

STATE OF NORTH CAROLINA )  
 )  
COUNTY OF MECKLENBURG )

**DRAINAGE AND DETENTION POND EASEMENT AGREEMENT**

THIS DRAINAGE AND DETENTION POND EASEMENT AGREEMENT (the “Agreement”) is made this \_\_\_\_ day of \_\_\_\_\_, 2022 (the “Effective Date”) by and between TOWN OF PINEVILLE, a North Carolina municipality, and/or its successors or assigns (the “Town”), and 10306 Industrial, LLC, a North Carolina limited liability company, and/or its successors or assigns (“Industrial”).

**RECITALS:**

**WHEREAS**, Town is the fee simple owner of that certain real property consisting of approximately 1.632 acres and shown on that certain subdivision plat recorded in Book \_\_\_\_\_, Page \_\_\_\_\_ in the Office of the Register of Deeds for Mecklenburg County, North Carolina, and as further described on Exhibit A and depicted on Exhibit C, both of which are attached hereto and incorporated by reference herein (the “Town Property”); and

**WHEREAS**, Industrial is the fee simple owner of that certain real property consisting of approximately 8.993 acres and shown on that certain subdivision plat recorded in Book \_\_\_\_\_, Page \_\_\_\_\_ in the Office of the Register of Deeds for Mecklenburg County, North Carolina, and as further described on Exhibit B, attached hereto and incorporated by reference herein, and depicted on Exhibit C, (the “Industrial Property”); and

**WHEREAS**, the Town Property and the Industrial Property are adjacent to each other and were once part of a single parcel located at 10306 Industrial Dr., Pineville, NC and having Mecklenburg Parcel identification number 20508107; and

**WHEREAS**, there is an existing detention pond which spans the boundary line between the Town Property and the Industrial Property (labeled and defined as the "Existing Detention Pond" on Exhibit C); and

**WHEREAS**, Town and Industrial desire to relocate the Existing Detention Pond such that a Proposed Detention Pond (as hereinafter defined) lies entirely within the boundaries of the Industrial Property, and to grant, declare and establish certain reciprocal easements that are necessary and sufficient for such relocation and development of the Town Property, all as more fully set forth herein.

**NOW, THEREFORE**, Town and Industrial do hereby declare, establish and create, and do hereby subject the Town Property and the Industrial Property to, the easements, terms and conditions set forth herein.

1. Incorporation of Recitals. The Recitals above are hereby incorporated into this Declaration.

2. Grant of Easements.

(a) Proposed Detention Pond. Subject to the terms and provisions hereof, Industrial hereby establishes and grants to Town a permanent, non-exclusive easement (“Easement”) on, over and through Industrial Property in the location generally shown on Exhibit C and labeled and defined as “Proposed Detention Pond” for the purpose of the drainage of surface and storm water over, across and through the area generally shown on Exhibit C and labeled and defined as “Easement Area”.

(b) Construction of Proposed Detention Pond and Temporary Construction Easement. Within \_\_\_\_ years after the Effective Date of this Agreement, Town, at its sole cost and expense, and subject to Section 3 herein, shall construct within the Easement Area the Proposed Detention Pond and pipes, culverts, catch basins and related facilities (collectively, the “Detention Pond Facilities”) necessary to drain storm water from the Town Property and Industrial Property into the Proposed Detention Pond in a size and capacity sufficient to accommodate Town’s proposed future development of the Town Property and Industrial’s use of the Industrial Property as it currently exists as of the Effective Date of this Agreement. Town shall have a temporary construction easement (the “Temporary Construction Easement”) within, over and upon Industrial Property as may be reasonably necessary for the purpose of constructing the Detention Pond Facilities, and to provide access to, and facilitate construction, installation, maintenance, repair and/or replacement of, any below- or above-ground improvements located (or to be located) within the Industrial Property and/or the Easement Area. The Temporary Construction Easement shall be effective during all periods as are reasonably necessary to access, install, maintain, repair and/or replace any such improvements. Upon completion of construction of the Detention Pond and Detention Pond Facilities, Town shall, at its cost and expense, restore the portions of Industrial Property that were disturbed by Town to substantially the same condition as existed before such construction work, and repair any damage to Industrial Property which may have been caused by virtue of such construction.

(c) Existing Detention Pond. Until such time as the Proposed Detention Pond is completely constructed, Town and Industrial each grant to the other a non-exclusive easement across the areas of the Existing Detention Pond and through those certain related pipes servicing the Existing Detention Pond for the purpose of draining water into the Existing Detention Pond. The temporary drainage easement to use the Existing Detention Pond granted to the other party

hereunder shall automatically terminate upon completion of the construction of the Proposed Detention Pond and Detention Pond Facilities.

3. Cost and Maintenance. The cost of maintaining, repairing, and/or replacing the Existing Detention Pond and the Proposed Detention Pond (as applicable), and for constructing the Proposed Detention Pond and Detention Pond Facilities shall be borne by Town; provided, however, in the event unusual or extraordinary maintenance is required to the Existing Detention Pond or Proposed Detention Pond (as the case may be) as a result of runoff or contamination caused by Industrial or the Industrial Property, then Town shall have the right to reimbursement from Industrial.

In the event the use of the Industrial Property changes from its use as of the Effective Date of this Agreement such that the Proposed Detention Pond's capacity cannot accommodate both the Town Property and the Industrial Property, then the cost of increasing the size of the Existing Detention Pond or Proposed Detention Pond (as the case may be) and/or the construction of any such ponds or storm water lines and related improvements shall be borne by Industrial.

4. Interference. Neither Town nor Industrial shall erect or permit the erection of any barriers, obstructions or other improvements on or within the Existing Detention Pond, Proposed Detention Pond, Detention Pond Facilities, or Easement Area that will interfere with the use thereof for the purposes contemplated in this Agreement.

5. Interference with Occupancy. Both Town and Industrial shall use reasonable efforts to cause any access, construction, maintenance and repair work on its property or within the easements granted herein to be performed in such a manner so as not to unreasonably interfere with, and so as to minimize disruptions of, the use, occupancy or enjoyment of or business conducted on the other property or any part thereof, by any other party and such other party's successors, assigns, mortgagees, tenants, agents, contractors, employees, customers, licensees and invitees. To that end, whenever reasonably practicable, the Town and Industrial shall, and shall cause its tenants, agents, contractors, employees, customers, licensees and invitees to, use a route to access the other party's property via Emmett Drive, which borders the Town Property and the Industrial Property.

6. Indemnification. Each of Town and Industrial hereby agrees to indemnify, defend and hold harmless the other from and against all claims, damages, and all costs, expenses, liabilities and reasonable, actual attorneys' fees incurred in connection with any claims (including any action or proceeding brought thereon), to the extent arising from or as a result of any accident, injury, loss or damage whatsoever caused to a natural person, or to the property of any person, alleged to have occurred on any portion of the indemnified party's property or leased premises (as applicable) in connection with any breach under this Agreement, or in connection with the exercise of any rights set forth herein, or due to the gross negligence or willful act of the indemnifying party.

7. Limitation on Rights Granted. No party shall have any rights pursuant to this Agreement with respect to any property which is not owned by such party, except as specifically granted and provided for herein.

8. Compliance with Legal Requirements. The rights and easements provided herein shall be subject to compliance with all applicable laws, ordinances, regulations and other legal requirements.

9. Priority; Consents. All easements and other terms and provisions as specified herein are to be superior to all leases, sales, conveyances, transfers, assignments, contracts, mortgages or other encumbrances and documents in any way affecting the Town Property and Industrial Property, as applicable, and any party foreclosing any mortgage, lien or encumbrance and all other persons or entities acquiring title to or an interest in either of the properties shall acquire and hold title to such property subject to the easements and use restrictions provided for in this Agreement.

10. Duration. The easements, restrictions and rights hereby created shall be perpetual (unless specified otherwise) and shall be enforceable by suit for specific performance and injunctive relief, in addition to any other remedies provided by law or equity. In any litigation arising hereunder, the prevailing party shall be entitled to reasonable attorneys' fees, in addition to all other costs and expenses thereof, including costs on appeal.

11. No Joint Venture or Partnership. The parties do not intend by this Agreement to create a partnership or joint venture or other business association or entity of any nature among or any subsequent owners of all or any part of the Town Property or Industrial Property. No owner of any portion of either property is authorized to act as agent for any other party or to otherwise act on behalf of any other owner.

12. No Waivers. Any indulgence or departure at any time or by any party from any of the provisions hereof or failure by any party to exercise any of its rights and remedies shall not modify the same or relate to the future, or waive future compliance therewith by any other party.

13. Amendment. This Agreement shall not be amended, modified, altered or terminated without a prior written agreement which has been (i) executed by each of the then current owners of the Town Property and the Industrial Property, and (ii) recorded in the Office of the Register of Deeds for Mecklenburg County, North Carolina.

14. Governing Law. All matters relating to the formation, interpretation, and enforcement of this Agreement shall be governed by North Carolina law.

15. Binding Effect. It is understood that this Agreement is a covenant running with the Town Property and Industrial Property, benefitting and burdening the Town Property and the Industrial Property, as applicable, and that this Agreement shall be binding upon and inure to the benefit and burden of all successors, assignees, transferees, heirs and assigns of Town and Industrial and the owners and occupants of the Town Property and Industrial Property.

16. Severability. If any provision of this Agreement shall be held by a court of competent jurisdiction to be invalid, void, unenforceable or inapplicable to any extent, this Agreement, to the extent unaffected by such holding, except as may be necessary to make the remaining provisions of this Agreement consistent with each other, shall remain valid and in force to the fullest extent permitted by law.

**[SIGNATURES AND NOTARIAL ACKNOWLEDGEMENTS  
INTENTIONALLY APPEAR ON THE FOLLOWING PAGES]**

**IN WITNESS HEREOF**, the parties have executed this Agreement as of the date and year set forth above.

**TOWN:**

TOWN OF PINEVILLE,  
a North Carolina municipality

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

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

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

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
2022 by \_\_\_\_\_.

[NOTARIAL SEAL]

\_\_\_\_\_  
NOTARY PUBLIC

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

My Commission Expires: \_\_\_\_\_

**INDUSTRIAL:**

10306 INDUSTRIAL, LLC,  
a North Carolina limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
2022 by \_\_\_\_\_.

[NOTARIAL SEAL]

\_\_\_\_\_  
NOTARY PUBLIC

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

My Commission Expires: \_\_\_\_\_

**EXHIBIT A**

**Description of Town Property**



**EXHIBIT B**

**Description of Industrial Property**

**EXHIBIT C**

**Depiction of Town Property, Industrial Property, Existing Detention Pond, Proposed  
Detention Pond, and Easement Area**