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## Post-Construction Stormwater Best Management Practices Operations and Maintenance Agreement and Easement Agreement

**This Post-Construction Stormwater Best Management Practices Operations and Maintenance Agreement** and Easement Agreement (the “Agreement”) is entered into and agreed upon as of \_\_\_\_\_, \_\_\_\_\_, (the “Effective Date”) by and between \_\_\_\_\_ (the “Property Owner”), and 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 City of Charlotte (“the City”) and the Property Owner, its administrators, executors, successors, heirs, or assigns, (the “Parties”), agree that the health, safety and welfare of the citizens of the City require that the Best Management Practices facility or facilities (collectively, the “BMP 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 Ordinance (Sections 18-101 *et seq.* of the Charlotte City Code of Ordinances, hereinafter called the “PCSO”) requires that the stormwater BMP Facilities shown on the approved development plans and specifications be constructed and maintained by the Property Owner; and.

**WHEREAS**, pursuant to the provisions of the PCSO, the City requires that Property Owner execute and record this Agreement 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 foregoing promises, the mutual covenants contained herein, and the following terms and conditions, the Parties hereto agree as follows:

1. The BMP Facilities shall be constructed by the Property Owner in accordance with the PCSO and the approved development plans and specifications for the Property.
2. The Property Owner shall maintain the BMP Facilities in good working condition acceptable to the City and in accordance with the Operations and Maintenance Tasks and Schedules found in the PCSO 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 BMP Facilities. This PCCE shall include twenty (20) foot wide access that will connect the BMP Facilities to a public right-of- way, which will allow the City the access it requires to inspect, monitor, maintain, repair or reconstruct the BMP 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 BMP Facilities whenever the City deems it necessary. Whenever possible, the City shall provide notice to the Property Owner prior to entry. The right of entry in no way confers an obligation on the City to assume responsibility for the BMP Facilities.
5. In the event the Property Owner fails to maintain the BMP Facilities as described in the PCSO 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 BMP Facilities to good working condition acceptable to the City. It is expressly understood and agreed by the Parties that the City is under no obligation to construct, maintain or repair the BMP Facilities and in no event shall this Agreement be construed to impose any such

obligation on the City.

6. The Property Owner shall be fully responsible for having the BMP 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 in the Administrative Manual (see Appendix D). 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 to the Property Owner. The Storm Water Administrator at his/her discretion may make annual inspections of the BMP Facilities to insure that the required maintenance has been conducted appropriately and the performance of the BMP Facilities is in compliance with the PCSO.
7. In the event the City, pursuant to the Agreement, performs work of any nature to the BMP Facilities, or expends any funds in the performance of said work for labor, use of equipment, supplies, materials, and the like, the Property Owner 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 Property Owner 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 BMP Facilities.
8. It is the intent of the Parties to insure the proper maintenance of the BMP Facilities by the Property Owner; provided, however, that this Agreement 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 BMP 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 BMP Facilities as provided in the PCSO Administrative Manual (see Appendix "O") 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 "Property Owner" under this Agreement.
11. The Property Owner hereby agrees to 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 BMP Facility or BMP 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 Agreement 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 Agreement has been recorded by the Property Owner with the Register of Deeds in Mecklenburg County.
13. This Agreement 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 Agreement shall in no way affect any other paragraphs and all other paragraphs shall remain in full force and effect.
16. In such cases where development has been deemed single family residential by definition, the Property Owner may petition the City to accept major maintenance responsibilities for the Best Management Practices for that development only after a two year warranty period has expired and the City has determined that the BMP Facilities meet the design requirements of the BMP Design Manual and Land Development Standards, and that all maintenance responsibilities have been upheld during this two year period successfully. It is further understood that the Property Owner will continue to provide routine maintenance activities as identified in the Administrative Manual after the City has agreed to accept the BMP Facilities for maintenance. Should at any time the City discover that the Property Owner has not performed the routine maintenance activities identified in the Administrative Manual in an acceptable manner; the City may impose all fines and remedies allowed by law.

IN WITNESS WHEREOF, Property Owner acknowledges and agrees to the terms of this agreement as of this \_\_\_\_\_ day of \_\_\_\_\_,

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 \_\_\_\_\_, of \_\_\_\_\_, and he as such authorized to do so, executed the foregoing instrument for the purposes therein contained by signing his name as \_\_\_\_\_ for said \_\_\_\_\_.

Witness my hand and Notarial Seal



SEAL

My commission expires \_\_\_\_\_

Notary Public