

(the above space is left blank for recording purposes)

Excise Tax: \$

PREPARED BY/RETURN TO:

Timothy D. Swanson, Attorney
Young, Morphis, Bach & Taylor, LLP
Post Office Drawer 2428
Hickory, North Carolina 28603

STATE OF NORTH CAROLINA

COUNTY OF CATAWBA

**STORMWATER OPERATION AND
MAINTENANCE AGREEMENT**

THIS STORMWATER OPERATION AND MAINTENANCE AGREEMENT (the “Agreement”) is made and entered into this the ____ day of _____, 20__, by and between City of Hickory, a North Carolina municipal corporation, having a mailing address of P.O. Box 398, Hickory, North Carolina 28603 (the “City”); and [Insert Name, Entity Type, and State of Incorporation](#), having a mailing address of [Insert Mailing Address](#) (the “Owner”) (each referred to separately as a “Party” and together as “Parties”).

W I T N E S S E T H:

WHEREAS, the Owner desires to develop that certain real property known as [Insert Property Address and Project Name](#), as described in the Deed and as shown on the Plat thereof recorded in Deed Book [Insert Book](#), Page [Insert Page](#), and Plat Book [Insert Book](#), Page [Insert](#)

[Page](#), Catawba County Registry (the “Project”); and

WHEREAS, in accordance with the City’s Phase II Stormwater Ordinance, the Owner will be required to construct, install and maintain Stormwater Control Measures (SCMs) as part of its development of the Project; and

WHEREAS, the Owner desires to accept responsibility for the construction, installation and maintenance of all SCMs required on the Project as prescribed in the Minimum Maintenance Measures Addendum attached hereto as **Exhibit A** (the “Maintenance Standards”); and

WHEREAS, the Owner further desires to grant the City continuing and uninterrupted access to the Project to inspect the SCMs constructed, installed and maintained by Owner thereon.

NOW, THEREFORE, in consideration of the mutual promises and undertakings set forth in this Agreement, and for such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties to this Agreement hereby agree as follows:

1. Maintenance. Construction, installation and maintenance of the SCMs identified in **Exhibit A** to this Agreement shall be the sole responsibility of the Owner. The Owner shall maintain all SCMs constructed and installed on the Project in accordance with the terms of this Agreement, the City’s Phase II Stormwater Ordinance, and the Maintenance Standards. If additional SCMs are required on the Project they shall be referenced and made a part of this Agreement by amendment under Section 6. Any such amendment shall describe the minimum maintenance measures to be performed for each additional SCM.

2. Access. As set forth in the Stormwater Facility Easement, the City shall be granted access to the Project and all SCMs located thereon to carry out all provisions of this

Agreement and City's Phase II Stormwater Ordinance, including but not limited to inspections of the SCMs.

3. Inspections. The Owner shall conduct annual inspections and provide the City with an annual inspection report from a qualified professional for each SCM identified in **Exhibit A** in accordance with the City's Phase II Stormwater Ordinance. Annual inspections and reporting shall occur before the first and each subsequent anniversary of the as-built certification. Each inspection report shall be submitted to the City's Engineering Department at 76 North Center Street, or mailed to the City's Engineering Department, P.O. Box 398, Hickory, NC 28603.

4. Financial Responsibility. The Owner hereby accepts financial responsibility for all SCMs constructed and/or installed on the Project.

5. Amendments. The provisions of this Agreement may be modified or amended only by written instrument signed by the Parties.

6. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

7. Authority. Each Party hereby represents and warrants to the other Party that it has obtained any and all consents or approvals necessary for it to enter into this Agreement, and that the individual(s) executing this Agreement on such Party's behalf are authorized to do so and to bind such Party to the terms and conditions hereof.

8. Binding Effect. This Agreement shall be binding upon the Parties and their respective heirs, representatives, successors, assigns, and their respective officers, directors, members, managers, shareholders, owners, partners, members, divisions, subsidiaries, parent

companies, related entities, employees, agents and attorneys.

9. Governing Law/Construction. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina, without reference to its choice of law provisions. This Agreement is entirely the product of the collective joint drafting efforts of the Parties hereto and their counsel. In the event of a dispute concerning the meaning, construction, or interpretation of this Agreement, should any Party assert any claim of ambiguity, this Agreement shall not be construed against any Party as a result of the Parties' particular contribution to this effort.

10. Recording. This Agreement shall be recorded in the real estate records of Catawba County, North Carolina.

11. Effective Date. The Effective Date of this Agreement shall be the date of the last Party to sign.

Signature and Acknowledgements Appears on Following Pages.

IN WITNESS WHEREOF, this Agreement is executed and delivered this the _____
day of _____, 20____.

OWNER:

_____ (Seal)

By: Print Name

Its: Print Name

STATE OF NORTH CAROLINA
COUNTY OF _____

I, Print Name, a Notary Public of Print Name County, State of North Carolina, do hereby
certify that Print Name, Print Name personally came before me this day and, being authorized to
do so, signed the foregoing instrument as his or her act and deed.

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

Notary Public

[AFFIX NOTARIAL SEAL]

My Commission Expires: _____.

IN WITNESS WHEREOF, this Agreement is executed and delivered this the _____
day of _____, 20__.

CITY:

CITY OF HICKORY,
a North Carolina municipal corporation

_____ (Seal)

By: Warren Wood

Its: Manager

Attest: _____
Debbie Miller, City Clerk

Approved as to form on behalf of the City of Hickory this ____ day of _____, 20__.

Timothy D. Swanson, City Attorney

STATE OF NORTH CAROLINA

COUNTY OF CATAWBA

I, _____, a Notary Public of _____ County,
State of North Carolina, do hereby certify that Debbie Miller personally came before me this day
and acknowledged that she is the City Clerk for the City of Hickory, a North Carolina municipal
corporation, and that by authority duly given and as the act of the City Council of the City of
Hickory, the foregoing instrument was signed in its name and by its Mayor, Hank Guess, sealed
with its corporate seal, and attested by her as its City Clerk.

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

Notary Public

[AFFIX NOTARIAL SEAL]

My Commission Expires: _____.

Exhibit A

Minimum Maintenance Measures Addendum