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 Franklin County North Carolina  
 Brandi S Brinson, Register of Deeds  
 BK **2262** PG **1221 - 1232 (12)**

**NORTH CAROLINA**  
  
**COUNTY OF WAKE**

**TOWN OF WAKE FOREST**  
**STORMWATER CONTROL FACILITIES/BMPs**  
**OPERATION AND MAINTENANCE**  
**AGREEMENT**

**THIS AGREEMENT** (the “**Agreement**”), is hereby made and entered into this 13th day of July, 2021 (the “**Effective Date**”), by and between Capital Companies Group, LLC, a North Carolina Limited Liability Company, (the “**Permittee**”) and the Town of Wake Forest, a North Carolina municipal corporation (the “**Town**”).

**WITNESSETH:**

WHEREAS, the Town has adopted through the Unified Development Ordinance certain stormwater management regulations applicable to the property owned by Permittee located in the Town of Wake Forest, North Carolina and known as Everly Subdivision Phase 4 (the “**Property**”), a legal description of which Property is attached hereto as Appendix A and incorporated herein by reference; and

WHEREAS, such stormwater management regulations, including but not limited to the Town of Wake Forest Unified Development Ordinance, Chapters 6, 12 and 15, as may be amended, modified, or supplemented from time to time (collectively, the “**SCM Regulations**”), require the Permittee to provide for, operate and maintain engineered stormwater control measures and stormwater treatment practices, also referred to as Best Management Practices, or BMPs (collectively, “**SCMs**”), to control the adverse effects of increased post-development stormwater runoff and nonpoint and point source pollution associated with new development and redevelopment; and

WHEREAS, to satisfy the requirements of the SCM Regulations, Permittee has constructed, or intends to construct, certain SCMs serving the Property, or portions of the Property (the “**Facility**” or “**Facilities**”), the boundaries and general description of such Facilities being described in Appendix B attached hereto and incorporated herein by reference; and

WHEREAS, Permittee is required to operate and maintain the Facilities in accordance with the SCM Regulations and all other applicable laws; and

WHEREAS, the SCM Regulations further require Permittee to enter into this Agreement prior to the conveyance or transfer of any lot or building site to be served by the Facilities, and prior to issuance of any permit for development or redevelopment requiring the Facilities; and

NOW, THEREFORE, for and in consideration of the premises and the approval by the Town of the development activities on the Property, the Permittee does hereby covenant and agree with the Town that the

Property and Facilities shall be held, operated, maintained, and encumbered pursuant to the covenants and conditions hereinafter set forth.

1. **Primary Responsibility.** Notwithstanding anything herein to the contrary, Permittee covenants and agrees that it will not convey, transfer, assign, lease, or otherwise release or relinquish ownership or control of the Facilities, in whole or in part, (referred to herein as a “**conveyance**”), including a conveyance to an Association (as defined in Section 4), until Final Acceptance (as defined in Section 2) has occurred. Once Final Acceptance has occurred, a conveyance of the Facilities shall be permitted (i) upon prior written notice thereof to the Town, and (ii) provided that any such transferee or assignee assumes all obligations under this Agreement. Once a conveyance has occurred in accordance with this Section, all references herein to “Permittee” shall be deemed to refer to such permitted transferee or assignee.

2. **Final Acceptance.** Upon completion of the Facilities, Permittee shall request an initial warranty inspection from the Town. Once the Facilities pass the initial warranty inspection (“**Initial Acceptance**”), as determined by the Town in its sole and reasonable discretion, the Permittee shall submit the following to the Town:

(a) A set of acceptable as-built drawings; and

(b) A written warranty against defects which shall guarantee the material and workmanship of the Facilities for a period of not less than one (1) year from the date that both Initial Acceptance and the Town’s receipt of the as-built drawings required by subsection (a) has occurred (the “**Warranty Period**”).

Upon the expiration of the Warranty Period, Permittee shall request a final inspection of the Facilities by the Town. Until such time that the Facilities pass final inspection (“**Final Acceptance**”), as determined by the Town in its sole and reasonable discretion, Permittee shall have primary responsibility for carrying out the provisions of this Agreement.

3. **Operation and Maintenance.** Permittee shall operate, maintain, repair, and, if necessary, reconstruct the Facilities in accordance with the provisions below:

(a) Maintenance of the Facilities shall be at least in accordance with the minimum standards and instructions for the specific type of SCMs, as set forth in the NCDEQ Stormwater Design Manual, including any and all subsequent revisions thereto (the “**Manual**”).

(b) Beginning one (1) year from the date of as-built certification and each year thereafter on or before the date of the as-built certification, or such other date as mutually agreed to by the parties herein, Permittee shall submit to the Town for its review and approval: (i) a certification, sealed by a certified inspector, that an inspection of the Facilities has been performed and that the Facilities are functioning as intended; and (ii) a certification by the Permittee that (1) all required maintenance activities have occurred in accordance with this Agreement and the SCM Regulations; (2) all necessary non-routine maintenance has been listed and performed, if any; and (3) the *Operation and Maintenance Plan* is adequate to ensure optimal functioning of the Facilities, or that changes are recommended (collectively, the “**SCM Certification**”).

(c) An *Operation and Maintenance Plan* shall be signed by the Permittee and submitted to the Town prior to approval of this Agreement. Changes to the *Operation and Maintenance Plan* shall be submitted with the *SCM Certification*, if required to maintain optimal functioning of the Facilities or to remain in compliance with the maintenance recommendations of the Manual. Proposed changes to the *Operation and Maintenance Plan* are subject to approval by the Town. Additional information may be required for reporting purposes, as directed by the Town Engineer or designee.

(d) Landscaping of the area around the Facilities shall not reduce the capacity or hinder operation and maintenance of the Facilities. Landscaping shall be maintained to ensure that landscape materials live and prosper. Re-vegetation and stabilization of areas may be required by the Town Engineer or designee. Notwithstanding the foregoing or anything herein to the contrary, Permittee shall be permitted

to assign its landscaping maintenance responsibilities to an Association (as defined herein below) prior to Final Acceptance.

(e) The Facilities shall be maintained in a manner so as to control insects, odors and algae as determined necessary by the Town Engineer or designee.

(f) Any fencing, or other safety and security measures, shall be maintained in good condition. If no fencing, or other safety and security measures, are included with the original construction, then such measures shall be added at the Permittee's expense and at such time as the Town Engineer or designee reasonably determines that such safety and security measures are necessary. Safety and security measures may include, without limitation, warning signs, fences, grates, and other similar features.

(g) Necessary non-routine maintenance actions shall be performed in a timely manner so as to ensure continuous performance of the Facilities. All non-routine maintenance activities shall be noted in the annual SCM Certification.

4. Requirements for Conveyance to an Association. In addition to all other terms and conditions set forth in this Agreement, any conveyance of the Facilities, in whole or in part, to any homeowner's association, property owner's association, or similar entity ("**Association**") shall be subject to the following terms and conditions:

(a) Prior to any conveyance of the Facilities from the Permittee to an Association, Permittee shall revise, if not already addressed therein, the *Operation and Maintenance Plan* to include an estimated annual maintenance budget for the Facilities.

(b) Upon conveyance of the Facilities from the Permittee to an Association, such Association shall continuously operate and maintain the Facilities in accordance with this Agreement and the SCM Regulations.

(c) If the Facilities are not performing adequately or as intended or are not properly maintained by the Association, the Town may remedy the situation, and in such instance the Town shall be fully reimbursed by the Association and its members within thirty (30) days of the Town's request thereof. The Town shall be permitted to recover from the Association and its members any and all costs the Town expends to maintain or repair the Facilities or to correct any operational deficiencies. Failure to pay the Town all of its expended costs, after thirty (30) days written request thereof, shall constitute a breach of this Agreement. The Town shall thereafter be entitled to bring an action against the Association and its members to pay, or foreclose upon, the lien hereby authorized by this Agreement against the Property, or both, in case of a deficiency. Interest, collection costs, and attorney fees shall be added to the recovery.

Notwithstanding the foregoing or anything herein to the contrary, under no circumstances shall conveyance to an Association occur until such time that Final Acceptance has occurred.

5. Right of Inspection by Town. The Permittee hereby grants the Town the right, privilege and easement over, upon and across the Property lying between any public street or right of way and the Facilities for the purpose of inspecting, monitoring, correcting, repairing, replacing, reconstructing, or maintaining the Facilities as provided in this Agreement; however, in no case shall the right of entry, of itself, confer an obligation on the Town to assume responsibility for the Facilities, or any portion thereof. This right, privilege and easement is appurtenant to and shall run with the Property and the Facilities.

6. No Liability. Notwithstanding anything herein to the contrary, under no circumstances shall the Town be obligated to maintain or repair the Facilities, nor shall the Town be liable to any person for the condition or operation of the Facilities. In addition, the Permittee shall indemnify and hold harmless the Town for any costs and injuries arising from or related to the Facilities, unless the Town has agreed in writing to assume maintenance responsibility for the Facilities and has expressly accepted dedication of any and all rights necessary to carry out that maintenance.

7. Remedies for Violations of this Agreement.

(a) If the Permittee shall fail to satisfactorily maintain or repair the Facilities as set forth herein, or otherwise violates this Agreement, the Town 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, in its sole discretion, may enter the Property and perform all necessary work to place the Facilities in proper working condition. The full cost of performing the work shall be a lien on the Property as provided in N.C.G.S. § 160A-193. In such event, the Town 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 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 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.

8. Municipal Authority. Nothing contained in this Agreement shall in any way diminish, limit, or restrict the right of the Town to enforce any of its ordinances as authorized by law.

9. 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 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.

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

11. Binding Effect. The conditions and restrictions set forth herein with regard to the Facilities 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 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.

12. Warranties of Title. The Permittee covenants and warrants that it is lawfully seized and possessed of the Property described in Appendix A as well as the Facilities described in Appendix B, 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.

13. Interpretation and Governing Law. 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 convenience of reference only, and shall not be used as an aid in interpretation or construction of this Agreement. The laws of North Carolina shall govern this Agreement.

14. 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.

15. Recording. This Agreement shall be recorded by the Permittee in the Wake County Register of Deeds Office (i) in the case of a site plan, as a condition of final issuance of a Certificate of Occupancy, or (ii) in the case of a subdivision, as a condition of final plat approval. In any event, this Agreement shall be recorded in the Wake County Register of Deeds Office so as to appear in the chain of title of all subsequent purchasers of the Property, or any portion thereof. Failure to record this Agreement in compliance with Section 12.5.6 of the Wake Forest UDO shall constitute a stormwater violation subject to penalties as further set forth in Section 16.3.5 of the Wake Forest UDO.

**[Remainder of Page Intentionally Blank. Signature Page Follows.]**

IN WITNESS WHEREOF, the Town and the Permittee have hereunto set their hands and seals as of the Effective Date.

**THE TOWN**

**The Town of Wake Forest,**  
a North Carolina municipal corporation

By: *Monica Sarna*  
Name: *Monica Sarna*  
Title: *Stormwater Engineer*

**STATE OF NORTH CAROLINA**

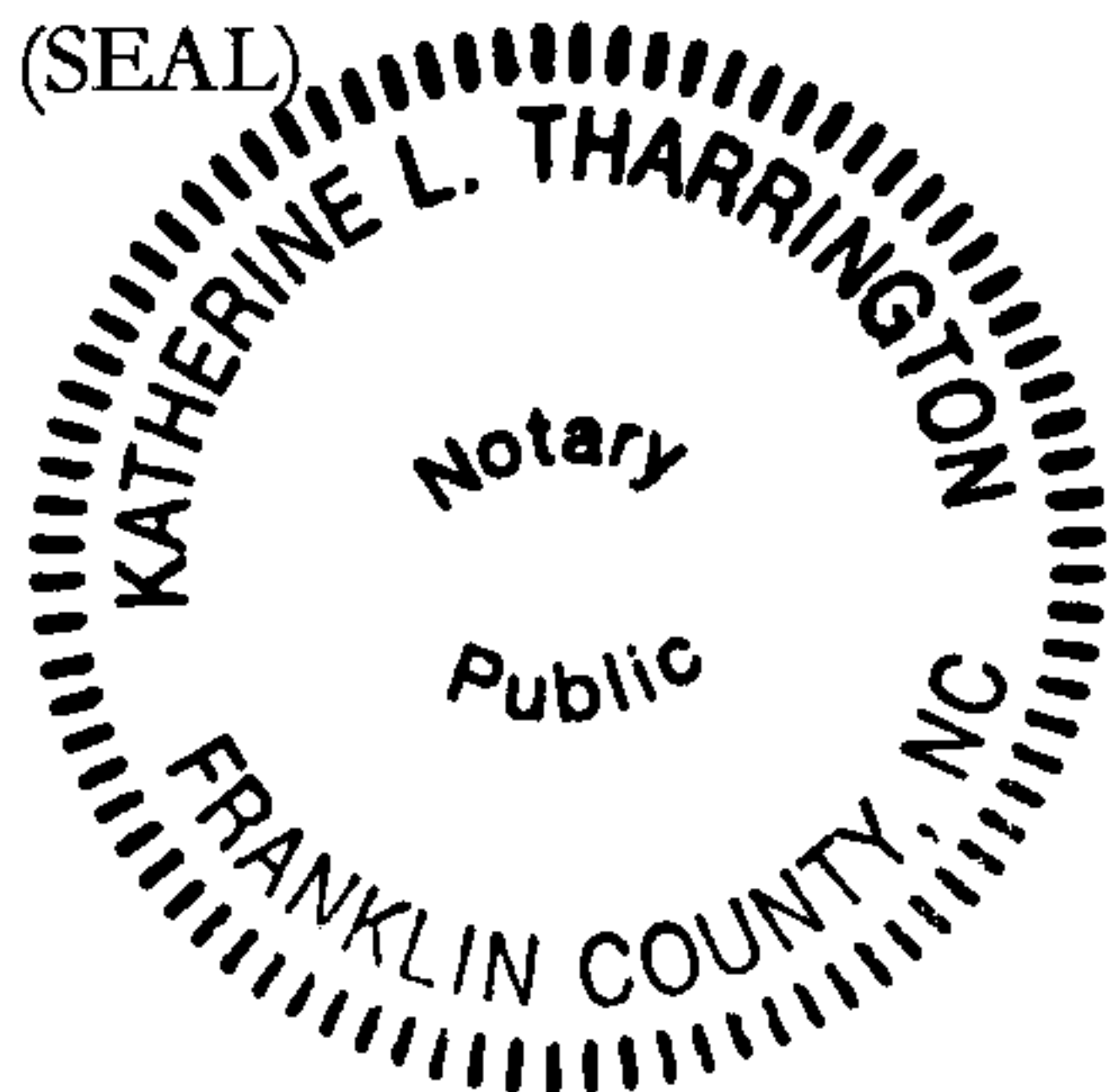
**COUNTY OF WAKE**

I, *Katherine L. Tharrington*, a notary public in and for said county and state, certify that *Monica Sarna* (Name) personally appeared before me this day, stated that he or she is the *Stormwater Engineer* (Title) of the Town of Wake Forest, a political Township in the State of North Carolina, and that by authority duly given may act on behalf of the Town.

This the *14<sup>th</sup>* day of *July*, 202*1*.

*Katherine L. Tharrington*  
Notary Public

My Commission Expires: *8 March 2024*



**THE PERMITTEE**

Capital Companies Group, LLC,  
a North Carolina Limited Liability Company

By: *Timothy Kelly*  
Name: Timothy Kelly  
Title: Managing Partner

STATE OF North Carolina

COUNTY OF Durham

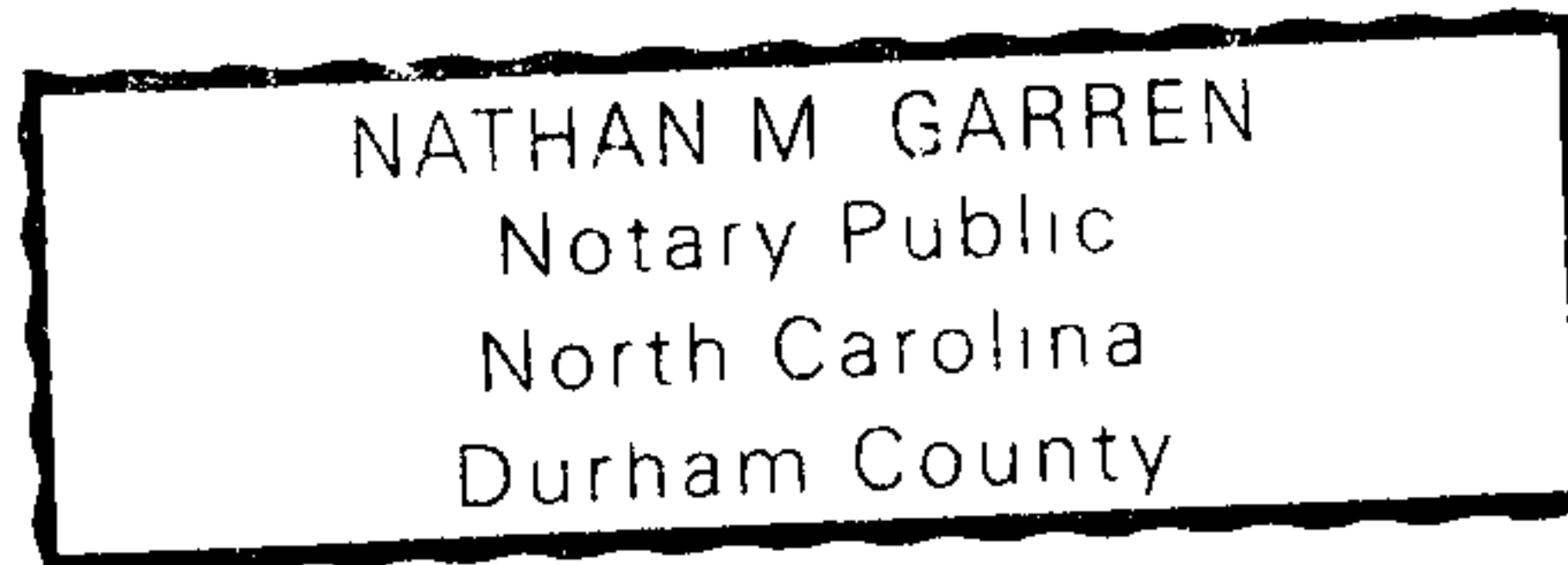
I, Nathan M. Garren, a notary public in and for said county and state, certify that Timothy Kelly personally appeared before me this date and acknowledged that he (or she) is Manager (title) of Capital Companies Group, LLC(entity), a NC limited liability co. (type of entity), and that he (or she) as Manager (title), being authorized to do so, executed the foregoing on behalf of said entity.

Witness my hand and official seal, this the 13th day of July, 2021.

*Nathan M. Garren*  
Notary Public

My Commission Expires: October 8, 2022

(SEAL)



**Appendix A**

**Legal Description of the Property**

Being all of the Property known as Everly Subdivision Phase 4, recorded in Book \_\_\_\_\_ Page \_\_\_\_\_, Wake County Registry.

**Note:**

- *If the whole subdivision is not being recorded at the same time, (i) indicate the recorded sections, and (ii) specify any and all future sections to be developed as part of the preliminary plat approved by Wake County on \_\_\_\_\_.*
- *For phased final plats, all plats recorded after this Agreement or any other applicable agreements must include a note on the plat stating that the property on that plat is subject to the agreements recorded previously (with DB/Page records).*



**Appendix B****Description of the Facilities (SCMs)**

All stormwater control measures located on the Property and identified as Everly Subdivision Phase 4, as approved by the Town of Wake Forest on 12/16/2020, are more particularly identified as:

-Stormwater Wetland #6, located in Phase 4 on a special Lot for stormwater conservation located south adjacent to Lot # 160 and Lot # 161.

***Example:***

***BMP #1: Dry Detention Pond #1, located on Lot # \_\_\_\_ or special Lot for stormwater conservation located adjacent to Lot # \_\_\_\_.***

***BMP #2: Bioretention Area #1, located on Lot # \_\_\_\_ or special Lot for stormwater conservation located adjacent to Lot # \_\_\_\_.***

## Operation & Maintenance Agreement

**Project Name:** Everly Subdivision - Phase 4  
**Project Location:** Wake Forest, NC

### Cover Page

Maintenance records shall be kept on the following BMP(s). This maintenance record shall be kept in a log in a known set location. Any deficient BMP elements noted in the inspection will be corrected, repaired, or replaced immediately. These deficiencies can affect the integrity of structures, safety of the public, and the pollutant removal efficiency of the BMP(s).

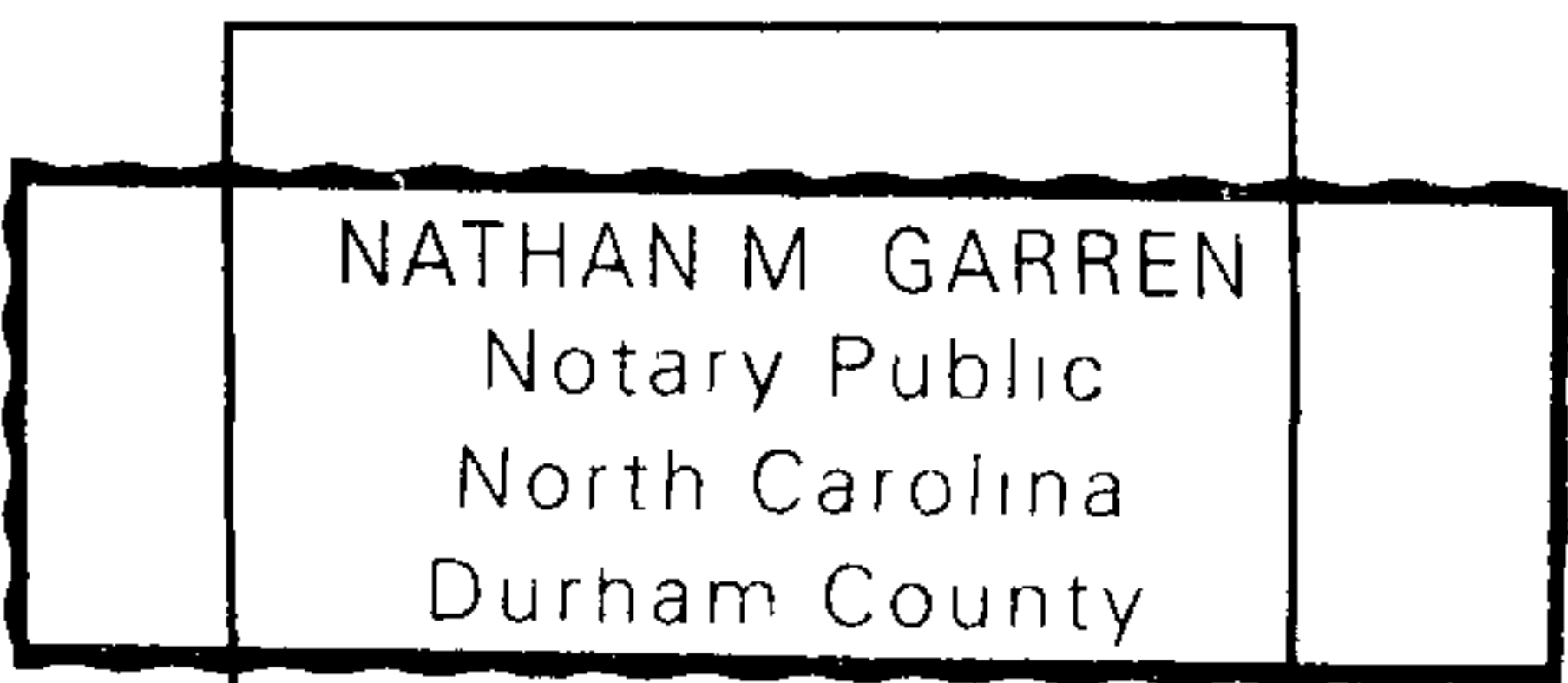
The BMP(s) on this project include (check all that apply & corresponding O&M tables will be added automatically):

Bioretention Cell	Quantity:		Location(s):	
Dry Detention Basin	Quantity:		Location(s):	
Grassed Swale	Quantity:		Location(s):	
Green Roof	Quantity:		Location(s):	
Infiltration Basin	Quantity:		Location(s):	
Infiltration Trench	Quantity:		Location(s):	
Level Spreader/VFS	Quantity:		Location(s):	
Permeable Pavement	Quantity:		Location(s):	
Proprietary System	Quantity:		Location(s):	
Rainwater Harvesting	Quantity:		Location(s):	
Sand Filter	Quantity:		Location(s):	
Stormwater Wetland	Quantity:	1	Location(s):	As shown on construction plans
Wet Detention Basin	Quantity:		Location(s):	
Disconnected Impervious Area	Present:	No	Location(s):	
User Defined BMP	Present:	No	Location(s):	

I acknowledge and agree by my signature below that I am responsible for the performance of the maintenance procedures listed for each BMP above, and attached O&M tables. I agree to notify NCDENR of any problems with the system or prior to any changes to the system or responsible party.

\* Responsible Party: **Tim Kelly**  
 Title & Organization: **Managing Partner, Capital Companies Group, LLC**  
 Street address: **1661 Cash Road**  
 City, state, zip: **Creedmoor, NC 27525**  
 Phone number(s): **716-777-1359**  
 Email: **tpk@capitalcompanies.group**

Signature: *Timothy Kelly* Date: *7/8/2021*  
 I, *Nathan M. Garren*, a Notary Public for the State of *North Carolina*  
 County of *Durham*, do hereby certify that *Timothy Kelly*  
 personally appeared before me this *8th* day of *July*, *2021* and  
 acknowledge the due execution of the Operations and Maintenance Agreement.  
 Witness my hand and official seal, *Nathan M. Garren*



Seal

My commission expires

*10/8/2022*

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### Stormwater Wetland Maintenance Requirements

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#### Important maintenance procedures:

- Immediately following construction of the stormwater wetland, bi-weekly inspections will be conducted and wetland plants will be watered bi-weekly until vegetation becomes established (commonly six weeks).
- No portion of the stormwater wetland will be fertilized after the first initial fertilization that is required to establish the wetland plants.
- Stable groundcover will be maintained in the drainage area to reduce the sediment load to the wetland.
- Once a year, a dam safety expert should inspect the embankment.

After the stormwater wetland is established, it shall be inspected **monthly and within 24 hours after every storm event greater than 1.0 inches (or 1.5 inches if in a Coastal County)**. Records of operation and maintenance will be kept in a known set location and will be available upon request.

Inspection activities shall be performed as follows. Any problems that are found shall be repaired immediately.

<b>BMP element:</b>	<b>Potential problem:</b>	<b>How I will remediate the problem:</b>
<b>Entire BMP</b>	Trash/debris is present.	Remove the trash/debris.
<b>The perimeter of the BMP</b>	Areas of bare soil and/or erosive gullies have formed.	Regrade the soil if necessary to remove the gully, and then plant a ground cover and water until it is established. Provide lime and a one-time fertilizer application.
	Vegetation is too short or too long.	Maintain vegetation at a height of approximately six inches.
<b>Forebay</b>	Sediment has accumulated in the forebay to a depth that inhibits the forebay from	Search for the source of the sediment and remedy the problem if possible. Remove the sediment and dispose of it in a location where it will not cause impacts to streams or the BMP.
	Erosion has occurred.	Provide additional erosion protection such as reinforced turf matting or riprap if needed to prevent future erosion problems.
	Weeds are present.	Remove the weeds, preferably by hand. If a pesticide is used, wipe it on the plants rather than spraying.
<b>The inlet device</b>	The pipe is clogged.	Unclog the pipe. Dispose of the sediment off-site.
	The pipe is cracked or otherwise damaged.	Replace the pipe.
	Erosion is occurring in the swale.	Regrade the swale if necessary to smooth it over and provide erosion control devices such as reinforced turf matting or riprap to avoid future problems with erosion.
	Stone verge is clogged or covered in sediment (if applicable).	Remove sediment and replace with clean stone.

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**Stormwater Wetland Maintenance Requirements (Continued)**


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<b>Deep pool, shallow water and shallow land areas</b>	Algal growth covers over 50% of the deep pool and shallow water areas.	Consult a professional to remove and control the algal growth.
	Cattails, phragmites or other invasive plants cover 50% of the deep pool and shallow	Remove invasives by physical removal or by wiping them with pesticide (do not spray) – consult a professional.
	Shallow land remains flooded more than 5 days after a storm event.	Unclog the outlet device immediately.
	Plants are dead, diseased or dying.	Determine the source of the problem: soils, hydrology, disease, etc. Remedy the problem and replace plants. Provide a one-time fertilizer application to establish the ground cover if necessary.
	Best professional practices show that pruning is needed to maintain optimal plant	Prune according to best professional practices.
	Sediment has accumulated and reduced the depth to 75% of the original design depth of	Search for the source of the sediment and remedy the problem if possible. Remove the sediment and dispose of it in a location where it will not cause impacts to streams or the BMP.
<b>Embankment</b>	A tree has started to grow on the embankment.	Consult a dam safety specialist to remove the tree.
	An annual inspection by appropriate professional shows that the embankment	Make all needed repairs.
	Evidence of muskrat or beaver activity is present.	Consult a professional to remove muskrats or beavers.
<b>Micropool</b>	Sediment has accumulated and reduced the depth to 75% of the original design depth.	Search for the source of the sediment and remedy the problem if possible. Remove the sediment and dispose of it in a location where it will not cause impacts to streams or the BMP.
<b>The outlet device</b>	Clogging has occurred.	Clean out the outlet device. Dispose of the sediment off-site.
	The outlet device is damaged	Repair or replace the outlet device.
<b>The receiving water</b>	Erosion or other signs of damage have occurred at the outlet.	Contact the local NC Department of Environment and Natural Resources Regional Office.