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Stormwater Treatment Facility Maintenance Agreement

This Agreement made and entered into this ____ day of _____, 20 ____, by _____, (hereinafter referred to as "Property Owner")

RECITALS:

WHEREAS, the Property Owner is the owner of the following described real property (hereinafter, the "Property") located in the City of Overland Park, Johnson County, Kansas, to wit:

Final Plat of _____.

WHEREAS, the Property Owner desires to develop the Property; and

WHEREAS, The Chapter 16.210 of the Overland Park Municipal Code requires that on-site stormwater treatment facilities be constructed and adequately maintained by the property owner.

WHEREAS, the term "Property Owner" as used in this document shall refer to the current owner of the Property, as well as all subsequent owners of any portion of the property contained within said Plat. Where the context requires, this shall include, without being limited to, any or all of the following: subsequent owners of individual lots developed for single family ownership, a Homes or Business Association that may own any property held in common, or any other owners of land within the Property described in said Plat.

WHEREAS, Chapter 16.210 of the Overland Park Municipal Code requires the Property Owner to place certain restrictions and responsibilities on the use and maintenance of stormwater treatment facilities; and

WHEREAS, the stormwater treatment facilities are located on the property in the locations as shown on **Attachment A (The Plan)**.

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WHEREAS, in order to insure the proper and adequate maintenance of the stormwater treatment facilities in compliance with legal requirements, it is necessary to establish binding covenants, conditions, and restrictions applicable to the Property, and

WHEREAS, the Property Owner does hereby establish the following regulations, stipulations, easements, covenants, conditions and restrictions pursuant to Chapter 16.210 of the Overland Park Municipal Code, on the Property:

- 1.0 **Homes or Business Association Requirements:** The Property Owner hereby states that Property Owner will fulfill the following conditions which are requirements of OPMC Section 16.210.100 related to formation of a Homes or Business Association:
- 1.1 Prior to consummation of the sale of any lot in the Subdivision, the Property Owner shall cause the Subdivision's Homes or Business Association (the "Association") to be duly formed as a Kansas corporation.
 - 1.2 Prior to the sale of any lot in the Subdivision, The Property Owner shall cause to be recorded with the Johnson County Records and Tax Administration, Johnson County, Kansas, a Homes or Business Association Declaration covering all of the platted lots within the Subdivision that includes this Agreement by reference.
 - 1.3 The Homes or Business Association Declaration shall require that the Homes or Business Association levy assessments against the lots within the Subdivision sufficient to pay for maintenance and future replacement of the Stormwater Treatment Facilities and for any costs incurred by reason of this Agreement. The Association will have an enforceable lien on any lot in the Subdivision in the event that any individual Property Owner fails to pay an assessment. All purchasers of lots will be given an outline summary of the maintenance obligations of the Association as per this Agreement.
 - 1.4 The Association Declaration shall contain a provision requiring the written consent of the City to the termination of the Association Declaration in its entirety or to any amendment, modification or termination of any provision thereto regarding the Stormwater Treatment Facilities.
 - 1.5 The Association Declaration shall name the City as a third-party beneficiary of all provisions therein relating to the Stormwater Treatment Facilities and will give the City the right to enforce all restrictions, obligations and other provisions regarding the Stormwater Treatment Facilities.
 - 1.6 Prior to the sale of any lots within any future phases of the Subdivision, The Property Owner will cause to be recorded with the Register of Deeds of Johnson County, Kansas, a Association Declaration covering all of the platted lots within such phase of the Subdivision and containing the provisions regarding the Stormwater Treatment Facilities set forth herein.

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2.0 Disclosure of Maintenance Requirements:

- 2.1 Minimum maintenance frequency and maintenance measures required for all stormwater treatment facilities are shown on **Attachment B (Maintenance Requirements)**.
- 2.2 It is understood by the Property Owner and City that actual maintenance costs and future replacement costs are variable, however for budgetary purposes, the project designer is required to estimate future maintenance and replacement costs so that the Property Owner may better plan future required expenditures. Based on the project designer's estimates, the following section tabulates anticipated maintenance and replacement costs:

Project designer should insert estimates of annual, periodic, and future replacement costs of all facilities, and expected lifespan of the facility here.

3.0 Property Owner Responsibilities

- 3.1 The Property Owner shall provide and is responsible for all maintenance of the designated stormwater treatment facilities as shown on the Property, including, but not limited to, sediment removal and disposal, maintenance of inlet and outlet works, trash and debris removal, vector control, and management of vegetation in accordance with the plan requirements in order to insure that all such facilities remain in proper working condition in accordance with approved design standards and all applicable legal requirements. In accordance with Section 16.210.100.G of the Overland Park Municipal Code, the Property Owner shall make records of the installation and of all maintenance and repairs, and shall retain the records for at least five years. These records shall be made available to the City during inspection of the facility and at other reasonable times upon request.
- 3.2 The Property Owner agrees to actively pursue measures to prevent unauthorized activities pursuant to Chapter 16.210 of the Overland Park Municipal Code which interfere with the function of the stormwater treatment facility.
- 3.3 In Accordance with Section 16.210.100 of the Overland Park Municipal Code, the Property Owner agrees to submit an inspection report to the City at a minimum interval of one (1) year following initial certification and subsequently every two (2) years thereafter. The inspection report shall be completed and sealed by a registered professional engineer in the State of Kansas, unless the Director of Planning and Development Services approves other qualified professionals to perform these duties. Such inspection report shall document each item, including, but not limited to, the need for removal of sediment, litter, and other debris, grass cutting, removal of undesirable vegetation, and replacement of vegetation that is part of the stormwater treatment facility. Any maintenance needs found must be addressed in a timely manner and documentation submitted showing that required maintenance has been performed. Maintenance certifications shall be submitted on a form approved by the City and shall include photographs documenting the condition of the facility at the time of the inspection.

4.0 Maintenance Access Easements:

In consideration of the sum of one dollar (\$1.00), receipt and sufficiency of which is hereby acknowledged, the Property Owner does convey to the Homes or Business Association , forever a perpetual access easement over and through the following referenced real estate for the purpose of obtaining access for inspecting, maintaining, and repairing a stormwater treatment facility; further the

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City of Overland Park may utilize such access easements for purposes of enforcing maintenance requirements as set forth in Section 5.0 of this agreement.

SEE ATTACHMENT 'A'

If it is the preference of the Property Owner to provide defined access easements for the stormwater treatment facilities on site, the legal description for each easement shall be provided on **Attachment C (Access Easements)**.

This Access Easement is executed and delivered and said easement is granted upon the following conditions:

- A. It is understood by the Property Owner that the City of Overland Park shall have the right at all times to use the herein described access easement for the purpose of inspecting, maintaining, and repairing the stormwater treatment facility as provided for under Section 5.0 of this agreement.
- B. That the Property Owner shall be fully responsible for providing and maintaining the access easement and the stormwater treatment facility and shall not construct fences, walls, landscaping, structures, or other items which would prevent reasonably convenient maintenance and repair access to the facility.
- C. The rights granted herein shall not be construed to interfere with or restrict the Property Owner, his/her/its heirs, executors, administrators, successors and assigns from the use of the premises with respect to the construction and maintenance of property improvements along and over the premises herein described so long as the same are so constructed as not to impair the rights of access to a stormwater treatment facility granted herein.

This easement shall run with the land and apply to all interests now owned or hereinafter acquired to the above-described property.

5.0 Maintenance Enforcement by City

- 5.1 If, after reasonable notice to the Property Owner, the Property Owner shall fail to maintain the Stormwater Treatment Facility as set forth herein and other applicable legal requirements, the City may perform all necessary repair or maintenance work, and the City may assess the Property Owner and the Property, for the cost of the work and any applicable penalties. For the purposes of this document, "reasonable notice" shall consist of 30 days prior written notice sent to the Property Owner, unless there are exigent circumstances requiring either immediate or shorter response than said 30 days would provide, in which case the notice provided shall be whatever is reasonable under those circumstances. The Property Owner does herein grant the City, its agents and contractors, a right of entry on said property for the purpose of inspecting, installing, maintaining or repairing the Stormwater Treatment Facility, and shall execute any documents deemed necessary by the City, if any, relating thereto.
- 5.2 The City may record an Affidavit of Nonpayment of Maintenance Charges in the Office of the Johnson County Records and Tax Administration, of Johnson County, Kansas, stating (a) the legal description of the property upon which the lien is claimed, (b) the name(s) of the Owner(s) of said property as last known to the City, and (c) the amount of the Maintenance Charge which is unpaid. The Lien shall be created at the time of the filing and recording of the Affidavit and such lien shall be superior to all other charges, liens, or encumbrances

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which may thereafter in any manner arise or be imposed upon the subject property, whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, or other instrument, saving and excepting only such liens for taxes and other public charges as are by applicable law made superior.

- 5.3 It is understood by Property Owner that the City of Overland Park is under no past, present, or future obligation to expend public funds or take any other action whatsoever to maintain or improve the stormwater treatment facility. The City or Property Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. The City or the Property Owner shall have the right to include in their claim for relief a reasonable sum to reimburse them for their attorneys' fees and any other expenses reasonably incurred in enforcing their rights hereunder. Failure by the City or by the Property Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Neither shall failure by the City to enforce the provisions hereof be deemed a waiver of any provision hereof as to any other Owner.

- 6.0 **Indemnification:** The Property Owner shall indemnify and hold the City harmless from any and all damage, loss, claims or liability of any kind whatsoever arising from the installation, maintenance, repair, operation or use of the stormwater treatment facility including, but not limited to, any loss occasioned by reason of damage or injury to persons or property which may occur. In addition, the Property Owner shall pay all costs and expenses involved in defending all actions arising there from.

These covenants and agreements as set forth herein, fully executed, shall be filed with the Johnson County Records and Tax Administration Office, Johnson County, Kansas, and the filing of the same shall constitute constructive notice to all heirs, successors, transferees, and assigns of the Property Owner of these covenants and agreements running with the land and notice of all stipulations made thereto. This document may not be amended or modified in any way without the prior written approval of the authorized officials of the City of Overland Park, Kansas, and that approval must be indicated on the face of any subsequently recorded document amending or modifying this document.

Notwithstanding other provisions of this document placing rights, duties, obligations and responsibilities on the Property Owner, as that term is defined herein, those rights, duties, obligations and responsibilities shall only be exercised or enforced in the following manner: when the property is owned by the current owner, or by a succeeding developer, those requirements shall only be exercised or enforced by or against those legal entities. When an approved Association takes over ownership of the Property, those rights, duties, obligations and responsibilities shall succeed to that Association as provided in the legal documents creating the same. It is not the intent of this document to create or impose any rights, duties, obligations and responsibilities directly on subsequent owners of individual lots within the subdivision, unless or until the Homes Association is unwilling or unable to exercise or comply with and enforce the terms of this document and fully meet all the duties, obligations and responsibilities set forth herein, including, without being limited to, payment of any costs imposed by this document by all means specified in the documents creating the Association, including assessment of individual lot owners when necessary. If that Association shall cease to exist or be in default of its duties, obligations or responsibilities as set forth herein, the City shall have the option of directly enforcing them against individual owners of lots within the subdivision.

The City, at Property Owner's cost, shall cause this agreement to be filed with the Johnson County Records and Tax Administration Office, Johnson County, Kansas. Each party hereto shall receive a duly executed copy of this agreement for its official records.

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IN WITNESS WHEREOF, the undersigned have caused this maintenance agreement to be duly executed the day and year first written above.

PETITIONER

BY: _____

ACKNOWLEDGMENT

STATE OF _____)
COUNTY OF _____) ss.

BE IT REMEMBERED, That on this ____ day of _____, 20____, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came _____ who is personally known to me to be the same persons who executed the foregoing instrument of writing on behalf of _____, and said persons duly acknowledged the execution of the same to be the act and deed of the limited liability company.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

My Commission Expires: _____
_____ Notary Public

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INSERT ATTACHMENT A

INSERT ATTACHMENT A HERE- Attachment A is an exhibit showing the locations and types of all treatment facilities on the site. At a minimum, the following information shall be provided:

- *Sufficient dimension information for each facility in order to determine its location in the field*
- *Type and location of each facility (provide a unique identifier for each facility)*
- *A minimum 15' wide access path to each facility from a public way*
- *Recorded plat name and book and page provided on the bottom right hand corner of each sheet*

INSERT ATTACHMENT B

INSERT ATTACHMENT B HERE - Attachment B is a detailed listing of all periodic maintenance requirements for each facility. This should include instructions written at a level understandable to a HOA that lists monthly, seasonal, annual and long term maintenance for each type of facility.

INSERT ATTACHMENT C (if applicable)

INSERT ATTACHMENT C HERE - Attachment C is written and graphical legal description of all access easements for all stormwater treatment facilities.

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