

BK09812 PG0221

FILED
CUMBERLAND COUNTY NC
J. LEE WARREN, JR.
REGISTER OF DEEDS
FILED Feb 29, 2016
AT 01:01:09 pm
BOOK 09812
START PAGE 0221
END PAGE 0229
INSTRUMENT # 05767
RECORDING \$26.00
EXCISE TAX (None)
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Prepared by/ ~~Met~~ after recording to:

City Attorney's Office
c/ o City of Fayetteville
433 Hay Street
Fayetteville, NC 28301

Return to: 4D Site Solutions / Natasha Ward

Parcel ID #: 9495-98-1162

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

THIS DECLARATION (this "Declaration"), made this 11 day of February, 20 , between Mohler Investments, LLC, hereinafter referred to as the "Covenantor," owner(s) of the following property: DB8626 PG468, (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 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 \$8,800.00.

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.

EX 09812 PG 0224


[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:


Signature

CHRIS POSEY
Printed Name


Signature



For Pamela Megill
Printed Name
City Clerk


FOR THE COVENANTOR(S)


Signature

Lorraine Mohler
Printed Name

Manager
Title

CITY OF FAYETTEVILLE, NORTH CAROLINA


Signature

Theodore L. Voorhees
Printed Name
City Manager

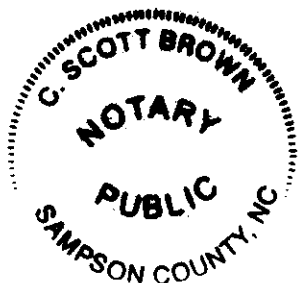
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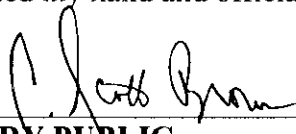
STATE OF
COUNTY OF

SS

I hereby certify that on this 11 day of February, 2016, before the subscriber, a Notary Public of the State of North Carolina, and for the County of Sampson, personally appeared Lorraine Mohler, 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: October 6, 2020

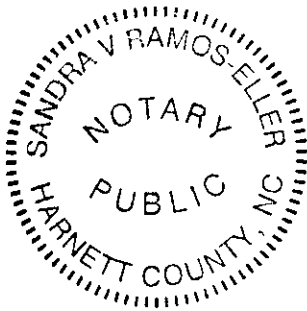
(N.P. SEAL)

STATE OF
COUNTY OF

SS

I hereby certify that on this 26 day of February, 2016, before the subscriber, a Notary Public of the State of North Carolina, and for the County of Cumberland, personally appeared Theodore L. Voorhes, 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.



Sandra V Ramos-Eller
NOTARY PUBLIC

My Commission Expires: 9/2/2018

(N.P. SEAL)

BMP Maintenance Plan**Arrans Cove**[Name of Development Project as indicated on approved plans]

City of Fayetteville

August 6, 2012[Date]

Prepared by/Mail after recording to:

City of Fayetteville, Real Estate, Attn: Giselle Rodriguez 433 Hay Street, Fayetteville NC
28301-5537**I. General BMP Information**

BMP ID Name	Street with Block Number	Parcel Tax ID
Pond #1	Point Crossing Place	9495-98-1162

II. BMP Site Location Map (attached)**III. Maintenance Annual Budget**

Budget for BMP Maintenance / Inspections		
Expenses	Estimated Costs	Source
Routine inspections	\$400	HOA
Sediment removal	\$125	HOA
Plant management / weed control	\$275	HOA
Replacement supplies, rock, plants, soil media, mulch	\$200	HOA
Mowing and litter removal	\$1,400	HOA
Seeding	\$210	HOA
Miscellaneous	\$500	HOA
[Other]		
Total	\$3,110	

IV. Escrow Account Activity

Provide documentation of BMP maintenance escrow account activity. This may be provided in the form of a bank statement which includes the current balance, deposits and withdraws for the previous 12 months.

V. Maintenance Inspection Reports

As indicated in the Stormwater Control Ordinance, annual maintenance inspection reports shall be submitted to the City Engineer. The first report shall be submitted one year following the final approval date of the BMP and each year thereafter on or before the approval anniversary date. All maintenance activities and inspection reports shall be documented using the forms contained in the Administrative Manual. Annual maintenance inspection reports shall be performed by a qualified professional as defined in Section 23-38 of the Ordinance. These inspections shall be discontinued only if the BMPs are accepted for maintenance by the City of Fayetteville.

Wet Detention Basin Maintenance Tasks and Schedule

TASK	SCHEDULE
Forebay observation and cleanout	Monthly
Bank mowing and observation / stabilization of eroded areas	Monthly
Outlet / inlet observation and cleanout	Monthly
Unwanted vegetation and trash removal	Monthly
Visual observation of water quality	Monthly
Overall facility observation	Within 24 hours after every storm event greater than 1.0 inch
Inspect / exercise all mechanical devices, valves, etc	Yearly
Inspect for structural damage, leaks, etc	Yearly
Inspect the embankment	Yearly
Forebay inspection and cleanout	Yearly – Remove sediment every 7 years or whenever the sediment volume exceeds 50% of storage volume
Volume measurement	Yearly – Dredging needed every 20 years or when 25% of permanent pool volume has been lost
Rodent management	As needed
Security	As needed

Important maintenance procedures:

- Immediately after the wet detention basin is established, the plants on the vegetated shelf and perimeter of the basin should be watered twice weekly if needed, until the plants become established (commonly six weeks).
- No portion of the wet detention pond should be fertilized after the first initial fertilization that is required to establish the plants on the vegetated shelf.
- Stable groundcover should be maintained in the drainage area to reduce the sediment load to the wet detention basin.
- If the basin must be drained for an emergency or to perform maintenance, the flushing of sediment through the emergency drain should be minimized to the maximum extent practical.