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STATE OF NORTH CAROLINA

COUNTY OF ONSLOW

CITY OF JACKSONVILLE'S STORMWATER OPERATION, MAINTENANCE, EASEMENT AND ACCESS AGREEMENT FOR STRUCTURAL STORMWATER MANAGEMENT OF BMPS AND ESCROW CONTRIBUTION CONTRACT

THE CITY OF JACKSONVILLE'S STORMWATER OPERATION, MAINTENANCE, EASEMENT AND ACCESS AGREEMENT FOR STRUCTURAL STORMWATER MANAGEMENT OF BMPS (the "Agreement") made this _____ day of _____, 20____, by and between _____, whose address and telephone number are _____, (hereinafter referred to as "Developer") and _____,

_____ (hereinafter referred to as the "Association") with, to and for the benefit of the CITY OF JACKSONVILLE, a municipal corporation of the State of North Carolina, whose address is PO Box 128, Jacksonville, North Carolina 28541 (hereinafter referred to as the "City"). Developer, Association, Association members or any subsequent successors and assigns are herein referred to collectively as the "Owners" and individually as "Owner".

WITNESSETH

WHEREAS, the City, under various state and federal laws, is required to regulate the maintenance of Structural BMPs (as defined herein) constructed to serve new or re-development within the City's planning jurisdiction to ensure that, following initial construction, the Structural BMPs are operated, maintained, and to the extent necessary, repaired in accordance with applicable state and federal laws; and

WHEREAS, the City may be subject to substantial regulatory and financial penalties from the State of North Carolina and the federal government if the above-referenced rules and regulations are not applied to new or re-developments occurring within the planning jurisdiction of the City; and

WHEREAS, the City Council of the City of Jacksonville has determined that, to maintain the City of Jacksonville's compliance under applicable state and federal regulations, certain obligations are to be met by Developers and subsequent owners of Structural BMPs; and

WHEREAS, Developer is the owner in fee simple of that certain "Property" situated in Onslow County, North Carolina and more particularly described on Exhibit A; and

WHEREAS, the Property is located within the planning jurisdiction of the City and subject to certain stormwater standards set forth in Jacksonville City Ordinance 2009-07 (the "Ordinance"), as may be amended from time to time; and

WHEREAS, the Developer has submitted construction drawings depicting the Stormwater Area and Structural BMPs (both herein defined), for the purpose of establishing a stormwater management system for the Property, and

WHEREAS, these Structural BMPs are required to comply with the Ordinance and that failure to maintain the Structural BMPs is a violation of the Ordinance potentially subjecting each lot owner of the Property to significant daily civil penalties and other enforcement actions; and

WHEREAS, at the completion of the Structural BMPs, the Developer may convey the Structural BMPs and the Stormwater Area to the Association; and

WHEREAS, the City also requires that the Developer grant or dedicate to the City an access and maintenance easement over and across the Property and Stormwater Areas for the purpose of inspecting, maintaining, repairing, reconstructing and replacing the Structural BMPs set forth in the Ordinance and this Agreement; and

WHEREAS, this Agreement has been procured in accordance with the requirements of N.C. General Statutes Chapter 143, Article 21, Part 1 and Jacksonville City Ordinance 2009-07.

NOW, THEREFORE, for a valuable consideration, including benefits Developer and Association may derive there from, the receipt of which is hereby acknowledged, the Owners and City hereby agree as follows:

1. RECITALS. The foregoing recitals shall constitute an integral part of this Agreement, and this Agreement shall be incorporated herein and made a part thereof.

2. PROPERTY. As required by the City in connection with the development of this Property, the Developer shall install engineered stormwater control structures and other stormwater structural Best Management Practices (BMPs) and associated appurtenances and vegetation (collectively, the "Structural BMPs") as shown on the construction drawings prepared by _____, entitled _____ and dated _____ on portion of Property as described in Exhibit B (the "Stormwater Areas"), for purposes of establishing a stormwater management system for the Property, and that Developer and Association assume specific maintenance, replacement, reconstruction and repair, responsibilities set forth in the Ordinance and with respect to the Structural BMPs; and

3. GRANT OF EASEMENT. Developer and Association hereby dedicate, bargain, sell, grant, and convey unto the City, its successors and assigns, a perpetual, non-exclusive and irrevocable right and easement over, under, through, and across the Stormwater Areas and access through the Property to and from the Stormwater Areas for the purpose of permitting City inspection and, if deemed necessary, as determined by the City, maintenance, replacement, reconstruction, and repair of the Structural BMPs, as more fully set forth herein and in the Ordinance (the "Protection Easement"). Said easement shall be clearly identified and labeled on the approved final plat for Property. Said easements shall be permanent and shall run with the land.

4. CONSTRUCTION AND MAINTENANCE STORMWATER MANAGEMENT FACILITIES. The Developer shall be responsible for the construction of the Stormwater BMPs; and prior to conveying control of the Stormwater Area, their appurtenances and vegetation to the Association by deed or easement, the Developer will be responsible for maintenance, repair, reconstruction, and replacement thereof. Following conveyance of the Stormwater Area to the Association, the Association and its members will be responsible for maintaining the Stormwater BMPs, their appurtenances and vegetation in the manner specified herein and in strict compliance with the Stormwater Ordinance 2009-07 which is incorporated herein by reference and made a part thereof (the "Ordinance"). At all times, the Stormwater BMPs shall perform as designed and shall at all times comply with all applicable laws, ordinances, regulations, rules and directives of governmental authorities.

5. OWNERSHIP AND/OR TRANSFER OF PROPERTY AND STORMWATER AREAS. Upon completion of the Structural BMPs, the Developer has the option to convey the Stormwater Area and that portion of the Property on which the structure is located to an Association to be formed for the purpose of administrating the provisions of a declaration of covenants to be imposed upon the Property, which declaration shall fully comply with all requirements of this contract as well as all applicable laws. The Declaration of Covenants, Conditions and Restrictions for Property, in reference to this Contract and all applicable stormwater laws, shall be subject to review and approval by the City of Jacksonville Attorney.

Developer agrees that it shall not transfer ownership and/or control of the Structural BMPs until construction has been completed in accordance with the approved Stormwater Areas, Structural BMPs plans and the Stormwater Permit, as defined in the Ordinance, the City has inspected and approved the

same. In addition, the Developer and Association and any new Owner must request that the Permit for the Structural BMPs be reissued to any subsequent Owner.

The Developer and Association agree that it shall not transfer, convey, assign or otherwise relinquish or release its responsibility for the operation and maintenance of its Structural BMPs until a Permit has been issued to Developer and Association's successor, or new owner at which time Developer and Association shall be released from any obligations hereunder arising from events or circumstances occurring after the date the Structural BMPs is transferred and the Permit is reissued to the new Owner of the Property.

6. INSPECTION. The Owner, its successors and assigns, shall ensure that the Structural BMPs are inspected by one of the following professional services: Qualified Registered North Carolina Professional engineer, surveyor, landscape architect, soil scientist, aquatic biologist, or person certified by the North Carolina Cooperative Extension Service for Stormwater treatment practice inspection and maintenance (the "Professional"). The Professional shall submit the Annual Maintenance and Inspection Report found in the City of Jacksonville Stormwater Administrative Manual which may be amended from time to time, to the City. The inspection report shall be due annually 30 days from the date of the final structural stormwater BMP construction inspection approval by the City. The inspection shall cover the entire Stormwater Area as well as any Structural BMPs.

7. COST ESTIMATES FOR CONSTRUCTION OF STRUCTURAL BMPs. The Developer's Engineer shall submit an estimate of construction costs for review and approval by the City in accordance and regulations with the Ordinance. This cost estimate will be used to establish the level to which the escrow account shall be funded.

8. ESCROW ACCOUNT. For purposes of insuring the availability of funds for the replacement and reconstruction of the Structural BMPs, there shall be the establishment of an escrow account, which can be spent solely for sediment removal, structural, biological or vegetative replacement, major repairs or reconstruction of the Structural BMPs. If the Structural BMPs are not performing adequately or as intended or are not properly maintained, the City, in its sole discretion, may remedy the situation, and in such instances the City shall be fully reimbursed from the escrow account. The escrow account will be funded initially by a lump sum contribution of the Developer (the "Initial Payment"), and thereafter by additional contributions of the Association. The Developer shall deposit the Initial Payment in the escrow account and show proof of at the earlier of:

- (i) Prior to plat recordation of the Property; or
- (ii) Before the issuance of building permits for the construction of improvements on the Property.

The Initial Payment shall be equal to \$_____ dollars (which is equal to fifteen percent (15%) of the initial construction costs of the Structural BMPs). The sinking fund budget is defined as the amount required for the initial construction costs. The Owner shall deposit funds at least annually in equal installments into the escrow account such that at least 2/3 of the total amount of the sinking fund budget, as set forth in the Ordinance, shall be deposited into the escrow account within the first five (5) years and the remaining amount shall be deposited within ten (10) years following initial construction of the Structural BMPs. Funds shall be deposited each year into the escrow account. A portion of the annual assessment of the Association shall include an allocation into the escrow

account. Any funds drawn down from the escrow account shall be replaced by Owner in accordance with the schedule of contribution specified by the City prior to the withdrawal of said funds.

The Association shall provide an annual attestation of the sinking fund performed by a certified public accountant in compliance with GAAP standards, stating the funds available and account activity during the preceding year.

The percent of Developer contribution and lengths of time to fund the escrow account may be varied by the City depending on the design and materials of the Structural BMP.

9. **USE OF PROTECTION EASEMENT.** The City, its officers, employees, contractors and agents may access the Property and enter the Stormwater Areas for purposes of exercising City's rights hereunder. This Agreement shall in no way obligate the City to maintain, replace, reconstruct and repair the Structural BMPs, and the City shall not be liable to any person, firm, partnership, company, corporation, governmental agency, or entity for the condition or operation of the Structural BMPs. Further, this Agreement shall in no way diminish, limit, or restrict the right of the City to enforce any of its ordinances as permitted by law.

10. **DEFAULT.** If the Developer, the Association, Association members or subsequent Owners shall fail to comply with the foregoing requirements or any other obligations imposed herein, in the Ordinance or pursuant to the terms of the Declaration of Covenants, Conditions and Restrictions for the Property as the same may be amended from time to time in accordance with the terms thereof (the "Declaration"), the City, in its sole discretion, may perform such work and recover the costs thereof from either the escrow account or from the Owner who is then responsible for the performance of such requirements and obligations provided, however, that, except in cases of emergencies, the City will give the Owner written notification of deadline for correcting the violation and an opportunity to cure the Owner's default hereunder. If the City exercises its right hereunder and maintains, repairs, reconstructs or replaces all or a portion of the Structural BMPs, then following acceptance and payment of the work, the City shall deliver to the Owner written notice of the costs of such work, and the Owner shall pay all such costs within forty-five (45) days after receipt of such notice. Any costs not paid by the Owner to the City within the forty-five (45) day period shall be delinquent, and the Owner shall be considered in default of this Agreement. In the event of such default, the City may either bring an action at law against the Owner for the cost of the work, plus interest at the rate of eight percent (8%) per annum, collection costs, and reasonable attorney fees, or foreclose a lien against the Property, or both.

The Declaration shall grant the Association the right to impose assessments to pay any monies owed by the Association to the City pursuant to this Agreement; payment of such assessment being secured by a lien against all of the Property upon the filing of a claim of lien by the Association or by the City, as the assignee of the Association's lien rights. The granted lien rights shall be foreclosed in like manner as a mortgage on real estate pursuant to power of sale under Article 2A of Chapter 45 of the General Statutes from and after the time of recording a claim of lien in the Office of the Clerk of Superior Court of the County where the Property is situated, which claim shall state the description of the Property encumbered thereby, the name and address of the Association, the record owners of the encumbered Property at the time the claim of lien is filed, and the amount of the lien claim. The claim of lien shall be recordable any time after default, and the lien shall continue in effect until all sums secured by the lien as herein provided shall by have been fully paid. Such claims of lien shall include all sums that are due and payable when the claim of lien is recorded plus interest at the rate set forth in the Declaration, but not to exceed eighteen percent (18%) per year, collection costs and attorney fees. City

lien claims shall be signed by the City Manager. Upon full payment of all sums secured by such claims of lien, the same shall be satisfied of record.

Any payment required by this Agreement which is not paid to the City within thirty (30) days after its due date shall be delinquent. In the event of such default, the City may bring an action against the Owner for nonpayment plus interest at a rate of eight percent (8%) per year, collection costs, a late payment charge of three hundred dollars (\$300) during the first forty five (45) days of default and five hundred dollars (\$500) thereafter and reasonable attorneys' fees.

The remedies set forth herein are cumulative; the City may, for example, bring an action for collection and foreclose its lien claim.

11. **RESERVATION BY RECORD OWNER.** The Developer and the Association and its members, as applicable, shall in all other respects remain the owner of the Property, subject to the Protection Easement, and may make all lawful uses of the Property not inconsistent therewith.

12. **NO WAIVER OF RIGHT.** The City does not waive or forfeit the right to take action to ensure compliance with the terms, conditions and purposes of this Agreement by a prior failure to act.

13. **NOTICE.** Written notice as required hereunder shall be provided to the City Manager of the City of Jacksonville at PO Box 128, Jacksonville, NC 28541, and to the Owner at _____

Written notice shall be deemed received four (4) days following its deposit, first class mail, with the United States postal system. In the event notice to the Owner is returned, the City may notify the Owner at either (i) the mailing address provided by the Onslow County Tax Assessor; or (ii) the registered agent of the Association on file with the Corporations Division of the Secretary of State's Office if an Owner is a corporation.

14. **SUCCESSORS AND ASSIGNS.** The designation of Developer, Association, and Owner shall include the heirs, assigns, and successors to the Developer, Association and Owner. The designation of City shall include the assigns and successors to the City.

15. **TERM.** This Agreement shall continue as a servitude running in perpetuity with the Property.

16. **CONTROLLING LAW.** This Agreement is to be governed by the laws of the State of North Carolina. Any and all applicable laws, rules, and regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts will be construed pursuant to the laws of the State of North Carolina. All claims and disputes arising from any contract shall be construed pursuant to the laws of the State of North Carolina. The State of North Carolina is the proper jurisdiction for all claims and disputes arising under any contract and the proper venue are the Onslow County Superior Court.

17. **INDEMNIFICATION.** Owners agree to protect, defend, indemnify and hold the City, its officers, employees and agents free and harmless from and against any losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities in connection with or arising out of this Agreement and/or the performance hereof that are due to the negligent acts of the Developer and Association, its officers, employees, or agents.

TO HAVE AND TO HOLD the aforesaid rights, privileges and easements herein to the City, its successors and assigns forever, and Developer and Association do covenant that Developer and Association are seized of said premises in fee or by easement and have the right to convey the same, the Developer and Association will warrant and defend such title to the same against claims of all persons whosoever.

IN WITNESS WHEREOF, the Owners and the City have executed this Agreement and under seal as of the day and year first above written.

DEVELOPER:

By: _____ (SEAL)
Name: _____
Its: _____ (Title)

STATE OF NORTH CAROLINA
COUNTY OF _____

DEVELOPER
ACKNOWLEDGEMENT

I, the undersigned Notary Public, certify _____
personally came before me this day and acknowledged he/she is the (title) _____
_____ of _____
(name of entity) a (circle one) corporation, limited liability company, general partnership and the he/she
as such officer being authorized to do so executed the foregoing instrument on behalf of said entity.

WITNESS my hand and official stamp seal this the _____ day of _____, 20____.

(SEAL)

Notary Public
My Commission Expires: _____

ASSOCIATION:

By: _____ (SEAL)

Name: _____

Its: _____ (Title)

STATE OF NORTH CAROLINA
COUNTY OF _____

ASSOCIATION
ACKNOWLEDGEMENT

I, the undersigned Notary Public, do hereby certify that _____
_____ personally came before me this day and acknowledged he/she is the (title) _____
_____ of _____
Association, Inc., a corporation, and the he/she as such officer being authorized to do so execute the
foregoing instrument on behalf of said entity.

This the _____ day of _____, 20__.

(SEAL)

Notary Public
My Commission Expires: _____

CITY OF JACKSONVILLE:

By: _____ (SEAL)

Name: Ronald F. Massey

Its: Interim City Manager (Title)

ATTEST: _____
City Clerk

STATE OF NORTH CAROLINA
COUNTY OF ONSLOW

INTERIM CITY MANAGER
ACKNOWLEDGEMENT

This is to certify that on the _____ day of _____, 20____, before me personally came _____, with whom I am personally acquainted, who, being by me duly sworn, says that she is the City Clerk and Ronald F. Massey is the Interim City Manager of the City of Jacksonville, the municipal corporation described in and which executed the foregoing; that she knows the corporate seal of said municipal corporation; that the seal affixed to the foregoing instrument is said corporate seal, and the name of the municipal corporation was subscribed thereto by the said City Clerk and that the said corporate seal was affixed, all by order of the governing body of said municipal corporation, and that the said instrument is the act and deed of said municipal corporation.

WITNESS my hand and official stamp seal this the _____ day of _____, 20____.

(SEAL)

Notary Public
My Commission Expires: _____

APPROVED AS TO FORM:

City Attorney

Date

LIST OF EXHIBITS

- Exhibit A “Property” Legal description of Property or Reference to recorded map
- Exhibit B “Stormwater Area” – Description of area where structural BMPs are to be constructed.
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