



CITY OF CHARLESTON, SOUTH CAROLINA

**Department of Public Service
Engineering Division**

COVENANTS FOR PERMANENT MAINTENANCE OF STORMWATER FACILITIES

THIS MAINTENANCE COVENANT AND ACCESS EASEMENT ("Covenant Agreement") is made this ____ day of _____, 20__, between _____ ("Property Owner") and the CITY OF CHARLESTON, a municipal corporation organized under the laws of the State of South Carolina (the "City").

RECITALS

- A. Property Owner is the owner of certain real property located in the City of Charleston, Charleston County, South Carolina, legally described on Exhibit A attached hereto and commonly known as _____ (the "Property").
- B. The City has approved the Construction Activity Application submitted by the Property Owner for Development, Re-Development, or other Construction Activities. This Covenant Agreement applies to all Best Management Practices (BMPs) used by the Property Owner for the control of stormwater, including detention and retention ponds. This Covenant Agreement applies to all BMPs as described in the approved construction plans and any other BMPs that may hereafter be constructed on the Property.
- C. To protect subsequent owners of the Property and owners of neighboring property, the City is requiring that Property Owner enter into this Covenant Agreement as a condition to the City's approval of the Construction Activity Application and approval of the final plat for the Property.
- D. This Covenant Agreement is intended to protect the value and desirability of the real property described above, and shall inure to the benefit of all citizens of the City of Charleston and their successors and assigns.

COVENANT AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Property Owner agree as follows:

- A. The above stated recitals are incorporated herein by reference as if fully restated verbatim.
- B. Definitions.**



The following words and terms when used in this Article shall have the meaning respectively ascribed to them in this Section.

“Best Management Practices (BMPs)” are any structural or non-structural measure including, but not limited to stormwater detention and retention ponds or facility used for the control of stormwater runoff, be it for quantity or quality control. BMPs also include schedules of activities, prohibitions of practices, maintenance procedures, treatment requirements, operating procedures, and other management practices to control site runoff, spillage or leaks, sludge or waste disposal, drainage from raw material storage, or measures that otherwise prevent or reduce the pollutant loading of receiving waters.

“Forebay” is a settling basin, engineered structure, or plunge pool constructed at the incoming discharge points of a stormwater BMP which helps to isolate the sediment deposition in an accessible area.

C. Covenant to Maintain and Repair.

Property Owner shall at all times maintain the BMPs in good working order, condition, and repair, clear of all debris, and in compliance with all applicable federal, state and municipal laws, rules, regulations, and guidelines (including those adopted from time to time by the City, including but not limited to, the City’s Stormwater Design Standards Manual), and in accordance with the Property Owner Responsibilities set forth in this Covenant Agreement.

D. Property Owner Responsibilities.

1. Regular Inspections: Inspections shall be performed at least twice a year or more regularly as listed below. In the event of a sale or a transfer of property, the original set of inspection records or a copy of the original inspection records shall be provided to the new property owner. BMP Inspection reports shall be generated and kept on file for five (5) years. BMP Reports shall be made available to the City of Charleston within seven (7) business days upon written request. If such reports are generated by a third party, the reports shall remain the owner’s (or owners’) responsibility to maintain.
2. Routine Maintenance: Maintenance activities needed on a routine basis are listed below. All activities listed below shall be performed at the frequency specified below or more frequently as needed.
 - a. Vegetation Management: If applicable, grass shall be mowed every two (2) weeks or more frequently as needed during the growing season.
 - b. Inlet and Outlet Structures: Any blockage of inlet and outlet structures shall be removed immediately. Inlet and outlet protection shall be repaired or replaced as needed.
 - c. Debris and Litter: Trash and other debris that collects in stormwater detention and retention ponds shall be removed immediately. Trash and other debris that collects in other BMPs shall be removed as recommended by the manufacturer or at a frequency such that the function of the BMP is not adversely affected.
3. Sediment Removal: BMPs will trap sediments and other material over time and shall be maintained in accordance with the submitted and City-approved post-construction maintenance plan. Removal of the sediment shall occur no less frequently than once per



year for manufactured BMPs, or once every five years for stormwater detention and retention ponds, or as specified by the BMP manufacturer, whichever is more frequent. If a Forebay exists, any trash or other debris shall be completely removed as discovered through routine maintenance activities or inspections.

- 4. Slope Stabilization/Structural Integrity: Slope erosion, sink holes, or other slope structural deficiencies shall be repaired upon discovery through routine maintenance activities or inspections.
- 5. The City of Charleston reserves the right to alter the maintenance schedule and required activity(ies) as necessary to ensure the proper function of a BMP.

E. Additional Responsibilities.

Additional routine or long-term maintenance activities to be performed on the BMPs. This section may also be used to replace the list of maintenance activities listed above or to list manufacturer requirements.

F. Failure to Perform Covenant Agreement

If the City determines that Property Owner is not in compliance with the requirements contained in this Covenant Agreement, except in the case of emergency, the City or its designee shall give the Property Owner written notice to perform the maintenance and/or repair work specified in the notice. If such work is not performed to the City’s satisfaction within seven (7) days after the date of such notice, Property Owner hereby grants to the City, its employees, independent contractors and designees the right to enter the Property to perform any and all work required to bring the BMPs into compliance with the requirements contained in this Covenant Agreement. The scope of work required shall be determined by the City at its sole discretion.

If the City determines that the Property Owner is not in compliance with the requirements contained in this Covenant Agreement and determines that there exists or will likely exist an emergency on or about the Property with respect to the BMPs, Property Owner hereby grants to the City, its employees, independent contractors and designees the right to enter the Property to perform any and all work required to bring the BMPs into compliance with the requirements contained in this Covenant Agreement, and in such case the City shall use reasonable efforts to notify the Property Owner prior to entering the Property.

G. Reimbursement.



If the City exercises its right to enter the Property under the authority granted to it by this Covenant Agreement (to include inspection, sampling, repairing, maintaining, and monitoring), Property Owner shall reimburse the City for all of its costs and expenses incurred in connection therewith within thirty (30) days after receipt of an invoice from the City for such work. If Property Owner fails to pay the invoiced amount within such period, such amount shall thereafter accrue interest at a per annum rate equal to the prime rate being the rate from time to time publicly announced and published daily in the Wall Street Journal plus three percent (3%). Such amount, together with interest, shall be a lien on the Property (and each of the lots contained therein) which may be foreclosed in accordance with the law, as amended from time to time. If the Property is owned by more than one person (i.e., multiple lot owners), each such owner shall be jointly and severally liable for payment of the amounts provided for under the requirements contained in this Covenant Agreement.

H. Indemnification.

Property Owner agrees to indemnify, defend, and hold harmless the City, its employees, independent contractors and designees harmless from and against any liability, losses, costs, expenses (including reasonable attorneys' fees), claims or suits arising from Property Owner's failure to perform its obligations under this Covenant Agreement or any exercise of the City, its employees, independent contractors or designees of their rights under this Covenant Agreement.

I. Access Easement.

Property Owner hereby grants the City, its employees, independent contractors and designees a nonexclusive easement for ingress and egress over, across and under the Property for the purposes described in this Covenant Agreement and from time to time at the City's sole discretion to inspect, sample, and monitor components of the BMPs and discharges there from.

PROPERTY OWNER, FOR ITSELF AND ITS SUCCESSORS AND ASSIGNS (INCLUDING ALL OWNERS OF LOTS IN THE PROPERTY), AGREES THAT THE CITY, ITS EMPLOYEES, INDEPENDENT CONTRACTORS AND/OR DESIGNEES SHALL NOT HAVE ANY OBLIGATION TO EXERCISE THEIR RIGHTS UNDER THIS COVENANT AGREEMENT OR TO PERFORM ANY MAINTENANCE OR REPAIR OF THE BMPS, AND THAT THE CITY, ITS EMPLOYEES, INDEPENDENT CONTRACTORS AND/OR DESIGNEES SHALL NOT HAVE ANY LIABILITY TO PROPERTY OWNER OR ANY OF PROPERTY OWNER'S SUCCESSORS OR ASSIGNS (INCLUDING OWNERS OF LOTS IN THE PROPERTY) IN CONNECTION WITH THE EXERCISE OR NONEXERCISE OF SUCH RIGHTS, THE MAINTENANCE OR REPAIR OF THE BMPS, OR THE FAILURE TO PERFORM THE SAME.

J. This Covenant Agreement Runs with the Land.

The parties' rights and obligations contained herein shall run with the land and inure to the benefit of, and shall be binding upon, the City and Property Owner and their respective successors and assigns including, without limitation, subsequent owners of the Property and any homeowner's association owning common areas on the Property.

K. Assignment.



The obligations of the Property Owner (and subsequent owners of the Property) under this Covenant Agreement shall not be assigned except (a) in connection with the sale of the property owned by such person (in which case the transferee shall assume such obligations), or (b) with the prior written consent of the City.

L. Authority.

By executing this Covenant Agreement, the Property Owner represents and warrants to the City that he or she has the full power and authority to do so and that the Property Owner has full right and authority to enter into this Covenant Agreement and perform its obligations under this Covenant Agreement.

M. Entire Covenant Agreement.

This Covenant Agreement constitutes the entire Covenant Agreement between the parties, and supersedes all prior discussion, negotiations, and all agreements whatsoever whether oral or written.

N. Governing Laws.

The laws of South Carolina shall govern this Covenant Agreement. Any and all litigation arising under or as a result of said Covenant Agreement shall be litigated in the Circuit Court in the Ninth Judicial Circuit of Charleston County, South Carolina.



PROPERTY AND BMP DESCRIPTIONS

PARCEL/TMS#: _____

NAME & TYPE OF BMP(S):

LOCATION OF BMP(S):

PROPERTY DEED RECORDED DATE:

TITLE OF SITE PLAN:

(Shall exactly match the title given on application for a land disturbance permit)

PROJECT ENGINEERING FIRM:

PROJECT CONSTRUCTION FIRM:

NUMBER & DATE OF LAND DISTURBANCE PERMIT:

ENGINEERING DIVISION APPROVAL OF MAINTENANCE CONVENANTS

Plan Review Engineer or Public Service Department Designee

Date



PROPERTY OWNERS

NAME : _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

PHONE: _____ FAX: _____

E-MAIL: _____

NAME : _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

PHONE: _____ FAX: _____

E-MAIL: _____

NAME : _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

PHONE: _____ FAX: _____

E-MAIL: _____



IN WITNESS WHEREOF, the Property Owner and the City have executed this Covenant Agreement on the date first written above.

PROPERTY OWNER: _____

BY: _____ ITS: _____

Witness: _____ Printed Name _____

Witness: _____ Printed Name _____

STATE OF SOUTH CAROLINA) ss
County of Charleston)

This instrument was acknowledged before me on _____, by
_____ as _____.

Notary Public for South Carolina
My Commission Expires _____

THE CITY OF CHARLESTON, SOUTH CAROLINA

BY: _____ ITS: _____

Witness: _____ Printed Name _____

Witness: _____ Printed Name _____

STATE OF SOUTH CAROLINA) ss
County of Charleston)

This instrument was acknowledged before me on _____, by
_____ as _____ of the City of
Charleston.

Notary Public for South Carolina
My Commission Expires _____