

**STATE OF NORTH CAROLINA  
COUNTY OF FORSYTH**

**STORMWATER OPERATION AND  
MAINTENANCE AGREEMENT AND  
GRANT OF EASEMENT**

**THIS STORMWATER OPERATION AND MAINTENANCE AGREEMENT** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 201\_, pursuant to the Post-Construction Ordinance, Chapter 75, Article IV of the City Code of the City of Winston-Salem, by and among the City of Winston-Salem (hereinafter, the “City”), \_\_\_\_\_ (hereinafter, the “Developer”), and \_\_\_\_\_ (hereinafter, the “Association”), for the benefit of the City of Winston-Salem (the City, the Developer, and the Association, hereinafter, collectively, the “Parties”).

**RECITALS:**

A. WHEREAS, the Developer wholly owns certain land lying within the city limits of Winston-Salem described in Exhibit A attached hereto (the “Property”), and upon which Developer intends to construct improvements; and

B. WHEREAS, the development of the Property will require the construction of one or more –stormwater management control structures and associated conveyance systems, as necessary, and in accordance with approved plans, specifications, and the Operation and Maintenance Manuals (“Stormwater Control System”), to serve the Property; and

C. WHEREAS, the Developer has applied to the City for the issuance of a Stormwater Management Permit (“Permit”), which will allow Developer to construct, maintain, and operate the Stormwater Control System; and

D. WHEREAS, after the completion of the construction and approval by the Stormwater Director of the as-built records of all of the Stormwater Control System, the Developer will convey the operation and maintenance of the Stormwater Control System to the Association; and

E. WHEREAS, the City desires to ensure that the Stormwater Control System is properly constructed, maintained, and operated in accordance with the Permit and all other applicable ordinance provisions, and, therefore, requires the execution of this Agreement by Developer and Association prior to issuance of a Permit.

NOW, THEREFORE, in consideration of the benefits to be derived by the Developer in obtaining the Permit and developing the Property and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Developer does hereby agree as follows:

1. Generally. Developer shall construct the Stormwater Control System in accordance with the Permit and the plans and specifications for the Stormwater Control System, as approved by the City and shall, thereafter, operate and maintain the Stormwater Control System in accordance with the Permit, the plans and specifications, the Operation and Maintenance Manual(s), and all applicable law until such time as the Permit has been reissued to the Association. Once the Permit has been reissued to the Association, the Association shall, thereafter, operate and maintain the Stormwater Control System in accordance with the Permit, the plans and specifications, the Operation and Maintenance Manual(s), and all applicable law.

2. Transfers. Developer agrees that it shall not transfer ownership and/or control of the Stormwater Control System until construction has been finally completed in accordance with the Permit, a certified set of as-built plans and records of the system submitted to the Stormwater Director for review, the Stormwater Director has approved the completed construction and as-built records, the Developer complies with submittal of all annual inspection reports, and all current and future phases of the subdivision which constitutes the Property or of which the Property will be a part have been constructed and transferred to the Association. Developer will promptly notify the Stormwater Director when construction of the Stormwater Control System is finally complete and submit to the Stormwater Director a certified set of as-built plans and records which verify the system is built and operating as designed. Once the construction of the Stormwater Control System has been approved, the Developer complies with submittal of all annual inspection reports, and all current and future phases of the subdivision which constitutes the Property or of which the Property will be a part have been constructed and transferred to the Association, the City shall reissue the Permit to the Association, at which time the Developer shall be released from any obligations hereunder arising from events or circumstances occurring after the date the Stormwater Control System is transferred and the Permit is reissued. Developer shall remain responsible for the operation and maintenance of the Stormwater Control System until the Permit has been reissued to the Association. If the Association, thereafter, desires to transfer ownership/and/or control of the Stormwater Control System, the Association and the proposed transferee shall first request that the Permit be re-issued to the proposed transferee.

3. Construction of the Stormwater Control System: If the Developer, for any reason, or at any time, fails, within thirty (30) days after receiving written notice, to finally complete construction, operate, or maintain the Stormwater Control System, as required by the Operation and Maintenance Manual(s), the plans and specifications, this Agreement, or the Permit, prior to conveying control to the Association, the City may complete such construction or perform such maintenance, and the Developer, hereby, agrees to pay the City or other governmental authority all reasonable costs incurred, thereby. As security for the payment of these costs, Developer agrees, prior to the issuance of the Permit, to: 1) establish an escrow account, together with the Association, which will be used by the Developer and the Association for the operation, inspection, maintenance, repair, and reconstruction of the Stormwater Control System (hereinafter, the "Escrow Account") and 2) to pay a sum equal to fifteen percent (15%) of the cost of the Stormwater Control System's construction into the Escrow Account, from which the City must approve any release of funds. The amount of the Developer's payment into the Escrow Account will be

calculated in accordance with guidelines issued by the Stormwater Director and/or the City Council. Developer also, hereby, grants and conveys to the City a lien on all phases of the subdivision which constitutes the Property or of which the Property will be a part, subordinate only to the lien of any first deed of trust now or hereafter encumbering the Property. Developer warrants that the lien created by this paragraph has no less than a second priority status, excluding ad valorem property tax and other statutory liens. The City may bring an action at law against the Developer to pay any such sums coming due hereunder or foreclose the lien created herein against the Property in the same manner as prescribed by the laws of the State of North Carolina for the foreclosure of deeds of trust. Interest at the legal rate, costs and reasonable attorney's fees for representation of the City in such action or foreclosure shall be added to the indebtedness secured by such lien. Upon removal of the Stormwater Control System in accordance with applicable law, any applicable provisions of the Permit, and upon inspection and approval of the same by the Stormwater Director, the lien herein granted and conveyed to the City shall be of no further force or effect.

4. Maintenance of the Stormwater Control System: If the Association, for any reason, or at any time, fails, within thirty (30) days after receiving written notice, to operate and/or maintain the Stormwater Control System as required by the Operation and Maintenance Manual(s), this Agreement, or the Permit, the City may complete such construction or perform such maintenance or repair, and the Association, hereby, agrees to pay the City or other governmental authority all reasonable costs incurred, thereby. As security for the payment of these costs, the Association agrees to pay into the Escrow Account, within five (5) years of the date that the Permit is issued, a sum equal to two-thirds (2/3) of the amount satisfactory to support the operation, maintenance and annual inspection of the Structural BMPs, as defined in section 75-107 of the City Code and as indicated in a sealed engineer's estimate. The Association, furthermore, agrees to pay into the Escrow Account, within ten (10) years of the date that the Permit is issued, a sum equal to the remaining one-third (1/3) of the amount satisfactory to support the operation, maintenance and annual inspection of the Structural BMPs, as defined in section 75-107 of the City Code and as indicated in a sealed engineer's estimate. The amounts of the Association's payments into the Escrow Account will be calculated in accordance with guidelines issued by the Stormwater Director and/or the City Council. The Association will allocate a portion of the Association's annual assessments to the Escrow Account, sufficient to timely discharge the Association's obligations to pay into the Escrow Account. The amount of the Association's annual assessments that the Association allocates each year to the Escrow Account will be calculated by taking the sum total that the Association owes for the given period of time, and dividing it by the number of years left in the period of time. Thus, if the Association owes twelve thousand dollars (\$12,000) in the first five (5) years after the Permit's issuance, and the Association is formed one (1) year after the Permit's issuance, the Association's annual allocation to the Escrow Account will be twelve thousand dollars (\$12,000) divided by four (4) years or three thousand dollars (\$3,000). The Association will replace all funds drawn down from the Escrow Account in accordance with the schedule of anticipated work used to originally fund the Escrow Account. The City may bring an action at law against the Association to pay any such sums coming due hereunder, as prescribed by the laws of the State of North Carolina. If the Developer has not transferred ownership and/or legal and managerial authority and control of the Stormwater Control System to the Association and/or if the Permit has not been reissued to the Association when the Association's payments become due, then, the Developer will discharge all of the Association's payment obligations under this section 4 of the Agreement and the City may bring an action at law against the Developer to recover any sums due, hereunder, as prescribed by the laws of the State of North Carolina. Interest at the legal rate, costs and reasonable attorneys' fees for representation of the City in any action the City brings hereunder shall be added to the amount of the indebtedness. Upon removal of the Stormwater Control System in accordance with applicable law, any applicable provisions of the Permit, and upon inspection and approval of the same by the Stormwater Director, the lien herein granted and conveyed to the City shall be of no further force

or effect.

5. Easement for Inspection, Construction and Maintenance: Developer, hereby, grants and conveys to the City a non-exclusive, perpetual easement or easements (or blanket easement) (hereinafter, the "Easement") across those portions of the Property necessary for inspection, completion of construction, monitoring, maintenance, repair, and reconstruction of the Stormwater Control System, as shown on Exhibit B. Developer represents and warrants that it is seized of the aforesaid Property in fee, has the right to convey the Easement hereby granted, that the same is free from encumbrances, and that the Developer will warrant and defend said title to said Easement against the claims of all persons, whomsoever and whatsoever. Developer, furthermore, agrees to execute, acknowledge, and deliver all such further documents and instruments of conveyance or transfer, to provide all such information, and to take or refrain from taking such further actions as may be required to carry out and effectuate the intent and purpose of this Agreement and Easement, or to confirm or perfect any right created hereunder. This Easement shall terminate upon the removal of the Stormwater Control System in accordance with applicable law and any applicable provisions of the Permit, regulations and procedures, the permit and approval plans, and the inspection and approval of the removal by the Stormwater Director.

Nothing herein contained shall be deemed a gift or dedication of any portion of the Property described herein to the general public or for any public use or purpose, whatsoever, it being the intent of the Parties that this Easement shall be strictly limited to, and for the purposes, herein, expressed, and shall be solely for the benefit of the Parties, hereto, and their respective heirs, successors, and assigns, and successors in title to their respective properties.

Developer and Association, hereby, agree to jointly and severally release, indemnify, defend, and hold the City, its officials, officers, agents, and employees harmless from and against any and all claims, actions, suits, liabilities, losses, costs, expenses, reasonable attorneys' fees, and costs of litigation, of any nature, whatsoever, including but not limited to, claims for special, incidental, indirect, and consequential damages, arising out of, or in any way related to, the Stormwater Control System and/or the City's entry onto the Property and use of the Easement, thereupon.

6. Restrictive Covenant: All future transferees of the Property shall be subject to the restrictive covenant that they will a) construct, maintain, repair, and reconstruct the Stormwater Control System in conformance with the Operation and Maintenance Manual(s), the Permit, and this Agreement and b) replenish any funds withdrawn by the Developer or the Association or any subsequent transferees of the Property from the Escrow Account, in accordance with the schedule of anticipated work used to originally fund the Escrow Account. Such restrictive covenant shall run with the land, provided, however, that, with the approval of the Stormwater Director, the Developer may transfer all responsibilities and obligations, hereunder, to another entity having the legal and financial ability and authority to assure fulfillment of Developer's or Association's responsibilities under the Permit and this Agreement.

7. Notice. Any notice which any party, hereto, may send to the other pertaining to this Agreement shall be in writing and shall be considered delivered when deposited in the United States mail, certified with postage pre-paid. The addresses are as stated below:

if to the City:

if to the Developer:

if to the Association:

City of Winston-Salem  
Stormwater Division  
101 North Main Street  
Winston-Salem, NC 27101

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8. Modification and Amendment. This Agreement may only be amended by written agreement signed by the City, the Developer, and the Association or their respective successors and assigns. This Agreement contains the entire agreement among the Parties. There are merged, herein, all prior and collateral representations, promises, and conditions, in connection with the subject matter, hereof. Any representations, promises, or conditions not incorporated, herein, shall not be binding upon the Parties.

9. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order will, in no way, affect any other provisions, which shall remain in full force and effect.

10. Beneficiaries of this Agreement. The City is the governmental authority which has jurisdiction over the Stormwater Management Permit issuance, and shall be deemed to be a beneficiary of this Agreement, both in its own right, and also for the purpose of protecting the interests of the community and other parties, public or private, in whose favor, or for whose benefit, this Agreement has been provided. This Agreement shall run in favor of the City for the entire period during which this Agreement shall be in force and in effect, without regard to whether the City has, at any time, been, remains, or is an owner of the Property or any portion, thereof. The City shall have the right, in the event of any breach of this Agreement, following notice and a reasonable period to cure, to exercise all the rights and remedies, and to maintain any action or suit, at law or in equity, or other proper proceeding, to enforce the curing of such breach of this Agreement to which it may be entitled.

11. Caption Headings. The headings and captions used in this Agreement are used for convenience, only, and shall not be deemed to limit, amplify, or modify the terms of this Agreement

12. Governing Law. This Agreement shall be construed in accordance with the laws of the State of North Carolina. Venue for any litigation pertaining to this Agreement shall be laid in Forsyth County Superior Court in Forsyth County, North Carolina.

13. Binding Effect. The Parties agree that the terms and provisions of this Agreement shall be binding upon, and inure to the benefit of, the Parties, their heirs, executors, administrators, successors in interest, and assigns.

14. Recording. A copy of this Agreement and any modification, thereof, shall be filed in the office of the Forsyth County Register of Deeds and in the office of the Stormwater Director.

**TO HAVE AND TO HOLD** the aforesaid Easement and all privileges and appurtenances thereunto belonging to City, and its successors and assigns.

**IN WITNESS, WHEREOF**, Developer has caused this Agreement to be executed under seal, by its duly authorized representative, the day and year first above written.

**IN WITNESS, WHEREOF**, Association has caused this Agreement to be executed under seal, by its duly authorized representative, the day and year first above written.

**[SIGNATURES APPEAR ON THE FOLLOWING PAGES.]**

Signature Page

SEAL

Developer \_\_\_\_\_

By: \_\_\_\_\_(SEAL)

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Attested

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

SEAL

Association \_\_\_\_\_(SEAL)

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Attested

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signature Page

SEAL

City of Winston-Salem (via Stormwater  
Department of the City of Winston-Salem)

By: \_\_\_\_\_  
Print Name: Keith Huff  
Title: Stormwater Director

Attested

By: \_\_\_\_\_  
Print Name: Melanie Johnson  
Title: City Secretary

This instrument has been preaudited in the manner  
required by the Local Government and Fiscal  
Control Act,

Approved as to form and legality

This \_\_\_\_ day of \_\_\_\_\_,  
Not Applicable  
by Lisa Saunders, Chief Finance Officer

This \_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_  
by Angela I. Carmon, City Attorney



STATE OF NORTH CAROLINA )  
 )  
COUNTY OF FORSYTH )

I, \_\_\_\_\_, a Notary Public of the County and State aforesaid, certify that \_\_\_\_\_, personally came before me this day and acknowledged that he is the \_\_\_\_\_ of \_\_\_\_\_ and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its \_\_\_\_\_.

Witness my hand and notarial seal, this the \_\_\_\_\_ day of \_\_\_\_\_, A.D.

\_\_\_\_\_  
Notary Public My Commission Expires: \_\_\_\_\_

(SEAL)

STATE OF NORTH CAROLINA )  
 )  
COUNTY OF FORSYTH )

I, \_\_\_\_\_, a Notary Public of the County and State aforesaid, certify that \_\_\_\_\_, personally came before me this day and acknowledged that he is the \_\_\_\_\_ of \_\_\_\_\_ and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its \_\_\_\_\_.

Witness my hand and notarial seal, this the \_\_\_\_\_ day of \_\_\_\_\_, A.D.

\_\_\_\_\_  
Notary Public My Commission Expires: \_\_\_\_\_

(SEAL)

**EXHIBIT A**

**EXHIBIT B**

**EXHIBIT C**