

COVENANT TO MAINTAIN PRIVATE PARKING FACILITIES

THIS COVENANT made and entered into this _____ day of _____, 20____, by and between the City of Overland Park, Kansas, (the "City"), and _____, its successors and assigns ("Owner").

WHEREAS, Owner has an interest in certain real property generally located at _____ in Overland Park, Johnson County, Kansas, and legally described in Exhibit "A" attached hereto and incorporated herein by reference (the "Property"); and

WHEREAS, Owner intends to cause or has caused the Property to be developed as _____, in accordance with the Municipal Code of the City of Overland Park, Kansas; and

WHEREAS, Owner proposes the construction or replacement of private streets, drives, parking and driveway facilities located on the Property (the "Facilities"); and

WHEREAS, the City and Owner agree that it is in the public interest to properly maintain, repair and replace the Facilities for the benefit of the Property, the general public and surrounding areas; and

WHEREAS, this Covenant for the proper maintenance, repair and replacement of the Facilities is necessary to serve the development of the Property and to provide for appropriate traffic safety, convenience and circulation.

NOW, THEREFORE, the City and Owner do hereby covenant and agree as follows:

Section 1. Owner at its sole cost shall:

- a. Be responsible for the continuous and perpetual maintenance, repair and replacement, if necessary, of the Facilities; and
- b. Obtain all necessary permits required for the construction, maintenance, repair or replacement of the Facilities prior to performing any such work on the Facilities.

Section 2. The City is granted the right, but is not obligated, to enter upon the Property in order to inspect, maintain, repair or replace the Facilities if Owner fails to maintain, repair or replace the Facilities in accordance with the applicable City ordinances and regulations. In the event then the City provides or performs any maintenance, repair, or replacement of the Facilities, the City may charge the costs for the same against Owner, who shall reimburse the City upon demand within thirty (30) days from the date of the billing. If payment is not made within thirty (30) days, the City may take any or all of the following actions:

- a. Assess a lien against the Property;
- b. Maintain suit against Owner for all costs incurred by the City; or
- c. Take any other action permitted by law.

Unless necessitated by a threat to life or safety, the City shall notify Owner not less than thirty (30) days before it begins any maintenance, repair, or replacement of the Facilities.

Section 3. Owner shall not use nor attempt to use the Property in any manner which would interfere with the continuous and perpetual use, maintenance, repair or replacement of the Facilities and, in particular, shall not build thereon or thereover any structure which may interfere or cause to interfere with the use, maintenance, repair or replacement of the Facilities without the explicit written permission of the City.

Section 4. Owner shall be and shall remain liable for and subject to all permits issued to any contractor(s) on behalf of Owner for the Facilities or related improvements under the terms of this Covenant until the permits issued have satisfied their performance and warranty surety requirements.

Section 5. All notices required by this Covenant shall be in writing sent by regular United States mail, postage prepaid, commercial overnight courier or facsimile and addressed as hereinafter specified. Each party shall have the right to specify that notice be addressed to any other address by giving the other party ten (10) days notice thereof. Unless a party to this Covenant has given ten (10) days notice of a change of person and address for purposes of notice under this Covenant to the other party in writing, notices shall have a prominent marking on the envelope stating "IMPORTANT LEGAL NOTICE" and be directed to the following:

Notice to the City:
Director Planning and Development Services
City Hall
8500 Santa Fe Drive
Overland Park, KS 66212

Notice to Owner:

Section 6. This Covenant shall be binding upon the parties and their respective successors and assigns. It is the intention of the parties that this Covenant shall be a covenant running with the land and shall bind all successive owners of any interest in the Property.

Section 7. This Covenant shall not be amended, modified, canceled or abrogated without the prior written consent of the City. Any such amendment, modification, cancellation or abrogation shall be filed of record with the Johnson County, Kansas Register of Deeds.

Section 8. Invalidation of any part or parts of this Covenant by judgment or other court action shall in no way affect any of the other provisions, which shall remain in full force and effect.

Section 9. This Covenant shall be construed and enforced in accordance with the laws of the State of Kansas.

Section 10. Upon the effective date of this Covenant, the City shall file this Covenant with the Johnson County, Kansas Register of Deeds, and this Covenant shall be binding on Owner and Owner's successors and assigns.

Section 11. Owner shall jointly and severally release, hold harmless, indemnify and defend the City and its agents, officers and employees from any and all responsibility, liability, loss, damage or expense resulting to Owner or to any person or property caused by or incidental as to the design, function, use, construction, maintenance, repair or replacement of the Facilities, or the Owner's failure to properly maintain, repair or replace the Facilities.

CITY OF OVERLAND PARK, KANSAS

[INSERT NAME OF OWNER]

By: _____
Jack D. Messer, P.E.
Director, Planning and Development Services

By: _____
Print Name: _____
Title: _____

ATTEST:

Elizabeth Kelley
City Clerk

APPROVED AS TO FORM:

Stephen B. Horner
Senior Assistant City Attorney

MUNICIPAL CORPORATE ACKNOWLEDGEMENT

STATE OF KANSAS)
)
COUNTY OF JOHNSON)

BE IT REMEMBERED, that on this ____ day of _____, 20__, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Jack D. Messer, P.E., Director of Planning and Development Services of the City of Overland Park, Kansas, a municipal corporation, who is personally known to me to be the same person who executed the foregoing instrument on behalf of said City, and affix thereto the seal of the City.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

Notary Public

My appointment expires:

CORPORATE ACKNOWLEDGMENT

STATE OF _____)
) ss.
COUNTY OF _____)

BE IT REMEMBERED, that on this ____ day of _____, 20____, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came _____, President of _____, who is personally known to me to be the same person who executed as such officer the foregoing instrument on behalf of said company, and acknowledged the execution of the same to be the act and deed of said company.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

Notary Public

My appointment expires:

Exhibit "A"

Legal Description