### COUNTY OF FORSYTH

**STATE OF GEORGIA**

#### STORM WATER FACILITY, MAINTENANCE

#### AND REPAIR AGREEMENT

***\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_***

***“Name of Development”***

**THIS AGREEMENT** is made this \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_, 20\_\_\_, by and

between the **City of Cumming**, Georgia, a political subdivision of the State of Georgia

(the **“City**), and ***\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*** and/or

*Name and address of Company*

its successors and assigns, and is made under and shall be construed according to the

laws of the State of Georgia.

**WITNESSETH:**

**WHEREAS**, ***\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*** is the owner

*(the blanks here forward should be the Company Name, unless otherwise noted)*

of certain real property located in the City of Cumming, Georgia, more particularly

described on Exhibit A, which is attached hereto and made a part hereof by this express

reference (“**Property”**); and

**WHEREAS**, as currently planned, ***\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*** desires to develop the Property as shown on those plans submitted to the City on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (*insert date of submission here*) (“Plans”) as shown by the City’s receipt stamp, after which it is anticipated that the developed Property will be known as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (“*Development*”) which said plans are incorporated by reference into this Agreement; and

**WHEREAS**, ***\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_***as well as the City acknowledge that the agreement herein burdens and benefits the Property, as well as the land surrounding it, and that as such this Agreement shall run with the land to be binding upon the ***\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_***its successors and assigns; and

**WHEREAS**, as part of the City’s storm water management program, the City requires that all new developments provide for storm water management, which may include, for example and not limitation: drainage easements, detention ponds, retention ponds, storm sewers, and other storm water management infrastructure (“Storm Water Facilities”) as may be necessary to manage the storm water issues resulting from the impervious surfaces created by the respective development; and

**WHEREAS**, as part of the Preliminary Development Plans, ***\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*** proposes a Storm Water Management Plan to include certain storm water management infrastructure; and

**WHEREAS**, the Storm Water Management Plan may include plans to utilize Commercially Available Storm Water Treatment Technology (“CASWTT”) to address storm water management for the Development, which CASWTT is identified and described in Exhibit \_\_\_, attached hereto and made a part hereof; and

**WHEREAS**, the parties desire to set forth herein certain agreements regarding the repairs, maintenance, liability, replacement and allocation of costs associated with the Storm Water Facilities, including but not limited to any CASWTT, in order to further the public’s interest as well as its health, safety and welfare.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and obligations set forth herein and in consideration of One Dollar ($1.00) and other good and valuable consideration mutually exchanged this date between the parties hereto, the receipt and adequacy of which is hereby acknowledged, the parties hereby agree as follows:

**Section 1. Storm Water Management Design, Plans and Permits*-***

1.1. Storm Water Management Design, Plans and Permits. ***\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*** shall submit proposed storm water management plans to the City, which shall provide for adequate means necessary to properly collect and dispose of all storm water resulting from and related to the Development (“Storm Water Management Plans”). The Storm Water Management Plan shall provide for Storm Water Facilities. All Storm Water Management Plans shall provide for the proper management of storm water issues related to the Development, and shall be reviewed and approved by the City as a condition of receiving any permits related to the land disturbance or the general development of the Property.

1.2. CASWTT.Storm Water Management Plans may include plans to install CASWTT as part of the Storm Water Facilities to mitigate and manage storm water for the Development. The approval by the City of Storm Water Management Plans to include CASWTT shall be expressly contingent upon the installation of CASWTT in location, quality and quantity to adequately manage storm water for the Development. Specifically, and without limitation, the City may dictate the number, location and manufacturer of and CASWTT that may be installed, and ***\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*** agrees to abide by such terms as a condition of developing the Property.

* 1. Construction of Storm Water Facilities. All Storm Water Facilities shall be constructed in accordance with the Storm Water Management Plans, as approved by the City, and shall meet all local and state law requirements regarding the same. No building permits shall be issued by the City until the Storm Water Facilities are completed by the ***\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*** and approved by the City.
  2. Inspection, Maintenance Repair, and Bonding of Storm Water Facilities. Any and all maintenance, repair and/or replacement of the Storm Water Facilities within the Development shall be a responsibility of ***\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*** until the City of Cumming approves the shifting of such responsibility for maintenance, repair and/or replacement of the Storm Water Facilities to another person or entity. Costs related to the inspections, maintenance repairs and/or replacement of Storm Water Facilities shall be an obligation of ***\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_***until the City of Cumming approves the shifting of such obligation for the costs related to the inspections, maintenance, repair and/or replacement of the Storm Water Facilities to another person or entity. Until the time of an approved assignment, ***\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*** shall obtain and provide a maintenance bond or an Irrevocable Letter of Credit in an amount at least equal to the replacement value of all Storm Water Facilities as shown in the Storm Water Management Plans. Said bond shall be issued to the City of Cumming for the purpose of covering all costs related to the maintenance, repair and/or replacement of the Storm Water Facilities prior to and as a condition of obtaining final approval of the Development by the City. No building permits or certificates of occupancy will be issued if said bond is not in place.
  3. Subsequently Responsible Parties: Before any assignment of responsibility for maintenance, repair, replacement, inspection and the costs therefore will be approved by the City of Cumming, the party to assume responsibility must be shown to have the financial ability to meet such responsibilities, and must secure a bond at least equal to that required in paragraph 1.4, above, and for the same purposes. The Subsequently Responsible Party must be willing to sign and must actually sign an agreement with the City of Cumming whereby it assumes responsibility for the obligations, costs and responsibilities described herein. The failure of such agreement to be signed by the Subsequently Responsible Party shall result in the continued responsibility of ***\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*** for the obligations, costs and responsibilities described herein.
  4. Easement and Right of Entry Granted to City. Pursuant to this Agreement, the City is hereby granted an easement and right of entry to the Property for the purpose of inspecting the Storm Water Facilities to ensure that such are properly functioning and to conduct all necessary repairs and maintenance of the same in the event that Storm Water Facilities are not properly maintained by the party responsible therefore. Nothing contained in this paragraph shall create a duty of the City to inspect, repair or maintain the Storm Water Facilities.
  5. Failure of Proper Maintenance, Repair or Operation of Storm Water Facilities. In the event that the City determines by inspection that the Storm Water Facilities are not properly maintained or are not in good order, repair or operation, the City shall issue a written notice to the entity responsible for the Storm Water Facilities at the pertinent time describing such determinations and findings. Upon receipt of such notice, “the responsible entity shall perform all such maintenance and/or repairs as are determined necessary by the City to ensure proper, maintenance, repair and operation of the Storm Water Facilities. In the event that the responsible entity fails to take such necessary actions within 30 days (or less in the event of an emergency as determined by the City), of receiving such notice, the City may at its discretion, conduct all repairs or maintenance of the Storm Water Facilities, as it deems necessary and appropriate.

1.8. Assessment of Costs. In the event that the City undertakes the maintenance and/or repairs of the Storm Water Facilities pursuant to the terms of this Agreement, any related costs associated with such actions shall be assessed against the entity responsible for such under the terms of this Agreement at the time the maintenance and/or repairs are performed. Such assessment shall be deemed a lien against the Property until all charges are paid and satisfied, and ***\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*** for itself, its heirs and assigns expressly consents to the creation of this lien. The City may proceed to foreclose upon this lien as it would a lien for unpaid taxes.

**Section 2. Storm Water Utility and Legal Matters**

2.1 Recording. The City and ***\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*** agree that this Agreement shall be recorded as a restriction against the Property and shall run with the Property such that the respective future owners thereof shall have the obligations with respect thereto as set forth in this Agreement, even if the City has not approved any transfer of responsibility as described *infra*. Further, this Agreement shall be specifically noted and cross-referenced in all vesting deeds to future landowners of any or all portions of the Property. However, the foregoing notwithstanding, the failure of any cross-reference called for in this paragraph shall not affect the enforcement of this Agreement against any parties bound by it, to include but not be limited to the future owners of the Property or any portion thereof.

* 1. Storm Water Utility. In the event that the City implements a storm water utility after the date of this Agreement, the City may assess ***\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,*** its successors or assigns, and/or individual property owners within the Development, if any, a storm water utility charge for those purposes set forth in any future storm water ordinance or regulation. Provided, however, that ***\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*** and/or future property owners shall be given appropriate credits for all on-site storm water facilities.
  2. Representations and Warranties. ***\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*** represents and warrants that
     1. It is the owner in fee simple interest of the Property and that all easements and other rights granted to the City pursuant to this Agreement are given free of any encumbrances or restrictions; and
     2. It is either an individual or a corporate entity, duly formed and in good standing under the laws of the State of Georgia and has the full power and authority to enter into this Agreement.

2.4. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of each of the parties hereto and their successors and assigns. Whenever the parties are identified in this document, it shall include their successors and assigns unless specifically set forth to the contrary. Specifically, but without limitation on the foregoing, this Agreement shall be a covenant running with the Property, binding upon all subsequent purchasers of the Property or any portion thereof.

2.5. Indemnification. ***\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*** and any other party responsible for Storm Water Facilities under this Agreement or any future assignment, shall indemnify, defend and hold harmless the City, its agents and representatives against any and all claims, actions, liabilities, fines, losses, costs, damages or expenses, including, without limitation, reasonable attorneys fees, arising out of, resulting from, or related to the undertaking of the performance of the obligations under this Agreement, to include any such costs resulting from or related to the failure to perform obligations under this Agreement.

2.6. Enforcement. Each of the parties to this Agreement shall be entitled to enforce its rights under this Agreement by reason of any breach of any provision of the Agreement. The parties hereto agree and acknowledge that money damages may not be an adequate remedy for any breach of the provisions of this Agreement and that any party may, in that party’s sole discretion, apply to any court of law or equity of competent jurisdiction for specific performance or injunctive relief to enforce any violations of the provisions of this Agreement. The prevailing party in any such proceeding shall be entitled to its reasonable attorney’s fees and costs of litigation.

2.7. Additional Instruments. Each party shall properly endorse, execute and deliver any instruments or documents as may be reasonably necessary from time to time to effectuate the provisions of this Agreement.

2.8. Entire Agreement, Severability, Binding Effect. Each party agrees that this Agreement contains the entire understanding of the parties, there being no representation, promise, warranty, covenant or undertaking other than those expressly set forth herein as to the subject matter of this Agreement. The covenants and conditions of this Agreement are to be construed together, but should any part or parts of this Agreement be interpreted or construed to be unenforceable, void or without meaning, the remaining part or parts shall continue in full force and effect. This Agreement shall apply to, bind and be obligatory upon the parties, and upon their heirs, assigns, personal representatives, administrators, and executors.

2.9. Mutual Cooperation and Notice. Each of the parties hereto shall cooperate fully with the other party to ensure that the provisions of this Agreement are executed and carried out in good faith. This Agreement shall be effective upon execution hereof by each party. All notices required herein shall be addressed and delivered as follows:

**CITY \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Jonathon W. Heard Jonathon W. Heard \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Director, Department of Utilities \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

##### 100 Main Street \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Cumming, GA 30040 \_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_ \_\_\_\_\_\_\_

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IN WITNESS WHEREOF, the parties have caused these present to be executed in its name by its duly authorized officers, this \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_.

Signed, sealed and delivered **CITYOF CUMMING**

in the presence of:

ATTEST:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(SEAL) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

City Clerk JONATHON W. HEARD, DIRECTOR

Signed, sealed and delivered \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

in the presence of: ***Company Name***

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ BY:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(SEAL)

Witness (PRINT)

ITS:

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

Notary Public

My Commission Expires: