

FOR REGISTRATION REGISTER OF DEEDS
WILLIE L. COVINGTON
DURHAM COUNTY, NC
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*Prepared by City of Durham Department of Public Works
Return to Department of Public Works - Storm Water Services Division*

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

STORMWATER FACILITY OPERATION
AND MAINTENANCE PERMIT AGREEMENT
CITY VERSION 2-1195

THIS AGREEMENT, made and entered into this 5th day of MARCH, 2003, by and between **COUNTRY CLUB HEIGHTS, General Partnership** ("Permittee") and the City of Durham, a North Carolina municipal corporation ("City").

I. Background

a. The City has adopted, and from time to time will adopt, stormwater management ordinances and regulations applicable to certain real property owned by the Permittee. That property is described as follows and is referred to as "the Site", **as shown in Plat Book 158, Page 17**. Within the Site is certain real property that may be subject to liens pursuant to this agreement. This property is described as follows and is referred to as "the Property" **as shown in Plat Book 158, Page 17**. Within the site is a facility, **Stormwater Dry Detention Pond #1 designed to have a surface area of 4494 square feet for the 1-year, 24-hour frequency rainfall event. It is located on the south side of the site, west of lots 35 and 36 on the site commonly known as Country Club Heights on Eagles Nest Drive.**

b. Those ordinances and regulations require that when the Site is developed, the owner must operate and maintain a Facility on it. The ordinances further require that, before an occupancy permit may be issued for any structure constructed within a site proposed for development, the owner must enter into an agreement with the City to provide for the operation and maintenance of the Facility. This agreement is intended to comply with that requirement.

c. **Definitions.** In this agreement: "Director of Public Works" means the employce of the City who is designated by the City as the Director of Public Works or as the Director of Public Works Designee. "City Manager" means the City Manager of the City or any Assistant City Manager of the City. "Facility" means a privately owned on-site engineered stormwater control facility that satisfies the requirements of the City's ordinances and regulations for such facilities. "Permit Agreement" means a stormwater facility operation and maintenance permit agreement executed between a permittee and the City. "Person" includes natural persons, business trusts, joint ventures, governments, governmental subdivisions, governmental agencies, firms,

corporations, associations, partnerships, and other legal commercial entities. "Plans" are plans for a Facility that have been both approved by the Director of Public Works and placed on file in the office of the Director of Public Works. "Transfer" includes sell, convey, assign, alienate, mortgage, and/or make subject to a lien; however, neither a release of a lien (in whole or in part) by a lien holder nor an assignment (in whole or in part) of a lien from a lien holder is a "Transfer". In this agreement, these definitions apply to a defined term only when the initial letter of the term is capitalized.

2. Fees: Title Opinion: Construction Inspections and Maintenance.

The Permittee shall cause the following to be done:

a. At the time of delivering this agreement executed by the Permittee to the City, pay the stormwater permit fee in the amount determined by the Director of Public Works:

b. Provide to the City an opinion of title of the Site by an attorney licensed to practice law in North Carolina. Upon request of the Director of Public Works, the Permittee shall promptly provide to the City such an attorney's opinion updated to the time of recording this agreement or a memorandum thereof. The opinions shall indicate no liens or encumbrances that the Director of Public Works deems to interfere with the City's having adequate security in accordance with Section 6.

c. Construct the Facility in accordance with the Plans before applying for a certificate of compliance for any structure on the Site, it being agreed that the Site is not eligible for a certificate of compliance until the Facility has been so constructed;

d. Inspect the Facility, perform routine maintenance on the Facility, and make all necessary repairs to the Facility, all as directed by the Director of Public Works. This shall include the following categories:

i. Grass and Vegetative Cover.

A. Design, install, and maintain landscaping around the Facility so that it will not reduce the capacity or hinder the operation and maintenance of the Facility.

B. Maintain the vegetative cover of the Facility to prevent erosion.

C. Except as provided in 2 (d) (1) (D) below, mow the area as needed to prevent the grass and other plants (other than maintained shrubs and trees) from exceeding a height of fifteen (15) inches.

D. Keep open channels free of undesirable growth and maintained to the design cross-section and area as shown on the Plans, and keep the height of the vegetation on the slopes and bottom from exceeding eight (8) inches.

E. Replace landscape materials that fail to live and prosper, as required by the Director of Public Works.

ii. Embankments, Slopes, and Dams. Inspect and repair embankments, slopes, and dams for damage from erosion, sloughing, animal burrows, and woody vegetation.

iii. Removal and Disposal of Trash, Debris, and Sediment.

A. Keep the Facility's outlet structure cleared of all blockages.

B. Clean the channels and pipes as necessary to provide for the free conveyance of stormwater as designed.

C. Remove debris and sediment as needed to maintain the primary outlet capacity and Facility

storage volume when the depth of the Facility has been reduced by more than one (1) foot from the design depth, or when the Facility's storage volume has been reduced by twenty percent (20%) from the design volume.

D. Remove all sediment from sediment forebays, traps, and basins.

iv. Insects, Odors, and Algae.

A. Maintain the Facility in a manner to control odors and algae to the extent that the Director of Public Works determines to be necessary.

B. Apply, when and as directed by the Director of Public Works, a larvicide approved by the Durham County Health Department for insect control, and take other measures to control insects as directed by the Director of Public Works.

v. Fencing. Nothing in this agreement is intended to prevent the Permittee from placing fencing and other security measures on the Property, provided that the Permittee shall first submit information on the proposed construction to the Director of Public Works and obtain her consent. The Director of Public Works shall grant permission if she finds that the fencing and other measures will not interfere with the Facility. Nothing in this agreement is intended to affect the Permittee's obligation, if any, to exercise care with respect to persons who may enter the Site.

e. Cause the Facility to be inspected, by a registered professional engineer, a registered land surveyor, or a registered landscape architect, on a schedule to be established by the Director of Public Works. The Permittee shall submit the number of copies specified by the Director of Public Works of the inspection reports to the Director of Public Works promptly following each inspection.

f. If the Director of Public Works reasonably determines that the project that the Permittee has intended for the Site has been abandoned, she shall so notify the Permittee, who shall promptly clean up and repair the Site as directed by the Director of Public Works.

3. Transfer of the Property. If the Permittee proposes to Transfer any interest in the Property, the Permittee shall first:

a. Wait until the Director of Public Works has approved the Facility as having been completed in accordance with the Plans before completing the Transfer;

b. Notify the intended Transferee that it is required to execute a Permit Agreement, in a form approved by the Director of Public Works, and request the intended Transferee to execute such an agreement; and

c. If the intended Transferee is an owners' association, unit owner's association, or homeowners' association, arrange for the intended Transferee to provide the Director of Public Works a copy of the association's declaration, with a letter stating the book and page in which the declaration was recorded in the office of Register of Deeds of the counties in which the Property is located. The declaration shall provide:

- i. That the Facility is a part of the common elements and shall be subject to the Permit Agreement;
- ii. That the Permittee's obligations under the Permit Agreement shall receive the highest priority for expenditures by the association except for City and County assessments, ad valorem property taxes, and insurance, and any other expenditures which are required by law to have a higher priority.

- iii. That a separate fund shall be maintained by the association for the reconstruction and repair of the Facility, separate from the fund(s) for routine maintenance of the Facility;
- iv. That the reconstruction and repair fund shall contain at all times the dollar amount reasonably determined from time to time by the Director of Public Works to be adequate to pay for the probable reconstruction and repair cost for a three-year period; that fund shall be listed as a separate line in the association's budget and it shall be kept in an account insured by the FDIC or by another entity acceptable to the Director of Public Works. The funds in that account shall not be commingled with any other funds;
- v. That special assessments shall be charged to each member of the association, to pay for the Permittee's obligations under the Permit Agreement;
- vi. That there shall be no limit on the frequency or dollar amount of such assessments;
- vii. That, to the extent permitted by law, the association shall not enter into voluntary dissolution unless the Facility is Transferred to a Person who has executed a Permit Agreement; and
- viii. That, to the extent permitted by law, the Permittee shall not Transfer, or permit the Transfer of, any interest in the Property until a Permit Agreement has been executed by the intended Transferee.

If the Permittee Transfers, or permits the Transfer of, an interest without complying with this Section 3, that failure to comply shall not invalidate the Transfer, but nothing herein shall be construed to relieve the Transferee of the obligation to comply with this agreement. If the Permittee Transfers, or permits the Transfer of, an interest without complying with this Section 3, the City may in its discretion require the surety referred to in Section 4 to pay the City some or all of the Face Amount (defined in Section 4).

4. Bond. In order to secure the Permittee's obligations under this agreement, the Permittee shall immediately deliver to the City one or more bonds or other instruments in a form, and written by a surety, which are satisfactory to the City, in the amount of ten thousand, eight hundred and seven **dollars (\$10,807.00)** ("the Face Amount"), which is twenty (20) times the average annual maintenance cost estimated by the Director of Public Works. The bond or other instrument shall remain in effect permanently unless the City of Durham (by its City Manager) and the Permittee execute an agreement, under the official seal of the City of Durham, stating "The Permittee's obligation under Section 4 of the Stormwater Facility Operation and Maintenance Permit Agreement made on [date] between the City of Durham and [name of Permittee] to provide a bond or other instrument has been changed as follows [stating the new requirement or that it has been eliminated]." If the Director of Public Works notifies the Permittee that a surety is unacceptable to the Director of Public Works, the Permittee shall, within thirty (30) days substitute an acceptable surety or pay the City the Face Amount.

5. Right of Entry on Site. The Permittee hereby grants to the City the right of ingress, egress, and regress over and across the Site for the purpose of inspecting the Facility and for the purpose of correcting, repairing, replacing, and maintaining the Facility and exercising the other rights of the City that are provided for by this agreement.

6. Remedies for Violations; Lien on Property; Future Obligations Secured.

a. If the Permittee fails to perform its obligations under this agreement, the City may send notice to the Permittee to demand that it so perform. If the Permittee fails to comply with such demand within thirty (30) days from the date of mailing thereof, the City may enter the Site and perform some or all of the work that the Permittee was required to do in carrying out its obligations under this agreement, and the City may do any of such work as the Director of Public Works deems appropriate to place the Facility in proper working condition.

The Permittee shall pay the City for the cost incurred by the City to do that work, including reasonable amounts, calculated under procedures established by the Director of Public Works, for the City's overhead and use of City employees, equipment, and property. Interest shall accrue on those monetary obligations of the Permittee at the rate of one and one-half percent (1 - ½%) per month. Without limiting other remedies available to the City, including recourse to the bond or other instrument referred to in Section 4, it is agreed that those monetary obligations shall be a lien on the Property and may be collected as unpaid taxes in accordance with N.C.G.S. 160A-193.

b. This agreement may be enforced by injunctive relief in addition to other remedies available to the City. The remedies provided by this Section 6 are cumulative, and are in addition to any other remedies available to the City. By way of example, and not of limitation: whether or not the provisions of Section 3 are complied with, the City shall have all of the rights and remedies not prohibited by this agreement, provided that the City may not obtain double recovery.

c. The Permittee shall pay an attorney's fee of fifteen percent (15%) of the outstanding balance if the balance is collected by or through an attorney at law. The liability of a surety or other Person guaranteeing the Permittee's obligations under this agreement shall include said attorney's fees.

7. Release of Lien by Certificate.

a. Duty to Furnish a Certificate -- On the request of any of the Persons prescribed in subdivision (a) (i) below, and upon the condition prescribed by subdivision (a) (ii) below, the Director of Public Works shall furnish a written certificate stating the amount of any monetary liabilities owed by the Permittee to the City pursuant to this agreement (together with any interest and costs accrued thereon) that are a lien on the Property.

i. Who May Make Request -- Any of the following Persons shall be entitled to request the certificate:

- A. An owner of the Property;
- B. An occupant of the Property;
- C. A Person having a lien on the Property;
- D. A Person having a legal interest or estate in the Property;
- E. A Person having a contract to purchase or lease the Property or a Person having contracted to make a loan secured by the Property;
- F. The authorized agent or attorney of any Person described in subdivisions (a) (i) (A) through (E) above.

ii. Duty of Person Making Request -- The Director of Public Works shall not be required to furnish a certificate unless the Person making the request specifies the name of the Permittee, specifies the Book and Page in the office of Register of Deeds where this agreement or a memorandum thereof is recorded, and provides a copy of the first page of this agreement.

b. Reliance on the Certificate -- When a certificate has been issued as provided in Section 7(a) above, all monetary liabilities owed pursuant to this agreement that have accrued against the Property for the period covered by the certificate shall cease to be a lien against the Property, except to the extent of monetary liabilities stated to be due in the certificate, as to all Persons obtaining such a certificate and their successors in interest who rely on the certificate:

- i. By paying the amount of monetary liabilities stated therein to be a lien on the Property;
- ii. By purchasing or leasing the Property; or
- iii. By lending money secured by the Property.

c. Without limiting the effect of this Section 7, it is agreed that no oral statement made by any City employee as to the amount of monetary liabilities that are a lien on the Property pursuant to this agreement shall bind the City.

8. Warranty. The Permittee covenants with the City, that Permittee is seized of the Property in fee simple, has the right to convey the same in fee simple, that title is free and clear of all encumbrances, and that Permittee will warrant and defend the title against the lawful claims of all persons whomsoever except for the exceptions stated in the attorney's opinion of title provided in accordance with Section 2 (b) above.

9. Notice. When a notice is required or permitted by this agreement, it shall be given in writing to the City delivered to the Director of Public Works, 101 City Hall Plaza, Durham, NC 27701, or upon the Permittee, at **COUNTRY CLUB HEIGHTS, General Partnership, 4022 Carver Street, Durham, NC 27705, Attention: T.C. Stanford (919) 606-2828** . If mailed, the notice shall be by certified mail, return receipt requested. These addresses may be changed by sending a notice of the new address attached to a copy of this agreement.

10. No Waiver of Breach. If the City waives any breach of any obligation or covenant in this agreement, that waiver shall not constitute a waiver of any other or future breach of the same or any other obligation or covenant. The City's failure to exercise any right under this agreement shall not constitute a waiver of that right.

11. Binding Effect. This agreement and all the covenants in it shall run with the Site and shall bind all owners of any interest in the Site. By way of example and not limitation, all owners of any interest in the Property shall be jointly and severally liable to fulfill the Permittee's obligations under this agreement as if each of them were the Permittee. Unless the context otherwise requires, the term "Permittee" in this agreement includes all such owners.

12. Benefit of this Agreement.

a. The approval by the City or any employee of the City of any Plans or of any work referred to in this agreement shall not create any liability in the City or its officers, officials, or employees for the Plans or the work; but nothing herein is intended to release any other Person for any liability for those Plans or work.

b. The performance by the City or any employee of the City of any work referred to in this agreement shall not create any liability in the City or its officers, officials, or employees for the work; but nothing herein is intended to release any other Person for any liability for that work.

c. Except to the extent otherwise explicitly provided in this agreement, this agreement is not intended to be for the benefit of any Person other than the parties hereto and their heirs, successors, and assigns.

13. Interpretation of this Agreement. Unless the context requires otherwise, the singular includes the plural, the plural includes the singular, and the neuter includes the masculine and feminine. The captions and titles are for convenience only, and are not to be used to interpret the Agreement. The words include and including mean, respectively, include but not limited to, and including but not limited to.

14. Nondiscrimination Policy. The City of Durham opposes discrimination on the basis of race and sex and

urges all of its contractors to provide a fair opportunity for minorities and women to participate in their work force and as subcontractors and vendors under City contracts.

15. Severability. Invalidation of any term or provision in this agreement by a court of competent jurisdiction shall not invalidate the remaining terms and provisions.

IN WITNESS WHEREOF, the parties hereto have respectively set their hands and seals, or if corporate, have executed this under seal by their proper officers, the date first above written.

[COUNTRY CLUB HEIGHTS, General Partnership.]

By: [Signature]
General Partner

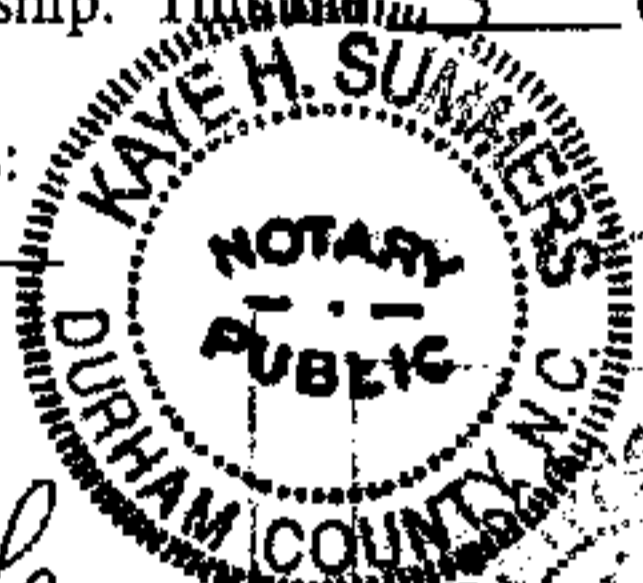
Printed Name: T.C. STANFORD

STATE OF NORTH CAROLINA

COUNTY OF DURHAM

I, a notary public in and for said county and state, certify that T.C. STANFORD personally (1) appeared before me this day, (2) stated that he or she is a general partner in COUNTRY CLUB HEIGHTS, a partnership, (3) acknowledged that the foregoing contract or agreement with the City of Durham carries on in the usual way the partnership's business, and (4) acknowledged the due execution of the contract or agreement on behalf of the partnership. This 5th day of MARCH, 2003.

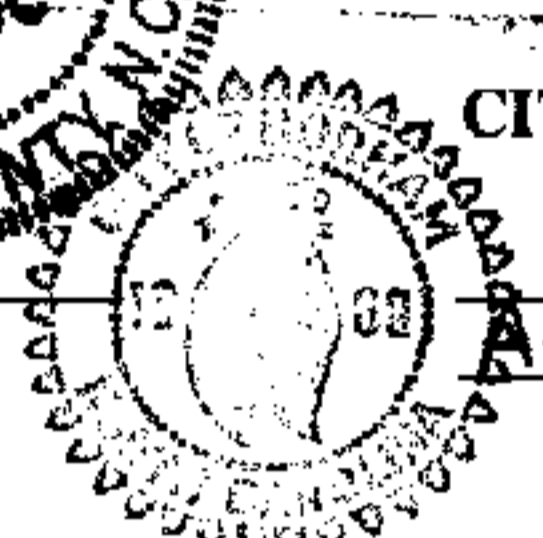
My commission expires: 1/2/03



[Signature]
Notary Public

ATTEST:

By: [Signature]
City Clerk
[Affix Municipal Seal]



[Signature]
Asst. City Manager

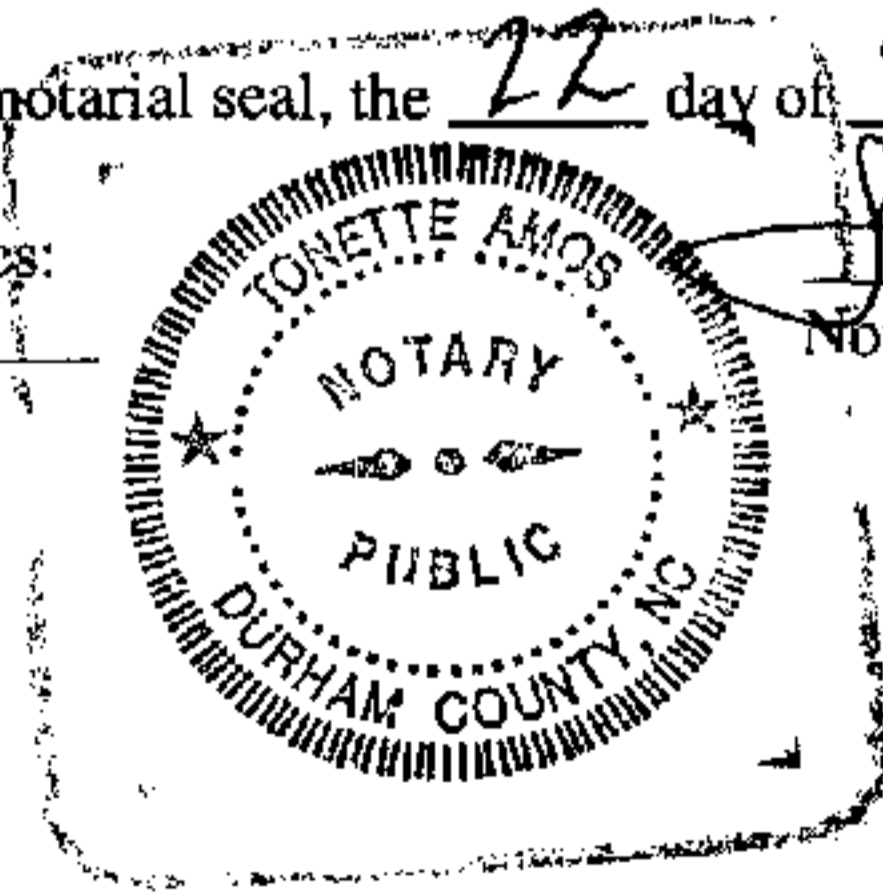
STATE OF NORTH CAROLINA

COUNTY OF DURHAM

I, Tonette Amos, a notary public in and for the County of Durham, North Carolina certify that D. Ann Gray personally appeared before me this day and acknowledged that he/she is City Clerk of the **CITY OF DURHAM**, a municipal corporation, and that by authority duly given and as the act of the City, the foregoing contract was signed in its name by its Asst City Manager, sealed with its corporate seal, and attested by himself/herself as its said City Clerk or Deputy City Clerk.

Witness my hand and notarial seal, the 22 day of April, 2003

My commission expires: 07-17-07



[Signature]
Notary Public

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act. [Signature] 3/7/03
FINANCE OFFICER DATE



WILLIE L. COVINGTON
REGISTER OF DEEDS , DURHAM COUNTY
DURHAM COUNTY COURTHOUSE
200 E. MAIN STREET
DURHAM, NC 27701

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AGMT 9 PGS \$35.00
Recorder: CYNTHIA Y FRAZIER

State of North Carolina, County of Durham

The foregoing certificate of KAYE H SUMMERS , TONETTE AMOS Notaries are certified to be correct. This 2 ND
of May 2003

WILLIE L. COVINGTON , REGISTER OF DEEDS

By: Cynthia Y Frazier
Deputy/Assistant Register of Deeds



2003027056