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Post-Construction Stormwater Control Measures Operations and Maintenance Declaration of Covenants and Easement

This Post-Construction Stormwater Control Measures Operations and Maintenance Declaration of Covenants and Easement (the “Declaration”) is entered into as of __, 20__, (the “Effective Date”) by _____ the “Property Owner”), for the benefit of the **CITY OF CHARLOTTE**, a municipal corporation organized under the laws of the State of North Carolina (the “City”).

The term “Property Owner” as used herein means the owner(s) of the Property (as hereinafter defined), together with their successors and assigns who take or succeed to ownership of the Property (or any portion thereof).

WHEREAS, the Property Owner is the current owner of certain real property more particularly described by deed recorded with the Register of Deeds of Mecklenburg County, North Carolina, in Deed Book _____ at Page _____, having tax parcel ID # _____, and located at _____ (hereinafter referred to as “the Property”); and

WHEREAS, the Property Owner, its administrators, executors, successors, heirs, or assigns, (the “Parties”), acknowledges that the health, safety and welfare of the citizens of the City require that the Stormwater Control Measure facility or facilities (collectively, the “SCM Facilities”) shown on the approved development plans and specifications for the Property must be constructed and maintained for the Property, and,

WHEREAS, the City of Charlotte Post-Construction Stormwater Regulations (Article 25 *et seq.* of the Charlotte Unified Development Ordinance, hereinafter called the “PCSR”) requires that the stormwater SCM Facilities shown on the approved development plans and specifications be constructed and maintained by the Responsible Persons/Entities as defined in the PCSR (hereinafter collectively called the “Responsible Party”); and.

WHEREAS, pursuant to the provisions of the PCSR, the Property Owner is required to execute and record this Declaration and convey the easements and rights described herein as a condition to the City issuing Certificates of Occupancy for Property Owner’s development on the Property;

NOW, THEREFORE, in consideration of the benefits received by the Property Owner as a result of approval by the City of the development plans, the Property Owner with full authority to execute deeds, mortgages, other covenants, and all rights, title and interest in the Property, does hereby covenant with the City as follows:

1. The SCM Facilities shall be constructed by the Property Owner in accordance with the PCSR and the approved development plans and specifications for the Property.
2. The Property Owner shall maintain the SCM Facilities in good working condition acceptable to the City and in accordance with the Operations and Maintenance Tasks and Schedules found in the PCSR Administrative Manual (“the Administrative Manual”)
3. The Property Owner hereby gives, grants, and conveys to the City a post-construction control maintenance easement (“PCCE”) as shown on the attached Exhibit or in Map Book: and Page: which will allow the City to inspect, monitor, maintain, repair or reconstruct the SCM Facilities. This PCCE shall include twenty (20) foot wide access that will connect the SCM Facilities to a public right-of- way, which will allow the City the access it requires to inspect, monitor, maintain, repair or reconstruct the SCM Facilities. Said easement shall in no way confer an obligation on the City to assume responsibility for the SCM Facilities.
4. The Property Owner hereby grants permission to the City, its authorized agents and employees, to enter upon the Property and to inspect the SCM Facilities whenever the City deems it necessary. The right of entry in no way confers an obligation on the City to assume responsibility for the SCM Facilities.

5. In the event the Property Owner fails to maintain the SCM Facilities as described in the PCSR and the Administrative Manual or approved development plans and specifications for the Property, the City, after reasonable notice to the Property Owner, may assess fines and enter the Property and take whatever steps the City deems necessary to return the SCM Facilities to good working condition acceptable to the City. It is expressly understood by the Property Owner that the City is under no obligation to construct, maintain or repair the SCM Facilities and in no event shall this Declaration be construed to impose any such obligation on the City.
6. The Property Owner shall be fully responsible for having the SCM Facilities inspected annually by a qualified inspector, as determined by the Storm Water Administrator, and shall provide to the City, at no additional costs to the City, an Annual Maintenance and Inspection Report as provided on The City Of Charlotte's Storm Water Services website). The Property Owner's failure to provide to the City said Annual Maintenance and Inspection Report within the appropriate time as defined in the Administrative Manual may result in fines in accordance with the PCSR . The Storm Water Administrator at his/her discretion may make annual inspections of the SCM Facilities to ensure that the required maintenance has been conducted appropriately and the performance of the SCM Facilities is in compliance with the PCSR.
7. In the event the City, pursuant to the Declaration, performs work of any nature to the SCM Facilities, or expends any funds in the performance of said work for labor, use of equipment, supplies, materials and the like, and/or incurs the costs of legal action, including attorneys' fees, the Responsible Party shall reimburse the City, or shall forfeit any required bond upon demand, within thirty (30) days of receipt from the City of a list for all the costs incurred by the City hereunder. If the Responsible Party has not reimbursed the City within the above mentioned time period, the City shall secure a lien against the Property in the amount of said costs. The actions described in this paragraph are in addition to and not in lieu of any and all legal remedies available to the City as a result of the Property Owner's failure to maintain the SCM Facilities, and the Parties hereto acknowledge that the City expressly reserves all of its rights of enforcement and legal remedies under the PCSR.
8. It is the intent of the Parties to ensure the proper maintenance of the SCM Facilities by the Responsible Party; provided, however, nothing in this Agreement shall be deemed to restrict the City's rights of enforcement or legal remedies under the PCSR, which terms are incorporated herein by reference, regardless of whether a Responsible Party is a party to this Declaration. This Declaration shall not be deemed to create or affect any additional liability of any party for damage alleged to result from or caused by storm water runoff in addition to any such liability otherwise existing under applicable law.
9. Sediment accumulation and other waste materials resulting from the normal operation of the SCM Facilities shall be removed by the Property Owner. The Property Owner will make arrangements at the Property Owner's expense for the removal and off-site disposal of all accumulated sediments and other waste materials.

10. In the event a Property Owner sells or transfers the Property, the transferring Property Owner shall provide to the City, a Declaration of Transfer of Inspection/Maintenance Responsibilities of Stormwater SCM Facilities as provided on The City Of Charlotte's Storm Water Services website signed by the transferring Property Owner and the transferee and witnessed by a public notary to document that all maintenance responsibilities have been transferred and communicated to such transferee. Upon such transfer or conveyance of the Property by the transferring Property Owner, all obligations of the transferring property Owner hereunder shall automatically be transferred and assigned to, and assumed by transferee and such transferee shall be and become the "Responsible Party" under this Declaration.
11. The Property Owner shall indemnify and hold harmless the City and its authorized agents and employees for any and all damages, accidents, casualties, occurrences or claims that might arise or be asserted against the City from the construction, operation, repair, presence, existence or maintenance of the SCM Facility or SCM Facilities. In the event a claim is asserted against the City, its authorized agents or employees, the City shall promptly notify the Property Owner and the Property Owner shall defend the City, its authorized agents or employees at the Property Owner's own expense against any such claim. If any judgment or claims against the City, its authorized agents or employees shall be allowed, the Property Owner shall pay for all costs and expenses, including attorneys' fees, in connection therewith.
12. This Declaration shall be recorded by the Property Owner among the deed records of the Mecklenburg County Register of Deeds and shall constitute a covenant running with the land and shall be binding on the Property Owner. The City may choose to withhold the release of any certificates of occupancy for the Property until such time that this Declaration has been recorded by the Property Owner with the Register of Deeds in Mecklenburg County.
13. This Declaration may be enforced by proceedings at law or in equity by or against the Parties hereto and their respective successors in interest.
14. Invalidation of any one of the paragraphs of this Declaration shall in no way affect any other paragraphs and all other paragraphs shall remain in full force and effect.

[Signatures of the parties begin on the next page.]

IN WITNESS WHEREOF, Property Owner has executed this Declaration of Covenants as of this _____ day of _____, 20__.

ATTEST:

PROPERTY OWNER,

(Signature)

(Signature)

(Printed Name)

Printed Name and Title)

STATE OF:

COUNTY OF:

On this _____ day of _____, 20__, before me, the undersigned officer, a Notary Public in and for the State and County aforesaid, personally appeared_, who acknowledged himself to be , and he, as such authorized to do so, executed the foregoing instrument for the purposes therein contained by signing his name on behalf of said company.

Witness my hand and Notarial Seal



SEAL

My commission expires

Notary Public