



COUNTY OF LINCOLN, NORTH CAROLINA

302 NORTH ACADEMY STREET, SUITE A, LINCOLNTON, NORTH CAROLINA 28092

PLANNING AND INSPECTIONS DEPARTMENT
704-736-8440 OFFICE
704-732-9010 FAX

To: Lincoln County Zoning Board of Adjustment

From: Randy Hawkins
Zoning Administrator

Date: February 14, 2011

Re: APP #324
Fifth Third Bank, applicant
Parcel ID# 88709-88731

The following information is for use by the Lincoln County Board of Adjustment at its meeting/public hearing on February 28, 2011.

Request

The applicant is appealing citations issued by the zoning administrator for alleged violations of the conditional use permit for the Burton Creek development. The original permit for this development was issued by the Board of Commissioners on Feb. 21, 2005, in a parallel conditional use rezoning (PCUR #110). On Sept. 18, 2006, the Board of Commissioners, at the request of the then-owner of the property, amended the permit (PCUR #110A) and included additional conditions. The applicant acquired the property on Sept. 14, 2010, in a foreclosure. Copies of the citations are included in this packet.

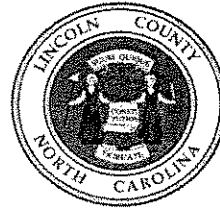
Site Area

The appeal involves a 250-acre site that borders Webbs Road, Burton Lane and Blades Trail. The property is zoned CU P-R (Conditional Use Planned Residential) and was approved for 385 single-family homes. A large amount of grading has been done and some streets and utilities have been constructed, but no homes have been built. The southern portion of this property is located in close proximity to Lake Norman.

filed 1/7/11 3:07 p.m.

Appeal Application

Lincoln County Planning and Inspections Department
302 N. Academy St., Suite A, Lincolnton, NC 28092
Phone: (704)736-8440 Fax: (704)732-9010



Part I

Applicant Name Fifth Third Bank - Attn: Charles Krawitz
Applicant Address 201 North Tryon Street, Sixteenth Floor, Charlotte, NC 28202
Applicant Phone Number (312) 636-3955
Property Owner's Name [same]
Property Owner's Address _____
Property Owner's Phone Number _____

Part II

Property Location Burton Creek Development
Tax Parcel ID 88709-88731
Property ID # (10 digits) PLN 4604-99-5391 Property Size 250 acres
Parcel # (5 digits) 56262 Deed Book(s) 2207 Page(s) 496

Part III

Date of Zoning Administrator's decision:

December 15, 2010; November 23, 2010; November 2, 2010

Summary of Zoning Administrator's decision:

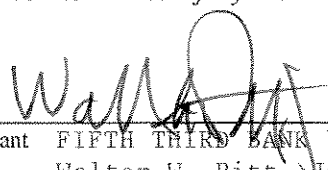
Alleged violations of PCUR #110A, including failure to post bond,
monitoring, and sediment control.

Briefly describe your reasons for seeking an appeal of decision:

(See attached.)

\$500 APPLICATION FEE MUST BE RECEIVED BEFORE PROCESSING AN APPEAL REQUEST

I hereby certify that all of the information provided for this application and attachments is true and correct to the best of my knowledge.


Applicant FIFTH THIRD BANK by
Walter W. Pitt, Jr., Esq.

Jan 7, 2011
Date

Owner _____

Date _____

**Attachment To
Appeal Application**

Fifth Third Bank ("the Bank") is not a developer but an involuntary owner holding the property as a result of foreclosure. It clearly is not the "developer" identified in the conditional use permit and it has no intention of being a developer of Burton Creek. The Bank acquired Burton Creek on September 14, 2010 as a result of foreclosure and is actively seeking a responsible buyer. The Bank is working diligently to resolve and will resolve existing erosion issues caused by the developer and will repair and stabilize the property pursuant to applicable regulations and requirements of the North Carolina Department of Environment and Natural Resources (DENR) and the Lincoln County Natural Resources Department. The Bank has entered into contracts (the "Erosion Contracts"—see attached except for the dredging contract which has not yet been signed) to undertake the necessary work at an initial cost of approximately \$232,000.

Arguably, the alleged violations relating to erosion and sedimentation control are under the jurisdiction and control of the Lincoln County Natural Resources Department, not the zoning administrator. In fact, the Bank has received a notice of violation from the Department and will respond consistent with the terms set forth in this appeal. The conditions relating to erosion and the posting of a bond or letter of credit were required of the developer and not the Bank, which is trying to sell the property to a new developer. Thus some of the zoning conditions, even if applicable to the Bank, may not be consistent with the zoning ordinance. Nonetheless, the Bank is offering the Erosion Contracts in lieu of a bond or letter of credit.

The Bank desires to remedy the immediate erosion and sedimentation issues, work cooperatively with the County, and turn the property over to an appropriate developer. The attached contracts are evidence of the Bank's efforts and the lack of a need for a bond or letter of credit from the Bank.

Attachments



COUNTY OF LINCOLN, NORTH CAROLINA
302 NORTH ACADEMY STREET, SUITE A, LINCOLNTON, NORTH CAROLINA 28092

PLANNING AND INSPECTIONS DEPARTMENT
704-736-8440 OFFICE

November 2, 2010

Fifth Third Bank
c/o Charles Krawitz
201 N. Tryon St., Suite 16000
Charlotte, NC 28202

Subject: Warning citation for zoning violations involving the Burton Creek development (Tax Parcel ID# 88709-88731)

Property owner:

This letter serves as a warning citation against Fifth Third Bank for zoning violations involving property owned by the bank. The violations are for failure to comply with certain conditions that are attached to the conditional use permit (PCUR #110A) for the Burton development off Webbs Road. The permit and the attached conditions run with the property and remain in effect. I have included copies of the original permit and amended permit with this letter.

The violations are:

- Failure to post a bond or letter of credit in the amount of \$500,000 to cover the cost of removal of sediment determined to have been deposited in Lake Norman from this development.
- Failure to employ an independent firm to monitor the depth of downstream coves on a monthly basis.
- Failure to clean up sediment flow that resulted in damages to Robert and Tracy Reiser's property at 8022 Blades Trail.

Under the Lincoln County Unified Development Ordinance, you have 10 days to correct these violations or a civil penalty may be imposed. If additional time is reasonably needed, the time limit may be extended. Please provide a written response to this warning citation within 10 days of the receipt of this letter.

You have the right to appeal this citation to the Lincoln County Zoning Board of Adjustment.

This citation pertains only to the zoning permit, and not to the erosion/sedimentation control permit for the development. Violations of that permit need to be corrected promptly.

Also, please be advised that \$653,253 is owed Lincoln County for the Burton Creek development's share of the costs of sewer improvements that have been completed in the area. If this money is not paid, the sewer flow allocation approved for the Burton Creek development is subject to be reallocated to another development.

If you would like to discuss these matters further, please feel free to contact me at (704) 748-1507.

A handwritten signature in cursive script that reads "Randy Hawkins".

Randy Hawkins
Zoning Administrator

cc: Jeff Taylor, county attorney



COUNTY OF LINCOLN, NORTH CAROLINA

302 NORTH ACADEMY STREET, SUITE A, LINCOLNTON, NORTH CAROLINA 28092

BUILDING AND LAND DEVELOPMENT
(704) 736-8440 OFFICE
(704) 736-8434 INSPECTION REQUEST
(704) 732-9010 FAX

February 22, 2005

Bob MacLeod
R & L MacLeod Investments
P.O. Box 320
Denver, NC 28037

Dear Mr. MacLeod:

This letter is to serve notice that on February 21, 2005, the Lincoln County Board of Commissioners took the following action regarding your request for a parallel conditional use rezoning (PCUR #110):

Voted 4-1 to approve the rezoning of a 249-acre tract (Parcel ID# 56262) to Planned Residential (P-R) and voted 5-0 to approve a conditional use permit for the development plan as amended to allow 350 single-family homes (including 90 patio homes) and 95 townhomes with the following conditions:

- 1) That the central access on Blades Trail shown as No. 4 on the site plan be eliminated, subject to the determination of the N.C. Department of Transportation.*
- 2) That major construction traffic come off Webbs Road and, in the secondary phasing, off Burton Lane.*
- 3) That the amenities include a swimming pool, clubhouse and playground and that they be constructed by the time the development is 50 percent built-out.*
- 4) That any improvements required by NCDOT at the intersections of Hwy. 16 and Unity Church Road, Fairfield Forest Road and Webbs Road be the responsibility of the developer.*
- 5) That, prior to the issuance of any building permits, an erosion/sedimentation control plan be submitted and approved by the N.C. Department of Environment and Natural Resources, Duke Power Lake Management and the Lincoln County Natural Resources Committee.*
- 6) That, prior to the issuance of any building permits, the developer show plans for methods and procedures to control runoff from site.*

Under the Lincoln County Zoning Ordinance, the conditional use permit will automatically expire two years from the date of this approval unless at least one building permit has been obtained for this project or a renewal is requested.

If you have any questions concerning this matter, please feel free to contact me at (704) 748-1507.

Sincerely,

A handwritten signature in cursive script, appearing to read "Randy Hawkins".

Randy Hawkins
Zoning Administrator



COUNTY OF LINCOLN, NORTH CAROLINA

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BUILDING AND LAND DEVELOPMENT
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(704) 732-9010 FAX

September 21, 2006

Greg Duncan
Burton Creek Investment LLC
PO Box 748
Monroe, NC 28111

Dear Mr. Duncan:

This letter is to serve notice that on September 18, 2006, the Lincoln County Board of Commissioners took the following action regarding your request to amend a conditional use district (PCUR #110A) to allow 385 single-family homes and no townhomes and changes in vehicular access and circulation:

Voted 4-1 to approve the changes as proposed with the following conditions:

- 1) That the developer shift Seagull Way to exist on Red Robin Trail/Sarah Drive, subject to NCDOT granting a driveway permit for that connection.*
- 2) That the technical memorandum recommended by NCDOT be prepared and that the developer and Board of Commissioners be advised of the responsibility of the developer as set forth in that memorandum.*
- 3) That the developer hire an independent firm to measure the depth of the five coves downstream from this development within 30 days of the approval of this amendment and to monitor the depth monthly and report the results to Lincoln County Building and Land Development until NCDENR gives final approval of the final phase of construction, and that the developer clean up any proven sediment flow from this development as determined by NCDENR or such other authority as the county may choose.*
- 4) That the developer provide crushed stone entries as required by NCDENR and if they have been installed that they be re-installed due to the fact that they are not effective.*
- 5) That in the areas that have been cleared that the grassing operations typically required by NCDENR begin immediately.*
- 6) That the developer post a bond or letter of credit in the amount of \$500,000 with the county to cover the cost of removal of sediment determined to have been deposited from this development under Condition #3 and that the county will withhold building permits if the developer fails to take the necessary correction action.*

If you have any questions concerning this matter, please feel free to contact me at (704) 748-1507.

Sincerely,

A handwritten signature in cursive script that reads "Randy Hawkins".

Randy Hawkins
Zoning Administrator



COUNTY OF LINCOLN, NORTH CAROLINA
302 NORTH ACADEMY STREET, SUITE A, LINCOLNTON, NORTH CAROLINA 28092

PLANNING AND INSPECTIONS DEPARTMENT
704-736-8440 OFFICE

November 23, 2010

Fifth Third Bank
c/o Charles Krawitz
201 N. Tryon St., Suite 16000
Charlotte, NC 28202

**Subject: First citation for zoning violations involving the Burton Creek development
(Tax Parcel ID# 88709-88731)**

Property owner:

On Nov. 2, 2010, a warning citation letter was sent notifying you of zoning violations involving property owned by Fifth Third Bank. Accompanying this letter is a first citation for these violations.

The violations are for failure to comply with certain conditions that are attached to the conditional use permit (PCUR #110A) for the Burton Creek development off Webbs Road. The violations are:

- Failure to post a bond or letter of credit in the amount of \$500,000 to cover the cost of removal of sediment determined to have been deposited in Lake Norman from this development.
- Failure to employ an independent firm to monitor the depth of downstream coves on a monthly basis.
- Failure to clean up sediment flow that resulted in damages to Robert and Tracy Reiser's property at 8022 Blades Trail.

This citation carries a civil penalty of \$25. Under the Unified Development Ordinance, you have 10 days to correct these violations or you will be subject to an additional civil penalty starting at \$50 per day and increasing weekly if the violations are not corrected. You have the right to appeal this citation to the Lincoln County Zoning Board of Adjustment.

If you would like to discuss this matter, please feel free to contact me at (704) 748-1507.

A handwritten signature in cursive script that reads "Randy Hawkins".

Randy Hawkins
Zoning Administrator

cc: Jeff Taylor, county attorney



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PLANNING AND INSPECTIONS
DEPARTMENT
(704) 736-8440 OFFICE
(704) 736-8434 INSPECTION REQUEST
(704) 732-9010 FAX
www.lincolncounty.org

Citation Number 1
Case Number 88709
Date Nov. 23, 2010
Location of Violation: Burton Creek development off Webbs Road
Name: First Third Bank, c/o Charles Karwitz
Address: 201 N. Tryon St., Suite 16000
City: Charlotte State: NC Zip: 28202

You are charged with violations of Lincoln County's zoning regulations as set forth below:

Failure to comply with conditional use permit PCUR #110A

Officer:

Randy Hawkins

Under the provisions of the Lincoln County Unified Development Ordinance, a penalty of \$25 is hereby assessed. If you fail to pay the penalties within 20 days, the county may recover the penalties in a civil action in the nature of debt. Failure to correct the violation within ten (10) days of the date indicated shall result in the issuance of an additional citation.

This penalty may be paid in the office of ~~Lincoln County~~ Planning and Inspections Department located at 302 N. Academy Street, Lincolnton, N.C. Business hours are from 8:00 a.m.-5:00 p.m. Monday through Friday.



COUNTY OF LINCOLN, NORTH CAROLINA

302 NORTH ACADEMY STREET, SUITE A, LINCOLNTON, NORTH CAROLINA 28092

PLANNING AND INSPECTIONS DEPARTMENT
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704-732-9010 FAX

December 15, 2010

Fifth Third Bank
c/o Charles Krawitz
201 N. Tryon St., Suite 16000
Charlotte, NC 28202

Subject: Second citation for zoning violations involving the Burton Creek development (Tax Parcel ID# 88709-88731)

Property owner:

On November 23, 2010, a first citation letter was sent notifying you of violations of the Lincoln County Unified Development Ordinance involving Fifth Third Bank's property off Webbs Road known as the Burton Creek development. Because these violations have not corrected, accompanying this letter is a second citation.

The violations are for failure to comply with certain conditions that are attached to the conditional use permit (PCUR #110A) for the development. The violations are:

- Failure to post a bond or letter of credit in the amount of \$500,000 to cover the cost of removal of sediment determined to have been deposited in Lake Norman from this development.
- Failure to employ an independent firm to monitor the depth of downstream coves on a monthly basis.
- Failure to clean up sediment flow that resulted in damages to Robert and Tracy Reiser's property at 8022 Blades Trail.

This citation carries a civil penalty that starts at \$50 per day and increases weekly if the violations are not corrected (see enclosed citation form). You have the right to appeal this citation to the Lincoln County Zoning Board of Adjustment.

If you have any questions or would like to discuss this matter, please feel free to contact me at (704) 748-1507. Our office hours are 8 a.m. to 5 p.m., Monday through Friday.

A handwritten signature in cursive script that reads "Randy Hawkins".

Randy Hawkins
Zoning Administrator

cc: Jeff Taylor, county attorney



COUNTY OF LINCOLN, NORTH CAROLINA

302 NORTH ACADEMY STREET, SUITE A, LINCOLNTON, NC 28092

PLANNING AND INSPECTIONS
DEPARTMENT

(704) 736-8440 OFFICE

(704) 736-8434 INSPECTION REQUEST

(704) 732-9010 FAX

www.lincolncounty.org

Citation Number

2

Case Number

88709

Date

Dec. 15, 2010

Location of Violation: Burton Creek development off Webbs Road

Name:

First Third Bank, c/o Charles Karwitz

Address:

201 N. Tryon St., Suite 16000

City:

Charlotte

State: NC

Zip: 28202

You are charged with violations of Lincoln County's zoning regulations as set forth below:

Failure to comply with conditional use permit PCUR #110A

Officer:

Randy Hawkins

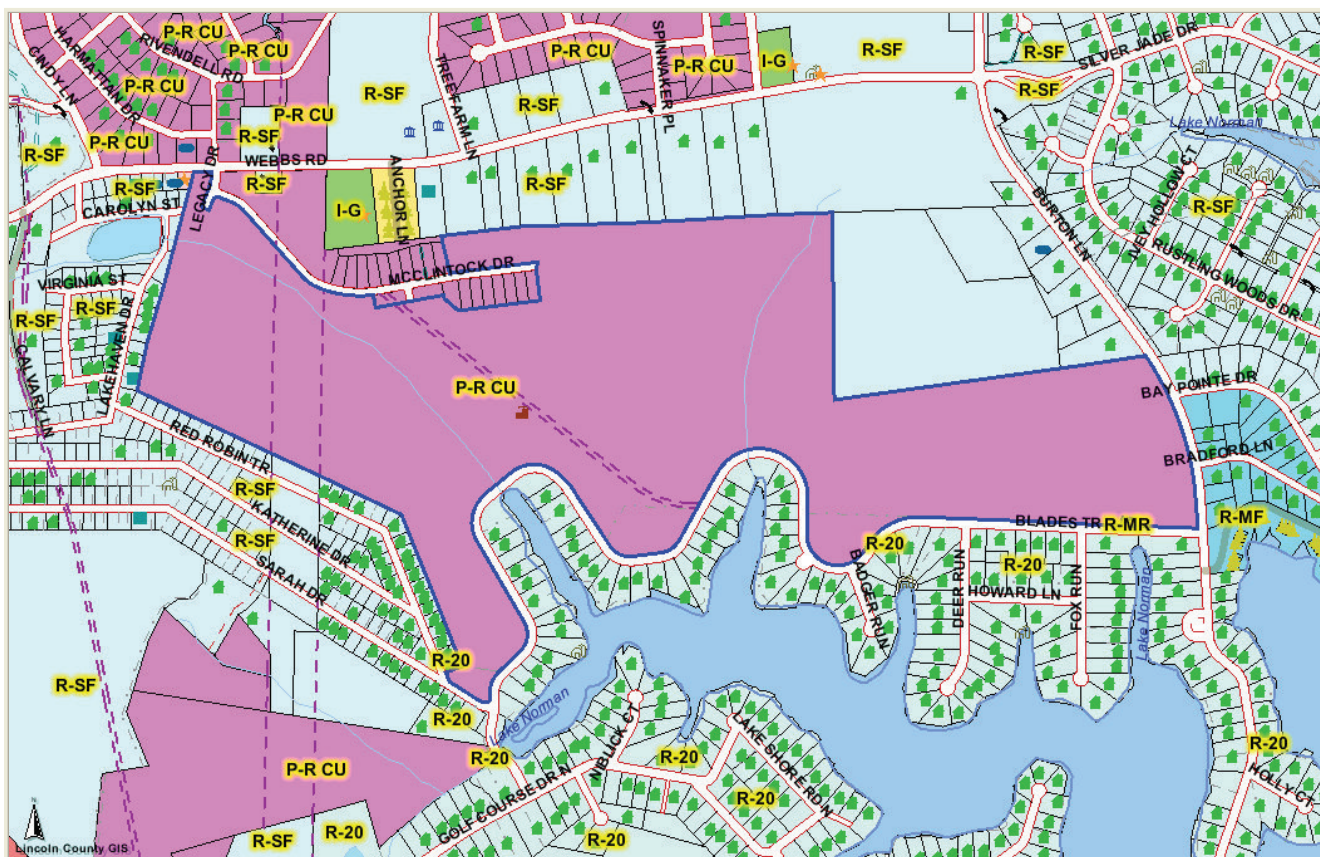
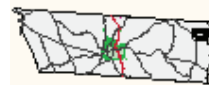
Under the provisions of the Lincoln County Unified Development Ordinance, a penalty of \$50 per day is hereby assessed. If these violations are not corrected, the penalty will increase to \$100 per day after seven days, to \$150 per day after 14 days, to \$250 per day after 21 days, and to \$500 per day after 28 days. If you fail to pay any penalties owed within 20 days, the county may recover the amount in a civil action in the nature of debt.

Penalties may be paid in the office of Lincoln County Planning and Inspections Department located at 302 N. Academy Street, Lincolnton, N.C. Business hours are from 8 a.m. to 5 p.m. Monday through Friday.



Lincoln County, NC

Office of the Tax Administrator, GIS Mapping Division
 Lincoln County and its mapping contractors assume no legal responsibility for
 the information contained on this map. This map is not to be used for land
 conveyance. The map is based on NC State Plane Coordinate System 1983 NAD.
 Date: 2/2/2011 Scale: 1 Inch = 1200 Feet



PHOTOS



Photo Not
Available

PARCEL INFORMATION FOR 4604-99-5391

Parcel ID	88709	Owner	FIFTH THIRD BANK
Map	4604-08	Mailing	10200 DAVID TAYLOR DR
Account	0228470	Address	CHARLOTTE NC 28262
Deed	2207-496	Recorded	9/15/2010
Land Value	\$3,349,634	Total Value	\$3,349,634
----- All values are for tax year 2010. -----			
Subdivision	Lot BLADES TRAIL/WESTPORT TRACT		9-5
Description	UNDEV BURTON CREEK PH2M1		Plat
Address	MCCLINTOCK DR		Deed Acres
Township	CATAWBA SPRINGS		Tax Acres
Improvement	No Improvements		231.52
Zoning District	Calculated Acres	Voting Precinct	Calculated Acres
P-R CU	231.43	WESTPORT (WP32)	231.52
Unknown	0.09		
Watershed Class		Sewer District	
WS-IVC	230.68	In the sewer District	231.52
WS-IVP	0.84		
2000 Census County		Tract	Block
37109		071100	2000
37109		071200	1024
37109		071200	1046
37109		071200	1047
37109		071200	1050
FloodZone Description			Panel
AE	SPECIAL FLOOD HAZARD AREA BASE ELEVATION DETERMINED - 100 YEAR		4604 0.1
AE	SPECIAL FLOOD HAZARD AREA BASE ELEVATION DETERMINED - 100 YEAR		4614 0.01
X	NO FLOOD HAZARD		4604 115.24
X	NO FLOOD HAZARD		4605 24.64
X	NO FLOOD HAZARD		4614 80.28
X	NO FLOOD HAZARD		4615 11.24



MECA

COLDWELL BANKER COMMERCIAL

MECA

1815 S. Tryon Street, Suite A
Charlotte, North Carolina 28203
(BUS) 704.971.3000
(FAX) 704.348-2477

January 5, 2011

Charles Krawitz
Fifth Third Bank
201 N. Tryon Street
Charlotte, NC 2820277

Re: Burton Creek Consulting Agreement

Dear Charles,

The following is a fee agreement ("Agreement") for construction management and consulting services between Coldwell Banker Commercial MECA ("Management Firm") and Fifth Third Bank ("Client") related to erosion control and compliance issues at the Burton Creek Subdivision in Lincoln County, NC.

Our services will include, among others as needed, the following:

- Onsite management of stabilization work
- Coordinate contractors and engineer
- Negotiate with local and State agencies
- Manage the ongoing required site erosion control maintenance

Our approved fee schedule is as follows:

Travel Expenses: \$75.00 per hour + \$0.48 per mile

Management Fee: \$150.00 per hour

Lodging and Meals: N/A

Construction work: Our firm will not be providing actual construction services but instead coordinating and supervising contractor work, negotiating with Lincoln County and dealing with other parties such as adjoining property owners. All construction contracts will be between Fifth Third Bank and the contractor directly.

Note: Professional Engineering services are not expected to be required at this time. Should Lincoln County require services of a civil engineer those fees will be incurred by Fifth Third at customary hourly rates. The need for such services will be approved by Fifth Third prior to authorization. The cost of those services, if required, will not exceed \$1200.

Construction Management Estimate:

On site management	8 Hours per week – 6 weeks @\$150.Hr
Admin and County Meetings	15 Hours
Trip Charge	2 Hours twice a week @ \$75/Hr
Mileage Fee	84 mi. round trip twice a week @ .48/mile
Estimated Management Total	\$12,258.00

Site Inspections- It should be noted that once in compliance weekly onsite inspections must be performed per State statute. The cost to complete the inspections and prepare the required report will cost \$750.00 per month and are not included in this scope of work.

Estimated Project Total

Site Construction (SM Smith)	\$ 87,842.00
Stabilization (ECS)	\$ 98,010.00
Dredging (Seawalls)	\$ 33,650.00
Management (CBC MECA):	<u>\$ 12,258.00</u>

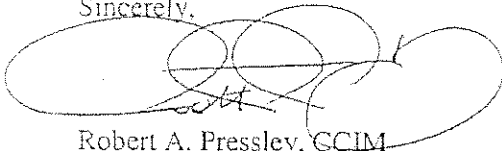
Estimated Project Total \$231,760.00

Burton Creek Stabilization Proposal, cont...
November 15, 2011
Page 3

Provided these terms are acceptable please sign below where indicated and return this document and the attached contractor agreements to my attention. We will immediately begin mobilization.

In the event you have questions lease call me at (704) 904-4053.

Sincerely,



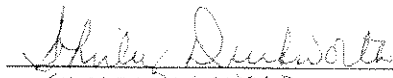
Robert A. Pressley, GCIM
President

CC: John Brunner

ACCEPTED AND AGREED:

FIFTH THIRD BANK

By:


SHIRLEY DUCKWORTH

Title:

VICE PRESIDENT

Date:

1-6-2011

EROSION CONTROL SERVICES, INC.

Agreement between Contractor and Owner

Contract amount: \$ 98,010.65

This Agreement is entered into as of January 5, 2011

Between Owner:

Fifth Third Bank
Attn: Chris C. Cagle, VP
Asset Disposition Team
165 Nash Street
Lawrenceville, GA 30046
Phone: (678) 906-4721 - Atlanta
Phone: (704) 808-5135 - Charlotte
Fax: (770) 995-9601

and Contractor

Erosion Control Services, Inc.
4006 Vandyke Ct.
Monroe, NC 28110
Attn: Grayson Glover
Phone: (704) 821-4427
Fax: (704) 821-2628

The Project:

Burton Creek Subdivision
Denver, NC

Contractor and Owner (collectively, "the Parties") agree as follows:

ARTICLE 1

THE CONTRACT DOCUMENTS

1.1 The Contract Documents comprising the agreement between Contractor and Owner (the "Contract Documents") consist of this Agreement, including the attached Exhibits, any modifications or amendments of this Agreement, and the following Exhibits:

Exhibits: A. Scope of the Work-on site work associated with Site Stabilization
 B. Scope of the Work-work associated with the repairs to the Reiser and Franck properties.

1.2 Contractor acknowledges that it has reviewed or had the opportunity to review the Contract Documents, and that is bound by the Contract Documents.

1.3 If inconsistencies or omissions appear in the Contract Documents, Contractor will notify Owner in writing within three (3) working days after Contractor discovers any inconsistency or omission.

ARTICLE 2

THE WORK

2.1 Contractor shall use its best care, skill, and diligence in performing the work described in this Agreement (the "Work"). Contractor shall be solely responsible for performing the Work, including the construction methods, techniques, means, and sequences for coordinating and completing various portions of the Work.

2.2 The Scope of the Site Stabilization Work is contained in Exhibits A and B and includes the stated tasks required to cause the Burton Creek Subdivisions ("the Site") to be returned to full compliance with the requirements of their NPDES Stormwater Permits.

2.3 Ongoing Maintenance Work (If any) will be provided under separate contract at unit prices to be stated therein. "Ongoing Maintenance Work" is defined as all work not set out in Exhibits A and B and other work necessary to comply with terms and conditions of applicable permits, laws, and regulations of regulating agencies.

ARTICLE 3

TIME OF COMMENCEMENT AND COMPLETION, TERMINATION

3.1 The Work shall be commenced within 5 business days after final acceptance by both Parties. The Site Stabilization Work specified in Exhibits A and B shall be completed within 60 calendar days thereafter, conditions permitting. Upon completion of the Site Stabilization Work, Contractor shall deliver written certification to Owner that all Site Stabilization Work has been completed in compliance with Exhibits A and B and all applicable State and Federal regulations and requirements.

3.2 Time is of the essence for the Site Stabilization Work.

ARTICLE 4

THE CONTRACT SUM

4.1 Owner shall, subject to the other provisions of this Agreement, pay Contractor in current funds for performing the Burton Creek Stabilization Work **Ninety Eight Thousand and Ten Dollars and 65/100 (\$98,010.65)**. Owner shall pay for the Site Stabilization Work within 30 days of receipt of the certificate provided for in paragraph 3.1 above.

ARTICLE 5

INSURANCE

5.1 Before Contractor does any work at or prepares or delivers material to the Project, Contractor shall provide to Owner certificates of insurance evidencing coverage acceptable to Contractor in the following amounts:

5.1.1 Worker's Compensation. Worker's compensation insurance coverage is required with the following minimum limits of liability:

Each Accident	\$500,000
Disease - Policy Limit	\$500,000
Disease - Each Employee	\$500,000

Contractor shall furnish Owner a certificate of insurance confirming the liability coverages and the waiver of subrogation.

5.1.2 General Liability. Commercial liability insurance on an occurrence basis insuring personal injury and property damage against the hazards of Premises and Operations.. Products and Completed Operations. Independent Contractor's and Contractual Liability (specifically covering the indemnity set forth in Subparagraph 9.10) and the following minimum limits of liability:

- Minimum \$1,000,000 General Aggregate
- Minimum \$1,000,000 Products--Comp/OP Aggregate
- Minimum \$1,000,000 Personal & Advertising Injury
- Minimum \$1,000,000 Each Occurrence
- Minimum \$1,000,000 Fire Damage (anyone fire)
- Medical Expense \$5,000 (any one person)

Umbrella Liability (Excess of above underlying limits of Employer's Liability, General Liability and Auto Liability)

- Minimum \$2,000,000 per occurrence
- Minimum \$2,000,000 Aggregate

Such insurance shall name Owner as an additional insured party. Contractor shall furnish a certificate of insurance confirming the liability coverages and that Owner is an additional insured.

5.1.3 Automobile Liability. Comprehensive automobile liability insurance in connection with owned, hired, and non-owned automobiles with the minimum limits of \$1,000,000 combined. Such insurance shall name Owner as an additional insured party. Contractor shall furnish a certificate of insurance confirming the liability coverages and that Owner is an additional insured.

5.1.4 The certificates evidencing the above-required coverages shall provide that such coverage shall not be cancelled or reduced except by written notice to Owner at least 30 days before the effective date of such cancellation or material reduction in coverage. New or renewal certificates shall evidence all the above required coverages.

ARTICLE 6 RIGHTS AND RESPONSIBILITIES

6.1 Contractor is prohibited from delegating, transferring, conveying, subcontracting, relinquishing or otherwise disposing of the whole or any part of its duties under this Agreement without the prior written approval of Owner.

ARTICLE 7 EXECUTION AND PROGRESS OF THE WORK

7.1.1 Owner hereby agrees to provide Contractor with access to the Site to perform the Site Stabilization Work.

7.1.2 Contractor shall cooperate with Owner in scheduling and performing the Work to avoid conflict or interference with the work of others, if any other activities are occurring on the site.

7.1.3 Contractor shall pay for all materials, equipment, and labor used in, or in conjunction with, the performance of the Work and shall furnish satisfactory evidence, when requested by Owner, to verify compliance with this requirement.

7.1.4 Contractor shall furnish all of the labor, materials, equipment, and services, including, but not limited to, competent supervision, shop drawings, samples, tools, and equipment as are necessary for the proper performance of the Work in accordance with the Contract Documents.

7.1.5 Contractor acknowledges that it has visited the Site and visually inspected the general and local conditions and reviewed all soils and other reports that could affect the Work. Any failure of Contractor to reasonably ascertain from a visual inspection of the Site, the general and local conditions that could affect the Work, will not relieve Contractor from its responsibility to properly complete the Work without additional expense to Owner.

7.1.6 Owner is entitled to rely on the accuracy and completeness of any professional certifications required to be held by Contractor to perform the Work.

7.1.7 Contractor shall schedule and perform all inspections of the Work or portions of the Work. Contractor shall give proper written notice to all required parties of such inspections. Contractor shall bear all expenses associated with inspections, and approvals required of Contractor to perform the Work.

7.1.8 Every part of the Work shall be executed in accordance with the Contract Documents in a good and workmanlike manner. All materials used in the Work shall be furnished in sufficient quantities to facilitate the proper and expeditious execution of the Work, and shall be new except as may be expressly provided otherwise in the Contract Documents. No substitutions shall be made in the Work unless permitted in the Contract Documents and only then upon Contractor's first receiving all approvals, in writing, from Owner.

7.1.9 Contractor is required to correct in a timely fashion any Work rejected by Owner for failing to comply with the Contract Documents. Contractor shall correct at its cost and time and bear the expense of additional services for any nonconforming.

ARTICLE 8 LAWS, PERMITS, FEES AND NOTICES

8.1.1 Contractor shall give all notices and comply with all laws, ordinances, rules, regulations, codes, and orders of any public authority bearing on the performance of the Work. Contractor shall secure and pay for all permits and governmental fees, licenses, sales tax, and inspections necessary for the proper execution and completion of the Work. If Contractor performs any portion of the Work contrary to any Laws, then Contractor shall assume full responsibility for correcting such Work and shall bear all associated costs, charges, fees, damages, and expenses necessarily incurred to remedy the violation, including fines for noncompliance, defense costs, and costs of corrective measures to return the project to compliance with requirements of permits, laws, and regulations.

8.1.2 Contractor shall comply with Laws relating to employment of individuals, including social security acts, unemployment compensation acts, and workers' compensation acts insofar as applicable to the performance of this Agreement.

ARTICLE 9 WORK OF OTHERS

9.1.1 In carrying out the Work, Contractor shall take necessary precautions to protect the work of other trades from damage caused by its operations.

ARTICLE 10 SAFETY PRECAUTIONS AND PROCEDURES

10.1.1 Contractor shall take all reasonable safety precautions regarding the Work, shall comply with all safety measures initiated by Contractor and with all Laws for the safety of persons or property in accordance with the requirements of the Contract Documents. Such obligation shall include taking reasonable steps to protect:

- (a) employees and other persons at the site;
- (b) materials and equipment stored at the site or at off-site locations for use in performance of the Work; and
- (c) all property and structures located at the site and adjacent to work areas, whether or not the property or structures are part of the Sites or involved in the Work.

Contractor shall inform the Owner in writing prior to the Contractor's mobilization on the Sites the name and title of the Contractor's competent person for administration of the Contractor's safety program and for OSHA- and other governmental agency compliance requirements, including compliance with NPDES Stormwater Permits. Contractor must inform Owner in writing in advance of any change in status of the Contractor's competent person.

ARTICLE 11. CLEANING UP

11.1 Contractor shall follow Owner's cleanup directions, and at all times keep the Project free from debris resulting from the Work and place all debris in job site containers.

11.2 If Contractor fails to comply, then Owner may implement appropriate cleanup measures without further notice and deduct the cost thereof from any amounts due or to become due Contractor under this Agreement.

ARTICLE 12. WARRANTY

12.1 Contractor warrants to the Owner that all materials and equipment furnished shall be new unless otherwise specified, and that all Work shall be of good quality, free from faults and defects, and in conformance with the Contract Documents and Laws, permits, and regulations applicable to work under this Agreement. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The warranty provided in this paragraph shall be in addition to any other warranty or remedy provided by law or any of the Contract Documents.

12.2 Contractor warrants that its Site Stabilization Work shall achieve full stabilization (as defined by applicable State and Federal regulations) with the exception of damage caused by extraordinary weather events (as defined by applicable State and Federal regulations).

12.3 Omitted.

12.4 The warranties survive performance and termination of this Agreement.

ARTICLE 13. INDEMNIFICATION

13.1 Contractor shall indemnify, protect, defend, and hold harmless the Owner and its agents, consultants, and employees (collectively, "**Indemnitee**"), from and against any and all demands, claims, suits, causes of action, liabilities, losses, costs, settlements, damages, and judgments (including, without limitation, court costs and attorneys' fees) (collectively "**Claims**"), whether arising in equity, at common law, or by statute, including unfair trade practices claims, or under the law of contracts or torts (including, without limitation, negligence and strict liability without regard to fault), of every kind or character (including, without limitation, Claims for personal injury or real or personal property damage and economic loss), arising out of the performance of the Work, due to or arising out of the negligence or misconduct of, or breach of contract by, Contractor, any of its equipment or material suppliers, or any of the foregoing person's respective agents, representatives, suppliers, employees or other persons directly or indirectly employed by them or for whose actions they may be liable or arising out of the Work. The indemnification obligations arising under this paragraph shall not be construed to negate, abridge or reduce other rights or obligations of indemnification that would otherwise exist as to a party or person described in this paragraph.

13.2 In any claim against the Owner any of its agents or employees by any employee of Contractor, anyone directly or indirectly employed by Contractor or anyone for whose acts Contractor may be liable, the indemnification obligation under paragraph 13.1 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor under workers' or workmen's compensation acts, disability benefits acts or other employee benefit acts.

13.3 Contractor waives all rights against Owner and its agents or employees, for loss or damage to the extent covered by builder's risk or any other insurance, except such rights as it may have to the proceeds of such insurance.

ARTICLE 14 ARBITRATION

14.1 All claims, disputes, and other matters in question arising out of or relating to this Agreement or breach thereof, shall be decided by arbitration. Arbitration shall be conducted in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then prevailing unless the parties mutually agree otherwise. Arbitration will be held in Charlotte, NC, before a single arbitrator. The arbitrator in such Arbitration shall award attorneys' fees and costs to the prevailing party. North Carolina law shall apply.

14.2 Except by written consent of the person sought to be joined, no arbitration arising out of or relating to the Contract Documents shall include, by consolidation, joinder or in any other manner, any person or entity not a party to this Agreement under which such arbitration arises, unless it is shown at the time the demand for arbitration is filed that (1) such person or entity is substantially involved in a common question of fact or law, (2) the presence of such person or entity is required if complete relief is to be accorded in the arbitration, and (3) the interest or responsibility of such person or entity in the matter is not insubstantial. Any disagreement between Owner and Contractor regarding whether such person should be joined shall be determined by Arbitration. Owner and Contractor consent with this agreement to Arbitrate and any other written agreement to Arbitrate with an additional person or persons referred herein and that such Agreement shall be specifically enforceable under the prevailing arbitration law.

14.3 In such Arbitration, no party shall be required to conduct discovery, including deposition discovery or exchange of documents, except that each party shall provide copies of all documents that are to be offered into evidence 30 days prior to such hearing.

14.4 The award rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

14.5 If any claim shall be made by Owner against Contractor that any part of the Work performed by Contractor hereunder is defective or fails to comply with the plans and specifications, Contractor shall perform at its expense the Work necessary to correct the defective or non-complying Work to the satisfaction of the Owner, including repairs to the work of the trades damaged by the rework of Contractor. If Contractor disputes the claim of the Owner, Contractor shall notify Owner that Contractor is performing the work under protest and will submit to Contractor a written demand for compensation for extra work which Contractor will submit to the Owner.

14.6 Contractor shall carry on the Work notwithstanding the existence of a claim under this subsection, unless this Agreement has been terminated. If Contractor is continuing to perform in accordance with this Agreement, Owner shall continue to make payments as required by this Agreement.

14.7 To the extent not prohibited by their contracts with others, the claims and disputes of Owner and Contractor concerning a common question of fact or law, shall be heard by the same arbitrator in a single proceeding.

ARTICLE 15 MISCELLANEOUS PROVISIONS

15.1 If either party becomes involved in litigation or arbitration arising out of this Agreement or the performance thereof, the court or arbitration panel in such litigation or arbitration or in a separate suit shall award reasonable attorneys' fees to the prevailing party.

15.2 Any notices required or permitted under this Agreement shall be in writing and shall be deemed duly served only if hand-delivered, sent by a nationally recognized overnight courier service, sent by facsimile transmission or given by certified mail, returned receipt requested, addressed to the address contained in this Agreement, as it may be changed from time to time by written notice given by one party to the other. Notice shall be effective upon delivery to the intended addresses of the addressee.

15.3 Section headings herein are inserted only for convenience or reference, and shall in no way define, limit or prescribe the scope or extent of any provision of this Agreement.

15.4 All previous oral or written promises, agreements, and/or representations relating to this Agreement are hereby superseded to the extent they may be inconsistent herewith, it being expressly agreed and understood that the terms and provisions of this Agreement shall constitute the full and complete agreement between Owner and Contractor.

15.5 If any term or provision of this Agreement shall be held to any extent to be invalid or unenforceable, the remaining terms and conditions of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by Law.

15.6 All covenants, agreements, indemnities, guaranties and warranties made by Contractor shall survive completion of the Work and any payment of the Contract Sums, and shall inure to the benefit of Owner and its respective successors and assigns.

15.7 No waiver by Contractor, whether express or implied, of any breach or failure to comply with any provision of this Agreement shall be deemed to be a waiver of any such breach or failure to comply with any other provision of this Agreement or of any subsequent breach by Contractor of the same provision or any other provisions.

15.8 Owner shall pay the sum herein set forth in current funds for such work and materials, and in the manner and at the time herein set forth. Such sum is intended to include all increases in cost, foreseen or unforeseen, including without limiting the generality of the foregoing, taxes, labor, materials, and transportation costs, all of which are to be borne solely by Contractor. All loss or damage arising from any of the Work performed under this Agreement through unforeseen or unusual obstructions, difficulties or delays which may be encountered in the prosecution of the Work, or through the action of the elements, shall be borne by Contractor. No payment made under this Agreement shall be conclusive of the performance of this Agreement, either wholly or in part, nor shall it be construed to be an acceptance of defective work or improper materials, or an approval of any of the items in any requisition made or bill rendered.

15.9 Contractor shall indemnify, defend and save Owner harmless from and against all liability for fines, penalties, or other enforcement actions, claims, and liens for labor performed or equipment or material used or furnished to be used in connection with the Work, including any costs for attorney's fees, premiums for bond required by any title company, or Owner, and all incidental or consequential damages incurred by Owner as a result of such fines, penalties, or other enforcement actions, claims or liens. Further, in case suit on such claim is brought, Contractor shall defend the suit at its cost, and shall pay and satisfy any such fines, penalties, or other enforcement actions, lien or judgment as may be established by the decision of the court in the suit. Contractor shall, within ten days after written demand, cause the effect of any suit or lien to be removed from the Project and to provide corrective measures to remedy violations of Laws, and in the event Contractor shall fail to do so, Owner may use whatever means, in its discretion, it deems appropriate to cause the violations to be remediated or lien to be removed or dismissed and the cost thereof, together with reasonable attorneys' fees, shall be immediately due and payable to Owner by Contractor. Contractor may litigate any lien or suit above described provided it causes the effect thereof to be removed promptly, in advance, from the Project, and shall further do such things as may be necessary to cause the Owner not to withhold any monies due to Contractor from the Owner by reason of such liens or suits. Notwithstanding anything to the contrary set forth above in this paragraph, Contractor shall not be construed to be foregoing its lien rights in the event of a dispute over payments due to services rendered and materials furnished to the Sites.

OWNER

Fifth Third Bank
Attn: Chris C. Cagle, VP
Asset Disposition Team
165 Nash Street
Lawrenceville, GA 30046
Phone: (678) 906-4721 - Atlanta
Phone: (704) 808-5135 - Charlotte
Fax: (770) 995-9601

CONTRACTOR

Erosion Control Services, Inc.
4006 Vandyke Ct.
Monroe, NC 28110
Attn: Grayson Glover
Phone: (704) 821-4427
Fax: (704) 821-2628

BY Shirley Duckworth, VP
Signature

SHIRLEY DUCKWORTH
Printed Name

VICE PRESIDENT
Title

1/4/2011
Date

BY Grayson Glover
Signature

GRAYSON GLOVER
Printed Name

PRESIDENT
Title

1/05/2011
Date

Exhibit "A"



Erosion Control Services

4806 Van Dyke Ct., Monroe, NC 28110

O: 704-821-4427 F: 704-821-2528

www.erosioncontrolservices.biz

CBC MECA
John Brunner
Burton Creek Project
11/29/2010

PHASE 3

1. stabilize entrance area to phase 3: 1.56 acres permanent seed & straw @ \$1,300/AC = \$2,028.00
2. slope at basin #17: 1,945 SY of curlex matting with permanent seed mix @ \$1.35/SY = \$2,625.75
3. slope at right of phase 3 entrance: 1,045 SY of Flexterra hydromulch with permanent seed mix @ \$1.17/SY = \$1,222.65
4. temp basin between basins #17 & #15: 1,010 SY of 70:30 blended hydromulch with permanent seed mix @ \$0.55/SY = \$555.50
5. basin #15: 4,104 SY of 70:30 blended hydromulch with permanent seed mix @ \$0.55/SY = \$2,257.75; 0.61 acres permanent seed & straw @ \$1,300/AC = \$793.00

Total for Phase 3: \$9,482.65

PHASE 2

1. paved areas: bushhog all right-of-ways, weed eat curb line, clean debris from storm inlet grates and remove old rotten silt fence: \$3,100.00
2. basin #14: 300 LF of silt fence for sediment containment @ \$1.50/LF = \$450.00; 5,135 SY of 70:30 blended hydromulch with permanent seed mix @ \$0.55/SY = \$1,724.25; 2.46 acres permanent seed & straw @ \$1,300/AC = \$3,198.00

3. creek crossing between basins #13 & #14: repair creek banks: 1,800 SY of C-125 coconut matting with permanent seed mix @ \$2.25/SY = \$4,050.00
4. basin #13: 1.18 acres permanent seed & straw @ \$1,300/AC = \$1,534.00
5. basin #12: 1,475 SY of 70:30 blended hydromulch @ \$0.55/SY = \$811.25; 0.96 acres permanent seed & straw @ \$1,300/AC = \$1,248.00
6. basin #11: 1,435 SY of 70:30 blended hydromulch @ \$0.55/SY = \$789.25; 1.08 acres permanent seed & straw @ \$1,300/AC = \$1,404.00; 400 LF of coir baffles inside basin @ \$2.75/LF = \$1,100.00
7. basin #9: 1,320 SY of 70:30 blended hydromulch @ \$0.55/SY = \$726.00; 1.15 acres permanent seed & straw @ \$1,300/AC = \$1,495.00
8. basin #8: 1,175 SY of 70:30 blended hydromulch @ \$0.55/SY = \$646.25; 0.92 acres permanent seed & straw @ \$1,300/AC = \$1,196.00
9. lower half of phase 2 drainage area: 27.90 acres permanent seed & straw @ \$1,300/AC = \$36,270.00
10. lot 123: 0.46 acres permanent seed & straw @ \$1,300/AC = \$598.00
11. lots 128 - 135 and rear cut slope: 2.94 acres permanent seed & straw @ \$1,300/AC = \$3,822.00

Total for Phase 2: \$63,162.00

PHASE 1

1. basin #1: 2,475 SY of 70:30 blended hydromulch @ \$0.55/SY = \$1,361.25; 2.07 acres permanent seed & straw @ \$1,300/AC = \$2,691.00
2. basin #4: 1,910 SY of 70:30 blended hydromulch @ \$0.55/SY = \$1,050.50; 0.78 acres permanent seed & straw @ \$1,300/AC = \$1,014.00
3. basin #8 and road leading to it: 1,530 SY of 70:30 blended hydromulch @ \$0.55/SY = \$841.50; 1.27 acres permanent seed & fertilizer @ \$1,300/AC = \$1,651.00
4. basins #6 & #7: 2,890 SY of 70:30 blended hydromulch @ \$0.55/SY = \$1,589.50; 2.11 acres permanent seed & straw @ \$1,300/AC = \$2,743.00

5. basin #5: 1.12 acres permanent seed & straw @ \$1,300/AC = \$1,456.00
6. drainage area above basins #6 & #7: 1.68 acres permanent seed & straw @ \$1,300/AC = \$2,184.00
7. basin #2: 94% S/V of T5/RU blended hydromulch @ \$58.50 = \$547.25; 1.04 acres permanent seed & straw @ \$1,300/AC = \$1,352.00

Total for Phase 3: \$18,701.00

TOTAL COST FOR ENTIRE PROJECT: \$91,345.65

Exhibit "B"



Erosion Control Services

4906 Van Dyke Ct., Monroe, NC 28110

O: 704-521-4427 F: 704-521-2628

www.erosioncontrolservices.biz

CBC MECA

John Brunner

Reiser & Frank Property

11/02/2010

1. 300 LF of coir baffles (in woods below basin #11) @ \$2.75/LF = \$825.00
2. 18 hours labor (to spread wood mulch in woods below basin #11) @ \$30.00/HR = \$540.00
3. replace damaged crape myrtle and juniper shrubs: \$3,500.00
4. 4,000 SF of fescue sod (to repair yard damage) @ \$0.45/SF = \$1,800.00

Total with sod: \$6,665.00

S.M. SMITH AND SONS, INC.

Agreement between Contractor and Owner

Contract amount: \$ 87,842.00

This **Agreement** is entered into as of January 4, 2011

Between **Owner:**

Fifth Third Bank
Attn: Chris C. Cagle, VP
Asset Disposition Team
165 Nash Street
Lawrenceville, GA 30046
Phone: (678) 906-4721 - Atlanta
Phone: (704) 808-5135 - Charlotte
Fax: (770) 995-9601

and **Contractor**

S.M. Smith and Sons, Inc.
10107 Truelight Church Road
Charlotte, NC 28277
Attn: Michael Smith
Phone: (704) 545-4177
Fax (704) 545-4172

The **Project:**

Burton Creek Subdivision
Denver, NC



Contractor and Owner (collectively, "the Parties") agree as follows:

ARTICLE 1

THE CONTRACT DOCUMENTS

1.1 The Contract Documents comprising the agreement between Contractor and Owner (the "**Contract Documents**") consist of this Agreement, including the attached Exhibits, any modifications or amendments of this Agreement, and the following Exhibits:

Exhibits: A. Scope of the Work-on site earthwork associated with Site Stabilization
 B. Scope of the Work-earthwork associated with the repairs to the Reiser and Franck properties.

1.2 Contractor acknowledges that it has reviewed or had the opportunity to review the Contract Documents, and that is bound by the Contract Documents.

1.3 If inconsistencies or omissions appear in the Contract Documents, Contractor will notify Owner in writing within three (3) working days after Contractor discovers any inconsistency or omission.

ARTICLE 2

THE WORK

2.1 Contractor shall use its best care, skill, and diligence in performing the work described in this Agreement (the "Work"). Contractor shall be solely responsible for performing the Work, including the construction methods, techniques, means, and sequences for coordinating and completing various portions of the Work.

2.2 The Scope of the Site Stabilization Work is contained in Exhibits A and B and includes the stated tasks required to cause the Burton Creek Subdivisions ("the Site") to be returned to full compliance with the requirements of their NPDES Stormwater Permits.

2.3 Ongoing Maintenance Work (If any) will be provided under separate contract at unit prices to be stated therein. "Ongoing Maintenance Work" is defined as all work not set out in Exhibits A and B and other work necessary to comply with terms and conditions of applicable permits, laws, and regulations of regulating agencies.



ARTICLE 3

TIME OF COMMENCEMENT AND COMPLETION, TERMINATION

3.1 The Work shall be commenced within 5 business days after final acceptance by both Parties. The Site Stabilization Work specified in Exhibits A and B shall be completed within 60 calendar days thereafter, conditions permitting. Upon completion of the Site Stabilization Work, Contractor shall deliver written certification to Owner that all Site Stabilization Work has been completed in compliance with Exhibits A and B and all applicable State and Federal regulations and requirements.

3.2 Time is of the essence for the Site Stabilization Work.

ARTICLE 4

THE CONTRACT SUM

4.1 Owner shall, subject to the other provisions of this Agreement; pay Contractor in current funds for performing the Burton Creek Stabilization Work **Eighty Seven Thousand Eight Hundred and Forty Two Dollars and 00/100 (\$87,842.00**. Owner shall pay for the Site Stabilization Work within 30 days of receipt of the certificate provided for in paragraph 3.1 above.

ARTICLE 5

INSURANCE

5.1 Before Contractor does any work at or prepares or delivers material to the Project, Contractor shall provide to Owner certificates of insurance evidencing coverage acceptable to Contractor in the following amounts:

5.1.1 Worker's Compensation. Worker's compensation insurance coverage is required with the following minimum limits of liability:

Each Accident	\$500,000
Disease - Policy Limit	\$500,000
Disease - Each Employee	\$500,000

Contractor shall furnish Owner a certificate of insurance confirming the liability coverages and the waiver of subrogation.



5.1.2 General Liability. Commercial liability insurance on an occurrence basis insuring personal injury and property damage against the hazards of Premises and Operations,. Products and Completed Operations, Independent Contractor's and Contractual Liability (specifically covering the indemnity set forth in Subparagraph 9.10) and the following minimum limits of liability:

- Minimum \$1,000,000 General Aggregate
- Minimum \$1,000,000 Products--Comp/OP Aggregate
- Minimum \$1,000,000 Personal & Advertising Injury
- Minimum \$1,000,000 Each Occurrence
- Minimum \$1,000,000 Fire Damage (anyone fire)
- Medical Expense \$5,000 (any one person)

Umbrella Liability (Excess of above underlying limits of Employer's Liability, General Liability and Auto Liability)

- Minimum \$2,000,000 per occurrence
- Minimum \$2,000,000 Aggregate

Such insurance shall name Owner as an additional insured party. Contractor shall furnish a certificate of insurance confirming the liability coverages and that Owner is an additional insured.

5.1.3 Automobile Liability. Comprehensive automobile liability insurance in connection with owned, hired, and non-owned automobiles with the minimum limits of \$1,000,000 combined. Such insurance shall name Owner as an additional insured party. Contractor shall furnish a certificate of insurance confirming the liability coverages and that Owner is an additional insured.

5.1.4 The certificates evidencing the above-required coverages shall provide that such coverage shall not be cancelled or reduced except by written notice to Owner at least 30 days before the effective date of such cancellation or material reduction in coverage. New or renewal certificates shall evidence all the above required coverages.

ARTICLE 6 RIGHTS AND RESPONSIBILITIES

6.1 Contractor is prohibited from delegating, transferring, conveying, subcontracting, relinquishing or otherwise disposing of the whole or any part of its duties under this Agreement without the prior written approval of Owner.

ARTICLE 7 EXECUTION AND PROGRESS OF THE WORK

7.1.1 Owner hereby agrees to provide Contractor with access to the Site to perform the Site Stabilization Work.



7.1.2 Contractor shall cooperate with Owner in scheduling and performing the Work to avoid conflict or interference with the work of others, if any other activities are occurring on the site.

7.1.3 Contractor shall pay for all materials, equipment, and labor used in, or in conjunction with, the performance of the Work and shall furnish satisfactory evidence, when requested by Owner, to verify compliance with this requirement.

7.1.4 Contractor shall furnish all of the labor, materials, equipment, and services, including, but not limited to, competent supervision, shop drawings, samples, tools, and equipment as are necessary for the proper performance of the Work in accordance with the Contract Documents.

7.1.5 Contractor acknowledges that it has visited the Site and visually inspected the general and local conditions and reviewed all soils and other reports that could affect the Work. Any failure of Contractor to reasonably ascertain from a visual inspection of the Site, the general and local conditions that could affect the Work, will not relieve Contractor from its responsibility to properly complete the Work without additional expense to Owner.

7.1.6 Owner is entitled to rely on the accuracy and completeness of any professional certifications required to be held by Contractor to perform the Work.

7.1.7 Contractor shall schedule and perform all inspections of the Work or portions of the Work. Contractor shall give proper written notice to all required parties of such inspections. Contractor shall bear all expenses associated with inspections, and approvals required of Contractor to perform the Work.

7.1.8 Every part of the Work shall be executed in accordance with the Contract Documents in a good and workmanlike manner. All materials used in the Work shall be furnished in sufficient quantities to facilitate the proper and expeditious execution of the Work, and shall be new except as may be expressly provided otherwise in the Contract Documents. No substitutions shall be made in the Work unless permitted in the Contract Documents and only then upon Contractor's first receiving all approvals, in writing, from Owner.

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ARTICLE 8 LAWS, PERMITS, FEES AND NOTICES

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8.1.2 Contractor shall comply with Laws relating to employment of individuals, including social security acts, unemployment compensation acts, and workers' compensation acts insofar as applicable to the performance of this Agreement.

ARTICLE 9 WORK OF OTHERS

9.1.1 In carrying out the Work, Contractor shall take necessary precautions to protect the work of other trades from damage caused by its operations.

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10.1.1 Contractor shall take all reasonable safety precautions regarding the Work, shall comply with all safety measures initiated by Contractor and with all Laws for the safety of persons or property in accordance with the requirements of the Contract Documents. Such obligation shall include taking reasonable steps to protect:

- (a) employees and other persons at the site;
- (b) materials and equipment stored at the site or at off-site locations for use in performance of the Work; and
- (c) all property and structures located at the site and adjacent to work areas, whether or not the property or structures are part of the Sites or involved in the Work.

Contractor shall inform the Owner in writing prior to the Contractor's mobilization on the Sites the name and title of the Contractor's competent person for administration of the Contractor's safety program and for OSHA and other governmental agency compliance requirements, including compliance with NPDES Stormwater Permits. Contractor must inform Owner in writing in advance of any change in status of the Contractor's competent person.



ARTICLE 11. CLEANING UP

11.1 Contractor shall follow Owner's cleanup directions, and at all times keep the Project free from debris resulting from the Work and place all debris in job site containers.

11.2 If Contractor fails to comply, then Owner may implement appropriate cleanup measures without further notice and deduct the cost thereof from any amounts due or to become due Contractor under this Agreement.

ARTICLE 12. WARRANTY

12.1 Contractor warrants to the Owner that all materials and equipment furnished shall be new unless otherwise specified, and that all Work shall be of good quality, free from faults and defects, and in conformance with the Contract Documents and Laws, permits, and regulations applicable to work under this Agreement. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The warranty provided in this paragraph shall be in addition to any other warranty or remedy provided by law or any of the Contract Documents.

12.2 Omitted.

12.3 Omitted.

12.4 The warranties survive performance and termination of this Agreement.

ARTICLE 13. INDEMNIFICATION

13.1 Contractor shall indemnify, protect, defend, and hold harmless the Owner and its agents, consultants, and employees (collectively, "**Indemnitee**"), from and against any and all demands, claims, suits, causes of action, liabilities, losses, costs, settlements, damages, and judgments (including, without limitation, court costs and attorneys' fees) (collectively "**Claims**"), whether arising in equity, at common law, or by statute, including unfair trade practices claims, or under the law of contracts or torts (including, without limitation, negligence and strict liability without regard to fault), of every kind or character (including, without limitation, Claims for personal injury or real or personal property damage and economic loss), arising out of the performance of the Work, due to or arising out of the negligence or misconduct of, or breach of contract by, Contractor, any of its equipment or material suppliers, or any of the foregoing person's respective agents, representatives, suppliers, employees or other persons directly or indirectly employed by them or for whose actions they may be liable or arising out of the Work. The indemnification obligations arising under this paragraph shall not be construed to negate, abridge or reduce other rights or obligations of indemnification that would otherwise exist as to a party or person described in this paragraph.



13.2 In any claim against the Owner any of its agents or employees by any employee of Contractor, anyone directly or indirectly employed by Contractor or anyone for whose acts Contractor may be liable, the indemnification obligation under paragraph 13.1 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor under workers' or workmen's compensation acts, disability benefits acts or other employee benefit acts.

13.3 Contractor waives all rights against Owner and its agents or employees, for loss or damage to the extent covered by builder's risk or any other insurance, except such rights as it may have to the proceeds of such insurance.

ARTICLE 14 ARBITRATION

14.1 All claims, disputes, and other matters in question arising out of or relating to this Agreement or breach thereof, shall be decided by arbitration. Arbitration shall be conducted in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then prevailing unless the parties mutually agree otherwise. Arbitration will be held in Charlotte, NC, before a single arbitrator. The arbitrator in such Arbitration shall award attorneys' fees and costs to the prevailing party. North Carolina law shall apply.

14.2 Except by written consent of the person sought to be joined, no arbitration arising out of or relating to the Contract Documents shall include, by consolidation, joinder or in any other manner, any person or entity not a party to this Agreement under which such arbitration arises, unless it is shown at the time the demand for arbitration is filed that (1) such person or entity is substantially involved in a common question of fact or law, (2) the presence of such person or entity is required if complete relief is to be accorded in the arbitration, and (3) the interest or responsibility of such person or entity in the matter is not insubstantial. Any disagreement between Owner and Contractor regarding whether such person should be joined shall be determined by Arbitration. Owner and Contractor consent with this agreement to Arbitrate and any other written agreement to Arbitrate with an additional person or persons referred herein and that such Agreement shall be specifically enforceable under the prevailing arbitration law.

14.3 In such Arbitration, no party shall be required to conduct discovery, including deposition discovery or exchange of documents, except that each party shall provide copies of all documents that are to be offered into evidence 30 days prior to such hearing.

14.4 The award rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.



14.5 If any claim shall be made by Owner against Contractor that any part of the Work performed by Contractor hereunder is defective or fails to comply with the plans and specifications, Contractor shall perform at its expense the Work necessary to correct the defective or non-complying Work to the satisfaction of the Owner, including repairs to the work of the trades damaged by the rework of Contractor. If Contractor disputes the claim of the Owner, Contractor shall notify Owner that Contractor is performing the work under protest and will submit to Contractor a written demand for compensation for extra work which Contractor will submit to the Owner.

14.6 Contractor shall carry on the Work notwithstanding the existence of a claim under this subsection, unless this Agreement has been terminated. If Contractor is continuing to perform in accordance with this Agreement, Owner shall continue to make payments as required by this Agreement.

14.7 To the extent not prohibited by their contracts with others, the claims and disputes of Owner and Contractor concerning a common question of fact or law, shall be heard by the same arbitrator in a single proceeding.

ARTICLE 15 MISCELLANEOUS PROVISIONS

15.1 If either party becomes involved in litigation or arbitration arising out of this Agreement or the performance thereof, the court or arbitration panel in such litigation or arbitration or in a separate suit shall award reasonable attorneys' fees to the prevailing party.

15.2 Any notices required or permitted under this Agreement shall be in writing and shall be deemed duly served only if hand-delivered, sent by a nationally recognized overnight courier service, sent by facsimile transmission or given by certified mail, returned receipt requested, addressed to the address contained in this Agreement, as it may be changed from time to time by written notice given by one party to the other. Notice shall be effective upon delivery to the intended addresses of the addressee.

15.3 Section headings herein are inserted only for convenience or reference, and shall in no way define, limit or prescribe the scope or extent of any provision of this Agreement.

15.4 All previous oral or written promises, agreements, and/or representations relating to this Agreement are hereby superseded to the extent they may be inconsistent herewith, it being expressly agreed and understood that the terms and provisions of this Agreement shall constitute the full and complete agreement between Owner and Contractor.

15.5 If any term or provision of this Agreement shall be held to any extent to be invalid or unenforceable, the remaining terms and conditions of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by Law.



15.6 All covenants, agreements, indemnities, guaranties and warranties made by Contractor shall survive completion of the Work and any payment of the Contract Sums, and shall inure to the benefit of Owner and its respective successors and assigns.

15.7 No waiver by Contractor, whether express or implied, of any breach or failure to comply with any provision of this Agreement shall be deemed to be a waiver of any such breach or failure to comply with any other provision of this Agreement or of any subsequent breach by Contractor of the same provision or any other provisions.

15.8 Owner shall pay the sum herein set forth in current funds for such work and materials, and in the manner and at the time herein set forth. Such sum is intended to include all increases in cost, foreseen or unforeseen, including without limiting the generality of the foregoing, taxes, labor, materials, and transportation costs, all of which are to be borne solely by Contractor. All loss or damage arising from any of the Work performed under this Agreement through unforeseen or unusual obstructions, difficulties or delays which may be encountered in the prosecution of the Work, or through the action of the elements, shall be borne by Contractor. No payment made under this Agreement shall be conclusive of the performance of this Agreement, either wholly or in part, nor shall it be construed to be an acceptance of defective work or improper materials, or an approval of any of the items in any requisition made or bill rendered.

15.9 Contractor shall indemnify, defend and save Owner harmless from and against all liability for fines, penalties, or other enforcement actions, claims, and liens for labor performed or equipment or material used or furnished to be used in connection with the Work, including any costs for attorney's fees, premiums for bond required by any title company, or Owner, and all incidental or consequential damages incurred by Owner as a result of such fines, penalties, or other enforcement actions, claims or liens. Further, in case suit on such claim is brought, Contractor shall defend the suit at its cost, and shall pay and satisfy any such fines, penalties, or other enforcement actions, lien or judgment as may be established by the decision of the court in the suit. Contractor shall, within ten days after written demand, cause the effect of any suit or lien to be removed from the Project and to provide corrective measures to remedy violations of Laws, and in the event Contractor shall fail to do so, Owner may use whatever means, in its discretion, it deems appropriate to cause the violations to be remediated or lien to be removed or dismissed and the cost thereof, together with reasonable attorneys' fees, shall be immediately due and payable to Owner by Contractor. Contractor may litigate any lien or suit above described provided it causes the effect thereof to be removed promptly, in advance, from the Project, and shall further do such things as may be necessary to cause the Owner not to withhold any monies due to Contractor from the Owner by reason of such liens or suits. Notwithstanding anything to the contrary set forth above in this paragraph, Contractor shall not be construed to be foregoing its lien rights in the event of a dispute over payments due to services rendered and materials furnished to the Sites.

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Exhibit "A"

S.M. Smith and Sons, Inc
10107 Truelight Church Road
Charlotte NC 28227
704-545-4177 (phone) 704-545-4172 (fax)

QUOTE

Prepared For: Erosion Control Services
Project: Burton Creek

<u>Location:</u>	<u>Description:</u>	<u>Total:</u>
Entrance	Mobilization	\$3000.00
	Place Fence and Cable at Entrance	\$1000.00
Basin 17	2 Loads Rip Rap, 1 Load #5	\$1350.00
	1.5 Days- Track Hoe	\$1500.00
	1 Days on Walking Slopes (Dozer)	\$760.00
	1 Day on Phase III Entrance Road	\$760.00
	1 Days on Dozer for Blading Roads	\$760.00
Stockpile Beside #5	1 Day on Dozer	\$760.00
	6 Hours for Off Road Trucking (Hauling Mulch)	\$750.00
	6 Hours for Track Hoe (To Load Mulch)	\$750.00
Basin 15	1 Days on Dozer	\$760.00
	1 Day on Track Hoe	\$1000.00
	Block Entrance Past Basin 15	\$300.00
	Haul Off 3 Loads of Trash to C&D Landfill	\$750.00
	1 Week for Skid Steer to Grade and Backfill Curb	\$3400.00
On Delaware Rd	Replace 15 (2x3) Storm Drain Grates	\$3000.00
	1 Day for Welder to Tack Storm Drains Back	\$680.00
	1 Day for Skid Steer and Dump Truck to Remove Debris and Leave Outside.	\$1200.00

Continued-

<u>Location:</u>	<u>Description:</u>	<u>Total:</u>
Basin 14- Dip Basin	2 Days on Track Hoe & Off Rd Truck	\$4000.00
	½ Load #5 Stone	\$240.00
	1 Day on Dozer to Fill Pipe Ravine	\$760.00
	200' of 24" Slope Drain Pipe with 90 Degree Elbow/Reroute Water from 13 to 14	\$5300.00
Basin 13&14	Pump to Delaware Basins	\$1200.00
Basin 13	2 Loads of Rip Rap	\$900.00
	1 Day for Dozer	\$760.00
	6 Hours on Track Hoe	\$750.00
Basin 12	1 Days on Track Hoe and Off Rd. Truck	\$2000.00
	½ Load of #5 Stone	\$240.00
	½ Day on Dozer (fix reels)	\$380.00
Basin 11	2 Days on Track Hoe and Off Rd. Truck	
	Dip Basin Out	\$4000.00
	½ Load of #5 Stone	\$240.00
In Front of Basin 11	Build New Basin	
	1 Days on Dozer	\$760.00
	1 Days on Track Hoe	\$1000.00
	3 Loads of Rip Rap	\$1350.00
	1 Load of #5 Stone	\$450.00
Basin 9	½ Load of #5 Stone	\$240.00
	6 Hours on Track Hoe	\$750.00
Basin 8	Dip Out Basin	
	1 Day on Track Hoe	\$1000.00
	1 Day on Dozer	\$760.00
	½ Load of #5 Stone	\$240.00
	½ Load of Rip Rap	\$240.00

Continued-

<u>Location:</u>	<u>Description:</u>	<u>Total:</u>
Lower Half of Ph II Drainage	Approximately 27.89 Acres	
	4 Days on Dozer	\$3040.00
	1 Day on Loader and Off Road Truck	\$1760.00
	Tractor and Phillips Hare-2 Days	\$2187.00
Lot 123/124	6 Hours on Dozer to Fix Wash Out	\$570.00
Lot 128-135	Repair Back Slopes and Wash Outs	
	9 Loads of Rip Rap	\$4050.00
	Track Hoe for 2 Days	\$2000.00
	2 Days on Dozer	\$1520.00
Phase I	Place Cable or Gate at Entrance	\$1000.00
Basin 1	1 Load of #5 Stone	\$450.00
	2 Days on Dozer	\$1520.00
	1 Day on Track Hoe	\$1000.00
	1 Load of Rip Rap	\$450.00
Basin 4	1 Days on Dozer	\$760.00
	1/2 Load of #5 Stone	\$240.00
	1/2 Day on Track Hoe	\$500.00
Basin 6&7	Regrade Slopes	
	1 Load of #5 Stone	\$450.00
	3 Days on Dozer	\$2280.00
	2 Days on Track Hoe	\$2000.00
Basin 5	1 Day on Dozer	\$760.00
Basin 2	1 Day on Dozer	\$760.00
	1/2 Day on Track Hoe	\$625.00
		<u>\$ 77 962.00</u>

REISER AND FRANK PROPERTIES

DESCRIPTION OF WORK:	PRICE:
1 Load of Mulch	\$500.00
3 Days on Mini Hoe and Truck	\$2800.00
5 Loads of Compactable Dirt	\$500.00
2 Days on Roller	\$600.00
3 Days Laborer	\$720.00
1 Load of Trash to Dump	\$250.00
2 Days on Skid Steer	\$1360.00
Move Irrigation System	\$1500.00
1 Roll of Matting	\$300.00
2 Loads of #67 Stone	\$900.00
1 Load of Rip Rap	<u>\$450.00</u>
	<u>\$9850.00</u>

OWNER

Fifth Third Bank
Attn: Chris C. Cagle, VP
Asset Disposition Team
165 Nash Street
Lawrenceville, GA 30046
Phone: (678) 906-4721 - Atlanta
Phone: (704) 808-5135 - Charlotte
Fax: (770) 995-9601

CONTRACTOR

S.M. Smith and Sons, Inc.
10107 Truelight Church Road
Charlotte, NC 28277
Attn: Michael Smith
Phone: (704) 545-4177
Fax (704) 545-4172

BY Shirley Duckworth, Jr
Signature

SHIRLEY DUCKWORTH
Printed Name

VICE PRESIDENT
Title

1/6/11
Date

BY Michael Smith
Signature

Michael Smith
Printed Name

President
Title

1/04/11
Date

