

NORTH CAROLINA	)	STORM WATER CONTROL
	)	OPERATIONS AND
FORSYTH COUNTY	)	MAINTENANCE
		LIEN AND EASEMENT
		AGREEMENT

THIS AGREEMENT is made pursuant to the VILLAGE OF CLEMMONS Watershed Protection Ordinance and entered into this \_\_\_\_\_ day of \_\_\_\_\_, By \_\_\_\_\_, a North Carolina limited Liability Company (hereinafter referred to as "DEVELOPER"), for the benefit of the VILLAGE OF CLEMMONS, N.C. (the "VILLAGE").

**WITNESSETH**

1. DEVELOPER is the owner of certain lands lying in the Yadkin River Watershed upon which it is erecting and will make improvements, said development being known as \_\_\_\_\_ the same is described by metes and bounds in those deeds recorded in Deed Book \_\_\_\_\_ at page \_\_\_\_\_ Forsyth County Registry (hereinafter, the "Property"). DEVELOPER is the only party with an interest in the Property, excepting that interest conveyed by a first deed of trust.

2. The development of the Property as contemplated by DEVELOPER requires the construction of an NC DEQ approved engineered stormwater control structure (hereinafter, "Stormwater Control Structure") to provide storage and treatment of stormwater runoff to serve the Property.

3. DEVELOPER has applied to the VILLAGE for the issuance of a Stormwater Management Permit (hereinafter, the "Permit") to 1) construct a Stormwater Control Structure consistent with the design plans and specifications, and 2) operate and maintain the Stormwater Control Structure consistent with the Maintenance and Operation Manual for the designed Stormwater Control Structure which is to be submitted in accordance with the Unified Development Ordinance, Chapter C section 3-4/7-6.

4. The VILLAGE desires to assure that the Stormwater Control Structure is properly constructed, maintained and operated in accordance with law and Permit provisions in order to protect the quality of the waters of the State and the public interest therein and therefore is requiring the execution of this Agreement by DEVELOPER in connection with DEVELOPER'S application for a Permit.

NOW, THEREFORE, for and in consideration of the benefits to be derived by DEVELOPER in obtaining a Permit and being allowed to develop the property, DEVELOPER does hereby agree as follows:

1. DEVELOPER shall construct the Stormwater Control Structure in accordance with the Permit and plans and specifications hereafter issued and approved by the VILLAGE; and shall thereafter properly operate and maintain such Stormwater Control Structure in accordance with applicable Permit provisions, the plans and specifications of the Stormwater Control Structure, the operation and maintenance plan or manual, and applicable laws and regulations.

2. DEVELOPER agrees that it shall not transfer ownership and/or control of the Stormwater Control Structure until construction has been completed in accordance with the Permit and approved plans, and the Stormwater Administrator has inspected and approved the same. DEVELOPER contemplates that upon completion of the Stormwater Control Structure, it will convey the Stormwater Control Structure and that portion of the Property on which the structure is located to a non-profit Property Owners' Association to be formed for the purpose of administering the provisions of a declaration of covenants to be imposed upon the Property, which declaration shall be substantially in the form of the Declaration of Covenants, Conditions, and Restrictions for (name of project / development); said declaration of covenants to be submitted to and approved by the VILLAGE prior to transfer. In order to transfer the Stormwater Control Structure, DEVELOPER and the new owner must complete the "Notice of Transfer of Ownership" form and submit to the Stormwater Administrator.

3. DEVELOPER agrees that it shall not transfer, convey, assign or otherwise relinquish or release its responsibility for the operation and maintenance of its Stormwater Control Structure until the "Notice of Transfer of Ownership" form is submitted, at which time DEVELOPER shall be released from any obligations hereunder arising from events or circumstances occurring after the date the Stormwater Control Structure is transferred.

4. In the event DEVELOPER for any reason fails to complete or maintain the Stormwater Control Structure as required hereunder and the VILLAGE OF CLEMMONS or other appropriate governmental authority, following notice and a reasonable period within which to cure, completes or maintains the structure, DEVELOPER agrees to pay to the VILLAGE OF CLEMMONS or such other appropriate governmental authority all reasonable costs incurred in completing the Stormwater Control Structure which are in excess of the amount of the bond posted with the VILLAGE OF CLEMMONS, or in maintaining the Stormwater Control Structure, to assure its completion and maintenance. As security for the payment of any such sum, DEVELOPER hereby grants and conveys to the VILLAGE OF CLEMMONS, a lien on the Property subordinate only to any first lien deed of trust, and/or liens and encumbrances of record, as of the date hereof, encumbering the Property. The VILLAGE OF CLEMMONS may bring an action at law against the DEVELOPER to pay any such sums coming due hereunder or foreclose the lien created herein against the Property in the same manner as prescribed by the laws of the State of North Carolina for the foreclosures of deeds of trust. Interest at the legal rate, costs and reasonable attorney's fees for representation of the VILLAGE OF CLEMMONS in such action or foreclosure shall be added to the indebtedness secured by such lien. Upon removal of the Stormwater Control

Structure in accordance with applicable law and inspection and approval of the same by the Stormwater Administrator, the lien herein granted and conveyed to the VILLAGE OF CLEMMONS shall automatically terminate and shall be of no further force or effect.

5. DEVELOPER hereby grants and conveys to the VILLAGE OF CLEMMONS or other appropriate governmental authority having jurisdiction for watershed protection, a non-exclusive easement over and upon those portions of the Property necessary to complete the construction of, inspect, or to maintain, the Stormwater Control Structure in the event DEVELOPER for any reason fails to complete or maintain the Stormwater Control Structure as required hereunder. This easement shall expire upon the removal of the Stormwater Control Structure in accordance with applicable law, the Permit and approved plans and the inspection and approval of the same by the Stormwater Administrator. TO HAVE AND TO HOLD the foregoing rights and easements unto the VILLAGE OF CLEMMONS or other appropriate governmental authority having jurisdiction for watershed protection, said easement to run with the Property and bind DEVELOPER, its successors and assigns. Prior to issue of stormwater occupancy permit, the owner shall file with the Register of Deeds a description of the area containing the Stormwater control structure(s) within a drainage easement together with any dedication necessary for access to and from the Stormwater control structures and a public street.

6. Each of the VILLAGE OF CLEMMONS and any other appropriate governmental authority having jurisdiction for watershed protection shall be deemed a beneficiary of this Agreement, both for and in its or their own right, and also for the purpose of protecting the interest of the community and other parties, public or private, in whose favor or for whose benefit this Agreement has been provided. This Agreement shall run in favor of the VILLAGE OF CLEMMONS and any other appropriate governmental authority having jurisdiction for watershed protection for the entire period during which this Agreement shall be in force and in effect without regard to whether the VILLAGE OF CLEMMONS or such other governmental entity has at any time been, remains, or is an owner of the Property or any portion thereof. The VILLAGE OF CLEMMONS and such other governmental authority shall have the right, in the event of any breach of this Agreement, following notice and a reasonable period to cure, to exercise all the rights and remedies and to maintain any action or suits at law or in equity or other proper proceedings to enforce the curing of such breach of this Agreement to which it or any other appropriate governmental authority may be entitled.

7. A copy of this Agreement shall be filed in the office of the Forsyth County Register of Deeds and in the office of the Stormwater Administrator.

IN WITNESS WHEREOF, this Agreement was executed in duplicate originals by DEVELOPER on the day and year first written above.

DEVELOPER: \_\_\_\_\_

By: \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public for the State of \_\_\_\_\_, County of \_\_\_\_\_, do hereby certify that \_\_\_\_\_ personally appeared before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and acknowledged the due execution of the above form.

Witness my hand and official seal,

SEAL

\_\_\_\_\_  
Notary

My commission expires \_\_\_\_\_

ACCEPTED BY:

\_\_\_\_\_  
Name:  
Title: Stormwater Administrator and / or Village Designee

I, \_\_\_\_\_, a Notary Public for the State of \_\_\_\_\_, County of \_\_\_\_\_, do hereby certify that \_\_\_\_\_ personally appeared before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and acknowledged the due execution of the above form.

Witness my hand and official seal,

SEAL

\_\_\_\_\_  
Notary

My commission expires \_\_\_\_\_