

**NORTH CAROLINA
TOWN OF LILLINGTON**

**STORMWATER OPERATION
& MAINTENANCE AGREEMENT**

This AGREEMENT, made and entered into this the _____ day _____ 2024, by and between XXXX, herein "Permittee" and the Town of Lillington, a political subdivision of North Carolina.

WITNESSETH

WHEREAS, the Town of Lillington has adopted through the Town of Lillington Unified Development Ordinance certain stormwater management regulations applicable to the property of Permittee located in the Town of Lillington, North Carolina and known as XXXX ("the Property"), recorded in Plat Book ____ Page ____ of the Harnett County Registry; and

WHEREAS, such regulations, including but not limited to the Town of Lillington Unified Development Ordinance, require the Permittee to operate and maintain an engineered Stormwater Control Measure (SCM) 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 total suspended solid (TSS) and peak flow attenuation, and to enter into an agreement with the Town of Lillington securing that commitment;

NOW, THEREFORE, for and in consideration of the premises and the approval by the Town of Lillington of the development activities on the Property, the Permittee does hereby covenant and agree with the Town of Lillington 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 and until the proposed new owner of the Facility, or any interest therein, has entered into a SCM Operation and Maintenance Agreement with the Town of Lillington containing substantially the same terms and conditions as this Agreement.

2. Property Obligated. A legal description of all the property which is obligated to maintain 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 SCMs, as described in Stormwater Best Management Practices ("Manual"), NC Department of Environment and Natural Resources, Division of Water Quality, Water Quality Section, 2017, including any and all subsequent revisions. At minimum, maintenance activities shall conform to the guidelines contained therein, and shall maintain the Facility as designed for optimal functioning. For the project named herein, the specific SCM(s) is/are described in Appendix A.
- b. An Annual SCM Certification/Inspection shall be submitted by the Permittee and approved by the Town, according to Town of Lillington regulations. It shall be the responsibility of the property owner(s) to ensure such inspection is performed. Records of inspections shall be maintained on forms approved or supplied by the NCDEQ. Annual inspections shall begin within one (1) year of the filing date of the deed for the SCM and an inspection report shall be submitted to the Town in the format approved by the Administrator: Annually, on or before July 31, the Permittee shall submit to the Town of Lillington a certification, sealed by a registered professional engineer, that the Facility is functioning as intended and that (1) the specific maintenance activities have occurred, (2) all nonroutine maintenance has been listed and (3) that the Operation and Maintenance Plan is adequate to ensure optimal functioning or that changes are recommended. Changes to the Operation and Maintenance Plan shall be submitted with the certification, if required to maintain optimal functioning of the SCM or to remain in compliance with the maintenance recommendations of the Manual in accordance with the Town UDO. Proposed changes to the Operation and Maintenance Plan are subject to approval by Town of Lillington. Additional information may be required for reporting purposes, as directed by the Town of Lillington UDO Administrator or designee. In the event that an inspector discovers that an SCM needs improvements, he/she shall notify the owner and the Administrator. The owner shall make improvements consistent with the plans and specifications of the SCM and the operation plan or manual. After the improvements are made, the owner shall submit a maintenance log to the Town. The improvements shall be made, and the maintenance log shall be submitted with 90 days of the inspection unless the Administrator has granted an extension to the owner; The Administrator may inspect SCMs at any time to determine if they are in compliance.
- c. Landscaping and grounds maintenance shall be the responsibility of the owning entity. 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 UDO Administrator or designee.
- d. The Facility shall be maintained in a manner so as to control insects, odors and algae as determined necessary by the UDO Administrator or designee.
- e. 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 UDO Administrator or designee determines that unauthorized persons are disturbing the Facility and that security measures will help prevent such unauthorized activity.

f. Necessary nonroutine maintenance actions shall be performed in a timely manner so as to ensure continuous performance of the Facility. All nonroutine maintenance activities shall be noted in the yearly report.

g. Except for general landscaping and grounds management, the owning entity shall notify the Administrator prior to any repair or reconstruction of the SCM. All improvements shall be made consistent with the approved plans and specifications of the SCM and the operation and maintenance plan. After notification by the owning entity, the Administrator shall inspect the completed improvements and shall inform the owning entity of any additions, changes or modifications and of the time period to complete said improvements.

h. Minor Amendments to Plans and Specifications 1. Amendments to the plans and specifications of the SCM and/or the operation and maintenance plan or manual shall be approved by the Administrator, provided that the changes do not involve a change in the size or location of the structure; and 2. Proposed changes shall be prepared by a state registered professional engineer and submitted to and reviewed by the Administrator as follows:

a. If the Administrator approves the proposed changes, the owning entity of the SCM shall file sealed copies of the revisions with the Administrator; or

b. If the Administrator disapproves the changes, the proposal may be revised and resubmitted to the Administrator as a new proposal. If the proposal has not been revised and is essentially the same plan that was already reviewed, it shall be returned to the applicant.

i. Major Amendments to Plans and Specifications Amendments to the plans and specifications of the SCM and/or the operation and maintenance plan or manual that involve a change in the size or location may be approved by the Administrator. Proposed changes shall be prepared by a state registered professional engineer and submitted to and reviewed by the Administrator.

j. Revision of Plan Required if Found to be Inadequate

c. If the Town finds that the operation and maintenance plan or manual is inadequate for any reason, the Administrator shall notify the owning entity of any required changes and shall prepare and file copies of the revised agreement with the Harnett County Register of Deeds, the Administrator and the owning entity; and

d. If the Administrator finds that the operation and maintenance plan or manual is inadequate for any reason, the Administrator shall notify the owner(s) of any required changes. Once the revised plan or manual has been deemed adequate, the owner(s) shall prepare and file copies of the revised agreement with the Harnett County Register of Deeds and the Administrator of this Ordinance.

4. Right of Inspection by Town. The Permittee hereby grants the Town of Lillington 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 of Lillington 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 of Lillington, 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 debt owed by Permittee, any and all owners of the Property, and a lien on the property as provided in G.S. 160A-193." In such event, the Town of Lillington 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 of Lillington within three (3) months of the assessment, then each owner of record shall become personally, and jointly and severally 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. Until fully paid by one or all, the lien is on the whole property for any outstanding debt, not just the percent owned by any individual(s).

b. The Town of Lillington 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.

d. In the event that the owner fails to provide an annual inspection report, perform needed maintenance, or submit a maintenance log, the Town reserves the right to levy fines against property owner in the amount and timeframes noted herein until the SCM is inspected and, if necessary, brought in compliance with approved plans, specifications, and operations manual.

6. 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 of Angier 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.

7. Amendments. This Agreement may be amended, revised or modified only by a written document signed by the parties.

8. 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 of Lillington 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.

9. Warranties of Title. The Permittee covenants and warrants that it is lawfully seized and possessed of the Facility and real estate described in Appendix 1, 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.

10. 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.

11. Adequate Consideration. Both parties hereby agree and stipulate that this contract is supported by fair and adequate consideration.

12. No Agency Relationship: Permittee shall be responsible for and perform any services provided for or required by this Agreement. No employment or agency relationship is created by virtue of Permittees performance of any duties required by Town related to this agreement. To the extent Permittee employs any third parties to conduct any work or services required by Town pursuant to this agreement, Permittee shall make known to any entitles and persons performing the work that the work is not being performed through any form of employment or agency relationship with the Town and that Town has no responsibility or liability for payment for any such work or for any damages or harm incurred during, or as a result of, such work. Permittee and its agents or employees shall not represent, act, purport to act, or be deemed to be the agent, representative, employee, or servant of the Town.

13. Drafting of Document and Reliance by Parties. In negotiation, discussion and drafting of this contract, the parties have been advised to seek legal counsel for representation to the extent they desire and have been given the opportunity to do so. The parties warrant, represent and agree that they are not relying on the advice of any other party to this contract as to the legal or other consequences arising out of the negotiation and execution of this contract other than legal counsel to the extent they have chosen to consult legal counsel. The parties warrant and agree that this contract was not induced by fraud, coercion, compulsion or mistake. This contract shall be deemed to have been drafted by both parties and for purposes of interpretation no presumptions shall be made to the contrary.

14. Reading and Signing. The parties hereby further warrant that they have completely read all the terms hereof; that they are competent to sign this contract; that they fully understand the terms of this contract; and that they voluntarily accept the terms of this contract.

15. Entire Agreement. The parties hereto warrant and agree that this contract and any documents or other agreements referenced herein contain the entire agreement between the parties and that the terms of this contract are contractual and not a mere recital.

16. Governing Law and Consent to Jurisdiction and Venue. The parties warrant and agree that this Agreement has been executed in the State of North Carolina and shall be subject to, and construed in accordance with, the laws of the State of North Carolina. Any and all actions relating in any way to this contract shall be brought in the General Courts of Justice in the County of Harnett, State of North Carolina.

17. Savings Clause. To the extent any provision herein shall be deemed unenforceable, either as a matter of law or any other reason, such provision shall be modified to reflect the intent of the parties. If such a provision cannot be modified to reflect the intent of the parties, the remainder of the agreement shall remain in full force and effect as long as the purpose and intent of the agreement can still be carried out by the remaining enforceable terms. In the event that there are unenforceable provisions which prevent the effect, intent and purpose of the agreement from being carried out, which cannot be modified to keep such purpose and intent, then the parties hereby agree that they shall take whatever action necessary to effectuate the purpose of this agreement. In the event the parties cannot come to an agreement as to the alternative methods for effecting the purpose and intent of this agreement, the parties hereby expressly consent to binding arbitration by a single arbitrator to be selected by the Harnett County Resident Superior Court Judge. Said arbitrator shall, following an opportunity to be heard by each party, provide for an enforceable plan to affect the purposes and intents of this agreement, including directing the parties to draft documents, file actions or take any actions necessary to affect his directive. The Arbitrator's directive shall be enforceable by Order of the court and to the extent the parties do not follow such directive, said parties shall be subject to the power of contempt by the court for not abiding by the terms of this agreement. Fees for the services of the Arbitrator, if such becomes necessary, shall be borne by equally between the parties. Despite this paragraph, if a party hereto believes it has the right to bring a court proceeding or file an action with the court that relates in any way to the matters in controversy addressed by this Agreement, said proceeding shall be filed in Harnett County and all parties hereby consent and agree to said jurisdiction and venue.

18. Dispute Resolution. Without waiving the foregoing resolution process discussed in the Savings clause paragraph above, if a party hereto believes it has the right to bring a court proceeding or file an action with the court that relates in any way to the matters in controversy addressed by this contract, said proceeding shall be filed and heard in Harnett County and all parties hereby consent and agree to said exclusive jurisdiction and venue.

19. Indemnification/Hold Harmless. To the fullest extent allowable under North Carolina law, Permittee hereby agrees to indemnify, hold harmless and defend Town from any and all actions which

may arise as a result of any damages or claims for damages against Permittee or Town by any person or entity, including other parties hereto, arising from this contract or performance of the services as called for herein.

20. Awareness of Hazards. Permittee represents that it understands the currently known hazards to persons, property and the environment resulting from the services called for in this contract. Permittee further represents that it will perform all services under this Agreement in a safe, efficient, and lawful manner, using industry-accepted practices and methods.

21. Waiver Only for Specific Occurrence. Any waiver by either party of any provision or condition of this Agreement shall not be construed or deemed to be a waiver of any other provision or condition of this Agreement, nor a waiver of a subsequent breach of the same provision or condition.

22. Waiver of Less Than Strict Performance. Failure to require strict performance of any of the provisions hereof shall not be considered a waiver of future right to demand strict performance with the provisions of this Agreement.

23. No Third-Party Beneficiaries. Nothing contained in this Agreement shall create a contractual relationship with or cause of action in favor of a third party against either Party.

24. Collection Costs and Reasonable Attorney Fees. In the event either party is caused to engage the services of an attorney to enforce the terms of this Agreement, the prevailing party shall be entitled to recover the costs of such enforcement including, but not limited to, reasonable attorney's fees, court costs and other fees and costs reasonably incurred.

25. Notice. Notice shall be considered valid when delivered as follows:

- a. For Town
- b. For Permittee

26. Headings. The subject headings of the paragraphs are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions.

27. Authority. The undersigned persons hereby verify that they have the actual and apparent authority to enter into this contract and that any and all action necessary to approve this contract has been undertaken and approved by said entities.

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

Property Owner

Name

Signature

Title

NORTH CAROLINA
HARNETT COUNTY

(Fill in Company name) ACKNOWLEDGEMENT

I certify that the following person personally appeared before me this day and acknowledged to me that he or she voluntarily signed the foregoing document for the purpose stated therein and, in the capacity, indicated:

(Print name of signatory in blank)

Date: _____

My Commission Expires:

Signature: _____

Print Name: _____

[Affix Notary Stamp or Seal]

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

Town of Lillington

Name

Signature

Title

NORTH CAROLINA
HARNETT COUNTY

TOWN OF LILLINGTON ACKNOWLEDGEMENT

I certify that the following person personally appeared before me this day and acknowledged to me that he or she voluntarily signed the foregoing document for the purpose stated therein and, in the capacity, indicated:

Date: _____

My Commission Expires:

Signature: _____

Print Name: _____

[Affix Notary Stamp or Seal]

Appendix A

Description of Facility (SCM(s)) and Property Description

Stormwater Control Measures providing stormwater attenuation and nutrient removal for the subject Property, approved (date), are more particularly identified as:

Appendix B

Description of Property Obligated to Maintain Facility

Being all of the known as "XXXX" and recorded at Book _____
page _____ of Harnett County Registry.

Description of Facility (SCMs) and Property Description

**Operation & Maintenance Inspection Form
NC Division of Energy, Mineral, and Land Resources Operation
& Maintenance Inspection Form – Wet Pond**

Project name:		Permit number: Town of Lillington Construction Plans Approved	Inspection date:
Street address:		Town: Lillington	State and ZIP code:
Name of inspector:		Phone number:	Email address:
Required forebay depth:	Measured forebay depth:	Required main pool depth:	Measured main pool depth:
Description of SCM location on the project:			
Signature of Inspector certifying that the information provided in this form is complete and correct:			

Stormwater Collection System and Accessibility

- | | | | |
|---|------------------------------|-----------------------------|------------------------------|
| 1. Swales are free from blockage and erosion. | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Grates, gutters, curb openings, and pipes appear free from damage and clogs. | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. Wet pond is accessible for inspection. | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |

Inlet(s) and Forebay

- | | | | |
|--|------------------------------|-----------------------------|------------------------------|
| 4. Inlet(s) are free from damage, clogs, and erosion. | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. Forebay berm is stable and not eroding. | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 6. Algal growth covers < 50% of the surface area. | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 7. Cattails, phragmites, or other invasive plants cover < 10% of the surface area. | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 8. Forebay is free from trash and debris. | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 9. Forebay is at least 2 feet deep. | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |

Perimeter, Embankment, and Side Slopes

- | | | | |
|---|------------------------------|-----------------------------|------------------------------|
| 10. Perimeter is free from water quality impacts caused by geese and ducks. | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 11. Embankment is free from woody shrubs and trees. | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 12. Side slopes are stable, vegetated, and free from erosion/bare soil. | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 13. Side slopes are free from trash and debris. | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 14. Side slopes are free from muskrat and/or beaver activity. | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |

Main Pool

- | | | | |
|---|------------------------------|-----------------------------|------------------------------|
| 15. Vegetated shelf is covered with healthy vegetation and free from erosion. | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 16. Algal growth covers < 20% of the surface area. | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 17. Cattails, phragmites, or other invasive plants cover < 10% of the surface area. | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 18. Main pool is free from trash and debris. | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 19. Measured main pool depth > required main pool depth. | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 20. Fountain is not causing sedimentation problems in the pond. | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |

Outlet Device(s)

- | | | | |
|---|------------------------------|-----------------------------|------------------------------|
| 21. Emergency bypass and bypass swale is clearly visible and in good condition. | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 22. Outlet structure is free from damage, clogs, and erosion. | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 23. Water level matches the level of the lowest outlet. | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |

Action Plan to address any “Nos” listed above, including dates for completion (for permittee to complete):
