GOVERNMENT OF THE DISTRICT OF COLUMBIA

**Office of the Attorney General**

##### Commercial Division

**Procedure and Protocol for obtaining legal sufficiency review of a Stormwater Management Declaration of Covenants from the Office of the Attorney General (OAG)**

DC Official Code Section 8-103.01 provides for the promulgation of rules to implement the provision. Section 529 of Title 21 of the District of Columbia Municipal Regulations (DCMR)

requires that, under certain circumstances, owners of real property execute a stormwater declaration of covenants containing a stormwater management plan (SWMP) and an easement in favor of the Department of Energy and Environment (DOEE) insuring access. Section 529.3 of the DCMR provides that the declaration of covenants and easement shall “be determined legally sufficient by the Attorney General or the Department’s [DOEE’s] Designee.”

DOEE and OAG have agreed that OAG shall determine legal sufficiency.

**Department of Energy and Environment must:**

1. Provide name and e-mail address of technical reviewer so that OAG may discuss technical issues. If necessary, OAG will provide a PDF of the signed Declaration of Covenants to the DOEE reviewer.
2. Provide attached template of the Declaration of Covenants to the owner/developer.

**Review Engineer:**

 **E-mail address:**

**Owner/developer must:**

1. Draft the Declaration of Covenants.
2. Subordinate all prior liens to the Declaration.
3. Produce evidence of title and all liens on the property (i.e. copy of deed and full title search).
4. Provide a site plan (Exhibit B) as approved by DOEE, showing all required stormwater Best Management Practices (BMPs) and land covers and documenting any Off-Site Retention Volume (Offv), as well as the Required Plan Compliance Sheet generated from the Stormwater Database.
5. Provide a maintenance plan of all stormwater BMPs, stormwater infrastructure, and land covers for District approval pursuant to 21 DCMR § 519 (Exhibit C).
6. Submit a pdf of the covenant based on the attached form and modified and completed for execution (with Exhibits A, B, and C) and the information set forth in 3 above to the Contact Person at OAG [the submission need not be executed]. Once the OAG Contact Person has approved the form of your covenant and Exhibit A, send by mail or hand delivery the complete, original covenant signed by the Declarant.
7. After receiving notification of OAG approval for legal sufficiency, return the OAG approved and signed original covenant to DOEE with all exhibits for technical sufficiency review and approval.
8. Provide copy of recorded Declaration of Covenants to DOEE.

**Contact Person at OAG:**

Lawrence Wolk

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Commercial Division

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**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

 **Department of Energy and Environment**

**NATURAL RESOURCES ADMINISTRATION**

**WATERSHED PROTECTION DIVISION**

**DECLARATION OF COVENANTS**

**For a Stormwater Management Facility**

THIS DECLARATION OF COVENANTS (the “**Declaration**”) is made as of this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_, 20\_\_, by and between NAME OF PROPERTY OWNER, a LIST TYPE OF CORPORATE ENTITY (if applicable), and its successors and assigns (“**Owner**”), for the benefit of the DISTRICT OF COLUMBIA, a municipal corporation (the “**District**”).

**RECITALS**

A. The Owner is the owner in fee simple of certain real property and improvements (collectively, the “**Property**”) located in the District of Columbia and more particularly described in **Exhibit A** attached hereto and made a part hereof. No other person or entity has an ownership interest in the Property.

B. In order to manage stormwater flow conditions resulting from certain improvements Owner will make to the Property, the regulations of the District, found at Title 21, Chapter 5, of the District of Columbia Municipal Regulations (“DCMR”) require that Owner develop and submit for approval a Stormwater Management Plan (“SWMP”) for the installation and maintenance of all stormwater best management practices (“BMPs”), stormwater infrastructure, and land covers on the Property (collectively, the “Facility”), and including any obligation to achieve Off-Site Retention Volume (Offv).

C. Section 529 of Title 21 of the DCMR requires that Owner execute and record, with the District of Columbia Recorder of Deeds, a declaration of covenants running with the land that set forth Owner’s responsibilities under the SWMP.

NOW, THEREFORE, for and in consideration of the issuance of building permits and approval of Owner’s plans by the District, and other good and valuable consideration the sufficiency of which is hereby acknowledged, for the benefit of and limitation upon Owner and all future owners of the Property, and for the benefit of the District, Owner for itself, its successors and assigns, does hereby acknowledge, represent, covenant, agree, and warrant to the District as follows:

1. The foregoing Recitals and attached Exhibits are all hereby incorporated in and made a part of this Declaration to the same extent as if herein set forth in full, provided however, that said Recitals shall not be deemed to modify the express provisions hereinafter set forth.

2. The Facility and any responsibility to achieve Off-Site Retention Volume (Offv), as stated in gallons, is shown on the plans approved by the District attached hereto as **Exhibit B**, the Site Plan, as the same may be amended pursuant to the District’s approval.

3. Owner, at its sole expense, shall construct and perpetually operate and maintain the Facility in such manner as to comply with the provisions of Title 21, Chapter 5 of the DCMR and in strict accordance with the SWMP, including the Maintenance Plan, attached hereto as **Exhibit C**, as the same may be amended pursuant to the District’s approval.

4. Owner shall, at its sole expense, make such changes or modifications to the Facility as the District, in its discretion, may determine necessary to ensure that the Facility is maintained in good condition and continues to operate as designed and approved.

5. The District and its agents, employees, and contractors shall have the right to enter the Property for the purpose of inspecting the Facility in accordance with established inspection procedures and Section 16 of the Water Pollution Control Act of 1984 (D.C. Law 5-188; 32 DCR 919; D.C. Official Code § 8-103.01, *et seq.* (2013 Repl.), as amended (the “Act”), at reasonable times and in a reasonable manner, in order to ensure that the Facility is being properly maintained and is continuing to perform in the manner approved by the District.

6. Should Owner fail to perform its responsibilities as required herein, or fail to operate and restore the Facility in accordance with approved design standards, as the same may be amended from time to time, the District shall be entitled to pursue any and all enforcement actions available to it pursuant to the Act, and Title 21, Chapter 22 of the DCMR, as the same may be amended from time to time. Without limiting the generality of the foregoing, in the event that a discharge or threat of discharge from the Facility poses an imminent and substantial danger to the environment or the public health or welfare, the District may take immediate action against Owner pursuant to D.C. Official Code § 8-103.08(b).

7. If Owner’s failure or refusal to maintain the Facility in accordance with the covenants and warranties contained in this Declaration ultimately results in corrective action by the District, Owner shall bear all costs incurred by the District for such corrective measures, such costs may be assessed against the Property, and Owner may be fined in accordance with the Act and Title 21, Chapter 5 of the DCMR.

8. The provisions of this Declaration shall be deemed warranties by Owner and covenants running with the land and shall bind and inure to the benefit of Owner and the District, their respective heirs, successors and/or assigns. When Owner ceases to own an interest in the Property, the rights, warranties, and obligations under this Declaration shall become the rights, warranties, and obligations of the successor-in-ownership and interest to the Property.

9. Owner shall, at its cost and expense, properly record this Declaration with the Recorder of Deeds and provide the District’s Department of the Environment with a copy of this Declaration, certified by the Recorder of Deeds as a true copy of the recorded instrument.

10. Owner shall indemnify, save harmless, and defend the District, and all its officers, agents, and employees from and against all claims or liabilities that may arise out of or in connection with, either directly or indirectly, any of Owner’s actions or omissions with regard to the construction, operation, maintenance and/or restoration of the Facility.

11. Owner warrants, and shall ensure, that all prior liens recorded against the Property are subordinate to this Declaration. Failure to subordinate liens shall, at the District’s sole election, give rise to termination of any building permits and/or invalidation of any certificate of occupancy relating to the Property.

12. Owner shall, at its sole expense, comply with all provisions of this Declaration regardless of any conflicting requirements in any other covenant, easement, or other legal document recorded or unrecorded against the Property. Neither the entering into of this Declaration nor performance hereunder will constitute or result in a violation or breach by Owner of any other agreement or order that is binding on Owner.

13. To the extent Owner is an entity, Owner warrants that it: (i) is duly organized, validly existing and in good standing under the laws of its state of organization; (ii) is qualified to do business in, and is in good standing under, the laws of the District of Columbia; (iii) is authorized to perform under this Declaration; and (iv) has all necessary power to execute and deliver this Declaration.

14. The form of this Declaration has been approved by the District of Columbia Office of the Attorney General (“OAG”) for legal sufficiency pursuant to Title 21, Section 529.3 of the DCMR. This Declaration, and the provisions contained herein, may not be modified, amended, or terminated without the prior written consent of the District and legal sufficiency approval by OAG, such agreement to be evidenced by a document duly executed and delivered in recordable form and recorded with the Recorder of Deeds at no expense to the District.

15. The District has the right to specifically enforce this Declaration.

16. This Declaration shall be governed by, construed under, and enforced in accordance with, the laws of the District of Columbia.

17. This Declaration has been duly executed and delivered by Owner, and constitutes the legal, valid, and binding obligations of Owner, enforceable against Owner and its successors and assigns, in accordance with its terms.

18. If any of the covenants, warranties, conditions or terms of this Declaration shall be found void or unenforceable for whatever reason by any court of law or of equity, then every other covenant, condition or term herein set forth shall remain valid and binding.

**[SIGNATURES FOLLOW]**

IN WITNESS WHEREOF, Owner has, as of the day and year first above written, caused this Declaration of Covenants to be signed by NAME AND TITLE OF PERSON SIGNING ON BEHALF OF OWNER.

By: **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**\_\_\_\_\_\_\_\_\_\_\_\_\_

 NAME, TITLE

**ACKNOWLEDGMENT**

\_\_\_\_\_\_LIST STATE\_\_\_\_\_\_\_\_\_\_\_\_ )

 ) ss:

\_\_\_\_\_\_LIST COUNTY\_\_\_\_\_\_\_\_\_\_ )

I, NAME OF NOTARY, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that NAME OF PERSON SIGNING ON BEHALF OF OWNER, who is personally well known (or satisfactorily proven) to me, and being authorized to do so, executed the foregoing Declaration of Covenants and has acknowledged the same to be the act and deed of NAME OF OWNER, and that s/he delivered the same as such.

GIVEN under my hand and seal this \_\_\_\_ day of \_\_\_\_\_\_\_\_, 20\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public

My commission expires:

[NOTARIAL SEAL]

**Approved as to technical sufficiency:**

District of Columbia Department of Energy and Environment

Natural Resources Administration

Watershed Protection Division

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY:**

District of Columbia Office of the Attorney General

Commercial Division

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Assistant Attorney General

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Property Address [include Square and Lot(s):**

**EXHIBIT A**

[LEGAL DESCRIPTION]

**EXHIBIT B**

[SITE PLAN]

**EXHIBIT C**

[MAINTENANCE PLAN]