

Stream Corridor Maintenance Agreement

THIS DECLARATION OF COVENANTS, EASEMENTS, CONDITIONS AND RESTRICTIONS: Maintenance Obligations for Stream Corridor is made this ____ day of _____, 20__, by _____, (hereinafter referred to as "Property Owner") and the City of Olathe Kansas, a municipal corporation duly organized in accordance with the laws of the state of Kansas ("City") (collectively, the "Parties", and each individually, a "Party").

RECITALS:

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

SEE EXHIBIT "A" ATTACHED HERETO

WHEREAS, the Property Owner desires to develop the Property which contains a natural stream; and

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 the same Plat. This shall include, without being limited to, subsequent owners of individual lots developed for single family ownership, a Homes Association that may own any property held in common, or any other owners of land within the Property described in said Plat.

WHEREAS, Chapter 17 of the Olathe Municipal Code requires a Stream Corridor Maintenance Agreement to be submitted with all final plans and final Plats and is subject to approval by the City Engineer; and

WHEREAS, Chapter 17 of the Olathe Municipal Code requires each Property Owner within the City to provide on the Property Owner's property all approved stormwater treatment facilities to ensure the adequate drainage and control of stormwater on the Property Owner's property both during and after construction of such facilities; and

WHEREAS, the City has approved a Final Plat for the Property subject to the conditions and stipulations hereinafter set forth, including the recordation of this Declaration of Covenants, Easements, Conditions and Restrictions: Maintenance Obligations for the Steam Corridor, and

WHEREAS, the Property Owner desires to utilize the stream corridor in accordance with the Stream Corridor Plan as shown on **Exhibit "B"**; and

WHEREAS, in order to insure the proper and adequate maintenance of the natural stream preservation corridor in compliance with legal requirements, it is necessary to establish binding covenants, conditions, and restrictions applicable to the Property.

NOW THEREFORE, the Parties hereby agree to establish the following regulations, stipulations, easements, covenants, conditions and restrictions pursuant to Chapter 17 of the Olathe Municipal Code, on the Property:

1) The Property Owner shall provide and is responsible for all maintenance (as required by Chapter 17.06.090 (B) of the Olathe Municipal Code) of the designated stream corridor as shown on the Property, including, without being limited to, the stream bed and all existing and future bank stabilization measures, in as great a frequency as is necessary (as determined by the City through reasonable annual inspections) to insure that all such facilities remain in proper working condition in accordance with approved design standards and all applicable legal requirements.

2) The Property Owner agrees to limit uses of the stream corridor to those as shown on the Stream Corridor Plan shown on **Exhibit "B"**. The Property Owner understands that the following maintenance activities are prohibited within the stream corridor in accordance with Chapter 17.06.090 (C) of the Olathe Municipal Code, and agrees to actively pursue measures to prevent these or any other unauthorized activities within the stream corridor:

- a. Regular mowing outside of recreational use areas.
- b. Non-selective chemical spraying.

3) The Property Owner will remove obstructions and excessive silt deposits within the stream corridor which might cause flooding of buildings, roadways, or other properties.

4) Permanent water quality and quantity drainage, storm drainage and temporary construction easements, if required by the City in the future, shall be dedicated at no cost to the City.

5) 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 stream corridor or any facilities related thereto on the Property, 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 therefrom.

6) It is understood by Property Owner that the City of Olathe is under no past, present, or future obligation to expend public funds or take any other action whatsoever to maintain or improve the storm drainage system in the stream corridor. Either Party 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. Either Party shall have the right to include in their claim for relief a reasonable sum to reimburse the prevailing Party for their attorneys' fees and/or any other expenses reasonably incurred in enforcing their rights hereunder. Failure by either Party 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.

7) If, after reasonable notice to the Property Owner in accordance with Chapter 17 of the Olathe Municipal Code, the Property Owner shall fail to maintain the stream corridor 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 stream corridor, and shall execute any documents deemed necessary by the City, if any, relating thereto.

8) The City may record an Affidavit of Nonpayment of Maintenance Charges in the Office of the Register of Deeds 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 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.

9) While other provisions of this document may allow the City to take certain actions to enforce the terms of this document, it should be understood that the City has no duty or obligation to enforce those other provisions by entering the Property and performing maintenance or clearing obstructions within the stream corridor and assessing the Property Owner for reasonable expenses incurred performing this maintenance or taking any other action to enforce the terms and conditions set forth elsewhere in this document.

10) The Property Owner agrees to provide, without being limited to, the minimum maintenance within the stream corridor, or any portion thereof, in accordance with applicable provisions of the Olathe Municipal Code; provided, however, if the stream corridor is dedicated and accepted by the City for use as public parkland, the corridor

shall be maintained in accordance with established parkland maintenance policies, notwithstanding any other provision in this document to the contrary.

11) These covenants and agreements as set forth herein, fully executed, shall be filed with the Register of Deeds in Olathe, Johnson County, Kansas, by the City at Property Owner's cost. The filing of this Declaration 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. Each party hereto shall receive a duly executed copy of this agreement for its official records.

12) This document may not be amended or modified in any way without the prior written approval of the authorized officials of the City, which approval must be indicated on the face of any subsequently recorded document amending or modifying this document.

13) 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 Homes 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, or adjacent Property Owners, as applicable.

14) This Declaration shall be construed and enforced in accordance with the laws of the state of Kansas.

IN WITNESS WHEREOF, the undersigned has caused this Declaration to be duly executed the day and year first written above.

PROPERTY OWNER

BY: _____

ACKNOWLEDGMENT

STATE OF KANSAS)
) ss:
COUNTY OF JOHNSON)

BE IT REMEMBERED, That on this _____ day of _____ 201____,
before me, the undersigned, a Notary Public in and for the County and State
aforesaid, came _____ (Name),
_____ (Title) of _____, a
_____, who is personally known to me to be the same
person who executed as such officer/member the foregoing instrument of writing on
behalf of said entity and said person duly acknowledged the execution of the same
to be the act and deed of said entity.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day
and year first above written.

Notary Public

My Appointment Expires:

CITY OF OLATHE, KANSAS

BY: _____

J. Michael Wilkes, City Manager

ATTEST: _____

Donald T. Howell, City Clerk

ACKNOWLEDGMENT

STATE OF KANSAS)
) ss:
COUNTY OF JOHNSON)

BE IT REMEMBERED, That on this _____ day of _____, 201__, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came **J. MICHAEL WILKES**, City Manager of the City of Olathe, Kansas, and **DONALD T. HOWELL**, City Clerk of said City, who are personally known to me to be the same persons who executed, as such officers, the within instrument on behalf of said City, and such persons duly acknowledged the execution of the same to be the act and deed of said City.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

Notary Public

My Appointment Expires:
