

WAKE COUNTY, NC 117  
 CHARLES P. GILLIAM  
 REGISTER OF DEEDS  
 PRESENTED & RECORDED ON  
 11/28/2018 14:50:32

BOOK:017303 PAGE:01060 - 01068

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**Instrument prepared by:** David J. Neill, Smith Moore Leatherwood LLP, PO Box 27525, Raleigh, NC 27611  
**Mail after recording:** David L. York, Smith Moore Leatherwood LLP, PO Box 27525, Raleigh, NC 27611  
**Excise Tax:** \$0.00 (NCGS § 105-228.29(6))  
**Brief Description for Index:** Granite Falls Blvd  
**Parcel Identifier:** Portion of #0314111

### DRAINAGE AND TEMPORARY CONSTRUCTION EASEMENT AGREEMENT

This DRAINAGE AND TEMPORARY CONSTRUCTION EASEMENT AGREEMENT (hereinafter the “**Agreement**”) is made this 26<sup>th</sup> day of November 2018, by and between **WOODROW W. MARLOWE, JR.**, an unmarried man having a mailing address of P.O. Box 36, Clarkton, NC 28433 (“**Grantor**”); and **TOWN OF ROLESVILLE**, a North Carolina municipal corporation having an address of 502 Southtown Circle, Rolesville, NC 27571 (the “**Town**”; Grantor and Town hereinafter collectively, the “**Parties**”).

#### WITNESSETH:

WHEREAS, Grantor is the fee owner of that certain parcel of land located in the Town of Rolesville; Township of Wake Forest, County of Wake, and State of North Carolina commonly known as 6000 Rogers Road, Rolesville, North Carolina and having a Wake County PIN of 1759-71-4313 (the “**Grantor’s Land**”); and

WHEREAS, Town is developing a certain public road and sidewalk improvement project commonly known as “Granite Falls Boulevard” (the “**Project**”) together with certain associated stormwater drainage improvements to be situated upon Grantor’s Land (collectively the “**Stormwater Improvements**”); and

WHEREAS, Town desires certain easements across portions of the Grantor’s Land for the successful design, construction, installation, maintenance, and operation of the Project and Stormwater Improvements; and

WHEREAS, Town desires to acquire from Grantor and Grantor desires to grant to Town a drainage easement on, over, and across those portions of the Grantor’s Land described with

particularly in Exhibit A attached hereto and incorporated herein (the “**Drainage Easement Area**”); and

WHEREAS, Town desires to acquire from Grantor and Grantor desires to grant to Town a temporary construction easement on, over, and across that portion of the Grantor’s Land described with particularly in Exhibit B attached hereto and incorporated herein (the “**TCE Areas**”; the Drainage Easement Area and TCE Area collectively the “**Easement Areas**”).

NOW, THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

I. Easements.

A. Drainage Easement. Grantor hereby grants and conveys to Town a permanent, non-exclusive drainage easement on, over, under, through, and across the Drainage Easement Area for (i) receipt of stormwater flowing from the Project; (ii) construction, installation, improvement, replacement, inspection, repair, maintenance, use, and operation of Stormwater Improvements; and (iii) ingress, egress, and regress facilitating those rights set forth by this subsection (the “**Drainage Easement**”).

B. Temporary Construction Easement. Grantor hereby gives and grants unto Town a temporary, non-exclusive easement on, over, under, through, and across the TCE Areas for purposes reasonably necessary and incidental to the construction of the Project, including the temporary stockpiling of materials, the movement and temporary storage of equipment, construction staging, and similar temporary construction purposes (the “**TCE**”; the Drainage Easement and TCE collectively, the “**Easements**”).

II. Reserved Rights. Grantor shall retain fee simple ownership of the Easement Areas and may make any use of the Easement Areas that does not unreasonably interfere with the exercise by Grantee of Grantee’s rights hereunder.

III. Benefit. The Easements and rights granted herein shall be in the nature of public utility easements and this Agreement shall be binding upon the Town and Town’s successors and assigns. Further, the Easements shall be easements running with the Grantor’s Land and binding upon Grantor and all owners of fee simple title to the Grantor’s Land, their respective heirs, successors, and assigns.

IV. Term.

A. Drainage Easement. The Drainage Easement shall be a perpetual easement.

B. Temporary Construction Easement. The TCE shall terminate and its provisions as set forth in this Agreement shall be of no further effect upon the earlier of (i) the completion of construction of the Project; or (ii) five (5) years from the date this instrument is recorded in the offices of the Wake County Register of Deeds.

V. Maintenance & Costs.

A. Unless there occurs the Development Event (as defined below), Grantor shall have no obligations for the payment for or performance of any construction, operation, maintenance, replacement, or repair of Town-installed improvements within the Easement Areas.

B. In the event of development of Grantor's Land evidenced by any application for and issuance of any building permit for the construction of improvements upon Grantor's Land (the "**Development Event**"), all obligations and costs for maintenance, replacement, or repair of the Drainage Easement shall immediately be deemed assigned by Town and assumed by Grantor and Grantor's successors and assigns, such obligations running with Grantor's Land in perpetuity. In furtherance of this assignment and assumption, Town shall promptly deliver to the fee owner or owners of Grantor's Land (the "**Owners**") all plans, records, and maintenance contracts for the Stormwater Improvements and the Owners shall promptly assume all obligations under such any such contracts.

VI. Restrictions on Use. The TCE is subject to the following terms and provisions:

A. Grantee shall restore the grade, replace any removed vegetation or structures, and seed with grass those portions of the TCE Areas that Grantee has disturbed in exercising its rights under the TCE.

B. All work undertaken by Grantee in connection with the Temporary Easement shall be done in a good and workmanlike manner.

VII. Public Dedication. This Agreement shall constitute a public dedication and acceptance of the Drainage Easement and Drainage Easement Area.

VIII. Warranty. Grantor covenants that Grantor is seized of the aforesaid Easement Areas in fee and has the right to convey the easements hereby granted; that the same is free from all encumbrances; and that Grantor will warrant and defend said title against the lawful claims of all persons claiming by, under, or through Grantor.

IX. Subordination. If, at the time this Agreement is recorded in the office of the Register of Deeds of Wake County, if the Grantor's Land is subject to the lien of any mortgage, deed of trust, or other financing instrument (any such instruments shall be referred to hereinafter collectively or individually as a "**Financing Document**"), the owner of such encumbered parcel shall obtain from each creditor secured by any such Financing Document an instrument, in recordable form, subordinating the lien of the Financing Document to the rights and easements created hereunder.

X. Interpretation. If there arises any issue regarding the intent of the Parties to this Agreement or the interpretation of any provision of this Agreement or any ambiguity arising from this Agreement, no presumption or burden of proof shall arise favoring or disfavoring any

party, and this Agreement shall not be strictly construed against any party. When the context in which a word is used in this Agreement indicates that such is the intent, a word in the singular number shall include the plural and vice-versa, and a word in the masculine gender shall include the feminine and neuter and vice-versa. Any use in this Agreement of any form of the verb "to include" means the word stated but not limited to. The paragraph headings or titles used in this Agreement are for convenience only, and shall not define, limit, extend, or interpret the scope of this Agreement or any particular section, paragraph, or provision of this Agreement.

XI. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina without giving effect to any conflict of law, rule or provision thereof that would cause the application of the laws of any other jurisdiction.

XII. Relationship. This Agreement does not constitute an agreement of partnership or joint venture, and does not create a relationship of principal and agent. No party shall have the authority to act as agent of the other for any purpose, except as may be expressly provided herein. The Parties are, and shall remain, independent contractors responsible for all their respective obligations and liabilities.

XIII. Third-party Beneficiaries. Except as may be otherwise expressly provided herein, this Agreement shall not confer any rights or remedies upon any person or entity other than the Parties hereto, and their respective successors and assigns.

XIV. Injunctive Relief. The Parties acknowledge that any breach or violation of this Agreement will cause irreparable harm to the non-breaching party for which there is no adequate remedy at law. Accordingly, in addition to any other remedies available at law or equity, any party hereto that is aggrieved by a breach or threatened breach of any of the provisions of this Agreement shall be entitled to seek from any court of competent jurisdiction an order for specific performance and/or for temporary and/or permanent injunctive relief to enforce the provisions of this Agreement without the necessity of proving actual damages or posting bond or other security.

***REMAINDER OF PAGE INTENTIONALLY BLANK  
SIGNATURE & ACKNOWLEDGMENT PAGES FOLLOW***

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

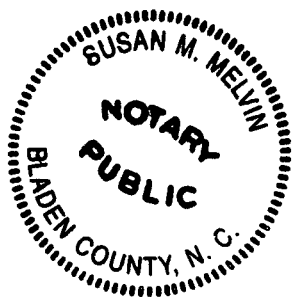
**“Grantor”:**

Woodrow W. Marlowe, Jr. (SEAL)  
WOODROW W. MARLOWE, JR.

Bladen COUNTY, NORTH CAROLINA

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document: Woodrow W. Marlowe, Jr.

Date: November 8, 2018

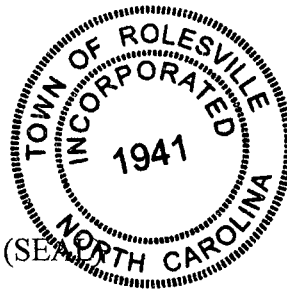


Susan M. Melvin  
[Notary's signature as name appears on seal]

Susan M. Melvin, Notary Public  
[Notary's printed name as name appears on seal]

My commission expires: June 19, 2023

[Affix Official Seal in Space Above]



"Town":

TOWN OF ROLESVILLE (SEAL)

By:

Name: Kelly Arnold

Title: Town Manager

WAKE COUNTY, NORTH CAROLINA

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document: Kelly Arnold as town manager of the Town of Rolesville.

Date: NOVEMBER 26, 2018

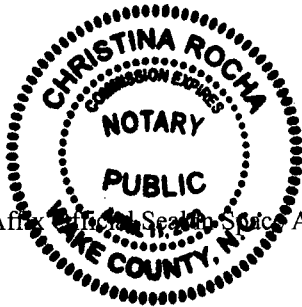
Christina Rocha

[Notary's signature as name appears on seal]

CHRISTINA ROCHA

[Notary's printed name as name appears on seal]

My commission expires: APRIL 11, 2023



[Affix Notary Seal to Space Above]

Attest:

Robin Peyton  
Robin Peyton  
Town Clerk

Approved as to Form:

David L. York  
David L. York  
Town Attorney

**EXHIBIT A**

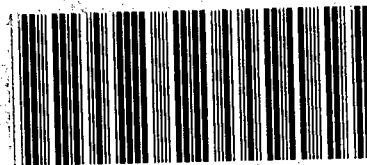
**The “Drainage Easement Area”**

BEING all certain area of land identified as “Public Drainage Easement” and consisting of approximately 17,987 square feet as shown on that map and plat titled “Granite Falls Blvd. Roadway Extension Acquisition Map” prepared by John A. Edwards & Company dated October 12, 2018 and recorded in the offices of the Wake County Register of Deeds in Book of Maps 2018, Page 2072 to the extent situated on that land conveyed to Woodrow Marlowe pursuant to that North Carolina General Warranty Deed dated June 1, 2012 and recorded in the offices of the Wake County Register of Deeds in Book 14792, Page 2756.

**EXHIBIT B****The “TCE Areas”**

BEING all of those two areas of a combined 8,281 square feet situated immediately north and south respectively and bounding the newly dedicated Granite Falls Boulevard as shown on that map and plat titled “Granite Falls Blvd. Roadway Extension Acquisition Map” prepared by John A. Edwards & Company dated October 12, 2018 and recorded in the offices of the Wake County Register of Deeds in Book of Maps 2018, Page 2072 to the extent situated on that land conveyed to Woodrow Marlowe pursuant to that North Carolina General Warranty Deed dated June 1, 2012 and recorded in the offices of the Wake County Register of Deeds in Book 14792, Page 2756.





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**Please retain yellow trailer page**

It is part of the recorded document and must be submitted with the original for re-recording.

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**Charles P. Gilliam**

**Register of Deeds**

Wake County Justice Center  
300 South Salisbury Street, Suite 1700  
Raleigh, NC 27601

☐ New Time Stamp

☐ \$25 Non-Standard Fee

☐ Additional Document Fee

☐ Additional Reference Fee

**This Customer Group**

\_\_\_\_\_ # of Excessive Entities

\_\_\_\_\_ # of Time Stamps Needed

**This Document**

\_\_\_\_\_ 9 \_\_\_\_\_ # of Pages