

**DECLARATION OF MAINTENANCE OBLIGATIONS**

**THIS DECLARATION OF MAINTENANCE OBLIGATIONS** (“Declaration”) is dated the \_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_, and issued by

\_\_\_\_\_ (hereafter referred to as the “Owner”).

**WHEREAS**, Owner is the fee simple owner of certain real property located within the City of Paducah generally located at \_\_\_\_\_ and more particularly described as follows:

\_\_\_\_\_ (the “Real Property”). It is acknowledged that the development and/or redevelopment on the Real Property is subject to requirements of the City of Paducah’s Code of Ordinances (the “Code”), Chapter 50, Article III, Section 50-155 (5) relating to stormwater management and water control facilities design criteria as mandated by the Kentucky Pollutant Discharge Elimination System permit issued to the City of Paducah by the Kentucky Division of Water as well as other mandates imposed by state and federal law;

**WHEREAS**, Owner has submitted a stormwater management plan (the Plan”) to the City of Paducah, Kentucky (the “City”) for approval under the Code, Chapter 50, Article III, Section 50-155(5), and Chapter 102, Article II, Section 102-33(g).

**WHEREAS**, Under Section 50-155 of the Code, the Plan must address the ownership and maintenance responsibilities for all stormwater management and water quality control facilities for the development.

**WHEREAS**, the City’s approval of the Plan is contingent upon the Owner signing, issuing and recording this Declaration, and accepting all maintenance, inspection, and other obligations for the stormwater management and water quality control facilities located on the Real Property (the “Facilities”) as provided herein or otherwise required by law; and

**WHEREAS**, Owner designates and appoints \_\_\_\_\_ at the following address \_\_\_\_\_, as the Owner’s representative who shall be fully authorized to receive any notices or communications from the City as provided herein (hereafter the “Authorized Representative.”). The Owner shall provide the name and address of any change to the Authorized Representative.

**NOW, THEREFORE**, in consideration of the foregoing premises, and further valuable consideration, the adequacy and sufficiency of which is hereby acknowledged by all parties hereto, it is agreed as follows:

1. Successor Liability. For purposes of this Declaration, Owner shall mean and include the current Owner of the Real Property and such Owner’s successors, assigns, heirs, transferees, or any other person or entity that obtains an ownership interest in the Real Property,

including any homeowner's association, it being the parties' intent that the obligations in this Declaration constitute covenants running with and binding upon the land. Upon execution, Owner shall record this Declaration in the McCracken County Clerk's Office. All obligations of the Owner herein shall be binding upon the Owner's successors, assigns, heirs, transferees, or any other person or entity that obtains an ownership interest in the Real Property, including any homeowner's association and each shall also be a "Responsible Party." Owners of fractional interests shall be jointly and severally responsible.

2. Maintenance and Repair. Owner shall perpetually maintain the Facilities in good repair, condition and working order, and shall furnish all maintenance, repairs, replacements (including replacement of the Facilities at the termination of their useful life), parts and services required therefore, at Owner's expense. Without limiting the foregoing, Owner shall: (i) establish sufficient vegetative cover to control erosion and promptly repair any eroded areas; (ii) regularly cut, trim and maintain the vegetative cover and keep any basins in a lawn state; (iii) periodically visually inspect any detention basin and all discharge pipes; (iv) remove any sediment build-up in any detention basin to maintain the approved design volume; (v) clean out any Facilities and drainage pipes as needed. Owner shall maintain for a period of at least five (5) years, records of all inspections, maintenance and repairs to the Facilities and shall provide such records to the City upon request.

3. Annual Inspections. The Owner shall inspect the Facilities on an annual basis and shall submit an inspection report to the City by March 1 of each calendar year. The purpose of the inspection is to assure safe and proper functioning of the Facilities. The inspection shall cover all components, berms, outlet structure, quality structures, pond areas, plant materials, access roads, etc. and deficiencies shall be noted in the inspection report.

4. Right of Entry. The Owner shall grant to the City, its authorized representatives, agents, and employees the right to enter upon the Real Property at any time and without prior notice to Owner, as may be necessary to inspect or monitor the Facilities. Inspections may include but not limited to evaluating the condition of the Facilities and the stormwater management practices of the Owner, reviewing maintenance and repair records, testing and sampling, and all other lawful activities. The City shall provide the Owner copies of any inspection findings. Nothing herein shall be construed as imposing a duty upon the City to conduct an inspection or that any inspection by the City constitutes an acceptance of the condition of the Facility or serve as any waiver of City's right to provide notice of deficiencies even though such deficiencies were not noted in prior inspections or that may have for any reason gone undetected. Any inspection by the City shall have no bearing on Owner's obligation to maintain and repair the Facilities as set forth in this Declaration and under the Code.

5. Notice to Cure. If any Owner or Responsible Party fails to maintain the Facilities as required herein, the City shall notify the Authorized Representative by certified mail or personal delivery. Such notice shall specify the measures necessary to comply and/or to remedy the deficiencies., The Responsible Party shall have a period of sixty (60) days from the date of receiving the notice to cure.. If the Responsible Party fails to adequately cure the deficiencies within 60 days, the City may in its sole discretion, enter upon the Real Property and perform the work necessary to cure the deficiency. The City may assess the Responsible Party for the cost of the repair work and shall provide Responsible Party with a written statement of the costs and

expenses incurred. If the Responsible Party fails to pay such costs and expenses within 30 days, the balance due shall accrue interest at the rate of 8% per annum. The Owner hereby grants the City a lien against the Real Property for such amount. It is expressly understood that the City is under no obligation to maintain or repair the Facilities and in no event shall this Declaration be construed to impose such obligation on the City. Nothing herein shall be construed to be an acceptance of the Facilities by the City; nor shall any repairs performed by the City be deemed an act of ownership of the Facilities by the City.

6. Indemnity. The Owner hereby indemnifies and holds harmless the City and its authorized agents and employees for any and all damages, accidents, casualties, occurrences or claims which may arise or be asserted against the City from the construction, presence, existence, or maintenance of the Facilities. In the event a claim is asserted against the City, its authorized agents or employees, the City shall notify Owner and Owner shall defend at Owner's own expense any suit based on such claim.

7. Enforcement. The City shall have the right to enforce the obligations imposed under this Declaration against the Owner or Responsible Party. This Declaration shall be governed by the laws of the Commonwealth of Kentucky. All rights and remedies provided to the City under this Declaration are cumulative and do not limit or waive any other rights or remedies available to the City at law or in equity. The Responsible Party shall be liable to the City for all costs reasonably incurred by the City in seeking enforcement or collection under this Declaration, including attorney's fees and costs of any necessary expert witnesses. The City shall have a lien against the Real Property for such amount. This Declaration contains the entire understanding of its subject matter. Any waiver, amendment, modification or supplement of or to any term or condition of this Declaration shall be effective only if in writing and signed by an authorized representative of the City. Any suit relating to or arising under this Declaration shall be filed exclusively in the state courts located in McCracken County, Kentucky. The parties hereby consent to such jurisdiction and waive any right to object on such basis.

8. Covenant Running with the Land. This Agreement shall be recorded among the land records of McCracken County, Kentucky, and shall constitute a covenant running with the land, and shall be binding on the Owner, successor, assign or transferee of the Owner, or if any other person or entity who has obtained or received an ownership interest in the Real Property, including any homeowner's association.

**WITNESS** Owner's signature on the date first above written.

**OWNER:**

\_\_\_\_\_

By: \_\_\_\_\_

Printed Name \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

The foregoing Declaration of Maintenance Obligations was signed and acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2\_\_\_ by \_\_\_\_\_, \_\_\_\_\_ (title) of and on behalf of \_\_\_\_\_.

My commission expires \_\_\_\_\_.

\_\_\_\_\_  
Notary Public, State at Large

Prepared by:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_