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 Granville County, NC  
 Kathy M. Taylor Reg of Deeds

BK **1961** PG **277-308**

***Please return to: James C. Wrenn, Jr., Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, LLP, P.O. Box 278, Oxford, NC 27565***

STATE OF NORTH CAROLINA  
 COUNTY OF GRANVILLE

STORMWATER FACILITY AGREEMENT  
 AND COVENANTS (Residential Version)

**THIS AGREEMENT ("Agreement")** is made among **JSW PARTNERS**, a North Carolina general partnership ("**Permittee**"), **CEDAR KNOLLS HOMEOWNERS ASSOCIATION, INC.** ("**Association**"), and the **COUNTY OF GRANVILLE**, a body politic and corporate of the State of North Carolina ("**County**") and is effective on the date of its recordation in the Granville County Register of Deeds.

**1. Background and Definitions**

a. Scope: Purpose. Permittee owns and is developing real property (the "Property") that, upon completion of development, will contain one or more constructed stormwater improvements (the "Facility/ies") to control stormwater runoff and pollution from the Property. After construction, Permittee will transfer portions of the Property, including the Facility/ies, to the Association, which will be responsible for perpetual maintenance, annual inspection, repair, reporting to the County, and reconstruction of the Facility/ies. This Agreement sets forth Permittee's obligations to construct the Facility/ies in accordance with the obligations of this Agreement and other County Requirements, inspect and certify the Facility/ies, pay certain monies toward the replacement of the Facility/ies, and establish the Association and its obligations, through legally binding covenants. This Agreement also sets forth the responsibilities of the Association with regard to the Facility/ies. This Agreement is appurtenant to and runs with the Property, described in Section 1(b) below. The purpose of this Agreement is to ensure construction of the Facility/ies per County Requirements, to ensure the perpetual inspection, maintenance, repair, and reconstruction of the Facility/ies by Lot Owners within the Property, and to allow the County in its discretion to enforce these requirements, if necessary, for the benefit of the Lot Owners collectively, and the public at large.

b. Property To Which This Agreement Attaches. The Property is that certain property more particularly described at Book 1873, Page 644 of the Granville County Registry and more further identified as Tax Map No. 183400164083. The Facility/ies that must be constructed,

certified, maintained, inspected annually, repaired, and reconstructed pursuant to this Agreement are located as shown on that certain survey and plat by Puckett Surveyors, PLLC, Professional Land Surveyors, entitled "Exempt Plat Survey for: JSW Partners" which plat is dated February 15, 2023 and recorded at Plat Book 52, Page 71, Granville County Registry (the "Plat") and are of the following approximate size and type (*describe below each Facility by its general type such as "wet detention facility" or "wetlands", the projected approximate size for each, and identify the lot on the above-described plat where each Facility will be located*):

- i. Those certain "Stormwater Maintenance and Access Easement" consisting of (i) 12,192 Sq. Ft.; (ii) 42,001 Sq. Ft.; and (iii) 34,544 Sq. Ft. as shown on the Plat.
  - ii. Those two (2) Bioretention Areas shown on the Plat.
  - iii. That certain Level Spreader shown on the Plat.
  - iv. All Neuse River Riparian Buffers shown on the Plat which shall be measured 50' From Top of Bank", Zone 1 of which shall be a 30' undisturbed buffer and Zone 2 of which will be a 20' vegetated buffer which shall be maintained as a perpetual easement even if the Neuse Buffer Rule changes in the future.
  - v. County shall have access for ingress/egress construction maintenance and inspections and all other purposes consistent with the terms of this Agreement over and across that certain "Proposed 50' Access Easement" consisting of 167,160 Sq. Ft. (3.837 acres) shown on the Plat.
  - vi. Any other easement area reasonably necessary in connection with access to or construction or maintenance of stormwater control measures shown on the Plat not referenced above or not specifically labeled.
  - vii. Any other access easement not shown on the plat but benefitting the Property.
- c. Background. This Agreement is intended to comply with County ordinances and policies that implement State and Federal laws that require that development contain stormwater facilities to control runoff and pollution and that such facilities be perpetually maintained and reconstructed.
- d. Relationship to Ordinances, Policies, and Guidelines. This Agreement supplements other County Requirements. If this Agreement and such County Requirements conflict, the stricter requirements shall control.
- e. Definitions. The terms in this Agreement have the following definitions:

"Association" and "HOA" (the terms being used interchangeably) mean the association that has executed this Agreement that was formed by Permittee in compliance with statutory requirements (which may include the North Carolina Nonprofit Corporation Act, NCGS Chapter

55A, and the North Carolina Planned Community Act, NCGS Chapter 47F and successor statutes) 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 or the failure of the Association to meet its obligations hereunder, for whatever reason(s), the Lot Owners, collectively, shall be considered the Association and shall be responsible for the Association's obligations under this Agreement. The "Association" may also include additional associations or Lot Owners not shown on the Property where such associations or owners have joined, or have purchased subject to, the obligations of the Association in this Agreement.

"County Employee" or "Employee of the County" includes all employees, agents, contractors, or others working for or on behalf of the County.

"County Manager" means the Granville County Manager or an Assistant or Deputy County Manager to whom authority to execute contracts has been delegated.

"County Fund" [Intentionally Deleted]

"County Planner" or "Planner" means the Granville County Planning Director or his or her designee.

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

"Escrow Account" means an account, funds from which can be spent solely for sediment removal, structural, biological or vegetative replacement, major repair, or reconstruction of the engineered stormwater controls.

"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 including any and all ditches, pipes, and other conveyance structures, access easement areas, and other area, land, or structures located within any easement area shown on the Plat or described herein. Such facilities may include but are not limited to dry detention areas, wet detention ponds, wetlands, level spreaders, conveyance structures, access easement areas, natural areas and all associated constructed and natural features that allow such devices or areas to function as intended.

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

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

"Permittee" means the party that owns the Property at the time of recordation and that executes this Agreement and successors in interest who take all or a portion of the Property. The term does not include any Person that has only a beneficial interest in the Property. The term also does not include a Person who owns one Lot zoned for single family use (or more than one Lot if all Lots are contiguous) where such owner does not own other Lots and there is only one single family residence on the Lot (or there are no residences on any contiguous Lots owned by the same

Person) and said single family residence and any contiguous lots are not being held for resale as part of the Person's trade or business.

"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 is owned by the Permittee and which will be served by the Facility/ies described herein.

"Site" means a Lot or parcel within the Property which contains at least one Facility. Where there are multiple Facilities, there shall be multiple Sites.

"Stormwater Facility Replacement Fund" (also "County Fund") [Intentionally Deleted]

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

**2. Permittee's Obligations to Create HOA; Record Documents and Covenants; Provide Certification; and Make Fund Payment Prior to Transferring Interest in or Selling any Lots.**

a. Incorporation of Association; Recording Documents and Covenants. Permittee shall incorporate an Association consisting of all Lot Owners in the Property which Association shall be charged with maintaining and repairing common areas within the Property of which the Facility/ies shall be a part. Permittee shall create covenants for the Association which comply with this Agreement and which include Exhibit A to this Agreement, the Mandatory Covenant Requirements Regarding Stormwater Facilities (the "Covenants"). Before Transfers of any interest in or Lots within the Property, Permittee shall take the following actions and complete the following filings in the Register of Deeds for Granville County, in the order indicated below:

- i. Finalize the covenants for the Property as required by the Granville County Code of Ordinances, §32-1065:
- ii. Record the properly executed Covenants for the Property, the final plat for the subdivision, and comply with any other requirements of the Granville County Code of Ordinances or other applicable law.

b. Delivery of Recorded Documents and Attorney Certification. Prior to Transferring any interest in the Property, including, but not limited to, the sale of any Lot, and prior to applying for and receiving any building permits for any Lot, Permittee shall deliver to the County Attorney for review and approval an attorney's certification, as described below, and copies of the properly executed and recorded documents described in subparagraph 2(a) above – i.e., the recorded Plat, the recorded Agreement, and the recorded covenants for the Property. The attorney certification

shall be from an attorney licensed to practice law in the State of North Carolina, in form and substance acceptable to the County that certifies to the following:

- i. That the Association was properly formed and incorporated in North Carolina in accordance with law;
  - ii. That this Agreement and the Covenants for the Property have been executed by all legally necessary parties, in a legally binding manner, and are binding on the parties and the Property;
  - iii. That the Agreement contains necessary references to the recorded Plat for the Property, and that the Covenants for the Property contain necessary references to the recorded Plat and the recorded Agreement, and incorporate Exhibit A of this Agreement;
  - iv. That recordation of instruments described above occurred in the following order – Plat, then Agreement, then Covenants;
  - v. That the Covenants for the Property require membership for each Lot within the Property (except commonly owned Lots which may be excepted) and a rational allocation of the cost of maintenance, repair, and reconstruction of the Facility/ies amongst all such member Lots exists;
  - vi. That the mandatory dues amounts for the Escrow Account have been included in the Covenants;
  - vii. That the Covenants provide a process for assessing the Lot Owners for delinquent payments and for additional payments for stormwater costs and enforcing such assessments and that the County is named as a third party with the right to enforce such assessments in lieu of the Association as set out herein;
  - viii. That this Agreement and the Covenants have been properly executed by persons authorized to execute them;
  - ix. That this Agreement is recorded directly after the deed to Permittee and there are no liens and encumbrances on title other than as set out in Schedule 2(ix) attached hereto and incorporated herein by reference.
- c. Payment of Stormwater Permit Fee(s). At the time of delivery of the recorded

documents and certification, Permittee shall pay the stormwater permit fee for each of the Facility/ies, as prescribed by County Requirements.

d. **Modification of Certain Requirements.** The County Attorney and Ordinance Administrator may consent to the recordation of the plat described in subsection 1(b) and the recordation of this Agreement in advance of the recordation of the final plat and the covenants so that a stormwater permit may be issued to begin land disturbing activities. However, no stormwater permit shall be issued until the Association is properly formed and incorporated in North Carolina in accordance with law, the plat described in Section 1.b. is recorded, and this Agreement is recorded. **NO BUILDING PERMIT SHALL BE ISSUED UNTIL THE COUNTY ATTORNEY DETERMINES THAT ALL THE OBLIGATIONS CREATED BY THIS AGREEMENT HAVE BEEN MET. IN THE EVENT STORMWATER PERMIT(S) OR ANY BUILDING PERMIT(S) ARE ISSUED AND IT IS DETERMINED THAT ANY OF THE REQUIREMENTS HEREOF HAVE NOT BEEN MET OR THAT THE ATTORNEY'S CERTIFICATION IS INCORRECT, THE STORMWATER PERMIT(S) AND/OR BUILDING PERMITS MAY BE REVOKED.**

**3. Permittee's Obligations with Regard to Construction of Facility/ies; Denial of Permits in the Event of Noncompliance.**

a. Construction, Inspection, Certification, and Submission of As-Built Construction Drawings. Permittee shall complete the actions described below for the Facility/ies on such timetable as is specified in County Requirements.

- i. Construct the Facility/ies in accordance with the construction plans approved by the County Planner and take various steps toward final completion, and finally complete the Facility/ies, in accordance with such timetables and/or deadlines specified in County Requirements;
- ii. Provide any additional security required by the County Planner to ensure construction of the Facility/ies if the deadlines described in (i) above have not been met, or in the event that Permittee becomes insolvent or otherwise unable to proceed with construction on the Property;
- iii. Cause the Facility/ies to be finally inspected and certified by the engineer who designed the Facility/ies or by such other registered NC Professional Engineer acceptable to the County, in accordance with the County Requirements;
- iv. Submit to the County Planner reproducible as-built drawings and as-built calculations acceptable to the County Planner;
- v. Complete an operation and maintenance manual for each Facility in accordance with County Requirements;

- vi. Submit records to the County Planner accordance with County Requirements documenting construction costs for the Facility, including but not limited to all costs of construction administration; and
- vii. Complete any repairs to the Facility/ies that may be directed in the discretion of the County Planner.

In the event Permittee does not satisfactorily complete the foregoing obligations on such timetable as may be specified by the County, the County may withhold any permits and approvals related to development of the Property or any Lot and may pursue any other remedy available under this Agreement or applicable law.

b. Transfer of Site and Facility to Association. After satisfactory completion of the steps described in subsection (a) above, Permittee shall Transfer the Site(s) to the Association(s) which shall, thereafter, become responsible for inspection, maintenance, and reconstruction of the Facility/ies as set forth in Section 4 below. Permittee's transfer of the Site prior to completion of the steps described in (a) above shall not relieve Permittee of its obligations under this Agreement.

c. Discharge of Permittee's Obligations; Recordation of Release. Following satisfactory performance of its obligations under this Agreement, Permittee may request a release from the County Planner in writing. Within thirty (30) calendar days of receipt of such request and receipt of all accompanying documentation and certifications required by the County, upon determination that Permittee has satisfied its obligations, the County Planner shall issue a release confirming that Permittee has fulfilled its obligations under this Agreement and is discharged from such obligations. Permittee shall record such release at the Granville County Register of Deeds. In its discretion, the County may record any documents indicating that construction of the Facility/ies has been completed and/or that Permittee is released from the obligations of this Agreement.

d. Notice to Lot Owners and Successors in Interest to Permittee. Recordation of this Agreement gives notice to all Lot Owners that building permits may be withheld for Lot(s) in which they have an interest in the event of Permittee noncompliance with Section (2) above or this Section (3). In addition, it gives notice to all Persons who may be considered a "Permittee" under the definitions herein that approvals and permits related to development of the Property may be withheld in the event of Permittee noncompliance with this Agreement.

#### **4. Association/Lot Owner Responsibility for Completed Facility/ies**

a. Association's/Lot Owners' Continuing Permanent Responsibility for Facility/ies. Upon release of Permittee as described in Section 3(c) above, or if no release occurs, then upon official notification to the Association from the County, the Association, or in the event there is no legally effective Association, the Lot Owners collectively shall be responsible for inspection, maintenance, repair, reconstruction, and funding for the completed Facility/ies, and shall comply with all County Requirements. The Association shall be responsible for performing these obligations whether or not the Site and/or the Facility/ies have been legally transferred to the

Association. The obligations of the Association, or the Lot Owners in the absence of an Association, are further described below.

b. Filing of Responsible Officer for Association with County. The Association shall file with the County's County Planner, and update such filing yearly, the name and contact information of a responsible officer or agent for the Association 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 County Requirements and with the operations and maintenance manual prepared specifically for the Facility/ies. Standards for maintenance of Facility/ies are located in the North Carolina Department of Environmental Quality Stormwater Design Manual as amended from time to time, or such successor publication issued by the North Carolina Department of Environmental Quality or its successor agency or as may be adopted by the County (together with any modifications thereto).

d. Inspections/Reports to County. In accordance with County Requirements, the Association shall cause the Facility/ies to be inspected (i) annually; (ii) after events that cause visual damage to the Facility/ies; (iii) upon notification by the County Planner; and (iv) when required by the operation and maintenance manual. The inspection shall be performed by a registered North Carolina Professional Engineer or a North Carolina Registered Landscape Architect or by a person who has been awarded a Stormwater BMP Inspection and Maintenance Certification by the North Carolina State University Cooperative Extension. The inspection shall occur annually during the month in which acceptance of the as-built certification for the Facility/ies occurred, or at such other time as may be reasonably directed by the County. The inspection shall be reported to the County as further described below.

e. Repair and Reconstruction. The Association shall repair and/or reconstruct the Facility/ies as it determines is necessary, and, additionally, as may be directed by the County, to allow the Facility/ies to function for its/their intended purpose, and to design capacity. The Association shall provide written reports regarding major repair or reconstruction to the County in accordance with County Requirements. Without limitation, the Association shall make or cause to be made any repairs identified in the inspection report provided under 4(d) above and as may be reasonably directed by the County from time to time based on County requirements or County inspections of the Facility/ies. Compliance with inspection reports or County directives shall not limit Association's repair obligations. The Association shall have any repair and reconstruction work and related work re-inspected and certified by an Engineer as appropriate or if required by the County.

f. Budget Line Items for Stormwater Expenses. The dues of the Association shall include amounts for upkeep and reconstruction of the Facility/ies and charges for these purposes shall be included in the dues charged to Lots from the point that Lots are charged dues for other common purposes. The Association 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, including but not limited to, annual inspections, maintenance, and routine repairs



(the "Routine Annual Expenditures") and the funds for this purpose may be maintained as part of the Association's general account. The second ("Escrow Account") shall be dedicated to the separate Escrow Account that will build over time and provide money for sediment removal, structural, biological or vegetative replacement, major repair, and reconstruction of the engineered stormwater controls (the "Major Expenditures"), provided that the County shall first consent to the expenditure. The Escrow Account shall be maintained in an account that is separate from the HOA's general account as described below. At a minimum, the Association shall earmark \$2,500.00 annually from its collected dues for the Inspection and Maintenance Fund as determined by the County for Routine Annual Expenditures and \$3,072.00 annually for the Escrow Account for Major Expenditures determined as set out in the section entitled "Escrow Account". The Routine Annual Expenditures shall be increased annually by 3% per year over the prior year's amount unless the County Planner determines that such an increase is not necessary for a given year. The Association may set a higher amount in its discretion. The Association shall set a higher amount if the County Planner determines, in his/her reasonable discretion that additional amounts are necessary to provide for Routine Annual Expenditures. Contributions to the Escrow Account for Major Expenditures shall be determined as set out in the section entitled "Escrow Account". No additional contributions shall be required to the Escrow Account for Major Expenditures once the account balance reaches \$61,431.00 which amount shall be the sinking fund budget for the engineered stormwater controls. Withdrawals from and additions to the Escrow Account shall be required as set out in the section entitled "Escrow Account" and elsewhere herein. The Association shall set dues at a sufficient amount to fund Routine Annual Expenditures and the Escrow Account for Major Expenditures in addition to the Association's other obligations. The Association 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 for the purpose of fulfilling the Association's obligations under this Agreement. Such assessments shall be collected in the manner set forth in the covenants. As allowed under NCGS §471<sup>2</sup>, or successor statutes, or, for condominiums, as allowed under NCGS 47C, or successor statutes, all assessments remaining unpaid for thirty (30) days or longer shall constitute a lien on the Lot when the requirements set forth in the applicable North Carolina General Statutes are met. Such lien and costs of collection may be filed and foreclosed on by the Association. In addition, the Association's rights may, in the discretion of the County, be exercised by the County, as a third party beneficiary of this Agreement and/or as Attorney in Fact for the Association, as provided in Section 8 of this Agreement, without limitation as to other rights the County may have under this Agreement and under law.

h. Stormwater Expenditures Receive Highest Priority. Notwithstanding any contrary provisions of the Association'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 Escrow Account; Requirements for Withdrawal. The Association shall maintain the Escrow Account 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 shall use the Escrow Account only for Major Expenditures. The Association's bylaws shall require that signatures of two Association officers are required for withdrawal of funds from the Escrow Account and that withdrawals and expenditures shall only be made with the consent of the County.

j. Engineer Report prior to Major Repairs and Reconstruction. Prior to withdrawing funds from the Escrow Account, the Association shall (i) obtain a written report from an engineer approved in accordance with County Requirements regarding repairs or reconstruction needed and approximate cost of such repair or reconstruction; and (ii) submit such report to the County Planner and notify the County Planner of the major repairs or reconstruction to be undertaken on the Facility, the proposed date, and the amount to be withdrawn from the Escrow Account. In the event of an emergency, withdrawal and expenditure of funds from the Escrow Account may be made after telephone notification to the County Planner.

k. Annual Reports to County. The Association shall provide to the County Planner annual reports in substance and form as set forth in County Requirements. This annual report shall be signed by an officer of the Association, 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's affairs, the report shall so indicate. The officer's signature and attestation shall be notarized. At a minimum each report shall include:

- i. the annual Facility/ies inspection report described in Section 4(d) above;
- ii. a bank or account statement showing the existence of and balance in the separate Escrow Account at the time of submission of the report;
- iii. other information regarding the Facility/ies as may be required under County Requirements;
- iv. the amount of Association dues being set aside for the current year for each of the two purposes – the Inspection and Maintenance Fund, and the Escrow Account.

l. Facility/ies to Remain with Association; Lot Owners' Liability. To the extent not prohibited by law, the Facility/ies shall remain the property of the Association and may not be conveyed by the Association. In the event the Association ceases to exist or is unable to perform its obligations under this Agreement, in addition to and not in limitation of any other remedies County may have hereunder, all Lot Owners shall be proportionately liable to the County to fulfill the Association's obligations under this Agreement. Each Lot's proportional obligation shall be calculated as set forth in the Covenants for the Association. In addition, the County may exercise the remedies described in Section 8 of the recorded Agreement and all other remedies provided by law and this provision is in no way intended to limit the County's rights under any other provision of this Agreement.

m. No Public Adoption. The County's exercise of rights under this Agreement or under County Requirements does not constitute adoption of the Facility/ies by the County. County

regulation is not intended to impede or prohibit the Association 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.

**5. Escrow Account.**

a. Escrow Account Established. The covenants shall require the establishment of an Escrow Account, which can be spent solely for Major Expenditures. If engineered stormwater controls are not performing adequately or as intended or are not properly maintained, the County, in its sole discretion, may remedy the situation, and in such instances the County shall be fully reimbursed from the Escrow Account. Funds in the Escrow Account may be spent by the Association for Major Expenditures, provided that the County shall first consent to the expenditure.

b. Payments into Escrow Account. The Escrow Account shall be funded both by payments made by the Permittee ("Permittee Contribution") and annual contributions made by the HOA ("Sinking Fund Payments") (collectively, "Contributions"). Both Permittee Contribution and Sinking Fund Payments shall fund the Escrow Account. Prior to plat recordation or issuance of construction permits, whichever shall first occur, the Permittee shall pay into the Escrow Account the sum of \$46,073.00 which is an amount equal to fifteen (15) percent of the initial estimated construction cost of the engineered stormwater controls of \$307,153.00. Thereafter, until the HOA makes a common expense assessment, the Permittee shall pay all common expenses. After any assessment has been made by the HOA, the HOA shall make an annual assessment the proceeds of which shall be used for Sinking Fund Payments to be paid to the Escrow Account as set out herein. Contributions totaling two-thirds of the total amount of the initial construction cost of the engineered stormwater controls shall be deposited into the Escrow Account within the first five (5) years and Contributions totaling the full amount of the sinking fund budget shall be deposited to the Escrow Account within ten (10) years following initial construction of the engineered stormwater controls. Any funds drawn down from the Escrow Account shall be replaced within twelve (12) months so that the Escrow Account is maintained as required herein. At least once every five (5) years, the annual inspection report or another document delivered with the annual inspection report shall contain a present day estimate of the probable initial construction costs of the engineered stormwater controls under seal of a professional engineer. The Contributions shall be increased if necessary to maintain an amount sufficient in the Escrow Account to cover the updated probable initial construction costs of the engineered stormwater controls.

**6. County Easement/Right of Entry/No County Responsibility.**

Permittee, the Association, and the Lot Owners hereby grant the County a permanent nonexclusive easement over the Site and Facility/ies for inspection, construction, repair, and other work on the Facility/ies. The terms and conditions regarding the use of such easement may be expanded but not limited by recorded declarations regarding the use of such easements. Permittee, the Association, and the Lot Owners also grant the County a permanent irrevocable, nonexclusive 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. Permittee and Lot Owners grant the County a permanent irrevocable, nonexclusive right of ingress, egress, and regress over individual Lots solely for response to emergencies, public nuisances, or the imminent threat thereof. In this Section, "the County" includes County Employees. The grant of these rights does not obligate the County to exercise them or to take any other action.

**7. Assignment of Engineering Agreements and Plans and Specifications.**

Permittee shall execute an Assignment of Engineering Agreements and Plans and Specifications in the form attached hereto as **Exhibit B**.

**8. Remedies for Violations; Lien on Property; Future Obligations Secured.**

a. County Performance of Work. If the Permittee and/or Association fail to perform their obligations under this Agreement, the County may send notice to the party (ies) in default demanding performance. If the defaulting party does not cure such default within thirty (30) days from the date notice is mailed, the County may, in the reasonable discretion of the County Planner, enter the Property and the Site and perform some or all of the defaulting party's obligations under this Agreement. In an emergency the County may perform such work prior to the expiration of the thirty (30) day period. Nothing in this Agreement shall be interpreted to require the County to undertake a party's obligations under this Agreement.

b. Repayment to County. The defaulting party shall reimburse the County for its costs in inspecting, constructing, repairing, and reconstructing the Facility/ies. Such costs may include the cost of administration and overhead. The County shall send written notice to the party in default requesting reimbursement for the costs of the work. The defaulting party shall pay all such costs within forty-five (45) days of the date the notice is mailed. Any costs not paid to the County within the forty-five (45) days period shall be delinquent, and the defaulting party shall be subject to all legal remedies available to the County under law or equity.

c. Debt Owed in the Event of Nonpayment; Lien. In the event that the defaulting party does not reimburse the County as required in subsection (b) above, the defaulting party 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 County using any remedy authorized by law or in this Agreement. In addition, the debt or a proportional amount thereof calculated using a methodology reflecting number of lots, value of Property, types of uses, or a combination of these factors, as determined in the County's sole discretion, shall be a lien against the Property and the Lots and may be collected as unpaid taxes in accordance with N.C.G.S. §153A-140 or other statutory provisions, with notice as may be required by law. The County may add the debt to any utility bills owed and utilize any remedy provided by law or ordinance for unpaid utility bills. The County may also foreclose on the liens.

d. Right to Act for the Association. In addition to all of the remedies set forth herein, if the defaulting party is the Association and payment has become delinquent as described in

Section 8 the County may, with additional thirty (30) days' written notice to the Association, pursue the right of the Association to repay the amount due, as calculated in accordance with the Articles of Incorporation, Covenants, and Bylaws of the Association. The Association hereby designates, constitutes and appoints the County 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.

e. Withholding of Permits. In the event the defaulting party is the Permittee, the County may withhold any or all permits or other approvals necessary to complete development of the Property or any Lot until such time as Permittee fulfills such obligations.

## 9. 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 County Planner shall furnish a written certificate stating the amount of any monetary liabilities owed pursuant to this Agreement by a party to this Agreement or a Lot Owner.

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 County's duty to furnish a certificate is contingent upon the requester providing the following, as may be specified by the County Planner: the name of the party regarding whom the certificate is requested; the property regarding which the certificate is requested (the Property as a whole, some portion of the Property, or a Lot); 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, if any.

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 or the Property or the Lot 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 County Employee as to the amount of monetary liabilities that are owed by the 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 County.

**10. Warranty.** Permittee covenants with the County 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, except for those identified in the Opinion of Title furnished to the County as a requirement prior to the County's execution of the Agreement, and that Permittee will warrant and defend the title against the lawful claims of all persons except for the exceptions stated in such Opinion of Title.

**11. Notice.** When a notice is required or permitted by this Agreement, it shall be given in writing to the County delivered to the County Planner, P.O. Box 877 (mail), 122 Williamsboro Street (delivery), Oxford, NC 27565, with a copy to James C. Wrenn, Jr., Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, LLP, P.O. Box 278 (mail), 111 Gilliam Street (delivery), Oxford, NC 27565, upon the Permittee, at 10931 Strickland Road, Suite 111, Raleigh, NC 27615, Attn: Robert Wayne Bailey, Sr., General Partner or upon Association 10931 Strickland Road, Suite 111, Raleigh, NC 27615, Attn: Alex Bailey, President. 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.

**12. No Waiver of Breach.** If the County fails to enforce or waives any breach of any obligation or covenant in this 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 County's failure to exercise any right under this Agreement shall not constitute a waiver of that right.

**13. Agreement Binding.** This Agreement shall bind the Association in perpetuity and shall

bind Permittee and its successors in interest until the County releases such Permittee as described in Section 3 above. A Lot Owner's obligations and liabilities under this Agreement shall cease upon conveyance of his/her Lot.

**14. Amendment of Agreement.** Amendments to this Agreement shall be valid only if made in writing and signed by the parties, provided that the Permittee's signature shall not be required if the Permittee has ceased to exist or has been released by the County as provided in Section 3 above. The County Manager may, on behalf of the County, amend this agreement without approval by the County Board of Commissioners.

**15. Covenants Herein to Run with the Property.** The obligations of this Agreement are a perpetual servitude and appurtenant to and running with the Property, the Site, and the Lots.

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

**17. Liability; Indemnification.**

a. The approval by the County or any Employee of the County of any plans or of any work referred to in this Agreement shall not create any liability in the County or its officers, officials, or County 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 County or any Employee of the County of any work allowed under this Agreement shall not create any liability in the County or its officers, officials, or County Employees for the work. Nothing herein is intended to release any other Person for any liability for that work.

c. The Permittee, prior to release from the County, and the Association, after the Facility/ies are constructed, shall indemnify the County and its officers and County Employees for any costs to the County 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 County.

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

**19. 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, the Lot Owners, and their heirs, personal representatives, successors, and assigns.

**20. Governmental Functions; Superseding Regulations.** Nothing contained in this Agreement shall be deemed or construed to in any way estop, limit, or impair the County 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.

**21. Choice of Law and Forum.** This Agreement shall be deemed made in Granville 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 Granville 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.

**22. 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".

**23. 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 County, as set forth herein.

[EXECUTION PAGES FOLLOW]



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 Granville County Register of Deeds.

**JSW PARTNERS**

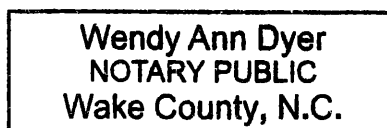
a North Carolina general partnership

By: Robert Wayne Bailey Sr. (SEAL)  
Robert Wayne Bailey, Sr., General Partner

STATE OF NORTH CAROLINA, COUNTY OF Wake

I, the undersigned Notary Public of the County of Wake and State of North Carolina, certify that **Robert Wayne Bailey, Sr.**, either ☒ being personally known to me or ( ) proven by satisfactory evidence (said evidence being \_\_\_\_\_), personally appeared before me this day and acknowledged that he is a General Partner of JSW PARTNERS, a North Carolina general partnership, and that he, as a General Partner being authorized to do so, voluntarily executed the foregoing on behalf of the company for the purposes stated therein.

Witness my hand and notarial seal this the 12th day of Sept, 2023.



Wendy Ann Dyer  
Notary Public

Wendy Ann Dyer  
Printed/Typed Name of Notary  
My commission expires: 10-9-23

CEDAR KNOLLS HOMEOWNERS ASSOCIATION, INC.

Signed: Alex Bailey  
Alex Bailey, President

[Affix Corporate Seal]

STATE OF NORTH CAROLINA, COUNTY OF Cape Fear

I, Wendy Ann Dyer, a notary public for said county and state, certify that **Alex Bailey**, personally appeared before me this day, and acknowledged he is President of **CEDAR KNOLLS HOMEOWNERS ASSOCIATION, INC.**, a North Carolina non-profit corporation, and that by authority duly given and as the act of the corporation, he has signed the foregoing contract with the County of Granville in the name of the corporation and in his capacity as its President.

Witness my hand and notarial seal this the 12<sup>th</sup> day of Sept, 2023.

Wendy Ann Dyer  
NOTARY PUBLIC  
Wake County, N.C.

Wendy Ann Dyer  
Notary Public

Wendy Ann Dyer  
Printed/Typed Name of Notary

My commission expires: 10-9-23

GRANVILLE COUNTY

ATTEST:

Debra A. Weary  
Debra A. Weary, Clerk  
Granville County Board of Commissioners

By: Barry W. Baker  
Barry W. Baker, Planning Director  
and Stormwater Administrator

ACKNOWLEDGMENT BY GRANVILLE COUNTY

*Name of other party(ies) to the contract:*

JSW PARTNERS and CEDAR KNOLLS HOMEOWNERS ASSOCIATION, INC.

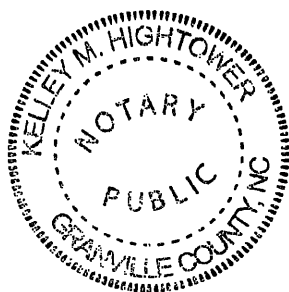
*Title of the contract:* Stormwater Facility Agreement and Covenants (Residential Version)

I, Kelley M. Hightower, a notary public, certify:  
(Type or print name of Notary Public)

(1) Debra A. Weary personally appeared before me in Granville 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 Granville County, the foregoing document was signed in its name as a body politic and corporate of the State of North Carolina by its Planning Director and Stormwater Administrator, sealed with its corporate seal, and attested by its said County Clerk.

This the 12<sup>th</sup> day of September, 2023.

Witness my hand and notarial seal this the 12<sup>th</sup> day of September, 2023.



Kelley M. Hightower  
Notary Public

Kelley M. Hightower  
Printed/Typed Name of Notary  
My commission expires: 12-3-2025

**SCHEDULE 2(ix)**  
**EXCEPTIONS TO TITLE**

1. Taxes for the year 2023 and subsequent years, not yet due and payable.

# **EXHIBIT A**

## TO STORMWATER FACILITY AGREEMENT AND COVENANTS MANDATORY COVENANT REQUIREMENTS REGARDING STORMWATER FACILITIES

### **ARTICLE \_\_\_\_ (fill in)**

#### **Obligations Regarding Stormwater Facilities**

The Property includes one or more stormwater management facilities (hereafter "Facility/ies") that is/are the perpetual responsibility of the Association. Such Facilities are the subject of a Stormwater Facility Agreement and Covenants ("Stormwater Agreement") between Declarant, the Association, and the County of Granville ("the County") that is binding on the Association. The Stormwater Agreement is recorded at Deed Book \_\_\_\_\_ Page \_\_\_\_\_, Granville County Register of Deeds. Defined terms shall have the meaning given to them in the Stormwater Agreement. The Property subject to that Stormwater Agreement is the "Property" referred to in this Article. The Stormwater Facilities must be maintained in accordance with County Requirements, which include all ordinances, policies, standards, and maintenance protocols and in accordance with the recorded Stormwater Agreement. In particular, the North Carolina Department of Environmental Quality Stormwater Design Manual as amended from time to time, or such successor publication issued by the North Carolina Department of Environmental Quality or its successor agency or as may be adopted by the County (together with any modifications thereto), and the operation and maintenance manual prepared specifically for the Facility/ies contain requirements that apply to the Association's Facilities.

Nothing in the remaining Articles of these Restrictive Covenants filed by Declarant as part of this Declaration or any subsequent modifications of this Declaration may reduce the Association's or Lot Owners' obligations with regard to the Facility/ies. Such additional covenants may increase the obligations or provide for additional enforcement options.

The Stormwater Facility/ies and their location are as follows: Those certain Stormwater Facilities described in the recorded Stormwater Agreement shown on that survey and plat by Puckett Surveyors, PLLC, Professional Land Surveyors, entitled "Exempt Plat Survey for: JSW Partners" which plat is dated February 15, 2023 and recorded at Plat Book 52, Page 71, Granville County Registry (the "Plat"). The Property is that certain property more particularly described at Book 1873, Page 644 of the Granville County Registry and more further identified as Tax Map No. 183400164083. The Facilities are described specifically, without limitation, as follows:

- i. Those certain "Stormwater Maintenance and Access Easement" consisting of (i) 12,192 Sq. Ft.; (ii) 42,001 Sq. Ft.; and (iii) 34,544 Sq. Ft. as shown on the Plat.
- ii. Those two (2) Bioretention Areas shown on the Plat.
- iii. That certain Level Spreader shown on the Plat.
- iv. All Neuse River Riparian Buffers shown on the Plat which shall be measured

50' From Top of Bank", Zone 1 of which shall be a 30' undisturbed buffer and Zone 2 of which will be a 20' vegetated buffer which shall be maintained as a perpetual easement even if the Neuse Buffer Rule changes in the future.

- v. County shall have access for ingress/egress construction maintenance and inspections and all other purposes consistent with the terms of this Agreement over and across that certain "Proposed 50' Access Easement" consisting of 167,160 Sq. Ft. (3.837 acres) shown on the Plat.
- vi. Any other easement area reasonably necessary in connection with access to or construction or maintenance of stormwater control measures shown on the Plat not referenced above or not specifically labeled.
- vii. Any other access easement not shown on the plat but benefitting the Property.

In addition to the above obligations, the Association's obligations with regard to the Facilities/ies are:

1. **Inspections/Routine Maintenance.** In accordance with County Requirements, the Association shall cause the Facility/ies to be inspected i) annually; ii) after major storm events that cause visual damage to the Facility/ies; and iii) upon notification from the County to inspect. The inspection shall be performed by a registered North Carolina Professional Engineer or a North Carolina Registered Landscape Architect or by a person who has been awarded a Stormwater BMP Inspection and Maintenance Certification by the North Carolina State University Cooperative Extension. The inspection shall occur annually during the month in which the Facility/ies' as-built certification was accepted by the County, which month may be determined through contact with the County Planner. The inspection shall be reported to the County as further described below.

2. **Repair and Reconstruction.** The Association shall repair and/or reconstruct the Facility/ies as it determines is necessary, and, at a minimum, as set forth in County Requirements or as directed by the County to allow the Facility/ies to function for its intended purpose, and to its design capacity. The Association shall provide written reports regarding major repair or reconstruction to the County in accordance with County Requirements. Without limitation, the Association shall make or cause to be made any repairs identified in the inspection report provided under paragraph 1 above and as may be reasonably directed by the County from time to time based on County requirements or County inspections of the Facility/ies. Compliance with inspection reports or County directives shall not limit Association's repair obligations.

3. **Stormwater Budget Line Items & Funding.** The dues of the Association shall include amounts for upkeep and reconstruction of the Facilities and charges for these purposes shall be included in the dues charged to Lots from the point that Lots are charged dues for other common purposes. The Association 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 -- annual inspections, maintenance, and routine repairs (the "Routine Annual Expenditures") -- and the funds for this purpose may be maintained as part of the Association's general account. The second ("Escrow Account") shall be dedicated to the separate Escrow

Account that will build over time and provide money for sediment removal, structural, biological or vegetative replacement, major repair, and reconstruction of the engineered stormwater controls (the "Major Expenditures"), provided that the County shall first consent to the expenditure. The Escrow Account shall be maintained in an account that is separate from the HOA's general account as described below. At a minimum, the Association shall earmark \$2,500.00 annually from its collected dues for the Inspection and Maintenance Fund as determined by the County for Routine Annual Expenditures and \$3,072.00 annually for the Escrow Account for Major Expenditures determined as set out in the section entitled "Escrow Account". The Routine Annual Expenditures shall be increased annually by 3% per year over the prior year's amount unless the County Planner determines that such an increase is not necessary for a given year. The Association may set a higher amount in its discretion. The Association shall set a higher amount if the County Planner determines, in his/her reasonable discretion that additional amounts are necessary to provide for Routine Annual Expenditures. Contributions to the Escrow Account for Major Expenditures shall be determined as set out in the section of the Stormwater Agreement entitled "Escrow Account". No additional contributions shall be required to the Escrow Account for Major Expenditures once the account balance reaches \$61,431.00, which amount shall be the sinking fund budget for the engineered stormwater controls. Withdrawals from and additions to the Escrow Account shall be required as set out in section of the Stormwater Agreement entitled "Escrow Account" and elsewhere herein. The Association shall set dues at a sufficient amount to fund Routine Annual Expenditures and the Escrow Account for Major Expenditures in addition to the Association's other obligations. The Association may compel payment of dues through all remedies provided in the Covenants for the Property or otherwise available under law.

4. **Assessments/Liens.** In addition to payment of dues, each Lot shall be subject to assessments by the Association for the purpose of fulfilling the Association's obligations under this Article and under the Stormwater Agreement. Such assessments shall be collected in the manner set forth in these Covenants. As allowed under NCGS §47F, or successor statutes, or, for condominiums, as allowed under NCGS 47C, or successor statutes, all assessment remaining unpaid for thirty (30) days or longer shall constitute a lien on the Lot when the requirements set forth in the applicable North Carolina General Statutes are met. Such lien and costs of collection may be filed and foreclosed on by the Association. In addition, the Association's rights may, in the discretion of the County, be exercised by the County, as a third party beneficiary of the recorded Stormwater Agreement and/or as Attorney in Fact for the Association, as provided in Section 8 of the recorded Stormwater Agreement.

5. **Stormwater Expenditures Receive Highest Priority.** Notwithstanding any contrary provisions of the covenants of which this Article is a part, 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.

6. **Separate Account for Escrow Account. Engineer's Report.** The Association shall maintain the Escrow Account for the Facility/ies in an account separate from the Association's general account. The Association shall use the Fund only for major repairs and reconstruction of the Facility/ies. No withdrawal shall be made from this fund unless the withdrawal is approved by two Association officials who shall execute any documents allowing

such withdrawal. Prior to withdrawing funds from this account, the Association shall (i) obtain a written report from an engineer approved in accordance with County Requirements regarding repairs or reconstruction needed and approximate cost of such repair or reconstruction; and (ii) submit such report to the County Planner, and notify the County Planner of the repairs or reconstruction to be undertaken on the Facility, the proposed date, and the amount to be withdrawn from the Escrow Account. In the event of an emergency, withdrawal and expenditure of funds may be made after telephone notification to the County Planner.

7. **Annual Reports to County.** The Association shall provide to the County annual reports in substance and form as set forth in County Requirements. This annual report shall be signed by an officer of the Association, who shall attest as to the accuracy of the information in such report. If prepared by a professional management company hired to manage the Association's affairs, the report shall so indicate. The officer's signature and attestation shall be notarized. At a minimum each report shall include:

- i. the annual Facilities inspections report described in Section 1 above;
- ii. a bank or account statement showing the existence of the separate Escrow Account described in Section 6 above and the balance in such fund as of the time of submission of the report;
- iii. a description of repairs exceeding normal maintenance that have been performed on the Facility/ies in the past year, and the cost of such repairs;
- iv. the amount of Association dues being set aside for the current year for each of the two stormwater funds – the Inspection and Maintenance Fund and the Escrow Account.

8. **Facility/ies to Remain with Association; Lot Owners' Liability.** To the extent not prohibited by law, the Facility/ies shall remain the property of the Association and may not be conveyed by the Association. In the event the Association ceases to exist or is unable to perform its obligations under this Agreement, in addition to and not in limitation of any other remedies County may have under these Covenants or under the Stormwater Agreement, all Lot Owners as defined in the Stormwater Agreement referenced above shall be proportionately liable to the County to fulfill the Association's obligations under this Agreement. Each Lot's proportional obligation shall be calculated as set forth in these Covenants. In addition, the County may also exercise the rights described in Section 8 of the recorded Stormwater Agreement and all other remedies provided by law and this provision is in no way intended to limit the County's rights under the Stormwater Agreement or under any other provision of these Covenants.

9. **County Rights; Liens Against Owners.** In addition to rights granted to the County by ordinance or otherwise, the County shall have the following rights, generally summarized below, and more explicitly set forth in the Stormwater Agreement referenced above:

Direct the Association in matters regarding the inspection, maintenance, repair, and /or reconstruction of the Facility/ies.

If the Association does not perform the work required by ordinance, by these covenants, and by the Stormwater Agreement referenced above, do such work itself, upon thirty (30) days' written notice to the Association.



Access the Facility/ies for inspection, maintenance, and repair, crossing as necessary the lot(s) on which the Facility/ies are located and all other private and public easements that exist within the Property subject to these covenants.

Require reimbursement by the Association of the County's costs in inspecting, maintaining, repairing, or reconstructing the Facility/ies, as provided in the Stormwater Agreement referenced above.

Enforce any debts owed by the Association as described in the Stormwater Agreement referenced above against Lot Owners if such debts are not fully paid by the Association. The debt may be allocated to Lot Owners as provided in the other sections of these Covenants, and may be made a lien on each owner's property, may be added to each owner's utility bills, and may result in foreclosure, as provided in Section 8 of the Stormwater Agreement referenced above.

**10. No Dissolution.** To the extent not prohibited by law, the Association shall not enter into voluntary dissolution unless the Facility is transferred to a Person who has been approved by the County and has executed a Stormwater Agreement with the County assuming the obligations of the Association. Under the Stormwater Agreement referenced above, individual Lots and Lot Owners continue to be liable for the Facility/ies in the event the Association is dissolved without a new Stormwater Agreement between the County and a responsible party that is assuming the Association's obligations.

**11. No Amendment.** Without the prior written consent of the County, which may be given by the Granville County Manager, and notwithstanding any other provisions of these Restrictive Covenants, the Association may not amend or delete this Article with the exception of supplementing its provisions in a more detailed manner to better describe members' or Lot Owners' obligations regarding each other.

**12. Stormwater Agreement Supersedes.** The Stormwater Agreement referenced above supersedes any limiting provisions contained elsewhere in other Articles of these Covenants. However, such other Articles of these Covenants may supplement the obligations of the Association as set forth in the Stormwater Agreement, and/or the obligations of and remedies against individual Lot Owners or members bound by these Covenants. In the event of a conflict between these Covenants and the Stormwater Agreement, the Stormwater Agreement shall control.

## EXHIBIT "B" TO STORMWATER FACILITY OPERATION AGREEMENT (Residential Version)

### ASSIGNMENT OF ENGINEERING AGREEMENTS AND PLANS AND SPECIFICATIONS

FOR VALUE RECEIVED, the undersigned, JSW PARTNERS, a North Carolina general partnership ("**Permittee**"), assigns to GRANVILLE COUNTY, a body politic and corporate of the State of North Carolina ("**County**"), all of its right, title and interest in and to:

1. All engineering, design, architectural and development agreements, and any and all amendments, modifications, supplements, addenda and general conditions thereto (collectively, "**Engineering Agreements**"); and
2. All plans and specifications, shop drawings, working drawings, amendments, modifications, changes, supplements, general conditions and addenda thereto (collectively "**Plans and Specifications**")

heretofore or hereafter entered into or prepared by any architect, engineer or other person or entity (collectively "**Engineer**"), for or on behalf of Permittee in connection with the construction of the Facility/ies on the Property. The Plans and Specifications, as of the date hereof, are those which Permittee has heretofore, or will hereafter deliver to County. The Engineering Agreements include, but are not limited to, all contracts with Thomas & Hutton Engineering Co., a George corporation related to the Property including, but not limited to, all agreements related to that certain stormwater permit application and all plans, specifications, and related documents concerning stormwater controls on said Property.

This ASSIGNMENT OF ENGINEERING AGREEMENTS AND PLANS AND SPECIFICATIONS ("**Assignment**") constitutes a present and absolute assignment to County as of the Effective Date; provided, however, County confers upon Permittee the right to enforce the terms of the Engineering Agreements and Permittee's rights to the Plans and Specifications so long as no Default or event which would constitute a Default after notice or the passage of time, or both, has occurred and is continuing under the Stormwater Facility Agreement and Covenants. Upon the occurrence of a Default or event which would constitute a Default after notice or the passage of time, or both, under the Stormwater Facility Agreement and Covenants, County may, in its sole discretion, give notice to Engineer of its intent to enforce the rights of Permittee under the Engineering Agreements and of its rights to the Plans and Specifications and may initiate or participate in any legal proceedings respecting the enforcement of said rights. Permittee acknowledges that by accepting this Assignment, County does not assume any of Permittee's obligations under the Engineering Agreements or with respect to the Plans and Specifications.

Permittee represents and warrants to County, as of the Effective Date, that: (a) all Engineering Agreements entered into by Permittee are in full force and effect and are enforceable in accordance with their terms and no default, or event which would constitute a default after notice or the passage of time, or both, exists with respect to said Engineering Agreements; (b) all copies of the Engineering Agreements and Plans and Specifications delivered to County are complete and

correct; and (c) Permittee has not assigned any of its rights under the Engineering Agreements or with respect to the Plans and Specifications.

Permittee agrees: (a) to pay and perform all obligations of Permittee under the Engineering Agreements; (b) to enforce the payment and performance of all obligations of any other person or entity under the Engineering Agreements; (c) not to modify the existing Engineering Agreements nor to enter into any future Engineering Agreements without County's prior written approval except as otherwise may be permitted in the Stormwater Facility Agreement and Covenants; and (d) not to further assign, for security or any other purposes, its rights under the Engineering Agreements or with respect to the Plans and Specifications without County's prior written consent.

This Assignment supplements the Stormwater Facility Agreement and Covenants and provisions of the Stormwater Facility Agreement and Covenants are incorporated herein by reference.

The term "**Stormwater Facility Agreement and Covenants**" as used herein shall mean the Stormwater Facility Agreement and Covenants, of even date herewith between Permittee and County, as well as any future modifications, novations, or amendments thereto between Permittee and County which refer to this Assignment. Capitalized terms not otherwise defined herein shall have the meaning set forth in the Stormwater Facility Agreement and Covenants.

This Agreement shall be deemed made in Granville 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 Granville County. Such actions shall neither be commenced in nor removed to federal court. This paragraph shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this paragraph.

This Assignment shall be binding upon and inure to the benefit of the heirs, legal representatives, assigns, and successors-in-interest of Permittee and County.

The attached Architect's/Engineer's Consent, Schedule 1 and Property Description are attached hereto and incorporated herein by reference as Exhibit B-1, Exhibit B-2, and Exhibit B-3, respectively.

[EXECUTION PAGES FOLLOW]

Dated as of: \_\_\_\_\_, 2023.

"PERMITTEE"

**JSW PARTNERS**

a North Carolina general partnership (SEAL)

By: Robert Wayne Bailey, Sr. (SEAL)  
Name: Robert Wayne Bailey, Sr.  
Title: General Partner

Permittee's Address:  
10931 Strickland Road, Suite 111  
Raleigh, NC 27615

**EXHIBIT "B-1"**  
to  
**"Assignment of Engineering Agreements and Plans and Specifications"**

**ARCHITECT'S/ENGINEER'S CONSENT**

The undersigned architect and/or engineer (collectively referred to as "**Engineer**") hereby consents to the foregoing Assignment to which this Architect's/Engineer's Consent ("**Consent**") is a part, and acknowledges that there presently exists no unpaid claims due to the Engineer except as set forth on Schedule 1 attached hereto, arising out of the preparation and delivery of the Plans and Specifications to Permittee and/or the performance of the Engineer's obligations under the Agreements described in the Assignment.

Engineer agrees that if, at any time, County shall become the owner of said Property, or, pursuant to its rights under the Stormwater Facility Agreement and Covenants, elects to undertake or cause the completion of construction of the Facility/ies on any portion of the Property, in accordance with the Plans and Specifications, and gives Engineer written notice of such election; THEN, so long as Engineer has received, receives or continues to receive the compensation called for under the Agreements, County may, at its option, use and rely on the Plans and Specifications for the purposes for which they were prepared, and Engineer will continue to perform its obligations under the Agreements for the benefit and account of County in the same manner as if performed for the benefit or account of Permittee in the absence of the Assignment.

Engineer further agrees that, in the event of a breach by Permittee of the Agreements, or any agreement entered into with Engineer in connection with the Plans and Specifications, so long as Permittee's interest in the Agreements and Plans and Specifications is assigned to County, Engineer will give written notice to County of such breach at the address shown below. County shall have thirty (30) days from the receipt of such written notice of default to remedy or cure said default provided, if such default is of a nature that it cannot be cured within thirty (30) days, County shall have thirty (30) days within which to commence the cure and shall thereafter have such reasonable period of time to complete such cure as is necessary. Nothing herein shall require County to cure said default or to undertake completion of construction of the Facility/Facilities.

Engineer warrants and represents that Engineer has no knowledge of any prior assignment(s) of any interest in either the Plans and Specifications and/or the Agreements. Except as otherwise defined herein, the terms used herein shall have the meanings given them in the Assignment.

[Remainder of Page Left Blank; Signature Page Follows]

Executed on September 12, 2023.

Thomas & Hutton Engineering Co  
a Georgia corporation

By: Kevin E. Shoemaker (SEAL)  
Name: Kevin E. Shoemaker  
Title: Vice President

County's Address:

GRANVILLE COUNTY  
P.O. Box 877 (mail)  
122 Williamsboro Street (delivery)  
Oxford, NC 27565  
Attn: Planning Director

With a copy to:  
James C. Wrenn, Jr.  
Smith, Anderson, Blount, Dorsett, Mitchell &  
Jernigan, LLP  
P.O. Box 278 (mail)  
111 Gilliam Street (delivery)  
Oxford, NC 27565 Oxford, NC 27565

ENGINEER'S ADDRESS

Thomas & Hutton Engineering Co  
111 West Main St.  
Durham, NC 27701

**EXHIBIT “B-2”**  
**to**  
**“Assignment of Engineering Agreements and Plans and Specifications”**

**SCHEDULE 1**  
**SCHEDULE OF UNPAID CLAIMS**

Schedule 1 to Assignment of Engineering Agreements and Plans and Specifications between JSW PARTNERS (“Permittee”), and GRANVILLE COUNTY (“County”).

None.

**EXHIBIT “B-3”  
to  
“Assignment of Engineering Agreements and Plans and Specifications”**

**PROPERTY DESCRIPTION**

Exhibit C to Assignment of Engineering Agreements and Plans and Specifications, between JSW PARTNERS (“Permittee”), and Granville County (“County”).

BEING all of Tract 1 containing 65.92 acres as shown on map and survey entitled “Exempt Plat Survey for: JSW Partners” prepared by Puckett Surveyors, PLLC, dated February 15, 2023, and said map and survey being recorded in the Office of Register of Deeds of Granville County at Plat Book 52, Page 71.

For further reference see Book 1873, Page 644. Granville County Registry. Said property is further identified as Tax Map Number 183400164083.