

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

**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 COUNTY OF CHARLESTON, a public body corporate and politic and political subdivision of the State of South Carolina (the "County").

RECITALS

Whereas, Property Owner is the owner of certain real property located in the County of Charleston, Charleston County, South Carolina, legally described on Exhibit A attached hereto and commonly known as _____ (the "Property"); and

Whereas, the County 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 as described in the approved construction plans ("BMP Plan"); and

Whereas, the County is requiring that Property Owner enter into this Covenant Agreement as a condition to the County's approval of the Construction Activity Application and approval of the final plat for the Property; and

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County 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 stormwater management system 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 County, including but not limited to, the County’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 County of Charleston within seven (7) business days upon written request. If such reports are generated by a third party, the reports shall remain the Property 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 before vegetation reaches 10 inches in height or more frequently as needed during the growing season, unless the intent was stated in writing on the Construction Application as a planted area with a vegetative purpose.
 - 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 County-approved post-construction maintenance plan. Removal of the sediment shall occur once the sediment reduces the effective volume of the BMP by 30%, or as prescribed by the engineer of record for BMPs, 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 County 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 County determines that Property Owner is not in compliance with the requirements contained in this Covenant Agreement, except in the case of emergency, the County 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 based on the Approved Plan within seven (7) days after the date of such notice, Property Owner hereby grants to the County, 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 County in accordance with the BMP Plan at its sole discretion.

If the County 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 BMP Plan, Property Owner hereby grants to the County, 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 County shall use reasonable efforts to notify the Property Owner prior to entering the Property.

G. Enforcement

If the Property Owner is in violation of this Covenant Agreement, the County may seek a judicial determination regarding the enforcement hereof. Should a court of competent jurisdiction order the County to complete the obligations of the Property Owner under this Covenant Agreement, the County will seek reimbursement from the Property Owner and the subsequent collection thereof. The County further reserves all rights and remedies available to the County under the law.

H. Hold Harmless.

The Property Owner will hold the County harmless against any and all claims, demands, suits, actions, damages and causes of action related to or arising out of or in any way connected with Covenant Agreement, including, without limitation, expenses, judgments, fines, settlements

and other amounts actually and reasonably incurred in connection with any liability, suit, action, loss, or damage arising or resulting from the County's performance of the terms and conditions of this Covenant Agreement.

I. Access Easement.

Property Owner hereby grants the County, 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 County'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 COUNTY, 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 COUNTY, 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 County 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 County.

L. Authority.

By executing this Covenant Agreement, the Property Owner represents and warrants to the County 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 CHARLESTON COUNTY STORMWATER PERMIT:

ENGINEERING DIVISION APPROVAL OF MAINTENANCE CONVENANTS

Plan Review Engineer or Public Works Department Designee

Date

PROPERTY OWNERS

NAME : _____

ADDRESS: _____

COUNTY: _____ **STATE:** _____ **ZIP CODE:** _____

PHONE: _____ **FAX:** _____

E-MAIL: _____

NAME : _____

ADDRESS: _____

COUNTY: _____ **STATE:** _____ **ZIP CODE:** _____

PHONE: _____ **FAX:** _____

E-MAIL: _____

NAME : _____

ADDRESS: _____

COUNTY: _____ **STATE:** _____ **ZIP CODE:** _____

PHONE: _____ **FAX:** _____

E-MAIL: _____

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

PROPERTY OWNER (s): _____
Print Names(s)

BY: _____ ITS: _____
Owner Signature(s) Title(s)

Witness: _____ Name _____
Signature Print

Witness: _____ Name _____
Signature Print

STATE OF _____)
County of _____)

This instrument was acknowledged before me on _____,
Date

by _____ as _____
Owner (Print) Owner (Title)

of _____.
Entity Name (if entity listed as Property Owner)
Enter "N/A" if Not Applicable

Signature
Notary Public for South Carolina
My Commission Expires _____

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THE COUNTY OF CHARLESTON, SOUTH CAROLINA

CHARLESTON COUNTY PUBLIC WORKS

BY: _____ ITS: _____
Charleston County Public Works Representative Signature Charleston County Public Works Representative's Title

Witness: _____ Name _____
Signature Print

Witness: _____ Name _____
Signature Print

STATE OF SOUTH CAROLINA)
County of Charleston)

This instrument was acknowledged before me on _____,
Date

by _____ as _____
Charleston County Public Works Representative (Print) Charleston County Public Works Representative's Title

of the County of Charleston.

Signature
Notary Public for South Carolina
My Commission Expires _____

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