, have acknowledged the same before me in my City and State aforesaid.

Given under my hand this ___ day of _____, 201_.

Notary Public

My Commission Expires: _____
Notary Registration No.: _____

LENDER CONSENT

By: _____
Name: _____
Title: _____

STATE OF _____
CITY/COUNTY OF _____, to wit:

I, _____, a Notary Public in and for the City/County and State aforesaid, do hereby certify that _____, _____ of _____, whose name is signed to the foregoing Agreement on its behalf, has acknowledged the same before me in my City/County and State aforesaid.

Given under my hand this ____ day of _____, 201_.

Notary Public

My Commission Expires: _____
Notary Registration No.: _____

