

Prepared by: Jeri A. Duncan  
Return to: City of Monroe

Tax Parcel No. \_\_\_\_\_

STATE OF NORTH CAROLINA  
UNION COUNTY

### STORMWATER MAINTENANCE AGREEMENT

THIS AGREEMENT, made and entered into this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between City of Monroe, hereinafter referred to as City, and \_\_\_\_\_, hereinafter referred to as Owner;

#### WITNESSETH

WHEREAS, the City has adopted certain storm water management regulations applicable to the property of Permittee located in the City of Monroe, Union County, North Carolina, and more particularly described In Book \_\_\_\_\_, Page \_\_\_\_\_, Union County Registry (the "Property"); and

WHEREAS, such regulations require the Permittee to operate and maintain an engineered storm water control facility as part of the development of the Property; and

WHEREAS, Permittee has constructed a private on-site engineered storm water control facility (the "Facility") to satisfy the requirements of such regulations, the boundaries of such Facility being described in Exhibit "A" attached hereto and incorporated herein by reference; and

WHEREAS, as a condition of the development of the Property, Permittee is required to enter into an operation and maintenance agreement providing for a continued operation and maintenance of the Facility.

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

- 1) Operation and Maintenance Plan. Permittee has prepared and submitted to the City an Operation and Maintenance Plan for the Facility which has been approved by the City. Permittee shall operate, maintain, repair, and, if necessary, reconstruct the Facility in accordance with the Operation and Maintenance Plan.
- 2) Inspection and Maintenance of Facility. In addition to the maintenance provided for in the Operation and Maintenance Plan, Permittee shall undertake and provide the following inspection, repair, and maintenance of the Facility:
  - a) Grassing around the Facility shall be maintained to prevent the erosion of these areas. The areas shall be periodically mowed to maintain the aesthetic quality of the site and to prevent a reduction in capacity of the stormwater system. Grass should not exceed a height of 12 inches. All eroded areas shall be repaired.
  - b) Open ditches shall be kept free of undesirable growth and mowed or maintained to the design cross-section and area as shown on the construction plans approved by Stormwater Administrator and on file in the Engineering Department. Growth on the slopes and bottom should not exceed a height of 8 inches.
  - c) 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 of areas may be required by the Stormwater Administrator.

- d) The Facility shall be routinely checked as directed by the Stormwater Administrator for, and cleared of, all accumulation of debris and the Facility's outlet structure cleared of any blockage that is present.
  - e) Storm drainage pipes and culverts shall be periodically inspected after storm event for debris and sand build-up. They shall be cleaned as necessary to provide for the free conveyance of stormwater as designed.
  - f) The Facility shall be maintained at the design depth as shown on the construction plans approved by the Stormwater Administrator and on file in the office of the Engineering Department. The pond shall be inspected and maintained by the Permittee on a regular basis. Debris and sedimentation shall be removed by the Permittee when:
    - i) The primary outlet capacity is impaired and/or;
    - ii) The depth of the Facility has been reduced by more than one foot from the original depth or the Facility volume is reduced by 20% of the design impoundment volume. Sediment bays and forebays shall be kept clean of any sediment.
  - g) The Facility shall be maintained in a manner to control insects, odors and algae as determined necessary by the Stormwater Administrator.
  - h) 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 Stormwater Administrator determines that unauthorized persons are disturbing the Facility and that security measures will help prevent such unauthorized activity.
- 3) Annual Inspection Report. Annually, the Permittee shall provide an inspection report from a licensed professional to occur each year beginning one year from the date of as-built certification and each year thereafter on or before the date of the as-built certification. A financial statement documenting the available funding established in the escrow account for operation and maintenance of the stormwater control and management facilities must be included as part of the annual inspection report. This report should be mail to:

City of Monroe – Engineering Department  
Attn: Engineering Director  
PO Box 69  
Monroe, NC 28111-0069

- 4) Remedies for Violations of this Agreement.
- a) If the Permittee shall fail to maintain or repair the Facility as set forth herein, or otherwise violates this Agreement, the city may order the Permittee to undertake the necessary repair or maintenance or to correct such violation. If the Permittee shall fail to comply with such order within thirty (30) days from the date thereof, the permittee shall be considered in violation of this agreement and Chapter 159-502 of the City of Monroe Code of Ordinance and will be subject to penalties as provided in section 159-502 of the City of Monroe Code of Ordinance and pursuant to the authority contained in Article 19 of Chapter 160A, Planning and Development and 15A NCAC 2B.0258. Should the permittee fail to make the required corrections within 30 days of the issuance of the civil penalty, the City may enter the Property and perform all necessary work to place the Facility in proper working condition. The full cost of performing the work including administrative costs and penalties shall be assessed as a lien on the property.
  - b) If deemed by the City there pose an immediate danger to the public health, safety, or welfare, the City will notify the Owner and 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 City to erect any structure of a permanent nature on the property. It is expressly understood and agreed that the City 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 City.
  - c) The City shall have the right to bring an action and recover sums due, damages, seek injunctive relief, and/or such other and further relief as may be just and appropriate.
  - d) The remedies provided by this paragraph are cumulative; and are in addition to any other remedies provided by law.
- 5) 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 City 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.

- 6) Amendments. This Agreement may be amended, revised or modified only by a written document signed by the parties.
- 7) 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 successors and assigns and all parties claiming by, through, or under them shall be taken to hold, agree, and covenant with the City, with its successors and assigns, and with each of them to conform to and observe said conditions and restrictions. The City 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 City.
- 8) Warranties of Title. The Permittee covenants and warrants that it is lawfully seized and possess of the Facility and real estate described in Exhibit \A\, 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.
- 9) 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.
- 10) 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.
- 11) Liability Disclaimer: The Owner, its administrators, executors, successors, heirs, or assigns hereby indemnifies and holds harmless the City, authorized agents and employees, for any and all damages, accidents, casualties, occurrences or claims that may arise or be asserted against the City from the construction, presence, existence or maintenance of the facility or facilities by the Owner or the City. In the event a claim is asserted against the City, authorized agents and employees, the City shall promptly notify the property owner and the Owner shall defend at its own expense any suit based on such claim. If any judgment or claims against the City, its authorized agents or employees, shall be allowed, the Owner shall pay for all costs and expenses in connection herewith.
- 12) Right of Entry: Owner, its administrators, executors, successors, heirs, or assigns hereby grant permission to the City, authorized agents and employees, to enter upon the Property as shown on the attached Exhibit \A\ and to inspect the stormwater the stormwater management/BMP facilities whenever the City deems necessary.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this the day and year first above written.

Owner

\_\_\_\_\_  
 Name of Owner  
 Address

\_\_\_\_\_  
 City of Monroe

ATTEST:

\_\_\_\_\_  
 \_\_\_\_\_  
 CITY CLERK

STATE OF NORTH CAROLINA  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a notary public in and for said county and state, certify that \_\_\_\_\_ personally appeared before me this date, stated that he or she is \_\_\_\_\_ of \_\_\_\_\_, and acknowledged the execution of the foregoing instrument with the City of Monroe on behalf of said \_\_\_\_\_.

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, stated that he or she is the City Clerk of the City of Monroe, a municipal corporation, and that by authority duly given and as the act of the City, foregoing contract was signed in its corporate name by its \_\_\_\_\_, sealed with its corporate seal, and attested by herself as its said City Clerk.

This the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

(SEAL)

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney