

APPENDIX H – STORMWATER EASEMENT & MAINTENANCE AGREEMENT STANDARD DOCUMENTS

The following are standard documents to be used to meet easement and maintenance agreement requirements related to Article 19 of the Land Development Code. The City's Legal Department will prepare the documents for owner signatures.

- 3" top margin required on first page of each recorded document.

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PERMANENT EASEMENT

This agreement, is made this ____ day of _____, 20____, by and between _____, hereinafter called “Grantor,” and the City of St. Cloud, Minnesota, a municipal corporation organized under the laws of the State of Minnesota, hereinafter called “Grantee.”

That whereas said Grantor, is the owner of that tract of land in the County of **insert County Name**, State of Minnesota legally described as:

Insert legal description of entire parcel

That for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Grantor does hereby grant and convey to the Grantee and its assigns, a perpetual easement to, around and from the Structural Stormwater Best Management Practice (BMP) located within the following described easement area to-wit:

Insert Legal Description for the easement

- 1. The easement is required to be a minimum of 10 feet in width and shall extend from the structural stormwater BMP to the boundary of the parcel and terminate at said boundary at a location providing for **reasonable access** (e.g. abut to existing approaches) from the adjoining public right-of-way onto the easement.*
- 2. The easement shall be a minimum of 10 feet in width from the edge of the structural stormwater BMP and include all pre-treatment BMPs (e.g. sumps). In the case of surface ponding BMP's, the easement shall be a minimum of 10 feet in width from the Normal High Water Level.*
- 3. Provide a map (exhibit) showing the location of the easement area along with the written legal description. Must be 11 x 17 for recording purposes.*

for the right to, but not the obligation, to, inspect, maintain and repair such Structural Stormwater BMP(s) located in the above-described easement area. Grantor also grants to Grantee the right over and across Grantor's adjacent lands to access the above-described easement area.

No one other than Grantor **and Insert who (e.g. mortgage company) or delete if none** possess any right, title or interest in the property above-described.

The intent of this easement is not to shift responsibility from Grantor, its successors or assigns, the responsibility for, inspections, maintenance and repair of the Structural Stormwater BMP(s). Grantor,

its successors or assigns, shall remain primarily responsible for all such inspections, maintenance and repair of the Structural Stormwater BMP(s) located in the above easement area.

See attached and incorporated Exhibit A Easement Sketch and Description and Consent Subordination Agreement(s).

EXHIBIT A IS/ARE ATTACHED (IF THIS APPLIES ...A COPY OF THE CONSENT SUBORDINATION AGREEMENT)

[Signatures begin on next page]

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IN WITNESS WHEREOF, the parties have hereunto executed this document the day and year first above written.

CITY OF ST. CLOUD, MINNESOTA

By _____
Jake Anderson,
Its Mayor

By _____
Seth Kauffman,
Its City Clerk

STATE OF MINNESOTA)
) ss
COUNTY OF _____)

On this ____ day of _____, 20__, before me, a Notary Public within and for the County of _____, State of Minnesota, personally appeared Jake Anderson, and Seth Kauffman, the Mayor and City Clerk of the City of St. Cloud, Minnesota, to me known to be the persons described herein and who executed the foregoing instrument and acknowledged that they executed same as their free act and deed.

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Notary Public

My Commission Expires: _____

[Signatures continued on next page]

PRIVATE STORMWATER BMP MAINTENANCE AGREEMENT

- I. THIS AGREEMENT, made this ____ day of _____, 20____, by and between the City of St. Cloud (hereinafter referred to as the “City”), a Minnesota Municipal Corporation, and, **[corporation, individual]** (hereinafter referred to as “Owner”), its successors and assigns, with reference to the following facts and circumstances:
- A. Owner, owns certain real property situated in the City of St. Cloud, legally described as follows:
Insert Legal Description of entire parcel(s) structural stormwater BMP is located on
(hereinafter referred to as the “Subject Property”).
- B. As a condition of its approval of the development or re-development of the Subject Property, the City has required that the parties hereto enter into an agreement, which makes provision for the maintenance of the Structural Stormwater Best Management Practice(s) (BMPs) located within the boundaries of the Subject Property as the same is described and depicted in those certain construction plans prepared by Owner.
- C. The parties hereto desire to set forth their agreement with respect to the maintenance of the Structural Stormwater BMPs and the costs of such maintenance.

II. NOW THEREFORE, in consideration of the foregoing facts and circumstances, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, hereby agree as follows:

- A. For the purpose of this Agreement, maintenance of the Structural Stormwater BMPs shall mean the regular inspection, routine maintenance, and major maintenance described within the maintenance plan and as required to maintain the performance standard and function of the Structural Stormwater BMPs identified within the projects Stormwater Pollution Prevention Plan (SWPPP) and construction documents.
- B. Owner shall be solely responsible for the maintenance of the Structural Stormwater BMPs, and shall bear all costs of such maintenance.
- C. Owner shall complete an annual report, certified by a qualified individual. The report shall include written documentation of the inspection schedule, dates of inspection, remedial actions taken to repair, modify, or reconstruct the BMPs, certification that the BMP(s) are functioning in accordance with the approved plans, and notification of any planned change in responsibility for the BMPs. Owner shall retain completed annual reports for a minimum of 5 years and shall provide the City with the written documentation upon request.
- D. Owner grants the City or its agents or contractor the right of entry at reasonable times and in a reasonable manner for the purpose of inspecting, operating, installing, constructing, reconstructing, maintaining, or repairing the Structural Stormwater BMPs.
- E. Owner grants to the City the necessary easements and right-of-way and maintain perpetual access from public right-of-ways to the Structural Stormwater BMPs for the City or its agent or contractor. Owner agrees to grant and execute such other easements defining Structural Stormwater BMPs' area as may be required by the City.
- F. If, upon inspection, the City finds that the Owner has failed to properly maintain the Structural Stormwater BMPs, the City may order the work to be performed within a specified time. In the event the work is not performed, or a schedule for undertaking the work to be performed has not been provided within the specified time and agreed to by the City, Owner agrees to allow the City to enter the property and take whatever steps it deems necessary to properly maintain the Structural Stormwater BMPs. The cost reasonably incurred by the City for performing such maintenance shall be reimbursed to the City within 30 days by the party responsible for such maintenance and, if the responsible party does not timely reimburse the City, then the City may recover its costs by levying a special assessment against the Subject Property.

- G. The Owner, for itself and respective successors and assigns, hereby waives any statutory right which it may have to contest any such assessment by the City of its maintenance costs on the basis of the benefit to portions of the Subject property.
- H. Nothing in this Agreement will obligate the City to undertake maintenance or repair of the Structural Stormwater BMPs and in no event shall this Agreement be construed to impose any such obligation on the City.
- I. Owner, its heirs, administrators, executors, assigns and any other successor interest shall indemnify and hold harmless the City and its officers, agents and employees for any and all damages, accidents, casualties, occurrences, claims or attorney's fees which might arise or be asserted, in whole or in part, against the City from the construction, presence, existence, or maintenance of the Structural Stormwater BMPs subject to this Agreement. In the event a claim is asserted against the City, its officers, agents or employees, the City shall notify Owner and Owner shall defend at Owner's expense any suit based on such claim. If any judgment or claim against the City, its officers, agents or employees, shall be allowed Owner shall pay all costs and expenses in connection therewith. The City will not indemnify, defend or hold harmless in any fashion the Owner from any claims arising from any failure, regardless of any language in any attachment or other document that the Owner may provide.
- J. Responsibility for maintaining and repairing Structural Stormwater BMPs under this Agreement shall belong to the Owner and any successor owner of the subject property. The Owner signing this Agreement shall only be released upon sale with the written consent of the City. By accepting a deed or other conveyance of the Subject Property, future owners shall be responsible to meet all obligations of Owner under this Agreement.
- K. Owner, and its respective successors and assigns, shall not transfer, assign or modify its responsibilities with respect to this Agreement without the City's written prior consent. Nothing herein shall be construed to prohibit a transfer of its responsibilities with respect to this Agreement by Owner.
- L. No waiver of any provision of this agreement shall affect the right of any party thereafter to enforce such provisions or to exercise any right or remedy available.
- M. Owner shall provide as an attachment to this agreement the required Maintenance Plan as required by the City of St. Cloud Land Development Code Article 19 and its incorporated Appendices as referenced.

525 60th Street South
St. Cloud, MN 56301
(320) 255-7226

MORTGAGEE'S CONSENT SUBORDINATION

This Consent and Subordination Agreement is made this ____ day of _____, 20____, by the undersigned.

RECITALS

A. Owner, ____ holds the fee title to the following described subject property:

Insert legal description of parcel

B. The undersigned, _____, a corporation organized under the law of the State of _____, has an interest in this property pursuant to a Mortgage as evidenced by a document dated _____, and recorded on _____ in the office of the County Recorder for _____ County, as Document No. _____.

C. The Owner to this property intends to, inspect and maintain Structural Stormwater Best Management Practice (BMP)s on the above described property, pursuant to the requirements of St. Cloud City Land Development Code Article 19 and has entered into a Private Stormwater BMP Maintenance Agreement with the City of St. Cloud detailing the Owner's responsibilities. The Private Stormwater BMP Maintenance Agreement has been filed on the subject property.

D. A permanent easement has been granted by the Owner to the City of St. Cloud for perpetual access for the right to, but not the obligation, to inspect, maintain and repair such Structural Stormwater BMP(s).

CONSENT AND SUBORDINATION

The undersigned consents to and agrees that its interest in the property on which the Structural Stormwater BMP is located will be subordinate and subject to the terms, conditions and responsibilities of the Owner as enumerated in the Private Stormwater BMP Maintenance Agreement and the Permanent Easement.

