

# APPENDIX C

## Sample Access and Maintenance Easement Agreement

Return to: Thomas L. Horstman, CPESC  
Erosion Control Supervisor  
DEVELOPMENT REVIEW  
Town of Cary  
PO Box 8005, Cary, NC 27512

NORTH CAROLINA

WAKE COUNTY

**STORMWATER CONTROL STRUCTURE AND ACCESS  
EASEMENT AND AGREEMENT (Corporate)**

THIS STORMWATER CONTROL STRUCTURE AND ACCESS EASEMENT AND AGREEMENT, made this day 1 of 1, 191, (**DATE OF AGREEMENT**) by 2 (**NAME OF OWNER**), a North Carolina corporation whose principal address is 2a, (hereafter "Grantor"), with, to, and for the benefit of the Town of Cary, a municipal corporation of the State of North Carolina, whose address is P.O. Box 8005, Cary North Carolina 27512-8005 (hereinafter "Grantee" or "Town").

WITNESSETH:

**WHEREAS**, Grantor is the owner in fee simple of certain real property, situated in the Town of Cary, County of Wake, North Carolina and more particularly described as follows:

**3 (LEGAL DESCRIPTION OF PROPERTY)**

It being the same land conveyed to the Grantor by deed recorded in Book 3a at page 3a in the Office of the Register of Deeds for Wake County (hereafter referred to as "Property"); and

**WHEREAS**, the property is located within the planning jurisdiction of the Town of Cary, and is subject to certain requirements set forth in the Land Development Ordinance of the Town, (hereafter "Cary LDO"), as such may be amended from time to time; and

**WHEREAS**, one of the conditions for development of Property is the granting or dedication of a Stormwater Control Structure easement, which includes the implementation of certain stormwater practices such as, but not limited to, the construction, operation and maintenance of engineered stormwater control structure(s) as provided in Cary LDO; the dedication of an access easement for inspection and

maintenance of the Stormwater Control Structure easement area and engineered structures; and the assumption by Grantor of certain specified maintenance and repair responsibilities; and

**WHEREAS**, this Easement and Agreement has been procured in accordance with the requirements of N.C. G.S. Sec 143-211 *et. seq.* and Chapter 4, Part 4.6 of the Cary LDO.

**NOW, THEREFORE**, for a valuable consideration, including the benefits Grantor may derive therefrom, the receipt of which is hereby acknowledged, Grantor has dedicated, bargained and conveyed and by these presents does hereby dedicate bargain, sell, grant and convey unto the Grantee, its successors and assigns, a perpetual, and irrevocable right and easement in, on, over, under, through and across Property (1) for a STORMWATER CONTROL STRUCTURE easement (“hereafter SCS Easement”) of the nature and character and to the extent hereinafter set forth, more particularly shown and described on Attachment 4 (**NAME OF AS BUILT DRAWING**) which is attached hereto and incorporated herein by reference; upon which Grantor shall construct, maintain, repair and reconstruct stormwater control structure(s), including detention pond(s), pipes and water control structures, berms and dikes, and shall establish and maintain vegetative filters and groundcovers; and (2) an access easement more particularly shown and described on Attachment 4a (**ATTACHMENT NUMBER 1 OR 2**), , for the purpose of permitting Town inspection and, if necessary, maintenance and repair of the SCS Easement and engineered structure(s) as more fully set forth herein and in Cary LDO.

The terms, conditions, and restrictions of the Stormwater Control Structure Easement and Access Easement are:

1. The requirements pertaining to the SCS Easement are more fully set forth in Chapter Chapter 4, Part 4.6 of Cary LDO and the "Operation and Maintenance Manual for 5 (hereafter "Operations and Maintenance Manual"), Cary, NC, prepared by 5a, and dated 5b a copy of which is on file in the Town of Cary Engineering Department. Grantor further agrees Grantor shall perform the following, all at its sole cost and expense:

- I. Monthly or after every runoff producing rainfall, whichever comes first:
  - a. Remove debris from trash rack.
  - b. Check and clear orifice of any obstructions.
  - c. Check pond side slopes; remove trash, repair eroded areas before next rainfall.

## II. Quarterly

- a. Inspect the collection system (i.e., catch basin, piping, grassed swales) for proper functioning. Clear accumulated trash from basin grates, and basin bottoms, and check piping for obstructions.
- b. Check pond inlet pipes for undercutting. Repair if necessary.
- c. Repair any broken pipes.
- d. Replace rip rap that is choked with sediment.
- e. Reseed grassed swales twice yearly. Repair eroded areas immediately.

## III. Semi-Annually

- a. Remove accumulated sediment from bottom of outlet structure.
- b. Check available ponding depths at several locations. If depths are reduced to 75% of original design depths, remove sediment to original design depth.

## IV. General

- a. Mow side slopes according to the season and species of vegetation.
- b. Cattails and other invasive species shall be removed when they cover the entire surface area of bioretention area.
- c. All components of the engineered structures are to be kept in good working order.
- d. In case the ownership of the Stormwater Control Structure transfers, the current owner shall, within thirty (30) days of transfer of ownership, notify the Town of Cary Engineering Department, Stormwater Management Division of such ownership transfer.
- e. This property and structure are also subject to the Operation and Maintenance Manual filed with the register of deeds.

2. Grantor represents and warrant that Grantor is financially responsible for construction, maintenance, repair and replacement of all stormwater control structures, appurtenances and vegetation, including the impoundment. Grantor agrees to perform the maintenance as outlined above and in the Operations and Maintenance Manual in consideration of the Certificate of Compliance with stormwater regulations received for Property.

3. If Grantor fails to comply with these requirements, or any other obligations imposed herein, in Cary LDO or Operations and Maintenance Manual the Town of Cary may perform such work as Grantor is responsible for and recover the costs thereof from Grantor.

4. This Easement and Agreement gives the Grantee the following affirmative rights: Grantee, its officers, employees, and agents may enter Stormwater Control Structure and Access Easement whenever reasonably necessary for the purpose of inspecting same to determine compliance herewith, to maintain same and make repairs or

replacements to the engineered stormwater control structure(s) and appurtenances and conditions as may be necessary or convenient thereto in the event Grantor defaults in its obligations and to recover from Grantor the cost thereof, and in addition to other rights and remedies available to it, to enforce by proceedings at law or in equity the rights, covenants, duties, and other obligations herein imposed.

The Grantor shall in all other respects remain the fee owner of Property and area subject to these easements, and may make all lawful uses of Property not inconsistent with these easements.

The Grantee does not waive or forfeit the right to take action to ensure compliance with the terms, conditions and purposes of this Easement and Agreement by a prior failure to act.

The Grantor agrees that the terms, conditions and restrictions of this easement will be inserted by Grantor in any subsequent deed or other legal instrument by which he divests himself of either the fee simple title to or possessory interests in the subject property. The designation Grantor and Grantee shall include the parties, their heirs, successors and assigns.

TO HAVE AND TO HOLD the aforesaid rights, privileges, and easements herein granted to the Grantee, its successors and assigns forever and the same Grantor does covenant and that Grantor is seized of said premises in fee and has the right to convey the same, that except as set forth below the same are free from encumbrances and that Grantor will warrant and defend the said title to the same against claims of all persons whosoever.

The covenants agreed hereto and the conditions imposed herein shall be binding upon the Grantor and its agents, personal representatives, heirs and assigns and all other successors to Grantor in interest and shall continue as a servitude running in perpetuity with the above described land.

IN WITNESS WHEREOF, the Grantor has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by authority of its Board of Directors, the day and year first above written.

\_\_\_\_\_  
7  
(Grantor)

\_\_\_\_\_  
7a  
7b President

Attest:

\_\_\_\_\_ 7c \_\_\_\_\_

\_\_\_\_\_ Secretary (Corporate Seal)

NORTH CAROLINA  
WAKE COUNTY

I, the undersigned Notary Public, do hereby certify and State aforesaid, do hereby certify that \_\_\_\_\_ personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official seal this \_\_\_ day of \_\_\_\_\_, 19\_\_.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

[Official Seal]

ckc  
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