

Stormwater Management Facilities Maintenance Agreement

This Stormwater Management Facilities Maintenance Agreement is entered into by _____ (the "Grantor"), and the City of Johnston, Iowa ("City"), in consideration of the approval of the Site Plan/Plat by the City of Johnston, Iowa for development of the Property identified below. Grantor is obligated by the Municipal Code of the City of Johnston to control stormwater runoff for the proposed development as a part of the Site Plan/Platting approval process. In consideration for the City's approval of the Grantor's Site Plan, Grantor has entered into this Stormwater Management Facilities Maintenance Agreement (this "Agreement") to control and address stormwater runoff for the following described property:

_____, (hereinafter referred to as the "Benefited Property")

The following provisions are covenants running with the land to the benefit of the City, binding on Grantor and Grantor's successors and assigns in interest to the Benefited Property, and shall only be amended or released with the written permission of the City.

Part I – Covenants on the Benefited Property

1. Description of Affected Area. Grantor hereby agrees that the stormwater runoff for the Benefited Property shall be controlled through installation, construction and maintenance of stormwater detention basins and stormwater intakes (hereinafter collectively referred to as the "Stormwater Management Facilities") upon, over, under, through and across the Benefited Property substantially as shown on the approved Site Plan Sheets _____ Sheet Page Number(s) _____, all dated _____ MDDYY _____, prepared by _____ Engineer/Architect _____ and approved by the Johnston City Council via Resolution _____ ##-### on _____ MDDYY _____.
2. Benefited Property. It is hereby agreed and covenanted that the Benefited Property receives benefit from the Stormwater Management Facilities by controlling runoff from the Benefited Property to meet the requirements of the City's Policy on Stormwater Runoff Control.
3. Stormwater Management Plan. The Stormwater Management Facilities required to serve the Benefited Property shall be designed, constructed and maintained to meet the stormwater runoff control requirements of the City, as of the date of the Agreement. Grantor covenants and agrees that the Stormwater Management Facilities shall be designed, constructed and maintained in compliance with the above listed approved plans and specifications for the Benefited Property now on file and available for the public inspection in the office of the City of Johnston Community Development Department (hereinafter collectively referred to as the "Stormwater Management Plan") and also on file with the Grantor. Subject to the prior written approval by the City, the Stormwater Management Plan may be amended by Grantor, or its respective successors or assigns.
4. Transfer of Grantor's Obligations. It is hereby agreed that Grantor shall construct and install the Stormwater Management Facilities in compliance with the Stormwater Management Plan. Grantor's

obligations under this Agreement may not and shall not be transferred to Grantor's successors and assigns in ownership of the Benefited Property until the City provides written acknowledgement to Grantor that the Storm Water Management Facilities have been completed by Grantor in substantial compliance with the Storm Water Management Plan. The Grantor, and its successors and assigns, shall be responsible to operate, maintain, repair, and replace the Stormwater Management Facilities and keep the same in good condition and repair, in compliance with the approved Stormwater Management Plan, as the same may be amended from time to time.

5. Annual Inspections. The Grantor shall inspect the Stormwater Management Facilities on an annual basis. The inspection shall include inspecting the Stormwater Management Facilities, including but not limited to all pipes, inlets, outlets and basins, for defects, obstructions, and changes from the Stormwater Management Plan. The Grantor shall document such inspection by preparing an annual inspection report and attaching thereto date stamped photographs of the Stormwater Management Facilities. Any deficiencies or defects noted by the inspection shall be corrected as provided in Section 7, below. The inspection report shall be made available to the City for review upon request and shall be kept and maintained for a period of two (2) years.

6. Failure to Maintain.

A. Grantor acknowledges and agrees, on behalf of Grantor and Grantor's successors and assigns in ownership of the Benefited Property, that if the Stormwater Management Facilities are not maintained in substantial compliance with the Stormwater Management Plan, the Stormwater Management Facilities will not serve their intended purpose of controlling the quantity and quality of stormwater runoff from the Benefited Property, and may constitute a nuisance detrimental to the public health and safety. Failure to maintain the Stormwater Management Facilities may also be considered a violation of the City's site plan requirements, and subdivision regulations.

B. The Grantor shall promptly abate any nuisance arising from any failure by the Grantor to maintain, repair, reconstruct, dredge, grade, and replant the Stormwater Management Facilities as necessary to restore such facilities into substantial compliance with the Stormwater Management Plan as provided in Section 7, below. If Grantor fails to do so, the nuisance may be subject to administrative enforcement pursuant to Johnston Code of Ordinances, Chapter 50, Nuisance Abatement Procedure, and may further be considered a Municipal Infraction pursuant to Johnston Code of Ordinances, Chapter 3, Municipal Infractions.

C. Grantor hereby agrees and consents on behalf of itself and all its successors and assigns to assessment of the costs of maintaining, reconstructing, repairing, grading, dredging and replanting the Stormwater Management Facilities in the manner set forth in this Agreement.

Part II – Easement for Stormwater Facilities

7. Grant of Easement. Grantor hereby grants the City a Permanent Stormwater Management Easement under, over, through and across the Benefitted Property for the purpose of constructing, reconstructing, repairing, grading and maintaining the Stormwater Management Facilities in substantial compliance with the Stormwater Management Plan in the event that the Grantor fails to operate, maintain, repair, and

reconstruct the Stormwater Management Facilities so that they remain in good condition and repair and function in substantial compliance with the Stormwater Management Plan, including all rights of ingress and egress reasonably necessary therefore, the right to remove any unauthorized plantings or structures placed or erected on or within the Stormwater Management Facilities, and the right to do maintenance, repair, reconstruction, grading and dredging as reasonably determined by the City to be necessary to restore the Stormwater Management Facilities to substantial compliance with the Stormwater Management Plan.

8. Duties of the Grantor. Grantor shall perform all maintenance and repair necessary so that the Stormwater Management Facilities remain in good condition and repair and function in substantial compliance with the Stormwater Management Plan, including, but not limited to the following:

A. Stormwater Detention and/or Retention Basin Areas:

1. Grade, repair and replace the basin and appurtenant facilities as necessary to maintain the basin and appurtenant facilities in compliance with the Stormwater Management Plan.
2. If any time the capacity of the basin shall be reduced below the minimum required volume established in the Stormwater Management Plan for such basin, the Grantor shall cause the basin to be re-graded or excavated to restore the volume of the basin to its original design capacity as shown on the approved plans.
3. Tile the soil at the bottom of the riparian buffer if it does not drain out within the time established in the Stormwater Management Plan, and replant vegetation as designated in the Stormwater Management Plan.

B. Grass and/or Bio-retention Swale Areas:

1. Grade, repair and replace the swale and appurtenant facilities as necessary to maintain the swale in compliance with the Stormwater Management Plan.
2. Mow on a semi-annual basis to maintain the vegetation (other than any turf grass) at the height designated in the Stormwater Management Plan.
3. Tile the soil at the bottom of the swale if the grass swale does not drain out within the time established in the Stormwater Management Plan and replant vegetation as designated on the Stormwater Management Plan.

C. General Requirements:

1. Remove all trash, litter, debris or obstruction to the flow of water in the Stormwater Management Facilities and any obstruction to inlets or outlets located within the Benefited Property.
2. Routinely mow any portions of the Benefited Property, if any, designated on the Stormwater Management Plan to be maintained with turf grass.
3. Plant and maintain the vegetation within the Benefited Property in conformance with the Stormwater Management Plan. If any vegetation dies, it shall be replaced with vegetation in conformance with the Stormwater Management Plan as soon as the weather permits.
4. Remove weeds throughout the growing season to maintain the effectiveness of the Stormwater Management Facilities.

Please Note:
Section 8A-C
need to be
amended to
match the
design
elements for
the site in
question

5. Annually inspect all Stormwater Management Facilities as provided in Section 5, above.
6. No chemicals or substances shall be applied to the Benefited Property that shall harm or impair the effectiveness of the Stormwater Management Facilities.
7. No trees and shrubs shall be planted or allowed to grow on the Benefited Property that shall harm or impair the effectiveness of the Stormwater Management Plan.
8. No portion of the Stormwater Management Facilities shall be altered or removed without the prior written approval of the City of Johnston, including, but not limited to, any change to the grade, elevation or contour of any part of such Stormwater Management Facilities.
9. No structure, material, device, thing or matter which could reasonably be expected to obstruct or impede the normal flow of surface water over or into the Stormwater Management Facilities shall be erected or caused to be placed on the Benefited Property without obtaining the prior written approval of the City of Johnston.
10. The Stormwater Management Facilities shall not be used as a compost site, or for the disposal of yard wastes or other materials.

9. City's Enforcement Obligations are Discretionary. Nothing in this Agreement shall be construed to impose an obligation upon the City to maintain the Stormwater Management Facilities.

10. Successor's and Assigns. This Agreement shall be deemed to run with the land and shall be binding on Grantor and on Grantor's successors and assigns.

Grantor does hereby covenant with the City that Grantor holds the Benefited Property described in this Agreement by Title in Fee Simple and that Grantor has good and lawful authority to enter into this Agreement.

Words and phrases herein including acknowledgment hereof shall be construed as in the singular or plural number, and as masculine or feminine gender, according to the context.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

[Signature pages follow]

By: _____ (Signature)
Name: _____ (Print Name)
Title: _____ (Title)

This record was acknowledged before me this _____ day of _____, 20____, by _____ (Print Name), to me personally known, who being by me duly sworn, did say that they are the _____ (Title) of _____ (Print Grantor Name), on behalf of whom the record was executed.

Notary Public in and for said State

ACCEPTED AND APPROVED by the City of Johnston, Iowa, on _____, 20__.

CITY OF JOHNSTON, IOWA

By : _____
Paula Dierenfeld, Mayor

ATTEST:

By: _____
Cyndee Rhames, City Clerk

STATE OF IOWA)
) ss
COUNTY OF POLK)

On this ____ day of _____, 20__, before me, the undersigned, a Notary Public in the State of Iowa, personally appeared Paula Dierenfeld and Cyndee Rhames, to me personally known, and who, being by me duly sworn did state that they are the Mayor and City Clerk, respectively, of City of Johnston, Iowa, a municipal corporation; that the seal affixed to the foregoing instrument is the corporate seal of the corporation; that the instrument was signed on behalf of City of Johnston, Iowa, by authority of its City Council, as contained in Resolution No. _____ adopted by City Council on the ____ day of _____, 20__, and that Paula Dierenfeld and Cyndee Rhames acknowledged the execution of the instrument to the voluntary act and deed of City of Johnston, Iowa, by it and by them voluntarily executed.

Notary Public in the State of Iowa
My commission expires: _____