

STORMWATER FACILITY
MAINTENANCE AGREEMENT

THIS AGREEMENT, made and entered into this day of _____,
_____, by and between _____, acting by and through
_____, hereinafter referred to as “Owner”, and the City of Denton, a
Texas Home Rule Municipality hereinafter referred to as “City”.

WITNESSETH

WHEREAS, the Owner is the owner of certain real property described in “Exhibit A” hereinafter called the “Property”.

WHEREAS, the Owner is proceeding to build on and develop the Property according to the Civil Engineering Plan or Recorded Plat known as _____, which is expressly made a part hereof, as approved or to be approved by the City and the Owner provides for management of Stormwater within the confines of the Property; and

WHEREAS, the City and the Owner, and their successors and assigns, agree that the health, safety and welfare of the residents of the City of Denton, Texas require that on-site Stormwater Management Facilities be constructed and maintained on a portion of the Property; and

WHEREAS, the City requires that on-site Stormwater Management Facilities (“Facility”) as shown on the Civil Engineering Plan or Recorded Plat be constructed and adequately maintained by the Owner, its successors and assigns, the location and dimensions of which is shown and more particularly described by metes and bounds in the attached Exhibit “A” (“Facility Property”); and

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. The Owner, its successors and assigns, shall adequately construct and maintain the on-site Stormwater Management Facilities at no expense to the City of Denton in accordance with the design specifications for the Facility, attached as “Exhibit B”, and the current standards then in force and effect in the City of Denton and with the Operations and Maintenance Plan attached to this Agreement as “Exhibit C”. The Stormwater Facility includes all structures, improvements, and vegetation provided to control the quantity and quality of the Stormwater. Adequate maintenance is herein defined as good working condition so that these facilities are performing their design functions. The Stormwater Structural Control Maintenance Checklists, attached to this Agreement as “Exhibit D”, are to be used to establish what good working condition is acceptable to the City.
2. The Owner, its successors and assigns, shall inspect the Facility and submit an inspection report to the City annually. The purpose of the inspection is to assure safe and proper functioning of the Facility. The inspection shall cover the entire Facility, berms, outlet structure, pond areas, access roads, etc. Components of the Facility, which need maintenance or replacement to perform their design function, shall be noted in the inspection report along with the corrective actions to be taken.
3. If the City has not received an inspection report from the Owner within any 12-month period, the City may contact the Owner to request the inspection report. If a current inspection report is not provided within 30 days of this request, the City reserves the right to inspect the facility and recoup the cost of inspection in accordance with section 8 of this agreement.
4. The Owner, its successors and assigns, hereby grant permission to the City, its authorized agents and employees, to enter upon the Property and to inspect the Facility Property whenever the City deems necessary. The purpose of inspection is to follow-up on reported deficiencies and/or to respond to citizen complaints. The City shall provide the Owner, its successors and assigns, copies of the inspection findings and a directive to commence with the repairs if necessary.
5. The Owner is responsible for operating and maintaining the Stormwater Maintenance Facility in compliance with all city codes, state law, federal law, rules, and regulations.

The Owner is also responsible for maintaining the Stormwater Maintenance Facilities clean and free of debris or blockages at all times.

6. The Owner shall not permit any obstruction to the natural flow of storm water runoff by filling or by construction of any type of dam, building, bridge, fence, pole, utility, communication facility, walkway, or any other structure within the Property or within the Facility, unless approved, in advance, by the Director of Public Works or his/her designee.
7. In the event the Owner, its successors and assigns, fails to maintain the Facility in good working condition as specified herein, the City, its authorized agents and employees, may enter upon the Facility Property and take necessary action to correct deficiencies identified in the inspection report and to charge the costs of such repairs to the Owner, its successors and assigns. **It is expressly understood and agreed that the City is under no obligation to routinely maintain or repair said Facility, and in no event shall this Agreement be construed to impose any such obligation on the City, such obligation is Owner's.**
8. The Owner, its successors and assigns, will perform the work necessary to keep the Facility in good working order as appropriate. 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 Owner, its successors and assigns, shall reimburse the City upon demand, within thirty (30) days of receipt thereof for all actual costs incurred by the City hereunder. In the event that Owner or its successors or assigns fail to pay the City for the costs incurred under this section, the City shall impress a lien for the costs of such work upon other lots owned by the Owner. Such lien shall be perfected by filing in the office of the County Clerk of Denton County, Texas an affidavit identifying the property to be charged with such lien, stating the amount thereof, and making reference to this Agreement.
9. This Agreement imposes no liability of any kind whatsoever on the City. **THE OWNER AGREES TO HOLD THE CITY HARMLESS FROM ANY LIABILITY IN THE EVENT THE FACILITY FAILS TO OPERATE PROPERLY. OWNER COVENANT AND AGREE AND DOES HEREBY INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY OF DENTON,**

ITS AGENTS, SERVANTS AND EMPLOYEES FROM AND AGAINST ALL COSTS, EXPENSES, LOSSES, DAMAGES, CLAIMS OR CAUSES OF ACTION WHATSOEVER ARISING, OR WHICH MIGHT ARISE, FROM THE FAILURE OF OWNER OR ANY FUTURE OWNERS OF THE ABOVE FACILITY PROPERTY TO MAINTAIN THE FACILITY, INCLUDING, BUT NOT LIMITED TO THE BED AND BANKS OF THE DETENTION POND; ANY DAMAGES CAUSED TO PERSON OR PROPERTY DUE TO (1) FLOODING OF THE POND AND ITS BANKS, (2) SLOPE FAILURE OF THE BANKS OF THE POND, OR (3) FAILURE OF THE POND OR ITS BANKS TO OPERATE IN A MANNER CONSISTENT WITH CITY OF DENTON CRITERIA TO PERFORM ANY OTHER DUTIES OR OBLIGATIONS HEREUNDER.

- 10. THE OWNER AGREES TO DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES, HARMLESS AGAINST ANY CLAIMS, LAWSUITS, JUDGMENTS, COSTS, AND EXPENSES FOR DAMAGE TO THE STORMWATER MAINTENANCE FACILITIES OR IMPROVEMENTS OR FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE, OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY RESULT FROM, ARISE OUT OF, OR BE IN CONNECTION WITH THE STORMWATER MAINTENANCE FACILITIES OR THIS MAINTENANCE AGREEMENT.**
- 11. THE OWNER AGREES TO HOLD THE CITY OF DENTON WHOLE AND HARMLESS AND HEREBY RELEASES THE CITY OF DENTON FROM DAMAGES OF ANY NATURE RESULTING FROM THE FAILURE OF ANY STRUCTURE OR STRUCTURES WITHIN THE PROPERTY, INCLUDING WITHIN THE STORMWATER MAINTENANCE FACILITY AREA, WITHIN THE SUBDIVISION SURROUNDING THE PROPERTY, OR DUE TO THE CITY OF DENTON' STORM DRAINAGE SYSTEM.**

12. Owner covenants and agrees that no habitable building shall be erected within the drainage easement outlined on “Exhibit A” but this paragraph shall not preclude construction of other improvements within the drainage easement, which do not impede drainage and are allowed by the adopted Development Code and Design Criteria. Owner covenants and agrees that no habitable building shall be erected on the above property abutting such easement which shall have a finished floor at an elevation less than 30 inches above the maximum depth of water in the detention pond which would occur during a 100 year frequency flood.
13. This Agreement is hereby declared a covenant running with the land and is fully binding on all successors, heirs, and assigns of the Owner who acquire any right, title, or interest in or to the Property, or any part thereof. Any person who acquires any right, title, or interest in or to the Property, or any part thereof, thereby agrees and covenants to abide by and fully perform the provisions of this document.

[SIGNATURE PAGE FOLLOWS]

Executed this ____ day of _____ 20__.

OWNER

Name: _____

By: _____

Name: _____

Title: _____

Address: _____

ACKNOWLEDGMENT

STATE OF _____ §

§

§

COUNTY OF _____ §

This instrument was acknowledged before me on this ____ day of _____, 20__ by _____, an authorized representative of _____, on behalf of said entity.

(Notary Stamp)

Notary Public in and for
State of _____

CITY OF DENTON
SARA HENSLEY, CITY MANAGER

BY: _____

ATTEST:
INGRID REX, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: _____

THIS AGREEMENT HAS BEEN
BOTH REVIEWED AND APPROVED
As to financial and operational obligations
and business terms.

SIGNATURE

PRINTED NAME

“EXHIBIT A”

INSERT LEGAL DESCRIPTION

“EXHIBIT B”

INSERT DESIGN PLAN AND SPECIFICATION

“EXHIBIT C”

INSERT OPERATIONS AND MAINTENANCE PLAN

“EXHIBIT D”

INSERT MAINTENANCE CHECKLIST