

After recording, return to:  
City Clerk, City of Missoula  
435 Ryman  
Missoula, MT 59802

## **Private Storm Water Facility Maintenance Covenant and Right to Access**

This Maintenance Covenant and Right to Access (“Agreement”) is made this [INSERT DAY] day of [INSERT MONTH], [INSERT YEAR], between [INSERT OWNER NAME HER] (“Owner”) whose address is [INSERT OWNER ADDRESS HERE] and the City of Missoula, 435 Ryman, Missoula, Montana 59802, a municipal corporation under the laws of the state of Montana (the “City”).

### **RECITALS**

- A. Owner is the owner and developer of certain real property located in the City of Missoula, Missoula County, Montana, legally described as follows, and commonly known as (the “Development”):
- B. Owner has developed or will develop at the Development, private storm water management facilities as further described below:

List the type, quantity, and location of all private storm water facilities proposed and constructed within the development.

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- C. The City has approved construction plans submitted by Owner for the Development, including the on-site storm water facilities as described above (together with any other storm water facilities that may hereafter be constructed on the Development, the “Storm Water Facilities”).
- D. To protect future lot owners in the Development, as well as owners of neighboring property, the City requires Owner to enter into this Agreement as a condition to the City’s approval of

construction plans, building permit(s), if applicable, and the final plat, if applicable, for the Development.

- E. The Storm Water Facilities enable development of property while mitigating the adverse impacts of additional surface water and pollutants associated with storm water runoff prior to discharge from the property to the public storm water system. The consideration for this Agreement is connection to the City's storm water system.
- F. The Storm Water Facilities are designed by a registered professional engineer to accommodate the anticipated volume of runoff and to detain and treat runoff in accordance with the City's regulations, engineering standards, administrative rules, and amendments.
- G. Failure to inspect and maintain the Storm Water Facilities can result in an unacceptable impact to the public storm water system.

## **AGREEMENT**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Owner agree as follows:

### **1. Covenant to Maintain and Repair**

Owner shall, at its sole expense, itself or through qualified independent contractors, at all times maintain the Storm Water Facilities in good working order, condition and repair, clear of all debris, and in compliance with all applicable state and local rules, regulations, and guidelines (including those adopted from time to time by the City and including the City's engineering standards).

### **2. Covenant to Inspect**

The Owner shall perform annual inspections of all Storm Water Facilities covered by this agreement annually. Any work necessary to repair or maintain the facilities in good working order that is discovered during the annual inspection shall be completed by the Owner within a reasonable period of time after the annual inspection. Owner shall apply for renewed coverage under the City storm water permit as required by City Code.

### **3. Right to Access**

Owner hereby grants the City, its employees, independent contractors, and designees, a nonexclusive easement for ingress and egress over, across, and under the Development from time to time at the City's sole discretion to inspect, sample, and monitor components of the Storm Water Facilities and discharges therefrom, as well as allow the City to take the actions described in Sections 4 and 5 of the Agreement. Owner understands and agrees that this easement limits the ability of Owner, its successors, and assigns from constructing any permanent buildings, structures, landscaping, or other improvements that would interfere

with the functioning of the Storm Water Facilities or the City's access to perform the inspection and maintenance required under this Agreement.

#### **4. Failure to Perform Covenant**

If the City, in its sole discretion, determines that the Owner is not in compliance with the covenant described in Sections 1 and 2, except in the case of an emergency, the City or its designee shall give the Owner written notice to perform the maintenance and/or repair work specified in the notice. If such work is not performed to the City's satisfaction within twenty (20) days after the date of such notice, or such other time as the City may, in its sole discretion, determine, the City, its employees, independent contractors, and designees may exercise their right under the Easement described in Section 3 of this Agreement to enter the Development to perform any and all work required bringing the Storm Water Facilities into compliance with this Agreement.

#### **5. Emergency**

If the City, in its sole discretion, determines that there exists or will likely exist an emergency on or about the Development with respect to the Storm Water Facilities, the City, its employees, independent contractors, and designees may immediately exercise their rights under the Easement described in Section 3 of this Agreement to immediately enter the Development to perform any and all work required to bring the Storm Water Facilities into compliance with the Agreement, and in such case the City shall use reasonable efforts to notify the Owner prior to entering the Development. Notwithstanding the above, the work performed may consist only of avoiding or mitigating the emergency and/or cleaning and repairing the Storm Water Facilities to their original condition and standards.

#### **6. City Under No Obligation**

Owner, for itself or its successors and assigns (including all owners of lots in the Development), agrees that the City, as well as its department, employees, independent contractors, and/or designees shall have no obligation to exercise its rights under this Agreement, including the right under Sections 4 and 5 of this Agreement to perform the work required of the Owner, or to perform any other maintenance or repair of the Storm Water Facilities. Owner also agrees that none of the City, as well as its departments, employees, independent contractors, and/or designees shall have any liability to Owner or any of Owner's successors or assigns (including owners of lots in the Development) in connection with the exercise or non-exercise of such rights, the maintenance or repair of the Storm Water Facilities, or the failure to perform the same.

#### **7. Owner Obligation**

In addition to the covenants and easement described above, Owner agrees to the following additional obligation:

- a. Owner shall construct the Storm Water Facilities as shown on City-approved construction plans.
- b. Prior to the sale of any portion of the Development, Owner shall provide to the City's Development Services Department, a copy of the Operations and Maintenance Manual for the Storm Water Facilities, which shall include detailed diagrams and descriptions identifying the components and operations of the Storm Water Facilities.
- c. Prior to final approval of the Development, Owner shall record this document in the deed records of Missoula County and provide a copy of the recorded documents to the City.
- d. Owner shall notify the City's Public Works Director in writing of the person responsible for compliance with Owner's obligations under this covenant ("Owner Designee"), and of any change in the Owner Designee. Owner expressly agrees that the Owner Designee shall have the authority to bind Owner, its successors, and assigns with respect to the matters described in this Agreement.
- e. Upon sale or transfer of the Development, or any portion thereof, including any lots in a subdivision, the Owner shall inform the purchaser of the obligations required under this Agreement.

## **8. Reimbursement**

If the City exercises its right to enter the Development pursuant to the Easement described in Section 3 of this Agreement, Owner shall reimburse the City for all of its costs and expenses incurred in connection with any work performed pursuant to Section 4 or 5 of this Agreement within thirty (30) days after receipt of an invoice. If Owner fails to pay the invoiced amount within such period, such amount shall thereafter accrue interest at the statutory rate. The City may pursue any available means to collect such amount, together with interest, including placing a lien on the Development (and each of the lots contained therein). If the Development is owned by more than one person (i.e., multiple lot owners), each such owner shall be jointly and severally liable for payment of the amounts provided for in this Section.

## **9. Indemnification**

Owner agrees to indemnify, defend (with legal counsel acceptable to the City), and hold harmless the City, its employees, independent contractors, and designees from and against any liability, losses, costs, expenses (including reasonable attorney fees), claims, or suits arising from: (1) Owner's failure to perform its obligations under this Agreement, including among other things its obligation to properly design, construct, operate, and maintain the Storm Water Facilities, and (2) the exercise of the City's rights under this Agreement.

## **10. Run with the Land**

The parties' rights and obligations contained herein touch and concern the land, and shall run with the land and be binding upon Owner and its successors and assigns (including, without

limitation, subsequent owners of lots in the Development and any homeowner's association owning common areas in the Development). Those rights and obligations shall inure to the benefit of the City, as well as its successors and assigns.

**11. Assignment**

The obligations of Owner (and subsequent owners of lots in the Development) under this Agreement may not be assigned except (a) in connection with the sale of the property owned by such person (in which case the transferee will be deemed to assume such obligations), or (b) with the prior written consent of the City, to a homeowner's association that owns and maintains the common areas of the Development.

**12. Authority**

If Owner is an entity, the individual executing this Agreement on behalf of Owner represents and warrants to the City that he or she has the full powers and authority to do so and that the Owner has full right and authority to enter into this Agreement and perform its obligations under this Agreement.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement as of the date below.

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

\_\_\_\_\_  
Title

STATE OF MONTANA )  
 ) ss.  
County of \_\_\_\_\_ )

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_, an \_\_\_\_\_.

\_\_\_\_\_  
Notary Public—State of Montana  
My commission expires: \_\_\_\_\_

APPROVED:

By: \_\_\_\_\_  
Jeremy Keene, PE, Public Works Director

CITY OF MISSOULA, MONTANA:

By: \_\_\_\_\_  
John Engen, Mayor

ATTEST:

By: \_\_\_\_\_  
Marty Rehbein, City Clerk