STATE OF NORTH CAROLINA

COUNTY OF Iredell

# INSPECTION AND MAINTENANCE AGREEMENT

THIS AGREEMENT is made and entered into this 15th day of NOV, 2007, by and between ...T. Whelan Homes, Inc.....(hereinafter the "Owner") and **Larry E. Beam** (hereinafter the "Certified Operator").

WHEREAS, the Owner owns or controls the property upon which a ground absorption sewage treatment system (hereinafter "system") is installed, such system being designated a Type IV system under the Rules for Sanitary Sewage Collection, Treatment and Disposal found at 15A N.C. Admin. Code 18A.1900 et seq.; and

WHEREAS, 15A N.C. Admin. Code 18A.1961 required a contract to be executed between the system owner and a management entity prior to the issuance of an Operation Permit for said system; and

WHEREAS, 15A N.C. Admin. Code 18A.1961 requires that a condition of the Operation Permit for said system be that a properly executed contract between the system owner and a management entity shall be in effect for as long as the system is in use; and

WHEREAS, the Certified Operator is a management entity of a type authorized by 15A N.C. Admin. Code 18A.1961 to manage a Type IV system.

NOW THEREFORE, in consideration of the premises and of the mutual covenants and promises contained in the Agreement, it is hereby agreed by and between the Owner and the Certified Operator as stipulated below.

1. **The Certified Operator's Obligations**. The Certified Operator shall perform the following services on the Owner's system located at **Lot 15 Shepherd's Bluff, Mooresville, NC**
   - **a.** The Certified Operator shall inspect the system at least at the frequency required in table V(b) of 15A N.C. Admin. Code 18A.1961(b) for a Type IV System.
   - **b.** The Certified Operator shall perform the following routine maintenance procedures in accordance with the conditions of the Operation Permit:
     (1)
     (2)
     (3)
   - **c.** The Certified Operator shall report the results of its inspection to the local health department at the frequency specified in Table V(b) of 15A N.C. Admin. Code 18A.1961(b) for the Type IV System.
   - **d.** If an inspection indicates the need for System repairs, the Certified Operator shall notify the local health department within 48 hours of inspection.

e. The Certified Operator shall notify the Owner of needed repairs which are outside of the scope of routine maintenance described in subparagraph (b) above. The Certified Operator shall perform necessary repairs to the system at the request of the Owner and shall be entitled to payment therefor at the Certified Operator's normal charge for services and materials.

f. The Certified Operator shall employ or shall contract with another certified operator(s) if required by Table V(b) of 15A N.C. Admin. Code 18A. 1961(b) for a Type IV System.

g. The Certified Operator shall respond to a request for a non scheduled service or maintenance call within 72 hours after receipt of such request.

2. **The Owner's Obligations**.

a. The owner shall pay to the Certified Operator the sum of $0.00 per year for periodic inspections, routine maintenance procedures and periodic reports. The annual fee may be amended up sixty (60) days advance notice to the Owner but may not be increased more than 10 percent per year. The Owner shall pay to the Certified Operator his normal and customary fees for any work performed on the system as a result of nonscheduled service or maintenance calls. All fees are due and payable upon receipt, however no later than thirty (30) days of billing. Payments due to the Certified Operator and unpaid by the Owner after (30) days shall accrue interest from the due date until paid at a rate of 1 ½ percent per month.

b. Within 30 days of receipt of notice of needed repairs pursuant to paragraph 1.e. above, the Owner shall request the Certified Operator to complete needed repairs or shall provide to the Certified Operator evidence that the needed repairs were satisfactorily completed by another entity.

c. The Owner shall provide the Certified Operator with such access to the system as is reasonably necessary for the Certified Operator to comply with the terms of this Agreement.

3. **Term.** This Agreement shall remain in effect until terminated.

a. Automatic Termination.
This agreement shall automatically terminate if the Operation Permit for the system is revoked and all appeals for the revocation are exhausted or time for making an appeal has passed.

b. Termination by Mutual Consent.
The Parties may mutually agree to terminate this Agreement by giving written notice of termination by mutual consent to the local health department thirty (30) days in advance of the date of termination.

c. Termination by the Owner.
The Owner may terminate this Agreement by giving notice to the Certified Operator and to the local health department thirty (30) days in advance of the date of termination.

d. Termination by the Certified Operator.
(1) The Certified Operator may terminate this Agreement for cause by giving written notice of intent to terminate this Agreement to the Owner and to the local health department thirty (30) days in advance of the date of termination. Cause shall be defined as:
(a) Failure to remit payment for any bill for services performed under and in accordance with this Agreement if said bill is not paid within thirty(30) days.

(b) Failure of the Owner to provide to the Certified Operator authorization to complete needed repairs of satisfactory evidence that needed repairs to the system were completed by another entity within 30 days of receipt of notice of needed repairs pursuant to paragraph 1.e. above. If said authorization to complete needed repairs or evidence of completion of said repairs is provided after notice of termination is given but prior to the date of termination of this Agreement, this Agreement shall continue in effect;

(c) Failure of the Owner to allow the Certified Operator such access to the system as is reasonably necessary in order for the Certified Operator to comply with the terms of this Agreement.

(2) The Certified Operator may assign its rights and duties under this Agreement as provided in paragraph 4, below.

4. **Assignment**.
   a. Assignment by the Owner. The Owner shall notify the Certified Operator of the name and address of any purchaser of the property on which the system is located. The Owner shall also notify any purchaser of the property on which the system is located of the existence of the Agreement and shall assign all rights and duties under this Agreement to said purchaser.
   b. Assignment by the Certified Operator. The Certified Operator may assign its rights and duties under this Agreement to another management entity which is qualified pursuant to 15A N.C. Admin. Code 18A.1961 to manage a Type IV system upon thirty (30) days written notice to the owner and to the local health department.

5. **Use of Subcontractors**.
   The Certified Operator may subcontract with such manufacturers, suppliers and contractors as it deems desirable to perform any of the Certified Operator's duties under this Agreement. The Certified Operator shall at all times remain responsible for the performance of and payment for all work performed by all subcontractors.

6. **Representations**.
   The Parties represent to each other that each has the power, authority and legal right to enter into and perform its obligations as set forth in this Agreement.

7. **Regulatory Amendments**.
   References in this Agreement to sections of the Administrative Code shall include such rules as they may be amended in the future.

8. **No Implied Waiver**.
   The waiver by either Party of a default or a breach by the other Party of any provision of this Agreement shall not operate or be construed to operate as a waiver of any subsequent default or breach. The failure at any time of either Party to enforce any provision of this Agreement (a) shall not be construed to be a waiver of such provisions, or of any other provision; and (b) shall not in any way affect the validity of this Agreement, or any part of this Agreement, or the right of either Party thereafter to enforce each and every provision of this Agreement.

9. **Notice**

Every notice required under this Agreement shall be in writing and shall be deemed sufficiently given if delivered in person or sent by certified or registered mail, return receipt requested, to the Party to be notified and addressed as follows:

To the Owner:
T. Whelan Homes Inc...
PO Box 4419
Mooresville, NC 28117.

To the Certified Operator:
**Larry E. Beam, 2740 Sloop Rd., Mt.Ulla, NC 28125**

To the Local Health Department:
**Iredell County Health Dept.**

The date of any Notice shall be the date of personal delivery or the date shown on the return receipt as the date of delivery of attempted delivery, as the case may be. Changes in the respective addresses to which notice may be directed may be made from time to time by either Party by notice to the other party.

10. **Place of Agreement**.
This Agreement and any questions concerning its validity, construction or performance shall be governed by the laws of the State of North Carolina, notwithstanding the place of execution, or the order in which the signatures of the Parties are affixed.

11. **Entire Agreement and Amendment.**
This Agreement supersedes all prior negotiations, agreements and understandings between the Parties with respect to the subject matter hereof and constitutes the entire Agreement between the parties with respect to the subject matter hereof. To be effective, any amendment or modification to this Agreement must be in writing and must be signed by the Parties.

12. **Severability.**
In the event that any provision of this Agreement shall, for any reason, be determined to be invalid, illegal or unenforceable in any respect, the Parties shall negotiate in good faith and agree to such amendments, modifications or supplements of or to this Agreement or such other appropriate actions as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the Parties as reflected in this Agreement, and the other provisions of this Agreement shall, as so amended, modified, supplemented or otherwise affected by such action, remain in full force and effect.

13. **Negative Covenants of Certified Operator**
The Certified Operator, while agreeing to accomplish the appropriate inspection and maintenance of the system as hereinabove set forth and as required by law, nonetheless is not responsible for failure of the system, either partially or wholly, when the same is directly or indirectly caused by the following:

(a) Pump Failure;
(b) Valve or ring failure;
(c) Defects in the system which are not discoverable by reasonable visual inspections.
(d) Defects which are caused by the actions of the Owner, his invitees, guests, or contractors or subcontractors coming upon or working on the system of the property of the Owner.