

**STORM WATER DISCHARGE AND
RETENTION EASEMENT
AGREEMENT (the “Agreement”)**

As set forth in this Agreement, a perpetual non-exclusive easement is hereby granted by _____ (“**Seller**”), for the benefit of _____ (collectively called “**Purchasers**”), and is dated for reference purposes as of _____ as amended from time to time by the parties.

RECITALS

A. Purchasers own the parcel of real property located at _____ described on Exhibit A to this Agreement (the “**Development Property**”). Seller owns certain real property adjacent to the Development Property described on Exhibit B to this Agreement (the “**Retained Property**”).

B. Purchasers purchased the Development Property with the explicit understanding and agreement that all stormwater detention for the Development Property would be provided offsite by Seller and that there would be no additional stormwater detention and/or retention requirement for the Development Property.

C. In connection with the development of the Development Property for commercial development, Purchasers will be discharging rates and volumes of storm water runoff from the Development Property at such amounts as are required by Purchasers for their intended commercial use of the Development Property (“**Development Property Runoff**”) over and across the Seller Property.

D. Seller has agreed that it will provide sufficient off-site stormwater retention and/or detention capacity to handle Development Property Runoff, understanding and acknowledging that Purchasers relied upon said agreement in consummating the purchase of the Development.

NOW THEREFORE IN CONSIDERATION OF Purchasers consummation of the closing on the purchase of the Development Property pursuant to the Purchase Agreement and other good and valuable consideration, the sufficiency and receipt of which is herewith acknowledged, Seller agrees as follows.

1. **Grant of Easement.** Seller grants to Purchasers a perpetual, non-exclusive easement (the “Easement”) in, to, through, and over the Seller Property for the discharge of Development Property Runoff into storm water detention and/or retention facilities that are either currently existing or which will be constructed by Seller with sufficient capacity to accept and properly handle all Development Property Runoff (the “**Seller Improvements**”) and which shall be constructed by Seller in full compliance with any and all state, federal, county, or local statutes, ordinances, laws, regulations, rules or similar enactments (the “**Governmental Requirements**”).

2. **Maintenance.** At all times, Seller or its successor in interest to the Seller Property shall maintain the Seller Improvements and the Seller Property (to the extent of Purchasers’ use thereof) in compliance with all applicable Governmental Requirements. All costs of construction, maintenance and similar activities required shall be borne solely by Seller or its respective successor in interest.

3. **Reserved Rights of Seller.** Seller reserves the rights to use the Seller Property and to grant further easement interests in the Seller Property to others so long as such interest and uses do not materially or unreasonably interfere with the use of the Seller Property by Purchasers for Development Property Runoff in accordance with this Agreement.

4. **Inurement.** The benefits and burdens of this Agreement and Easement shall inure to the benefit of and be binding upon the parties and their respective legal representatives, successors, and assigns. The rights and obligations set forth in this Agreement are intended to run with the land and be perpetual in duration.

5. **Attorneys’ Fees.** In the event of any litigation, arbitration, or other proceeding brought to enforce or interpret this Agreement, the prevailing party shall receive an award of its reasonable attorneys’ fees and costs.

6. **Paragraph Headings.** Paragraph headings are included for reference purposes only and do not constitute part of this Agreement.

7. **Governing Law.** This Agreement shall be governed and construed under the laws of the State of Illinois without regard to conflicts of law provisions.

8. **Severability.** Whenever possible, each provision of this Agreement will be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of this Agreement.

9. **Notices.** All notices, demands, or other communications to any party under this Agreement shall be in writing (including facsimile transmission); shall be sent only by facsimile (with confirmation by United States Mail), by nationally recognized courier service, or by personal delivery; and shall be given:

If to the Seller:

If to Purchasers:

All such notices, demands, requests, or other communications shall be deemed received on the date of receipt by the recipient if received prior to 5:00 p.m. in the place of receipt and such day is a business day in the place of receipt. Otherwise, any such notice, demand, request, or other communication shall be deemed not to have been received until the next succeeding business day in the place of receipt. Addresses for notice may be changed from time to time by notice to the other party.

10. **Waiver.** Waiver by either party of any one default will not be deemed to be a waiver of any other default under this Agreement. Any remedy or election under this Agreement will not be deemed exclusive, but, instead, whenever legally permissible, will be cumulative with all other remedies at law or in equity.

11. **Construction.** The rule of strict construction does not apply to this Agreement. This Agreement shall be given a reasonable construction so that the intention of the parties can be carried out.

12. **Exhibits.** The parties acknowledge and agree that each of the Exhibits attached to this Agreement form an integral part of this Agreement and by this reference are incorporated herein as if set forth in full verbatim.

13. **Joint and Several.** All obligations of Purchasers under this Agreement shall be joint and several obligations.

Seller

By: _____

