

DECLARATION OF MAINTENANCE COVENANT FOR STORMWATER STRUCTURAL CONTROLS & CONTINUED MAINTENANCE OF DRAINAGE & DETENTION FACILITIES

This Declaration of Maintenance Covenant for Stormwater Structural Control(s) (“Declaration”) executed on _____, is by and between _____ (“Declarant”) and Brazoria Drainage District No. 4 (“District”).

WHEREAS, Declarant is the owner of the real property described on Exhibit A attached hereto and incorporated by reference (the “Property”); and

WHEREAS, Declarant intends to construct and thereafter maintain stormwater structural controls (the “Controls”) on the Property including, but not limited to, conduits, inlets, channels, pipes, retention or detention ponds and other devices and measures, necessary to collect, convey, store and control stormwater runoff, to be used for conveying stormwater from the Property to the District’s municipal separate storm sewer system (MS4).

WHEREAS, to ensure that the Controls continue to function according to the design and performance standards to which they were constructed, Declarant is imposing upon the Property, as a covenant running with the land, the obligation to maintain the Controls until such time, if ever, as the obligation to maintain the Controls is properly terminated;

NOW, THEREFORE, in consideration of the foregoing premises, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Declarant declares as follows:

1. **Covenant Running with the Land.** Declarant covenants that the burdens and benefits made and undertaken under this Declaration constitute covenants running with the Property, binding all successors and assigns.
2. **Declarant’s Responsibility to Construct and Maintain.** Declarant shall be responsible for the construction of the Controls. Declarant, its successors and assigns will at all times be responsible for the maintenance, repair and inspection of the Controls. The Controls are to be constructed in accordance with all applicable laws, ordinances, regulations, rules, and directives of appropriate governmental authorities.
3. **Location of the Controls.** The Controls shall be located on, over, across or under the Declarant’s Property.
4. **Brazoria Drainage District No. 4.** The District, or its designee, is authorized to access the Property as necessary to conduct inspections of the Controls to ascertain compliance with this Declaration and the District’s stormwater management program requirements (“District Requirements”) and if necessary or desirable, to maintain the Controls as

provided under Paragraph 6 below. The District is relieved of all responsibility for the maintenance of the Controls for the term of this Declaration. In no event shall this Declaration be construed to impose any such obligation on the District.

5. **Maintenance of Controls.** The Declarant shall be entirely responsible for all maintenance activities associated with the Controls and shall maintain all Controls in a good and workmanlike manner. The Declarant shall implement appropriate maintenance activities immediately if any of the following instances occur: obstructions of inlets/outlets, mechanical failures (valves, pumps, gates, etc.), accumulation of trash, erosion or instability of slopes, accumulated sedimentation, excessive growth of vegetation/trees, and/or if written notice from the District is issued requesting maintenance on the Control. The Declarant shall retain documentation of all maintenance activities performed on the Control and make the records available to the District for review upon request.
6. **Failure to Maintain.** If Declarant or its successors or assigns fails to maintain the Controls as required by this Declaration after 30 days written notice thereof, the District, may, but is not obligated to, cause any and all maintenance to be taken and performed and otherwise to take whatever steps the District deems necessary to maintain the Controls at the Declarant's expense. Declarant shall reimburse the District within 10 days from receipt of written demand from the District all costs incurred by the District together with interest thereon from the date incurred by the District at the lesser of (i) the maximum lawful rate of interest or (ii) 15% per annum until paid in full. Nothing in this paragraph or this Declaration, shall create or impose any liability on the District, its agents, employees, successors or assigns, for damages alleged to result from or to be caused by stormwater drainage from the Property.
7. **Conflicts.** The District Requirements control over any inconsistent provisions of this Declaration. As applicable provisions of the District Requirements are amended, modified, revised, deleted or moved to different sections, this Declaration is deemed to be revised so as to conform to the provisions of the District Requirements as they may exist from time to time and are applicable to the Property or any part thereof.
8. **Successors and Assigns Bound.** Declarant hereby agrees and acknowledges that maintenance of the Controls as set forth herein, the cost of maintenance, the District's access to the Controls, the District's rights of ingress and egress to the Controls and the District's right to recover all costs if Declarant fails to maintain the Controls are a burden and restriction on the use of the Property and the provisions of this Declaration shall be binding upon the Declarant, its successors and assigns and upon any future owners of the Property.

Every person who now or hereafter owns or acquires any right, title or interest in or to any portion of the Property is and shall be conclusively deemed to have consented and agreed to every covenant contained in this Declaration, whether or not any reference to this Declaration is contained in the instrument by which the Property was conveyed to such person. Whenever in this Declaration a reference is made to a party, such reference is deemed to include a reference to the heirs, executors, legal representatives, successors and assigns of such party.

9. **Negation of Partnership.** None of the terms or provisions of this Declaration shall be deemed to create a partnership between or among Declarant and the District or any

owners, mortgagees, occupants or otherwise; nor shall it cause them to be considered joint venturers or members of any joint enterprise. This Declaration is not intended nor shall it be construed to create any third party beneficiary rights in any person, except as expressly stated herein.

- 10. Enforcement.** If any person, persons, corporation or entity of any other type shall violate or attempt to violate this Declaration, the District or its successors may institute proceedings at law, or in equity, against the person or entity violating or attempting to violate this Declaration and to prevent the person or entity from violating or attempting to violate the Declaration. The failure at any time to enforce this Declaration by the District or its successors whether any violations hereof are known or not, shall not constitute a waiver or estoppel of the right to do so in the future.
- 11. Entire Agreement.** This Declaration contains all the representations and the entire agreement of Declarant with respect to the subject matter. Any prior correspondence, memoranda or agreements are superseded by this Declaration. The provisions of this Declaration shall be construed as a whole according to their common meaning and not strictly for or against Declarant.
- 12. Notices.** All notices and approvals required or permitted under this Declaration shall be served by certified mail, return receipt requested, to a party at its last known address or its principal place of business. A courtesy email will also be sent. Date of service of notice shall be the date on which such notice is deposited in a post office of the United States Postal Service or successor governmental agency.
- 13. Governing Law; Performance.** This Declaration and its validity, enforcement and interpretation shall be governed by the laws of the State of Texas without regard to any conflict of laws principles and applicable federal law. This Declaration is performable only in Brazoria County, Texas.
- 14. Amendment.** This Declaration may not be amended or abrogated in part or whole, without the express written consent of the District.
- 15. Rights of Mortgagees, Trustees or Lienholders.** No violation of any of these restrictions, covenants or conditions shall affect or impair the rights of any mortgagee, trustee or lienholder under any mortgage or deed of trust, or the rights of any assignee of any mortgagee, trustee or lienholder under any such mortgage or deed of trust.
- 16. Gender and Grammar.** The singular wherever used herein shall be construed to mean or include the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or other entities or individuals, male or female, shall in all cases be assumed as though in each case fully expressed.
- 17. Titles.** The titles of sections contained herein are included for convenience only and shall not be used to construe, interpret or limit the meaning of the term or provision contained in this Declaration.
- 18. Recording of Agreement.** This Declaration shall be recorded in the Official Public Records of Brazoria County, Texas and shall constitute notice to all successors and assigns of the title to the Property of the rights and obligations contained herein.

DECLARANT

Organization: _____

Signature: _____

Print Name: _____

Title: _____

Email: _____

Phone #: _____

Mailing Address: _____

STATE OF _____

COUNTY OF _____

Before me, the undersigned authority, on this day personally appeared _____, known to me or proved to me through proper documentation to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____, _____.

Notary Public in and for the State of _____

My commission expires: _____