

This instrument was prepared by:
Office of the City Attorney
City of Kingsport, Tennessee 37660

DECLARATION OF COVENANTS FOR PERMANENT MAINTENANCE OF
STORMWATER MANAGEMENT FACILITIES

This DECLARATION made and executed by _____, (identify as an individual/a Tennessee or other state corporation/partnership/limited liability corporation, etc.) (hereinafter "Declarant") establishes and grants these Covenants for Permanent Maintenance of Stormwater Management Facilities (hereinafter "Covenant") on this the ____ day of _____, 20____.

WITNESSETH:

WHEREAS, Declarant is the fee simple owner of the property (hereinafter "Property") described herein; and

WHEREAS, Declarant agrees that the permanent maintenance of Stormwater Management Facilities located on the Property is for the mutual interest and concern to all Owners of the Property; and

WHEREAS, the Declarant desires for the Property to be subject to all terms, obligations, conditions, restrictions, easements, and covenants set forth herein; and

WHEREAS, the City of Kingsport, (hereinafter "City") under various state and federal laws, is required to regulate the maintenance of Stormwater Management Facilities constructed to serve development or redevelopment, as those terms are defined in Kingsport City Code Section 38-85 *et seq.* within the corporate limits of the City to ensure that, following initial construction, the Stormwater Management Facilities are operated, maintained, and, to the extent necessary, repaired in accordance with applicable local, state, and federal law; and

WHEREAS, the City may be subject to substantial regulatory and financial penalties from the State of Tennessee and the federal government if the regulation of stormwater drainage and Stormwater Management Facilities are not applied to development and redevelopment occurring in the corporate limits of the City; and

WHEREAS, the board of mayor and aldermen of the City has determined through its enactment of the Kingsport City Code, Section 38-85 *et seq.*, that to maintain the City's compliance under applicable state and federal regulations, certain obligations must be met by developers and subsequent owners of Stormwater Management Facilities constructed to benefit Property Owners and the City; and

WHEREAS, Declarant intends to construct one or more Stormwater Management Facilities that will serve the Property and benefit one or more Owners of the Property (or any portion thereof), thereby requiring this Covenant on the Property, pursuant to the requirements of Kingsport City Code Section 38-139(h).

NOW THEREFORE, Declarant hereby declares that the Property hereinafter described is and will be held and conveyed subject to the following terms, obligations, conditions, restrictions, easements, and covenants, all of which are for the purpose of enhancing and protecting the value, function, and attractiveness of the Property; and also as a condition of the approval of a Stormwater Management Plan by the City, therefore, the Declarant warrants, covenants, and grants as follows:

Section 1. The Declarant warrants it is the fee simple owner of the following described Property, to-wit:

SITUATED in the ____ Civil District of _____ County, Tennessee, and more particularly described as follows:

[Description of Property]

AND BEING the same property conveyed to [Declarant's name] by deed of [Name of Grantor to Declarant] dated _____ and recorded in Deed Book _____, Page _____ in the Office of the Register of Deeds for _____ County, Tennessee, to which reference is here made.

MAP AND PARCEL NO.: [Tax map, Group and Parcel No.]

Section 2. Words used in the singular will include the plural, and the plural will include the singular, and words used in the present tense will include the future tense. As used in this Covenant the following words and terms have the following meanings:

(a) "Best Management Practices" means schedules of activities, prohibitions of practices, maintenance procedures, structural controls and other management practices designed to prevent or reduce the pollution of waters of the United States. Best Management Practices includes structural devices, such as Stormwater Management Facilities, or non-structural practices such as buffers or natural open spaces.

(b) "City" means the City of Kingsport, Tennessee.

(c) "City Approval" means the written approval of the City, as given by the Kingsport City Engineer, or designee, on the applicable document or plat.

(d) "Code" or "Kingsport City Code" means Code of Ordinances, City of Kingsport, Tennessee, as it may be amended from time to time.

(e) "Declarant" means the Person identified as the Declarant hereinabove and includes its successors and assigns, and any Person who has the powers of a Declarant established in a Successive Document, and its successors and assigns. Declarant is also a Property Owner until divested of all title to all of the Property.

(f) "Governmental Authority" or "Governmental Authorities" means the City, the County, the State of Tennessee, the United States of America having jurisdiction over any part of the Property, and all applicable departments and agencies of the same.

(g) "Maintain", "Maintenance", "Maintaining", or any similar term used herein means any one or more of the following, as the context requires: acquiring, administering, altering, cleaning, constructing or re-constructing, examination, improving, inspecting, installing, maintaining, mowing, cutting, trimming, pruning, fertilizing, planting, preserving, purchasing, operating, remodeling, removing, renewing, repainting, repairing, replacing, restoring, using, or watering .

(h) "Owner" or "Property Owner" means the record Owner, now or in the future, whether one or more Persons, of fee simple title to any part of the Property.

(i) "Person" means any natural person, corporation, estate, trust, partnership, limited liability company, association, joint venture, Governmental Authority (including the City), or other entity.

(j) "Property" or "Properties" means all or any part of the real property described herein.

(k) "Stormwater Management Facilities" or "Facilities" means structures and constructed features designed for the collection, conveyance, storage, treatment, and disposal of stormwater runoff into and through the stormwater system. Stormwater Management Facilities include but is not limited to structural or nonstructural measures, or both, to control the increased volume, rate and quality of stormwater runoff caused by manmade changes to the land. It also includes Best Management Practices.

(l) "Stormwater Management Plan" sometimes referred herein to as "Plan" means an engineering plan that has city approval for the design of Stormwater Management Facilities and Best Management Practices for a proposed development or redevelopment that has city approval.

(m) "Subsequent Document" means any document, map, or plat affecting or encumbering any part of the Property after this Covenant is recorded in the Office of the Register of Deeds.

Section 3. The Declarant or Property Owner desires to develop all or a portion of the Property in accordance with the approved Plan.

Section 4. The Declarant or Property Owner will construct and maintain the Stormwater Management Facilities in strict accord with the Plan, specifications, calculations, and conditions required by the City.

Section 5. To ensure that subsequent Property Owners have notice of this Covenant and the obligations therein, the Declarant or Property Owner will include in all instruments conveying any or all of the Property an encumbrance referencing this Covenant and any plat regarding part or all of the Property by the book and page number shown in the Office of the Register of Deeds.

Section 6. The Declarant or Property Owner will provide for continued operation and maintenance of the approved Stormwater Management Facilities in accordance with and as described in the Plan to ensure the Facilities remain in proper working condition, and comply with approved design standards and all applicable rules and regulations. The Declarant or Property Owner will perform such maintenance activities as described in the Stormwater Management Plan, along with necessary landscaping (e.g., vegetation planting or removal, etc.) and trash removal as part of regular maintenance. At all times, the Stormwater Management Facilities will comply with all applicable laws, ordinances, regulations, rules, and directives of Governmental Authorities, including, but not limited to, the Code, and it is the responsibility of each Property Owner to ensure such compliance.

Section 7. The Declarant or Property Owner grants to the City, or the City's designee, a non exclusive easement as shown in the Plan for the unrestricted right of access to the Stormwater Management Facilities, including its immediate vicinity, and ingress and egress to and from said Stormwater Management Facilities, at any time for any duration the City needs for the purpose of inspection, sampling, testing, and maintenance of the Stormwater Management Facilities. The City will make reasonable efforts to minimize or avoid interference with Declarant's or Property Owner's use of the Property. It is specifically understood and agreed that the City is under no obligation to maintain or repair the Stormwater Management Facilities and nothing herein will be construed to impose any such obligation or duty on the City. The Declarant and Property Owner further covenant that no structure or building will be erected on the access easement; that no woody vegetation will be allowed to grow on the access easement; and that no use will be made which will interfere with the use of said easement for access to the Facilities. If access to the Facilities is obstructed and the City is required to remove the obstruction, the Property Owner will be liable for the cost of removal.

Section 8. If the City determines that the Stormwater Management Facilities are not being maintained in good working order, the City will provide written notice to the current Property Owner to repair, replace, reconstruct, or maintain the Facilities within a reasonable time frame. The Declarant or Property Owner grants to the City, or the City's designee, the right to enforce these covenants by resort to the Tennessee Court for damages and injunctive relief as needed to require compliance with these Covenants.

Section 9. (a) If the City determines that the Declarant or Property Owner is not maintaining the Stormwater Management Facilities are not being maintained as required by this Covenant, the Plan and the Permanent Stormwater Maintenance Plan the City may and is authorized, after thirty (30) days written notice thereof, to seek enforcement by court action or to enter upon the Property to cause or

perform, at the Declarant's or Property Owner's expense, any and all maintenance to the Stormwater Management Facilities necessary under the requirements specified in this Covenant, the Plan, or the Permanent Stormwater Maintenance. The notice provided herein will be effective on the date sent by U.S. Mail, certified mail, to the record Property Owner of the Property as shown on the most recent tax roll.

(b) Property Owner further authorizes the City to place a lien on the Property for all the costs of any maintenance incurred by the City plus fifteen percent (15%) to cover the cost of administration. All such costs, including administrative costs, will accrue interest from the date incurred by the City at the maximum rate authorized by law until paid in full. In addition the City may pursue any enforcement action for the failure to maintain the Facilities, including administrative penalties.

(c) If the Property Owner fails to pay the City after forty-five (45) days written notice, the Property Owner authorizes the City to collect the costs from the Property Owner through the appropriate legal action, and the Property Owner will be liable for the reasonable expenses of collection, court costs, and attorney fees of the City for such action.

(d) Property Owner recognizes that this remedy does not obligate the City to maintain or repair any Stormwater Management Facilities or restrict the City from pursuing other or additional legal remedies against the Property Owner, and the actions described in this section are in addition to and not in lieu of any and all legal remedies as provided by law, available to the City as a result of Declarant's or Property Owner's failure to maintain the Stormwater Management Facilities.

Section 10. Each Property Owner will be jointly and severally responsible for maintenance of the Stormwater Management Facilities, including payment of any unpaid *ad valorem* taxes; public assessments for improvements, and unsafe building and public nuisance abatement liens charged against the Stormwater Management Facilities; any maintenance of the Facilities; and all interest charges thereon, together with the costs and expenses of collection incurred by themselves (or other collecting agent), including court costs and reasonable attorney's fees actually incurred. Each Property Owner has a right of contribution against all other Property Owners for payment of all such costs and expenses set out above to the extent that the Property Owner having such right of contribution pays more than such Property Owner's pro rata share thereof, such pro rata share being determined either by other assessment provisions for maintenance of Stormwater Management Facilities established in Successive Documents or, if such does not exist, by dividing the acreage of such Property Owner's portion of the Property by the total acreage of the Property.

Section 11. If the Declarant or Property Owner fails to maintain the Stormwater Management Facilities as required to the standards specified in Stormwater Management Plan, then the City may require the Declarant or Property Owner at their sole cost, to post security in a form, for a time period, and in an amount satisfactory to the City, to guarantee the Declarant's or Property Owner's performance of the obligations set forth herein. Should the Declarant or Property Owner fail to perform the obligations under this Covenant, the City may collect against said security. In the case of a cash bond or a letter of credit the City may act for the Declarant or Property Owner and use the proceeds from it to satisfy the Declarant's or Property Owner's reimbursement obligation contained herein and for the City's administrative expenses. In the case of a surety bond the City may require the sureties to perform the obligations of this Covenant.

Section 12. Recognizing the consequences to the City for non-compliance with the obligations of this Covenant, Declarant or Property Owner hereby grants the City the right to seek, in any court of appropriate jurisdiction, judicial action for specific performance of any of the obligations established in this Covenant. This right of the City will not limit any other remedies or enforcement options available to the City including those under the Code, any other applicable law.

Section 13. Declarant dedicates, establishes, and declares to and for the benefit of each Property Owner the following:

(a) a perpetual, irrevocable, and non-exclusive easement, right and privilege to

discharge, transport, treat, and store surface water drainage from any portion of the Property into, over, under, across, through, and upon the Stormwater Management Facilities and private drainage easements; and

(b) a perpetual, irrevocable, and non-exclusive easement, right and privilege to use and maintain Stormwater Management Facilities, including the right of access to and from the Stormwater Management Facilities, private drainage easements, and other portions of the Property as reasonably necessary to maintain the Stormwater Management Facilities located on the property; and

Section 14. Declarant or Property Owner hereby agrees and acknowledges that maintenance of the Stormwater Management Facilities as set forth herein, the costs of maintenance, the City's access to the Stormwater Management Facilities, the City's rights of ingress and egress to the Stormwater Management Facilities, and the recovery of costs if Declarant or Property Owner fails to maintain the Stormwater Management Facilities as herein set forth, are a burden and restriction on the use of the Property. The provisions of this Covenant will be enforceable as an equitable servitude and as conditions, restrictions and covenants running with the land, and will be binding upon the Declarant and upon each an all of its respective heirs, devisees, successors, and assigns, officers, directors, employees, agents, representatives, executors, trustees, successor trustees, beneficiaries, and administrators, and upon any future Owners of any part of the Property, jointly and severally.

Section 15. It is the express intent of the Declarant that the terms and provisions of this Covenant will be enforceable as an equitable servitude by Declarant or Property Owner. The Declarant hereby confers and assigns the rights to enforce the terms and conditions of this Covenant to the City.

Section 16. The Declarant hereby covenants that the burdens and benefits herein made and undertaken and this Covenant are permanent, will run with the land and constitute an encumbrance on the Property and will be binding on all parties holding or acquiring any right, title, or interest in the Property, or any part thereof, whether or not so expressed in any deed or other conveyance, and shall inure to the benefit of each Owner thereof and the City.

Section 17. The Declarant will record a plat showing and accurately defining the easements for Stormwater Management Facilities and the access easement to these Facilities. The plat must reference the instrument number, where this Covenant is recorded, and contain a note that the Property Owner is responsible for maintaining the Facilities pursuant to this Covenant. A plat is required for all commercial development or redevelopment, even if less than one acre in size. A plat is required for all development or redevelopment of a residential lot if the lot is greater than one acre or if the lot is a part of a larger development plan, meaning a development of two or more lots, regardless of size.

Section 18. The Declarant will record these Covenants in the Office of the Register of Deeds in the county where the property lies and return the original to the City before the final plat is signed by the City, before all or any portion of the Property is transferred or conveyed, or before any permits are issued by the City.

Section 19. The Declarant or Property Owner, its successors and assigns, shall have the obligation to construct and complete all the Stormwater Management Facilities as required by the City.

Section 20. The Property, this Covenant, and all provisions of Successive Documents and other separately recorded instruments applicable to the Property (or any portion thereof) are subject to the ordinances, regulations, and rules of the City, and will be construed in accordance with all of the applicable provisions of the Code, whether or not such Code provisions are specifically referenced in this Covenant or in any Successive Document. It will be the responsibility of each Property Owner to comply with all provisions of the Code applicable to the Property. No Successive Document may avoid, vary, negate, or waive the obligations and rights of the Declarant, any Property Owner or the City without an amendment to this Covenant with City Approval.

Section 21. (a) The provisions of the Code control over any inconsistent provisions of this

Covenant or any Successive Document. As applicable provisions of the Code are amended, modified, revised, deleted, or moved to different sections, this Covenant is deemed to be revised so as to conform to the provisions of the Code as they exist from time to time and are applicable to the Property or any part thereof.

(b) The provisions of this Covenant will control over any inconsistent provisions of any Successive Document. To the extent that any Successive Document affecting the Property conflicts with the provisions of the Code or the Tennessee Code Annotated, the conflicting provision will be automatically cured to comply with the Code and the Tennessee Code Annotated. To the extent the requirements of the Code and the Tennessee Code Annotated conflict, the Tennessee Code Annotated will prevail and apply.

(c) Allocation of assessment obligations among Owners in any Successive Document will not constitute a conflict with this Covenant. Provided, however, the rights of the City in this Covenant, including, without limitation, the rights of the City to enforce liens and collect monies from an Owner or Owners, will not be impaired or adversely affected by any such allocation of assessment obligations in any Successive Document.

Section 22. Any amendment of this Covenant must have City Approval. Amendments to this Covenant are valid only with City Approval and only from the time of recording in the appropriate Office of the Register of Deeds. Any amendment of this Covenant that requires City Approval is void *ab initio* if recorded without the required City Approval.

TO HAVE AND TO HOLD the covenants agreed to and the terms, obligations, conditions, restrictions, easements, and covenants imposed herein so that such will be binding upon the Declarant, its successors and assigns, and will continue as a servitude running with the land in perpetuity. Declarant covenants that it is vested of the Property in fee simple; that it has the right to convey the same in fee simple; that the Property is free from encumbrances except as hereinafter stated; and that Declarant will warrant and defend such title to the same against claims of all persons whatsoever. Title to the Property is subject to the following: all utility rights-of-way and easements recorded in the Office of the Register of Deeds; plats of any part or all of the Property recorded in the appropriate Office of the Register of Deeds; and restrictive covenants affecting any part or all of the Property that were recorded in the Office of the Register of Deeds prior to the recording of the deed to the Declarant that conveyed the Property to the Declarant.

Declarant acknowledges that the City is acting in reliance on (1) Declarant's authority to enter into this Covenant; and (2) the terms, obligations, conditions, restrictions, easements, and covenants imposed herein in approving subdivision of the Property; or in the issuance of any permit or development approval associated with any construction of improvements on the Property, and Declarant further acknowledges that the City may suffer irreparable harm from the violation of the terms, obligations, conditions, restrictions, easements, and covenants, restrictions, and obligations established herein.

IN WITNESS WHEREOF, Declarant signs its name and affixes its seal on the day and year first above written.

STATE OF TENNESSEE:
COUNTY OF _____:

Before me, the undersigned authority, a Notary Public a Notary Public in and for the State and County aforesaid, personally appeared _____, the property owner, with whom I am personally acquainted, (or proved to me on the basis of satisfactory evidence), and who, upon oath, executed the foregoing instrument for the purposes therein contained.

WITNESS my hand and official seal at office in _____ County, Tennessee this the _____

day of _____, 20_____.

NOTARY PUBLIC

My Commission Expires:

APPROVED AS TO FORM:

DIRECTOR: _____

CITY OF KINGSPORT, TENNESSEE