

Prepared by/ Mail after recording to:  
City Attorney's Office  
c/ o City of Fayetteville  
433 Hay Street  
Fayetteville, NC 28301

Parcel ID #: \_\_\_\_\_

**DECLARATION OF COVENANTS  
INSPECTION/MAINTENANCE OF STORMWATER  
MANAGEMENT FACILITY, TRANSFER OF MAINTENANCE RESPONSIBILITIES**

THIS DECLARATION (this "Declaration"), made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, between \_\_\_\_\_, hereinafter referred to as the "Covenantor," owner(s) of the following property: \_\_\_\_\_, (the "Property"), and the City of Fayetteville, North Carolina, hereinafter referred to as the "City".

**WITNESSETH:**

The Covenantor, with full authority to execute deeds, mortgages, other covenants, and all rights, titles and interest in the property described above, does hereby covenant with the City as follows:

1. In accordance with Section 23-38 of the City of Fayetteville Stormwater Management Ordinance (the "Stormwater Ordinance"), the City shall accept functional maintenance responsibility of structural structural stormwater management facilities (the "stormwater management facility or facilities", or the "BMP or BMP(s)") that are installed following a warranty period of one (1) year from the date of record-drawing certification described in Section 23-37 of the Stormwater Ordinance, or from the date the facility ceases to

function as an erosion control measure and starts to function as a stormwater management facility, whichever is later, provided the stormwater management facility:

- (1) Only serves a single-family detached residential development or townhomes all of which have public street frontage, which Covenantor intends to develop upon all the Property;
- (2) Is satisfactorily maintained during the one-year warranty period by the Covenantor;
- (3) Meets all the requirements of the Stormwater Ordinance;
- (4) Includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection, maintenance repair, or reconstruction; and
- (5) Prior to the release of the installation performance guarantee as outlined in Section 23-41(b), the Covenantor shall pay into a City maintenance fund used to maintain such facilities in the future an amount equal to 20 percent of the initial construction cost of the stormwater management facilities related to detention ponds or other BMPs constructed to meet the requirements of the Stormwater Ordinance, said 20 percent amount equaling \_\_\_\_\_.

The City engineer must receive an application for transfer of maintenance responsibilities for the structural stormwater management facility along with the stormwater design plan submittal.

2. The Covenantor must maintain the easement area(s) (the "Easement Area(s)") as referenced on the plat of the Property (the "Final Plat") as shown on **Exhibit A** attached hereto and incorporated herein by reference, by providing trash removal, grass cutting, and landscaping on the Property and performing other nonfunctional maintenance, as described in the maintenance plan (the "Maintenance Plan" or the "Plan") as shown on **Exhibit B** attached hereto and incorporated herein by reference. Therefore, the Covenantor shall develop and attach to this Declaration for recording at the Cumberland County Register of Deeds Office a Maintenance Plan that has been reviewed and approved by the City of Fayetteville or its designee. This Maintenance Plan shall describe the nonfunctional maintenance practices to be performed for the above referenced stormwater management facility and include a schedule for implementation of these practices. The Plan shall specify the name, mailing address and phone number of the party responsible for the fulfillment of the Maintenance Plan.
3. The City must provide routine inspection and structural maintenance for the BMP(s) as needed to ensure that the BMP(s) remain(s) in proper working condition in accordance with approved design standards. The City shall undertake all reasonable measures to return the Easement Area(s) to its original condition whenever the City undertakes repairs and maintenance in accordance with this Declaration.

4. The Covenantor must provide and maintain perpetual access from public rights-of-way to the BMP(s) for the City, its agents and its contractors.
5. The Covenantor must grant the City, its agents and its contractors a right of entry to the BMP(s) for the purpose of inspecting, operating, monitoring, installing, constructing, reconstructing, modifying, altering or repairing the BMP(s).
6. Except in the case of an emergency, the City shall provide not less than seven (7) days prior notice to the Covenantor before performing any structural maintenance or repair of the BMP(s) in accordance with this Covenant. The City shall also notify the Covenantor after completing the maintenance or repair work specified in the notice.
7. If, after reasonable notice by the City, the Covenantor fails to maintain the Easement Area(s) in accordance with this Covenant, the City may perform any nonfunctional maintenance needed to correct a condition that impacts the effectiveness of routine structural maintenance and collect any costs incurred as a result from each owner of the BMP(s) and in the same manner as real property taxes are collected. In addition, the City may seek reimbursement under any other method legally available to collect debts owed to the City.
8. The Covenantor agrees to indemnify and save the City harmless, including the City's elected officials, employees, agents, successors, and assigns, from any and all liability and any and all claims for any personal injury or property damage arising from maintenance of the Easement Area(s) in accordance with this Covenant.
9. Upon Covenantor's transfer of title of the BMP(s) to the applicable homeowners association for the single-family residential development (the "Association"), as evidenced by a recorded warranty deed from the Covenantor to the Association recorded with the Cumberland County Register of Deeds Office of Cumberland County, North Carolina, then the Covenantor shall be automatically released from all obligations hereunder, and such obligation shall be automatically assumed by the Association. The Covenantor agrees to promptly notify the City when the Covenantor legally transfers title to the BMP(s) to the Association, and shall include a copy of the recorded warranty deed from Covenantor to the Association with such notice.
10. The covenants contained herein shall run with the land and shall bind the City, the Covenantor and the Covenantor's successors and assignees, and shall bind all present and subsequent owners of property served by the BMP(s).
11. This Covenant shall be recorded in the Cumberland County Register of Deeds Office of Cumberland County, North Carolina.
12. This Covenant runs to the benefit of the City and may not be released or modified except by written consent of the City.

**[Remainder of This Page Intentionally Left Blank; Signature Page Attached Hereto]**

IN WITNESS WHEREOF, the Covenantor and the City have executed this Declaration of Covenants on the date first above written.

ATTEST:

FOR THE COVENANTOR(S)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

CITY OF FAYETTEVILLE, NORTH CAROLINA

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

Pamela Megill  
Printed Name  
City Clerk

Douglas J. Hewett  
Printed Name  
City Manager

(Jurats follow)

STATE OF  
COUNTY OF

: ss

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before the subscriber, a Notary Public of the State of \_\_\_\_\_, and for the County of \_\_\_\_\_, personally appeared \_\_\_\_\_, known to me (or satisfactorily proven) to be the person(s) described in the foregoing instrument, who did acknowledge that (he)(she)(they), having been properly authorized, executed the same in the capacity therein stated and for the purposes therein contained.

**IN TESTIMONY WHEREOF**, I have affixed my hand and official seal.

\_\_\_\_\_  
**NOTARY PUBLIC**

My Commission Expires \_\_\_\_\_

STATE OF  
COUNTY OF

: ss

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before the subscriber, a Notary Public of the State of \_\_\_\_\_, and for the County of \_\_\_\_\_, personally appeared \_\_\_\_\_, City Manager, known to me (or satisfactorily proven) to be the person described in the foregoing instrument, who did acknowledge that (he) (she), having been properly authorized, executed the same on behalf of Fayetteville, North Carolina in the capacity therein stated and for the purposes therein contained.

**IN TESTIMONY WHEREOF**, I have affixed my hand and official seal.

\_\_\_\_\_  
**NOTARY PUBLIC**

My Commission Expires \_\_\_\_\_

**EXHIBIT A**

[Describe Plat and Easement Area(s)]

**EXHIBIT B**

[Attach Maintenance Plan]