

AFTER RECORDING, RETURN TO:

City Secretary
City of McKinney
P.O. Box 517
McKinney, TX 75069

City of McKinney, Texas
DETENTION POND
MAINTENANCE AND MONITORING AGREEMENT
Live Oak Creek Addition

This Detention Pond Maintenance and Monitoring Agreement (“**Agreement**”) is made and entered into as of this ____ day of _____, 2014, by and between **THE CITY OF MCKINNEY, TEXAS**, a Texas municipal corporation and home-rule city (“**City**”), and **BEAZER HOMES TEXAS, L.P.**, a Delaware limited partnership (“**Beazer**”), witnesseth that:

WHEREAS, Wells Fargo Bank, N.A., owns certain real property located within the Jacob Dunbaugh Survey, Abstract No. 257, and the Samuel McFall Survey, Abstract No. 641, in the City of McKinney, Collin County, Texas, as more particularly described on Exhibit “A” attached hereto and incorporated herein by reference for all purposes allowed by law (the “**Property**”); and

WHEREAS, Wells Fargo Bank, N.A., has conveyed a drainage easement to Beazer upon and across the Property for the purpose of allowing Beazer to design, construct, maintain and repair detention facilities (“**Drainage Easement**”) to serve a residential subdivision that Beazer is developing on property adjacent to the Property and which development will generally be known and referred to as the **Live Oak Creek Addition** (the “**Development**”), the record plat of which Development is attached hereto as Exhibit “B” and incorporated herein by reference for all purposes allowed by law; and

WHEREAS, Beazer shall, pursuant to that certain Drainage Easement by and between Wells Fargo Bank, N.A. and Beazer, referenced above and recorded under Document No. 20130430000579860, on the 30th day of April, 2013, in the Official Public Records of Collin County, Texas (the “**Easement Agreement**”), construct, maintain and repair a detention pond on the Property (the “**Detention Pond**”) to control storm water upon and across the Development, a copy of the Easement Agreement is attached hereto as Exhibit “C” and incorporated herein by reference for all purposes allowed by law; and

WHEREAS, Beazer shall construct the Detention Pond in accordance with the plans reviewed and approved by the City (the “**Plans**”). The Plans, approved by the City, are on file in the City’s Engineering Department and are incorporated herein by reference for all purposes allowed by law; and

WHEREAS, Pursuant to the Easement Agreement, Beazer shall initially design and construct the Detention Pond and maintain and repair the Detention Pond until such time as Beazer has created a Homeowner's Association ("HOA") for the Development and assigns its obligations under the Easement Agreement to the HOA that shall be created to oversee and manage the Development; and

WHEREAS, The City requires that on-site storm water management facilities in the City, such as the Detention Pond shown on the Plans, be constructed and adequately maintained by a Responsible Party, as defined herein-below;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and to gain approval of the City to record the plat for the Development, Beazer and the City agree as follows:

1. Pursuant to the Easement Agreement, the Detention Pond on the Property shall be constructed by Beazer in accordance with the approved Plans.
2. Pursuant to the Easement Agreement, Beazer, and its successors and assigns, or a yet-to-be-created HOA for the Development (individually and collectively referred to hereinafter as the "**Responsible Party**"), shall perform maintenance and repairs of the Detention Pond as required in order to keep the Detention Pond in good condition and repair.
3. The Responsible Party shall conduct an annual inspection of the Detention Pond to ensure the safe and proper operating of the Detention Pond. The condition of the Detention Pond, including all deficiencies, shall be noted in a written inspection report prepared by the Responsible Party. If deficiencies are noted, such deficiencies shall be promptly corrected by the Responsible Party within a reasonable time and a certification reflecting such corrections shall be submitted to the City indicating the safe and proper function of the Detention Pond.
4. Beazer for itself, its successors and assigns as well as the HOA that Beazer creates for the Development hereby grants permission to the City and its authorized agents and employees, to enter upon the Property at all reasonable times after prior written notice for the express purposes of: (i) inspecting the Detention Pond to verify the safe and proper operating of the Detention Pond, (ii) investigating any suspected or reported deficiencies in the Detention Pond, and/or (iii) responding to any complaints regarding the Detention Pond. The City shall provide to the Responsible Party copies of any inspection results prepared by or for the City. Beazer warrants and represents that the Easement Agreement confers sufficient rights upon it to grant to City the permissions in this Paragraph.
5. In the event the Responsible Party fails to correct any deficiencies or maintain the Detention Pond in good working condition, the City may provide written notice to the Responsible Party of the deficiency and the specific steps (including a reasonable completion date as determined by the City Engineer or his designee) that the City requires the Responsible Party to take to correct such deficiency, and Responsible Party shall diligently pursue such repairs to completion.

6. It is expressly understood and agreed that the City shall not be under any obligation to maintain or repair the said Detention Pond, and in no event shall this Agreement be construed to impose any such obligation on the City.

7. This Agreement shall be recorded in the Official Land Records of Collin County, Texas. This Agreement shall be a covenant running with the land, and be binding upon the Responsible Party, its successors, heirs, assigns, grantees, vendors, trustees, representatives, and all others holding any interest now or in the future in all or any part, parcel or portion of the Property.

8. Beazer may assign this Agreement to any person or entity having a possessory interest in the Development. However, subject to the terms of this Section 8, Beazer shall remain jointly and severally responsible for the maintenance and repair of said Detention Pond unless and until such time as i) Beazer and its successors enter into a formal written assignment of this Agreement with a Responsible Party, including City's written consent thereof, (the "Assignment"), or ii) the City approves the Covenants, Conditions and Restrictions ("CCRs") for the Development. The City's consent to the Assignment shall be conditioned upon the full performance of a final inspection of the Detention Pond at or about the time of conveyance and the correction of any and all deficiencies noted therein by Beazer as noted in the required certification reflecting the performance of such corrections and indicating the current safe and proper function of the Detention Pond. In addition, the CCRs shall include comprehensive maintenance obligations in favor of the HOA for the Detention Pond and in a form satisfactory to the City. Upon receipt of City consent to Assignment or upon City's CCRs approval, Beazer shall have no further duties or obligations under this Agreement. This Agreement may be assigned by a successor Responsible Party in the same manner as described herein-above for Beazer's assignment of this Agreement.

9. If the Responsible Party fails or refuses to perform the inspections, maintenance or repairs to the Detention Pond as required by this Agreement, the City shall have the power and authority to issue citations to the Responsible Party for violations of the City's Storm Water Management Ordinance, and any other applicable provision of the City Code, or revoke the Certificate of Occupancy issued for the Property until such inspections, maintenance or repairs are completed to the satisfaction of the City. The City shall also have the authority, but not a corresponding obligation, to enter upon the Property and perform any necessary inspections, maintenance or repairs to the Detention Pond at the sole cost of the Responsible Party, which inspections, maintenance or repairs the Responsible Party fails or refuses to perform after 30 days written notice from the City. In the event the City performs or causes to be performed any necessary inspections, maintenance or repairs to the Detention Pond which are not performed by Responsible Party within such thirty (30) day period as required under this Agreement, the City shall have the right to bill the Responsible Party for such costs and expenses directly related to Responsible Party's failure or refusal to perform and in the event of nonpayment within 30 days after providing Responsible Party written notice of said costs and expenses, City shall have the further right to assert a priority lien against the Property for any costs and expenses incurred by the City in such circumstance.

10. Beazer, its successors, assigns, vendors, grantees, and/or trustees do hereby agree to fully indemnify, protect and hold City harmless from all third-party claims, suits,

judgments, and demands, including its reasonable attorney's fees, arising out of the sole or concurrent negligence of Beazer, and only to the extent or percentage attributable to Beazer, in the subdividing, development, or construction of public improvements, including the negligent maintenance thereof. Beazer shall not be responsible for or be required to indemnify City from City's own negligence.

11. Beazer shall develop the Property in accordance with the standards as set forth in City of McKinney zoning, subdivision and land development ordinances, including but not limited to provisions as to drainage, erosion control, pro rata payments, storm water, tree preservation, park land dedication, hike and bike trails, impact fees, Street Design Standards, Public Improvements Policy and construction standards.

12. Beazer expressly acknowledges that by entering into this Agreement, Beazer, its successors, assigns, vendors, grantees, and/or trustees, shall not construe any language contained herein or in any Exhibits as waiving any of the requirements of the Zoning Ordinance or Subdivision Ordinance or any other ordinance of the City except as herein specifically agreed.

13. Any notice or communication required or permitted hereunder shall be deemed to be delivered and received when actually received by the intended recipient or, whether actually received or not, when (a) deposited in the United States mail, postage fully prepaid, registered or certified mail, return receipt requested, addressed to the intended recipient at the address shown below, (b) deposited with a nationally recognized overnight delivery service (e.g. Federal Express), service fully paid for, addressed to the intended recipient at the address shown below, or (c) transmitted by electronic mail or facsimile (with confirmed transmission and receipt) to the intended recipient at the facsimile number shown below.

If to Beazer: Beazer Homes Texas, L.P.
1750 Valley View Lane, Suite 200
Dallas, Texas 75234
Attention: Troy Radelat
Telephone: (972) 250-3821
Facsimile: (972) 818-6866
Email: troy.radelat@beazer.com

and

BEAZER HOMES TEXAS, L.P.
1000 Abernathy Road, Suite 260
Atlanta, Georgia 30328
Attention: Andrew Devin
Telephone: (770) 829-3770
Facsimile: (770) 481-7547
Email: adevin@beazer.com

With a copy to: Johnson & Stephens, P.C.
4809 Cole Avenue, Suite 260
Dallas, Texas 75205
Attention: John Mark Stephens, Esq.
Telephone: (214) 559-2774
Facsimile: (214) 919-5941
Email: jmstephens@johnsonstephenslaw.com

If to City: CITY OF MCKINNEY, TEXAS
City Manager's Office
P.O. Box 517
McKinney, TX 75069
Attention: Jose Madrigal
Telephone: (972) 547-7500
Facsimile: (972) 547-2607
Email: jmadrigal@mckinneytexas.org

With a copy to: Brown & Hofmeister, L.L.P.
740 E. Campbell Road, Suite 800
Richardson, Texas 75081
Attention: Mark S. Houser
Telephone: (214) 747-6100
Facsimile: (214) 747-6111
Email: mhouser@bhlaw.net

Any address for notice may be changed by providing written notice of any requested changes to the other party at the addresses provided above.

IN WITNESS WHEREOF, the City and Beazer have each executed this Agreement as of the date first written above.

CITY OF MCKINNEY

By: _____
JOSE MADRIGAL
Deputy City Manager

Date Signed: _____

[Signatures continued on following page.]

ATTEST:

SANDY HART, TRMC, MMC
City Secretary

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney

BEAZER HOMES TEXAS, L.P.,
a Delaware limited partnership

By: Beazer Homes Texas Holdings, Inc.,
a Delaware corporation, its general
partner

By: _____
TROY RADELAT,
Division President

Date Signed: _____

THE STATE OF TEXAS
COUNTY OF COLLIN

BEFORE ME, the undersigned authority, in and for said County, Texas, on this day personally appeared JOSE MADRIGAL, Deputy City Manager of the **CITY OF MCKINNEY**, a Texas Municipal Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he has executed the same on the City's behalf.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE _____
DAY OF _____, 2014.

Notary Public Collin County, Texas
My commission expires _____

THE STATE OF TEXAS
COUNTY OF _____

This instrument was acknowledged before me on the _____ day of _____, 2014, by Troy Radelat, in his capacity as Division President of Beazer Homes Texas Holdings, Inc., a Delaware corporation, the general partner of Beazer Homes Texas, L.P., a Texas limited partnership, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me he executed the same on behalf of and as the act of said limited partnership.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE _____
DAY OF _____, 2014.

Notary Public _____ County, Texas
My commission expires _____

PREPARED IN THE OFFICES OF:

BROWN & HOFMEISTER, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081
214/747-6100
214/747-6111 Fax

Exhibit "A"

LEGAL DESCRIPTION OF PROPERTY

Exhibit "B"

RECORD PLAT OF DEVELOPMENT

Exhibit “C”

DRAINAGE EASEMENT