

NORTH CAROLINA

MECKLENBURG COUNTY

AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into as of the ____ day of _____, 2018 by and between **MECKLENBURG COUNTY**, a political subdivision of the State of North Carolina ("County"), and the **SOUTHEASTERN LAND DEVELOPMENT, L.L.C.**, a North Carolina limited liability company, (hereinafter "Southeastern").

W I T N E S S E T H:

WHEREAS, Southeastern encroached upon the property of Mecklenburg County identified as Tax Parcel Number 067-031-11 (the "Property") by constructing a rip-rap channel and ditch through the property (see attached Exhibit A) in order to facilitate outflow from an existing Best Management Practices (BMP) on adjacent Southeastern land into a Stewart Creek tributary; and

WHEREAS, Southeastern seeks to remedy the encroachment by connecting to the existing City of Charlotte storm drainage system via its own land and by removing the 24" reinforced concrete pipe located on its land which currently provides an outlet from the BMP to the rip-rap located on the Property; and

WHEREAS, Southeastern shall restore the Property to a condition acceptable to the County, with all costs of the project being borne and paid for by Southeastern; and

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Southeastern, at its sole cost and expense, agrees to remedy the existing encroachment across the Property. The scope of work shall include, but not be limited to, connecting to the existing City of Charlotte drainage system via its own land, removing the 24" reinforced concrete pipe leading to the rip-rap channel located across the Property, and restoring the Property to a condition acceptable to the County, all in accordance with a remediation plan designed by a consultant.
2. Southeastern will contract with Carolina Wetland Services, Inc. for the design of the approved remediation plan, which plan must be approved by the County prior to initiation of remediation activities. County, in its sole discretion, will make the determination as to whether the plan is acceptable, appropriate and in the best interests of the County, and if it is not satisfied with the original plan, County can request modifications to the same or require a different

consultant to design a plan until the County is satisfied. County will review the plan with Southeastern prior to initiation of work. Should the County have to hire a new consultant, Southeastern will reimburse the County for all expenses associated with doing so.

3. Southeastern will contract with Carolina Wetland Services, Inc. for the construction of the approved remediation plan. However, if County determines that Southeastern and/or Carolina Wetland Services, Inc. is unable or unwilling to construct the approved remediation plan correctly, the County has the right to hire a contractor to complete the work. Should the County have to hire a contractor, Southeastern will reimburse the County for all expenses associated with doing so.

4. Southeastern will secure all necessary permits and approvals prior to the start of construction and shall comply with all applicable laws.

5. Southeastern will provide its survey base data to the Carolina Wetland Services, Inc. for the design of the remediation plan or plans.

6. Subject to the approval of the Mecklenburg County Board of County Commissioners ("BOCC"), County will grant a temporary construction easement to Southeastern for purposes of completing the remediation.

7. Southeastern shall reimburse the County for all legal fees and staff time associated with the remediation plan and subsequent work.

8. Southeastern will have one hundred eighty (180) days from the date of BOCC ~~the~~ approval to have all work completed.

9. All remediation work shall be bonded in an amount sufficient to the satisfaction of the County and shall include a warranty period of one (1) year from completion of the same. The bond will be released after the warranty period is complete and the County has inspected the Property and is satisfied with its condition. In addition, Southeastern shall be responsible for complying with the insurance requirements set out in the attached Exhibit B.

10. Southeastern further acknowledges that the adjacent Southeastern-owned Tax Parcel Number 067-031-64 carries a bond held by the City of Charlotte for infrastructure improvements (as shown on the attached Exhibit C). The release of this bond will be held until the remediation work is completed to the satisfaction of the County.

11. Southeastern shall defend, indemnify and hold harmless County and its officers, trustees, elected officials, employees, contractors, contracted service providers and agents from and against all claims, losses, costs, damages and expenses, including attorneys' fees and litigation costs, (a) arising out of remediation work and resulting from the negligence or willful misconduct of Southeastern, its officers, directors, employees, agents, or contractors, or (b) arising out of any default by Southeastern, under this Agreement. Southeastern shall, at its own expense, defend all actions brought against County or its officers, trustees, elected officials, employees, contractors, contracted service providers, for which Southeastern is responsible for indemnification hereunder, and if Southeastern fails to do so, County (at its option, but without

being obligated to do so) may, at the expense of Southeastern and upon notice to Southeastern, defend such actions, and Southeastern shall pay and discharge any and all judgments, legal fees and staff expenses that arise therefrom.

12. All notices permitted or required by this Agreement shall be in writing and shall be deemed to have been duly given when delivered (1) by hand, or (2) by delivery to a nationally recognized overnight express delivering service, (3) by registered or certified mail, postage prepaid, return receipt requested, with a postmark affixed by the United States Postal Service, to the addresses set forth below, or (4) electronic mail. Notice shall be deemed received upon delivery by hand, or two (2) days after delivery to a nationally recognized overnight delivery service or posting by the United States Postal Service if sent by certified or registered mail:

If to Southeastern:

Southeastern Land Development, L.L.C.
c/o Lauren Ovitsky
20023 Shearwater Point Drive
Cornelius, NC 28031

If to County:

Real Estate Manager
Mecklenburg County
Asset and Facility Management
3205 Freedom Drive, Suite 101
Charlotte, NC 28208
Jacqueline.McNeil@mecklenburgcountync.gov

Changes to address for Notices shall be submitted in writing to the other party within 30 days from the effective date of the new contact information.

13. This Agreement shall be governed by the law of the State of North Carolina.

14. This Agreement contains the entire understanding and agreement by and between the parties, and all prior or contemporaneous oral or written agreements or instruments are merged herein, and no amendment to this Agreement shall be effective unless the same is in writing and signed by the parties.

15. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their successors and assigns.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year set forth above:

SOUTHEASTERN LAND DEVELOPMENT, L.L.C.

BY: _____

Name: Lauren Ovitsky

Title: Member/Manager

MECKLENBURG COUNTY

By: _____

Dena R. Diorio

County Manager

APPROVED AS TO FORM

County Real Estate Attorney