

Filed at the Request of
and to be Returned to:

MCREF III Lacey Apartments LLC
1417 116th Ave NE, Suite 208
Bellevue WA 98004

STORMWATER FACILITY DECLARATION

Grantor	MCREF III LACEY APARTMENTS LLC
Grantee	MCREF III LACEY APARTMENTS LLC
Legal Description (abbreviated)	A portion of Section 9, Township 18 N., Range 1 W., W.M. Full legal descriptions on Exhibits A and B.
Assessor's Tax Parcel ID Nos.	_____
Reference Nos. of Related Documents	N/A

STORMWATER FACILITY DECLARATION

This Stormwater Facility Declaration (“Declaration”) is made this ___ day of ___, 202_, by MCREF III LACEY APARTMENTS LLC, a Delaware limited liability company (“Declarant”).

RECITALS

A. Declarant is the owner of all that property which is subject to the Declaration of Covenants, Conditions and Restrictions for Lacey 23, a Plat Community, recorded in the records of Thurston County, Washington on _____, 202_ under Thurston County Auditor’s File No. _____ (the “Single-Family Property”).

B. Declarant is also the owner of all the real property described on Exhibit A attached hereto and by this reference incorporated herein (the “Multi-Family Property”).

C. Declarant desires to provide for maintenance of certain property benefiting the Single-Family Property and the Multi-Family Property, for the sharing of costs benefitting the owners of such property and for an allocation of such costs between the owner of the Multi-Family Property and Lacey 23 Owners’ Association (the “Association”), the homeowners’ association in which all owners of parcels within the Single-Family Property are members.

NOW THEREFORE, Declarant hereby declares that the Multi-Family Property, the Single-Family Property and the Stormwater Facility (as defined in Section 2.1 below) submitted to the terms of this Declaration (collectively, the “Properties”), shall be held, sold, and conveyed subject to the covenants, conditions and easements contained herein, which shall run with title to the Properties and shall bind all parties having any right, title, or interest in the Properties, their heirs, successors, and assigns, and shall inure to the benefit of the Association and each owner of the Properties.

1. Stormwater Facility. “Stormwater Facility” means the real property more particularly described on Exhibit B attached hereto and by this reference incorporated herein. The Stormwater Facility contains a bio retention swale, infiltration basin, stormwater pipes and related facilities serving both the Single-Family Property and the Multi-Family Property. “Stormwater Facility” does not mean, nor include, (i) dry wells required for each dwelling constructed on the Single-Family Property, which shall be the sole responsibility of each owner of the parcels within the Single-Family Property, (ii) stormwater facilities which exclusively serve the Multi-Family Property.

2. Easement and License; Indemnity.

2.1 Easement. Subject to the provisions of this Declaration, Declarant hereby grants and conveys to the Association, and beneficially, to each owner of property within the Single-Family Property, an easement appurtenant thereto over, under, and across the Stormwater

Facility to convey and discharge stormwater from the Single-Family Property through pipes and related facilities installed in or on the Stormwater Facility.

2.2 No Obstruction. No Association member shall install any permanent or temporary structure or improvement, nor permit refuse of any kind including, but not limited to, yard debris, leaves and dirt, or other matter, that prevents or obstructs the flow of stormwater from the Single-Family Property into the Stormwater Facility. The Association and Association members shall take all reasonable precautions to avoid causing the creation of excess surface water runoff from lots within the Single-Family Property.

2.3 Assumption of Risk. Any use of the Stormwater Facility in accordance with this Declaration shall be deemed to be at the risk of the person or entity using the same, and the owner of the Multi-Family Property shall not be liable or responsible for any damage to property or injury to person or loss of life in connection with any party's use of, or entry upon, the Stormwater Facility, except to the extent the damage results from the Multi-Family Property owner's own gross negligence or intentional misconduct. The Association and each owner of property within the Single-Family Property accepts the Stormwater Facility in their present condition, "AS-IS", and except as specifically provided in Section 2.3.2 herein regarding the Stormwater Facility, the owner of the Multi-Family Property shall not have any duties to the Association or owners of property within the Single-Family Property regarding the condition of the Stormwater Facility.

3. Joint Maintenance and Budget.

3.1 Joint Budget Items. The term "Joint Budget Items" means the expenses associated with maintenance of the Stormwater Facility, including but not limited to, real property taxes and assessments, reserves and/or expenditures for capital repairs and replacements, commercially reasonable insurance coverage and all other costs and expenses associated with the Stormwater Facility including, but not limited to maintenance costs and compliance with the Stormwater Maintenance Agreement (defined below) benefitting both the Single-Family Property and the Multi-Family Property associated therewith.

3.2 Multi Family Property Owner Responsibility.

3.2.1 Joint Budget Items. The owner of the Multi-Family Property shall have the exclusive right to contract for and obtain the services contemplated by the Joint Budget Items and shall have responsibility for the payment of the costs of such items.

3.2.2 Maintenance. The owner of the Multi-Family Property shall control the time, manner and cost of maintenance, repair and replacement, and keep the Stormwater Facility in such conditions as required by the City of Lacey Commercial Agreement to Maintain Stormwater Facilities and to Implement a Pollution Source Control Plan (the "Stormwater Maintenance Agreement") and as needed to ensure the Stormwater Facility operates

as intended. Notwithstanding the foregoing, the Association shall be responsible for ensuring Association member(s) and their family members, guests and invitees, including, without limitation, tenants and contractors (collectively, "Owner Parties") comply with the requirements of this Declaration and the Stormwater Maintenance Agreement or any document recorded against the Single-Family Property by the City of Lacey, Thurston County and/or any other governmental entity or public utility specifically relating to the Stormwater Facility. If the Multi-Family Owner's responsibilities under this Section are assumed by any local, state, or federal government entity, the owner of the Multi-Family Property shall be relieved of such responsibility to the extent so assumed. The Multi-Family Owner may, at its sole discretion, provide additional or a higher level of maintenance of the Stormwater Facility if such owner determines that such additional maintenance is desirable. Notwithstanding the foregoing, to the extent the Stormwater Facility is damaged (excluding ordinary wear and tear) or the terms and conditions of Stormwater Maintenance Agreement are violated as a result of the actions or omissions of an Owner Party or Parties, then the Association member(s) who caused, or whose Owner Parties caused, such damage or violation of such required terms shall be solely responsible for the maintenance and repair, and if necessary, the replacement, of the Stormwater Facility. All maintenance, repair and replacement work required under this Declaration shall be performed in compliance with applicable law. To the extent as may be required, the Association and Owner Parties, as applicable, must provide any information as may be required for the maintenance and compliance with the Stormwater Maintenance Agreement and applicable law.

3.2.3 Insurance. The owner of the Multi-Family Property shall keep in force property and public liability insurance on the Stormwater Facility in accordance with reasonable standards for such insurance. The Association shall be an additional insured with respect to such insurance. For avoidance of doubt, insurance is included as a Joint Budget item.

3.2.4 Fence. The owner of the Multi-Family Property shall install a fence along portions of the border between the Stormwater Facility and portions of the Single-Family Property adjacent thereto. The owner of the Multi-Family Property shall bear the cost for of the initial installation of such fence. The expense of ongoing maintenance, repair and replacement of such fence shall be included as a Joint Budget item.

4. Obligation to Share Costs.

4.1 Responsibility for Assessments. The Association shall pay to the owner of the Multi-Family Property an annual assessment to cover a portion of the costs, including insurance and property taxes and assessments applicable for the Stormwater Facility, incurred by the owner of the Multi-Family Property in performing its obligations under this Declaration. The obligation to pay such assessments shall be mandatory, whether or not the Association agrees with or is satisfied with the manner and extent of performance by the owner of the Multi-Family Property.

4.2 Computation of Assessments. On an annual basis, the owner of the Multi-Family Property shall determine an estimated budget for performing its obligations under this Declaration during the upcoming year, including but not limited to an appropriate amount to be placed in a reserve fund for capital repairs and replacements. The budget shall be adjusted to reflect any excess or deficiency in the budget assessed for the immediately preceding year, as compared to actual expenses for that year. The Association's annual assessment shall be thirty seven and one-half percent (37.5%) of the annual budget and the owner of the Multi-Family Property's annual assessment shall be sixty two and one-half percent (62.5%) of the annual budget and is based upon the percentage of stormwater run-off estimated to be generated by each respective property. Said percentage calculation is final and non-negotiable.

4.3 Payment of Assessments. Within thirty (30) days of notice of an annual assessment, the Association shall pay to the owner of the Multi-Family Property the entire amount due. Any assessment delinquent for a period of more than thirty (30) days shall be subject to a late charge of not exceeding the lesser of twelve percent (12%) per annum, or the maximum allowable by law, of the principal assessment amount from the date due until paid, plus all costs of collection including, but not limited to, reasonable attorneys' fees actually incurred and any other amounts provided or permitted by law. If any assessment remains unpaid after ninety (90) days, the owner of the Multi-Family Property may institute suit to collect such amounts. All payments shall be applied first to costs and attorneys' fees, then to late charges, then to interest, and then to the delinquent assessments.

4.4 Recordkeeping. The owner of the Multi-Family Property shall maintain full and accurate books of account with respect to the performance of its responsibilities - hereunder. The books and records shall be made available during normal business hours for inspection and copying upon request by the Association. Copying charges shall be paid by the Association when requesting copies.

5. General.

5.1 Notice. Any notice shall be served personally (including delivery by commercial courier service), by any recognized overnight service (such as UPS or Federal Express), or shall be mailed by certified mail, return receipt requested to the president or secretary of the Association at the then current address of the Association shown in the records of the Washington Secretary of State or to the owner of the Multi -Family Property at its mailing address shown in the records of the Thurston County Assessor.

5.2 Enforcement. The obligations created hereunder may be enforced by the Declarant, the Association, or any owner of any portion of the Properties by any means available at law or in equity.

5.3 Amendment. The Declarant may amend this Declaration unilaterally at any time and from time to time to: (i) bring any provision hereof into compliance with any

applicable governmental statute, regulation or judicial determination; (ii) enable any reputable title insurance company to issue title insurance coverage with respect to any portion of the Properties; (iii) enable any institution or government lender to make, purchase, insure, or guarantee mortgage loans on an portion of the Properties; provided, however, any such amendment shall not adversely affect the title to any property unless the owner thereof consents in writing. In addition, this Declaration may be amended upon the approval of (i) the owner of the Multi-Family Property and (ii) the approval of members holding majority of the votes in the Association. Amendments to this Declaration shall become effective when recorded in the public records of Thurston County, Washington, unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six (6) months of its recordation or such amendment shall be presumed to have been validly adopted.

5.4 Duration. The provisions of this Declaration shall run with and bind the Properties and shall be and remain in effect perpetually to the extent allowed by law.

5.5 Binding Effect. This Declaration shall be binding upon and inure to the benefit of every owner of any portion of the Properties.

5.6 Governing Law. This Declaration shall be governed by and construed under the laws of the State of Washington.

5.7 Waiver. No failure of any party to exercise any power under this Declaration or insist upon strict compliance with this Declaration and no custom or practice at variance with the terms of this Declaration shall constitute a waiver of the right to demand exact compliance with the terms of this Declaration.

5.8 Severability. Invalidation of any provision or application of a provision of this Declaration by any court shall not affect any other provision or applications.

[Remainder of page intentionally blank; signature on following page]

IN WITNESS WHEREOF, the Declarant has executed this Declaration as of the date first written above.

MCREF III LACEY APARTMENTS LLC,
a Delaware limited liability company

By: Mill Creek Fund III LLC,
a Delaware limited liability company, a
member

By: MCRT Fund III Manager LLC,
a Delaware limited liability company, its
manager

By: _____
Steve Yoon,
Senior Managing Director

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this ____ day of _____, 20__, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared STEVE YOON to me known to be the Senior Managing Director of MCRT Fund III Manager LLC, a Delaware limited liability company, the manager of Mill Creek Fund III LLC, a Delaware limited liability company, a member of MCREF III LACEY APARTMENTS LLC, a Delaware limited liability company, the limited liability company that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said company, for the use and purpose therein mentioned, and on oath stated that he was authorized to execute the said instrument.

Witness my hand and official seal thereto affixed the day and year in this certificate above written.

Print Name: _____
NOTARY PUBLIC in and for the State of
Washington, residing in _____
My commission expires _____

EXHIBIT A
LEGAL DESCRIPTION OF MULTI-FAMILY PROPERTY

EXHIBIT B
LEGAL DESCRIPTION OF STORMWATER FACILITY