

COMMON GREASE INTERCEPTOR AGREEMENT

This Common Grease Interceptor Agreement (hereinafter “Agreement”), dated the ____ day of _____, 2007, is made and entered into by and between the Johnson County Environmental Department (hereinafter “JCED”), and _____ (hereinafter referred to, whether one or more, as “Owner”).

WITNESSETH:

WHEREAS, the Owner has filed an application with the JCED requesting the approval and issuance of a Class A, Common Grease Interceptor Permit (hereinafter “Permit”), to allow the Owner to install a common grease interceptor (hereinafter “Interceptor”), to be shared by multiple food service facilities leasing portions of the Owner’s commercial property;

AND WHEREAS, for purposes of the Permit and this Agreement, the word “Interceptor” shall mean a common grease interceptor that can be used by more than one food service facility (user) in a single building, the size of the Interceptor to be based on the limits of the potable water line serving the building, or such other alternate sizing criteria approved by the JCED Director of Pollution Control (hereinafter “Pollution Control Director”), such that the Interceptor shall provide a thirty (30) minute peak hydraulic detention time of the wastewater flow;

AND WHEREAS, for purposes of the Permit and this Agreement, the word “grease” shall mean fats, oils and grease;

AND WHEREAS, for purposes of this Agreement, the words “interior piping or plumbing” shall mean and include both (i) the interior piping or plumbing lines extending

from the shared common grease line to the exterior wall(s) of a building on the Property containing more than one food service facility, and (ii) the interior piping or plumbing lines extending from the grease producing fixtures to the shared common grease line;

AND WHEREAS, for purposes of the Permit and this Agreement, the words “exterior piping or plumbing” shall mean those exterior piping or plumbing lines extending from the exterior wall(s) of a building on the Property containing more than one food service facility, to the Interceptor; and

AND WHEREAS, for purposes of the Permit and this Agreement, the term “food service facility” shall mean any user that prepares and/or packages food for sale or consumption, on or off-site, with the exception of private residences. Food service facility shall include, but is not limited to, food courts, food manufacturers, food processors, food packages, restaurants, grocery stores, delicatessens, bakeries, lounges, hospitals, hotels, nursing homes, churches and schools. Food service facility shall not include a facility that only prepares beverages; a facility that only sells prepackaged foods; a facility that is currently permitted through the JCED Industrial Pretreatment Program; or a facility classified by JCED as a Significant Industrial User;

AND WHEREAS, the Owner’s commercial property that is the subject of the Permit and this Agreement is located at or about _____, and is legally described on “Exhibit A,” attached hereto and incorporated herein, and which commercial property shall be referred to herein as the “Property;”

AND WHEREAS, the Owner is the sole owner of the Property, there being no others;

AND WHEREAS, the Owner's requested application to install an Interceptor on the Property is in lieu of the JCED requirement to install a separate grease interceptor for each food facility leasing a portion of the commercial building located on the Property;

AND WHEREAS, the operation of food service facilities shall produce grease, therefore the Interceptor and associated interior and exterior piping and plumbing need to be properly designed, installed, operated and maintained by the Owner in order to avoid excessive grease discharges into the sanitary sewer system that obstruct the wastewater lines, thereby causing significant repair costs and adverse impacts to the environment;

AND WHEREAS, the use of a common grease interceptor to be utilized by multiple food service facilities, as opposed to a single grease interceptor utilized by a single food service facility, poses significantly more challenges regarding its design, installation, operation, maintenance and regulation;

AND WHEREAS, additional precautions and protections are therefore necessary so that the the sanitary sewer system as well as the public health, safety and welfare can be safeguarded;

AND WHEREAS, as a term and condition of the JCED's approval of the Permit, the JCED required the Owner to enter into this Agreement regarding the Owner's contractual obligations and duties concerning Owner's use of an Interceptor in conjunction with the public sanitary sewers, and JCED's rights concerning said use;

AND WHEREAS, in consideration of, among other things, the JCED's approval of the Permit, and the Owner's contemplated use of the public sanitary sewers, the parties hereto are now desirous of entering into this Agreement, not only for the purpose of satisfying one of the conditions placed upon JCED's Permit approval, but to also reduce

to writing, for their mutual advantage, the terms and conditions regarding the parties' obligations and rights;

NOW, THEREFORE, the JCED and Owner, on behalf of themselves and their heirs, successors, assigns, grantees, transferees, lessees, legal representatives, executors, and administrators (hereinafter "Successors"), hereby enter into this Agreement on the following terms and conditions and in consideration of the mutual covenants and promises set forth herein:

1. RECITALS. The parties agree that the above written recitals are a true and accurate factual narration.

2. PROPERTY OWNER. The Owner hereby represents and warrants that upon the effective day of this Agreement that the Owner is the only owner(s) of the Property, there being no others.

3. PUMPING AND CLEANING OF INTERCEPTOR. The Owner agrees to maintain the Interceptor and associated interior and exterior piping and plumbing, which shall include but not be limited to the Interceptor pumping and clean out schedule, according to and in compliance with the requirements of the Permit and the Johnson County Code of Regulations for Sanitary Sewer Use, 2003 Edition (hereinafter "Sewer Use Code"). In the event of a conflict, either real or apparent between any of said requirements, then the more stringent requirements shall be deemed to control.

4. FAILURE TO SATISFACTORILY PUMP AND CLEAN. In the event the Owner:

- a. fails to timely maintain the Interceptor and associated interior and exterior piping and plumbing, according to and in compliance with

the requirements of the Permit and the Sewer Use Code, and Owner's failure constitutes a threat to the public sanitary sewer system or the public health, safety and welfare, as determined by the JCED Director (hereinafter "Director"); or

- b. despite the Owner's timely maintenance referenced above, conditions nonetheless exist which constitute a threat to the public sanitary sewer system or the public health, safety and welfare, as determined by the Director;

then the JCED may, at its option, exercise its rights, among others, by entering upon the Property and perform, or have performed on its behalf, the necessary maintenance of the Interceptor and associated interior and exterior piping and plumbing, including any and all environmental cleanup (hereinafter "Cleanup") required or made necessary as a result of an Interceptor release or overflow, or public sanitary sewer obstruction. In the event the JCED staff or their agents, if any, should desire to enter upon the Property to perform the necessary maintenance and/or Cleanup, then the Owner hereby expressly consents to the JCED staff and their agents entering upon the Property to perform said activities, and the Owner hereby grants and agrees that the JCED staff shall have access to the Property for the performance of said activities.

5. OWNER REIMBURSEMENT. Notwithstanding any other term or provision to the contrary herein, if any, it is expressly understood and agreed by the Owner, that the Owner and not the JCED shall remain liable and responsible for the satisfactory maintenance of the Interceptor and associated interior and exterior piping and plumbing, and Cleanup, regardless of any maintenance or Cleanup performed by and at

the option of the JCED staff or its agents, and the JCED hereby expressly disclaims any and all duties, responsibilities, obligations or warranties with respect to said maintenance or Cleanup. Therefore, the Owner agrees to and shall reimburse the JCED for the cost and expense incurred by JCED and its agents (hereinafter “Reimbursement Costs”), if the JCED or its agents perform the necessary maintenance or Cleanup. The Owner agrees to remit payment within thirty (30) days from the date of the bill requesting payment of the Reimbursement Costs. Furthermore, the Owner agrees to accept an itemized statement of the Director as the final and binding accounting of the actual Reimbursement Costs incurred by JCED staff and their agents for the necessary maintenance and/or Cleanup.

6. PROPERTY LIEN. If JCED does not receive the Owner’s payment for the Reimbursement Costs within thirty (30) days from the date of the bill, then the payment shall be considered delinquent, and shall accrue interest at the same rate interest accrues for delinquent ad valorem taxes under Kansas state law. Unpaid Reimbursement Costs and interest shall be collected in the same manner that delinquent ad valorem taxes are collected under Kansas state law. In addition thereto, the Board of County Commissioners of Johnson County, Kansas (hereinafter “BOCC”), may cause suit to be commenced against the Owner for failure to make timely payment of such Reimbursement Costs and accrued interest in any Court of competent jurisdiction for the purpose of collecting such charges.

On or before August 15, of each year, the Director shall certify to the Johnson County Department of Records and Tax Administration (hereinafter “RTA”), the legal description of any real property subject to a lien for delinquent Reimbursement Costs along with the amount of such costs and interest accrued through the date of certification.

Upon receipt of certification, the RTA shall place such charges for delinquent Reimbursement Costs and accrued interest on the tax rolls of the Property for collection in the same manner that a lien securing delinquent ad valorem taxes are collected under Kansas state law.

Written notice of the intent of the Director to certify such delinquent Reimbursement Costs and accrued interest to the RTA for placement on the tax rolls shall be sent by certified mail at least thirty (30) days prior to certification to the mailing address of the Owner designated in Paragraph 16 of this Agreement, that shall state:

- a. the intent of the Director to certify the delinquent Reimbursement Costs and accrued interest to the RTA for placement on the tax rolls of the subject property unless such Reimbursement Costs and accrued interest are paid in full within thirty (30) days from the date of the Notice; and
- b. the date the Director intends to certify the lien.

Any partial payments received in payment of delinquent Reimbursement Costs and accrued interest shall be applied first to any accrued interest and then to the principal amount of such Reimbursement Costs. Following the placement of delinquent Reimbursement Costs and accrued interest on the real estate tax rolls, all payment for such charges shall be made to the Johnson County Treasurer's Office subject to the procedures under which delinquent ad valorem real estate tax payments are accepted, applied and distributed by the Johnson County Treasurer under Kansas state law.

7. ASSUMPTION OF RISK. The design, type, sizing and capacity of grease interceptors are usually based upon the number and type of kitchen fixtures at each food

service facility that may discharge to the grease interceptor at any given time. As the number of food service facilities and kitchen fixtures that may ultimately utilize the Interceptor is currently unknown, the design, type, sizing and capacity are based on the maximum water flow to the building on the Property, or such other alternate sizing criteria approved by the Pollution Control Director. Therefore, due to the inherent uncertainty involved in approving the design, type, sizing and capacity of the proposed Interceptor, the Owner hereby expressly agrees and assumes all risk and responsibility, financial and otherwise, for the design, type, sizing, and capacity of the Interceptor, and for the use of the Interceptor by the Owner, and their invitees, guests, lessees, or others. Furthermore, in the event the JCED subsequently requires modification of the design, type, sizing, or capacity of the Interceptor for satisfactory and proper connection to the public sanitary sewer lines, for proper service to the Property, or for proper operation of the Interceptor, then the Owner shall and hereby does agree to complete such modifications at the Owner's sole cost and expense, free of any cost, duty or liability to the JCED.

8. PERMIT APPLICATIONS. The Owner hereby agrees that:
 - a. a Class A, Common Grease Interceptor Permit application and application fees pursuant to the then applicable fee schedule (including annual renewal fees, when applicable), must be submitted to the JCED by the Owner, and a Class A, Common Grease Interceptor Operating Certificate issued to the Owner by the JCED; and

- b. a Class B, Common Grease Interceptor Permit application and application fees pursuant to the then applicable fee schedule (including annual renewal fees, when applicable), must be submitted to the JCED by each food service facility utilizing the Interceptor, and a Class B, Common Grease Interceptor User Certificate issued to each food service facility by JCED;

prior to the discharge of any wastewater to the Interceptor. Furthermore, the Owner agrees that it shall not allow a food service facility to discharge to the Interceptor until the food service facility has been issued a Class B, Common Grease Interceptor User Certificate by JCED.

9. SIZING MODIFICATIONS. The Owner hereby further agrees that Owner shall request the written approval of the Pollution Control Director prior to making any changes or modifications to the:

- a. approved Interceptor Plan, including but not limited to the Interceptor and any associated piping or plumbing; and
- b. potable water line(s) serving any building located on the Property, including but not limited to the water meter sizing for the building.

10. INSPECTION AUTHORITY AND RIGHT OF ENTRY. In addition to any other rights granted to it, the Owner hereby authorizes and grants to the JCED and its agents:

- a. the right of entry to the Property;
- b. access to inspect, and without delay, the Interceptor and associated interior and exterior piping and plumbing;

- c. access to perform the necessary maintenance on the Interceptor and associated interior and exterior piping and plumbing, including but not limited to Cleanup; and
- d. access to inspect, and without delay, the Owner's maintenance records regarding the pumping and cleanout of the Interceptor.

11. RELEASE, WAIVER AND COVENANT NOT TO SUE. The Owner does hereby expressly agree to fully and forever release Johnson County, Kansas, and their officials, employees, agents, representatives and Successors, and promises not to sue or bring legal action against same, from and for any and all claims, liability, cost or damages, or other obligations of whatever kind, which arise out of or as a consequence of the design, type, sizing, capacity, installation, maintenance and use of the Interceptor and associated piping or plumbing on the Property, including but not limited to claims or obligations for delay, postponement or loss of income from the Property, for inability to use the Interceptor, for costs of building, rebuilding, locating, relocating or adjusting plumbing and/or plumbing fixtures on the Property, and for non-acceptance or approval of the Interceptor or associated piping and plumbing. Furthermore, the Owner hereby expressly waives any and all rights of the Owner not expressed in this Agreement that may, by law or otherwise, be imposed or arise in relation to the design, type, sizing, capacity, installation, maintenance and use of the Interceptor and associated piping and plumbing.

12. REVOCATION. The authority granted to the Owner by the Permit and this Agreement, to install or use the Interceptor and associated piping or plumbing on the Property, may be revoked by the JCED at any time in the event that the Owner fails or

refuses to fully comply with the terms of the Permit or this Agreement. The Owner shall immediately, upon receipt of a written notice that authority has been revoked, cease any construction, connection and/or use of the Interceptor and associated interior and exterior piping or plumbing covered by the Permit or this Agreement.

13. ASSIGNMENT. This Agreement and the duties and obligations thereunder, may not be assigned by the Owners, in whole or in part, to any person for any reason, without the prior written consent of the JCED.

14. INDEMNITY. The Owner further hereby expressly agrees to protect, defend, indemnify and hold Johnson County, Kansas, and their officials, employees, agents, representatives and Successors, free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities, whether false, fraudulent, meritless or meritorious, of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings or causes of action of every kind and character (the "claims") in connection with, relating to or arising directly or indirectly out of the design, type, sizing, capacity, installation, maintenance, and use of the Interceptor and the associated interior and exterior piping or plumbing on the Property, including but not limited to those claims of tenants or lessees on the Property, or of any other persons or entity. The Owner further hereby expressly agrees to investigate, handle, respond to, provide defenses for and defend any such claims at its sole expense and agrees to bear all other costs and expenses related thereto, even if said claims are groundless, false or fraudulent.

15. EFFECTIVE DATE AND TERM. The effective date of this Agreement shall be _____, notwithstanding that the parties to this Agreement may

have executed this Agreement on an earlier or later date, and shall continue in effect for as long as (i) the Owner is connected to the JCW sanitary sewer system by way of an Interceptor on the Property, and (ii) an additional 90 day period following disconnection of the Interceptor from said system.

16. NOTICES. Any notices, bills or other correspondence required under this Agreement shall be delivered in person, or sent by U.S. mail, postage prepaid, addressed to the following persons:

If to the JCED: Johnson County Environmental Department
c/o Director, Pollution Control Division
11811 S. Sunset Drive
Suite 2700
Olathe, Kansas 66061

With copies to: Johnson County Legal Department
111 S. Cherry, Suite 3200
Olathe, Kansas 66061

If to the Owner: _____

17. STATUS OF PARTIES. It is understood and agreed between the parties that this Agreement does not and shall not be construed, interpreted or argued by either of them, in a court of law or otherwise, to create any principal/agent, master/servant, employer/employee or partnership relationship of any kind between the Owner or its Successors, and the JCED or its Successors and the JCW or its Successors.

18. MODIFICATION. It is understood and agreed between the parties that there shall be no waiver or modification of this Agreement unless such waiver or modification is first reduced to writing and signed by both parties.

19. SEVERANCE. If any clause or provision of this Agreement is held to be illegal, invalid or unenforceable by a court of competent jurisdiction, then in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby.

20. LAWS OF KANSAS. It is understood and agreed between the parties that this Agreement, the performances required herein and all proceedings that flow therefrom, shall be construed according to and controlled by the laws of the State of Kansas. In any proceeding that may be brought arising out of, in connection with, or by reason of this Agreement, the laws of the State of Kansas shall be applicable, controlling and shall govern to the exclusion of the law of any other forum, without regard to the jurisdiction in which any such proceeding may be instituted.

21. BREACH OF AGREEMENT. It is understood and agreed upon by the parties that a breach or default by the Owner of any term, condition, provision or requirement of this Agreement or the Permit shall enable JCED, at its option, to exercise its rights, among others, of terminating the Permit and use of the Interceptor; imposing fines and penalties and obtaining injunctive relief as set forth in the Sewer Use Code; and requiring the Owner to install and utilize individual grease interceptors for each food service facility on the Property.

22. MATTERS DISREGARDED. The titles of the several sections, subsections and paragraphs set forth in this Agreement are inserted for convenience of reference only and they shall be disregarded in construing or interpreting any of the provisions of this Agreement.

23. RECORDING THIS AGREEMENT. The Owner further agrees that this Agreement shall be filed by the Owner with the Department of Records and Tax Administration of Johnson County, Kansas (formerly known as the Office of the Register of Deeds, Johnson County, Kansas), as soon as reasonably practical after it has been signed by both parties hereto, such costs as may be incurred by the recording to be paid by the Owner. The Owner shall provide the Pollution Control Director, the County's Chief Counsel, and the Clerk of the BOCC with a copy of the recorded Agreement immediately after it has been recorded and returned to the Owner.

24. COVENANTS RUNNING WITH THE LAND. All of the terms, provisions and requirements of this Agreement shall be deemed to be covenants running with the land, and shall, therefore, be binding upon the Owner and its respective Successors, and all persons claiming by or through the Owner shall be taken to hold, agree, and covenant to conform to and observe said covenants, and the sale or use of all or any portion of the Property shall be subject thereto. The Owner further agrees that it shall provide notice, in writing, of the conditions of this covenant and reservation to any and all persons who claim or may have an interest in the Property, to any and all persons who may be tenants, occupants or users of the Property, to the City of _____, Kansas, and to all other persons or entities connected to use of the Property, including but not limited to realtors, developers, builders and contractors. The JCED, JCW and/or the Board of County Commissioners of Johnson County, Kansas shall have the right to enforce the observance of these covenants and reservations in any court of competent jurisdiction.

25. SIGNATURE AUTHORITY. The Owner hereby states, represents and warrants that the individual whose name and signature appear below for and on behalf of the Owner has in fact the authority to so bind the Owner to the terms and conditions of this Agreement.

26. FINES. The Owner agrees that it shall be, and hereby is held subject to the Sewer Use Code, including but not limited to the following provisions set forth with Article 5 of the Sewer Use Code, regarding fines, and the word “user” as it appears in said provisions, shall be interpreted and used in equivalent meaning as being applicable toward and applying to the Owner:

- a. Part A, Section 6, Administrative Fines;
- b. Part B, Section 2, Civil Penalties;
- c. Part B, Section 3, Criminal Prosecution; and
- d. Attachment “A”, Administrative Fine Structure.

27. TIME. Time is of the essence in the performance of this Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands below.

JOHNSON COUNTY
ENVIRONMENTAL DEPARTMENT

Cindy Kemper, Director

APPROVED AS TO FORM:

Richard J. Lind
Deputy County Counselor

OWNER

STATE OF KANSAS)
) SS:
COUNTY OF JOHNSON)

The foregoing instrument was acknowledged before me this ____ day of _____, _____, by Cindy Kemper, as Director of the Johnson County Environmental Department.

Notary Public

My Commission Expires:

STATE OF _____)
) SS:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, _____, by _____.

Notary Public

My Appointment Expires:

EXHIBIT A

[LEGAL DESCRIPTION]