



**CITY OF WESTLAKE, OHIO
ORDINANCE NO. 2015-115:**

**AN ORDINANCE AUTHORIZING THE MAYOR
TO ENTER INTO A STORM WATER DRAINAGE
SYSTEM AGREEMENT WITH BEACON
WESTLAKE, LLC AND CAPSTONE WESTLAKE,
LLC, AND DECLARING AN EMERGENCY.**

WHEREAS, Beacon Westlake, LLC and Capstone Westlake, LLC have agreed to provide a Storm Water Drainage System with Best Management Practices on its property to benefit the City of Westlake; and

WHEREAS, the Mayor and Director of Engineering hereby recommend that Council authorize the Mayor to execute said Agreement.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WESTLAKE, COUNTY OF CUYAHOGA AND STATE OF OHIO:

Section 1: That the Mayor be and he hereby is authorized and directed to enter into a Storm Water Drainage System Agreement with Beacon Westlake, LLC and Capstone Westlake, LLC, which Agreement is attached hereto as Exhibit "A" with such changes as may be made by the Director of Law without changing the substance thereof.

Section 2: That it is found and determined that all formal actions of this Council concerning and relating to this legislation were adopted in an open meeting of this Council and that all deliberations of this Council and any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements including Section 10, Article XI of the Charter of the City of Westlake and Section 121.22 of the Ohio Revised Code.

Section 3: That this legislation is hereby declared to be an emergency measure immediately necessary for the preservation of the public health, safety and welfare, and for the further reason that it is immediately necessary to provide for a Storm Water Drainage System, and further provided it receives the affirmative vote of two-thirds of all members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor.

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Passed: 9/17/15



Michael P. Killeen
President of Council

Presented to Mayor: 9/18/15

Approved: 9/18/15

ATTEST:


Denise L. Rosenbaum, Clerk of Council


Dennis M. Clough, Mayor

I, Denise L. Rosenbaum, Clerk of Council of the City of Westlake do hereby certify that Ordinance/Resolution no. 2015-115 adopted 9/17/15 was duly posted on 9/18/15 and remained posted for a period of 15 days thereafter in not less than 2 of the most public places in the City as determined by the Charter of said City.

**AGREEMENT FOR INSPECTION AND MAINTENANCE OF STORM
WATER DRAINAGE SYSTEMS AND BEST MANAGEMENT
PRACTICES**

THIS AGREEMENT, made this _____ day of _____ 20____ by and between _____ ("the Owner"); and the City of Westlake, a political subdivision of the State of Ohio which agreement provides as follows:

WHEREAS, the Owner, is the owner of certain real estate shown as

Tax Map No. PPN _____, situated in the City of Westlake, Cuyahoga County, Ohio, known as _____, Westlake, Ohio, which is to be developed as a _____; and

WHEREAS, the Owner is providing a storm water drainage system with a BEST MANAGEMENT PRACTICE (BMP) consisting of an above ground detention system and outlet control structure located on Owner's property (herein referred to as the "Facility") as shown and described on the plans entitled _____ or as shown on any subsequent revision approved by the City of Westlake, a copy of which is incorporated by reference; and

WHEREAS, to comply with the rules and regulations of *Chapter 1111- Storm Drainage* of the City of Westlake pertaining to this project, the Owner has agreed to maintain the Facility in accordance with the terms and conditions hereinafter set forth.

NOW, THEREFORE, for and in consideration of the mutual covenants and undertaking of the parties, the parties hereby agree as follows:

1. MAINTENANCE OF THE "FACILITY"

The Owner agrees that it shall maintain the Facility in a manner which will permit the Facility to perform the purposes for which it was designed and constructed, and in accordance with the standards by which it was designed and constructed, all as shown and described on the plans referenced above. Maintenance of the Facility shall run with the land and shall inure to the benefit of and shall be binding upon the parties hereto, their respective successors and assigns, and all subsequent owners of the property. This includes all pipes, and channels built to convey storm water to the Facility, as well as structures, improvements, and vegetation provided to control the quantity and quality of the storm water. Specifically, however, the Owner agrees that it shall, in accordance with approved maintenance plan for such Facility (attached hereto as Exhibit "A"):

- a. Perform any maintenance or repairs requested in writing by the City within ten (10) days of such request or such longer time if specified by the City of Westlake Engineer,
- b. Maintain, update and store the maintenance records for the Facility;
- c. Maintain and make all necessary repairs to the Facility located on the Property to ensure its original designed function.

2. FINAL INSPECTION REPORTS

The Owner agrees that it will have the design engineer certify in writing to the City of Westlake that as-builts of final improvements have been constructed in accordance with the approved plans and specifications.

3. INSPECTION FOR PREVENTATIVE MAINTENANCE

The Owner must complete an annual inspection of each BMP and submit a corresponding annual written report to the Westlake City Engineer by May 1st of each year. At a minimum, this report shall include the following items:

- a. The date of inspection
- b. Vicinity sketch showing general area where the best management practices) is/are located
- c. A summary of all maintenance activities that have taken place since the previous year's annual inspection
- d. Current photos of and a description of the condition of design features specific to each BMP (refer to the approved maintenance plan for each BMP).
- e. Indication of any deviations from the original approved plan for the BMP
- f. Identification of any improvements necessary to restore original design function
- g. Maintenance activities that will be undertaken in the next year
- h. Any other items requested by the City Engineer
- i. Identification and contact information of the entity responsible for maintenance of the BMP
- j. Identification, and contact information with original signature and date of the person responsible for preparing the annual report.
- k. The Owner(s) shall grant to the City of Westlake or its agent or contractor the right of entry at reasonable times and in a reasonable manner for the purpose of inspecting, operating, installing, construction, reconstructing, maintaining or repairing the facility.

4. PROHIBITION OF ALTERATIONS

The Owner is prohibited from altering the design of the BMP(s) without prior written approval from the City of Westlake Engineer,

5. RIGHTS OF THE CITY IN THE EVENT OF DEFAULT BY THE OWNER

In the event of any default or failure by the Owner in the performance of any of the covenants and warranties pertaining to the maintenance of the Facility, or if Owner shall fail to maintain the facility in accordance with the approved design standards and with the law and applicable executive regulation or, in the event of an emergency as determined by the State of Ohio, County of Cuyahoga, or City of Westlake in its sole discretion, the City of Westlake, after providing reasonable notice to the Owner, may enter upon the property and take whatever steps necessary to correct deficiencies identified in the inspection report and to charge the cost of such repairs to the Owner. The Owner shall reimburse the City of Westlake upon demand, within thirty (30) days of receipt thereof for all actual cost incurred by the City of Westlake hereunder. All costs thereof expended by the City of Westlake in performing such necessary maintenance or repairs shall constitute a lien against the properties of the Owner described hereunder, provided, however, that such lien shall not become perfected nor encumber the properties of the Owner until such time as a memorandum of lien setting forth the amount of the lien shall be recorded in the Cuyahoga County Recorder's Office, Ohio, and indexed in the grantor's index in the name of the Owner. Any lots or property conveyed of record by the Owner to third parties prior to the recordation of said memorandum of lien as aforesaid shall pass free and clear of any such lien, and such memorandum of lien shall not be construed to create an encumbrance upon title of any such lots or property so conveyed of record by the Owner to third parties. However, nothing herein shall obligate the City of Westlake to maintain the Facility.

6. RELEASE, HOLD HARMLESS AND INDEMNIFICATION

The Owner will release, protect, defend, indemnify, and save whole and harmless the City of Westlake and its agents, employees, officers and assigns from all claims brought against City, its agents, employees, officers or assigns for death or bodily injury, or the damage, loss or destruction of real or tangible personal property, or other damage, accident, casualty, or occurrence by Owner or other third party that might arise or be asserted as to the design, construction, presence, existence, or maintenance of the Facility, in accordance with the terms set forth herein. This release, duty to defend, indemnity and hold harmless, will extend from the date of this Agreement and will continue in perpetuity until the end of time.

- (a) The parties hereto expressly do not intend by execution of this Agreement to create in the public, or any member thereof, any rights as a third party beneficiary or to authorize anyone not a party hereof to maintain a suit for any damages pursuant to the terms of this Agreement.
- (b) This agreement shall be a covenant which runs with the land and shall inure to the benefit of and shall be binding upon the parties hereto, their respective successors and assigns, and all subsequent owners of the property.
- (c) The current Owner shall promptly notify the City of Westlake when the Owner legally transfers any of the Owners responsibilities for the facility. The Owner shall supply the City of Westlake with a copy of any document of transfer, executed by both parties.
- (d) Upon execution of this Agreement, it shall be recorded in the Cuyahoga County Recorder's Office, Ohio, at the Owner's expense.
- (e) In the event that the City of Westlake shall determine at its sole discretion at future time that the Facility is no longer required, then the City of Westlake shall at the request of the Owner execute a release of the Agreement which the Owner shall record at its expense.

IN WITNESS WHERE OF, the parties have caused this Agreement to be signed
in it names by a duly authorized person.

COMPANY:

By: _____
Signature of the Authorize Person

Its: _____

Printed name

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

Be It Remembered, that on the _____ day of _____, 20____, before me the subscriber, a Notary Public in and for said state and county, personally came the above named _____ Agent of Company _____, who acknowledged being an authorized representative of _____ Company _____, and who signed or acknowledged the signing of the forgoing instrument to be the voluntary act and deed of said _____ Company _____.

In Testimony Whereof, I have hereunto subscribed my name and affixed my official seal.

Notary

My commission Expires

CITY OF WESTLAKE, OHIO

By: _____
Dennis M. Clough, Mayor

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

Be It Remembered, that on the _____ day of _____, 20____, before me the subscriber, a Notary Public in and for said state and county, personally came the above named Dennis M. Clough, Mayor and authorized representative of the City of Westlake and who signed or acknowledged the signing of the forgoing instrument to be the voluntary act and deed of said City of Westlake.

In Testimony Whereof, I have hereunto subscribed my name and affixed my official seal.

Notary

My commission Expires

APPROVED AS TO FORM:

John Wheeler, Law Director