

Green Infrastructure Twenty Year Maintenance Covenant for Westlawn Renaissance Phase Two - Contract G98004P44

This Twenty-Year Maintenance Covenant (Covenant) is ~~granted by~~made and entered into by and among the Westlawn Gardens Homeowners' Association (Association) located at 455 East Ogden Street, Milwaukee, Wisconsin 53202, the Housing Authority of the City of Milwaukee (HACM), located at 809 North Broadway, Milwaukee, Wisconsin 53202, to the Milwaukee Metropolitan Sewerage District (District), located at 260 West Seeboth Street, Milwaukee, Wisconsin 53204.

INTRODUCTION

1. **The Green Infrastructure.** The Green Infrastructure (GI) installed as shown in Exhibit A includes: 1,107 square feet of native landscaping capturing 443 gallons; 19,368 square feet of porous pavement capturing 92,848 gallons; 206 stormwater trees capturing 5,150 gallons; and 984 square feet of bioswales capturing 17,908 gallons for a total capture capacity of 116,349 gallons.
2. **Baseline Documentation.** The condition of the ~~green-infrastructure~~GI is documented in a Baseline Report at the office of the District and incorporated into this Covenant by reference. The Baseline Report consists of reports, maps, photographs, and other documentation and provides an inventory of relevant features, characteristics, and conservation values. The Baseline Report provides an accurate representation of the condition of the ~~green-infrastructure~~GI at the time of the conveyance of this Covenant. The Baseline Report is an objective, but not exclusive, reference for monitoring compliance with the terms of this Covenant.
3. **Conservation Intent.** Association, HACM and the District share the common purpose of preserving the ~~green-infrastructure~~GI for a period of at least twenty years. Association and HACM ~~intends~~intend to protect the ~~green-infrastructure~~GI. In addition, Association and HACM ~~intends~~intend to convey to the District and the District agrees to accept a right to monitor and enforce these restrictions.
4. **Status.** The GI was constructed by HACM pursuant to the terms of an Out of Program Agreement (Westlawn Gardens – West) by and between HACM and the City of Milwaukee (City) dated as of December 1, 2017 (the Out of Program Agreement). All of the GI constructed by HACM was constructed within City public right-of-way and title to the GI is held by the City. Pursuant to the terms of a Stormwater Management Facility and Common Area Maintenance and Easement Agreement (Westlawn Gardens) by and among the City of Milwaukee, HACM, Association and other owners within Westlawn Gardens (the Stormwater Management Agreement) responsibility for maintaining the GI was assumed by Association. City granted a license to Association to maintain the GI located within the City right-of-way and Association granted City the right to enforce Association's maintenance responsibility. Pursuant to this Covenant, Association further Covenants and agrees that District shall be considered a third-party beneficiary to the Stormwater Management Agreement and shall have the right to enforce the Stormwater Management Agreement against Association according to its terms. The Stormwater Management Agreement was recorded with the Milwaukee County Register of Deeds on March 21, 2019, as Document No. 10856296.

MAINTENANCE COVENANT

In consideration of the facts recited above, Association and HACM ~~grants~~grant, and ~~the~~-District accepts a Maintenance Covenant for a period of twenty years for the ~~green infrastructure~~GI. This Covenant consists of the following terms, rights, and restrictions.

- 1. Purpose.** The purpose of this Covenant is to require Association and HACM to keep, preserve and maintain the ~~green infrastructure~~GI, as described above.
- 2. Effective Dates.** This Covenant is effective when signed by ~~both~~Association, HACM and ~~the~~-District. This Covenant terminates on January 31, 2044.
- 3. Operation and Maintenance.** ~~HACM~~Association will maintain the ~~green infrastructure~~GI so that it remains functional for the entire term of this Covenant. Association and HACM ~~is~~ solely are jointly responsible for operation, maintenance and evaluating performance.

4. **Additional Reserved Rights of ~~HACM~~. ~~HACM~~Association.** Association retains all rights associated with the ~~green infrastructure~~GI, including the right to use it and invite others to use it in any manner that is not expressly restricted or prohibited by the Covenant or the Stormwater Management Agreement or inconsistent with the purpose of ~~the~~this Covenant. However, ~~HACM~~Association may not exercise these rights in a manner that would adversely affect the ~~green infrastructure~~GI.

~~HACM expressly reserves the right to sell, give, bequeath, mortgage, lease or otherwise encumber or convey the green infrastructure, if:~~

~~4.1 The encumbrance or conveyance is subject to the terms of this Covenant.~~

~~4.2 HACM incorporates the terms of this Covenant by reference in any subsequent deed or other legal instrument by which HACM transfers any interest in all or part of the green infrastructure.~~

~~4.3 HACM notifies the District of any conveyance in writing within fifteen days after the conveyance and provides the District with the name and address of the recipient of the conveyance and a copy of the legal instrument transferring rights.~~

~~4.4 Failure of HACM to perform any act required in Subparagraphs 4.2 or 4.3 does not impair the validity of this Covenant or limit its enforceability in any way.~~

5. **District Rights and Remedies.** To accomplish the purpose of this Covenant, Association and HACM expressly ~~conveys~~convey to the District the following rights and remedies:

5.1 Preserve Conservation Values. The District has the right to preserve and protect the ~~green infrastructure~~GI.

5.2 Prevent Inconsistent Uses. The District has the right to prevent any activity or use of the ~~green infrastructure~~GI that is inconsistent with the purpose of this Covenant and require the restoration of areas or features of the ~~green infrastructure~~GI that are damaged by any inconsistent activity or use, pursuant to the remedies set forth below.

5.3 Inspection. The District has the right to: inspect and monitor compliance with the terms of this Covenant; obtain evidence for use in seeking judicial or other enforcement of the Covenant; and otherwise exercise its rights under the Covenant. The District will: provide prior notice to Association and HACM before inspecting the ~~green infrastructure~~GI, comply with safety rules of Association and HACM and avoid unreasonable disruption of the activities and HACM.

6. **Remedies for Violations.** The District has the right to enforce the terms of this Covenant and prevent or remedy violations through appropriate legal proceedings.

6.1 Notice of Problems. If the District identifies problems with the ~~green infrastructure~~GI, then the District will initially attempt to resolve the problems collaboratively. The District will notify Association and HACM of the problems and request remedial action within a reasonable time.

- 6.2 Notice of Violation and Corrective Action. If the District determines that a violation of the terms of this Covenant has occurred or is threatened, then the District will give written notice of the violation or threatened violation and allow at least thirty (30) days to correct the violation. If ~~HACM~~Association fails to respond, then the District may initiate judicial action. The requirement for an initial notice of violation does not apply if, in the discretion of the District, immediate judicial action is necessary to prevent or mitigate significant damage to the ~~green-infrastructure~~GI or if good faith efforts to notify ~~HACM~~Association are unsuccessful.
- 6.3 Remedies. When enforcing this Covenant, the remedies available to the District include: temporary or permanent injunctive relief for any violation or threatened violation of the Covenant, the right to require restoration of the ~~green-infrastructure~~GI to its condition at the time of the conveyance of this Covenant, specific performance, declaratory relief and recovery of damages resulting from a violation of the Covenant or injury to the ~~green-infrastructure~~GI.
- 6.4 Non-Waiver. A delay or prior failure of the District to discover a violation or initiate enforcement proceedings does not waive or forfeit the right to take any action necessary to assure compliance with the terms of this Covenant.
- 6.5 Waiver of Certain Defenses. Association and HACM ~~waives~~waive any defense of laches, such as failure by the District to enforce any term of the Covenant, and estoppel, such as a contradictory statement or action by the District.
- 6.6 Acts Beyond the Control of Association or HACM. The District may not bring any action against Association or HACM for any injury or change in the ~~green-infrastructure~~GI resulting from causes beyond the control of Association or HACM, including, but not limited to, natural disasters such as fire, flood, storm, natural earth movement and natural deterioration, or prudent actions taken by Association or HACM under emergency conditions to prevent or mitigate damage from such causes, provided that Association or HACM notifies the District of any occurrence that has adversely affected or interfered with the purpose of this Covenant.
- 7. Amendment.** At any time, Association, HACM and the District may jointly amend this Covenant in a written instrument executed by ~~both~~all parties. However, no amendment will be allowed if, in the judgment of the District, it:
- 7.1 diminishes the ~~green-infrastructure~~GI,
 - 7.2 is inconsistent with the purpose of ~~the~~this Covenant,
 - 7.3 affects the duration of ~~the~~this Covenant, or
 - 7.4 affects the validity of ~~the~~this Covenant.
- 8. Assignment.** The District may convey, assign or transfer its interests in this Covenant to a unit

of federal, state or local government or to an organization that is qualified within the meaning of Section 170(h)(3) of the Internal Revenue Code and in the related regulations or any successor provisions then applicable. As a condition of any assignment or transfer, any future holder of this Covenant is required to carry out its purpose for the remainder of its term. The District will notify [Association and](#) HACM of any assignment at least thirty days before the date of such assignment. However, failure to give such notice does not affect the validity of assignment or limit its enforceability in any way.

9. Captions. The captions in this Covenant have been inserted solely for convenience of reference and are not part of the Covenant and have no effect on construction or interpretation.

10. Controlling Law and Liberal Construction. The laws of the State of Wisconsin govern the interpretation and performance of this Covenant. Ambiguities in this Covenant will be construed in a manner that best effectuates the purpose of the Covenant and protection of the ~~green infrastructure~~[GI](#).

11. Counterparts. [Association](#), HACM and the District may execute this Covenant in two or more counterparts, which will, in the aggregate, be signed by both parties. Each counterpart is an original document.

12. Entire Agreement. This Covenant sets forth the entire agreement between [Association](#), HACM and the District with respect to this Covenant and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Covenant.

13. Extinguishment. This Covenant may be terminated or extinguished before the expiration of its term, in whole or in part, only through judicial proceedings in a court of competent jurisdiction. Furthermore, the Covenant may be extinguished only if [Association](#), HACM and the District agree that a subsequent unexpected change in the condition of or surrounding the ~~green infrastructure~~[GI](#) makes accomplishing the purpose of the Covenant impossible.

14. ~~Ownership~~—Responsibilities, Costs, and Liabilities. ~~HACM~~[Association](#) retains all responsibilities and will bear all costs and liabilities related to the ~~ownership of the green infrastructure~~[GI](#), including, but not limited to, the following:

14.1 Operation, upkeep, and maintenance. HACM is responsible for the operation, upkeep and maintenance of the ~~green infrastructure~~[GI](#).

14.2 Control. In the absence of a judicial decree, nothing in this Covenant establishes any right or ability in the District to:

- a. exercise physical or managerial control over the day-to-day operations of the ~~green infrastructure~~[GI](#);
- b. become involved in the management decisions of [Association or](#) HACM regarding the generation, handling or disposal of hazardous substances; or

- c. otherwise become an operator of the ~~green infrastructure~~GI within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), or similar laws imposing legal liability on the owner or operator of the ~~green infrastructure~~GI.

14.3 Permits. Association and HACM ~~is~~are solely responsible for obtaining applicable government permits and approvals for any construction or other activity or use permitted by this Covenant. During construction or any other activity, Association and HACM will comply with all applicable federal, state and local laws, regulations, and requirements.

14.4 Indemnification. Association and HACM ~~releases~~release and will hold harmless, indemnify and defend the District and its members, directors, officers, employees, agents and contractors and the heirs, personal representatives, successors and assigns of each of them (collectively “Indemnified Parties”) from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, judgments or administrative actions, including, without limitation, reasonable attorney fees, arising from or in any way connected with:

- a. injury to or the death of any person, or physical damage to the ~~green infrastructure~~GI resulting from any act, omission, condition, or other matter related to or occurring on or about the ~~green infrastructure~~GI, regardless of cause, unless due solely to the negligence of any of the Indemnified Parties;
- b. the violation or alleged violation of, or other failure to comply with, any state, federal or local law, regulation, including without limitation, CERCLA, by any person other than the Indemnified Parties, in any way affecting, involving, or related to the ~~green infrastructure~~GI; or
- c. the presence or release in, on, from, or about the ~~green infrastructure~~GI, at any time, of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, unless caused solely by any of the Indemnified Parties.

Nothing in this ~~agreement~~Covenant is intended to be a waiver or estoppel of Association or HACM or its insurer to rely upon the limitations, defenses, and immunities contained within Wisconsin law, including those contained within Wisconsin Statutes secs. 893.80, 895.52, and 345.05. To the extent that indemnification is available and enforceable, HACM or its insurer will not be liable in indemnity or contribution for an amount greater than the limits of liability for municipal claims established by Wisconsin Law.

15. Severability. If any provision or specific application of this Covenant is found to be invalid by a court of competent jurisdiction, then the remaining provisions or specific applications of this Covenant will remain valid and binding.

16. **Successors.** This Covenant is binding upon and inures to the benefit of Association, HACM and the District and their respective personal representatives, heirs, successors and assigns and will continue as a servitude running with the ~~green infrastructure~~GI for the term of ~~the~~this Covenant.
17. **Terms.** Wherever used in this Covenant, the terms "Association", "HACM" and "District" include the respective personal representatives, heirs, successors, and assigns of Association, HACM and ~~the~~ District.
18. **HACM Role.** HACM joins as a party to this Covenant in order to guaranty the obligations of Association under this Covenant. HACM applied to and received funding from District for a portion of the costs of GI. The GI was constructed within City public right-of-way by HACM pursuant to the Out of Program Agreement. City, HACM and Association agreed to allocate responsibility for maintenance of the GI to Association pursuant to the term of the Stormwater Management Agreement so that Association could assess all property owners within Westlawn Gardens for their proportionate share of the costs incurred by Association to maintain the GI in accordance with terms of this Covenant and the Stormwater Maintenance Agreement..

WESTLAWN GARDENS PROPERTY OWNERS' ASSOCIATION, INC.

By: _____
Anissia Robertson, President

~~MILWAUKEE METROPOLITAN
SEWERAGE
DISTRICT~~MILWAUKEE
METROPOLITAN SEWERAGE
DISTRICT

**HOUSING AUTHORITY OF THE CITY OF
MILWAUKEE**

By: _____

Kevin L. Shafer, P.E.
Executive Director

By: _____

Willie [L. Hines, Jr.](#)
Secretary Executive Director

Date: _____

Date: _____

Approved as to Form

Approved as to Form

By: _____

Attorney for the District

By: _____

Attorney for HACM

Exhibit A **Westlawn Renaissance Phase Two**



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Summary report: Litera Compare for Word 11.4.0.111 Document comparison done on 4/23/2024 10:21:37 AM	
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<u>Table Insert</u>	0
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Table moves from	0
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