

BK10142 PG0017

FILED
CUMBERLAND COUNTY NC
J. LEE WARREN, JR.
REGISTER OF DEEDS
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END PAGE 0029
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RA

Prepared by/ Matt after recording to:
City Attorney's Office
of o City of Fayetteville
433 Hay Street
Fayetteville, NC 28301

*Return: Phill
Larry King & Assoc*

Parcel ID #: _____

**DECLARATION OF COVENANTS
INSPECTION/MAINTENANCE OF STORMWATER
MANAGEMENT FACILITY, TRANSFER OF MAINTENANCE RESPONSIBILITIES**

THIS DECLARATION (this "Declaration"), made this 18th day of July, 20 , between Bill Clark Homes of Fayetteville, LLC, hereinafter referred to as the "Covenantor," owner(s) of the following property: Stonegate Section 4, (the "Property"), and the City of Fayetteville, North Carolina, hereinafter referred to as the "City".

WITNESSETH:

The Covenantor, with full authority to execute deeds, mortgages, other covenants, and all rights, titles and interest in the property described above, does hereby covenant with the City as follows:

1. In accordance with Section 23-38 of the City of Fayetteville Stormwater Management Ordinance (the "Stormwater Ordinance"), the City shall accept functional maintenance responsibility of structural structural stormwater management facilities (the "stormwater management facility or facilities", or the "BMP or BMP(s)") that are installed following a warranty period of one (1) year from the date of record-drawing certification described in Section 23-37 of the Stormwater Ordinance, or from the date the facility ceases to

function as an erosion control measure and starts to function as a stormwater management facility, whichever is later, provided the stormwater management facility:

- (1) Only serves a single-family detached residential development or townhomes all of which have public street frontage, which Covenantor intends to develop upon all the Property;
- (2) Is satisfactorily maintained during the one-year warranty period by the Covenantor;
- (3) Meets all the requirements of the Stormwater Ordinance;
- (4) Includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection, maintenance repair, or reconstruction; and
- (5) Prior to the release of the installation performance guarantee as outlined in Section 23-41(b), the Covenantor shall pay into a City maintenance fund used to maintain such facilities in the future an amount equal to 20 percent of the initial construction cost of the stormwater management facilities related to detention ponds or other BMPs constructed to meet the requirements of the Stormwater Ordinance, said 20 percent amount equaling 5557.00.

The City engineer must receive an application for transfer of maintenance responsibilities for the structural stormwater management facility along with the stormwater design plan submittal.

2. The Covenantor must maintain the easement area(s) (the "Easement Area(s)") as referenced on the plat of the Property (the "Final Plat") as shown on **Exhibit A** attached hereto and incorporated herein by reference, by providing trash removal, grass cutting, and landscaping on the Property and performing other nonfunctional maintenance, as described in the maintenance plan (the "Maintenance Plan" or the "Plan") as shown on **Exhibit B** attached hereto and incorporated herein by reference. Therefore, the Covenantor shall develop and attach to this Declaration for recording at the Cumberland County Register of Deeds Office a Maintenance Plan that has been reviewed and approved by the City of Fayetteville or its designee. This Maintenance Plan shall describe the nonfunctional maintenance practices to be performed for the above referenced stormwater management facility and include a schedule for implementation of these practices. The Plan shall specify the name, mailing address and phone number of the party responsible for the fulfillment of the Maintenance Plan.
3. The City must provide routine inspection and structural maintenance for the BMP(s) as needed to ensure that the BMP(s) remain(s) in proper working condition in accordance with approved design standards. The City shall undertake all reasonable measures to return the Easement Area(s) to its original condition whenever the City undertakes repairs and maintenance in accordance with this Declaration.

4. The Covenantor must provide and maintain perpetual access from public rights-of-way to the BMP(s) for the City, its agents and its contractors.
5. The Covenantor must grant the City, its agents and its contractors a right of entry to the BMP(s) for the purpose of inspecting, operating, monitoring, installing, constructing, reconstructing, modifying, altering or repairing the BMP(s).
6. Except in the case of an emergency, the City shall provide not less than seven (7) days prior notice to the Covenantor before performing any structural maintenance or repair of the BMP(s) in accordance with this Covenant. The City shall also notify the Covenantor after completing the maintenance or repair work specified in the notice.
7. If, after reasonable notice by the City, the Covenantor fails to maintain the Easement Area(s) in accordance with this Covenant, the City may perform any nonfunctional maintenance needed to correct a condition that impacts the effectiveness of routine structural maintenance and collect any costs incurred as a result from each owner of the BMP(s) and in the same manner as real property taxes are collected. In addition, the City may seek reimbursement under any other method legally available to collect debts owed to the City.
8. The Covenantor agrees to indemnify and save the City harmless, including the City's elected officials, employees, agents, successors, and assigns, from any and all liability and any and all claims for any personal injury or property damage arising from maintenance of the Easement Area(s) in accordance with this Covenant.
9. Upon Covenantor's transfer of title of the BMP(s) to the applicable homeowners association for the single-family residential development (the "Association"), as evidenced by a recorded warranty deed from the Covenantor to the Association recorded with the Cumberland County Register of Deeds Office of Cumberland County, North Carolina, then the Covenantor shall be automatically released from all obligations hereunder, and such obligation shall be automatically assumed by the Association. The Covenantor agrees to promptly notify the City when the Covenantor legally transfers title to the BMP(s) to the Association, and shall include a copy of the recorded warranty deed from Covenantor to the Association with such notice.
10. The covenants contained herein shall run with the land and shall bind the City, the Covenantor and the Covenantor's successors and assignees, and shall bind all present and subsequent owners of property served by the BMP(s).
11. This Covenant shall be recorded in the Cumberland County Register of Deeds Office of Cumberland County, North Carolina.
12. This Covenant runs to the benefit of the City and may not be released or modified except by written consent of the City.

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[Remainder of This Page Intentionally Left Blank; Signature Page Attached Hereto]

IN WITNESS WHEREOF, the Covenantor and the City have executed this Declaration of Covenants on the date first above written.

ATTEST:

FOR THE COVENANTOR(S)

W. Larry King
Signature

Brian Walker
Signature

W. Larry King
Printed Name

Brian Walker
Printed Name

Division Manager
Title



CITY OF FAYETTEVILLE, NORTH CAROLINA

Pamela Megill
Signature

Kristoff T. Bauer
Signature

Pamela Megill
Printed Name
City Clerk

KRISTOFF T. BAUER
Douglas J. Hewett
Printed Name
City Manager DEPUTY CITY MGR

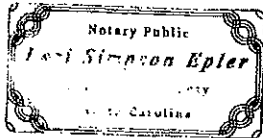
(Jurats follow)

STATE OF
COUNTY OF

: ss

I hereby certify that on this 18th day of July, 2017, before the subscriber, a Notary Public of the State of NC, and for the County of Cumberland, personally appeared Brian Walker, known to me (or satisfactorily proven) to be the person(s) described in the foregoing instrument, who did acknowledge that (he)(she)(they), having been properly authorized, executed the same in the capacity therein stated and for the purposes therein contained.

IN TESTIMONY WHEREOF, I have affixed my hand and official seal.



Lori Simpson Epler
NOTARY PUBLIC

My Commission Expires 11-14-19

(N.P. SEAL)

STATE OF
COUNTY OF

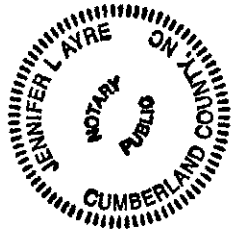
SS

I hereby certify that on this 24TH day of JULY, 2017, before the subscriber, a Notary Public of the State of NORTH CAROLINA and for the County of CUMBERLAND, personally appeared KRISTOFF T. BAUER, City Manager, known to me (or satisfactorily proven) to be the person described in the foregoing instrument, who did acknowledge that (he) (she), having been properly authorized, executed the same on behalf of Fayetteville, North Carolina in the capacity therein stated and for the purposes therein contained.

IN TESTIMONY WHEREOF, I have affixed my hand and official seal.

[Signature]
NOTARY PUBLIC

My Commission Expires DEC 8, 2020



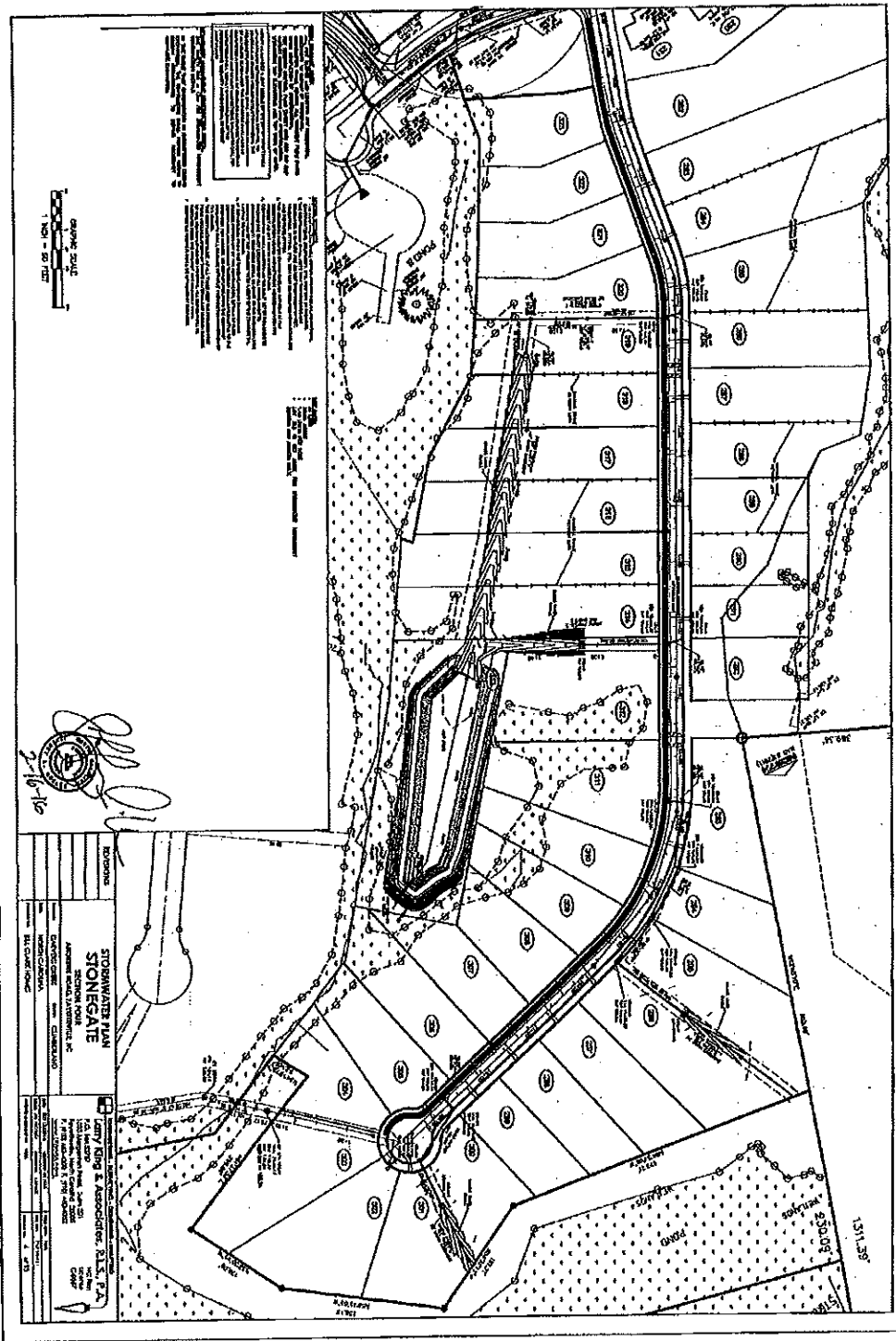
(N.P. SEAL)

BK 10142 PG 0023

EXHIBIT A

[Describe Plat and Easement Area(s)]

BK10142 PG0024



THIS MAP MAY NOT BE A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS AND HAS NOT BEEN REVIEWED FOR COMPLIANCE WITH RECORDING REQUIREMENTS FOR PLAT.

BK 10142 PQ0025

EXHIBIT B

[Attach Maintenance Plan]

BMP Maintenance Plan
City of Fayetteville

Stonegate Section 4
 Development Name (Per Approved Plans)
 Andrews Road, Fayetteville, NC
 Development Address
 February 18, 2018
 Date

This document must be recorded as an Addendum to the Declaration of Covenants

I. General BMP Information [Complete this table with each BMP that is planned within the development. Use the same naming system used on the approved plans, i.e. Stoneridge Phase I – Bioretention – 1]

| BMP ID Name | Street with Block Number | Parcel Tax ID |
|------------------|--------------------------|---------------|
| Dry Pond | Glencourse Way | 0531-43-5273 |
| Storm Easement-1 | Glencourse Way | 0531-43-5273 |
| Storm Easement-2 | Glencourse Way | 0531-43-5273 |
| Storm Easement-3 | Glencourse Way | 0531-43-5273 |
| Storm Easement-4 | Glencourse Way | 0531-43-5273 |

II. BMP Site Location Map (attached) [Attach a small site plan map coinciding with the table above to show the general location of each BMP within the development.]

III. Maintenance Annual Budget [Provide a simple annual budget for maintenance and inspection of BMPs and list the source of funding, i.e. owner, trust, HOA, etc. Edit chart below as necessary]

| Budget for BMP Maintenance / Inspections | | |
|--|-----------------|--------|
| Expenses | Estimated Costs | Source |
| Routine inspections | \$700 | HOA |
| Sediment removal | \$1000 | HOA |
| Plant management / weed control | \$1000 | HOA |

| | | |
|---|--------|-----|
| Replacement supplies, rock, plants, soil media, mulch | | HOA |
| Mowing and litter removal | \$700 | HOA |
| Seeding | \$200 | HOA |
| Miscellaneous | | |
| [Other] | | |
| Total | \$3800 | HOA |

IV. Escrow Account Activity

Provide documentation of BMP maintenance escrow account activity. This may be provided in the form of a bank statement which includes the current balance, deposits and withdraws for the previous 12 months.

V. Maintenance Inspection Reports

As indicated in the Stormwater Control Ordinance, annual maintenance inspection reports shall be submitted to the City Engineer. The first report shall be submitted one year following the final approval date of the BMP and each year thereafter on or before the approval anniversary date. All maintenance activities and inspection reports shall be documented using the forms contained in the Administrative Manual. Annual maintenance inspection reports shall be performed by a qualified professional as defined in Section 23-38 of the Ordinance. These inspections shall be discontinued only if the BMPs are accepted for maintenance by the City of Fayetteville.

VI. Routine Maintenance Tasks and Schedule [The following pages outline the specific maintenance tasks and frequency for each type of BMP in tables. For the recorded document, simply discard the pages (tables) that are not needed according to the types of BMPs within the development.]

| Grassed Swales Maintenance Tasks and Schedule | |
|--|---|
| TASK | SCHEDULE |
| Trash removal | Weekly – Monthly (prior to mowing) |
| Mowing | Weekly – Monthly (as needed to retain 3 – 6 inch height) |
| Stabilization of eroded areas | Monthly |
| Observe for clogging (enhanced swale) | Monthly |
| Observe pea gravel diaphragm and replace / repair as necessary | Monthly |
| Overall facility observation | Within 24 hours after every storm event greater than 1.0 inch |
| Inspect condition of dispersion devices and check dams | Yearly |
| Reseed | Yearly |
| Removal of sediment | Yearly |

Important maintenance procedures:

- The drainage area of the grassed swale should be carefully managed to reduce the sediment load to the grassed swale.
- After the first time fertilization to establish the grass in the swale, fertilizer should not be applied to the grass swale.

| Dry Extended Detention Basin Maintenance Tasks and Schedule | |
|--|---|
| TASK | SCHEDULE |
| Forebay observation and cleanout | Monthly |
| Bank mowing and observation / stabilization of eroded areas | Monthly |
| Outlet / inlet observation and cleanout | Monthly |
| Unwanted vegetation and trash removal | Monthly |
| Overall facility observation | Within 24 hours after every storm event greater than 1.0 inch |
| Inspect for structural damage, leaks, etc | Yearly |
| Inspect / exercise all mechanical devices, valves, etc | Yearly |
| Inspect the embankment | Yearly |
| Forebay inspection and cleanout | Yearly -- Remove sediment every 7 years or when sediment volume exceeds 50% of storage volume |
| Evaluate sediment level | Yearly -- Remove as needed |
| Security | As needed |

Important maintenance procedures:

- The drainage area should be managed to reduce the sediment load to the dry extended detention basin.
- Immediately after the dry extended detention basin is established, the vegetation should be watered twice weekly if needed, until the plants become established (commonly six weeks).
- No portion of the dry extended detention pond should be fertilized after the first initial fertilization that is required to establish the vegetation.
- The vegetation in and around the basin should be maintained at a height of approximately six inches.

