



BIORETENTION CELL OPERATION & MAINTENANCE AGREEMENT

This Operation and Maintenance Agreement (“Agreement”) is established this _____ day of _____, 20_____, by _____ (“Owner”), who is the owner of the Property (hereinafter defined), on behalf of the Owner, the Association (if applicable), and all successor Owners of the Property and the Town of Apex (“Town”).

The “Property” is that certain real property described as PIN # _____, commonly known as _____, it being the same land conveyed to Owner by deed recorded in Book _____ at page _____ in the Wake County Register of Deeds.

Owner represents, warrants, and agrees that Owner is financially responsible for the construction, maintenance, repair and replacement of all stormwater control structures, appurtenances and vegetation, including the impoundment, located on the Property. Owner agrees to perform the maintenance as outlined below and as may be applicable or required as part of the regulations set forth in Section 6.1.12 of the Town Unified Development Ordinance. A Homeowners Association or Property Owners Association shall not be the financially responsible party unless more than 50% of the lots or units on the Property have been sold and a resident of the Association has been named the president.

Owner agrees that the Town has the right to access the Stormwater Control Measures (hereinafter

“SCM”) on the Property, as deemed necessary in the Town’s sole discretion, by way of the ‘SCM Maintenance & Access easement’ as recorded on the final plat. Owner recognizes and agrees that Owner is responsible for the maintenance and upkeep of the SCM Maintenance & Access easement. Owner acknowledges that Town’s authorized access to the SCM(s) does not create any operation or maintenance responsibility or obligation on the part of the Town.

Owner shall keep a maintenance record for routine maintenance performed related to SCMs on the Property (“SCM Maintenance Record”). The SCM Maintenance Record shall be kept updated by the Owner and be submitted to the Town each year as part of the required annual inspection report package. Any deficiencies noted during routine maintenance shall be corrected, repaired or replaced immediately by Owner. These deficiencies can affect the safety of the public and the pollutant removal efficiency of the SCM.

NUMBER OF BIORETENTION CELLS: _____ *(If multiple SCMs of the same type are being recorded, please list below which SCMs are being recorded as labeled on approved construction drawings, e.g. SCM #1, SCM #2, etc.)*

SCMs being recorded with this agreement

A bioretention cell is an excavation that is filled with a sandy media and plants. It is designed to temporarily hold and filter stormwater. Bioretention cells are one of the most versatile SCMs. They can be installed in a variety of soil types from clay to sand and in a wide variety of sites. They are also one of the most effective SCMs for removing pollutants, because they use many different pollutant removal mechanisms, including infiltration, absorption, adsorption, microbial action, plant uptake, sedimentation, and filtration.

Inspection and maintenance procedures:

- Immediately after the bioretention cell is planted, the plants shall be watered twice weekly or until established (commonly six weeks). The watering shall be in accordance with the Town Water Conservation Ordinance.
- Snow, mulch, etc. shall never be piled on the surface of the bioretention cell.
- Heavy equipment shall never be driven over the bioretention cell.
- Special care shall be taken to prevent sediment from entering the bioretention cell.
- Once a year, a soil test of the soil media will be conducted.

After the bioretention cell is established, Owner shall inspect it once a quarter. Owner shall keep records of inspection and maintenance.

Notices to Owner shall be sent to (please fill in all blanks):

Name

Phone number

Mailing address

E-mail

City, State, ZIP

Notices to Town shall be sent to:

Stormwater & Utility Engineering Manager

P.O. Box 250

Apex, NC 27502

(919) 249-3413

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

SCM Element	Potential Problems	Problem Remediation
The entire SCM	Trash/debris is present.	Remove the trash/debris.
Perimeter of the bioretention cell	Cells of bare soil and/or erosive gullies have formed.	Regrade the soil if necessary to remove the gully and plant a groundcover and water until it is established. Provide lime and a one-time fertilizer application.
Inlet	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.	Remove sediment and clogged stone and replace with clean stone.
Pretreatment system	Flow is bypassing pretreatment area and/or gullies have formed.	Regrade if necessary to route all flow to the pretreatment area. Restabilize the area after grading.
	Sediment has accumulated to a depth greater than three inches.	Search for the source of the sediment and remedy the problem if possible. Remove the sediment and restabilize the pretreatment area.
	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 by hand.

SCM Element	Potential Problems	Problem Remediation
Bioretention cell vegetation	Best professional practices show that pruning is needed to maintain optimal plant health.	Prune according to best professional practices. Maintain lines of sight.
	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 ground cover.
Bioretention cell mulch and media	Mulch (if applicable) is breaking down or has floated away.	Spot mulch if there are only random void areas. Replace whole mulch layer if necessary. Remove the remaining mulch and replace with triple shredded hard wood mulch at a maximum depth of three inches.
	Sod and/or mulch are clogged with sediment.	Determine the extent of the clogging. Remove/replace top layer or entire media as needed. Dispose of the spoil in an appropriate location. Search for the source of the sediment and remedy the problem.
	An annual soil test shows that pH has dropped or heavy metals have accumulated in the soil media.	Dolomitic lime shall be applied as recommended per the soil test and toxic soils shall be removed, disposed of properly and replaced with new planting media.
Underdrain system	Clogging has occurred.	Flush the underdrain system.
Outlet device	Erosion or other signs of damage have occurred at the outlet.	Repair or replace as necessary.
Outlet protection	Erosion has occurred, rip rap has been misplaced, or contamination has occurred.	Repair or replace as necessary.

Remedies for Violations of this Agreement

If the Owner shall fail to satisfactorily maintain or repair the SCM as set forth above, or otherwise violates this Agreement, the Town may order the Owner to undertake necessary actions to correct such violation. If the Owner 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 SCM in proper working condition. The full cost of performing the work shall be a lien on the property as provided in G.S. 160A-193. In such event, the Town shall assess against Owner 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 Owner hereby agrees to timely pay the same.

Where the Owner 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.

The Town shall have the right to bring an action against the Owner 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.

The remedies provided by this paragraph are cumulative and are in addition to any other remedies provided by law.

Please fill out ONE of the following FOUR signature forms (INDIVIDUAL, CORPORATION, LLC, OR GENERAL PARTNERSHIP) that is the most appropriate description of the type of property owner. Before recording with Wake County, please delete this page and the remaining THREE pages that do not apply.

INDIVIDUAL

IN WITNESS WHEREOF, the Owner has hereunto set its hand and seal, or if corporate, has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by authority of its Board of Directors, this the day and year first above written.

[Print Name of Owner]

By: _____
[Signature of Owner]

STATE OF NORTH CAROLINA

COUNTY OF _____ [county in which acknowledgement taken]

I, _____, a Notary Public of _____
County, North Carolina, do hereby certify that _____,
personally appeared before me this day and acknowledged the due execution of the foregoing
instrument.

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

[Signature of Notary Public]

[SEAL]

My Commission Expires: _____

CORPORATION

IN WITNESS WHEREOF, the Owner has hereunto set its hand and seal, or if corporate, has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by authority of its Board of Directors, this the day and year first above written.

[Print Name of Corporation]

By: _____
[Signature of Authorized Representative]

Title: _____

STATE OF NORTH CAROLINA

COUNTY OF _____ [county in which acknowledgement taken]

I, _____, a Notary Public of _____ County, North Carolina, certify that _____, personally came before me this day and acknowledged that he/she is _____ of _____ and that he/she as _____, being authorized to do so, executed the foregoing on behalf of the corporation.

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

[Signature of Notary Public]

[SEAL]

My Commission Expires: _____

LLC

IN WITNESS WHEREOF, the Owner has hereunto set its hand and seal, or if corporate, has caused this instrument to be signed in its corporate or company name by its duly authorized managing member and its seal to be hereunto affixed, this the day and year first above written.

_____, LLC
[Print Name of Company]

By: _____ [Seal]
[Signature of Member/Manager]

STATE OF NORTH CAROLINA

COUNTY OF _____ [county in which acknowledgement taken]

I, _____, a Notary Public of _____ County, North Carolina, certify that _____, personally appeared before me this day and acknowledged that he/she is a member/manager of _____, LLC, and that by authority duly given as a member/manager of the company, the foregoing instrument was signed and sealed by him/her on behalf of the company and acknowledged said writing to be the act and deed of said company.

Witness my hand and official stamp or seal, this ___ day of _____, 20___.

[Signature of Notary Public]

[SEAL]

My Commission Expires: _____

GENERAL PARTNERSHIP

IN WITNESS WHEREOF, the Owner has hereunto set its hand and seal, or if corporate, has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by authority of its Board of Directors, this the day and year first above written.

_____, General Partnership
[Print Name of General Partnership]

By: _____
[Signature of General Partner]

STATE OF NORTH CAROLINA

COUNTY OF _____ [county in which acknowledgement taken]

I, _____, a Notary Public of _____
County, North Carolina, certify that _____, a
general partner of _____, personally appeared before me this day
and acknowledged the execution of the foregoing instrument.

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

[Signature of Notary Public]

[SEAL]

My Commission Expires: _____