



BAYFILTER OPERATION & MAINTENANCE AGREEMENT

This Operation and Maintenance Agreement (“Agreement”) is established this _____ day of _____, 20_____, by _____ (“Owner”), who is the owner of the Property (hereinafter defined), on behalf of the Owner, the Association (if applicable), and all successor Owners of the Property and the Town of Apex (“Town”).

The “Property” is that certain real property described as PIN # _____, commonly known as _____, it being the same land conveyed to Owner by deed recorded in Book _____ at page _____ in the Wake County Register of Deeds.

Owner represents, warrants, and agrees that Owner is financially responsible for the construction, maintenance, repair and replacement of all stormwater control structures, appurtenances and vegetation, including the impoundment, located on the Property. Owner agrees to perform the maintenance as outlined below and as may be applicable or required as part of the regulations set forth in Section 6.1.12 of the Town Unified Development Ordinance. A Homeowners Association or Property Owners Association shall not be the financially responsible party unless more than 50% of the lots or units on the Property have been sold and a resident of the Association has been named the president.

Owner agrees that the Town has the right to access the Stormwater Control Measures (hereinafter

“SCM”) on the Property, as deemed necessary in the Town’s sole discretion, by way of the ‘SCM Maintenance & Access easement’ as recorded on the final plat. Owner recognizes and agrees that Owner is responsible for the maintenance and upkeep of the SCM Maintenance & Access easement. Owner acknowledges that Town’s authorized access to the SCM(s) does not create any operation or maintenance responsibility or obligation on the part of the Town.

Owner shall keep a maintenance record for routine maintenance performed related to SCMs on the Property (“SCM Maintenance Record”). The SCM Maintenance Record shall be kept updated by the Owner and be submitted to the Town each year as part of the required annual inspection report package. Any deficiencies noted during routine maintenance shall be corrected, repaired or replaced immediately by Owner. These deficiencies can affect the safety of the public and the pollutant removal efficiency of the SCM.

NUMBER OF BAYFILTER CARTRIDGES: _____

SCMs being recorded with this agreement

Important maintenance procedures:

- A routine inspection should be done before the winter season.
- Maintenance (replacement of the filter cartridges and removal of accumulated sediments) should be performed during periods of dry weather.
- All other guidelines in the *ADS BayFilter Inspection & Maintenance Procedures* document should be followed.

After the BayFilter system is installed, Owner shall inspect it once a quarter. Owner shall keep records of inspection and maintenance.

Notices to Owner shall be sent to (please fill in all blanks):

Name

Phone number

Mailing address

E-mail

City, State, ZIP

Notices to Town shall be sent to:

Environmental Engineering Manager

P.O. Box 250

Apex, NC 27502

(919) 249-3537

Maintenance shall be performed per the *ADS BayFilter Inspection & Maintenance Procedures* document and be performed by Certified Maintenance Providers.

Remedies for Violations of this Agreement

If the Owner shall fail to satisfactorily maintain or repair the SCM as set forth above, or otherwise violates this Agreement, the Town may order the Owner to undertake necessary actions to correct such violation. If the Owner 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 SCM in proper working condition. The full cost of performing the work shall be a lien on the property as provided in G.S. 160A-193. In such event, the Town shall assess against Owner 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 Owner hereby agrees to timely pay the same.

Where the Owner 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.

The Town shall have the right to bring an action against the Owner 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.

The remedies provided by this paragraph are cumulative and are in addition to any other remedies provided by law.

Please fill out ONE of the following FOUR signature forms (INDIVIDUAL, CORPORATION, LLC, OR GENERAL PARTNERSHIP) that is the most appropriate description of the type of property owner. Before recording with Wake County, please delete this page and the remaining THREE pages that do not apply.

INDIVIDUAL

IN WITNESS WHEREOF, the Owner has hereunto set its hand and seal, or if corporate, has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by authority of its Board of Directors, this the day and year first above written.

[Print Name of Owner]

By: _____
[Signature of Owner]

STATE OF NORTH CAROLINA

COUNTY OF _____ [county in which acknowledgement taken]

I, _____, a Notary Public of _____
County, North Carolina, do hereby certify that _____,
personally 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____.

[Signature of Notary Public]

[SEAL]

My Commission Expires: _____

CORPORATION

IN WITNESS WHEREOF, the Owner has hereunto set its hand and seal, or if corporate, has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by authority of its Board of Directors, this the day and year first above written.

[Print Name of Corporation]

By: _____
[Signature of Authorized Representative]

Title: _____

STATE OF NORTH CAROLINA

COUNTY OF _____ [county in which acknowledgement taken]

I, _____, a Notary Public of _____ County, North Carolina, certify that _____, personally came before me this day and acknowledged that he/she is _____ of _____ and that he/she as _____, being authorized to do so, executed the foregoing on behalf of the corporation.

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

[Signature of Notary Public]

[SEAL]

My Commission Expires: _____

LLC

IN WITNESS WHEREOF, the Owner has hereunto set its hand and seal, or if corporate, has caused this instrument to be signed in its corporate or company name by its duly authorized managing member and its seal to be hereunto affixed, this the day and year first above written.

_____, LLC
[Print Name of Company]

By: _____ [Seal]
[Signature of Member/Manager]

STATE OF NORTH CAROLINA

COUNTY OF _____ [county in which acknowledgement taken]

I, _____, a Notary Public of _____ County, North Carolina, certify that _____, personally appeared before me this day and acknowledged that he/she is a member/manager of _____, LLC, and that by authority duly given as a member/manager of the company, the foregoing instrument was signed and sealed by him/her on behalf of the company and acknowledged said writing to be the act and deed of said company.

Witness my hand and official stamp or seal, this ___ day of _____, 20___.

[Signature of Notary Public]

[SEAL]

My Commission Expires: _____

GENERAL PARTNERSHIP

IN WITNESS WHEREOF, the Owner has hereunto set its hand and seal, or if corporate, has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by authority of its Board of Directors, this the day and year first above written.

_____, General Partnership
[Print Name of General Partnership]

By: _____
[Signature of General Partner]

STATE OF NORTH CAROLINA

COUNTY OF _____ [county in which acknowledgement taken]

I, _____, a Notary Public of _____
County, North Carolina, certify that _____, a
general partner of _____, personally appeared before me this day
and acknowledged the execution of the foregoing instrument.

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

[Signature of Notary Public]

[SEAL]

My Commission Expires: _____