

**AFTER RECORDING
RETURN TO:**

Designer
Address
Address
City, State Zip

STORMWATER DRAINAGE FACILITIES

MAINTENANCE AGREEMENT

BETWEEN AND AMONG

CITY OF CUYAHOGA FALLS

AND

"OWNER"

DATED AS OF _____, 20__

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**STORMWATER DRAINAGE FACILITIES
MAINTENANCE AGREEMENT**

THIS STORMWATER DRAINAGE FACILITIES MAINTENANCE AGREEMENT (this "**Agreement**") is dated as of the ____ day of _____, 20____, and is between and among **CITY OF CUYAHOGA FALLS**, an Ohio municipal corporation ("**City**") and "**Insert Owner**", an Ohio limited liability company ("**Owner**").

SECTION 1. RECITALS.

A. The Owner is the record owner of certain property in the City that is generally depicted on **Exhibit A** to this Agreement and is legally described on **Exhibit B** to this Agreement ("**Property**").

B. The Property will be improved with a commercial retail facility (the "Development").

C. As a condition to granting the necessary permits to construct the Development, the City and Summit County, Ohio have required the Owner to execute this Agreement for the maintenance of the stormwater drainage facilities (the "**Facilities**") installed on the Property to provide stormwater drainage to the Property as further described on **Exhibit A**.

D. This Agreement is entered into pursuant to all applicable authority including, without limitation, the Ohio Constitution.

SECTION 2. FACILITIES.

A. Installation. At its sole expense, Owner will design and install the Facilities (the "**Work**") on the Property. Owner shall design and install the Facilities so that they have sufficient size, capacity, and components to provide stormwater drainage and sanitary sewer service to the Property.

B. Ownership, Repair, Maintenance, and Replacement. Owner will own the Facilities. Owner will maintain the Facilities in strict conformance with this Agreement and the ordinances of the City, and perform such work as may be necessary to maintain, preserve, restore, or rehabilitate the Facilities in good condition and repair, or any portion thereof to ensure that the Facilities operate in a safe and functional manner (the "**Work**"). Owner will or will enter into one or more contracts with one or more third parties to undertake the Work. Owner shall pay all costs associated with the Work.

C. Inspection and Preventative Maintenance. The owner must complete an annual inspection of each Best Management Practice (BMP) and submit a corresponding written annual report to the City's Stormwater Department by June 1st of each year. At a minimum, this report shall include the following:

1. The date of inspection
2. Vicinity sketch showing general area where the BMP(s) is/ are located
3. A summary of all maintenance activities that have taken place since the previous year's annual inspection
4. Current photos and a description of the condition of design features specific to each BMP (refer to the approved maintenance plan for each BMP)

5. Indication of any improvements necessary to restore original design function
6. Maintenance activities that will be undertaken in the next six (6) months
7. Any other items requested by the City Engineer and/or Stormwater Department.
8. Identification and contact information of the entity responsible for maintenance of the BMP
9. Identification and contact information with the original signature and date of the person responsible for preparing the annual report.

SECTION 3. NATURE, SURVIVAL AND TRANSFER OF OBLIGATIONS. Owner will record this Agreement, at its cost, against the Property. This Agreement shall run with and bind the Property and shall inure to the benefit of, and be enforceable by, the City, the Owner, and any of their respective legal representatives, heirs, grantees, successors, and assigns.

SECTION 4. ENFORCEMENT. Each party may, by any proceeding, enforce or compel the performance of this Agreement, but Owner hereby waives the right to seek, or recover a judgment for, monetary damages against the District or any of its elected or appointed officials, officers, employees, agents, representatives, or attorneys for breach of this Agreement. If one party prevails in a judicial proceeding against the other party, the prevailing party is entitled to reimbursement from the unsuccessful party of all costs and expenses, including reasonable attorneys' fees, incurred in connection with such judicial proceeding.

SECTION 5. GENERAL PROVISIONS.

A. Compliance with Laws. Each party will comply with all applicable federal, state, and local laws, statutes, codes, ordinances, resolutions, orders, rules, and regulations ("***Requirements of Law***").

B. Notice. Any notice or communication required or permitted to be given under this Agreement must be in writing and must be delivered: (i) personally, (ii) by a reputable overnight courier, (iii) by certified mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid, or (iv) by facsimile. A facsimile notice is valid only if it is (a) actually received by the individual to whom addressed and (b) followed by delivery of actual notice in the manner described in either (i), (ii) or (iii) above within three business days thereafter at the appropriate address set forth below. Unless otherwise expressly provided in this Agreement, a notice is deemed received upon the earlier of (a) actual receipt; (b) one business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (c) three business days following deposit in the U.S. mail, as evidenced by a return receipt. By notice complying with the requirements of this Section 5.B, each party may change the address or the addressee, or both, for all future notices and communications to such party, but no notice of a change of addressee or address is effective until actually received. Notices and communications to the City must be addressed to, and delivered at, the following address:

The City:

The City of Cuyahoga Falls
2310 Second Street
Cuyahoga Falls, Ohio 44221
Attention: Mr. Tony V. DeMasi, City Engineer

With a copy to:

Summit Soil & Water Conservation District
1180 S Main St
#230
Akron, OH 44301
Attention: Mr. Brian Prunty, District Program Administrator

Notices and communications to the Owner must be addressed to, and delivered at, the following addresses:

Owner
Address
Address
City, State Zip
Attention:

With a copy to:

Designer
Address
Address
City, State Zip

C. Time of the Essence. Time is of the essence in the performance of this Agreement.

D. Entire Agreement; Effect of Agreements. This Agreement constitutes the entire agreement between the parties and supersedes any and all prior agreements and negotiations between the parties, whether written or oral, relating to the subject matter of such Agreement.

E. Non-Waiver. The City is under no obligation to exercise any of its rights. The City's failure to exercise any right shall not waive that right, or void or affect the City's right to enforce that right or any other right.

F. Governing Law. This Agreement is governed by, and enforced in accordance with, the internal laws, but not the conflicts of laws rules, of the State of Ohio.

G. Exhibits. Exhibits A through C attached to this Agreement are, by this reference, incorporated in and made a part of this Agreement. If a conflict exists between an exhibit and the text of this Agreement, the text of this Agreement controls.

H. Amendments and Modifications. No amendment or modification to this Agreement is effective unless and until reduced to writing and approved and executed by all parties in accordance with the Requirements of Law.

I. Authority to Execute. The City hereby warrants and represents to the Owner that the persons executing this Agreement on its behalf have been properly authorized to do so. The person executing this Agreement on behalf of Owner hereby warrants and represents to the

City (i) that Owner is the owner of record of fee simple title to the Property; (ii) that he or she has the full and complete right, power and authority to execute this Agreement and to agree to the terms, provisions and conditions set forth in this Agreement and to bind the Property as set forth in this Agreement; (iii) that all legal actions necessary to authorize him or her to execute and deliver this Agreement have been taken; and (iv) that neither the execution of this Agreement nor the performance of the obligations assumed by the Owner will result in a breach or default under any agreement to which the Owner is a party or to which it or the Property is bound.

J. Severability. If any provision of this Agreement or its application to any person, entity, or property is held invalid by a court of competent jurisdiction, the remaining provisions of this Agreement and their validity, enforceability, and application to any person, entity, or property shall not be impaired thereby, and shall be interpreted, applied, and enforced so as to achieve, as near as may be, the purpose and intent of this Agreement to the greatest extent permitted by applicable law.

K. No Third Party Beneficiaries. No claim as a third party beneficiary under this Agreement by any person or entity will be valid against the City or the Owner.

L. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original document and together shall constitute the same instrument.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

ATTEST:

CITY OF CUYAHOGA FALLS,
an Ohio municipal corporation

By: _____
Its: _____

By: _____
Name: _____
Its: _____

ATTEST:

“Owner”
an Ohio limited liability company

By: _____
Its: _____

By: _____
Name: _____
Its: _____

APPROVED AS TO FORM:

By: _____
Name: Janet Ciotola
Title: Law Director, City of Cuyahoga Falls

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INDEX OF EXHIBITS

Exhibit A General Depiction of the Property and Description of the Facilities

Exhibit B Legal Description of the Property

EXHIBIT A

Depiction of the Property and the Facilities

EXHIBIT B

Legal Description of the Property