

STATE OF NORTH CAROLINA

ORANGE COUNTY

STORMWATER STRUCTURAL BMP OPERATION AND MAINTENANCE AGREEMENT

THIS AGREEMENT is entered into this ____ day of _____, 20__, by and between the Town of Carrboro, a duly chartered municipality located in Orange County (the “Town”), and _____, whose address is _____, (the “Owner”).

WHEREAS, the Town has issued a permit for the development of the property of the Owner, which property is described in Exhibit A to this Agreement; and

WHEREAS, the permit issued for the development of the Owner’s property requires that there be constructed on that property to serve that development one or more “Structural BMPs,” meaning a device constructed or installed to trap, settle out, or filter pollutants from stormwater runoff or to reduce stormwater discharge volume or velocity in order to satisfy one or more requirements of Section 15-263 of the Carrboro Land Use Ordinance; and

WHEREAS, the particular Structural BMPs covered by this Agreement are identified in Exhibit B to this Agreement; and

WHEREAS, Section 15-263.1 of the Carrboro Land Use Ordinance imposes on the original owner and all successor owners of such Structural BMPs certain obligations relating to the operation, maintenance, and inspection of such Structural BMPs, as well as obligations regarding the provision of adequate funding for the same; and

WHEREAS, Section 15-263.1 of the Carrboro Land Use Ordinance also requires that, prior to final plat approval, in the case of a subdivision, or prior to the issuance of a certificate of occupancy, in the case of an unsubdivided development, the owner of property where a Structural BMP is located must enter into an Operation and Maintenance Agreement that is consistent with the requirements of that section for each such Structural BMP; and

WHEREAS, the Owner wishes to enter into this Agreement in order to obtain final plat approval or a certificate of occupancy for the development permitted on the Owner’s property;

NOW THEREFORE, in consideration of the premises and the approval by the Town of the above referenced development permit, the parties hereby agree as follows:

1. The covenants and promises set forth in this Agreement run with the Owner’s land and are binding upon the Owner and the heirs, successors and assigns of the Owner to the extent that such heirs, successors, and assigns take title to the Structural BMPs covered in this Agreement.

2. The Owner shall ensure that each Structural BMP identified in Exhibit B is operated and maintained so as to preserve and continue its ability to control stormwater quality and quantity in the manner in which such Structural BMP was designed to function. Any problems or deficiencies that prevent compliance with this standard shall be promptly remedied. Such operation and maintenance shall be in accordance with the most recent version of Maintenance Manual (applicable to the type of Structural BMP in question) maintained in the Carrboro Planning Department.

3. The Owner shall ensure that each Structural BMP identified in Exhibit B is inspected in accordance with the most recent version of Maintenance Manual (applicable to the type of Structural BMP in question) maintained in the Carrboro Planning Department, and that such inspection is performed by a qualified registered North Carolina professional or other individual specially qualified by an appropriate training, testing, and certification program. The person performing the inspections shall submit annually to the Carrboro Zoning Administrator a report certifying the results of such inspections. The report shall be in a format and shall contain the information prescribed by the Zoning Administrator. The first report shall be due one year from the date of the as built certification required by Subsection 15-263(g) of the Carrboro Land Use Ordinance, and subsequent reports shall be due on or before that anniversary date.

4. The Owner shall ensure that funds are set aside in an escrow account, sinking fund, or other arrangement, sufficient to pay major, non-routine costs associated with keeping such BMPs in proper operational condition, such as the cost of sediment removal, structural, biological, or vegetative replacement, major repair, or reconstruction. The Owner shall submit annually to the Zoning Administrator a report certifying that such funds have been set aside. The report shall be in a format and shall contain the information prescribed by the Zoning Administrator. The first report shall be due one year from the date of the as-built certification required by Subsection 15-263(g) of the Carrboro Land Use Ordinance, and subsequent reports shall be due on or before that anniversary date.

5. The Owner hereby grants unto the Town and its employees and agents a perpetual right, privilege, and easement to cross the Owner's property as necessary to reach the site where each Structural BMP identified in Exhibit B is located, and to enter each such site, for the purpose of (i) inspecting the same for compliance with the requirements of Section 15-263.1 of the Carrboro Land Use Ordinance and the provisions of this Agreement, and (ii) performing any work authorized under Subsection 15-263.1(e)(3) of the Land Use Ordinance or Paragraph 6 of this Agreement.

6. If the Owner fails to operate and maintain each Structural BMP identified in Exhibit B in accordance with the requirements of Section 15-263.1 of the Land Use Ordinance and this Agreement, the Town is authorized (but not obligated) to enter the property where such Structural BMP is located and to perform such work as is necessary to bring such Structural BMP into compliance. All costs associated with the performance of such work shall be billed to the Owner by the Town and promptly paid by the Owner. The Town may also remedy such a failure to properly operate and maintain a Structural BMP by using the nuisance abatement procedures set forth in Part 2 of Article V of Chapter 11 of the Carrboro Town Code, and if the

Town does so, the costs of remedying the violation shall become a lien on the Owner's property as provide in the Town Code and Section 160A-193 of the North Carolina General Statutes.

7. This Agreement shall be interpreted, and all claims and disputes arising under this Agreement shall be decided, in accordance with the laws of the State of North Carolina. The State of North Carolina is the proper jurisdiction for all claims and disputes arising under this Agreement, and the proper venue shall be the Orange County Superior Court.

IN WITNESS WHEREOF, the Owner and the Town have executed this Agreement on the date first above written.

TOWN OF CARRBORO

BY _____
Town Manager

ATTEST _____
Town Clerk

OWNER

BY _____

ATTEST _____

THIS IS THE ACKNOWLEDGEMENT FOR INDIVIDUAL OWNER(S)

STATE OF _____
_____ COUNTY

I, _____, a Notary Public in and for said County and State, do hereby certify that _____ appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official stamp or seal this ____ day of _____, 20____.

Notary Public

My Commission Expires: _____

[THIS IS THE ACKNOWLEDGEMENT FOR LLCs]

STATE OF _____
_____ COUNTY

I, _____, a Notary Public of the County and State aforesaid, certify that _____ personally appeared before me this day and acknowledged that he is a managing member of _____, LLC, and that by authority duly given and as the act of said LLC, the foregoing instrument was signed in its name by him/her as managing member on behalf of the LLC.

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

(SEAL)

Notary Public

My commission expires: _____

[THIS IS THE ACKNOWLEDGEMENT FOR CORPORATIONS]

STATE OF _____
_____ COUNTY

I, _____, a Notary Public of the County and State aforesaid, certify that _____ personally appeared before me this day and acknowledged that he is _____ Secretary of _____, a corporation, and that by authority duly given and as the act of said corporation, the foregoing instrument was signed in its name by its _____ President, sealed with its corporate seal and attested by _____ as its _____ Secretary.

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

(SEAL)

Notary Public

My commission expires: _____

[THIS IS THE ACKNOWLEDGEMENT FOR GENERAL AND LIMITED PARTNERSHIPS]

STATE OF _____
_____ COUNTY

I, _____, a Notary Public of the County and State aforesaid, certify that _____ personally appeared before me this _____ day and acknowledged that he is a general partner of _____, a general/limited partnership, and that by authority duly given and as the act of said partnership, the foregoing instrument was signed in its name by him/her as a general partner on behalf of the partnership.

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

(SEAL)

Notary Public

My commission expires: _____