

STATE OF NORTH CAROLINA

COUNTY OF WAKE

AGREEMENT

STORMWATER FACILITY MAINTENANCE AGREEMENT

WHEREAS, The Property Owner _____
Recognizes that stormwater management facilities (hereinafter referred to as “the facility” or “facilities”) must be maintained for the development called _____

_____ located in the jurisdiction of the Town of Fuquay-Varina, Wake County, North Carolina; and,

WHEREAS, the Property Owner is the owner of real property more particularly described on the attached Exhibit A as recorded by deed in the records of Wake County Register of Deeds in Deed Book _____ on Page(s) _____, (hereinafter referred to as “the Property”), and,

WHEREAS, the Town of Fuquay-Varina (hereinafter referred to as “the Town”) and the Property Owner, or its administrators, executors, successors, heirs, or assigns, agree that the health, safety and welfare of the citizens of the town require that the facilities be constructed and maintained on the property, and,

WHEREAS, the Town’s Stormwater Management Policy requires that facility or facilities as shown on the approved development plans be constructed and maintained by the Property Owner, its administrators, executors, successors, heirs, or assigns.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants contained herein, and the following terms and conditions, the parties hereto agree as follows:

1. The facility or facilities shall be constructed by the Property Owner in accordance with the approved development plans.
2. The Property Owner, its administrators, executors, successors, heirs, or assigns shall maintain the facility or facilities in good working condition acceptable to the Town and in accordance with the operations and maintenance manual agreed hereto and attached as Exhibit B.
3. The Property Owner, its administrators, executors, successors, heirs, or assigns hereby grants permission to the Town, its authorized agents and employees, to enter upon the property and to inspect the facilities whenever the Town deems necessary. Whenever possible, the Town shall provide notice prior to entry. The Property Owner shall execute a twenty-five foot public access easement in favor of the Town of Fuquay-Varina to allow the Town to inspect, observe, maintain, and repair the

facility as deemed necessary. A fully executed original easement is attached to this Agreement as Exhibit C and by reference made a part hereof.

4. In the event the Property Owner, its administrators, executors, successors, heirs, or assigns fails to maintain the facility or facilities as shown on the approved development plans in good working condition and in accordance with the operations and maintenance manual incorporated into this Agreement, the Town, with due notice, may enter the property and take whatever steps it deems necessary to return the facility or facilities to good working order. This provision shall not be construed to allow the Town to erect any structure of a permanent nature on the property. It is expressly understood and agreed that the Town is under no obligation to maintain or repair the facility or facilities and in no event shall this Agreement be construed to impose any such obligation on the Town.
5. In the event the Town, pursuant to this Agreement, performs work of any nature, or expends any funds in the performance of said work for labor, use of equipment, supplies, materials, and the like, the Property Owner shall reimburse the Town within thirty (30) days of receipt thereof for all costs incurred by the Town hereunder. If not paid within the prescribed time period, the Town shall secure a lien against the real property in the amount of such costs. The actions described herein are in addition to and not in lieu of any and all legal remedies available to the Town as a result of the Property Owner's failure to maintain the facility or facilities.
6. It is the intent of this Agreement to insure the proper maintenance of the facility or facilities by the Property Owner; provided, however, that this Agreement shall not be deemed to create or affect additional liability of any party for damage alleged to result from or caused by stormwater runoff.
7. Sediment accumulation resulting from the normal operation of the facility or facilities will be considered. The Property Owner will make accommodation for the removal and disposal of all accumulated sediments. Disposal will be provided onsite in a reserved area(s) or will be removed from the site. Reserved area(s) shall be sufficient to accommodate for a minimum of two dredging cycles.
8. The Property Owner shall establish an escrow account for the maintenance of the facility or facilities. The escrow account shall be in the amount of 15% of the initial construction costs of the facility or facilities. The escrow account shall be supplemented annually with a sinking fund from homeowner association dues or property owner payments in accordance with an anticipated maintenance schedule and in addition, 60% of initial construction costs shall be deposited in the escrow account within 10-years following initial construction (such that the escrow account has 75% of initial construction costs in addition to maintenance costs), and 100% of initial construction costs within 20-years. Information regarding the establishment of the escrow account and maintenance schedule is attached to this Agreement as Exhibit D and by reference made a part thereof. A certified annual audit of the escrow account shall be submitted to the Town for its records.
9. If at any time the Town accepts the facility for public management and maintenance, the portion of the sinking fund based on initial construction costs shall be remitted to the Town at time of acceptance.

10. The Property Owner, its administrators, executors, successors, heirs, or assigns shall use the Fuquay-Varina Standard Maintenance Inspection Reports attached to this Agreement as Exhibit E and by reference made a part hereof for the purpose of a minimal annual inspection of the facility or facilities by a qualified inspector. A copy of the inspection reports shall be submitted to the Town for its records.
11. The Property Owner, its administrators, executors, successors, heirs, or assigns hereby indemnifies and holds harmless the Town and its authorized agents and employees for any and all damages, accidents, casualties, occurrences or claims that may arise or be asserted against the Town from the construction, presence, existence or maintenance of the facility or facilities by the Property Owner or the Town. In the event a claim is asserted against the Town, its authorized agents or employees, the Town shall promptly notify the property owner and the Property Owner shall defend at its own expense any suit based on such claim. If any judgment or claims against the Town, its authorized agents or employees shall be allowed, the Property Owner shall pay for all costs and expenses in connection herewith.
12. This Agreement shall be recorded with the Register of Deeds of Wake County, North Carolina and shall constitute a covenant running with the land and shall be binding on the Property Owner, its administrators, executors, successors, heirs, or assigns and any other successors in interest.
13. This Agreement may be enforced by proceedings at law or in equity by or against the parties hereto and their respective successors in interest.
14. Invalidation of any one of the provisions of this Agreement shall in no way effect any other provisions and all other provisions shall remain in full force and effect.

Signature Page