



Doc ID: 015865080005 Type: CRP
 Recorded: 12/08/2023 at 09:19:51 AM
 Fee Amt: \$26.00 Page 1 of 5
 Pitt County, NC
 Lisa P. Nichols REG OF DEEDS

BK 4475 PG 100-104

Prepared by: Stephen Smith
 Town of Ayden

Return to: Planning Director
 Town of Ayden
 P.O. Box 219
 Ayden, NC 28513

RESTRICTIVE COVENANTS AND BMP OPERATION AND MAINTENANCE AGREEMENT –
 KINGS MILL SUBDIVISION

THIS AGREEMENT, made and entered into this 7th day of December, 2023, by and between Jones and Smith Contractors, LLC hereinafter called the "Landowner" and the Town of Ayden, hereinafter called the "Town".

WITNESSETH, that

WHEREAS, the Landowner is the owner of certain real property described as Pitt County Tax Map 4672155169/Parcels # 12975, 12976 and 14006 as recorded by deed in the land records of Pitt County, North Carolina, Deed Book 4293 Page 511, respectively hereinafter called the "Property".

WHEREAS, the Landowner is proceeding to build on and develop the Property; and

WHEREAS, the Kings Mill Subdivision hereinafter called the "Plan", which is expressly made a part hereof, as approved or to be approved by the Town, provides for detention of stormwater within the confines of the property; and

WHEREAS, the Town and the Landowner, its successors and assigns, including any homeowners association, agree that the health, safety, and welfare of the residents of the Town of Ayden, North Carolina, require that on-site stormwater management/BMP facilities be constructed and maintained on the Property; and

WHEREAS, the Town requires that on-site stormwater management/BMP facilities as shown on the Plan be constructed and adequately maintained by the Landowner, its successors and assigns, including any homeowners association.

5

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants contained herein, and the following terms and conditions, the parties hereto agree as follows:

1. The on-site stormwater management/BMP facilities shall be constructed by the Landowner, its successors and assigns, in accordance with the plans and specifications identified in the Plan.
2. The Landowner, its successors and assigns, including any homeowners association, shall adequately maintain the stormwater management/BMP facilities in accordance with the requirements of the Town of Ayden's Phase II Stormwater Ordinance and the North Carolina Department of Environment and Natural Resources, Division of Water Quality, Water Quality Section, Stormwater Best Management Practices Manual. This includes all pipes and channels built to convey stormwater to the facility, as well as all structures, improvements, and vegetation provided to control the quantity and quality of the stormwater. Adequate maintenance is herein defined as good working condition so that these facilities are performing their design functions.
3. The Landowner, its successors and assigns, shall have a qualified professional as defined by Section 50.1(B) of the Town of Ayden Phase II Stormwater Ordinance inspect the stormwater management/BMP facility and maintain annual inspection reports. The purpose of the inspection is to assure safe and proper functioning of the facilities. The inspection shall cover the entire facilities, berms, outlet structure, pond areas, access roads, etc. Deficiencies shall be noted in the inspection report. Annual reports shall be kept on record for a minimum of five years and shall be made available to the Town upon request.
4. The Landowner, its successors and assigns, hereby grant permission to the Town, its authorized agents and employees, to enter upon the Property and to inspect the stormwater management/BMP facilities whenever the Town deems necessary. When making the entry, the Town will take reasonable efforts to ensure that the entry does not unreasonably interfere with the business operations of the Landowner, its successors and assigns, at the Property. The purpose of inspection is to follow-up on reported deficiencies and/or to respond to citizen complaints. The Town shall provide the Landowner, its successors and assigns, copies of the inspection findings and a directive to commence with the repairs if necessary.
5. In the event the Landowner, its successors and assigns, fails to maintain the stormwater management/BMP facilities in good working condition acceptable to the Town within ninety (90) days after receipt of the inspection findings and a directive to commence with the repairs, the Town may enter upon the Property and take whatever steps necessary to correct deficiencies identified in the inspection report and to charge the costs of such repairs to the Landowner, its successors and assigns. This provision shall not be construed to allow the Town to erect any structure of permanent nature on the land of the Landowner outside of the easement for the stormwater management/BMP facilities. It is expressly understood and agreed that the Town is under no obligation to routinely maintain or repair said facilities, and in no event shall this Agreement be construed to impose any such obligation on the Town.
6. The Landowner, its successors and assigns, will perform the work necessary to keep these facilities in good working order as appropriate. In the event a maintenance schedule for the

stormwater management/BMP facilities (including sediment removal) is outlined on the approved plans, the schedule will be followed.

7. In the event the Town pursuant to this Agreement, performs work of any nature, or expends any funds in performance of said work for labor, use of equipment, supplies, materials, and the like, the Landowner, its successors and assigns, shall reimburse the Town upon demand, within thirty (30) days of receipt thereof for all actual costs incurred by the Town hereunder.
8. This Agreement imposes no liability of any kind whatsoever on the Town and the Landowner agrees to hold the Town harmless from any costs and injuries arising from or related to the structural BMP, unless the Town of Ayden has agreed in writing to assume maintenance responsibility for the BMP and has accepted dedication of any and all rights necessary to carry out that maintenance.
9. Acceptable financial security shall be deposited with the Town of Ayden to ensure that each structural stormwater BMPs is adequately maintained. The applicant shall deposit with the Town of Ayden either cash or an evergreen letter of credit as financial security approved by the Town of Ayden that is readily convertible into cash at face value. The cash or evergreen letter of credit shall be in an amount equal to fifteen (15) percent of the total cost of the structural stormwater BMPs. If structural BMPs are not performing adequately or as intended or are not properly maintained, the Town of Ayden, in its sole discretion, may use the funds to remedy the situation, and in such instances the Town of Ayden shall be fully reimbursed by the land owner, its successors and assigns for sediment removal, structural, biological or vegetative replacement, major repair, and reconstruction of the structural BMPs, provided that the Town of Ayden shall first consent to the expenditure.
10. This Agreement shall be recorded in the Registry of Deeds among the land records of Pitt County, North Carolina, and shall constitute a covenant running with the Property, and shall be binding on the Landowner, its administrators, executors, assigns, heirs and any other successors in interests, including any homeowners association.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written:

Jones & Smith Contractors, LLC
Company/Corporation/Partnership Name

112 West Firetower Road
Mailing Address

By: *[Signature]*

Winterville, NC 28590
City/State/Zip

Kenneth H. Smith
(Type Name)

Managing Member
(Type Title)

STATE OF NORTH CAROLINA

COUNTY OF PITT

Megan T. Carter Greene *Kenneth Smith*
I, ✓, a Notary Public for ✓ County, North Carolina, certify that ✓ personally came before me this day and acknowledged that he is owner, and that he, as owner, being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official seal, this 7th day of December, 2023

Megan T. Carter

NOTARY PUBLIC

My Commission Expires: December 15, 2026

Megan T. Carter
NOTARY PUBLIC
Greene County
North Carolina
My Commission Expires December 15, 2026



IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written:

TOWN OF AYDEN
Company/Corporation/Partnership Name

4144 EAST AVE
Mailing Address

By: 

AYDEN, NC 28513
City/State/Zip

STEPHEN SMITH
(Type Name)

ASSISTANT TOWN MANAGER
(Type Title)

STATE OF NORTH CAROLINA

COUNTY OF PITT

I, Megan T Carter, a Notary Public for Greene County, North Carolina, certify that Stephen Smith personally came before me this day and acknowledged that he is Assistant Town Manager, and that he, as Assistant Town Manager, being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official seal, this 7th day of December, 2023.



NOTARY PUBLIC

My Commission Expires: December 7, 2026

Megan T. Carter
NOTARY PUBLIC
Greene County
North Carolina
My Commission Expires December 15, 2026

