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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 by and between the City of Hickory, a North Carolina municipal corporation, with a mailing address of P.O. Box 398, Hickory, North Carolina 28603 (the “City”), and _____, a _____ [Insert Entity Type] organized and existing under the laws of the State of _____, with a mailing address of _____ (the “Owner”), and is effective as of the last date herein below signed (the “Effective Date”). The identified parties are at times referred to herein collectively as “Parties” and individually as a “Party.”

RECITALS:

WHEREAS, the Owner desires to develop that certain real property located at _____ (the “Property”), more particularly described in that certain deed recorded in Deed Book _____, Page _____, in the Catawba County Registry, and, if applicable, as depicted on the plat recorded in Plat Book _____, Page _____, in the Catawba County Registry, in connection with the development known as _____ (the “Project”); and

WHEREAS, pursuant to the City’s Phase II Stormwater Ordinance (the “Stormwater Ordinance”), the Owner is required to construct, install, operate, inspect, maintain, repair, and, as necessary, replace one or more Stormwater Control Measures (“SCMs”) as part of the

development of the Project; and

WHEREAS, the Owner desires to accept responsibility for the operation, inspection, maintenance, repair, and replacement of all SCMs required for the Project in accordance with the minimum maintenance standards referenced in the attached **Addendum A** and incorporated herein by reference (the “Maintenance Standards”); and

WHEREAS, the Owner further desires to grant the City a continuing, perpetual, and non-exclusive right of entry upon the Project for the purpose of inspecting the SCMs and enforcing the terms of this Agreement and the Stormwater Ordinance.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Maintenance.** The Owner shall be solely responsible, at its sole cost and expense, for the construction, installation, operation, inspection, maintenance, repair, replacement, and continued performance of the SCMs identified in the attached **Addendum A**. The Owner shall maintain each SCM in accordance with this Agreement, the City’s Phase II Stormwater Ordinance, and the Maintenance Standards referenced in the attached **Addendum A**. If additional SCMs are required for the Project, they shall become subject to this Agreement by written amendment executed by the Parties and recorded in the Catawba County Registry. Any such amendment shall identify the additional SCMs and the applicable Maintenance Standards.

2. **Access.** As provided in the Stormwater Facility Easement, the Owner grants, or has granted, the City a continuing, non-exclusive right of access to the Project and all SCMs located thereon for the purpose of inspecting the SCMs and carrying out the provisions of this Agreement and the City's Phase II Stormwater Ordinance, including the performance of inspections and enforcement activities.

3. **Inspections.** The Owner shall conduct annual inspections and submit to the City an annual inspection report prepared by a qualified professional for each SCM identified in the attached **Addendum A**, in accordance with the City’s Phase II Stormwater Ordinance. The initial inspection and report shall be completed prior to the first anniversary of the as-built certification, and each subsequent inspection and report shall be completed annually thereafter. Inspection reports shall be delivered to the City’s Engineering Department at 76 North Center Street, Hickory, North Carolina 28601, or mailed to P.O. Box 398, Hickory, North Carolina 28603, or to such other address as the City may designate.

4. **Financial Responsibility.** The Owner accepts full financial responsibility for the construction, installation, operation, inspection, maintenance, repair, replacement, and continued performance of all SCMs serving the Project.

5. **Amendments.** This Agreement may be amended only by a written instrument executed by the Parties and, if this Agreement has been recorded, such amendment shall also be recorded in the Catawba County Registry.

6. **Counterparts; Electronic Signatures.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A signature transmitted by electronic means, including by portable document format (PDF), DocuSign, Adobe Sign, or any other electronic signature technology permitted under the North Carolina Uniform Electronic Transactions Act, N.C. Gen. Stat. Chapter 66, Article 40, shall be deemed an original signature and shall have the same legal force and effect as an original manual signature.

7. **Authority.** Each Party represents and warrants that it has obtained all approvals and authorizations necessary to execute and perform this Agreement and that the individual executing this Agreement on its behalf is duly authorized to bind such Party.

8. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, personal representatives, successors, and assigns. This Agreement shall constitute a covenant running with the land and shall be binding upon all future owners of the Project and any portion thereof until terminated or released by the City in writing and recorded in the Catawba County Registry.

9. **Governing Law/Construction.** This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina, without regard to its conflict of laws principles. This Agreement is the product of the joint drafting efforts of the Parties, and no provision shall be construed against either Party by reason of authorship.

10. **Recording.** Following execution by all Parties, this Agreement shall be recorded in the office of the Register of Deeds of Catawba County, North Carolina, at the Owner's expense.

11. **Entire Agreement.** This Agreement, together with the exhibits attached hereto and incorporated herein by reference, constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous negotiations, representations, understandings, and agreements, whether oral or written, relating to such subject matter. Nothing in this Section shall be construed to modify, supersede, or limit the applicability of the City's Phase II Stormwater Ordinance, the Stormwater Facility Easement, or any other applicable law or recorded instrument affecting the Project.

[Signature Pages Follow.]

IN WITNESS WHEREOF, the Parties have executed this Stormwater Operation and Maintenance Agreement as of the dates set forth in their respective signature blocks below.

(Name of Owner)

By: _____ (Seal)

Print Name: _____

Title: _____

Date: _____

STATE OF _____
COUNTY OF _____

I, _____, a Notary Public of _____ County,
State of _____, certify that _____ personally appeared
before me this day and acknowledged the due execution of the foregoing instrument. If signing on
behalf of an entity or other principal, the undersigned further acknowledged that he or she was
authorized to execute the instrument in the capacity indicated and that the instrument was executed
as the act of such entity or principal.

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

Notary Public

[AFFIX NOTARIAL SEAL]

My Commission Expires: _____.

IN WITNESS WHEREOF, the Parties have executed this Stormwater Operation and Maintenance Agreement as of the dates set forth in their respective signature blocks below.

CITY OF HICKORY,
a North Carolina municipal corporation

By: _____ (Seal)
Warren Wood, City Manager

Date: _____

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, North Carolina, certify that Debbie Miller personally appeared before me this day and acknowledged that she is the City Clerk of the City of Hickory, a North Carolina municipal corporation, and that, by authority duly given and as the act of the City, the foregoing instrument was signed in its name by Warren Wood, City Manager, sealed with its corporate seal, and attested by her as 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