

[Torrens/Abstract]

**STORMWATER MANAGEMENT FACILITIES
DECLARATION AND EASEMENT AGREEMENT**

THIS STORMWATER MANAGEMENT FACILITIES DECLARATION AND EASEMENT AGREEMENT is made and given on _____, 20__ by _____ (“Owner”), to the City of _____, a Minnesota municipal corporation, (“City”).

WHEREAS, Owner is the fee owner of the property legally described on attached Exhibit A (“Property”); and

WHEREAS, stormwater management facilities on the Property will be connected to the City’s stormwater utility system, and the City’s system and the surface waters of the City and the State may be adversely affected by the operation and maintenance of stormwater management facilities on the Property; and

WHEREAS, in connection with an application by Owner for _____, the City has required, as a condition of approval, the execution and recording of this Stormwater Management Facilities Declaration and Easement Agreement (“Agreement”); and

WHEREAS, to secure the benefits and advantages of the City’s approval, Owner desires to subject the Property to the terms hereof;

NOW, THEREFORE, Owner declares that the Property is, and shall be, held, transferred, sold, conveyed and occupied subject to the easement hereinafter granted and the terms of this Agreement.

1. **Definitions.** For purposes of this Agreement, the following terms shall have the meanings given.

1.1. “Stormwater Management Facilities” means the following

improvements designed and constructed to manage stormwater. The designation of the improvement corresponds to the designation on Exhibit B, the approved plans for the Stormwater Management Facilities.

1.1.1. [Vegetative Filter System]

1.1.2. [Infiltration Trench/Basin]

1.1.3.

1.1.4.

1.2. “Operations and Maintenance Checklist” means the operations and maintenance checklist form for the corresponding Stormwater Management Facility. The Operations and Maintenance Checklist[s] for the corresponding Stormwater Management Facilities [is/are] attached as Exhibit C.

2. **Owner’s Obligations.**

2.1. The Owner shall construct Stormwater Management Facilities in accordance with the approved plans attached as Exhibit B. A full size original of Exhibit B is on file with the City Engineer of the City. Construction of the Stormwater Management Facilities shall be completed by _____.

2.2. The Owner shall inspect the Stormwater Management Facilities, at least as frequently as is specified, and meeting all of the requirements for inspections listed, on the Operations and Maintenance Checklists. Completed Operations and Maintenance Checklists forms shall be completed annually and delivered to the City Engineer within thirty (30) days of their completion and no later than October 1st of each calendar year.

2.3. The Owner shall continuously and perpetually maintain, clean, repair and replace the Stormwater Management Facilities. All Stormwater Management Facilities shall be so maintained, repaired and replaced as to maintain their original, approved design, function, volume, capacity, and efficiency. Without limiting the generality of the foregoing, maintenance, repair and replacement activities shall include, at a minimum, activities listed on the Operations and Maintenance Checklists.

3. **Enforcement.**

3.1. This Agreement is enforceable by the City acting through its City Council. The City may enter the Property for the purposes of inspection of the Stormwater Management Facilities and enforcement of the obligations of Owner under this Agreement. If Owner fails to perform its obligations under this Agreement, the City must provide written notice of default to Owner before taking any corrective action. If the failure continues for 30 days after the City's written notice, the City may take whatever actions it deems reasonably necessary in order to fulfill the obligations of Owner under this Agreement. If it is determined by the City that it is necessary to enter the Property to maintain or repair Stormwater Management Facilities to protect public utility facilities or the public health, safety or welfare without first giving such notice to the Owner, it may do so, giving the Owner such notice as is reasonably possible under the circumstances. Owner must reimburse the City for the reasonable out-of-pocket costs incurred by the City for its corrective action within 30 days after receipt by Owner of a written demand from the City accompanied by reasonable documentation of the expenses. If Owner fails to reimburse the City within such 30-day period, the City may recover its costs by assessing the amounts against the Property to be collected with property taxes. Owner waives any and all rights to receive notice and a hearing or to contest these assessments. Further, City may enforce the terms of this Agreement by any proceeding in law or in equity to restrain violation, to compel compliance, to recover costs for corrective action, or to recover damages, including attorneys' fees and costs of the enforcement actions. The Owner is not liable for the actions of any third party, other than its employees, agents, or contractors, that violate the terms of this Agreement unless the Owner, its employees, agents, or contractors had actual knowledge of the violation and failed to take reasonable action to stop the violation.

4. **Grant of Easement.**

4.1. **Grant of Easement.** For valuable consideration, Owner conveys to the City an easement for inspection, maintenance and repair of Stormwater Management Facilities purposes over, under, and across the Property on the terms and conditions hereinafter set forth.

4.2. **Scope of Easement Rights.** The Easement hereby conveyed includes the right of the City, its contractors, employees, agents and assigns to:

4.2.1. reasonable right of ingress and egress to inspect Stormwater Management Facilities in accordance with Section 3.1 hereof;

4.2.2. reasonable right of ingress and egress to perform the Owner's Obligations upon default by Owner in accordance with Section 3.1 hereof;

- 4.2.3. locate, construct, reconstruct, operate, maintain, inspect, alter and repair the Stormwater Management Facilities in accordance with Section 3.1 hereof; and
- 4.2.4. cut, trim, or remove trees, shrubs, or other vegetation that, in the City's judgment, unreasonably interfere with the Stormwater Management Facilities.

5. **Miscellaneous.**

- 5.1. **No Waiver.** Failure to enforce any provision of this Agreement upon a violation of it will not be deemed a waiver of the right to do so as to that or any subsequent violation.
- 5.2. **Validity.** Invalidation of any of the terms of this Agreement will in no way affect any of the other terms, which will remain in full force and effect.
- 5.3. **Duration of Easements.** The agreements and easements granted herein are permanent and shall remain in effect in perpetuity.
- 5.4. **Warranty of Grantor.** The Owner warrants that it is the owner of a fee simple interest in the Property, that it has the right to grant this Agreement, and that the Property is free and clear of any lien, encumbrance, easement, restriction, covenant or condition, except for those filed of record with the County Recorder or Registrar of Titles for Washington County, Minnesota.
- 5.5. **Easement Runs with Land.** This Agreement runs with the land and is binding on the Owner, its heirs, successors and assigns.
- 5.6. **Amendments.** This Agreement may not be amended without the written approval of the City and the Middle St. Croix Watershed Management Organization.

By: _____
Its: _____

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2012,
by _____, the _____ of
_____, on behalf of _____.

Notary Public

THIS INSTRUMENT WAS DRAFTED BY:
The City of _____

For City use only:
Planning File # _____
Date of Council approval _____

EXHIBIT A

Description of the Property

EXHIBIT B

Stormwater Management Facilities Approved Plans

EXHIBIT C

Operations and Maintenance Checklists

CONSENT

The undersigned Mortgagee of the real estate described in the attached instrument pursuant to the Mortgage recorded as Document No. _____ in the office of the Washington County _____, hereby joins in and consents to all of the terms and provisions contained in the attached Stormwater Management Facilities Declaration and Easement Agreement (the "Agreement"). The undersigned Mortgagee further agrees that its interest in the property covered by the Mortgage is subject to the Agreement and to all of the terms and provisions contained in it and agrees that if the Mortgagee forecloses its mortgage(s) on the property, or takes a deed in lieu of foreclosure, the Mortgagee will take title subject to the Agreement.

By _____

Its _____

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, _____, by _____, the _____ of _____, on behalf of the corporation .

Notary Public