

**STORMWATER FACILITIES MAINTENANCE AGREEMENT**

**WHEREAS**, the Property Owner \_\_\_\_\_ recognizes that the wet or extended detention facility or facilities (hereinafter referred to as "the facility" or "facilities") must be maintained for the development called, \_\_\_\_\_, located in Land Lot(s) \_\_\_\_\_, District(s) \_\_\_\_\_, of the City of Brookhaven, DeKalb County, Georgia; and,

**WHEREAS**, the Property Owner is the owner of real property more particularly described on the plat attached as Exhibit A, and,

**WHEREAS**, the City of Brookhaven (hereinafter referred to as "the City") and the Property Owner, or its administrators, executors, successors, heirs, or assigns, agree that the health, safety and welfare of the citizens of the City require that the facilities be constructed and maintained on the property, and,

**WHEREAS**, The Development Regulations require that facility or facilities as shown on the approved development plans and specifications be constructed and maintained by the Property Owner, its administrators, executors, successors, heirs, or assigns.

**NOW, THEREFORE**, in consideration of the foregoing premises, the mutual covenants contained herein, and the following terms and conditions, the parties hereto agree as follows:

**SECTION 1**

The facility or facilities shall be constructed by the Property Owner in accordance with the plans and specifications for the development.

**SECTION 2**

The Property Owner, its administrators, executors, successors, heirs or assigns shall maintain the facility or facilities in good working condition acceptable to the City, including pipes, channels or other conveyances built to convey stormwater to the facility, as well as all structures, improvements, and vegetation provided to control the quantity and quality of the stormwater, and in accordance with the schedule of long term maintenance activities agreed hereto and attached as Exhibit B.

### **SECTION 3**

The Property Owner, its administrators, executors, successors, heirs or assigns hereby grants permission to the City, its authorized agents and employees, to enter upon the property and to inspect the facilities whenever the City deems necessary. Whenever possible, the City shall provide notice prior to entry. The Property Owner shall execute an access easement in favor of the City of Brookhaven to allow the City to inspect, observe, maintain, and repair the facility as deemed necessary. A fully executed original easement is attached to this Agreement as Exhibit C and by reference made a part hereof.

### **SECTION 4**

In the event the Property Owner, its administrators, executors, successors, heirs or assigns fails to maintain the facility or facilities as shown on the approved plans and specifications in good working order acceptable to the City and in accordance with the maintenance schedule incorporated in the Agreement, the City, with due notice, may enter the property and take whatever steps it deems necessary to return the facility or facilities to good working order. This provision shall not be construed to allow the City to erect any structure of a permanent nature on the property. It is expressly understood and agreed that the City is under no obligation to maintain or repair the facility or facilities and in no event shall this Agreement be construed to impose any such obligation on the City.

### **SECTION 5**

In the event the City, pursuant to the Agreement, performs work of any nature, or expends any funds in the performance of said work for labor, use of equipment, supplies, materials, and the like, the Property Owner shall reimburse the City, or shall forfeit any required bond upon demand within thirty (30) days of receipt thereof for all the costs incurred by the City hereunder. If not paid within the prescribed time period, the City shall secure a lien against the real property, or real properties of said Property Owner in the amount of such costs. The actions described in this section are in addition to and not in lieu of any and all legal remedies available to the City as a result of the Property Owner's failure to maintain the facility or facilities.

### **SECTION 6**

It is the intent of this agreement to insure the proper maintenance of the facility or facilities by the Property Owner; provided, however, that this Agreement shall not be deemed to create or effect any additional liability of any party for damage alleged to result from or caused by storm water runoff.

### **SECTION 7**

Sediment accumulation resulting from the normal operation of the facility or facilities will be catered for. The Property Owner will make accommodation for the removal and disposal of accumulated sediments. Disposal will be provided onsite in a reserved area(s) or will be removed from the site. Reserved area(s) shall be sufficient to accommodate for a minimum of two dredging cycles.

## **SECTION 8**

The Property Owner shall use the standard BMP Operation and Maintenance Inspection Report attached to this agreement as Exhibit D and by this reference said report shall be made a part hereof for the purpose of a minimal annual inspection of the facility or facilities by a qualified inspector.

## **SECTION 9**

The Property Owner, its administrators, executors, successors, heirs and assigns hereby indemnifies and holds harmless the City and its authorized agents and employees for any and all damages, accidents, casualties, occurrences or claims which might arise or be asserted against the City from the construction, presence, existence or maintenance of the facility or facilities by the Property Owner or the City. In the event a claim is asserted against the City, its authorized agents or employees, the City shall promptly notify the Property Owner and the Property Owner shall defend at its own expense any suit based on such claim. If any judgement or claims against the City, its authorized agents or employees shall be allowed, the Property Owner shall pay for all costs and expenses in connection herewith.

## **SECTION 10**

This Agreement shall be recorded among the deed records of the Clerk of Superior Court of DeKalb County and shall constitute a covenant running with the land and shall be binding on the Property Owner, its administrators, executors, heirs, assigns and any other successors in interest.

## **SECTION 11**

This Agreement may be enforced by proceedings at law or in equity by or against the parties hereto and their respective successors in interest.

## **SECTION 12**

Invalidation of any one of the provisions of this Agreement shall in no way effect any other provisions and all other provisions shall remain in full force and effect.

**STORMWATER FACILITIES MAINTENANCE AGREEMENT**

**SO AGREED** this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**PROPERTY OWNER**

\_\_\_\_\_  
**Name**

\_\_\_\_\_  
**By**

\_\_\_\_\_  
**Title**

Signed, sealed and delivered in the presence of:

\_\_\_\_\_  
**Witness**

\_\_\_\_\_  
**Notary Public**

[AFFIX NOTARIAL SEAL & STAMP]

**CITY OF BROOKHAVEN, GEORGIA**

By: \_\_\_\_\_  
Director of Community Development

Attachments:   Exhibit A (Plat and Legal Description)  
                      Exhibit B (Maintenance and Inspection Schedule)  
                      Exhibit C (Access Easement)  
                      Exhibit D (Standard BMP Operation and Maintenance Inspection Report)

**EXHIBIT A**

[Plat & Legal Description of the Property]

**EXHIBIT B**

[Maintenance & Inspection Schedule]

**EXHIBIT C**

**PERMANENT WATER QUALITY BMP AND ACCESS EASEMENT AGREEMENT**

**STATE OF GEORGIA**

**CITY OF BROOKHAVEN**

THIS EASEMENT granted this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
between the property owner \_\_\_\_\_ as party  
of the first part, hereinafter referred to as Grantor, and CITY OF BROOKHAVEN, a political  
subdivision of the State of Georgia, as party of the second part, hereinafter referred to as Grantee.

WITNESSETH THAT: Grantor, for and in consideration of the sum of ONE DOLLAR (\$1.00)  
in hand paid at and before the sealing and delivery of this easement and in consideration of the  
agreements and covenants contained in this document and the Maintenance Agreement between  
Grantor and Grantee, hereby grants unto the Grantee an easement in and to that portion of the  
property shown on Exhibit "A" to the Maintenance Agreement, described by the legal description  
attached hereto and as also shown and identified on the plat attached hereto as Exhibit "1".

The purpose of this easement is to allow Grantee, or its agents, access for maintenance activities  
to the Water Quality Best Management Practice (BMP) facility, and to prevent development of  
the property within the easement following issuance of the Certificate of Occupancy or in the  
case of a residential subdivision, the approval of the Final Plat, without written permission from  
the City of Brookhaven. This easement is required by the provisions of the Maintenance  
Agreement executed by and between the Grantor and Grantee.

**PERMANENT WATER QUALITY BMP AND ACCESS EASEMENT AGREEMENT**

**SO AGREED** this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**PROPERTY OWNER**

\_\_\_\_\_  
**Name**

\_\_\_\_\_  
**By**

\_\_\_\_\_  
**Title**

Signed, sealed and delivered in the presence of:

\_\_\_\_\_  
**Witness**

\_\_\_\_\_  
**Notary Public**

[AFFIX NOTARIAL SEAL & STAMP]

**CITY OF BROOKHAVEN, GEORGIA**

By: \_\_\_\_\_  
Director of Community Development

Attachments: Exhibit 1 (Plat & Legal Description of Easement)

**EXHIBIT 1**

[Plat & Legal Description of the Access Easement]

**CITY OF BROOKHAVEN**  
**(Exhibit D)**

BMP Facility Operation and Maintenance Inspection Report for Pond Facilities  
(THIS MAY BE USED AS A TEMPLATE FOR OTHER BMPs)

Inspector Name \_\_\_\_\_ Community \_\_\_\_\_

Inspection Date \_\_\_\_\_ Address \_\_\_\_\_

Type of BMP \_\_\_\_\_

Watershed \_\_\_\_\_ Tax Map \_\_\_\_\_

ITEM INSPECTED	CHECKED		MAINTENANCE		OBSERVATIONS & REMARKS
	Yes	No	Reqd.	Not Reqd.	
I. POND FACILITIES					
A. Pond Dam Embankments and Emergency Spillways					
1. Vegetation and Ground Cover Adequate					
2. Surface Erosion					
3. Animal Burrows					
4. Unauthorized Planting					
5. Cracking, Bulging, or Sliding of Dam					
a. Upstream Face					
b. Downstream Face					
c. At or Beyond Toe					
Upstream					
Downstream					
d. Emergency Spillway					
6. Pond, Toe & Chimney Drains Clear & Functioning					
7. Seeps/Leaks on Downstream Face					
8. Slope Protection or Riprap Failures					
9. Vertical and Horizontal Alignment of Top of Dam as Per "As-Build" Plans					
10. Emergency Spillway Clear of Obstructions and Debris					
11. Other (Specify)					

ITEM INSPECTED	CHECKED		MAINTENANCE		OBSERVATIONS & REMARKS
	Yes	No	Reqd.	Not Reqd.	
B. Riser and Principal Spillway					
Type: Reinforced Concrete _____					
Corrugated _____					
Masonry _____					
*Indicates Dry Ponds Only					
1.* Low Flow Orifice Obstructed					
2.* Low Flow Trash Rack					
a. Debris Removal Necessary					
b. Corrosion Control					
3. Weir Trash Rack Maintenance					
a. Debris Removal Necessary					
b. Corrosion Control					
4. Excessive Sediment Accumulation Inside Riser					
5. Concrete/Masonry Condition Riser & Barrels					
a. Cracks & Displacement					
b. Minor Spalling (<1")					
c. Major Spalling (Rebars Exposed)					
d. Joint Failures					
e. Water Tightness					
6. Metal Pipe Condition					
7. Control Valve					
a. Operational/Exercised					
b. Chained and Locked					
8. Pond Drain Valve					
a. Operational/Exercised					
b. Chained and Locked					
9. Outfall Channels Functioning					
10. Other (Specify)					
C. Permanent Pool – Wet Ponds					
1. Undesirable Vegetative Growth					

ITEM INSPECTED	CHECKED		MAINTENANCE		OBSERVATIONS & REMARKS
	Yes	No	Reqd.	Not Reqd.	
2. Floating or Floatable Debris Removal Required					
3. Visible Pollution					
4. Shoreline Problems					
5. Other (Specify)					
D. Dry Pool Areas – Dry Pond					
1. Vegetation Adequate					
2. Undesirable Vegetative Growth					
3. Undesirable Woody Growth					
4. Low Flow Channels Clear of Obstructions					
5. Standing Water or Wet Spots					
6. Sediment and/or Trash Accumulation					
7. Other (Specify)					
E. Condition of Outfalls into Pond Area					
1. Rip Rap Failures					
2. Slope Invert Erosion					
3. Storm Drain Pipes					
4. Endwalls/Headwalls					
5. Other (Specify)					
F. Other					
1. Encroachments on Pond or Easement Area (Be Specific)					
2. Complaints from Local Residents (Describe on Back)					
3. Aesthetics					
a. Grass Mowing Reqd.					
b. Graffiti Removal Reqd.					
c. Other					
4. Public Hazards (Be Specific)					
5. Maintenance Access					

## II. SUMMARY

Inspector's Remarks: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

1. Overall Condition of Facility (Check One) Acceptable \_\_\_\_\_

Unacceptable \_\_\_\_\_

2. Signed: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_