APPENDIX E

Maintenance Covenants

This Appendix contains a blank copy of the “Covenants for Permanent Maintenance of Water Quality Facilities and Best Management Practices".
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COVENANTS FOR PERMANENT MAINTENANCE OF WATER QUALITY FACILITIES AND BEST MANAGEMENT PRACTICES

THE TERMS WATER QUALITY MANAGEMENT FACILITIES AND BEST MANAGEMENT PRACTICES MAY REFER TO: detention basins, retention basins, water quality basins, water quality wetlands, vegetated buffers, swales, pipes, oil/water separators, sand filtering devices, water quality credit areas, etc.

___________________, (an individual/ a Tennessee or other state corporation/ partnership) with its (office/ residence) located at ________________________, (hereinafter "Property Owner") grants these Covenants for Maintenance of Water Quality Facilities and Best Management Practices (hereinafter "Covenants") on this the ______ day of ________.

WITNESSETH:

WHEREAS, The City of ____________ Water Quality Management Ordinance requires property owners to enter into permanent maintenance agreements for water quality and best management practices before the property is developed.

NOW THEREFORE, as a condition of the approval of a Water Quality Management Plan by the City of ________, the property owner warrants, covenants, and grants as follows:

1. The Property Owner warrants that it is the owner of property located in the City of ____________ at __________ (address); CLT Number: Map ___ Insert ______ Group ______ Parcel ______; and more specifically of record by deed dated ___ in (Warranty Book _______ Page _____ or as Instrument Number ___) with the City of ____________ Register of Deeds (hereinafter- referred to as the "Property") and that it has the right to grant said Covenants.

2. The Property Owner desires to develop all or a portion of the above described property in accordance with the approved As-Built Certification for the property entitled ____________, dated _______________ and prepared by ________ ________ (hereinafter "Plan").

3. The Property Owner will construct and maintain the water quality facilities and best management practices in strict accord with the Plan, specifications, calculations, and conditions required by the City of ________.

4. The Property Owner will provide a surety bond, letter of credit, or cash bond acceptable to the City of _________ and in an amount to be determined by the City of to guarantee that the water quality facilities and best management practices are constructed in accordance with the plan.

5. To ensure that subsequent property owners have notice of these Covenants
and the obligations therein, the Property Owner will include in all instruments conveying any or all of the above described property on which the water quality facilities and best management practices are located, the specific instrument numbers referencing these Covenants and the recorded subdivision plat indicated in paragraph 12 herein.

6. The Property Owner will provide for adequate long term operation and maintenance of the approved water quality facilities and best management practices described in the Plan to ensure that the facilities and practices remain in proper working condition in accordance with approved design standards and all applicable rules and regulations. The Property Owner shall perform such maintenance activities as described in the attached “Maintenance Guidance and Checklist”, along with necessary landscaping (e.g., vegetation planting or removal, etc.) and trash removal as part of regular maintenance.

7. In order to provide access to water quality facilities and best management practices by personnel, vehicles and equipment, the Property Owner will provide an access easement from a public street in strict accord with the Plan and any conditions required by the Engineering Department. The access easement is twenty (20) feet in width, and has an internal unobstructed, traversable access width located within and along the entire length of the easement. The Property Owner further covenants that no structure or building will be erected on the access easement; that no woody vegetation will be allowed to grow on the access easement; and that no use will be made which will interfere with the use of said easement for access to the facilities. If access to the facilities is obstructed and the City is required to remove the obstruction, the City will follow the notice procedure, double lien, and collection process as set forth in paragraph 9 herein.

8. Property Owner grants permission to the City, its agents and employees, to enter upon the property to inspect and monitor said facilities whenever the City deems necessary and further for the City or its agents to repair, replace, maintain, and reconstruct said facilities as permitted herein.

9. If the City determines that the water quality facilities and/or best management practices are not being maintained in good working order, the City will provide written notice to the current Property Owner to repair, replace, reconstruct, or maintain said facilities within a reasonable time frame. Said written notice must include identification of the property, the water quality facility(ies) or best management practice(s), a statement of the issue, and an estimate of the cost to repair, replace, reconstruct, or maintain said facilities.

10. (a) If the City determines that the water quality facilities and/or best management practices are not being maintained in good working order and gives written notice to the current Property Owner to repair, replace, reconstruct, or maintain said facilities within a reasonable time, and the property owner fails to comply with the City’s notice within the time specified, Property Owner authorizes the City or its agents to enter upon the Property to repair, reconstruct, replace or perform maintenance on said facilities at the Property Owner’s expense.
(b) Property Owner further authorizes the City to place a lien for double the amount of said expenses of repair, maintenance or reconstruction against the property.

(c) If the Property Owner fails to pay the City after forty-five (45) days written notice, the Property Owner authorizes the City to collect said expenses from the Property Owner through the appropriate legal action, with the Property Owner to be liable for the reasonable expenses of collection, court costs, and attorney fees.

(d) Property Owner recognizes, however, that this remedy does not obligate the City to maintain or, repair any water quality facilities and/or best management practices or restrict the City from pursuing other or additional legal remedies against the Property Owner.

11. These Covenants shall be binding on the Property Owner’s heirs, administrators, executors, successors, and assigns, and any and all subsequent property owners. Upon conveyance of the Property, these Covenants shall transfer to and be binding upon the new property owner and the original Property Owner shall be released from any and all responsibilities and obligations under these Covenants.

12. These Covenants are permanent and shall run with the land.

13. Property Owner will record a plat showing and accurately defining the easements for water quality facilities and best management practices an access easement to these facilities on a survey plat of record. The survey plat must reference the instrument number, where these Covenants are recorded and contain a note that the property owner is responsible for maintaining the facility or practice.

14. Property Owner will record these Covenants with the County Register of Deeds and return the original to the City before the final plat is signed by the City, and before all or any portion of the property is transferred or conveyed.

15. Upon the Property Owner’s satisfaction of all duties set forth in this Covenant and proof of same, the property owner may make application to the City for the return or refund of the bond, letter of credit or cash bond.

16. The Addendum attached hereto is made a part hereof, incorporated herein, and adopted by reference as if set out below.

IN WITNESS WHEREOF, WE HAVE SET OUR HANDS, THIS ____ DAY OF __________, ____________.

PROPERTY OWNER:

___________________________________

CITY of ____________, TENNESSEE

___________________________________
By: Mayor

STATE OF TENNESSEE )
COUNTY OF _________________)

Before me, the undersigned authority, a Notary Public at Large of the State of Tennessee, personally appeared _________________, the property owner, with whom I am personally acquainted, and who, upon oath, executed the foregoing instrument for the purposes therein contained.

WITNESS my hand and official seal at office in _____________ County, Tennessee this the ___ day of _____________, 2008.

NOTARY PUBLIC

My Commission Expires:

STATE OF TENNESSEE )
COUNTY OF _________________)

Before me, the undersigned authority, a Notary Public at Large of the State of Tennessee, personally appeared _________________, with whom I am personally acquainted, and who, upon oath, executed the foregoing instrument for the purposes therein contained, and who further acknowledged that he or she is the ______ _________ of the ___________ (property owner) ___________ and is authorized by ______ _______ (property owner) ___________ to execute this instrument on behalf of same.

WITNESS my hand and official seal at office in _____________ County, Tennessee this the ___ day of _____________, 2008.

NOTARY PUBLIC

My Commission Expires:

STATE OF TENNESSEE )
COUNTY OF _________________)

Before me, the undersigned authority, a Notary Public at Large of the State of Tennessee, personally appeared _________________, with whom I am personally acquainted, and who, upon oath, executed the foregoing instrument for the purposes therein contained, and who further acknowledged that he or she is the Mayor of Knox County, Tennessee and is authorized by _____________ County, Tennessee to execute this instrument on its behalf.
WITNESS my hand and official seal at office in, Tennessee this the day of _____ ____________, 20__.

NOTARY PUBLIC
My Commission Expires:

APPROVED AS TO LEGAL FORM:

________________________  ______________________
Law Director                  Date