EST 1808
CITY OF
DELAWARE
OHIO

INFRASTRUCTURE DESIGN MANUAL

APPENDIX G
STORMWATER BEST MANAGEMENT PRACTICES OPERATIONS AND MAINTENANCE AGREEMENT

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STORMWATER BEST MANAGEMENT PRACTICES
OPERATIONS AND MAINTENANCE AGREEMENT

THIS AGREEMENT, made and entered into this_____day of _____,20_____, by and between_____, (hereinafter the "**Landowner**"), and The City of Delaware (hereinafter "**City**");

WITHNESSTH

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

WHEREAS, the stormwater management BMP(s) Operations and Maintenance Plan has been approved by the City (hereinafter referred to as the "**Plan**") for the property identified herein, which is attached hereto as Appendix A and made part hereof, as approved by the City, provides for management of stormwater within the confines of the Property through the use of Best Management Practices ("**BMP(s)")**; and

WHEREAS, the City and the Landowner, his successors and assigns, agree that the health, safety and welfare of the residents of the City and the protection and maintenance of water quality require that onsite stormwater Best Management Practices be constructed and maintained by the Property: and

WHEREAS, for the purposes of this agreement, the following definitions shall apply;

BMP – "Best Management Practices", activities, facilities, designs, measures or procedures used to manage stormwater impacts from land development, to protect and maintain water quality and groundwater recharge and to otherwise meet the purposes of the Municipal Stormwater Management Ordinance, including but not limited to infiltration trenches, seepage pits, filter strips, bio retention, wet ponds, permeable paving, rain gardens, grassed swales, forested buffers, sand filters and detention basins.

Infiltration Trench – A BMP surface structure designed, constructed, and maintained for providing infiltration or recharge of stormwater into the soil and/or groundwater aquifer.

Seepage Pit – An underground BMP structure designed, constructed and maintained for providing infiltration or recharge of stormwater into the soil and/or groundwater aquifer.

Rain Garden – A BMP overlain with appropriate mulch and suitable vegetation designed, constructed and maintained for the purpose of providing infiltration or recharge of stormwater into the soil and/or underground aquifer, and

WHEREAS, the City requires, through the implementation of the Plan that stormwater management BMPs as required by said Plan and the Municipal Stormwater Management Ordinance be constructed and adequately operated and maintained by the Landowner, his successors and assigns;

NOW, THEREFORE, inconsideration of the foregoing promises, the mutual covenants contained herein and the following terms and conditions, the parties hereto agree as follows:

1. **Construction of BMP Facility by Landowner.** The BMPs shall be constructed by the Landowner in accordance with the plans and specifications identified in the Plan.
2. **Duty of Operation & Maintenance of Facility.** The Landowner shall operate and maintain the BMP(s) as shown on the Plan in good working acceptable to the City and in accordance with the specific maintenance requirements noted on the Plan.
3. **Right of Entry on Premises.** The Landowner hereby grants permission to the City, its authorized agents and employees, to enter upon the property, at reasonable times and upon presentation of proper identification, to inspect the BMP(s) whenever it deems necessary. Whenever possible, the Municipality shall notify the Landowner prior to entering the property.

4. **Options if Landowner fails to Maintain.** In the event the Landowner fails to operate and maintain the BMP(s) as shown on the Plan in good working order acceptable to the City, the City or its representatives may enter upon the Property and take whatever action is deemed necessary to maintain said BMP(s). This provision shall not be construed to allow the City to erect any permanent structure on the land of the Landowner. It is expressly understood and agreed that the City is under no obligation to maintain or repair said facilities, and in no event shall this Agreement be construed to impose any such obligation on the City.
5. **Reimbursement by Landowner.** In the event the City, pursuant to this Agreement, performs work of any nature, or expends any funds in performance of said work or labor, use of equipment, supplies, materials, and the like, the Landowner shall reimburse the City for all expenses (direct and indirect) incurred within 10 day of receipt of invoice from the City. If Landowner fails to reimburse the City within 10 days, the City may certify the charge to the County Auditor so that the charge will be collected at the next tax collection. The County Auditor will place the charge on the tax duplicate of the county with interest and penalties allowed by law, and it shall be collected as other taxes are collected.
6. **Purpose of Agreement.** The intent and purpose of this Agreement is to ensure the proper maintenance of the onsite BMP(s) by the Landowner; provided, however, that this Agreement shall not be deemed to create of effect any additional liability of any party for damage alleged to result from or be caused by stormwater runoff.
7. **Release of City.** The Landowner, its executors, administrators, assigns, and other successors in interests, shall release the City's employees and designated representatives from all damages, accidents, casualties, occurrences or claims which might arise or be asserted against said employees and representatives from the construction, presence, existence, or maintenance of the BMP(s) by the Landowner or City. In the event that a claim is asserted against the City, its elected officials, City Officers or employees, designated representatives or employees, the City shall promptly notify the Landowner and the Landowner shall defend, at his own expense, any suit based on the claim. If any judgment or claims against the City's employees or designated representatives shall be allowed, the Landowner shall pay all costs and expenses regarding said judgment or claim.
8. **Duty to Inspect by City.** The City shall inspect the BMP(s) at a minimum of once every three years to ensure their continued functioning.
9. **Recording of Agreement/Covenant running with the Land.** This Agreement shall be recorded at the Delaware County Recorder's Office, Delaware, Ohio and shall constitute a covenant running with the Property and/or equitable servitude, and shall be binding on the Landowner, his or her heirs, successors and assigns, and any other successors in interests, in perpetuity.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and date first above written.

Witnesses:

_____

_____

Landowner:

_____

_____

City of Delaware

By:_____

Attest:_____