

**NORTH CAROLINA
TOWN OF SMITHFIELD**

**STORMWATER OPERATION
& MAINTENANCE AGREEMENT**

This AGREEMENT, made and entered into this _____ day _____, 20__, by and between _____, herein "Permittee" and the Town of Smithfield, a political subdivision of North Carolina.

WITNESSETH

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

WHEREAS, such regulations, including but not limited to the Town of Smithfield Unified Development Ordinance, require the Permittee to operate and maintain an engineered stormwater Best Management Practice (BMP) 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 nutrient reduction and/or peak flow attenuation, and to enter into an agreement with the Town of Smithfield securing that commitment;

NOW, THEREFORE, for and in consideration of the premises and the approval by the Town of Smithfield of the development activities on the Property, the Permittee does hereby covenant and agree with the Town of Smithfield 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 BMP Operation and Maintenance Agreement with the Town of Smithfield 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 BMPs, 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 BMP(s) is/are described in Appendix A.

b. A Yearly Maintenance Plan shall be submitted by the Permittee and approved by the Town, according to Town of Smithfield regulations. Annually, on or before July 31, the Permittee shall submit to the Town of Smithfield a certification, sealed by a registered professional engineer, that the Facility is functioning as intended, plus a certification by the person or entity responsible for maintenance that (1) the specific maintenance activities have occurred, (2) all nonroutine maintenance has been listed and (3) that the Yearly Maintenance Plan is adequate to ensure optimal functioning or that changes are recommended. Changes to the Yearly Maintenance Plan shall be submitted with the certification, if required to maintain optimal functioning of the BMP or to remain in compliance with the maintenance recommendations of the Manual. Proposed changes to the Yearly Maintenance Plan are subject to approval by Town of Smithfield. Additional information may be required for reporting purposes, as directed by the Town of Smithfield UDO Administrator or designee.

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 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 next yearly report.

4. Right of Inspection by Town. The Permittee hereby grants the Town of Smithfield 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 Smithfield 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 Smithfield, 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 lien on the property as provided in G.S. 153A-140. In such event, the Town of Smithfield 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 Smithfield 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.

b. The Town of Smithfield 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.

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 Smithfield 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 County, its successors and assigns, and with each of them to conform to, comply with and observe said conditions and restrictions. The Town of Smithfield 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. 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.

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

Property Owner:

Town of Smithfield:

By: _____
Title/Office _____
Address: _____

By: _____

NORTH CAROLINA
JOHNSTON COUNTY

I, _____, a Notary Public, do hereby certify that _____ personally appeared before me this day and acknowledged that he (or she) is _____ (title) of _____ (corporation) being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and notarial seal this the _____ day of _____ 20_____.

Notary Public: _____
(Printed Name)

(Signature)

NC County of Commission: _____

Commission Expires: _____

NORTH CAROLINA
JOHNSTON COUNTY

I, _____, a Notary Public, do hereby certify that _____ personally appeared before me this day and acknowledged that he is the _____ of the Town of Smithfield, a political subdivision of the State of North Carolina and that by authority duly given and as the act of the Town of Smithfield.

Witness my hand and notarial seal this the _____ day of _____ 20_____.

Notary Public: _____
(Printed Name)

(Signature)

NC County of Commission: _____

Commission Expires: _____

Appendix A (example)

Description of Facility (BMPs) and Property Description

Best Management Practices providing stormwater nutrient removal for the subject Property identified as , approved (date), are more particularly identified as:

BMP #1 - Dry Detention Pond #1; located on Lot# ____ or special Lot for stormwater conservation" located adjacent to Lot # _____.

MBP#2 – Bioretention Area #1

OR:

The tract described below contains all approved BMP(s) and is a portion of the property identified above.

Appendix B (example)

Description of Property Obligated to Maintain Facility

Being all or part of the subdivision know as _____ and recorded at
Book _____ page _____ , of Johnston County Registry.

Or, if the whole subdivision is not being recorded at the same time, indicate the recorded sections and specify future sections developed as part of the preliminary plat approved by the Town of Smithfield.