

(the above space is left blank for recording purposes)

Excise Tax: \$

PREPARED BY/RETURN TO:
Timothy D. Swanson, Attorney
Young, Morphis, Bach & Taylor, LLP
Post Office Drawer 2428
Hickory, North Carolina 28603

STATE OF NORTH CAROLINA

COUNTY OF CATAWBA

DEED OF EASEMENT
[Stormwater Facility Easement]

THIS DEED OF EASEMENT is made this ____ day of _____, 20____, by and between _____, having a mailing address of _____ (“Grantor”), and the City of Hickory, a North Carolina municipal corporation duly organized and existing under the laws of the State of North Carolina, having a mailing address of P.O. Box 398, Hickory, North Carolina 28603 (“Grantee”).

WHEREAS, Grantor is the owner of that certain tract or parcel of land located in Hickory Township, Catawba County, North Carolina (the “Grantor Property”), being the property conveyed to Grantor by deed recorded in Deed Book _____, Page _____, Catawba County Registry, which deed is incorporated herein by reference; and

WHEREAS, development of the Grantor Property is subject to the National Pollutant Discharge Elimination System (“NPDES”) Phase II Stormwater Regulations and the City of Hickory Phase II Stormwater Ordinance, which require the construction, operation, and maintenance of one or more one or more Stormwater Control Measures (“SCMs”) on the Grantor Property pursuant to that certain Stormwater Operation and Maintenance Agreement recorded in Deed Book _____, Page _____, Catawba County Registry, together with the applicable Operation

and Maintenance Manual, both of which are incorporated herein by reference; and

WHEREAS, the Parties desire to establish a perpetual easement to allow Grantee to access the SCMs for purposes of carrying out its responsibilities under the City of Hickory Phase II Stormwater Ordinance, including inspection and enforcement of the Stormwater Operation and Maintenance Agreement.

NOW, THEREFORE, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor does hereby grant, bargain, sell, and convey unto Grantee, its successors and assigns, a perpetual, non-exclusive easement over, across, and through the Grantor Property for pedestrian and vehicular ingress and egress to the SCMs, together with the right to inspect, monitor, maintain, repair, replace, restore, reconstruct, and otherwise perform such work as is authorized under the Stormwater Operation and Maintenance Agreement, the City of Hickory Phase II Stormwater Ordinance, and applicable law. The easement hereby conveyed is more particularly described as follows:

Being that certain Stormwater Facility Easement shown and designated on that certain plat entitled “_____,” prepared by _____, North Carolina Professional Land Surveyor License No. _____, dated _____, and recorded in Plat Book _____, Page _____, Catawba County Registry, which plat is incorporated herein by reference.

The rights granted herein include the right for Grantee, its officers, employees, agents, consultants, contractors, and representatives, together with such vehicles, equipment, machinery, tools, and materials as may be reasonably necessary, to enter upon the easement area for the purposes authorized herein.

Grantor acknowledges and agrees that Grantee is acquiring this easement for the purpose of inspecting the SCMs and, upon the failure of Grantor or any successor owner to properly operate, maintain, repair, or replace the SCMs as required by the Stormwater Operation and Maintenance Agreement, the City of Hickory Phase II Stormwater Ordinance, or applicable law, entering upon the Grantor Property to perform such work as Grantee determines is reasonably necessary to restore the SCMs to their intended design and functionality.

Nothing contained herein shall be construed as imposing upon Grantee any duty or obligation to inspect, operate, maintain, repair, replace, or reconstruct the SCMs. The responsibility for operation, maintenance, repair, and replacement of the SCMs shall remain with Grantor and all successor owners of the Grantor Property except to the extent Grantee elects to exercise the rights granted herein.

Nothing herein shall limit or impair Grantee’s right to recover from Grantor or any successor owner all costs and expenses incurred by Grantee in exercising the rights granted herein, including costs of inspection, maintenance, repair, restoration, administrative expenses, and any other amounts authorized by the Stormwater Operation and Maintenance Agreement, applicable ordinance, or law.

Following completion of any work performed by Grantee within the easement area, Grantee shall restore the surface of the easement area, as nearly as reasonably practicable, to substantially the condition existing immediately prior to such entry, ordinary wear, necessary disturbance associated with the work performed, and pre-existing conditions excepted.

Grantor reserves the right to use and enjoy the easement area for any lawful purpose that does not interfere with or obstruct Grantee's rights under this easement or impair the operation, inspection, maintenance, repair, replacement, or restoration of the SCMs.

This easement shall be perpetual, shall run with the Grantor Property, and shall be binding upon and inure to the benefit of Grantor and Grantee and their respective heirs, successors, assigns, and all future owners of the Grantor Property.

The rights and remedies granted to Grantee under this Deed of Easement are cumulative of, and not in lieu of, any rights, remedies, or enforcement authority granted to Grantee under the Stormwater Operation and Maintenance Agreement, the City of Hickory Phase II Stormwater Ordinance, or any other applicable law, ordinance, rule, or regulation. Nothing contained herein shall be construed to limit, waive, or impair Grantee's authority to enforce the provisions of the Stormwater Operation and Maintenance Agreement, applicable ordinances, or other applicable law.

TO HAVE AND TO HOLD the foregoing easement and rights unto Grantee, its successors and assigns, forever. Grantor covenants that it is the owner of the Grantor Property and has full right, power, and authority to grant the easement and rights conveyed herein, and that the easement shall be enjoyed by Grantee free from the lawful claims of all persons claiming by, through, or under Grantor.

[Signature Pages Follow.]

IN TESTIMONY WHEREOF, Grantor has duly executed this Deed of Easement as of the day and year first above written.

GRANTOR:

_____ (Seal)

By:

Its:

STATE OF NORTH CAROLINA
COUNTY OF _____

I, _____, a Notary Public of _____ County, State of _____, do hereby certify that _____ appeared before me this day and acknowledged that he/she is the _____ of _____, and being authorized to do so, voluntarily executed the foregoing instrument for the purposes stated therein on behalf of said corporation.

Witness my hand and notarial stamp or seal, this _____ day of _____, 20__.

Notary Public

[AFFIX NOTARIAL SEAL]

My Commission Expires: _____.

ACCEPTANCE

The City of Hickory, North Carolina, hereby accepts the foregoing Deed of Easement and the rights conveyed therein, this _____ day of _____, 20__.

CITY OF HICKORY,
a North Carolina municipal corporation

By: _____ (Seal)
Warren Wood, City Manager

Attest: _____
Debbie Miller, City Clerk

Approved as to form on behalf of the City of Hickory this ____ day of _____, 20__.

Attorney for the City of Hickory

STATE OF NORTH CAROLINA
COUNTY OF _____

I, _____, a Notary Public of _____ County, State of North Carolina, do hereby certify that Debbie Miller personally came before me this day and acknowledged that she is the City Clerk for the City of Hickory, a North Carolina municipal corporation, and that by authority duly given and as the act of the City Council of the City of Hickory, the foregoing instrument was signed in its name and by its City Manager, Warren Wood, sealed with its corporate seal, and attested by her as its City Clerk.

Witness my hand and notarial stamp or seal, this ____ day of _____, 20__.

Notary Public

[AFFIX NOTARIAL SEAL]

My Commission Expires: _____.