

**STORMWATER BEST MANAGEMENT PRACTICES  
OPERATIONS AND MAINTENANCE AGREEMENT**

City of Aspen, Colorado

**THIS AGREEMENT**, made and entered into this 18<sup>th</sup> day of April, 2016, by and between Bleeker Mill Development LLC, a Delaware limited liability company hereinafter called the "**Landowner**", and the City of Aspen, Colorado, hereinafter called the "**City**".

**WITNESSETH**

**WHEREAS**, the Landowner is the owner of certain real property described as Lots P, Q, R and S, Block 78, City and Townsite of Aspen, County of Pitkin, State of Colorado, 201 N. Mill Street, Aspen CO 81611 and as more fully described as follows, to wit:

A PARCEL OF LAND SITUATED IN SECTION 7, TOWNSHIP 10 SOUTH, RANGE 84 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY OF ASPEN, COUNTY OF PITKIN, STATE OF COLORADO, BEING LOTS P, Q, R & S, BLOCK 78, ASPEN TOWNSITE, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEASTERLY CORNER OF SAID LOT S, THE POINT OF BEGINNING;

THENCE N75°09'11"W ALONG THE SOUTHERLY BOUNDARIES OF SAID LOTS A A DISTANCE OF 120.62 FEET TO THE SOUTHWESTERLY CORNER OF SAID LOT P; THENCE LEAVING SAID SOUTHERLY BOUNDARIES N14°50'49"E ALONG THE WESTERLY BOUNDARY OF SAID LOT P, A DISTANCE OF 100.00 FEET TO THE NORTHWESTERLY CORNER OF SAID LOT P;

THENCE LEAVING SAID WESTERLY BOUNDARY S75°09'11"E ALONG THE NORTHERLY BOUNDARIES OF SAID LOTS A A DISTANCE OF 120.62 FEET TO THE NORTHEASTERLY CORNER OF SAID LOT S;

THENCE LEAVING SAID NORTHERLY BOUNDARIES S14°50'49"W ALONG THE EASTERLY BOUNDARY OF SAID LOT S A DISTANCE OF 100.00 FEET TO THE POINT OF BEGINNING.

also known as 201 N. Mill Street, Aspen CO 81611, hereinafter called the "**Property**"; and

**WHEREAS**, the Landowner is proceeding to build on and develop the Property; and

**WHEREAS**, the stormwater management BMP Operations and Maintenance Plan for the property identified herein has been approved by the City, herein after called the "**Plan**", which is attached hereto as Appendix A and made part hereof, as approved by the City, provides for management of stormwater within the confines of the Property through the use of stormwater management or Best Management Practices (**BMPs**) facilities; and

**WHEREAS**, the City and the Landowner, its successors and assigns, agree that the health, safety, and welfare of the residents of City of Aspen, Colorado and the maintenance of

water quality require that on-site stormwater management/BMP facilities be constructed and maintained on the Property; and

**WHEREAS**, the City requires, through implementation of the Plan from the Landowners which is attached hereto as Appendix A and made part hereof, that on-site stormwater management/BMPs as shown on the Plan be adequately constructed, operated, and maintained by the Landowner, its successors and 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:

1. **Construction of BMP Facility by Landowner.** The on-site stormwater management/BMP facilities shall be constructed by the Landowner, its successors and assigns, in accordance with the plans and specifications approved by the City and identified in the Plan.

2. **Duty of Operation and Maintenance of Facility.** The Landowner, its successors and assigns, including any homeowners association, shall adequately operate, inspect, and maintain the stormwater management/BMP facilities as acceptable to the City and in accordance with the specific operation, inspection, and maintenance requirements noted in the Plan. Adequate operation and maintenance is herein defined as good working condition so that these facilities are performing their design functions.

3. **Duty of Documentation.** The Landowner, its successors and assigns, shall document inspections, maintenance, and repairs performed and provide said documentation to the City or its representatives upon request.

4. **Right of Entry on Property.** The Landowner, its successors and assigns, hereby grant permission to the City, its authorized agents and employees, to enter upon the Property at reasonable times and upon presentation of proper identification, and to inspect the stormwater management/BMP facilities whenever the City deems necessary. The purpose of inspection is to follow-up on suspected or reported deficiencies, to respond to citizen complaints, and/or to assure safe and proper functioning of the facilities. The City shall provide the Landowner, its successors and assigns, copies of the inspection findings and a directive with timeline to commence with the repairs if necessary.

5. **Failure to Maintain.** In the event the Landowner, its successors and assigns, fails to construct, operate and maintain the stormwater management/BMP facilities in good working condition acceptable to the City, the City, its authorized agents and employees, may enter upon the Property and take whatever action(s) deemed necessary to correct deficiencies identified in the inspection report and to charge the costs of such construction or repairs to the Landowner. It is expressly understood and agreed that the City is under no obligation to install, construct, or routinely maintain or repair said stormwater management/BMP facilities, and in no event shall this Agreement be construed to impose any such obligation on the City.

6. **Reimbursement by Landowner.** In the event the City pursuant to this Agreement, performs work of any nature, or expends any funds in performance of said work for labor, use of equipment, supplies, materials, and the like, the Landowner, its successors or

assigns, shall reimburse the City upon demand, within thirty (30) days of receipt thereof for all actual costs incurred by the City hereunder.

7. **Duty to Inspect by City.** The City, its employees or representatives, shall inspect the stormwater management/BMP facilities at a minimum of once every three years to ensure their continued and adequate functioning.

8. **Release of City.** The Landowner, its executors, administrators, assigns, and other successors in interests, shall release the City, its employees and designated representatives from all damages, accidents, casualties, occurrences, or claims which might arise or be asserted against said City, employees, and representatives from the construction, presence, existence, operative or maintenance of the stormwater management/BMP facilities by the Landowner or City. In the event that a claim is asserted against the City, its elected officials, City Officers or employees, the City shall promptly notify the Landowner and the Landowner shall defend, at its own expense, any suit based on the claim. If any judgment or claims against the City's employees or designated representatives shall be allowed, the Landowner shall pay all costs and expenses regarding said judgment or claim.

9. **Recording of Agreement Running with the Property.** This Agreement shall be recorded in the real property records of Pitkin County, Colorado, and shall constitute a covenant running with the Property or land, and shall be binding on the Landowner, its administrators, executors, assigns, heirs and any other successors in interests, in perpetuity.

**[Signatures appear on following pages]**

IN WITNESS WHEREOF the undersigned has hereunto affixed its signatures to this  
STORMWATER BEST MANAGEMENT PRACTICES OPERATIONS AND  
MAINTENANCE AGREEMENT as of the date first above written.

BLEEKER MILL DEVELOPMENT LLC  
a Delaware limited liability company

By: BLEEKER MILL DEVELOPMENT LLC  
a Delaware limited liability company  
Manager

By: [Signature]  
Michael Rudin  
Manager

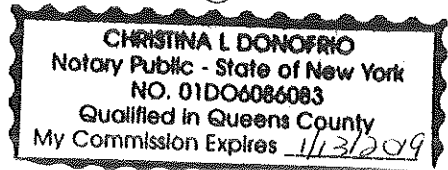
STATE OF NEW YORK    )  
                                  ) ss.  
COUNTY OF Queens )

The foregoing Condominium Declaration for the Mill Building Condominium was  
acknowledged before me this 18<sup>th</sup> day of April, 2016, by Michael Rudin as Manager of  
Rudin West I LLC, a Delaware limited liability company as Manager of Bleeker Mill  
Development LLC, a Delaware limited liability company.

Witness my hand and official seal.

[Signature]  
Notary Public

My commission expires: 1/13/2019



[Signatures appear on following pages]



## APPENDIX A BMP Operations and Maintenance Plan

### Operation and Maintenance

#### Pervious Paver Area

As per section 8.5.3.1 of the URMP, the following maintenance schedule will be undertaken by the owners of the property to achieve long term performance of the BMP's.

**Table 8.8 Maintenance Recommendations for Modular Block Pervious Pavement**

Required Action	Maintenance Objective and Action	Frequency of Action
Debris and litter removal	Accumulated material should be removed as a source control measure.	Routine – As needed.
Sod maintenance	If sandy loam turf is used, provide lawn care, irrigation system, and inlay depth maintenance as needed.	Routine – As dictated by inspection.
Inspection	Inspect representative areas of surface filter sand or sandy loam turf for accumulation of sediment or poor infiltration.	Routine and during a storm event to ensure that water is not bypassing these surfaces on frequent basis by not infiltrating into the pavement.
Rehabilitating sand infill surface	To remove fine sediment from the top of the sand and restore its infiltrating capacity.	Routine – Sweep the surface annually and, if need be, replace lost sand infill to bring its surface to be ¼ below the adjacent blocks.
Replacement of Surface Filler Layer	Remove, dispose, and replace surface filler media by pulling out turf plugs or vacuuming out sand media from the blocks. Replace with fresh ASTM C-33 sand or sandy loam turf plugs, as appropriate.	Non-routine – When it becomes evident that runoff does not rapidly infiltrate into the surface. May be as often as every two year or as little as every 5 to 10 years.
Replace modular block pavement	Restore the pavement surface. Remove and replace the modular pavement blocks, the sand leveling course under the blocks and the infill media when the pavement Surface shows significant deterioration.	Non-routine – When it becomes evident that the modular blocks have deteriorated significantly. Expect replacement every 10 to 15 years dependent on use and traffic.

#### Drywells

Dry wells must be inspected and maintained quarterly to remove sediment and debris that is washed into them. A maintenance plan shall be submitted to the City in the Drainage Report describing the maintenance schedule that will be undertaken by the owners of the new residence or building. Minimum inspection and maintenance requirements include the following:

- Inspect dry wells at least four times a year and after every storm exceeding 0.5 inches.
- Dispose of sediment, debris/trash, and any other waste material removed from a dry well at suitable disposal sites and in compliance with local, State, and Federal waste regulations.

Routinely evaluate the drain-down time of the dry well to ensure the maximum time of 24 hours is not being exceeded. If drain-down times are exceeding the maximum, drain the dry well via pumping and clean out the percolation area (the percolation barrel may be jetted to remove sediment accumulated in perforations. If slow drainage persists, the system may need to be replaced.