

WHEREAS, the Developer desires to construct certain improvements on its property regulated by the City of Fayetteville Stormwater Management Ordinance; and

WHEREAS, in order to construct certain improvements on its property, the Developer desires to build and maintain at its expense, a stormwater structural control more particularly described and shown on plans titled: _____ and further identified under Infrastructure Permit Number _____ ; and _____.

WHEREAS, the City of Fayetteville or its designee have reviewed and approved the plans associated with the Infrastructure Permit subject to the execution of this agreement.

NOW THEREFORE, in consideration of the benefits received by the Developer as a result of approval by the City of Fayetteville or its designee of these plans, the Developer, with full authority to execute deeds, mortgages, other covenants, and all rights, title and interest in the property described above, does hereby covenant with the City of Fayetteville as follows:

1. The Developer shall develop and attach to this “DECLARATION OF COVENANTS” 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 specific maintenance practices to be performed for the above referenced stormwater structural control and include a schedule for implementation of these practices. The Plan shall indicate that the stormwater structural control shall be inspected by a qualified professional at least annually to ensure that it is operating properly. The Plan shall specify the name, mailing address and phone number of the party responsible for the fulfillment of the Maintenance Plan and describe the mechanism by which the funding for the performance of this maintenance shall be secured through the use of an (Insert “ESCROW ACCOUNT” OR OTHER FUNDING SOURCE AS APPROVED BY THE CITY ENGINEER.)

2. The Developer shall establish an (Insert “ESCROW ACCOUNT” OR OTHER FUNDING SOURCE AS APPROVED BY THE CITY ENGINEER.)

which can be spent solely for sediment removal, structural, biological or vegetative replacement, major repair, or reconstruction of the above referenced stormwater structural control. If the stormwater structural control is not performing adequately or as intended or is not properly maintained, the City of Fayetteville, in its sole discretion, may remedy the situation, and in such instances the City of Fayetteville shall be fully reimbursed from the (Insert “ESCROW ACCOUNT” OR OTHER FUNDING SOURCE AS APPROVED BY THE CITY ENGINEER.)

Funds may be spent by the Developer for sediment removal, structural, biological or vegetative replacement, major repair, and reconstruction of the stormwater structural control, provided that the City of Fayetteville shall first consent to the expenditure.

3. Both contributions by the Developer and contributions to an escrow account fund from either the Developer or a property owners' association shall fund the (Insert "ESCROW ACCOUNT" OR OTHER FUNDING SOURCE AS APPROVED BY THE CITY ENGINEER.)

_____. Prior to the release of the installation performance guarantee, the Developer shall pay into the (Insert "ESCROW ACCOUNT" OR OTHER FUNDING SOURCE AS APPROVED BY THE CITY ENGINEER.)

_____.
an amount equal to fifteen (15) per cent of the initial construction cost of the stormwater structural control (INSERT DOLLAR AMOUNT EQUAL TO 15%)_____. Two-thirds (2/3) of the total initial construction cost (INSERT DOLLAR AMOUNT EQUAL TO 2/3)_____ shall be deposited into the (Insert "ESCROW ACCOUNT" OR OTHER FUNDING SOURCE AS APPROVED BY THE CITY ENGINEER) within the first five (5) years and the full amount

_____.
(INSERT DOLLAR AMOUNT EQUAL TO THE FULL AMOUNT) shall be deposited within ten (10) years following initial construction of the stormwater structural control. Funds shall be deposited each year into the (Insert "ESCROW ACCOUNT" OR OTHER FUNDING SOURCE AS APPROVED BY THE CITY ENGINEER.)

_____. A portion of the annual assessments of the property owners' association shall include an allocation into the (Insert "ESCROW ACCOUNT" OR OTHER FUNDING SOURCE AS APPROVED BY THE CITY ENGINEER.)

_____.
Any funds drawn down from the (Insert "ESCROW ACCOUNT" OR OTHER FUNDING SOURCE AS APPROVED BY THE CITY ENGINEER.)

_____ shall be replaced in accordance with the schedule of anticipated work used to create the escrow account budget.

4. The percent of Developer contribution and lengths of time to fund the (Insert "ESCROW ACCOUNT" OR OTHER FUNDING SOURCE AS APPROVED BY THE CITY ENGINEER.)

_____ may be varied by the City of Fayetteville depending on the design and materials of the stormwater structural control.

5. The Developer shall construct and perpetually operate and maintain, at its sole expense, the above-referenced stormwater structural control in strict accordance with the attached Maintenance Plan approved by the City of Fayetteville or its designee.

6. The Developer shall, at its sole expense, make such changes or modifications to the stormwater structural control as may, at the discretion of the City of Fayetteville or its designee, be determined necessary to ensure that the facility and system is properly maintained and continues to operate as designed and approved.
7. The City of Fayetteville, its agents, employees and contractors shall have the perpetual right of entry to inspect, monitor, maintain, repair and reconstruct the stormwater structural control.
8. The Developer agrees that should it fail to correct any defects in the above described stormwater structural control within ten (10) days from the issuance of written notice, or shall fail to maintain the structure in accordance with the attached Maintenance Plan and with the law and applicable executive regulation or, in the event of an emergency as determined by the City of Fayetteville or its designee in its reasonable discretion, the City of Fayetteville or its designee is authorized to enter the property to make all repairs, and to perform all maintenance, construction and reconstruction as the City of Fayetteville or its designee deems necessary. The City of Fayetteville or its designee shall then recover from the Developer any and all costs the City of Fayetteville expends to maintain or repair the stormwater structural control or to correct any operational deficiencies. Failure to pay the City of Fayetteville or its designee all of its expended costs, after forty-five days written notice, shall constitute a breach of the agreement. The City of Fayetteville or its designee shall thereafter be entitled to bring an action against the Developer to pay, or foreclose upon the lien hereby authorized by the agreement against the property, or both. Interest, collection costs, and attorney fees shall be added to the recovery.
9. The Developer shall not obligate the City of Fayetteville to maintain or repair any stormwater structural control, and the City of Fayetteville shall not be liable to any person for the condition or operation of any stormwater structural control.
10. The Developer shall not in any way diminish, limit, or restrict the right of the City of Fayetteville to enforce any of its ordinances as authorized by law.
11. The Developer shall indemnify, save harmless and defend the City of Fayetteville or its designee from and against any and all claims, demands, suits, liabilities, losses, damages and payments including attorney fees claimed or made by persons not parties to this Declaration against the City of Fayetteville or its designee that are alleged or proven to result or arise from the Developer's construction, operation, or maintenance of the stormwater structural control that is the subject of this Covenant.
12. The covenants contained herein shall run with the land and the Developer further agrees that whenever the property shall be held, sold and conveyed, it shall be subject to the covenants, stipulations, agreements and provisions of this Declaration, which shall apply to, bind and be obligatory upon the Developer hereto, its heirs, successors and assigns and shall bind all present and subsequent owners of the property served by the stormwater structural control. Upon the sale and conveyance by the owner of the

Property (or any portion thereof) of its entire interest therein, such owner shall automatically be deemed to be released of all future obligations thereafter arising under this Declaration; and as to any future owner of the Property, or any portion thereof, such future owner shall automatically be subject and bound by the terms and provisions of this Declaration upon its acquisition of fee simple title to the Property (or portion thereof) in the same manner as the owner of the Property as of the date hereof is presently bound under this Declaration.

13. The Developer shall promptly notify the City of Fayetteville or its designee when the Developer legally transfers any of the Developer's responsibilities for the stormwater structural control. The Developer shall supply the City of Fayetteville or its designee with a copy of any document of transfer, executed by both parties.
14. The provisions of this Declaration shall be severable and if any phrase, clause, sentence or provisions is declared unconstitutional, or the applicability thereof to the Developer is held invalid, the remainder of this Covenant shall not be affected thereby.
15. The Declaration and the exact boundary of all stormwater structural controls (as shown on final plats prepared by a registered surveyor) shall be recorded at the Cumberland County Register of Deeds Office at the Developer's expense.
16. In the event that the City of Fayetteville or its designee shall determine at its sole discretion at future time that the stormwater structural control is no longer required, then the City of Fayetteville or its designee shall at the request of the Developer execute a release of this Declaration of Covenants which the Developer shall record at its expenses.

IN WITNESS WHEREOF, the Developer has executed this Declaration of Covenants as of this ____ day of _____, 20____.

ATTEST:

FOR THE COVENANTER(S)

(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

My commission expires _____
Notary Public

Seen and approved

(City Engineer)