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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")

RECITALS:

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

Final Plat of _____.

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 described as the Final Plat of _____, as well as all subsequent owners of any portion of the property contained within said 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 18.365 of the Overland Park Municipal Code allows reservation of a stream corridor through a Restrictive Covenant.

WHEREAS, Chapter 18.365 of the Overland Park Municipal Code requires the Property Owner to place certain restrictions and responsibilities within the stream corridor; and

WHEREAS, the stream corridor is located on Tract _____, _____ (FINAL PLAT NAME) in the City of Overland Park, Johnson County, Kansas; and

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WHEREAS, the City of Overland Park has approved a Final Plat of _____ 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 Stream Corridor, and

WHEREAS, the Property Owner desires to utilize the stream corridor in accordance with the Stream Corridor Plan as shown on Exhibit A.

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, and

WHEREAS, the Property Owner does hereby establish the following regulations, stipulations, easements, covenants, conditions and restrictions pursuant to Chapter 18.365 of the Overland Park Municipal Code, on the Property:

- 1) The Property Owner shall provide and is responsible for all maintenance 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 order 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 actively pursue measures to prevent unauthorized activities pursuant to Chapter 18.365 of the Overland Park Municipal Code which interfere with the preservation of the stream corridor.
- 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 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, including, but not limited to, any loss occasioned by reason of damage or injury to persons or property which may occur. In addition, the Petitioner shall pay all costs and expenses involved in defending all actions arising there from.
- 6) It is understood by Property Owner that the City of Overland Park 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. The City or Property Owner 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. The City or the Property Owner shall have the right to include in their claim for relief a reasonable sum to reimburse them for their attorneys' fees and any other expenses reasonably incurred in enforcing their rights hereunder. Failure by the City or by the Property Owner 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

Rev. 11-01-06

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any provision hereof as to any other Owner.

- 7) If, after reasonable notice to the Property Owner, 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.

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.

- 8) 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.
- 9) The Property Owner understands that the following activities are prohibited within the stream corridor except where to the extent allowed pursuant to Chapter 18.365 of the Overland Park Municipal Code:
- a. Regular mowing
 - b. Clearing of healthy vegetation
 - c. Disposal of grass clippings, leaves or other yard waste and debris
- 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 Overland Park 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) The Property Owner agrees to limit uses of the stream corridor to those as shown on the Stream Corridor Plan shown on Exhibit A.

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These covenants and agreements as set forth herein, fully executed, shall be filed with the Register of Deeds in Olathe, Johnson County, Kansas, and the filing of the same 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. This document may not be amended or modified in any way without the prior written approval of the authorized officials of the City of Overland Park, Kansas, and that approval must be indicated on the face of any subsequently recorded document amending or modifying this document.

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.

The City, at Property owner's cost, shall cause this agreement to be filed with the Register of Deeds of Johnson County, Kansas. Each party hereto shall receive a duly executed copy of this agreement for its official records.

IN WITNESS WHEREOF, the undersigned have caused this maintenance agreement to be duly executed the day and year first written above.

PETITIONER

BY: _____

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