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JB2013R-015831

ANN HUDSON

CRAIGHEAD COUNTY

RECORDED ON:

08/26/2013 09:03AM

FILE

**MAINTENANCE AGREEMENT**

2013 AUG 26 AM 9: 04 FOR STORMWATER MANAGEMENT FACILITIES

PAGE 1 OF 4

BY *Ann Hudson*, D. C.

ANN HUDSON  
~~CLERK OF CIRCUIT COURT~~  
~~PROPERTY DEPARTMENT~~

Project Name: Willow Creek Apartments, Phase II Minor Plat  
Project Address: Willow Creek Drive, Jonesboro AR 72404  
Owner(s): Willow Creek Properties Phase II, LLC  
Owner Address: 1735 South 19<sup>th</sup> Avenue  
City: Bozeman State: Montana Zip Code: 59718

In accordance with Section 112-157 of the Jonesboro Municipal Code, this agreement is made and entered into this 22 day of Aug, 20 13 by and between the City of Jonesboro, an Arkansas municipal corporation, hereinafter called the "City" and Willow Creek Properties Phase II, LLC, hereinafter called the "Developer".

WITNESSTH, that:

WHEREAS, The Developer is proceeding to build on and develop the property in accordance with the Stormwater Management Plan (the "Plan") approved by the City and the recorded plat (the "Plat") for Willow Creek Apartments, Phase II Minor Plat as recorded in the records of Craighead County, Arkansas, at Plat Book \_\_\_\_\_, Page \_\_\_\_\_, also attached hereto as "Exhibit "A".

WHEREAS, the City and the Developer, its successors and assigns, including any property owners' association or homeowners' association, agree that the health, safety, and welfare of the residents of the City of Jonesboro, Arkansas require that on-site stormwater runoff management facilities be constructed and maintained on the property.

WHEREAS, the City requires that on-site stormwater runoff management facilities as shown on the plan be constructed and adequately maintained by the Developer, its successors and assigns, including any homeowner association.

WHEREAS, adequate maintenance is defined herein as the general upkeep of the facilities, specifically the mowing and trimming of grasses or other vegetative cover and the removal of litter and other minor debris that could impact the functionality of the facility or that would otherwise be considered unsightly or a nuisance.

WHEREAS, the City of Jonesboro shall be responsible, after construction and final acceptance of the development, for the operation and long-term maintenance of all drainage structures and improved watercourses which are part of the City of Jonesboro Stormwater Management System, are within a dedicated public drainage easement; and, which are not constructed and maintained by or under the jurisdiction of any State or Federal agency.

WHEREAS, Long-term maintenance is defined herein as the removal of sediment deposits, re-grading or shaping of embankments, drainage channels, and detention areas, and the repair or replacement of piping networks, and other underground drainage structures.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants contained herein, and the following terms and conditions, the parties agree as follows:

**MAINTENANCE AGREEMENT  
FOR STORMWATER MANAGEMENT FACILITIES  
PAGE 2 OF 4**

1. The on-site stormwater runoff management facilities shall be constructed by the Developer, its successors and assigns, in accordance with the plans and specifications identified in the Plan.
2. The Developer, its successors and assigns, including any property owners' association or homeowners' association, shall adequately maintain the on-site stormwater runoff management facilities.
3. The Developer, its successors and assigns, hereby grant permission to the City, its authorized agents and employees, to enter upon the Property to inspect and perform long-term maintenance of the on-site stormwater runoff management facilities whenever the City deems necessary.
4. In the event the Developer, its successors and assigns, fails to adequately maintain the stormwater runoff management facilities, the City may enter upon the Property upon thirty (30) days written notification or earlier, if deemed an emergency, and take whatever steps necessary to correct the deficiencies and charge the costs of such corrective action to the Developer, its successors and assigns. The Developer, its successors and assigns, shall reimburse the City upon demand, within thirty (30) days of receipt thereof for all actual costs incurred by the City including all labor, equipment, supplies, materials, and the like. This provision shall not be construed to allow the City to erect any structure of permanent nature on the land of the Developer outside of the easement for the on-site stormwater runoff management facilities. It is expressly understood and agreed that the City is under no obligation to routinely maintain or repair said facilities, and in no event shall this agreement be construed to impose any such obligation on the City. Any indemnification, payment, of reimbursement obligations provided for in this Agreement shall not be enforceable against the U.S. Department of Housing and Urban Development ("HUD") or the Federal Housing Commissioner ("FHA").
5. This agreement shall be recorded among the land records of Craighead County, Arkansas and shall constitute a covenant running with the land, and shall be binding on the Developer, its administrators, executors, assigns, heirs and any other successors in interests, including any property owners' association or homeowners' association.
6. This Agreement is binding upon and inures to the benefit of the City, and the Developer, the Developer's successors and assigns, any property owners' association or homeowners' association created which pertains to all or any part of the property and any individual lot owner who has purchased all or any part of the property referred to in this Agreement. The terms of this Agreement are enforceable on all of the above parties.
7. In the event any party to this Maintenance Agreement must employ a lawyer to enforce the terms and obligations set out in this Agreement and litigation ensue, the prevailing party, as determined under Arkansas Law, shall be entitled to recover not only court costs as defined under Arkansas Law but all costs of litigation, including a reasonable attorney's fee.

**MAINTENANCE AGREEMENT  
FOR STORMWATER MANAGEMENT FACILITIES  
PAGE 3 OF 4**

8. This Agreement is the complete agreement and understanding between the parties who have executed this Agreement. There are no other agreements, either oral or written. All prior or contemporaneous statements, representations, or guarantees are declared void. This Agreement may be amended only by a written document signed by all parties.

**Owner/Agent:** Mr. Jon Braxton, Member  
Printed Name

  
Signature

7/25/13  
Date


**MAINTENANCE AGREEMENT  
FOR STORMWATER MANAGEMENT FACILITIES  
PAGE 4 OF 4**

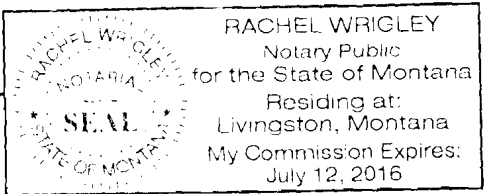
STATE OF MONTANA  
COUNTY OF GALLATIN

On this day before me, the undersigned officer, personally appeared Mr. Jon Braxton, to me well known to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he had executed the same for the purposes therein stated and set forth.

WITNESS my hand and seal this 25 day of JULY, 2013.

RACHEL WRIGLEY  
Notary Public (Printed Name)

  
Notary Public (Signature)



My Commission Expires: \_\_\_\_\_