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J. LEE WARREN, JR.  
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DJ

**SUMMER GROVE  
DECLARATION OF COVENANTS  
For Maintenance of Stormwater Structural Controls  
City of Fayetteville**

Prepared by/return to:  
Rebecca F. Person  
P.O. Drawer 1358  
Fayetteville, NC 28302

THIS DECLARATION OF COVENANTS, made this 15<sup>th</sup> day of October, 2009, by SUMMER GROVE, LLC, a North Carolina limited liability company, hereinafter referred to as the "Developer" to and for the benefit of the City of Fayetteville and its successors and assigns.

**WITNESSETH:**

WHEREAS, the City of Fayetteville is authorized to minimize the downstream impacts from increased stormwater runoff and prevent surface water quality degradation from development or redevelopment activities within its jurisdiction as set forth in the City of Fayetteville Stormwater Management Ordinance; and

WHEREAS, the Developer is the owner of a certain tract or parcel of land more particularly described as Summer Grove subdivision being all or part of the land which it acquired by deed dated September 17, 2008 from Tillman Estates Development, LLC, et al, grantors, and recorded with the Cumberland County Register of Deeds Office, in Book 7986, Page 128, such property being hereinafter referred to as "the property;" and

WHEREAS, the Developer desires to construct certain improvements on its property regulated by the City of Fayetteville Stormwater Management Ordinance; and

WHEREAS, in order to construct certain improvements on its property, the Developer desires to build at its expense, a stormwater structural control more particularly described and shown on plans approved by the Engineering Department of City of Fayetteville for Summer Grove subdivision; and

NOW THEREFORE, in consideration of the benefits received by the Developer as a result of approval by the City of Fayetteville or its designee of these plans, the Developer, with full authority to execute deeds, mortgages, other covenants, and all rights, title and interest in the property described above, does hereby covenant with the City of Fayetteville as follows:

1. The OPERATION & MAINTENANCE PLAN FOR SUMMER GROVE SUBDIVISION (the "Plan") that has been reviewed and approved by the City of Fayetteville or its designee is attached hereto. This Plan describes the specific maintenance practices to be performed for the above referenced stormwater structural control and includes a schedule for implementation of these practices. The name, mailing address and phone number of the party responsible for the fulfillment of the Plan during the period of Developer control is as follows:

Christopher E. Cates  
Summer Grove, LLC  
639 Executive Place, Suite 400  
Fayetteville, NC 28305  
Telephone: 910.481.0503

At such time as responsibilities for routine maintenance of the stormwater structural control have been transferred to the Summer Grove Owners Association, Inc. ("Association") the Association shall provide at least annually the name, mailing address and phone number of the party responsible for the fulfillment of the Plan to the City or its designee.

2. The Developer shall establish an escrow account which can be spent solely for sediment removal, structural, biological or vegetative replacement, major repair, or reconstruction of the above referenced stormwater structural control. If the stormwater structural control is not performing adequately or as intended or is not properly maintained, the City of Fayetteville, in its sole discretion, may remedy the situation, and in such instances the City of Fayetteville shall be fully reimbursed from the escrow account. Funds may be spent by the Developer for sediment removal, structural, biological or vegetative replacement, major repair, and reconstruction of the stormwater structural control, provided that the City of Fayetteville shall first consent to the expenditure. The funds in the escrow account shall be held for a period of twelve months from such time as construction of the stormwater structural control is complete and approved by the City. At the expiration of such twelve month period, any funds remaining in the escrow account shall be paid to Developer.
3. The Developer shall construct, operate and maintain, at its sole expense, the above-referenced stormwater structural control in strict accordance with the attached Plan approved by the City of Fayetteville or its designee, until such time as Developer transfers its responsibilities for the stormwater structural control to the City of Fayetteville and the Association. Thereafter, the Association shall be responsible for the general or routine maintenance requirements as set forth in the attached Plan; such general maintenance shall include, but not be limited to, inspection by a qualified professional at least twice a year to

insure that the stormwater structural control is operating properly. The City of Fayetteville shall be responsible for the operation and repair of the stormwater structural control in accordance with its standard procedure, as amended from time to time.

4. The City of Fayetteville, its agents, employees and contractors shall have the perpetual right of entry to inspect, monitor, maintain, repair and reconstruct the stormwater structural control.
5. The Developer agrees that, until such time as Developer transfers its responsibilities for the stormwater structural control to the City of Fayetteville and the Association, should it fail to correct any defects in the above described stormwater structural control within ten (10) days from the issuance of written notice, or shall fail to maintain the structure in accordance with the attached Plan and with the law and applicable executive regulation or, in the event of an emergency as determined by the City of Fayetteville or its designee in its reasonable discretion, the City of Fayetteville or its designee is authorized to enter the property to make all repairs, and to perform all maintenance, construction and reconstruction as the City of Fayetteville or its designee deems necessary. The City of Fayetteville or its designee shall then recover from the Developer any and all costs the City of Fayetteville expends to maintain or repair the stormwater structural control or to correct any operational deficiencies. Failure to pay the City of Fayetteville or its designee all of its expended costs, after forty-five days written notice, shall constitute a breach of the agreement. The City of Fayetteville or its designee shall thereafter be entitled to bring an action against the Developer to pay, or foreclose upon the lien hereby authorized by the agreement against the property, or both. Interest, collection costs, and attorney fees shall be added to the recovery.

Thereafter, should the Association fail to maintain the structure in accordance with the attached Plan and with the law and applicable executive regulation or, in the event of an emergency as determined by the City of Fayetteville or its designee in its reasonable discretion, the City of Fayetteville or its designee is authorized to enter the property to make all repairs, and to perform all maintenance, construction and reconstruction as the City of Fayetteville or its designee deems necessary. The City of Fayetteville or its designee shall then recover from the Association any and all costs the City of Fayetteville expends as a result of such failure to act on the part of the Association. Failure to pay the City of Fayetteville or its designee all of its expended costs, after forty-five days written notice, shall constitute a breach of the agreement. The City of Fayetteville or its designee shall thereafter be entitled to bring an action against the Association to pay, or foreclose upon the lien hereby authorized by the agreement against the property, or both. Interest, collection costs, and attorney fees shall be added to the recovery.

6. The Developer shall not in any way diminish, limit, or restrict the right of the City of Fayetteville to enforce any of its ordinances as authorized by law.
7. Until such time as Developer transfers its responsibilities for the stormwater structural control to the City of Fayetteville and the Association, the Developer shall indemnify, save harmless and defend the City of Fayetteville or its designee from and against any and all claims, demands, suits, liabilities, losses, damages and payments including attorney fees

claimed or made by persons not parties to this Declaration against the City of Fayetteville or its designee that are alleged or proven to result or arise from the Developer's construction, operation, or maintenance of the stormwater structural control that is the subject of this Covenant.

8. The covenants contained herein shall run with the land and the Developer further agrees that whenever the property shall be held, sold and conveyed, it shall be subject to the covenants, stipulations, agreements and provisions of this Declaration, which shall apply to, bind and obligatory upon the Developer hereto, its heirs, successors and assigns and shall bind all present and subsequent owners of the property served by the stormwater structural control. Upon the sale and conveyance by the owner of the Property (or any portion thereof) of its entire interest therein, such owner shall automatically be deemed to be released of all future obligations thereafter arising under this Declaration; and as to any future owner of the Property, or any portion thereof, such future owner shall automatically be subject and bound by the terms and provisions of this Declaration upon its acquisition of fee simple title to the Property (or portion thereof) in the same manner as the owner of the Property as of the date hereof is presently bound under this Declaration.
9. The Developer shall promptly notify the City of Fayetteville or its designee when the Developer legally transfers any of the Developer's responsibilities for the stormwater structural control. The Developer shall supply the City of Fayetteville or its designee with a copy of any document of transfer, executed by both parties.
10. The provisions of this Declaration shall be severable and if any phrase, clause, sentence or provisions is declared unconstitutional, or the applicability thereof to the Developer is held invalid, the remainder of this Covenant shall not be affected thereby.
11. The Declaration and the exact boundary of all stormwater structural controls (as shown on final plats prepared by a registered surveyor) shall be recorded at the Cumberland County Register of Deeds Office at the Developer's expense.
12. In the event that the City of Fayetteville or its designee shall determine at its sole discretion at future time that the stormwater structural control is no longer required, then the City of Fayetteville or its designee shall at the request of the Developer or the Association execute a release of this Declaration of Covenants which the Developer or the Association shall record at its expense.

IN WITNESS WHEREOF, the Developer has executed this Declaration of Covenants as of the day and year first above written.

[Signatures continued on next page]

SUMMER GROVE, LLC

By: 

Name: Christopher E. Cates

Title: Manager

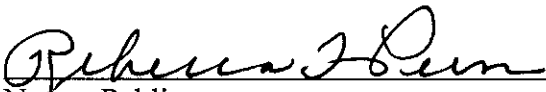
STATE OF NORTH CAROLINA

COUNTY OF CUMBERLAND

I certify that the following person(s) personally appeared before me this day and I have personal knowledge of the identity of the principal(s) or have seen satisfactory evidence of the principal's identity, by a current state or federal identification with the principal's photograph in the form of a driver's license or a credible witness has sworn to the identity of the principal(s); each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Name of Principal: Christopher E. Cates,

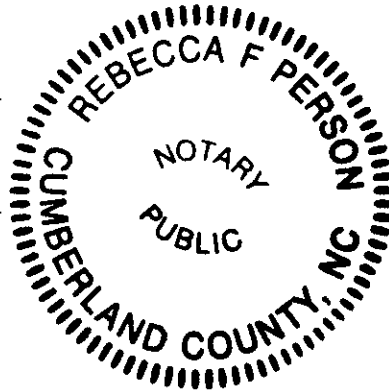
Manager

Date: 10-15-09

  
Notary Public

Rebecca F. Person  
Printed or Typed Name of Notary Public

My commission expires: 7-28-13



(N.P. SEAL)

**OPERATION & MAINTENANCE PLAN**

FOR

**SUMMER GROVE SUBDIVISION**

FISHER ROAD – SR. 1107

FAYETTEVILLE, NC

February 2009

Prepared by

**Moorman, Kizer & Reitzel, Inc.**  
P.O. Box 53774  
115 Broadfoot Avenue  
Fayetteville, North Carolina 28305  
(910) 484-5191

**MAINTENANCE AND OPERATION PLAN  
SUMMER GROVE SUBDIVISION  
Property of  
SUMMER GROVE, LLC**

**It is the intent of the Developer** to design the Wet Detention Basin to meet City of Fayetteville requirements so that heavy maintenance of the basin can be handled by the City, and light maintenance can be completed by Summer Grove Homeowners Association for the life of the basin.

Heavy maintenance would include things like riser & barrel repair, work on berm around basin from erosion, and pumping water down in the permanent pool area and sediment removal as needed.

Light maintenance would include mowing around basin, grassing as needed, removing any trash from basin as needed, and the inspection of the basin and notifying the City of any problems that may arise.

Until such time that the above can be accomplished, the Developer, Summer Grove, LLC will maintain basin as needed.

**This Maintenance and Operation Plan** is intended to assist the Owners (Homeowners Association) and Operators of designed detention basin in their regular and routine maintenance, operation and inspection activities. All structures of this type require periodic inspections and maintenance to insure their safe and effective operation. Detention basin must be properly maintained to prevent future malfunction and to enhance the aesthetics of the basin area. The following guidelines should be used to form the basis for the maintenance and operation of any conventional detention basin design:

**1.) Routine Maintenance of Embankments**

All areas around the basin including side slopes and embankments require continual maintenance of vegetative cover. All grass and vegetation associated with the detention basin shall be mowed at least once a month during the growing season and maintained at regular intervals during non-growing times of the year. All vegetation associated with the basin shall be properly maintained and supplemented when necessary in order to insure that there is an established, stable and non-erodible surface around the basin.

**2.) Erosion Control**

Any area susceptible to erosion should be protected with a sturdy vegetated surface. If an area of erosion develops, prompt repair of the area should be made to insure that more serious damage does not occur. Not only should these areas

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be repaired, but also an investigation should be made to determine the cause and address ways to prevent a re-occurrence of the problem.

**3.) Debris, Litter And Sediment Removal**

Litter and other debris that collect within the basin and its perimeter should be cleaned out at least once a month to insure that there is not a potential problem for the operational efficiency of the outflow structure. A buildup of litter and other debris on the outlet structure could significantly reduce the outflow capacity of the outlet structure, which could result in overtopping of the embankment and damage to adjacent slopes. Any large debris that makes its way into the basin should be removed immediately upon being identified. In removing debris from the basin, adequate safety measures should be in place to insure that no personnel involved in the cleanup are put in danger trying to reach debris floating in the basin.

Sediment deposits in the basin should be cleaned out periodically to insure that the basin storage rates remain constant and the outlet structure does not become clogged. The basin should be inspected periodically while construction activities are ongoing to allow for the measurement of the amount of sediment that has been deposited in the basin. Once all construction has been completed and facility has opened for use, the basin will need to be checked every two years for sediment buildup. Gauge stakes shall be placed in the basin with half-foot increments marked on them that will allow for the easy assessment as to how much sediment has entered the pond. The stakes should extend at least 1.5' above the riser elevation, and placed in a location that can be viewed easily for sediment measurement. Once the sediment has built up to a depth of 1' from the original basin bottom elevation, then the sediment shall be removed by suitable means and disposed of in a designated area.

**4.) Nuisance Control**

The basin embankments should be inspected periodically to insure that there are not rodents or other burrowing animals that could cause problems with the basin or surrounding area. If rodents are found, then appropriate methods for removing them and their burrows from the basin should be taken. If the burrows are extensive enough to warrant repair, then a North Carolina registered Professional Engineer should be consulted to insure that the repairs are sufficient to secure the stability of the embankment area.

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Another nuisance problem can come from insects. The basin are should be treated periodically, at least once a year, to keep insect infestations to a minimum. If a problem persist, then additional actions may become necessary. This action should be taken on both waterborne and landbased insects that could use the basin area as a breeding ground.

**5.) Maintenance of Outlet Structures**

The basin riser/barrel structure should be inspected on a yearly basis to insure that it is working properly. This inspection should include a check to make sure that the orifice and trash rack are clear of debris and other trash that could impede an effective flow of water from the basin. The orifice on the riser has to be checked on a regular basis to insure that opening is operating. Other items that should be reviewed include the outlet pipe (barrel), which should be inspected on a regularly planned basis to make sure that there are no leaking joints of pipe. The outlet pipe also needs to be checked to make sure that there is no build up of trash, debris or silt that would impede the flow from the basin. It may be necessary from time to time to check the anti-flotation block and riser/barrel connections. This type of inspection should be done with a North Carolina registered Professional Engineer so that the structure can be thoroughly analyzed and cleared for operation. Any deficiencies found during this type of inspection should be repaired as soon as possible to insure that the detention basin structure fulfills its primary function of releasing storm runoff as designed. The emergency weir should be reviewed on a regular basis similar to the embankments to insure that the area is adequately vegetated to prevent erosion in case of usage.

**6.) Inspections**

The basin should be inspected at least twice a year by the Owner/Operator. The Owner or Agent shall keep documentation on all inspections, maintenance, nuisance control operations and any other pertinent information concerning the detention basin. This information should be kept in an assessable location for reference by local Governmental Officials or any other personnel involved in the inspection of the detention basin. Any complaints concerning the basin, and measures addressed to correct the complaints where applicable should also be kept at part of the documentation.

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7.) **Emergency Management**

In some unusual situations, it may be necessary to take emergency actions due to an embankment or structural failure. In such cases, the following Emergency Agencies/Companies should be notified:

A.	Cumberland County Emergency Operations	911
B.	NC DENR (Regional Office)	486-1541
C.	City of Fayetteville Engineer Dept.	433-1691
D.	City of Fayetteville Inspections Department	433-1701
E.	PWC of Fayetteville	483-1401
F.	NCDOT	486-1493
G.	Others	

8.) **Landscaping and Grounds Maintenance and Control**

The Owner/Operator of the detention basin is responsible for providing proper maintenance of the areas in and around the detention basin facility. This includes the proper control of vegetative growth in and around the embankments of the basin. In no case, shall trees be allowed to grow in the basin, on the banks, or along the access and maintenance corridors around the facility. The area shall be grassed with a suitable blend of grasses that provides effective groundcover and bank stabilization. Any bare areas on the banks of the basin should be grassed and mulched as soon as possible after being identified. If the area persists, then other measures may be necessary to allow for the germination of adequate ground cover. All vegetative growth shall be inspected to insure that it does not interfere with the stability or operation of the detention basin, and if any growth does present a problem, then it should be removed as soon as possible.

9.) **Notification of Repairs**

Except for routine general maintenance activities, the Owner/Operator shall notify the City of Fayetteville Engineering Dept. at 433-1691 prior to any repairs or reconstruction of the stormwater control structure. Any repairs and improvements shall be consistent with the approved plans and specifications submitted for the applicable structure. Any repairs or improvements shall also be in keeping with the operation and maintenance plan for the stormwater structure. When all of the improvements and repairs are completed, then the Owner/Operator shall notify the City Engineer that the work is complete and ready for inspection. The City

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Engineer shall review the work, and notify the Owner/Operator if it is in compliance with the plans or if additional work is necessary.

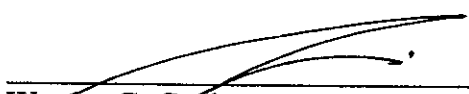
Any repairs resulting from a failure of the structure shall be made with the review of a North Carolina Registered Professional Engineer. Depending upon the nature of the failure, the types of repairs that will be needed will vary. Any failure repair plan will have to be approved by the City Engineer once the design is finalized by the acting engineer on the project.

### **CONCLUSION**

The calculations and supporting information presented within this submittal confirm that the detention basin proposed to serve Summer Grove Subdivision will meet or exceed the design requirements. The basin is designed to pick up and account for the majority of the drainage runoff that would be generated from on-site improvements and other incidental construction anticipated. All runoff drainage coming from the building sites and paved areas are directed into the basin through the planned drainage system. The remaining areas not directed to the basin is mostly the perimeter area along the western property line of the site where the grades would not permit the drainage to basin or are undeveloped wooded areas that already flow away from the proposed developed area. For the most part, these areas should not produce any significant pollutant laden runoff.

The detention basin will be provided with a 12' wide access for maintenance. The basin is situated in a location that affords easy access from the adjoining street, and a dedicated access easement will therefore not be required. The basin will have a chainlink type fence to insure safety and minimize the potential for disturbance of the basin area.

Owner: SUMMER GROVE, LLC  
639 Executive Place, Suite 400  
Fayetteville, NC 28305  
Phone (910) 481-0503

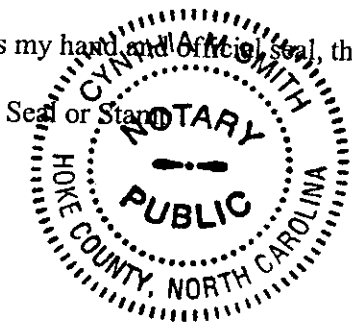
  
\_\_\_\_\_  
Watson G. Caviness, Member/Manager

2/10/2009  
\_\_\_\_\_  
Date

North Carolina, Norse County.

I, Cynthia M Smith, a Notary Public of the County and State aforesaid, certify that Watson G. Lewis personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official seal, this 18th day of February, 2009.



Cynthia M Smith  
Notary Public

My Commission Expires May 24 2010