



**Town of Indian Trail
Stormwater Services**
315 Matthews-Indian Trail Rd.
PO Box 2430
Indian Trail, NC 28079
Phone: (704)-821-5401

(This form for use with commercial establishments under single ownership.)

INSERT PROJECT NAME (must match plat title)

**DECLARATION OF COVENANTS
For Maintenance of Water Quality Control Structures
Town of Indian Trail**

THIS DECLARATION OF COVENANTS, made this _____ day of _____, 20____, by _____ hereinafter referred to as the "Owner" to and for the benefit of the Town of Indian Trail and its successors and assigns.

WITNESSETH:

WHEREAS, the Town of Indian Trail is authorized to prevent surface water quality degradation from development or redevelopment activities within its jurisdiction as set forth in the Town of Indian Trail Post-Construction Storm Water Ordinance; and

WHEREAS, the Owner is the owner of a certain tract or parcel of land more particularly described as:

being all or part of the land which it acquired by deed dated _____ from _____ grantors, and recorded with the Union County Register of Deeds Office, in Book _____ at Page _____ such property being hereinafter referred to as the "the property;" and

WHEREAS, the Owner desires to construct certain improvements on its property regulated by the Town of Indian Trail Post-Construction Storm Water Ordinance; and

WHEREAS, in order to construct certain improvements on its property, the Owner desires to build and maintain at its expense, a water quality control structure more particularly described and shown on plans titled

and further identified under Storm Water Management Permit Number _____; and

WHEREAS, the Town of Indian Trail has reviewed and approved the plans associated with the Storm Water Management Permit subject to the execution of this agreement.

NOW THEREFORE, in consideration of the benefits received by the Owner as a result of approval by the Town of Indian Trail of these plans, the Owner, 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 Town of Indian Trail as follows:

1. The Owner shall develop and attach to this “DECLARATION OF COVENANTS” for recording at the Union County Register of Deeds Office a “MAINTENANCE PLAN” that has been reviewed and approved by the Town of Indian Trail. This Maintenance Plan shall describe the specific maintenance practices to be performed for the above referenced water quality control structure and include a schedule for implementation of these practices. The Plan shall indicate that the water quality control structure 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.
2. The Owner shall construct and perpetually operate and maintain, at its sole expense, the above-referenced water quality control structure in strict accordance with the attached Maintenance Plan approved by the Town of Indian Trail.
3. The Owner shall, at its sole expense, make such changes or modifications to the water quality control structure as may, at the discretion of the Town of Indian Trail, be determined necessary to ensure that the facility and system is properly maintained and continues to operate as designed and approved.
4. The Town of Indian Trail, its agents, employees and contractors shall have a right of entry in the event that the Storm Water Administrator has reason to believe it has become necessary to inspect, monitor, maintain, repair, or reconstruct the structural BMP; however, in no case shall the right of entry, of itself, confer an obligation on the Town of Indian Trail to assume responsibility for the structural BMP.
5. The Owner agrees that should it fail to correct any defects in the above described water quality control structure 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 Town of Indian Trail in its sole discretion, the Town of Indian Trail is authorized to enter the property to make all repairs, and to perform all maintenance, construction and reconstruction as the Town of Indian Trail deems necessary. The Town of Indian Trail shall then recover from the Owner any and all costs the Town of Indian Trail expends to maintain or repair the water quality control structure or to correct any operational deficiencies. Failure to pay the Town Indian Trail all of its expended costs, after forty-five days written notice, shall constitute a breach of the agreement. The

Town of Indian Trail shall thereafter be entitled to bring an action against the Owner 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.

7. The Owner shall not obligate the Town of Indian Trail to maintain or repair any water quality control structure, and the Town of Indian Trail shall not be liable to any person for the condition or operation of any water quality control structure.
8. The Owner shall not in any way diminish, limit, or restrict the right of the Town of Indian Trail to enforce any of its ordinances as authorized by law.
9. The Owner shall indemnify, save harmless and defend the Town of Indian Trail 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 Town of Indian Trail that are alleged or proven to result or arise from the Owner's construction, operation, or maintenance of the water quality control structure that is the subject of this Covenant.
10. The covenants contained herein shall run with the land and the Owner 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 Owner hereto, its heirs, successors and assigns and shall bind all present and subsequent owners of the property served by the water quality control structure.
11. The Owner shall promptly notify the Town of Indian Trail or its designee when the Owner legally transfers any of the Owner's responsibilities for the water quality control structure. The Owner shall supply the Town of Indian Trail with a copy of any document of transfer, executed by both parties.
12. 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 Owner is held invalid, the remainder of this Covenant shall not be affected thereby.
13. The Declaration and the exact boundary of all water quality control structures (as shown on final plats prepared by a registered surveyor) shall be recorded at the Union County Register of Deeds Office at the Owner's expense.
14. In the event that the Town of Indian Trail or its designee shall determine at its sole discretion at future time that the water quality control structure is no longer required, then the Town of Indian Trail or its designee shall at the request of the Owner execute a release of this Declaration of Covenants which the Owner shall record at its expenses.

IN WITNESS WHEREOF, the Owner 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

(Storm Water Administrator)