

Instrument Prepared By: Raleigh City Attorney's Office
Brief Description for Index: 5706 Rock Quarry Rd
Parcel Identifier: 0056799
Project Name: Barwell Road Improvements
Mail After Recording To: City Real Estate Office (ML)
Post Office Box 590
Raleigh, North Carolina 27602

Revenue:

STATE OF NORTH CAROLINA

COUNTY OF WAKE

**DEED OF EASEMENT
WITH GENERAL WARRANTY FOR
STREET RIGHT-OF-WAY
PERMANENT STORMWATER DRAINAGE EASEMENT
PERMANENT UTILITY EASEMENT
PERMANENT SLOPING EASEMENT
TEMPORARY CONSTRUCTION EASEMENT**

THIS DEED OF EASEMENT is made and executed this ____ day of _____, 2024, by Aspen Spring Housing Associates LLC, a North Carolina limited liability company, with a mailing address of 5711 Six Forks Road, Suite 300, Raleigh, NC 27609, hereinafter referred to as the "Grantor", to the City of Raleigh, hereinafter referred to as the "City", with a mailing address of 222 W. Hargett Street, Raleigh, NC, 27601.

WHEREAS, Grantor is the owner of that parcel more particularly described and depicted as "Existing Lot 1" (the "Subject Property") on that plat entitled "Evergreen Aspen Springs - Easements and Line Corrections", dated March 31, 2022, and recorded in BM 2024, Pages 1659-1665, Wake County Registry (the "Plat"), and have agreed to convey to the City, according to the terms set forth below, the easement(s) hereinafter described;

The designation "Grantor" as used herein shall include the singular and plural, as required, and the masculine and neuter gender, as appropriate.

NOW, THEREFORE, for valuable consideration paid to the Grantor, receipt of which is hereby acknowledged, the Grantor has bargained and sold, and does hereby grant, sell and convey unto the City, its successors and assigns, those rights-of-way, privileges, and easements enumerated and described hereinbelow, and as more particularly identified and described in this Deed of Easement:

1 STREET RIGHT-OF-WAY

An easement to construct, improve, reconstruct, replace, inspect, repair, maintain and use a public street, including all related, customary uses of public street right-of-way such as sidewalk, bike path, storm drainage, street lighting, sanitary sewer, water supply and distribution, electric power, landscaping, cable television, gas, telephone, telecommunications, and other such purposes and uses, such public street right-of-way easements depicted and labeled as “Ex. Right of Way Dedication (BM 2022, PG 2107-2113)” over and upon “Existing Lot 1” as shown on the Plat.

2 PERMANENT STORMWATER DRAINAGE EASEMENT

A permanent stormwater drainage easement (“Easement”) for the acceptance, containment and transmittal of stormwater runoff and surface water drainage from adjacent properties, including the public streets, and specifically including the right, privilege and easement to access, construct, install, reconstruct, improve, inspect, repair, maintain, operate and use culverts, ditches, swales, impoundments, subsurface piping and other drainage control facilities (“Facilities”), together with the perpetual right to clear and keep clear the full widths of said Easement, such Easement depicted and labeled as “ Ex. Variable Width City of Raleigh Permanent Utility Easement, Permanent Drainage Easement, Permanent Slope Easement, and Temporary Construction Easement (BM 2022, PG. 2107-2113)” over, upon, and under “Existing Lot 1” as shown on the Plat (such Easement area being the “Permanent Drainage Easement Area”; the Permanent Drainage Easement Area is a combined Permanent Stormwater Drainage Easement, Slope Easement, Permanent Utility Easement, and Temporary Construction Easement).

Further terms and conditions of this permanent easement are as follows:

- a)** City’s operation, maintenance, repair or improvement of the Facilities does not guarantee the Grantor with complete protection from property damage for all storm events.
- b)** City shall have the right to enter upon the Easement to obtain samples of stormwater from time to time for testing purposes.
- c)** City shall have the right to remove from the Easement, now or at any time in the future, trees, structures, or other obstructions that may endanger the proper maintenance and operation of the Facilities.
- d)** In laying, constructing, replacing, enlarging, repairing and maintaining subgrade Facilities (excluding swales and/or ditches), City shall remove all surplus earth, make level the surface of the ground above the easement, replace and repair existing driveways and walkways, and restore any disturbed area to a condition substantially equal to its condition immediately prior to commencement of any such work, excepting therefrom any improvements made, or to be made, by the City to this combined easement area as are permitted by the grants of Permanent Stormwater Drainage Easement, Permanent Utility Easement, and Sloping Easement in this Deed of Easement as this easement area is a combined Temporary Construction Easement, Permanent Utility Easement, Permanent Stormwater Drainage Easement, and Slope Easement.
- e)** Grantor shall not erect any permanent structures over or across the Easement, including but not limited to: buildings, sheds, walls, masonry structures, tennis courts, swimming pools, fences, and structures located on a permanent, enclosed foundation.

f) Grantor shall not attempt to block or otherwise impede the natural flow of water on, within, or upon the Subject Property. Any alterations to Facilities proposed by the Grantor must first be approved in writing by the City's Stormwater Manager or designee prior to installation. Grantor shall immediately notify City in the event that the Facilities become blocked or the natural flow of water is impeded.

g) Routine maintenance of above-grade Facilities (including ditches and swales) such as minor pruning, mowing, and weeding, will be the responsibility of the Grantor, subject to reasonably accepted landscaping practices. Major maintenance determined to be necessary by the City's Stormwater Manager or other authorized designee will be performed by the City. The City shall be responsible for maintenance of all subgrade infrastructure.

h) The Grantor shall in all other respects remain the fee owner of the Subject Property and the area subject to the Easement, and may make all lawful uses of the Subject Property; provided, however, no use may be made of the Easement that interferes or is inconsistent with the City's easement rights and full, reasonable use thereof for stormwater drainage purposes.

3 PERMANENT UTILITY EASEMENT

An easement, now and hereafter, for all utility purposes, including public water, sanitary sewer, stormwater drainage, electric power, gas, cable television, telephone and communications, and related purposes, including the right to construct, install, improve, remove, replace, inspect, repair, maintain and use all pipes, lines, fixtures, equipment, and appurtenances, both above-ground and subsurface, necessary and appropriate to the utility purposes enumerated above, such permanent utility easement depicted and labeled as "Ex. Variable Width City of Raleigh Permanent Utility Easement, Permanent Drainage Easement, Permanent Slope Easement, and Temporary Construction Easement (BM 2022, PG. 2107-2113)" over, upon, and under "Existing Lot 1" as shown on the Plat (such permanent utility easement area being the "Permanent Utility Easement Area"; the Permanent Utility Easement Area is a combined Permanent Utility Easement, Permanent Stormwater Drainage Easement, Slope Easement, and Temporary Construction Easement).

Further specific terms and conditions applicable to the Permanent Utility Easement are as follows:

a) The City is authorized to remove and keep removed from the easement all trees, roots, limbs, shrubs, underbrush and part(s) thereof, or other obstructions as necessary to maintain, repair, or protect the utility lines located therein. Further, the City shall have the right to trim limbs from, or cut down, any tree outside the easement area which will likely endanger overhead electric cables or other lines within the easement.

b) The City shall be entitled to use the easement area for access onto this and other utility rights-of-way; provided nothing herein shall be construed to grant to the City any right of access over other property of the Grantor except that described and conveyed herein.

c) The City may also use the Permanent Utility Easement Area for slopes of cuts and fills adjacent to public street right-of-way, which shall specifically include the right to use the area, in accordance with generally accepted engineering practices, for excavating, sloping, cutting, filling, the construction of retaining walls, the installation of storm water drain pipes or other drainage facilities, and including grading or otherwise changing the natural contours of the land in order to support and

accommodate the adjacent roadway. Upon completion of construction of the adjacent street and/or sidewalk, the areas used for slopes of cuts and fills will be graded, stabilized, and restored, using conventional engineering and landscaping practices, excepting therefrom any improvements made, or to be made, by the City to this combined easement area as are permitted by the grants of Permanent Stormwater Drainage Easement, Permanent Utility Easement, and Sloping Easement in this Deed of Easement as this easement area is a combined Temporary Construction Easement, Permanent Utility Easement, Permanent Stormwater Drainage Easement, and Slope Easement.

d) Following completion of any utility improvement work within the entire easement area, any disturbed lands resulting from such work will be restored in accordance with generally accepted engineering and landscape practices, excepting therefrom any improvements made, or to be made, by the City to this combined easement area as are permitted by the grants of Permanent Stormwater Drainage Easement, Permanent Utility Easement, and Sloping Easement in this Deed of Easement as this easement area is a combined Temporary Construction Easement, Permanent Utility Easement, Permanent Stormwater Drainage Easement, and Slope Easement.

e) The City may also use the Permanent Utility Easement Area, on a temporary basis, for construction purposes and activities which are related to the Project (as defined below), such purposes and activities including, but not limited to, clearing, grading, landscaping, erosion control, temporary impoundment of drainage flows, movement and storage of supplies and equipment, construction staging, and the repair and re-connection of a private driveway or driveways onto the adjacent public roadway, the right to engage in such Project-related temporary uses to terminate upon final completion of the Project. Any property impacted by land-disturbing temporary construction uses shall be restored in accordance with sub-paragraphs (c) and (d), above, of this Permanent Utility Easement, excepting therefrom any improvements made, or to be made, by the City to this combined easement area as are permitted by the grants of Permanent Stormwater Drainage Easement, Permanent Utility Easement, and Sloping Easement in this Deed of Easement as this easement area is a combined Temporary Construction Easement, Permanent Utility Easement, Permanent Stormwater Drainage Easement, and Slope Easement. The City's temporary construction uses and activities relating to this easement shall be consistent with the official plans and specifications for the Barwell Road Improvements Project (the "Project"), that were prepared by SEPI Engineering entitled "Barwell Road Improvements Project", and maintained in the offices of the City of Raleigh Engineering Services Department.

f) The Grantor shall in all other respects remain the fee owner of the Subject Property and area subject to this easement, and may make all lawful uses of the Subject Property not inconsistent with this easement and its terms and conditions.

4 TEMPORARY CONSTRUCTION EASEMENT

A temporary easement for purposes reasonably necessary and incidental to the construction of public infrastructure improvements (such as streets, sidewalks, slopes, greenway trail, water, sewer and storm drainage facilities), such temporary construction purposes including the stockpiling of materials, the movement and storage of vehicles and equipment, construction staging, clearing, the grading of soil and other like material, the repair, reconstruction and reconnection of a private driveway or driveways onto adjacent public street right-of-way, and similar purposes, such temporary construction easement depicted and labeled as "Ex. Variable Width City of Raleigh Permanent Utility Easement, Permanent Drainage Easement, Permanent Slope Easement, and Temporary Construction Easement (BM 2022, PG. 2107-2113)" over, upon, and under "Existing Lot 1" as shown on the Plat (such temporary construction easement area being the "Temporary Construction Easement Area"; the

Temporary Construction Easement Area is a combined Temporary Construction Easement, Permanent Utility Easement, Permanent Stormwater Drainage Easement, and Slope Easement).

Further specific terms and conditions applicable to the Temporary Construction Easement are as follows:

a) Following construction of the Project, the City shall re-grade, mulch, and re-seed, or otherwise restore, the Temporary Construction Easement Area substantially to its prior use and condition, in accordance with generally accepted landscaping and engineering practices, excepting therefrom any improvements made, or to be made, by the City to this combined easement area as are permitted by the grants of Permanent Stormwater Drainage Easement, Permanent Utility Easement, and Sloping Easement in this Deed of Easement as this easement area is a combined Temporary Construction Easement, Permanent Utility Easement, Permanent Stormwater Drainage Easement, and Slope Easement.

b) The City's use of and activities within the Temporary Construction Easement Area [including grading, stabilization, and restoration under subparagraph (a) of this Temporary Construction Easement] shall substantially conform with the official plans and specifications for the Project, prepared by SEPI Engineering, entitled "Barwell Road Improvements Project ", maintained in the offices of the City of Raleigh Engineering Services Department.

c) This easement shall terminate upon final completion of the Project referenced above. Thereafter, the Grantor may make and enjoy all lawful uses of its property subject to the Permanent Utility Easement, Permanent Stormwater Drainage Easement, and Slope Easement which also encumber the Temporary Construction Easement Area and were granted to the City by this Deed of Easement.

5 SLOPING EASEMENT

An easement for slopes of cuts and fills adjacent to public street right of way, which shall specifically include the right to use the area, in accordance with generally accepted engineering practices, for excavating, sloping, cutting, filling, the construction of retaining walls, the installation of stormwater drain pipes or other drainage facilities, and including grading or otherwise changing the natural contours of the land in order to support and accommodate the adjacent roadway, such sloping easement depicted and labeled as "Ex. Variable Width City of Raleigh Permanent Utility Easement, Permanent Drainage Easement, Permanent Slope Easement, and Temporary Construction Easement (BM 2022, PG. 2107-2113)" over, upon, and under "Existing Lot 1" as shown on the Plat (such sloping easement area being the "Slope Easement Area"; the Slope Easement Area is a combined Slope Easement, Permanent Utility Easement, Permanent Stormwater Drainage Easement, and Temporary Construction Easement).

Further specific terms and conditions applicable to the Sloping Easement are as follows:

a) Upon completion of construction of the adjacent street and/or sidewalk, the area subject to this easement will be graded, stabilized, and restored, using conventional engineering and landscaping methods, excepting therefrom any improvements made, or to be made, by the City to this combined easement area as are permitted by the grants of Permanent Stormwater Drainage Easement, Permanent Utility Easement, and Sloping Easement in this Deed of Easement as this easement area is a combined Temporary Construction Easement, Permanent Utility Easement, Permanent Stormwater Drainage Easement, and Slope Easement.

b) The City may also use the Slope Easement Area, on a temporary basis, for construction purposes and activities which are incidental to the Project, such purposes and activities including, but not limited to, clearing, grading, landscaping, erosion control, temporary impoundment of drainage flows, movement and storage of supplies and equipment, construction staging, and the repair and reconnection of a private driveway or driveways onto the adjacent public roadway, the right to engage in such Project related temporary uses to terminate upon final completion of the Project. Any land disturbing temporary construction uses shall be restored in accord with subparagraph (a), above, in this Sloping Easement, excepting therefrom any improvements made, or to be made, by the City to this combined easement area as are permitted by the grants of Permanent Stormwater Drainage Easement, Permanent Utility Easement, and Sloping Easement in this Deed of Easement as this easement area is a combined Temporary Construction Easement, Permanent Utility Easement, Permanent Stormwater Drainage Easement, and Slope Easement.

c) In addition, and at its option, the City may plant and maintain trees, shrubs and other landscaping materials within the Slope Easement Area. Routine maintenance of the trees, shrubs, or other landscape material, such as watering, minor pruning, and weeding will be the responsibility of the Grantor. Major maintenance determined to be necessary by the City of Raleigh's Urban Forester will be performed by the City; and the Grantor may not injure, remove, or otherwise destroy the landscape material planted within the Slope Easement Area without the written consent of the City.

d) The City's use of and activities within the above-described easement area [including grading, stabilization, and restoration under subparagraph (a) of this Slope Easement] shall substantially conform with the official plans and specifications for the Project, prepared by SEPI Engineering, entitled "Barwell Road Improvements Project", maintained in the offices of the City of Raleigh Engineering Services Department.

e) The Grantor shall in all other respects remain the fee owner of the Subject Property and area subject to this easement and may make all lawful uses of the Subject Property not inconsistent with this easement and its terms and conditions; provided, there be no damage to the lateral and subjacent support of the public street and/or sidewalk or to any stormwater drainage facilities.

THE PROPERTY INTEREST HEREIN DESCRIBED AND CONVEYED does not include a primary residence.

TO HAVE AND TO HOLD the above-described permanent easements, running with the land, for the respective purposes enumerated above, unto the City of Raleigh, its successors and assigns, in perpetuity.

TO HAVE AND TO HOLD the above-described temporary easement, while in effect, unto the City, its successors and assigns.

The Grantor, for itself, its heirs, successors, and assigns, hereby warrants and covenants that it is the owner of the Subject Property; that it has the right to grant these easements; that the same are free from encumbrances except that City Future Advance Deed of Trust and Assignment of Rents and Profits recorded in Book 19326, Page 2357, and that certain UCC Financing Statement recorded at Book 19326, Page 2369, both of the Wake County Registry, and those security interests hereinafter stated that have been subordinated to this Deed of Easement; and that it will warrant and defend the title to the same against lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, the Grantor has executed the foregoing by signature of its managing member under seal, with proper authority, and as the act and deed of the Company, the day and year first above written.

Aspen Spring Housing Associates LLC, a North Carolina Limited liability company

By: LIHTC Managers, LLC, Managing Member

By: _____(SEAL)
Timothy G. Morgan, Manager

STATE OF NORTH CAROLINA

COUNTY OF _____

I certify that the following **person** personally appeared before me this day, acknowledging to me that he signed the foregoing document for the purpose stated therein and in the capacity indicated:

(print names of those appeared)

Witness my hand and official seal, this _____ day of _____, 2024.

Notary Public

(SEAL)

Notary's printed or typed name

My Commission Expires: _____

PROPERTY DESCRIPTION APPROVED:

- Engineering Services Director/Designee
- Assistant Public Utilities Department Director
- Parks, Recreation & Cultural Resources Director

CITY ATTORNEY'S OFFICE
APPROVED AS TO FORM:

- BM
- BP
- BW
- CS
- DT
- JR

CONSENT AND SUBORDINATION TO DEED OF EASEMENT

This Consent and Subordination to Deed of Easement given by First-Citizens Bank & Trust Company as the current owner and holder of the promissory note secured by, and beneficiary under, that certain Construction Deed of Trust Securing Future Advances dated January 12, 2023 and recorded at Book 19241, Page 686, Wake County Registry and lender under that certain Assignment of Rents recorded at Book 19241, Page 705, Wake County Registry, both of which encumber the Subject Property. First-Citizens Bank & Trust Company hereby consents to the Deed of Easement and subordinates its rights as the beneficiary under the Construction Deed of Trust Securing Future Advances and as lender under the Assignment of Rents to the rights created in this Deed of Easement. Other than as herein specifically set forth in this Consent and Subordination, First-Citizens Bank & Trust Company shall have no further obligation under this Deed of Easement to which this Consent and Subordination is attached.

FIRST-CITIZENS BANK & TRUST COMPANY

By: _____
Name: _____
Title: _____

STATE OF NORTH CAROLINA

COUNTY OF _____

I, _____, Notary Public, certify that the following person personally appeared before me this day, acknowledging to me that he/she voluntarily signed the foregoing document in the capacity indicated for the purposes stated therein: _____.

Witness my hand and official seal, this _____ day of _____, 2024.

Notary Public

(SEAL)

Notary's printed or typed name

My Commission Expires: _____

CONSENT AND SUBORDINATION TO DEED OF EASEMENT

This Consent and Subordination to Deed of Easement given by North Carolina Housing Finance Agency as (i) the current owner and holder of the promissory note secured by, and beneficiary under, that certain Deed of Trust, Assignment of Rents and Leases, and Security Agreement dated April 23, 2024 and recorded at Book 19592, Page 2253, Wake County Registry and secured party under that certain UCC Financing Statement recorded at Book 19592, Page 2286, Wake County Registry, and (ii) the current owner and holder of the promissory note secured by, and beneficiary under, that certain Deed of Trust, Assignment of Rents and Leases, and Security Agreement dated April 23, 2024 and recorded at Book 19592, Page 2291, Wake County Registry and secured party under that certain UCC Financing Statement recorded at Book 19592, Page 2311, Wake County Registry, all of which encumber the Subject Property. North Carolina Housing Finance Agency hereby consents to the Deed of Easement and subordinates its rights as the beneficiary under the two Deed of Trust, Assignment of Rents and Leases, and Security Agreements and as secured party under the two UCC Financing Statements to the rights created in this Deed of Easement. Other than as herein specifically set forth in this Consent and Subordination, North Carolina Housing Finance Agency shall have no further obligation under this Deed of Easement to which this Consent and Subordination is attached.

NORTH CAROLINA HOUSING FINANCE AGENCY

By: _____
Name: _____
Title: _____

STATE OF NORTH CAROLINA

COUNTY OF _____

I, _____, Notary Public, certify that the following person personally appeared before me this day, acknowledging to me that he/she voluntarily signed the foregoing document in the capacity indicated for the purposes stated therein: _____.

Witness my hand and official seal, this _____ day of _____, 2024.

Notary Public

(SEAL)

Notary's printed or typed name

My Commission Expires: _____

CONSENT AND SUBORDINATION

(Wake County – Aspen Spring Housing Associates, LLC)

The undersigned are the beneficiary and trustee under a certain deed of trust dated May 4th, 2023 and recorded in Book 19326, Pages 2383-2397, Wake County Registry (the “Deed of Trust”). The undersigned beneficiary also is the secured party under that certain UCC Financing Statement recorded at Book 19326, Pages 2398-2403, Wake County Registry. The undersigned hereby consent to and approve of the Deed of Easement with General Warranty for Street Right-of-Way, Permanent Stormwater Drainage Easement, Permanent Utility Easement, Permanent Sloping Easement, Temporary Construction Easement to which this Consent and Subordination is attached (the “Deed of Easement”) and hereby acknowledge and agree that their right, title, interest and estate by virtue of the Deed of Trust and the UCC Financing Statement in and to that portion of Grantor’s (as defined in the Deed of Easement) property identified and depicted as the “Street Right-of Way, Permanent Stormwater Drainage Easement, Permanent Utility Easement, Sloping Easement, Temporary Construction Easement” shall be subject and subordinate to this Deed of Easement. The undersigned hereby evidences such consent, approval, agreement and subordination by causing its duly authorized officers to sign, seal and deliver this Consent and Subordination this _____ day of _____, 20____. This Consent and Subordination is given for the sole purpose of consenting to, and subordinating, the undersigned’s interest in and to the Grantor’s property as identified in the Deed of Easement with General Warranty for Street Right-of-Way, Permanent Stormwater Drainage Easement, Permanent Utility Easement, Permanent Sloping Easement, Temporary Construction Easement and further depicted and illustrated in BM 2024, Pages 1659-1665 and BM 2022, Pages 2107-2113, Wake County Registry.

Attested by:

Name: Yvonne C. Gilyard
Title: Clerk to the Board

(Official Seal)

BENEFICIARY:

WAKE COUNTY, a body Politic and Corporate

By: _____
Shinica Thomas, Chair
Wake County Board of Commissioners

TRUSTEE:

By: _____
Scott Warren, Wake County Attorney,
Trustee as recorded in Deed Book 19326, Pages
2383-2397, Wake County Registry

NORTH CAROLINA
COUNTY OF WAKE

WAKE COUNTY
ACKNOWLEDGEMENT

I, the undersigned, a Notary Public in and for the said County and State, do hereby certify that Yvonne C. Gilyard personally appeared before me this day and acknowledged that she is the Clerk of the Wake County Board of Commissioners, and by authority duly given and as the act of said Board, the foregoing instrument was signed by its Chairman of the Wake County Board of Commissioners, sealed with its corporate seal and attested by Yvonne C. Gilyard as its Clerk.

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

Notary Public

(SEAL)

Notary printed or typed name

My Commission Expires: _____

NORTH CAROLINA
COUNTY OF WAKE

WAKE COUNTY
ACKNOWLEDGEMENT

I, the undersigned, a Notary Public in and for the said County and State, do hereby certify that the following person personally appeared before me and acknowledged to me that they signed the foregoing instrument: Scott Warren, Wake County Attorney.

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

Notary Public

(SEAL)

Notary printed or typed name

My Commission Expires: _____