

Prepared by: Marilena Jensen-Guthold  
Asst. City Attorney

After recording return to: Box 5

**STATE OF NORTH CAROLINA  
COUNTY OF FORSYTH  
GRANT  
EASEMENT**

**STORMWATER OPERATION AND  
MAINTENANCE AGREEMENT AND  
OF**

**THIS STORMWATER OPERATION AND MAINTENANCE AGREEMENT AND GRANT OF EASEMENT** is made and entered into on this the \_\_\_ day of \_\_\_\_\_, 2014, pursuant to the Post-Construction Stormwater Ordinance, Chapter 75, Article IV of the City Code of the City of Winston-Salem, by \_\_\_\_\_, a \_\_\_\_\_) (hereinafter known as the "Developer"), for the benefit of the City of Winston-Salem (the "City").

**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 a stormwater management control structure, including stormwater detention ponds and other stormwater control structures, as necessary, and in accordance with approved plans, specifications, and applicable 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, 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 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 applicable Permit provisions, the plans and specifications, the Operation and Maintenance Manual, and all other applicable law.

2 Transfers. Developer agrees that it shall not transfer ownership and/or control of the Stormwater Control System until construction has been completed in accordance with the Permit, and the Stormwater Director has approved the completed construction. If Developer, thereafter, desires to transfer ownership and/or control of the Stormwater Control System, Developer and the proposed transferee shall first request that the Permit be re-issued to the proposed transferee.

Developer shall remain responsible for the operation and maintenance of the Stormwater Control System until the Permit has been reissued to the proposed transferee, at which time Developer shall be released from any obligations, hereunder arising, from events or circumstances occurring, thereafter.

3 Right to Construct and Maintain. If the Developer for any reason, or at any time, fails, within thirty (30) days after receiving written notice, to complete construction or maintain the Stormwater Control System as required by the Operation and Maintenance Manual, this Agreement, or the Permit, 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 to pay a sum equal to four percent (4%) of the cost of the Stormwater Control System's construction into the City's Stormwater Structural Best Management Practice Replacement Fund, which payment will be calculated in accordance with guidelines issued by the Stormwater Director and/or the City Council and also, hereby, grants and conveys to the City a lien on the Property 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 foreclosures of deeds of trust. Interest at the legal rate, costs, and reasonable attorneys' 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 and effect.

4. Easement for Inspection, Construction and Maintenance. Developer hereby grants and conveys to the City, a non-exclusive easement or easements (“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. 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, hereby, agrees to release, indemnify, defend, and hold the City, its officials, officers, agents, and employees, harmless from any and claims, actions, suits, liabilities, losses, costs, expenses, reasonable attorneys’ fees, and costs of litigation, of any nature, whatsoever, including claims for special 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.

5. 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 applicable Operation and Maintenance Manual, the Permit, and this Agreement and b) repay any loans taken by Developer or any subsequent transferees of the Property from the City’s Stormwater Structural Best Management Practice Replacement Fund, under section 75-404 of the City Code. Such restrictive covenants 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 responsibilities under the Permit and this Agreement.

6. 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:

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

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

7. Modification and Amendment. This Agreement may only be amended by a written agreement signed by City and Developer or their respective successors and assigns. This Agreement contains the entire agreement between the parties. There are merged, herein, all prior and collateral representations, promises, and conditions, in connection with the subject matter, hereof. Any representation, promise, or condition not incorporated, herein, shall not be binding upon either party.

8. Severability. Invalidity 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.

9. Beneficiaries of this Agreement. The City is the governmental authority which has jurisdiction over 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 suits at law or in equity, or other proper proceedings, to enforce the curing of such breach of this Agreement to which it may be entitled.

10. 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.

11. 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.

12. 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.

13. 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. Developer covenants that it is seized of the aforesaid premises in fee, has the right to convey the Easement hereby granted, that the same are free from encumbrances, and that it will warrant and defend said title to said Easement against the claims of all persons, whomsoever and whatsoever, except as to any easements, restrictions, or conditions of record.



SEAL

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

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

Attested By:

\_\_\_\_\_  
Melanie Johnson  
City Secretary

This instrument has been pre-audited in the  
manner required by the Local Government and  
Fiscal Control Act.

Approved as to form and legality.

This \_\_\_\_ day of December, 2014.

This \_\_\_\_ day of December, 2014.

Not Applicable  
By Lisa Saunders, Chief Financial Officer

\_\_\_\_\_  
By Angela I. Carmon, City Attorney

**EXHIBIT A**

Permit Number: \_\_\_\_\_

**EXHIBIT B**

Permit Number: \_\_\_\_\_

**EXHIBIT C**