

## **DRAINAGE FACILITY MAINTENANCE AGREEMENT**

### COVENANT TO MAINTAIN REGIONAL STORMWATER DETENTION POND

WHEREAS, 130 Commerce Center L.L.C. ,”*Property Holder*” is the property owner of the following described property:

Lots 3D and 3E Renewable Energy Park Replat consisting of approximately 29.7943 acres (1,297,839.7 square feet), Tract of land situated in the William Caldwell Survey Abstract No. 162, In Travis County, Texas, being all of lot 3C of the Renewable Energy Park Preliminary Plat (unrecorded at this time), same being a portion of that 159.788 acre tract of land conveyed to Pflugerville Community Development Corporation by instrument recorded in document no. 2008190659 of the official public records of Travis County, Texas and;

WHEREAS, said Property Holder is seeking to develop Property located in the Pflugerville Renewable Energy Park and in connection therewith has obtained certain permits and approvals from the City of Pflugerville, Texas, and,

WHEREAS, said Property Holder and the Pflugerville Community Development Corporation (PCDC) and City of Pflugerville have agreed that the development of the Property includes the installation of a channel and pond designed to convey storm water runoff; and,

WHEREAS, such as storm water channel should be properly maintained for the benefit and protection of all the Property Owners in the Pflugerville Renewable Energy Park and for the protection of the public:  
Now Therefore,

### KNOW ALL MEN BY THESE PRESENTS:

That for and in consideration of the benefits received by the parties, the mutual promises herein expressed, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the undersigned Property Holder and the City of Pflugerville hereby agree as follows:

1. The maintenance of the regional storm water detention pond located on the Pflugerville Renewable Energy Park shall be the responsibility of all the Property Holder’s or the Property Holder’s representative on a pro rata basis, provided however, that the PCDC shall construct and own the pond and shall maintain the pond until 80% of the lots in the Pflugerville Renewable Energy Park have been sold by PCDC. After 80% of the lots have been sold PCDC shall notify all the Property Holders and bill them in accordance with this agreement on a pro rata basis.
2. The maintenance of the regional storm water pond shall consist of the following
  - a. Every six (6) months, vegetation exceeding six (6) inches in height, and accumulated paper, trash and debris, shall be removed from the regional storm water pond.
  - b. Maintenance is required anytime the regional storm water detention pond does not adequately convey storm water runoff due to collection of debris or erosion of the storm water pond. Maintenance will consist of the items in (A) above and, when necessary, cleaning, repairing, or re-grading the storm water pond.

- c. All hydraulic control structures, concrete, and slope stabilization shall be inspected annually and all cracks, structural defects, or erosion shall be repaired as directed by the City of Pflugerville.
  - d. Waste material generated in the course or any activity involving maintenance of the storm water pond shall be disposed of in an off-site disposal area approved by the City of Pflugerville and with written permission of the owner of the property containing the disposal site.
3. The undersigned Property Holder grants to the PCDC and the City of Pflugerville the right to enter upon the property from time to time to determine whether the storm water pond is being properly maintained. In the event such storm water pond is not being properly maintained and necessary repairs and maintenance not being timely performed by the undersigned Property Holder or his successor or assigns, the PCDC or the City of Pflugerville shall give the Property Holder notice in writing certified mail identifying the repairs and maintenance to the storm water channel or pond at the property which the City of Pflugerville required be made by the owner(s) and the period of time by which such repairs and maintenance must be accomplished, which shall not exceed a period of sixty (60) days. It is agreed that the City of Pflugerville Engineer shall determine the length of time needed to make such repairs in the reasonable exercise of his professional engineering judgment. If the repairs and maintenance identified in the notices are not corrected to the satisfaction of the City of Pflugerville Engineer within the period of time specified, the City of Pflugerville Engineer shall post a notice of non-compliance at the storm water pond site. Upon posting of said notice of non-compliance at the site of the storm water pond, and the expiration of five (5) calendar days, the PCDC or the City of Pflugerville or its contractor (representative) may enter the property and perform all necessary repairs and maintenance and shall be entitled to fix a lien against the Property for its costs provided, however, that no owner shall be liable for a percentage of maintenance cost in excess of the owner's percentage ownership in the Property, and provided further that the City of Pflugerville shall be obligated to release such lien on any part of the Property upon tender of the owner's pro rata share of the repair and maintenance costs.
4. It is understood and agreed that this covenant and agreement to properly maintain said storm water pond shall be a covenant running with the land and shall be binding upon all subsequent owners of all or part of the Property on a pro rata ownership basis. It is understood and agreed that this agreement shall terminate in full force and effect two (2) years from the execution date.
5. The City of Pflugerville understands and agrees that (i) \_\_\_\_ "Property Holder" \_\_\_\_ may convey an assign this agreement to a duly created property owners association, and (ii) all duties, liabilities and obligations created by this document shall be transferred and assigned, simultaneously with the conveyance of the Property, to that duly created property owners association.
6. This agreement may be modified, amended or terminated by joint action of both (I) The PCDC, and the Property Holder of the Property at the time of such modification amendment or termination.

Executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_"PROPERTY HOLDER"\_\_\_\_\_

BY: "PROPERTY HOLDER"

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

AGREED AND ACCEPTED:

PFLUGERVILLE COMMUNITY DEVELOPMENT CORPORATION

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

CITY OF PFLUGERVILLE

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

Title: \_\_\_\_\_

STATE OF TEXAS       §

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COUNTY OF TRAVIS   §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by \_\_\_\_"Property Holder representative"\_\_\_\_\_, \_\_\_\_"Title of Property Holder and Property Holder"\_\_\_\_\_, on behalf of said corporation and partnership.

(SEAL)

\_\_\_\_\_  
Notary Public, State of Texas

Notary's commission expires:\_\_\_\_\_

STATE OF TEXAS       §

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COUNTY OF TRAVIS   §

This instrument was acknowledge before me on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_by  
\_\_\_\_\_ of the Pflugerville Community Development Corporation.

(SEAL)

\_\_\_\_\_  
Notary Public, State of Texas

Notary's commission expires:\_\_\_\_\_

STATE OF TEXAS       §

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COUNTY OF TRAVIS   §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_ by  
\_\_\_\_\_”City of Pflugerville”, on behalf of the City.

(SEAL)

\_\_\_\_\_  
Notary Public, State of Texas

Notary’s commission expires:\_\_\_\_\_