

repairs, maintenance, removal, and/or replacement due to the defect or defects before the expiration of the ____ year Warranty Period, in which case the Developer shall reimburse the City for its costs incurred therefore and;

- C. Provide and maintain suitable barricades for the Improvements wherever necessary, and;
 - D. Save and hold harmless the City, its officers, agents and employees from any and all claims for damage to persons or property or death, including legal fees and costs associated therewith, sustained as a result of any defect or defects in the Improvements or lack of maintenance thereof or any negligent act or omission by the Developer, its employees, agents, contractors and subcontractors arising out of this Warranty Agreement, and;
 - E. Save and hold harmless the City, its officers, agents and employees from any and all claims for damage to persons or property or death, including legal fees and costs associated therewith, occurring during any Developer repairs, maintenance, removal, and/or replacement of the Improvements, and;
 - F. Developer shall not be responsible for damages to the Improvements caused by utilities or others.
2. If in the sole judgment of the City or its designee, repairs, maintenance, removal, and/or replacement to the above-referenced Improvements become necessary at any time during the Warranty Period or after the Warranty Period if the defect or defects are discovered within the expiration of the ____ year Warranty Period, said repairs, maintenance, removal, and/or replacement shall be made by the Developer at the Developer's expense upon written notice from the City or its designee. Developer shall take out and remove all inferior or defective Improvements and replace the same with good and acceptable trees approved by the City as necessary to bring the Improvements into compliance with the certified Street Tree Plans and the Street Tree Manual following final inspection and preceding the commencement of the ____ year Warranty Period. Failure to remedy any defect in the Improvements as requested by the City or its designee shall extend the Warranty Period until such repairs are completed and accepted by the City. If the City elects to make such repairs, the Developer shall reimburse the City for all expenses associated with such repairs no later than thirty (30) days from demand for reimbursement from the City. Repaired and/or removed and replaced Improvements shall be warranted for a period of ____ years from the date of City's acceptance of the repair and/or removal and replacement of the Improvement(s).
3. If during the ____ year Warranty Period, the City or its designee determines that any of the Improvements, need emergency repairs, maintenance, removal, and/or replacement in order to comply with federal, state or local regulations, or if the City or its designee determines that any Improvements require emergency repairs, maintenance, removal, and/or replacement in order to protect the public health, safety or welfare, then the City or its designee may demand in writing of Developer that such repairs, maintenance, removal, and/or replacement or maintenance be completed within fifteen (15) calendar

days from receipt of such demand notice from the City. Should the Developer fail to complete such repairs, maintenance, removal, and/or replacement of such Improvements within fifteen (15) calendar days of receipt of such demand notice from the City, then the City may perform such emergency repairs, maintenance, removal, and/or replacement to the Improvements and Developer shall be responsible for the costs of any such repairs, maintenance, removal, and/or replacement to the Improvements performed by the City and shall reimburse the City for all expenses associated with such repairs, maintenance, removal, and/or replacement no later than thirty (30) days from receipt of a demand for reimbursement from the City.

4. As a condition of this Agreement, the Developer shall provide a bond, attached hereto and incorporated herein as Exhibit A, in a form acceptable to the City for the benefit of the City (hereinafter the “**Warranty Bond**”). The Warranty Bond shall contain the following terms:
 - A. The amount of the Warranty Bond shall be _____ Dollars and ___/100 (_____), which represents ten percent (10%) of the cost of the constructed Improvements as shown on the Street Tree Plan approved by the City and as verified by an independent cost estimate for the Bonded Improvements prepared by _____, attached hereto and incorporated by reference herein as Exhibit B. The Warranty Bond shall either be provided by a reputable Federal Treasury Department approved bonding company with at least a rating of A minus or in a form acceptable by the City.
 - B. The Developer shall authorize the City to draw against the Warranty Bond upon presentation of a statement signed by an authorized officer of the City that the Developer has failed to maintain or repair the Improvements as required under this Agreement.
 - C. In the event the City performs maintenance or repairs to the Improvements, the Developer hereby agrees to give the City access to the approved Street Tree Plans for the Project and to draw against the Warranty Bond to pay for the necessary repair, maintenance, removal, and/or replacement to the Improvements. If necessary, the Developer shall cause the Warranty Bond to be extended by the Surety of the Warranty Bond, in order to provide the Surety or the City with sufficient time in which to complete the repairs, maintenance, removal, and/or replacement to the Improvements and draw against the Warranty Bond to pay for such repairs, maintenance, removal, and/or replacement in accordance with this Agreement.
5. During the Warranty Period should the cost of the repairs, maintenance, removal, and/or replacement to the Improvements exceed the Warranty Bond, the City may proceed with the repair, maintenance, removal, and/or replacement of the Improvements and subsequently demand such costs in excess of the Warranty Bond be paid by the Developer. Should Developer not pay such costs within thirty (30) calendar days of the City’s written demand therefor, the City shall be entitled to recover such costs from the Developer, including attorney’s fees and costs, in a court of competent

jurisdiction in Charleston County, South Carolina.

- 6. The parties hereto shall execute the original agreement with all attached original exhibits.
- 7. Developer agrees that during the Warranty Period, Developer shall advise the City in writing of any change in its address, contact information or corporate status.
- 8. Developer assures that it is financially stable, solvent and is fiscally capable of completing any repairs, maintenance, removal, replacement and/or other work to the Improvements that may become necessary pursuant to the terms of this Warranty Agreement.

IN WITNESS WHEREOF, the City of Charleston, South Carolina, and Developer have hereunto set their respective hands and seals the day and year hereinafter set forth.

I, _____, hereby certify that all Improvements being dedicated to the City has been installed in accordance with the Street Tree Manual as approved by the City of Charleston.

WITNESSES:

DEVELOPER / OWNER

Witness #1

Name

Witness #2

Date: _____

WITNESSES:

CITY OF CHARLESTON

Witness #1

By: _____

Witness #2

Its: _____
Date: _____