



TOWN OF WILSON'S MILLS

OPERATION and MAINTENANCE AGREEMENT

for ALL STORMWATER FACILITIES

Project Name: _____
Address: _____
Tax Parcel ID: _____

Permittee: _____
Contact Person: _____
Phone: _____
Email: _____

THIS AGREEMENT, made and entered into this _____ day of _____, 20____, by and between _____, herein "Permittee" and the Town of Wilson's Mills, a political township of North Carolina (the "Town");

WITNESSETH:

WHEREAS, the Town has adopted through the Town Development Ordinance certain stormwater management regulations applicable to the property of Permittee located in the Town of Wilson's Mills, North Carolina and known as _____ ("the Property"), recorded in Plat Book _____ Page _____, Johnston County Registry; and

WHEREAS, such regulations, including but not limited to the Town of Wilson's Mills Code of Ordinances and Development Ordinance, require the Permittee to operate and maintain an engineered stormwater Best Management Practice (BMP) to provide storage and/or treatment of stormwater runoff as part of the development of the Property; and

WHEREAS, Permittee has constructed an on-site stormwater control structure or series of engineered stormwater controls (the "Facility") to satisfy the requirements of such regulations, the boundaries and general description of such Facility being described in Appendix A attached hereto and incorporated herein by reference; and

WHEREAS, Permittee is, or upon completion thereof shall become, the owner of the Facility; and

WHEREAS, as a condition of the development of the Property, Permittee is required to operate and maintain the Facility in perpetuity in a manner that accomplishes the stormwater control and treatment intended, including but not limited to ongoing nutrient reduction and/or peak flow attenuation, and to enter into an agreement with the Town securing that commitment;

NOW, THEREFORE, for and in consideration of the premises and the approval by the Town of the development activities on the Property, the Permittee does hereby covenant and agree with the Town that the Property and Facility shall be held, operated, maintained, and encumbered pursuant to the covenants and conditions hereinafter set forth;

1. No conveyance of Facility without new Agreement. Permittee covenants and agrees that it will not convey, transfer, assign, lease or otherwise release or relinquish ownership or control of the Facility,

in whole or in part, unless the proposed new owner of the Facility, or any interest therein, has agreed to this BMP Operation and Maintenance Agreement with the Town.

2. Property Obligation. A legal description of all the property for which the owner is obligated to maintain within the Facility is attached hereto as Appendix B. All owners of each lot or parcel therein (or the sole owner if there is but one parcel) at the time the obligation hereunder arises shall be ultimately responsible for compliance by the Permittee with the terms, conditions and obligations of the Agreement.
3. Operation and Maintenance. Permittee shall operate, maintain, repair, and, if necessary, reconstruct the Facility in accordance with the provisions below:
 - a. Maintenance of the Facility shall be at least in accordance with instructions for the specific type of BMPs, as described in Stormwater Best Management Practices (“Manual”), NC Department of Environment and Natural Resources, Division of Water Quality, Water Quality Section, 2017, as revised from time to time. At minimum, maintenance activities shall conform to the guidelines contained therein, and Permittee shall maintain the Facility as designed for optimal functioning. For the project named herein, the specific BMP(s) is/are described in Appendix A.
 - b. A *Yearly Maintenance Plan* shall be submitted by the Permittee with the final plat application and approved by the Town, according to Town regulations. Annually, on or before June 30, the Permittee shall submit to the Town a certification, sealed by a registered professional engineer, that the Facility is functioning as intended, plus a certification by the person or entity responsible for maintenance that (1) the specified maintenance activities have occurred, (2) all nonroutine maintenance has been listed and (3) that the *Yearly Maintenance Plan* is adequate to ensure optimal functioning or that changes are recommended. Changes to the *Yearly Maintenance Plan* shall be submitted with the certification, if required to maintain optimal functioning of the BMP or to remain in compliance with the maintenance recommendations of the Manual. Proposed changes to the *Yearly Maintenance Plan* are subject to approval by the Town. Additional information may be required for reporting purposes, as directed by the Town Planning and Zoning Administrator or designee.
 - c. A notarized Operation and Maintenance Plan shall be signed by the responsible party and submitted to the Town prior to approval of this Agreement. Changes to the Operation and Maintenance Plan shall be submitted with the BMP Certification, if required to maintain optimal functioning of the BMP or to remain in compliance with the maintenance recommendations of the Manual. Proposed changes to the Operation and Maintenance Plan are subject to approval by the Town. Additional information may be required for reporting purposes, as directed by the Town Planning and Zoning Administrator or designee.
 - d. Landscaping of the area around the Facility shall not reduce the capacity or hinder operation and maintenance of the Facility. Landscaping shall be maintained to ensure that landscape materials live and prosper. Re-vegetation and stabilization of areas may be required by the Town Planning and Zoning Administrator or designee.

- e. The Facility shall be maintained in a manner so as to control insects, odors and algae, or other related conditions as determined necessary by the Town Planning and Zoning Administrator or designee.
 - f. Facilities shall be secured by chain link fence with lockable access gate(s) and/or suitable substitute to provide equal or better safety protocols from unauthorized entry. Any fencing or other security measures shall be maintained in good condition. If no fencing or security measures are included with the original construction, they shall be added at the Permittee's expense at such time as the Town Planning and Zoning Administrator or designee determines that unauthorized persons are disturbing the Facility and that security measures will help prevent such unauthorized activity, or if the Town determines that such security measures are reasonably required for public health and safety reasons. The foregoing notwithstanding, the Town shall have no liability for Permittee's failure to install fencing or other security measures, whether requested by the Town or not.
 - g. Necessary non-routine maintenance actions shall be performed in a timely manner so as to ensure continuous performance of the Facility. All non-routine maintenance activities shall be noted in the next yearly report.
4. Right of Inspection by Town. The Permittee hereby grants the Town the right, privilege and easement over, upon and across the Property lying between any public street or right of way and the Facility for the purpose of inspecting, correcting, repairing, replacing or maintaining the Facility as provided in this Agreement. This right, privilege and easement is appurtenant to and shall run with the Property and Facility.
5. Remedies for Violations of this Agreement.
- a. If the Permittee shall fail to satisfactorily maintain or repair the Facility as set forth herein, or otherwise violates this Agreement, the Town may order the Permittee to undertake necessary actions to correct such violation. If the Permittee fails to comply with such order within (30) days from the date thereof, the Town, in its sole discretion may enter the Property and perform all necessary work to place the Facility in proper working condition. The full cost of performing the work shall be a lien on the property as provided in G.S. 153A-140. In such event, the Town shall assess against Permittee all of its related costs and expenses (including but not limited to employee time, materials and supplies, vehicle and equipment use, administrative expenses, plus all contract costs, if required for repairs, design or inspection) and the Permittee hereby agrees to timely pay the same. Where the Permittee is the sole owner of the development, if this total amount is not paid in full within three (3) months of the assessment, then such amount shall be a continuing lien on the Property. Where there is more than one owner of record of the Property, and if the total amount is not paid in full to the Town within three (3) months of the assessment, then each owner of record shall become personally liable for such owner's proportionate share of the assessment. If the proportionate share of the assessment is not paid in full by each such owner within thirty (30) days following receipt of notice thereof from the Town, then such amount shall be a continuing lien on the property owned by each owner, such owner's heirs, devisees, personal representatives, successors and/or assigns.

- b. The Town shall have the right to bring an action against the Permittee and/or each individual owner to recover all sums due, including its expenses, damages and its reasonable attorney fees, seek injunctive and equitable relief, and/or such other and further relief as may be just and appropriate.
 - c. The remedies provided by this paragraph are cumulative and are in addition to any other remedies provided by law.
- 6. Indemnification. Permittee agrees to release the Town from any and all liability which may be incurred as a result of the installation, operation and/or maintenance of said Facilities and to indemnify and hold the Town harmless from any and all damages which may occur by reason of the construction, design, operation, and/or maintenance of said Facilities. Indemnification obligation hereunder shall include without limitation, the fees and expenses of the indemnified party's attorneys, engineers, and consultants, as well as court costs.
- 7. No Waiver of Breach. In the event of a breach of any term of this Agreement, any delay or failure on the part of the Town to exercise any rights, powers, or remedies herein provided shall not be construed as a waiver thereof or acquiescence of such breach or any future breach.
- 8. Governing Law. This Agreement shall be governed by its terms and the laws of the State of North Carolina. The Permittee agrees that this Agreement shall be deemed executed and completed in North Carolina, that this Agreement shall be performed in North Carolina, and that the Courts of North Carolina shall have exclusive jurisdiction over any disputes as to the terms of this Agreement. Venue shall be Johnston County, North Carolina. By the signatures below, the Customer consents to the exclusive, personal jurisdiction by the courts of North Carolina and further, waive any objection thereto.
- 9. Amendments. This Agreement may be amended, revised, or modified only by a written document signed by the parties.
- 10. Binding Effect. The conditions and restrictions set forth herein with regard to the Facility shall run with the land and shall bind the Permittee and its heirs, successors and assigns and all parties claiming by, through, or under them shall be taken to hold, agree, and covenant with the Town, its successors and assigns, and with each of them to conform to, comply with and observe said conditions and restrictions. The Town shall be deemed a beneficiary of the conditions and restrictions set forth herein and such conditions and restrictions shall run with the land in favor of the Town.
land in favor of the Town.
- 11. Warranties of Title. The Permittee covenants and warrants that it is lawfully seized and possessed of the Facility and real estate described in Appendix B, that it has good right and lawful authority to enter into this Agreement for the purposes herein expressed, and that no consent or waiver by the holder of any mortgage, deed of trust, or other security instrument, or any other person, firm, or corporation is required prior to entering into this Agreement.
- 12. Interpretation. Use of the masculine gender herein includes the feminine and neuter, and the singular number used herein shall equally include the plural. The captions preceding the various provisions of

this Agreement are for the convenience of reference only and shall not be used as an aid in interpretation or construction of this Agreement.

13. Severability. Invalidation of any one of these covenants or conditions by judgment or order of any court shall in no way affect any of the other provisions, which shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this the _____ day of _____, 20____.

Property Owner

Signature: _____
Printed Name: _____
Title/Office: _____
Address: _____

Town of Wilson's Mills

Signature: _____
Printed Name: _____
Title: _____
Post Office Box 448
Wilson's Mills, NC 27593

STATE OF NORTH CAROLINA

COUNTY OF _____

I, _____, a notary public in and for said county and state, certify that _____ personally appeared before me this day and acknowledged that he (or she) is _____ (title) of _____ (corporation) and that he (or she) as _____ (title), being authorized to do so, executed the foregoing on behalf of the corporation.

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

Notary Public: _____

My Commission Expires: _____

STATE OF NORTH CAROLINA

COUNTY OF _____

I, _____, a notary public in and for said county and state, certify that _____ personally appeared before me this day and acknowledged that he (or she) is the _____ (title) of the Town of Wilson's Mills, a political township in the State of North Carolina, and that by authority duly given may act on behalf of the Town.

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

Notary Public: _____

My Commission Expires: _____

Appendix A

Description of Facility (BMPs)

Best Management Practices providing stormwater nutrient removal for the subject Property identified as:
Project Name: _____ as approved by Town
of Wilson's Mills on _____ (date) more particularly described as:

BMP #1 (facility type: _____), located on lot # _____ or special lot for
stormwater conservation located adjacent to lot # _____.

BMP #2 (facility type: _____), located on lot # _____ or special lot for
stormwater conservation located adjacent to lot # _____.

OR

The tract described below contains all approved BMP(s) and is a portion of the property identified above.

_____ Subdivision
Lot _____ -BMP lot Special Purpose Lot for Stormwater Purposes

Located and being in Wilson's Mills Township in Johnston County, said lot being identified as Lot _____
in the _____ Subdivision and being more particularly described as follows:

Beginning at...

Appendix B

Description of Property Obligated to Maintain Stormwater Facility

Being all of the Property known as _____, recorded in Book _____
Page _____, Johnston County Registry.

From Recorded Deed/Legal Description...

Or, if the whole subdivision is not being recorded at the same time, indicate the recorded sections and specify future sections developed as part of the preliminary plat approved by Johnston County on _____ (date).

Note: For phased final plats, all plats recorded after the O&M Agreement, conservation easement or other document is recorded must include a note on the plat stating that the property on that plat is subject to the agreements recorded previously (with DB/Page records).