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Declaration of Transfer of Inspection/Maintenance Responsibilities of Stormwater SCM Facilities

THIS DECLARATION made this _____ day of _____, 20_____, between _____, here in referred to as the “Property Owner”, of the following property: _____, (the “Property”) and _____, hereinafter referred to as the “Transferee” of said Property.

WITNESSETH:

The Property Owner, having fulfilled all necessary recordation requirements of a Post-Construction Stormwater Control Measures Operations and Maintenance Declaration of Covenants and Easements (“Agreement”) recorded with the Mecklenburg County Register of Deeds office at Book _____, Page _____, for one or more Stormwater Control Measure facility or facilities (collectively, the “SCM Facilities”) for the Property listed above, does hereby transfer inspection and maintenance responsibilities of said SCM Facilities to the Transferee as required by the Agreement when ownership of the Property is transferred. By acknowledgement below, the Transferee acknowledges its assumption of the responsibilities of the SCM Facilities as required of the Property Owner and subsequent owners in the Agreement.

Upon the transfer or conveyance of the Property by the transferring Property Owner, all obligations of the transferring Property Owner automatically are transferred and assigned to, and assumed, by Transferee and such Transferee becomes the “Property Owner” under the Agreement.

The Transferee agrees to indemnify and hold harmless the City of Charlotte, its authorized agents and employees (“City”), from any and all claims for damages to persons or property arising from inspection and/or maintenance of the SCM Facilities as set forth in the Agreement.

The Property Owner must promptly notify the City when the Property Owner transfers and of the Property’s Owner’s responsibilities for the SCM Facilities. The Property Owner must submit to the Stormwater Administrator a certified copy of any fully executed and recorded revised Declaration of Transfer for the SCM Facilities.

In addition to the previously outlined items as applicable, the following items are made to be known to Transferee in summary:

1. The Property Owner shall maintain the SCM Facilities in good working condition acceptable to the City and in accordance with the associated Maintenance items described in the Stormwater Control Measure Design Manual (“the Design Manual”).
2. The Transferee acknowledges and continues to honor the Post-Construction Control Maintenance Easement (“the Easement”) as shown on the attached exhibit or in Map Book: _____, Page _____ previously given, granted and conveyed to the City. The Easement allows the City to inspect, monitor, maintain, repair or reconstruct the SCM Facilities. Said easement shall in no way confer an obligation on the City to assume responsibility for the SCM Facilities.
3. The Transferee shall be fully responsible for having the SCM Facilities inspected by a qualified inspector, as defined in the Post-Construction Stormwater Administrative Manual (“the Administrative Manual”), and shall provide to the City, at no additional costs to the City, an Annual Maintenance and Inspection Report as provided on The City of Charlotte’s Storm Water Services website. The Transferee’s failure to provide to the City said Annual Maintenance and Inspection Report within the appropriate time as defined in the Administrative Manual may result in fines accordance with the Regulations. The Stormwater Administrator, at their discretion, may make annual inspections of the SCM Facilities to ensure that the required maintenance has been conducted appropriately and the performance of the SCM Facilities is in compliance with the Regulations.
4. In the event the Transferee fails to maintain the SCM Facilities as described in the Post-Construction Stormwater Regulations (“the Regulations”) and the Design Manual or approved development plans and specifications for the Property, the City, after reasonable notice to the Transferee, may assess fines and enter the Property and take whatever steps the City deems necessary to return the SCM Facilities to good working condition acceptable to the City. It is expressly understood by the Transferee that the City is under no obligation to construct, maintain or repair the SCM Facilities and in no event shall this Declaration be construed to impose any such obligation on the City.
5. In the event the City, pursuant to the Declaration, performs work of any nature to the SCM Facilities, or expends any funds in the performance of said work for labor, use of equipment, supplies, materials, and the like, and/or incurs the costs of legal action, including attorneys’ fees, the Responsible Party shall reimburse the City, or shall forfeit any required bond upon demand, within thirty (30) days of receipt from the City of a list for all the costs incurred by the City hereunder. If the Transferee has not reimbursed the City within the above-mentioned time period, the City shall secure a lien against the Property in the amount of said costs. The actions described in the paragraph are in addition to and not in lieu of any and all legal remedies available to the City as a result of the Transferee’s failure to maintain the SCM Facilities, and the Parties hereto acknowledge that the City expressly reserves all of its rights of enforcement and legal remedies under the Regulations.
6. It is the intent of the parties to ensure the proper maintenance of the SCM Facilities by the Transferee; provide, however, nothing in this Declaration shall be deemed to restrict the City’s rights of enforcement of legal remedies under the Regulations, which terms are incorporated herein by reference, regardless of where the transferee is a party to this Declaration. This Declaration shall not be deemed to create or affect any additional liability of any party for damage alleged to result from or caused by storm water runoff in addition to any such liability otherwise existing under applicable law.

7. Sediment accumulation and other waste materials resulting from the normal operation of the SCM Facilities shall be removed by the Transferee. The Transferee will make arrangements at the Transferee's expense for the removal and off-site disposal of all accumulated sediments and other waste materials.
8. In the event the Transferee sells or transfers the Property, the Transferee shall provide to the City, a Declaration of Transfer of Inspection/Maintenance Responsibilities of Stormwater SCM Facilities as provided on the City of Charlotte's Storm Water Services website. This declaration shall be executed, notarized and recorded with the Register of deeds to document that all maintenance responsibilities have been transferred and communicated to such transferee. Upon such transfer or conveyance of the Property by the transferring Property Owner, all obligations of the transferring property owner hereunder shall automatically transfer and assign to and assume by the Transferee.
9. The Transferee shall indemnify and hold harmless the City and its authorized agents and employees for any and all damages, accidents, casualties, occurrences or claims that might arise or be asserted against the City from the construction, operation, repair, presence, existence or maintenance of the SCM Facility or SCM Facilities. In the event a claim is asserted against the City, its authorized agents or employees, the City shall promptly notify the Transferee, and the Transferee shall defend the City, its authorized agents or employees at the Transferee's own expense against any such claim. If any judgment or claims against the City, its authorized agents or employees shall be allowed, the Transferee shall pay for all costs and expenses, including attorneys' fees, in connection therewith.
10. This Declaration shall be recorded by the Transferee among the deed records of the Mecklenburg County Register of Deeds and shall constitute a covenant running with the land and shall be binding on the Transferee.
11. This Declaration may be enforced by proceedings at law or in equity by or against the Parties hereto and their respective successors in interest.
12. Invalidation of any one of the paragraphs of this Declaration shall in no way affect any other paragraphs and all other paragraphs shall remain in full force and effect.

IN WITNESS WHEREOF, the Property Owner and the Transferee have executed this Declaration of Transfer on the date first above written.

Signature

Signature

Printed Name

Printed Name

Title
Property Owner

Title
Transferee

STATE OF:

COUNTY OF:

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 there in stated for the purposes therein contained.

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

NOTARY PUBLIC

My Commission Expires: _____

IN WITNESS WHEREOF, the Property Owner and the Transferee have executed this Declaration of Transfer on the date first above written.

Signature

Signature

Printed Name

Printed Name

Title
Property Owner

Title
Transferee

STATE OF:

COUNTY OF:

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 there in stated for the purposes therein contained.

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

NOTARY PUBLIC

My Commission Expires: _____

THIS SECTION IS NOT TO BE RECORDED.

Return recorded copy of the Declaration of Transfer of Inspection/Maintenance Responsibilities of Stormwater SCM Facilities to Rylee Hernandez (Rylee.Hernandez@charlottenc.gov). Please complete and include the following information for the transferee as well:

SCM Owner Contact Information

Name:

Email:

Mailing Address:

Phone:

SCM Maintenance Contact Information (if available)

Company Name:

Contact Name:

Email:

Phone:

Additional information regarding SCM Maintenance Responsibilities, including tips for maintaining your SCM and a list of SCM inspection and maintenance contractors (not certified by the City), can be found at the following webpage: stormwatercm.info/SCMmaintenance

The City of Charlotte is committed to making our services and programs accessible to all. Upon request, auxiliary aids, written materials in alternative formats, language access and other reasonable accommodations or modifications will be provided. To make a request, please email Rylee.Hernandez@charlottenc.gov or call 980.287.5624.