

## **STORMWATER TREATMENT MAINTENANCE COVENANT**

This Covenant made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, ("Landowner").

WHEREAS, the Landowner is the owner of the following described real property ("Property") located in the City of Shawnee, Johnson County, Kansas, to wit:

Final Plat of \_\_\_\_\_

WHEREAS, the term "Landowner" as used in this Covenant 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. This shall include without being limited to, 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; and

WHEREAS, the Landowner desires to develop the Property; and

WHEREAS, Shawnee Municipal Code, Title 11 ("SMC Provisions") requires that on-site stormwater treatment facilities be constructed and adequately maintained by the Landowner; and

WHEREAS, SMC Provisions require that a "Final Stormwater Treatment Facility Report" be prepared and which for purposes of this Covenant includes but is not limited to site maps, design plans, specifications, engineering certifications, location maps, maintenance requirements, repair plans, landscaping plans, copies of dedicated tracts and easements, maintenance responsibilities, maintenance schedules and projected cost, signage requirements, inspection and certification requirements; and,

WHEREAS, SMC Provisions require the Landowner 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 following described real property located in the City of Shawnee, Johnson County, Kansas, as shown on **ATTACHMENT A**, which is attached hereto and incorporated herein.

### **(Attachment A: Legal Description)**

WHEREAS, to ensure 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 Landowner hereby establishes the following regulations, stipulations, easements, covenants, conditions, and restrictions pursuant to SMC Provisions, on the Property:

**1.0 Homes or Business Association Requirements:** The Landowner hereby states that Landowner will fulfill the following conditions related to formation of a Homes or Business Association:

- 1.1 Before the sale of any lot in the subdivision, the Landowner shall cause the Subdivision's Homes or Business Association ("Association") to be duly formed as a Kansas Corporation.
- 1.2 Before the sale of any lot in the subdivision, the Landowner shall cause to be recorded with the Johnson County Records and Tax Administration, Johnson County, Kansas, an Association declaration covering all of the platted lots within the subdivision that includes this Covenant by reference.
- 1.3 Before the sale of any lots within any future phases of the subdivision, the Landowner will cause to be recorded with the Johnson County Records and Tax Administration, Johnson County, Kansas, an 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.
- 1.4 The Association declaration shall require that the 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 Covenant. The Association will have an enforceable lien on any lot in the subdivision in the event that any individual Landowner 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 Covenant.
- 1.5 The Association declaration shall contain a provision requiring the written consent of the City of Shawnee ("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.
- 1.6 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.

**2.0 Disclosure of Maintenance Requirements:**

- 2.1 Maintenance, inspection and certification must be done in accordance with the minimum maintenance frequency and maintenance measures required for all stormwater treatment facilities in accordance with the SMC Provisions, this Covenant, and the Final Stormwater Treatment Facility Report for the Property.
- 2.2 It is understood by the Landowner 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 Landowner may better plan future required expenditures. Based on the project designer's estimates, the anticipated maintenance, replacement costs and expected lifespan of the facility are shown in the Report, and any amendments thereto.

### **3.0 Landowner Responsibilities:**

- 3.1 Landowner must provide and is responsible for all maintenance, inspection, and certification of the Stormwater Treatment Facilities as shown on the Property. The maintenance, inspection, and certification of the Stormwater Treatment Facilities on the Property shall include the obligation to maintain in good condition and promptly repair and restore all grade surfaces, walls, drains, dams and structures, vegetation, erosion and sediment control measures, 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 to ensure that all such facilities remain in proper working condition. Landowner of the Property shall make records of the installation and of all maintenance and repairs, and shall retain the records for at least five (5) years. These records shall be made available to the City upon request.
- 3.2 The Landowner agrees to actively pursue measures to prevent unauthorized activities that interfere with the function of the stormwater treatment facility.

### **4.0 Maintenance Enforcement by City:**

- 4.1 If the required Stormwater Treatment Facilities certifications, inspections, maintenance and repairs are not completed in accordance with the SMC Provisions, the Final Stormwater Treatment Report or as required by the written notice issued by the City, the City, after reasonable notice, may perform all necessary work to place the facility in proper working condition. For the purposes of this document, "reasonable notice" shall consist of 30 calendar days prior written notice sent to the Landowner, unless exigent circumstances exist requiring either an immediate or shorter response than 30 calendar days, in which case the notice provided shall be whatever is reasonable under those circumstances. The Landowner(s) of the lands served by the facility, excluding public Right of Way, shall be assessed the cost of the work, including administrative costs, materials, personnel, and any penalties. Costs shall be proportioned to each Landowner based on a ratio of the area of land owned to the total area of land assessed. This assessment may be accomplished either by placing a special assessment on the property(ies), which may be placed on the tax bill and collected in the same manner as ordinary taxes or as otherwise permitted by the SMC Provisions.
- 4.2 The City, its representatives, and assigns, shall have the right to enter upon the Property, at reasonable times and with reasonable notice, for the purpose of inspecting the Property to ensure compliance with the terms of this Covenant and the SMC Provisions.
- 4.3 It is understood by Landowner that the City is under no past, present, or future obligation to expend public funds or take any action to maintain or improve the stormwater treatment facility. The City or the Landowner 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 Covenant and to reimbursement of fees and other expenses reasonably incurred in enforcing the rights hereunder. Failure by the City or by the Landowner to enforce any covenant or restriction shall not be deemed a waiver of the right to do so thereafter. Failure by the City to enforce the provisions hereof shall not be deemed a waiver of any provision hereof as to any other owner.

**5.0 Indemnification:** The Landowner 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 that may occur. In addition, the Landowner shall pay all costs and expenses involved in defending all actions arising there from.

The City, at the Landowner's cost, shall cause this Covenant, as set forth herein and fully executed, to be recorded and 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, executors, transferees, and assigns of the Landowner of these covenants and Covenants running with the land and notice of all stipulations made thereto. This Covenant shall not be amended or modified in any way without the prior written approval of the City Manager, or designee, of the City, and that approval must be indicated on the face of any subsequently recorded document amending or modifying this Covenant.

Notwithstanding other provisions of this Covenant placing rights, duties, obligations and responsibilities on the Landowner, 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 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 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.

IN WITNESS WHEREOF, the undersigned have caused this Covenant to be duly executed on \_\_\_\_\_, 20\_\_\_\_.

#### LANDOWNER

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

#### ACKNOWLEDGMENT

STATE OF KANSAS                    )  
  ) ss.  
COUNTY OF JOHNSON            )

This Instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_.

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

Commission Expires: \_\_\_\_\_

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

**Acknowledged by City of Shawnee**

\_\_\_\_\_  
Signature/Title

Date \_\_\_\_\_