

SAMPLE EASEMENT AGREEMENT AND MAINTENANCE COVENANT
SUBJECT TO MODIFICATION FOR EACH APPROVED PROJECT

THIS DOCUMENT PREPARED BY:

Holland & Knight LLP
131 South Dearborn Street, 30th Floor
Chicago, IL 60603

AFTER RECORDING RETURN TO:

City of Warrenville
28W701 Stafford Place
Warrenville, Illinois 60555

Property Address:
[insert property address]

P.I.N.s:
[insert P.I.N.s]

For Recorder's Use Only

PRIVATE PROPERTY DRAINAGE PROGRAM
EASEMENT AGREEMENT AND MAINTENANCE COVENANT

THIS EASEMENT AGREEMENT AND MAINTENANCE COVENANT ("Covenant") is made and entered into by and between ***[insert Name(s) of PROPERTY OWNER exactly as LISTED on the proof of ownership]*** ("Owner") and the City of Warrenville (the "City").

IN CONSIDERATION OF the mutual covenants and agreements set forth herein and pursuant to the City's home rule powers, the parties hereto agree as follows:

Section 1. Background.

A. The Owner is the owner of certain property commonly known as ***[insert address of property]***, Warrenville, Illinois, County of Du Page, State of Illinois, and legally described in ***Exhibit A*** ("Property").

B. The Owner applied for assistance through the City's Private Property Drainage Assistance Program ("Program").

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C. In accordance with the Program, the City will, either with City staff or through its agent, construct the storm water drainage improvements specifically described in **Exhibit B** attached hereto, and by this reference, made a part hereof (“Facilities”).

D. In accordance with the Program requirements, the Owner and the City have determined that it is in their respective best interests to enter into this Covenant in order to set forth the parties’ respective obligations and responsibilities regarding the Facilities.

Section 2. Grant and Use of Easement. The Owner grants, conveys, warrants, and dedicates to the City and its agents a perpetual easement in, at, over, along, across, through, upon, and under that portion of the Property legally described on **Exhibit C** (“Easement Premises”), to survey, construct, operate, use, maintain, own, test, inspect, repair, remove, and replace or abandon in place (collectively the “Installation”) the Facilities, together with all reasonable rights of ingress and egress over, along, across, and upon the Property necessary for the exercise of the rights granted herein. The City shall, at its sole cost and expense, complete the Installation of the Facilities in a good and workmanlike manner.

[OPTIONAL] Section 3. Grant and Use of Temporary Construction Easement. The Owner grants, conveys, and warrants to the City and its agents a temporary construction easement for the Installation of the Facilities in, at, over, along, across, through, upon and under that portion of the Property legally described in **Exhibit D** (“Temporary Easement Premises”). The Temporary Easement Premises shall be used by the City only during periods of actual Installation activity and for any necessary restoration of the Easement Premises.

Section 4. Limitations on the Owner’s Use of the Easement Premises. The Owner reserves the right to use the Easement Premises in any manner that will not prevent or interfere in any way with the exercise by the City of the rights granted herein; provided, however, that the Owner shall not permanently or temporarily improve or obstruct the Easement Premises or cause any improvements or obstructions to be constructed on the Easement Premises that would impair the exercise by the City of the rights granted herein. No change shall be made to the Easement Premises nor shall any construction of any kind whatsoever be erected or permitted to exist within the Easement Premises that might materially impede the storm water drainage capacity of the Facilities ***[for detention facilities add: or materially reduce the storm water detention capacity thereof. Trees, shrubs, fences and***

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normal landscape planting shall be permitted within the Storm Water Detention Area only with the prior written approval of the City Administrator].

Section 5. Additional Easements. The Owner shall have the right to grant other non-exclusive easements over, along, across or upon the Easement Premises [*and the Temporary Easement Premises*]; provided, however, that any such other easements shall be subject to this Covenant and the rights granted hereby; and provided further, that the City Administrator shall have first consented in writing to the terms, nature, and location of any such other easements.

Section 6. City Restoration. Upon completion of any Installation, the City agrees to (a) replace and grade any and all topsoil removed by the City; (b) restore to condition immediately preceding the Installation any and all fences, roads, plantings, and improvements that are damaged or removed as a direct result of the Installation; (c) replace any and all sod removed with sod of like quality; and (d) replace any and all natural grass removed by seeding with a good quality seed.

Section 7. Maintenance of the Facilities. The Owner understands and agrees that the Owner is fully responsible for the continued maintenance of the Facilities, except for any storm sewer main and any storm sewer main connections, in a first rate manner in accordance with this Covenant and the Program.

Section 8. City Right to Maintain Facilities. In the event the City determines, in its sole and absolute discretion, that any maintenance of the Facilities required to be performed by the Owner pursuant to Section 7 of this Covenant is not performed at any time, the City, after ten (10) days prior written notice to the Owner, may, but shall not be obligated to, enter upon the Easement Premises for the purpose of performing maintenance work on and to the Facilities.

Section 9. Reimbursement for Maintenance. In the event that the City shall cause to be performed any work pursuant to Section 8 of this Covenant, the City shall have the right to charge the Owner an amount sufficient to defray the entire cost of such work or action, including administrative costs, either before or after such cost is incurred. If the amount so charged is not paid by the Owner within thirty (30) days following a demand in writing by the City for such payment, such charge, together with interest and costs of collection, shall become a lien upon the Easement Premises and the City shall have the right to collect such charge, with interest and costs, and to enforce such lien as in foreclosure proceedings as permitted by law.

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Section 10. Reimbursement for Removal or Damage. The Owner understands and agrees that if within five years of the completion of the Facilities, the Facilities are removed or damaged other than by an act of God, the Owner will reimburse the City, on a pro-rata basis, the cost of the construction of and the materials used for the Facilities. If the amount so charged is not paid by the Owner within thirty (30) days following a demand in writing by the City for such payment, such charge, together with interest and costs of collection, shall become a lien upon the Easement Premises and the City shall have the right to collect such charge, with interest and costs, and to enforce such lien as in foreclosure proceedings as permitted by law.

Section 11. Covenants Running With the Land. The easements and rights granted in this Covenant, the restrictions imposed by this Covenant, and the agreements and covenants contained in this Covenant shall be easements, rights, restrictions, agreements and covenants running with the land, shall be recorded against the Property, and shall be binding upon and inure to the benefit of the Owner and the City and their respective heirs, executors, administrators, successors, assigns, agents, licensees, invitees, and representatives, including, without limitation, all subsequent owners of the Property, or any portion thereof, and all persons claiming under them.

Section 12. Indemnification. The Owner agrees to, and does hereby, release, hold harmless and indemnify the City and all of its elected and appointed officials, officers, boards, commissions, employees, agents, representatives, engineers, and attorneys, from any claims, lawsuits, judgements, demands, damages, liabilities, losses, executions, debts, fines, penalties, and expenses, including administrative expenses and attorneys' fees (collectively "Claims"), that may arise or be alleged to have arisen, out of or in connection with the construction, installation and maintenance of the Facilities. The Owner shall, and does hereby agree to, pay all expenses, including attorneys' fees, court costs, and administrative expenses, incurred by the City in defending itself with regard to any and all of the Claims mentioned in this Section.

Section 13. Enforcement. The Owner recognizes and agrees that the City has a valid interest in ensuring that this Covenant is properly adhered to and therefore does hereby grant the City the right to enforce this Covenant by any proceeding at law or in equity against any person or persons attempting to violate any restriction contained herein, either to restrain violations, to compel affirmative action, or to recover damages.

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Section 14. Exercise of City Rights; Waiver. The City is not required to exercise the rights granted herein except as it shall determine to be in its best interest. Failure by the City to exercise any right herein granted shall not be construed as a waiver of that right or any other right. Nothing herein shall be deemed or construed to constitute a dedication of any real property to the City.

Section 15. No Dedication. Nothing in this Covenant shall be construed to constitute a dedication of any portion of the Facilities to, or an acceptance thereof by, the City. ***[Note this may need to be revised depending on actual facilities constructed on each project]***

Section 16. Recordation. This Covenant shall be recorded with the Recorder of Deeds of Du Page County, Illinois, and all contracts and deeds of conveyance relating to the Property, or any part thereof, shall be subject to the provisions of this Covenant.

Section 17. Headings. The headings of the Sections herein are intended for reference only and are not intended to alter, amend or affect any of the terms or provisions of this Covenant.

Section 18. Term. The restrictions hereby imposed shall be enforceable for a term of one hundred (100) years from the date this Covenant is recorded, after which time such Covenant shall be automatically extended for successive periods of ten (10) years unless an instrument amending this Covenant shall be recorded and provide for some other duration. If any of the rights or restrictions imposed by this Covenant would otherwise be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then such provision shall continue only until twenty-one (21) years after the death of the survivor of the now living lawful descendants of the current Governor of the State of Illinois.

Section 19. Severability. Invalidation of any one of these agreements, covenants and restrictions by a judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 20. Notice. Any notice to the Owner under this Covenant shall be given to the last name and address shown on the most recent real estate tax bill issued by the County Treasurer. Any notice to the City under this Covenant shall be given to:

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City of Warrenville
Attention: Deputy Public Works Director
3S258 Manning Avenue
Warrenville, Illinois 60555

or to such other address at which the principal administrative offices of the City are located from time to time.

Section 21. Amendment. This Covenant may be modified, amended, or annulled only by the written agreement of the Owner and the City.

Section 22. Exhibits. Exhibits A through D *[This should be updated to reflect actual number of exhibits.]* attached to this Covenant are incorporated herein and made a part hereof by this reference.

Section 23. Governing Law. This Covenant shall be governed by the internal laws, but not the conflicts of laws rules, of the State of Illinois.

IN WITNESS WHEREOF, the parties hereto have executed or caused this Covenant to be executed by their duly authorized officials.

ATTEST:

OWNER

By: _____

ATTEST:

OWNER

By: _____

ATTEST:

CITY OF WARRENVILLE

By: _____

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EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

[insert legal description exactly as shown on the proof of ownership document]

Commonly known as: *[insert street address]*

Permanent Real Estate Index Number: *[insert PIN]*

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EXHIBIT B

DESCRIPTION OF THE FACILITIES

[Insert description of the facilities]

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EXHIBIT C

LEGAL DESCRIPTION OF THE EASEMENT PREMISES

[insert legal description]

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EXHIBIT D

LEGAL DESCRIPTION OF THE TEMPORARY EASEMENT PREMISES

[insert legal description]