
STORMWATER CONTROL MEASURES OPERATIONS AND MAINTENANCE AGREEMENT

WHEREAS, the _____(Owner), its administrators, executors, successors, heirs or assigns, recognizes that the structural Stormwater Control Measure (SCM) must be operated, maintained, and inspected in perpetuity as required by the Stormwater Quality Ordinance for the development or redevelopment called, _____ (Project Name), located at _____ (Property), and located on parcels numbered _____ of the Town of Harrisburg, North Carolina; and,

WHEREAS, the Owner is the owner of real Property more particularly described on the attached Exhibit A as recorded in the Register of Deeds of Cabarrus County in Deed Book _____ at page(s) _____, and,

WHEREAS, The Town and the Owner agree that the health, safety and welfare of the citizens of the Town require that the structural BMP(s) be constructed, operated, maintained, and inspected on the Property, and,

WHEREAS, the Stormwater Quality Ordinance requires that structural BMP(s) as shown on the approved stormwater managements plans and specifications be constructed, operated, and maintained by the Owner.

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:

SECTION 1.

The structural BMP(s) shall be constructed by the Owner in accordance with the plans and specifications for the development or redevelopment.

SECTION 2.

The Owner shall maintain the structural BMP(s) in good working condition acceptable to the Town and in accordance with the schedule of long-term maintenance activities provided in the Harrisburg Stormwater Manual, Final Approved Plans and as follows: _____

referenced documents contained therein. If the structural BMP(s) are not in good working condition acceptable to the Town then the Owner shall return the structural BMP(s) to good working condition.

SECTION 3.

The Owner hereby grants permission to the Town, its authorized agents and employees, to enter upon the property and to inspect and monitor the structural BMP(s) whenever the Town deems necessary. Whenever possible, the Town shall provide notice prior to entry.

SECTION 4.

In the event the Owner fails to maintain the structural BMP(s) as shown on the approved plans and specifications in good working order acceptable to the Town, the Town, with due notice, may enter the property and take whatever steps it deems necessary to return the structural BMP(s) 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 structural BMP(s) and in no event shall this Agreement be construed to impose any such obligation on the Town.

SECTION 5.

In the event the Town, pursuant to the 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 Owner shall reimburse the Town, or shall forfeit any required bond upon demand within forty-five (45) days of receipt thereof for all the costs incurred by the Town hereunder. If not paid within the prescribed period, the Town shall secure a lien against the real property in the amount of such costs. Interest, collection costs, and attorney fees may be added to the recovery of costs. The actions described in this section are in addition to and not in lieu of any and all legal remedies available to the Town as a result of the Owner's failure to maintain the structural BMP(s).

SECTION 6.

It is the intent of this Agreement to insure the proper maintenance of the structural BMP(s) by the Owner; provided, however, that this Agreement shall not be deemed to create or affect any additional liability of any party for damage alleged to result from or caused by stormwater runoff.

SECTION 7.

If directed by the Town, pursuant to Section 404 of the Stormwater Quality Ordinance, the Owner shall provide the Town with a performance security or bond with surety, cash escrow, letter of credit or other acceptable legal arrangement providing for the maintenance of the structural BMP(s) for a period of perpetual duration. The performance security or bond shall be in the amount of an annuity based on a reasonable estimate of the annual cost of inspection, operation and maintenance of the structural BMPs approved under the permit, at a discount rate that reflects the Town's cost of borrowing minus a reasonable estimate of long-term inflation. A copy of the bond or letter of credit is attached to this Agreement and by reference made a part thereof.

SECTION 8.

Homeowner's and other associations, as Owner shall establish an escrow account to be spent solely maintenance, repair, or reconstruction costs for structural BMP(s). Both developer contribution and annual sinking funds shall fund the escrow account. Prior to plat recordation or issuance of construction permits, whichever shall first occur, the developer shall pay into the escrow account an amount equal to fifteen (15) per cent of the initial construction cost of the structural BMPs. Two-

thirds (2/3) of the total amount of sinking fund budget 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 structural BMPs. Funds shall be deposited each year into the escrow account. 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.

SECTION 9.

The Owner shall comply with the requirement of an annual inspection of the structural BMP(s) located on the Property and submit the results of the inspection to the Town, as referenced in the Stormwater Quality Ordinance. The inspection shall be performed by a Professional Engineer and recorded on the structural BMP Inspection Forms provided by the Town in the Harrisburg Stormwater Manual.

SECTION 10.

The Owner hereby indemnifies and holds harmless the Town and its authorized agents and employees for any and all damages, accidents, casualties, occurrences or claims which might arise or be asserted against the Town from the construction, presence, existence or maintenance

of the structural BMP(s) by the 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 Owner and the 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 Owner shall pay for all costs and expenses in connection herewith.

SECTION 11.

This Agreement shall be recorded among the Register of Deeds of Cabarrus County on the final plat, shall constitute a covenant running with the land, and shall be binding on the Owner, its administrators, executors, heirs, assigns and any other successors in interest. A recorded copy of the Agreement shall be submitted to the Town within fourteen (14) days of recordation.

SECTION 12.

This Agreement may be enforced by proceedings at law or in equity by or against the parties hereto and their respective successors in interest.

SECTION 13.

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.

MAINTENANCE AGREEMENT

SO AGREED this _____ day _____ of 20_____

OWNER

By: _____ Attest: _____

Title: _____ Title: _____

Contact Information for Day-to-Day Operations & Maintenance of Storm Water Device(s):

Name: _____ Title: _____

Business Phone No: _____ Business Address: _____

Email Address: _____

STATE OF _____
COUNTY OF _____

This _____ day of _____, 20____, personally came before me
_____, who, being by me duly sworn says that (s)he is the
_____ of _____, and that by authority duly given and as the
(title) (organization)
act of such entity, (s)he signed the foregoing instrument in its name on its behalf as its act and deed.

[NOTARIAL SEAL]

Notary Public

Print/type name: _____

My commission expires: _____

HARRISBURG, NORTH CAROLINA

Attest: _____ By: _____
Stormwater Administrator Town Manager

Print Name: Robert Donham, P.E.

Print Name: Haynes Brigman

STATE OF NORTH CAROLINA
COUNTY OF _____

This _____ day of _____, 20____, personally came before me
_____, who, being by me duly sworn says that (s)he is the
Town Manager of the Town of Harrisburg, and that by authority duly given and as the
(title) (organization)
act of such entity, (s)he signed the foregoing instrument in its name on its behalf as its act and deed.

[NOTARIAL SEAL]

Notary Public

Print/type name: _____

My commission expires: _____