

STATE OF NORTH CAROLINA
COUNTY OF FORSYTH

Permit No. _____

HOMEOWNERS (or other) ASSOCIATION OPERATION AND MAINTENANCE AGREEMENT

THIS AGREEMENT made pursuant to Town of Kernersville Watershed Protection and Stormwater Ordinances and entered into this _____ day of _____, 20____, by and between the TOWN OF KERNERSVILLE, a North Carolina Municipal Corporation, Party of the First Part, hereinafter referred to as "TOWN"; and _____, here-in after referred to as "DEVELOPER", and _____, here-in after referred to as the "ASSOCIATION", Parties of the Second Part.

WITNESSETH:

1. The TOWN under various state and federal laws, is required to regulate the maintenance of engineered Stormwater Control Measures and related structures (hereinafter referred to as "SCMs") constructed to serve new or re-development within both the corporate limits of the TOWN and within the extra territorial zoning jurisdiction of the TOWN to ensure that, following initial construction, the SCMs are operated, maintained, and to the extent necessary, repaired in accordance with applicable state and federal laws.

2. The TOWN has determined that, to maintain the Town's compliance under applicable state and federal regulations, certain obligations are to be met by the DEVELOPER and subsequent owners of the SCMs.

3. The DEVELOPER is the owner of certain lands as described in Deed Book _____, Page _____, in the Office of the Register of Deeds of Forsyth County, North Carolina upon which it is erecting and will make improvements, said development to be known as _____ (hereinafter referred to as the "PROPERTY").

4. The DEVELOPER desires to build SCMs to provide storage and treatment of stormwater runoff to serve the development on said PROPERTY, as required by the Kernersville Watershed Protection and Stormwater Ordinances (hereinafter referred to as "ORDINANCES").

5. The DEVELOPER has applied to the TOWN for the issuance of a high density watershed/stormwater permit (hereinafter referred to as "PERMIT") to construct, maintain and operate the SCMs consistent with the approved plans and specifications on file at the office of the Watershed Administrator and the Operation and Maintenance Plan (ATTACHMENT A).

6. The DEVELOPER has conveyed unto the TOWN, or its successors or assigns, an Easement and Right-of-Way establishing the right of ingress, egress and regress over the PROPERTY for the purpose of inspection, repair, or maintenance of the SCMs. The Easement and Right-of-Way for the SCMs are described in Deed Book _____, Page _____, which is recorded in the Office of the Register of Deeds of Forsyth (or Guilford, if applicable) County, North Carolina.

7. The TOWN desires to assure that the SCMs on the PROPERTY are properly constructed, maintained and operated in accordance with law, the ORDINANCES, and PERMIT provisions in order to protect the quality of the waters of the State and the public interest therein.

8. These SCMs are required to comply with the ORDINANCES and that failure to maintain the SCMs is a violation of the ORDINANCES potentially subjecting each lot owner of the PROPERTY to significant daily civil penalties and other enforcement actions.

9. After the completion of construction of the SCMs, the DEVELOPER may convey the SCMs to the ASSOCIATION.

NOW, THEREFORE, in consideration of the promises and the benefits to be derived by each of the parties hereto, the TOWN, the DEVELOPER and the ASSOCIATION do hereby mutually agree as follows:

1. The DEVELOPER shall construct the SCMs in accordance with the ORDINANCES, PERMIT and plans and specifications hereafter issued and approved by the TOWN; and that DEVELOPER and ASSOCIATION assume specific maintenance, replacement, reconstruction and repair, responsibilities set forth in the ORDINANCES and with respect to the SCMs.

2. Construction and Maintenance of the SCMs: The DEVELOPER shall be responsible for the construction of the SCMs; and prior to conveying control of the SCMs, the DEVELOPER will be responsible for maintenance, repair, reconstruction, and replacement thereof. Following conveyance of the SCMs, the ASSOCIATION and its members will be responsible for maintaining the SCMs, their appurtenances and vegetation in the manner specified herein and in strict compliance with the ORDINANCES. At all times, the SCMs shall perform as designed and shall at all times comply with all applicable laws, ordinances, regulations, rules and directives of governmental authorities.

3. Ownership and/or Transfer of PROPERTY: Upon completion of the SCMs, the DEVELOPER has the option to convey that portion of the PROPERTY on which the SCMs are located to an Association to be formed for the purpose of administering the provisions of a declaration of covenants to be imposed upon the PROPERTY, which declaration shall fully comply with all requirements of this contract as well as all applicable laws. The Declaration of Covenants, Conditions and Restrictions for PROPERTY, in reference to this contract and all applicable stormwater and watershed laws, shall be subject to review and approval by the Town of Kernersville Attorney.

The DEVELOPER agrees that it shall not transfer ownership and/or control of the SCMs until construction has been completed in accordance with the PERMIT and approved plans and specifications; and as defined in the ORDINANCES, the TOWN has inspected and approved the SCMs. In addition, the DEVELOPER and ASSOCIATION and any new Owner must request that the PERMIT for the SCMs be re-issued to any subsequent Owner.

The DEVELOPER and ASSOCIATION agree not to transfer, convey, assign or otherwise relinquish or release its responsibility for the operation and maintenance of its SCMs until a PERMIT has been re-issued to DEVELOPER and ASSOCIATION's successor, or new owner at which time DEVELOPER and ASSOCIATION shall be released from any obligations hereunder arising from events or circumstances occurring after the date the SCMs are transferred and the PERMIT is reissued to the new Owner of the PROPERTY.

4. Cost Estimates for Construction of the SCMs: The DEVELOPER's Engineer shall submit an estimate of construction costs for review and approval by the TOWN in accordance and regulations with the ORDINANCES. This cost estimate will be used to establish the level to which the escrow account shall be funded.

5. Establishment of an Escrow Account: For the purpose of insuring the availability of funds for the long term maintenance and/or replacement/reconstruction of the SCMs, an escrow account must be established, which can be spent solely for that purpose. Maintenance activities include, but are not limited to, sediment removal, and structural, biological or vegetative replacement, major repairs, or reconstruction. If the SCMs are not performing adequately or as intended or are not properly maintained, the TOWN in its sole discretion, may remedy the situation, and in such instances, the TOWN shall be fully reimbursed from the escrow account.

Escrowed funds may be spent by the DEVELOPER, ASSOCIATION or ASSOCIATION's successor for allowable expenses, provided that the TOWN shall first consent to the expenditure. Escrowed funds shall not be spent for routine landscaping maintenance items such as mowing.

The escrow account will be funded initially by a lump sum contribution of the DEVELOPER (the "Initial Payment"), and thereafter by annual sinking funds paid by the ASSOCIATION, if it has taken ownership or by the DEVELOPER if it still retains ownership of the SCMs. The DEVELOPER shall deposit the Initial Payment in the escrow account and show proof of such payment:

- (i) Prior to plat recordation of the PROPERTY; or
 - (ii) Before the issuance of building permits for the construction of improvements on the PROPERTY.
- Whichever occurs first.

The Initial Payment shall be equal to \$ _____ dollars (which is equal to fifteen percent (15%) of the initial construction costs of the SCMs).

The total sinking fund budget is defined as the amount required for the initial construction cost of the SCMs. The ASSOCIATION shall deposit funds at least annually in equal installments into the escrow account such that at least two-thirds (2/3) of the total amount of the sinking fund budget, as set in the ORDINANCES, shall be deposited into the escrow account within the first five (5) years and the full amount shall be deposited within ten (10) years following initial construction of the SCMs. A portion of the annual assessments of the ASSOCIATION shall include an allocation into the escrow account. Any funds drawn down from the escrow account shall be replaced in accordance with the schedule of anticipated work used to create the sinking fund budget.

6. The DEVELOPER shall provide in an Operation and Maintenance Plan (ATTACHEMENT A) that specifies all necessary operation and maintenance procedures and that the SCMs, appurtenances and access easements thereto shall thereafter be properly maintained and operated in conformity with ORDINANCES and the provisions of the PERMIT.

7. The DEVELOPER and its successors shall grant to the TOWN a right of entry to inspect, monitor, maintain, repair, and reconstruct SCMs.

8. The DEVELOPER and its successor hereby authorize the TOWN to recover from the DEVELOPER or ASSOCIATION and its members, whichever is the responsible party, any and all costs the TOWN expends to maintain or repair the SCMs or to correct any operational deficiencies. Failure to pay the TOWN all of its expended costs, after forty-five days written notice, shall constitute a breach of the agreement. The TOWN shall thereafter be entitled to bring an action against the responsible party to pay, or foreclose upon the lien hereby authorized by the agreement against the PROPERTY, or both, in case of a deficiency. Interest, collection costs, and attorney fees shall be added to the recovery.

9. This Agreement shall not obligate the TOWN to maintain or repair any SCMs, and the TOWN shall not be liable to any person, firm, partnership, company, corporation, governmental agency, Association or entity for the condition or operation of SCMs.

10. This agreement shall not in any way diminish, limit, or restrict the right of the TOWN to enforce any of its ordinances as authorized by law.

11. Indemnification: Owners, DEVELOPER and/or ASSOCIATION agree to protect, defend, indemnify and hold the TOWN, its officers, employees and agents free and harmless from and against any losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities in connection with or arising out of this Agreement and/or related to the SCMs, unless the TOWN has agreed in writing to assume the maintenance responsibility for the SCMs and has accepted dedication of any and all rights necessary to carry out that maintenance.

12. A copy of this Operation and Maintenance Agreement shall be filed at the Forsyth (or Guilford, if applicable) County Register of Deeds and in the office of the Watershed Administrator.

IN WITNESS WHEREOF, the parties have hereto set their hands and seals, this _____ day of _____, 20__:

{SIGNATURES APPEAR ON THE FOLLOWING PAGES}

PARTY OF THE FIRST PART:

TOWN OF KERNERSVILLE

By: _____
Dawn H. Morgan, Mayor

ATTESTED TO:

Keith Hooker, Town Clerk

STATE OF NORTH CAROLINA)
COUNTY OF _____

I, _____, a Notary Public of Forsyth County, North Carolina, do hereby certify that _____ personally came before me this day and acknowledged that he is the Town Clerk of the Town of Kernersville, a North Carolina municipal corporation, and that by authority duly given as the act of the Town of Kernersville, the foregoing instrument was signed in its name by its Mayor, sealed with its corporate seal and attested by him/her as its Town Clerk.

Witness my hand and official seal, this the _____ day of _____, 20____.

Notary Public
Print/Type Name: _____

My Commission Expires: _____

PARTY OF THE SECOND PART:

DEVELOPER:

By: _____ (SEAL)

Name: _____

Its: _____ (Title)

ATTESTED TO:

STATE OF NORTH CAROLINA)
COUNTY OF _____)

DEVELOPER
ACKNOWLEDGEMENT

I, _____, a Notary Public of _____ County, North
Carolina, do hereby certify that _____, the _____ of
_____ personally came before me this day and acknowledged the execution
and sealing of the foregoing instrument as _____ on behalf of and as the act of the
company referred to in this acknowledgment.

Witness my hand and notarial seal, this the _____ day of _____, 20____.

Notary Public

My Commission Expires: _____

(SEAL)

PARTY OF THE SECOND PART:

ASSOCIATION:

_____.

By: _____ (SEAL)

Name: _____

Its: _____ (Title)

ATTESTED TO:

STATE OF NORTH CAROLINA)
COUNTY OF _____)

ASSOCIATION
ACKNOWLEDGEMENT

I, _____, a Notary Public of _____ County, North
Carolina, do hereby certify that _____, the
_____ of _____ personally came before
me this day and acknowledged the execution and sealing of the foregoing instrument as
_____ President on behalf of and as the act of the company referred to in this
acknowledgment.

Witness my hand and notarial seal, this the _____ day of _____, 20____.

Notary Public

My Commission Expires: _____

(SEAL)