

DECLARATION OF RESTRICTIVE COVENANT

This DECLARATION OF RESTRICTIVE COVENANT (the “Declaration”) is made this _____ day of _____, 2018 by _____, having its principal office at _____, (the “Declarant”) in favor of the City of Detroit, a municipal corporation of the State of Michigan, acting by and through its Department of Water and Sewerage (“DWSD” or “City”), with offices located at 735 Randolph St., Detroit, Michigan 48226.

RECITALS

WHEREAS, the Declarant is the fee owner of certain real property situated in the City of Detroit, County of Wayne and State of Michigan, which property is designated as parcel(s) number(s) _____ with the Wayne County Register of Deeds and is also known by the street address of _____, Detroit, MI (such real property together with all improvements now or hereafter erected thereon, being hereinafter referred to as the “Premises”), legally described as:

Parcel ID:

; and

WHEREAS, the Declarant has agreed to construct a Green Stormwater Infrastructure (also referred to as Stormwater Practice) project as described in *Appendix A* of the Capital Partnership Agreement (“CPA”) between the Declarant and the Detroit Water and Sewerage Department (DWSD) dated _____ hereto (the “Project”) at the Premises; and

WHEREAS, the Project is designed to reduce combined sewer overflow and reduces stormwater runoff from impervious surfaces in the City of Detroit in accordance with the Capital Partnership Program application filed with DWSD and pursuant to the CPA; and

WHEREAS, Declarant has applied for partial funding for the Project; and

WHEREAS, the DWSD has allocated the amount of _____ Dollars (\$ _____) to provide funding (“Funding”) for the Project; and

WHEREAS, the Funding will be made available by DWSD for the purposes of the Project pursuant to the terms and conditions of the CPA, hereby incorporated herein as if fully restated; and

WHEREAS, as a condition precedent to the disbursement of the Funding for the purposes of the Project pursuant to the CPA, Declarant has agreed to execute, deliver and perform its obligations under this Declaration.

NOW THEREFORE, Declarant, for itself and on behalf of its successors, heirs, assigns, legal representatives, lessees and transferees, including, without limitation, any owners and/or users of the Premises does hereby declare and agree that the Premises shall be hereinafter held, sold, transferred, conveyed and occupied subject to the restrictions, covenants, obligations and agreements set forth in this Declaration which shall run with the Premises and shall be binding upon Declarant and its successors, heirs, assigns, legal representatives, lessees and transferees, including, without limitation, any future owners and/or users of the Premises.

WHEREAS, Declarant has agreed to construct the Project and provide for its continued operation and maintenance for the duration of the “Performance Term,” as more fully described below;

1. **DEFINITIONS.** For purposes hereof the following terms shall have the following meanings:
 - a. **Capital Partnership Agreement (CPA)** – The agreement between the Declarant and DWSD prescribing the terms and conditions of the Declarant’s participation in the CPP and funding of GSI measures installed on Declarant’s Premises.
 - b. **Capital Partnership Program (CPP)** - The DWSD program that provides capital partnership funding to selected applicants who agree to design, construct operate and maintain GSI projects that meet DWSD performance and prioritization criteria.
 - c. **Green Stormwater Infrastructure (GSI)** - Practices designed and constructed to reduce or control the volume and rate at which stormwater leaves a site. Stormwater practices may use vegetation, soils, and other elements to restore some of the natural processes that reduce runoff. Examples of stormwater practices include bio-retention practices, permeable pavement, green roofs, and detention ponds
 - d. **Lien** - any lien (statutory or otherwise), security interest, mortgage, deed of trust or other encumbrance or similar rights of others, or any other agreement to give any of the foregoing
 - e. **Operation and Maintenance (O&M)** – activities required of the CPP applicant to provide for continuing Performance of the GSI installed on the Declarant’s Premises. O&M requirements are as delineated in appendices of the CPA between the Declarant and DWSD.
 - f. **Performance** - measures of the functionality of the installed GSI measures in terms stormwater volume and peak-flow detention and retention as delineated in the DWSD Drainage Program Guide.

- g. **Performance Term** – the period of time, typically coincident with the term of the CPA, over which the Declarant’s installed GSI measure is to meet the Performance measures delineated in the CPA between the Declarant and DWSD.
- h. **Person** - an individual, corporation, partnership, joint venture, estate, trust, unincorporated association; any federal, state, county or municipal government or any bureau, department or agency thereof; and any fiduciary acting on behalf of any of the foregoing.
- i. **Substantial Completion** - the construction work contemplated by the Project has been substantially completed and a Certificate of Occupancy has been issued for the Premises such that the Premises can be utilized for the purposes described in the CPA

2. **EFFECTIVE DATE AND TERMINATION.** This Declaration shall become effective immediately upon execution by Declarant and shall terminate upon expiration of the Performance Term except for rights and obligations that accrued prior to termination.

3. **CITY PURPOSE COVENANT.** For a period commencing upon Substantial Completion of the improvements contemplated by the Project, and concluding _____ (the “Performance Term”), Declarant, for itself and on behalf of its successors, heirs, assigns, legal representatives, lessees, and transferees, including without limitation, any owners and/or users of the Premises agrees as follows (“City Purpose Covenant”):

Declarant agrees that for the Performance Term the Project shall be used to reduce combined sewer overflow and reduce runoff from impervious surfaces in the City of Detroit for the benefit of DWSD and the people of the City.

4. **USE AND MAINTENANCE.** Unless otherwise approved in writing by DWSD, the Declarant agrees that for the Performance Term, it will maintain the Project and keep it in good repair with full functionality for its intended purpose as described in the CPA. The Declarant further agrees that, unless otherwise approved in writing by DWSD, the Project shall for the duration of the Performance Term be kept free and clear of any and all obstructions that would impede the Project’s proper functioning or inspection thereof.

5. **CERTIFICATION.** On the second anniversary of the date of this Declaration and on each anniversary thereafter, Declarant (or the owner of the Premises at such time) shall issue certification to DWSD certifying that the Premises are held, occupied and used in compliance with the requirements of this Declaration. The certification required by this Section shall be signed by the Chief Executive Officer of Declarant or that of the owner of the Premises at such time.

6. **INSPECTION.** At any time and from time to time upon reasonable prior notice, the City and its employees, servants, consultants and agents shall be permitted to enter the Premises to confirm that the Premises are being used in compliance with the requirements of this

Declaration.

7. **REPRESENTATIONS AND WARRANTIES.** Declarant represents and warrants that:
 - a. There are no restrictions of record on the use of the Premises, nor any present or presently existing future estate or interest in and to the Premises nor any Lien (as defined below), obligation, covenant, easement, limitation, lease or other encumbrance of any kind, on or with respect to the Premises, which prevent, preclude or delay, or may prevent, preclude or delay, the imposition of the restrictions, covenants, obligations and agreements of this Declaration which have not been extinguished or subordinated to this Declaration; and
 - b. The execution, delivery, performance and recordation of this Declaration by Declarant has been authorized by all necessary corporate action of Declarant and does not and will not: (i) require any consent or approval by any Person (as defined below), (ii) contravene the charter or by-laws of Declarant, (iii) violate any provision of, or require any filing, registration, consent or approval of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to Declarant or its affiliates, (iv) result in a breach of, or constitute a default or require any consent under, any indenture or agreement, lease or instrument to which Declarant is a party or its properties may be bound or affected, or (v) cause Declarant to be in violation of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award, or in default under any such indenture, agreement, lease or instrument.
8. **REAL COVENANTS.** Declarant for itself and on behalf of its successors, heirs, assigns, legal representatives, lessees and transferees including, without limitation, any present and future owners and/or users of the Premises understands and agrees that the restrictions, covenants, obligations and agreements contained in this Declaration shall be real covenants running with the land and shall inure to the benefit of the City and its successors and assigns, and bind Declarant and its successors, heirs, assigns, legal representatives, lessees and transferees, including, without limitation, any present and future owners and/or users of the Premises.
9. **RECORDING.** Declarant shall file and record, or shall cause to be filed and recorded with the Wayne County Register of Deeds.
10. **REMEDIES AND ENFORCEMENT.** Declarant for itself and on behalf of its successors, heirs, assigns, legal representatives, lessees and transferees including, without limitation, any owners and/or users of the Premises understands, acknowledges and agrees as follows:
 - a. The City is an interested party to this Declaration and Declarant consents to enforcement by the City of the restrictions, covenants, obligations and agreements contained herein.

- b. Monetary damages would not be adequate or sufficient to compensate the City for a breach of any of the restrictions, covenants obligations and/or agreements of this Declaration, therefore the City may obtain equitable relief in the form of an injunction compelling Declarant to specifically perform and observe the restrictions, covenants, obligations and agreements contained in this Declaration or to remedy any failure on the part of Declarant or any of its successors, heirs, assigns, legal representatives, lessees and transferees including, without limitation, any owners and/or users of the Premises to perform or observe any such restriction, covenant, obligation or agreement.

11. INDEMNIFICATION. Declarant for itself and on behalf of its successors, heirs, assigns, legal representatives, lessees and transferees agrees that it shall defend, indemnify and hold the City and its employees and agents harmless from any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, including but not limited to, court costs and reasonable attorney fees that may be imposed upon or incurred by the City resulting from the execution and delivery of this Declaration, the recordation thereof or the failure of the Declarant or any of its successors, heirs, assigns, legal representatives, lessees and transferees including, but not limited to, any present and future owners and/or users of the Premises to perform or observe any restriction, covenant, obligation or agreement of this Declaration on its or their party to be performed or observed.

Dated as of:

By:

PRINT NAME

TITLE

State of Michigan
County of Wayne

The foregoing instrument was acknowledged before me this (date) by (name of person acknowledged).

NOTARY

Notary Public, State of _____

My Commission expires _____.

After recording, please return to the Detroit Water and Sewerage Department

735 Randolph
Detroit, MI 48226
Attn: Stormwater Management Group

Drafted by:

Nikkiya T. Branch, Esq.
Detroit Water and Sewerage Department
735 Randolph
Detroit, Michigan 48226