



FOR REGISTRATION REGISTER OF DEEDS
Willie L. Covington
DURHAM COUNTY, NC
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Prepared by: City of Durham, Department of Public Works, Stormwater Services Division, 101 City Hall Plaza, Durham, NC 27701

Please return to Department of Public Works, Stormwater Services Division, 101 City Hall Plaza, Durham, NC 27701, Attn: Rhonda Spivey

**STATE OF NORTH CAROLINA
COUNTY OF DURHAM**

**SUPPLEMENTAL STORMWATER FACILITY
AGREEMENT AND PARTIAL RELEASE
(Residential Version for HOA Assumption)**

THIS AGREEMENT ("Agreement") is made among Country Club Heights Homeowner's Association, a North Carolina corporation ("Association Permittee"), the City of Durham, a North Carolina municipal corporation ("City"), and Country Club Heights, GP, a North Carolina general partnership ("Original Permittee") and is effective on the date of its recordation in the Durham County Register of Deeds

1. Background and Definitions.

a. Scope, Purpose

(i) History Association Permittee owns real property (the "Site") that contains one or more constructed stormwater improvements (the "Facility/ies") to control stormwater runoff and pollution from a particular development (the "Property") The Original Permittee constructed the Facility/ies and entered into an agreement and covenants (the "Original Agreement") with the City to ensure the perpetual maintenance, reconstruction, annual inspection, repair, and reporting to the City of the Facility/ies The Original Permittee also recorded general Covenants putting into effect the Original Agreement and other obligations of the Association The Original Permittee has transferred the Facility/ies to the Association Permittee pursuant to the document described in Paragraph 2 below By virtue of the Original Agreement, the Covenants, and the transfer, the Association Permittee and Lot Owners within the Property are now responsible for perpetual maintenance, annual inspection, repair, reporting to the City, and reconstruction of the Facility/ies

(ii) Supplementation of Original Agreement With regard to Association Permittee, this Agreement, when recorded, supplements and clarifies the Original Agreement regarding Association Permittee's and Lot Owners' obligations with regard to the Facilities This Agreement entirely supersedes Sections 2 (a), (b) and (c) of the Original Agreement The obligations remaining under the Original Agreement, generally described, include the obligation to maintain, inspect, repair, and reconstruct the Facility/ies in accordance with City Requirements, maintain two funds to assist in accomplishing these purposes, maintain a perpetual surety (bond, Letter of Credit or Assignable Certificate of Deposit), and report to the City regarding these responsibilities To

the extent that this Agreement might conflict with the Original Agreement, the stricter provisions (assessed with regard to the obligations assumed or performance required of the private parties) shall control

(iii) Release of Original Permittee This Agreement, when recorded, releases the Original Permittee from its obligations to the City under Sections 2, 3, 4, 6, and 8 of the Original Agreement, with the following exceptions (1) the obligations described in Sections 2 (d), (e), and (f) and Section 6 of the Original Agreement remain for all Lots within the Property still owned by Original Permittee at the time of recordation of this Agreement, for the sole and limited purpose of retaining for said lots until sale, and allowing transfer to future purchasers of said Lots at time of sale, the same stormwater obligations that Lots previously transferred by Original Permittee have under the Original Agreement, (2) release of Original Permittee through this Agreement does not release any Lots or Lot Owners or the Association from the obligations of the Original Agreement, with the exception of Sections 2 (a), (b) and (c) as described in (ii) above, and Original Permittee, the City, and such Lot Owners, through the Association Permittee, agree that the intent of the Original Agreement was that each Lot Owner in the Property have a legal interest in, and a continuing obligation for, the Site and the Facility/ies that runs with their Lot as part of the Property notwithstanding that primary responsibility for the Facility/ies may be assumed by a named permittee, such as the Association Permittee, 3) this release does not constitute a release from any claims the City might assert with regard to the improper design or construction of the Facility/ies

b Property to which this Agreement Relates This Agreement affects the Property described in this paragraph The Property is that property shown on the plat entitled **Country Club Heights Phase 2** and recorded at **Plat Book 158, Page 17, Durham County Registry** It is generally **located on Eagles Nest Drive and is commonly known as "Country Club Heights Phase 2"**.

c Site and Facility/ies to which this Agreement Attaches This Agreement is appurtenant to and runs with the Site and the Facility/ies The Site containing the Facility/ies is located at **Plat Book 158, Page 17, Durham County Registry** The Facility generally **consists of one (1) dry detention pond designed to have a surface area of 4,495 square feet for the 1-year, 24-hour frequency rainfall event. The pond is located on the south side of the site, west of Lots 35 and 36.**

d Relationship to, Ordinances, Policies, and Guidelines This Agreement and the Original Agreement supplement other City Requirements that may exist now or in the future This Agreement and the original Agreement do not limit the City's police power or its authority to impose additional obligations that exceed the obligations contained in said agreements

e Definitions The terms in this Agreement have the following definitions
"Association Permittee" and "Association" (the terms being used interchangeably) means the association that has executed this Agreement that was formed for the purpose of owning and maintaining real property and improvements thereon intended for the common benefit of Lot Owners within the Property In the absence of the Association, for whatever reason, the Lot Owners, collectively, shall be considered the Association and shall be responsible for the Association Permittee's obligations under this Agreement

"City Manager" means the Durham City Manager or a Deputy City Manager to whom authority to execute contracts has been delegated

"City Requirements" means the legal obligations and standards set forth in City ordinances, and written City and Public Works policies, guidelines, manuals, protocols, standards, and/or handbooks, as such may be amended from time to time

"Covenants" means the Covenants putting into effect the Original Agreement and other obligations regarding commonly owned property, which are further described in Section 2 below

"Director" means the City's Director of Public Works or the Director of a successor department to the Department of Public Works and any Person to whom the Director's duties have been delegated pursuant to City Requirements

"Facility/ies" means one or more stormwater control device(s) and/or areas that are created for the purpose of detaining and/or treating stormwater. The specific Facility/ies that are the subject of this Agreement are those described in Section 1(c) above.

"Lot" means a lot within the Property, whether developed or undeveloped.

"Lot Owner" means the legal owner of any fee simple interest in a Lot.

"Original Agreement" means the stormwater agreement and covenants originally recorded by the Original Permittee for the Property and the Site, which agreement is described in Paragraph 2 below.

"Original Permittee" means the party that executed the Original Agreement, as Permittee, with the City.

"Person" includes but is not limited to natural persons, business trusts, joint ventures, governments, governmental subdivisions, governmental agencies, firms, corporations, limited liability companies, associations, partnerships, and other legal entities.

"Property" is the land described in Section 1(b) above which was platted by the Original Permittee and subjected to the Original Agreement and the Covenants by the Original Permittee and which is served by the Facility/ies described herein.

"Site" means a Lot or parcel within the Property which contains at least one Facility, the Site is described in Section 1(c) above.

"Transfer" includes sell, convey, assign or alienate all or a portion of an interest in the Property.

2. Warranties by Association Permittee and Original Permittee as to Prior Recordings, Obligations, Modification of Instruments, and Execution.

a Warranties by Association and Original Permittee. The Association Permittee and the Original Permittee warrant the following:

(i) That the Association was properly formed and incorporated in North Carolina in accordance with law and is currently in good standing with the Secretary of State of North Carolina,

(ii) That the Original Agreement was recorded at **Deed Book 3884, Pages 524-532**, Durham County Registry, and such recording occurred prior to any sales to Lot Owners in the Property that is described in Section 1(b) above, and was binding on all such Lots,

(iii) That at time of execution of this Agreement by the Original Permittee and Association, the Association owns the Site and the conveyance, that transferred the Site, is recorded at **Deed Book 4155, Pages 159-162**, Durham County Registry,

(iv) That the Original Permittee recorded Covenants implementing the Original Agreement at **Deed Book 2628, Pages 888-936, Deed Book 2628, Pages 937-943 and Deed Book 2915, Pages 785-793**, Durham County Registry, and that such Covenants

- (a) are binding on all Lots identified above in Section 1(b) as the Property and allocate to all such Lots responsibility for the Facility/ies,
- (b) make the Facility a common element and subject it to the Original Agreement,
- (c) establish that the stormwater obligations under the Original Agreement have the highest priority for expenditures by the Association, with the exception of government assessments and taxes, insurance, and other expenditures that the law requires be given a higher priority,
- (d) require two line items in the budget for the Facility/ies, one for routine maintenance and minor repairs and the other for reconstruction and repair,
- (e) require a separate fund from the Association's other funds for the reconstruction and repair of the Facility, and require that fund be kept in an FDIC or other similarly insured account,
- (f) allow for special assessments to all Lot Owners to pay for the obligations of the Original Agreement,
- (g) restrict dissolution of the Association in the absence of transfer of the Facility/ies to a

Permittee who enters into an agreement with the City,

(v) That it is within the authority of the Association Permittee to agree to this Supplemental Agreement, and this Agreement has been approved and executed by the Association in accordance with legal requirements, including those that may be required in the Association's Declaration, Articles of Incorporation, and/or By-Laws (A copy of a Resolution from the Association which authorizes the officers of the Association to execute this Agreement should be submitted with this Agreement),

(vi) That changes necessary to incorporate the provisions of Section 3 of this Agreement have been made to the Association's By-Laws or to the following instrument Resolution (describe) if the By-Laws are not the appropriate place to make such changes,

(vii) That mandatory dues for the Lot Owners are provided for in the Bylaws and are set by action of the Association and are estimated at the time of recordation of this Agreement to generate **\$1,838.40 each year** for routine maintenance and minor repair of the Facility and **\$612.80 each year** for the separately maintained reconstruction and repair fund,

(viii) That as of _____ (date) the separate fund maintained for the reconstruction and repair of the Facility contains \$ _____ and that fund requires the signatures of two officers to withdraw monies from the fund,

(ix) That this Agreement has been executed by the Original Permittee and by the Association in a legally sufficient manner so as to bind such parties,

(x) That the Facility/ies has been inspected and certified as required by the City and such inspection reports and certifications have been submitted to the City,

(xi) That the fee as set by the City of **\$10, 807.00**, based on twenty (20) times the average annual maintenance cost estimated by the Director of Public Works, has been provided to the City

b Attorney Certification The warranties described in (a) (i) through (a) (vi) and (ix) above shall be certified by an Attorney licensed to practice law in the State of North Carolina Such certification as well as the remaining guarantees shall be made in form and substance acceptable to the City

3. Association/Lot Owner Responsibility for Facility/ies.

The Association, and in the absence of such Association, the Lot Owners, as provided in the Original Agreement, agree to assume all obligations of Permittee under the Original Agreement, with the exception of Sections 2 (a), (b) and (c) of the Original Agreement, which are superseded by this Agreement In addition, the Association agrees to do the following

a Association Permittee's Continuing Permanent Responsibility for Facility/ies The Association Permittee shall be responsible for inspection, maintenance, repair, reconstruction, and funding for the completed Facility/ies, and shall comply with all City Requirements These obligations are further described below

b Filing of Responsible Officer for Association with City The Association Permittee shall file with the City's Department of Public Works, and update such filing yearly, the name and contact information of a responsible officer or agent for the Association Permittee who is familiar with the maintenance and upkeep of the Facility/ies The filing shall also be updated when there is a change in the responsible officer or agent

c Maintenance The Facility/ies shall be maintained in compliance with City Requirements as they may change from time to time. At the time of recordation of this Agreement these are generally found in the City of Durham's "Owner's Maintenance Guide for Stormwater BMPs Constructed in the City of Durham" and in the operation and maintenance manual prepared specifically for the Facility/ies at the time of completion of construction. (As of October 1, 2007, the current version of the "Owner's Maintenance Guide for Stormwater BMPs Constructed in the City of Durham" can be viewed at or downloaded from the City's website at http://durhamnc.gov/ich/op/pwd/storm/Documents/BMP/doc11_maint_guide.pdf)

d Inspections/Reports to City In accordance with City Requirements, the Association Permittee shall cause the Facility/ies to be inspected (i) annually, (ii) after events that cause visual damage to the Facility, and (iii) upon notification by the Director. The inspection shall be performed by a registered North Carolina Professional Engineer or a North Carolina Registered Landscape Architect certified by the City and shall be in compliance with City Requirements. The inspection shall occur annually during the month of **MARCH**, or at such other time as may be reasonably directed by the City. The inspection shall be reported to the City as further described below.

c Repair and Reconstruction The Association Permittee shall repair and/or reconstruct the Facility/ies as it determines is necessary, and, additionally, as may be directed by the City, to allow the Facility/ies to function for its/their intended purpose, and to its design capacity. The Association Permittee shall provide written reports regarding major repair or reconstruction to the City in accordance with City Requirements.

f Budget Line Items for Stormwater Expenses The dues of the Association Permittee shall include sufficient amounts to provide for both the upkeep and maintenance of the Facility, and, in addition, for the eventual reconstruction of the Facility. The Association Permittee shall maintain two (2) separate funds in its budget for the Facility/ies. The first ("Inspection and Maintenance Fund") shall be for routine, yearly Facility expenditures for upkeep -- annual inspections, maintenance, and routine repairs -- and the funds for this purpose may be maintained as part of the Association Permittee's general account. The second ("Major Reconstruction Fund") shall be placed in a separate, increasing fund that will build over time and will provide a reserve fund for major repairs to and eventual reconstruction of the Facility/ies. The Major Reconstruction Fund shall be maintained in an account that is separate from the Association Permittee's general account as described below. At a minimum, the Association Permittee shall earmark **\$1,838.40** annually from its collected dues for the Inspection and Maintenance Fund and **\$612.80** annually for the Major Reconstruction Fund. These minimum amounts shall be increased annually by 3% per year over the prior year's amount. The Association Permittee may set a higher amount in its discretion. The Association Permittee shall set a higher amount if the City's Director determines, in his/her reasonable discretion that additional amounts are necessary to provide for adequate inspections and maintenance or for an adequate reserve fund. The Association Permittee shall set dues at a sufficient amount to fund each of the two line items in addition to the Association Permittee's other obligations. The Association Permittee may compel payment of dues through all remedies provided in the Covenants for the Property or otherwise available under law.

g Assessments/Liens In addition to payment of dues, each Lot shall be subject to assessments by the Association Permittee for the purpose of fulfilling the Association Permittee's obligations under this Agreement. Such assessments shall be collected in the manner set forth in the Covenants. As allowed under NCGS §47F, or successor statutes, or, for condominiums, as allowed under NCGS 47C, or successor statutes, all assessments remaining unpaid for 30 days or longer shall constitute a lien on the Lot. Such lien and costs of collection may be filed and foreclosed on by the Association Permittee. In addition, the Association Permittee's rights may, in the discretion of the City, be exercised by the City, as a third party beneficiary of this Agreement and/or as Attorney in Fact for the Association Permittee, as provided in Section 6 of this Agreement, without limitation as to other rights the City may have under this Agreement or the Original Agreement, and under law.

h Stormwater Expenditures Receive Highest Priority Notwithstanding any contrary provisions of the Association Permittee's recorded Covenants, to the extent not prohibited by law, the inspection, maintenance, repair, and replacement/reconstruction of the Facility/ies shall receive the highest priority (excluding taxes and assessments and

other statutorily required expenditures) of all Association expenditures

i Separate Account for Major Reconstruction Fund, Requirements for Withdrawal The Association Permittee shall maintain the Major Reconstruction Fund for the Facility/ies in an account maintained at a bank or other similar institution and such account shall be separate from the Association's general account. The Association Permittee shall use the Major Reconstruction Fund only for major repairs and reconstruction of the Facility/ies. The Association Permittee's bylaws shall require that signatures of two Association officers are required for withdrawal of funds from the Major Reconstruction Fund

J Engineer Report prior to Major Repairs and Reconstruction Prior to withdrawing funds from this account, the Association Permittee shall (i) obtain a written report from an engineer approved in accordance with City Requirements regarding repairs or reconstruction needed and approximate cost of such repair or reconstruction, and (ii) submit such report to the Director and notify the Director of the major repairs or reconstruction to be undertaken on the Facility, the proposed date, and the amount to be withdrawn from the Major Reconstruction Fund. In the event of an emergency, withdrawal and expenditure of funds from the Major Reconstruction Fund may be made after telephone notification to the Stormwater Services Division of the Department. Telephone notification shall be followed up with a written report identified in (i) above and submitted to the Director within 30 days

k Annual Reports to City The Association Permittee shall provide to the Director annual reports in substance and form as set forth in City Requirements. This annual report shall be signed by an officer of the Association Permittee, who shall attest as to the accuracy of the financial information in such report. If prepared by a professional management company hired to manage the Association Permittee's affairs, the report shall so indicate. The Officer's signature and attestation shall be notarized. At a minimum each report shall include the annual Facility/ies inspection report described in Section 3(d) above

- (i) A bank or account statement showing the existence of and balance in the separate Major Reconstruction Fund at the time of submission of the report,
- (ii) Other information regarding the Facility/ies as may be required under City Requirements,
- (iii) The amount of Association Permittee dues that are dedicated for the current year for each of the two purposes – routine inspection/maintenance/repair and the Major Reconstruction Fund

l Facility/ies to Remain with Association Permittee, Lot Owners' Liability To the extent not prohibited by law, the Facility/ies shall remain the property of the Association Permittee and may not be conveyed by the Association Permittee. In the event the Association Permittee ceases to exist or is unable to perform its obligations under this Agreement, all Lot Owners with the exception of those Lots owned by the Association Permittee shall be obligated to fulfill the Association Permittee's obligations under this Agreement. Such Lot Owners shall have the right of contribution from other owners with each Lot's proportional obligation calculated as set forth in the Covenants for the Association. In addition, the City may exercise any other remedies described in this Agreement, the Original Agreement, or by law

m No Public Adoption The City's exercise of rights under this Agreement or under City Requirements does not constitute adoption of the Facility/ies by the City. City regulation is not intended to impede or prohibit the Association Permittee or Lot Owners from taking all necessary actions to maintain, repair, and reconstruct the Facility/ies so that they function safely and perform the function for which they were created

4. Perpetual Surety.

The Association Permittee shall secure the obligations under this Agreement by delivering to the City a surety (Letter of Credit or Assignable Certificate of Deposit) in a form which is 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 estimate by the Director of Public Works. The surety shall remain in effect permanently unless the City of Durham (by its City Manager) and the Association Permittee execute an agreement, under the official seal of

the City of Durham, stating "The Association Permittee's obligation under Section 4 of the Supplemental Stormwater Facility Agreement and Partial Release made on [date] between the City of Durham and [name of Association Permittee] to provide a surety has been changed as follows [stating the new requirement or that it has been eliminated]" If the Director of Public Works notifies the Association Permittee that a surety is unacceptable to the Director of Public Works, the Association Permittee shall, within thirty (30) days, substitute an acceptable surety or pay the City the Face Amount

5. City Easement/Right of Entry/No City Responsibility.

Association Permittee and the Lot Owners hereby grant the City a permanent easement over the Site and Facility/ies for inspection, construction, repair, and other work on the Facility The terms and conditions regarding the use of such easement may be expanded but not limited by designations or language in recorded declarations, plats, or plans that describe the use of such easements Association Permittee and the Lot Owners also grant the City a permanent irrevocable right of ingress, egress, and regress over and across all public or private easements on the Property, including but not limited to private roads, for inspection, construction, repair, and other work on the Facility/ies In this Section, "the City" includes employees, agents, and contractors of the City The grant of these rights does not obligate the City to exercise them or to take any other action

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

a City Performance of Work If the Association Permittee fails to perform its obligations under this Agreement, the City may send notice demanding performance If the Association does not cure such default within sixty (60) days from the date notice is mailed, the City may, in the reasonable discretion of the Director, enter the Site and perform some or all of the Association's obligations under this Agreement In an emergency the City may perform such work prior to the expiration of the 60 day period Nothing in this Agreement shall be interpreted to require the City to undertake the Association's obligations under this Agreement or the Original Agreement

b Repayment of City The Association shall reimburse the City for its costs in inspecting, constructing, repairing, and reconstructing the Facility/ies Such costs may include the cost of administration and overhead The City shall send written notice requesting reimbursement for the costs of the work The Association shall pay all such costs within sixty days of the date the notice is mailed Any costs not paid to the City within the sixty day period shall be delinquent, and the Association shall be subject to all legal remedies available to the City under law or equity, and under this Agreement and the Original Agreement

c Debt Owed in the Event of Nonpayment, Lien In the event that the Association does not reimburse the City as required in subsection (b) above, the Association shall owe the following additional amounts interest on such costs at the rate of eight percent (8%) per annum, collection costs, late payment charges of three hundred dollars (\$300) for the first ninety (90) days of default and five hundred dollars (\$500) additional charge for each ninety (90) day period thereafter, and reasonable attorneys' fees The debt may be collected by the City using any remedy authorized by law or in this Agreement or the Original Agreement In addition, the debt shall be a lien against the Site and may be collected as unpaid taxes in accordance with N C G S 160A-193 or other statutory provisions, with notice as may be required by law

d Right to Act for the Association Permittee In addition to all of the remedies set forth herein, if the Association Permittee has allowed repayment to the City to become delinquent as described in paragraph (b) above, then, with additional 30 days' written notice to the Association Permittee, the City may pursue the right of the Association Permittee to collect from its members, in such manner as may be set forth in the Articles of Incorporation, Covenants, and/or Bylaws of the Association The Association Permittee hereby designates, constitutes and appoints the City as the Association's Attorney in Fact for the express and limited purpose of assessing and pursuing collection of such amounts under the conditions and limitations as set forth herein This appointment is coupled with an interest and is irrevocable as long as this Agreement is in effect To the extent that the Association does not fulfill its obligations to

collect from the Lot Owners and the City undertakes enforcement by virtue of this Power of Attorney, the City may add the debt to any utility bills owed by the Lot Owners and utilize any remedy provided by law or ordinance for unpaid utility bills

e Remedies under Original Agreement The set forth herein supplement any remedies that can be exercised against successor owners in the Property under the Original Agreement, and any remedies otherwise allowed under law

7. Release of Lien by Certificate.

a Duty to Furnish a Certificate On the request of any of the Persons described in subsection (a) (i) below, and upon the condition prescribed by subsection (a) (ii) below, the Director shall furnish a written certificate stating the amount of any monetary liabilities owed pursuant to this Agreement by the Association Permittee or a Lot Owner's share of such obligation

- (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 in the Property, including but not limited to a Lot Owner,
 - E A Person having a contract to purchase or lease the Property or Lot or a Person that has contracted to make a loan secured by the Property or Lot,
 - 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 City's duty to furnish a certificate is contingent upon the requester providing the following, as may be specified by the Director the name of the party regarding whom the certificate is requested, the property regarding which the certificate is requested, recordation information for the pertinent Agreement, recordation information for pertinent covenants, if the request concerns an Association or Lot, a copy of the first page of this Agreement, a copy of the first page of the Association's Covenants, and payment of the required fee for a certificate

b Reliance on the Certificate When a certificate has been issued as provided in subsection(a) above, all monetary liabilities owed pursuant to this Agreement that have accrued against the Site identified in the request for the period covered by the certificate shall cease to be a lien against the identified property for which the certificate has been issued, 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 by doing one or more of the following

- (i) Paying the amount of monetary liabilities stated therein to be owed,
- (ii) Purchasing or leasing a portion of the Property, or
- (iii) Lending money secured by all or part of the Property

c Oral Representations not Effective Without limiting the effect of this Section, no oral statement made by any City employee as to the amount of monetary liabilities that are owed by the Association Permittee or a Lot Owner, or are a lien on all or a portion of the Property pursuant to this Agreement, shall be legally effective, or shall bind the City

8. Warranty. Association Permittee covenants with the City that Association Permittee is seized of the Site in fee simple, has the right to convey the same in fee simple, that title is free and clear of all encumbrances, except for those identified in the attorney certification required under 2(a) 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 Manager of Stormwater Services Division, Public Works Department, City of Durham, 101 City Hall Plaza, Durham, NC 27701, FAX (919) 560-4316 or upon the Association Permittee, at *Country Club Heights Homeowner's Association, Inc., c/o CAS, Inc., 5915 Farrington Road, Suite 104, Chapel Hill, NC 27517; ATTN: Todd Petherbridge (919) 403-1400 todd@casnc.com*. Written notice shall be sent by first class mail, and in addition by facsimile, if a fax address can be determined. Parties' addresses may be changed by sending a notice of the new address attached to a copy of the first page and execution pages of this Agreement.

10. **No Waiver of Breach.** If the City fails to enforce or waives any breach of any obligation or covenant in this Agreement or the Original Agreement, that failure to enforce or 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. **Agreement Binding.** This Agreement and Covenants shall bind the Association in perpetuity and shall bind Association Permittee and its successors in interest until the City releases such Association Permittee. To the degree this Agreement and the Original Agreement impose obligations upon Lot Owners, a Lot Owner shall be obligated under such agreements only for the time period that they own a Lot within the Property identified in this Agreement.

12. **Amendment of Agreement.** Amendments to this Agreement shall be valid only if made in writing. Such amendments may be made by the Association Permittee (or its successor in interest if such exists) and the City. No amendment may increase in any manner the obligation of the Original Permittee. The Original Permittee is not required to join in such amendments. The City Manager may, on behalf of the City, amend this agreement without approval by the City Council.

13. **Covenants Herein to Run with the Site and Property.** The obligations of this Agreement are a perpetual servitude and are appurtenant to and run with the Site, and, to the degree that the Original Agreement runs with the Property defined in this Agreement, are appurtenant to and run with said Property.

14. **Successors and Assigns.** The designation of Original Permittee, Association Permittee, Association, and the City shall also include their heirs, assigns, and successors in interest.

15. **Liability; Indemnification.**

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. 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 allowed under this Agreement shall not create any liability in the City, or its officers, officials, or employees for the work. Nothing herein is intended to release any other Person for any liability for that work.

c. The Association Permittee shall indemnify the City and its officers and employees for any costs to the City or such Persons resulting from any claims regarding the construction, operation, maintenance, repair, and/or reconstruction of the Facility/ies, or the failure to perform the same. Costs shall include but are not limited to the expense of counsel chosen by and acceptable to the City.

16. **Remedies not Exclusive.** The enumeration of specific remedies in this Agreement is not limiting and the City shall have all remedies available in law and in equity to enforce the provisions of this Agreement and the Original Agreement against the Association Permittee and/or the Lot Owners, and their respective heirs, personal representatives, successors, and assigns.

17. **No Third Party Rights.** Except as may be 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, personal representatives, successors, and assigns

18. **Governmental Functions; Superseding Regulations.** Nothing contained in this Agreement shall be deemed or construed to in any way estop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions. In addition, this Agreement does not restrict or prevent the application of ordinances or other enactments which may supplement or supersede the provisions of this Agreement

19. **Choice of Law and Forum** This Agreement shall be deemed made in Durham County, North Carolina and shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this Agreement shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This section shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this section

20. **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"

21. **Severability.** Invalidation of any term or provision in this Agreement by a court of competent jurisdiction shall not invalidate the remaining terms and provisions of this Agreement which may be enforced, at the election of the City, as set forth herein

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, to be effective as of the date of its recordation in the Durham County Register of Deeds

**COUNTRY CLUB HEIGHTS, General Partnership,
a North Carolina general partnership**

RN Barringer, Jr Partner
Printed Name Russell N Barringer, Jr

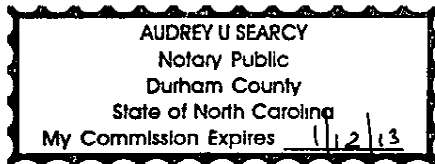
STATE OF North Carolina

COUNTY OF Durham

I, AUDREY U SEARCY, a notary public for said county and state, certify that RUSSELL N BARRINGER JR personally appeared before me this day, and acknowledged he or she is a general partner of **Country Club Heights, GP**, a North Carolina general partnership, acknowledged that the foregoing agreement with the City of Durham carries on the partnership's business in the usual way, and acknowledged the due execution of the agreement on behalf of the partnership This the 17th day of July, 2012

Audrey U Searcy
Notary Public

My commission expires
Jan 12, 2013



COUNTRY CLUB HEIGHTS HOMEOWNER'S ASSOCIATION, INC., a North Carolina corporation

By *David R. Clark*
Printed Name David R. Clark
Title President

ATTEST

Signed *Gail M. Hegedus*
Printed Name Gail M. Hegedus
Title Secretary

STATE OF NC

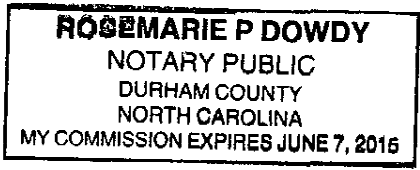
COUNTY OF Durham

I, Rosemarie P. Dowdy, a notary public in and for the aforesaid county and state, certify that Gail M. Hegedus personally appeared before me this day and acknowledged she is Secretary of the **Country Club Heights Homeowner's Association, Inc.**, a North Carolina corporation, and that by authority duly given as the act of the corporation, the foregoing agreement with the City of Durham was signed and executed under seal in its name by its President, whose name is David R. Clark and attested by herself as its Secretary

This the 16th day of July, 2012

Rosemarie P. Dowdy
Notary Public

My commission expires
June 7, 2015



ATTEST

D. Ann Gray City Clerk

Thomas J. Bonfield City Manager

Thomas J. Bonfield

CITY OF DURHAM

CITY OF DURHAM

18 69

CITY OF DURHAM

NORTH CAROLINA

Type or print name person signing for the City _____

ACKNOWLEDGMENT BY CITY OF DURHAM

Name of other party to the contract: Country Club Heights, GP, Country Club Heights Homeowner's Association, Inc

Title of the contract Supplemental Stormwater Facility Agreement and Partial Release (Country Club Heights)

I, Tonette Amos, a notary public, certify
(Type or print name of Notary Public)

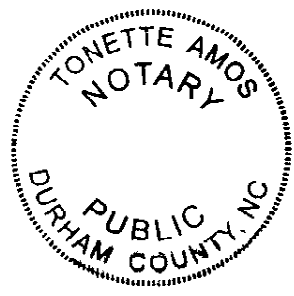
(1) D. Ann Gray personally appeared before me
(Type or print name of City Clerk or Deputy City Clerk who attested)

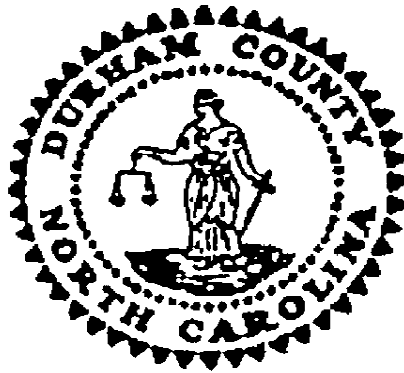
in Durham County, N C on this day, (2) I have personal knowledge of her identity, and (3) she acknowledged that by authority duly given and as the act of the City of Durham, the foregoing document was signed in its corporate name by its _____ City Manager, sealed with its corporate seal, and attested by its said City Clerk or Deputy City Clerk

This the 3rd day of August, 2012

My commission expires
07-17-2017

Tonette Amos
Notary Public





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

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