

**CITY OF MARTINSBURG PLANNING DEPARTMENT**

***AGREEMENT REGARDING PRIVATE FENCING  
WITHIN EXISTING DRAINAGE EASEMENT***

**THIS AGREEMENT**, made this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, by and between \_\_\_\_\_ hereafter referred to as OWNER(S) of the property located at \_\_\_\_\_, and the City of Martinsburg Planning Department, hereinafter referred to as the CITY.

**WITNESSETH:**

We the OWNER(S), with full authority to execute deeds, mortgages, other covenants, all rights, titles and interest in the property described above, do hereby covenant with the CITY and agree as follows:

1. An easement for drainage was lawfully in existence on the property referenced above prior to the voluntary desire by OWNER(S) to construct a fence within same.
2. Said easement is established to facilitate continued function of drainage as it pertains to promoting and protecting the public health and safety of the surrounding neighborhood.
3. OWNER(S) must not damage or otherwise impair the function of the easement and any improvements therein, such as ditch grading, drainage structures or conduit.
4. OWNER(S) shall construct all fencing within the easement in such a manner that drainage may pass freely through, provided by a combination of fence panels between support posts being up off the ground and fence panels containing gaps and/or offsets between fence panel elements.
5. Construction of a fence within said easement by OWNER(S) shall constitute full acceptance by OWNER(S) for any and all liability for future claims regarding drainage affected by fence.
6. The OWNER(S) shall indemnify and save harmless the CITY and any entity having authority regarding this easement from any and all claims for damages to persons or property arising from the construction, maintenance and use of the fence.
7. The OWNER(S) shall grant the CITY, and any entity having authority regarding this easement, or its agent or contractor the right of entry at reasonable times and in a

reasonable manner for the purpose of inspecting, operating, installing, constructing, reconstructing, maintaining or repairing the drainage related improvements situated in the easement.

8. The OWNER(S) shall be responsible for preserving, repairing, replacing any fencing disturbed for the purpose of inspecting, operating, installing, constructing, reconstructing, maintaining or repairing drainage related improvements situated in the easement.
9. This AGREEMENT and the Covenants contained herein shall apply to and bind the OWNER(S) heirs, executors, successors and assigns and shall bind all present and subsequent owners of the referenced property.
10. The OWNER(S) shall record this AGREEMENT prior to construction of any fencing in the land records of Berkeley County, West Virginia, and the OWNER(S) shall provide proof of such recordation to the CITY.
11. It is further understood and agreed between the parties hereto that the duties and responsibilities of the OWNER(S) as set forth herein with respect to real estate constitute an affirmative burden on the real estate having the force and effect of a covenant running with the land.

IN WITNESS WHEREOF, the OWNER(S) and the CITY executed this AGREEMENT as of this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_.

ATTEST:

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Printed name*

ATTEST:

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Printed name*

FOR THE OWNER(S)

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Printed name*

FOR THE CITY

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Printed name*

**STATE OF WEST VIRGINIA  
COUNTY OF BERKELEY**

I hereby certify that \_\_\_\_\_, whose name is signed in writing above and hereto annexed, bearing this date the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_ has this day acknowledged the same before me in my said County.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

My Commission expires: \_\_\_\_\_

\_\_\_\_\_  
**NOTARY PUBLIC**