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Document Title: Covenant to Maintain Storm Water Detention Facility
(Kimpton Falls)
Date of Document: _____, 2023
Grantor Name: Kimpton Property, LLC and LOF Kimpton Falls, LLC
Grantee Name: Kansas City, Missouri
Statutory Address: 414 East 12th Street
Kansas City, MO 64106
Legal Description: See Exhibits A, B and C

**COVENANT TO MAINTAIN STORM WATER DETENTION FACILITY AND BMPs
PLAT OF KIMPTON FALLS**

THIS COVENANT made and entered into this ____ day of _____, 2023, by and between Kansas City, Missouri, a constitutionally chartered Municipal corporation (City), and Kimpton Property, LLC, a Missouri limited liability company (“**Kimpton Property**”) and LOF Kimpton Falls, LLC, a Texas limited liability company (“**LOF Kimpton**”) (Kimpton Property and LOF Kimpton are hereinafter collectively, the “**Developer**”).

WHEREAS, Kimpton Property owns that certain real estate generally located south of N.W. Barry Road and along the future extension of Line Creek Parkway in Kansas City, Platte Missouri, (“**Kimpton Property**”) more specifically described in Exhibit A attached hereto and incorporated herein by reference, which real property is described as Tracts A and B on the Plat (as defined below);

WHEREAS, LOF Kimpton owns that certain real estate generally located south of N.W. Barry Road and along the future extension of Line Creek Parkway in Kansas City, Platte Missouri, (“**LOF Property**”, together with the Kimpton Property, the “**Property**”) more specifically described in Exhibit B attached hereto and incorporated herein by reference, which real property is described as Lot 1 on the Plat (as defined below);

WHEREAS, Developer intends to cause the Property to be platted as the Final Plat of Kimpton Falls (the “**Plat**”), in accordance with Chapter 88, Code of Ordinances of the City of Kansas City, Missouri;

WHEREAS, Developer intends to subdivide the Property and create pursuant to the Plat Lot 1 and Tracts A and B, as shown on Exhibit C attached hereto;

WHEREAS, the improvements proposed by LOF Kimpton on Lot 1 warrant storm water control to serve Lot 1 of the final plat of Kimpton Falls;

WHEREAS, the storm water detention facilities to serve the Plat are located on Tracts A and B of the final plat of Kimpton Falls;

WHEREAS, the City and Developer agree that it is in the public interest to detain storm water for the benefit of the Property and surrounding areas;

WHEREAS, the provisions for the maintenance of the storm water detention facility is necessary to serve the development; and

WHEREAS, the Kimpton Property agrees at its cost to:

- a. Be responsible for the maintenance, repair and replacement if necessary of the storm water detention facilities and appurtenances (Facilities) within the storm water detention facilities located on Tracts A and B of the final plat of Kimpton Falls.

- b. Maintain the pipes, structures, grounds, and appurtenances for the Facilities located on Tracts A and B of the Plat.
- c. Keep the pipes, structures and appurtenances located on Tracts A and B open and free of silt and vegetation.
- d. Keep the pipes, structures and appurtenances located on Tracts A and B in good working condition or replace same if necessary.
- e. Mowing the grass area within Tracts A and B.
- f. Maintain the grades within Tracts A and B pursuant to the approved plan on file in the office of the Director of Public Works and identified as File No. _____.
- g. Obtain all necessary improvement and repair permits prior to performing any work on the Facilities.

NOW, THEREFORE, Developer and City, for and in consideration of the benefits to themselves, their assigns and future grantees do hereby agree as follows:

Sec. 1. City is granted the right, but is not obligated to enter upon Tracts A and B of the final plat of Kimpton Falls in order to maintain the Facilities including the pipes, structures, grounds, and appurtenances if Kimpton Property fails to maintain same. City may also (a) charge the costs for such maintenance against the Kimpton Property or the owner of Lot 1, served by the Facility on Tracts A and B; (b) assess a lien on Lot 1; and (c) maintain suit against the Kimpton Property and/or owners of Lot 1 served by the Facility on Tracts A and B for the unpaid cost of such maintenance. Unless necessitated by a threat to life and/or safety, City shall notify the Kimpton Property and/or the then current owners of Lot 1 not less than thirty (30) days before it begins maintenance of the Facilities.

Sec. 2. Developer shall not use nor attempt to use Tracts A and B of the final plat of Kimpton Falls in any manner which would interfere with the operation of the Facilities in such manner as would interfere with the proper, safe, and continuous maintenance and use thereof and in particular shall not build thereon or thereover any structure which may interfere or cause to interfere with the maintenance and use thereof.

Sec. 3. This Covenant shall run with the land legally described in Exhibit A and Exhibit B. Developer shall remain liable under the terms of this Covenant unless and until Developer assigns its rights and obligations to a third party and such assignment is accepted by the City.

Sec. 4. To the extent allowed by law, in the event of a default under a loan agreement by a third party who is assigned the rights and obligations in accordance with the terms of this Covenant, the City will agree to an assignment from the defaulting third party to the secured lender.

Sec. 5. Notices. All notices required by this Covenant shall be in writing sent by regular United States mail, postage prepaid, commercial overnight courier or facsimile and addressed as hereinafter specified. Each party shall have the right to specify that notice be addressed to any other address by giving the other party ten (10) days notice thereof. Unless a party to this Agreement has given ten (10) days notice of a change of person and address for purposes of

notice under this Agreement to the other party in writing, notices shall be directed to the following:

Notices to the City:

Director of City Planning & Development
City Hall, 414 East 12th Street
Kansas City, Missouri 64106
Fax number: (816) 513-2548

Notice to Kimpton Property shall be addressed to:

Kimpton Property, LLC
c/o MD Management, Inc.
4600 College Blvd., Suite 102
Overland Park, KS 66211

With copies to:

Patricia R. Jensen, Esq.
Rouse Frets White Goss Gentile Rhodes P.C.
4510 Belleview; Suite 300
Kansas City, MO 64111
816-753-9201 (fax)

Notice to LOF Kimpton shall be addressed to:

LOF Kimpton Falls, LLC
c/o Longhorn Opportunity Fund I, L.P.
4930 South Congress Avenue
Suite 303-C
Austin, Texas 78745
E-mail: K.Thomas@LonghornOpportunityFund.com

With copies to:

DLA Piper LLP (US)
701 Fifth Avenue, Suite 6900
Seattle, Washington 98104
Attention: Michael Hutchings
Email: Michael.Hutchings@us.dlapiper.com

Sec. 6. This Agreement shall not be amended, modified, canceled or abrogated without the prior written consent of the City.

Sec. 7. Invalidation of any part or parts of this Covenant by judgment or other court action shall in no way affect any of the other provisions, which shall remain in full force and effect.

Sec. 8. This Agreement shall be construed and enforced in accordance with the laws of the State of Missouri.

Sec. 9. Upon the effective date of this Covenant, the City shall file this Covenant in the Office for recording real estate documents in Platte County, Missouri, and shall be binding on Developer, its successors, assigns and transferees.

Sec. 10. Developer shall jointly and severally release, hold harmless, indemnify and defend City and its agents, officers and employees from any and all responsibility, liability, loss, damage or expense resulting to Developer or to any person or property caused by or incidental as to the design, function, construction, maintenance or failure to maintain the Facility.

ATTESTATION BY CITY CLERK:

KANSAS CITY, MISSOURI

By: _____

City Clerk

City's Director of City Planning &
Development

Approved as to form:

Assistant City Attorney

STATE OF MISSOURI)
) SS
COUNTY OF _____)

BE IT REMEMBERED that on this ___ day of _____, 2023, before me, the undersigned, a notary public in and for the county and state aforesaid, came Jeffrey Williams, Director of the Department of City Planning and Development of the City of Kansas City, Missouri, a corporation duly organized, incorporated and existing under and by virtue of the laws of the State of Missouri, and Marilyn Sanders, City Clerk of the City of Kansas City, Missouri, who are personally known to me to be the same persons who executed, as officials, the within instrument on behalf of Kansas City, Missouri, and such persons duly acknowledge the execution of the same to be the act and deed of said Kansas City, Missouri.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

Notary Public

My Commission Expires: _____

DEVELOPER:

KIMPTON PROPERTY, LLC,
a Missouri Limited Liability Corporation

I hereby certify that I have authority to
execute this document on behalf of
Developer.

By: _____
Erika Feingold, Manager

Date: _____
Check one: () Sole Proprietor
() Partnership
() Corporation
(X) Limited Liability Company
(LLC)

STATE OF _____)
) ss.
COUNTY OF _____)

On this _____ day of _____, 2023, before me appeared Erika Feingold, to me personally know, who, being by me duly sworn, did say that she is the Manager of **Kimpton Property, LLC**, a limited liability company of the State of Missouri, and that said instrument was signed in behalf of said limited liability company, by authority of its members, and she acknowledged said instrument to be the free act and deed of said limited liability company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State the day and year last above written.

Notary Public within and for said
County and State

My term expires: _____

LOF KIMPTON FALLS, LLC,
a Texas Limited Liability Corporation

I hereby certify that I have authority to execute this document on behalf of Developer.

By: _____
Name: _____
Title: _____

Date: _____
Check one: () Sole Proprietor
() Partnership
() Corporation
(X) Limited Liability Company (LLC)

STATE OF _____)
) ss.
COUNTY OF _____)

On this _____ day of _____, 2023, before me appeared _____, to me personally known, who, being by me duly sworn, did say that s/he is the _____ of **LOF Kimpton Falls, LLC**, a limited liability company of the State of Texas, and that said instrument was signed in behalf of said limited liability company, by authority of its members, and s/he acknowledged said instrument to be the free act and deed of said limited liability company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State the day and year last above written.

Notary Public within and for said
County and State

My term expires: _____

EXHIBIT A
Kimpton Property

EXHIBIT B
Property

EXHIBIT C
Plat