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FORSYTH CO. NC FEE \$26.00  
PRESENTED & RECORDED

11-18-2021 12:08:23 PM

LYNNE JOHNSON  
REGISTER OF DEEDS  
BY: ANGELA BOOE, DPTY

BK: RE 3656  
PG: 2478-2482

Tax Block 3810

Lot 112

Prepared by: City of Winston-Salem City Attorney's Office  
Return after Recording to: Deana Lindley, Senior Engineering Technician  
CWS Engineering/Real Estate – Box 30

NORTH CAROLINA ) APPLICATION  
) AND CONVEYANCE  
FORSYTH COUNTY ) AGREEMENT

THIS AGREEMENT, made and entered into this 18<sup>th</sup> day of November, 2021, between **PEM Investments, LLC** with its principal office located in Forsyth County, North Carolina, hereinafter referred to as the "Applicant"; and the **City of Winston-Salem**, hereinafter referred to as the "City", acting through the City/County Utility Commission, hereinafter referred to as the "CCUC", a joint agency created by the City and Forsyth County;

WITNESSETH:

WHEREAS, the CCUC maintains, on behalf of the City, the public water and sanitary sewer systems located throughout the City and Forsyth County; and

WHEREAS, the Applicant seeks the CCUC's permission to construct water and sanitary sewer extensions, hereinafter referred to as the "extensions", and to connect these extensions with the City's water and sanitary sewer system as shown on map and detailed engineering drawings entitled "**Ardmore Commons**", prepared by Steve M. Cause, P.E., a copy of which are on file in the Department of Public Works of the City of Winston-Salem, **City Project Number 12495** and which, along with any amendments thereto, are incorporated herein by reference and hereinafter referred to as the "Plans"; and

WHEREAS, the extensions are to be located within the City of Winston-Salem and the CCUC has determined that the extensions shall promote and benefit the orderly growth and development of the City of Winston-Salem and Forsyth County, subject to the provisions of the Water and Sewerage System Policy Resolutions, adopted by the CCUC June 12, 1978, and September 28, 1981, respectively, together with subsequent amendments; and

WHEREAS, the extensions shall be constructed in accordance with the "Plans" and in accordance with all rules, regulations and laws, whether promulgated by the Federal Government, the State of North Carolina, the County of Forsyth or the City of Winston-Salem, hereinafter referred to as the "Specifications"; and

WHEREAS, the Applicant represents and warrants to the CCUC that it is the owner of all property abutting or having frontage along the extensions; and

WHEREAS, subject to the terms and conditions contained herein, and upon the CCUC's acceptance of the extensions, all title and interest in the extensions and the adjoining right-of-ways shall automatically be conveyed to the City free and clear of any liens, claims or encumbrances.

NOW, THEREFORE, in consideration of the premises above and the following promises and obligations contained herein, the sufficiency and adequacy of which is hereby acknowledged, the parties hereto contract and agree as follows:

#### I. CONSTRUCTION

A. The Applicant shall, at its own risk and expense, construct or cause to be constructed the extensions - the estimated cost of the water extension being \$147,150.00, and estimated cost for the sanitary sewer extension being \$338,140.00.

B. All Plans shall be stamped by a North Carolina Professional Engineer, approved by the CCUC and be in accordance with the applicable provisions of the CCUC's policies relating to the construction of water and sanitary sewer extensions. The Applicant shall obtain all required easements or right-of-ways in widths satisfactory to the CCUC where the Applicant does not own the land in which the extensions will be placed or where the extensions will not be located in a public right-of-way. The Applicant shall show satisfactory evidence that he has obtained and recorded with the Forsyth County Registrar of Deeds proper agreements conveying right-of-ways and that the same are free and clear of all encumbrances.

C. Applicant shall utilize a North Carolina Licensed Utility Contractor, hereinafter the "Contractor", acceptable to the CCUC, to construct the extensions. The designated Contractor shall not sublet or assign any portion of construction without the CCUC's prior written consent. The Applicant is responsible to ensure that the Contractor shall, at all times, construct the extensions in a safe and proper manner and in compliance with all applicable ordinances, statutes, rules and regulations concerning safety, including but not limited to, such applicable statutes, rules and regulations known as or issued pursuant to, the Occupational Safety and Health Act ("OSHA") (hereinafter "safety standards"). Without limiting the foregoing in any manner, safety standards concerning trenching and excavation are particularly important. The Applicant shall require the Contractor to comply with the safety standards in performing all aspects of the work subject to this Agreement. If the CCUC becomes aware of any violation of the safety standards or of any failure by the Applicant to require the Contractor to comply with the safety standards, the CCUC may, without obligation, report the Contractor's violation to the Applicant and/or any regulatory agency. It is expressly understood and agreed that neither the CCUC nor the City nor their respective officers, agents, employees or representatives shall have any obligation, duty or responsibility to inspect the work subject to this Agreement for compliance with this paragraph nor to report violations of this paragraph to the Contractor, the Applicant and/or any regulatory agency.

D. During construction, the CCUC may make periodic inspections to determine if the extensions are being constructed according to the Plans and Specifications. Such inspections, however, shall not relieve the Applicant from any obligation to perform all of the work strictly in accordance with the Plans and Specifications. In case of any disputes arising as to the materials furnished or the manner of performing the work, the CCUC shall have authority to reject materials or suspend work until the disputes have been resolved. It is further understood and agreed that the Applicant shall remove any work or materials condemned as unsatisfactory by the CCUC and shall rebuild and replace same to the standard required by the Plans and Specifications, all at his own expense and in default thereof, the same may be done by the CCUC and the costs thereof charged against the Applicant.

E. The Applicant shall not allow the use of the extensions, other than for testing purposes, or allow connections to the extensions until the extensions have been completed, inspected, accepted by the CCUC and conveyed to the City. The CCUC and the City have the complete and unfettered discretion to determine if the extensions have been properly constructed and to accept the extensions.

F. Connections to the extensions shall be made by and paid for by the Applicant or the subsequent users of the extensions. The CCUC and the City shall not, under any circumstances, be liable to or obligated to pay for or provide connections to the Applicant's extensions— even after the extensions have been completed and accepted by the City. Any connection, additions, or extensions to the herein described extensions shall be made only upon written permission of the CCUC.

G. Upon completion of the extensions and prior to the extensions being put into operation, the Applicant shall furnish to the CCUC certified, itemized and final quantities of work performed, including a certified statement from the utility contractor indicating that the contractor has been paid in full for work performed. The Applicant will also furnish to the CCUC reproducible "as-built" drawings in a form acceptable to the CCUC.

## II. ACCEPTANCE

A. Prior to the CCUC's acceptance of the extensions, the Applicant shall assign to the City, its successors and assigns, in a form that is acceptable to the City, the easements or permanent right-of-ways that are necessary to operate, maintain, repair and replace the extensions free and clear of any liens, claims or encumbrances. The Applicant shall warrant and defend title to the easements or right-of-ways against the claims of any persons whomsoever.

B. The CCUC's acceptance of the extensions shall occur only after the Applicant assigns all easements and permanent right-of-ways (see A above), submits as-built drawings acceptable to the CCUC and provides proof of payment (with itemized breakdown attached) that the utility contractor has been paid in full and construction final has been issued. Upon the CCUC's acceptance of the extensions, the extensions together with any appurtenances which are made a part thereof, shall automatically be conveyed to the City free and clear of any liens, claims or encumbrances, without the need of executing or recording an additional agreement. Should the Applicant choose to build this project in phases, the Applicant shall request the CCUC's written approval. Should the CCUC approve the request to build this project in phases, this Agreement shall remain in effect for each phase, until all phases of the project are completed.

C. The extensions shall be constructed within the right-of-ways of public streets within which the CCUC shall have the right to operate, maintain, repair and replace the extensions or that the extensions shall be constructed within permanent easements or right-of-ways that are owned by the Applicant and shall be assigned to the City, as set out above.

D. Appointment of the City as Applicant's Attorney-in-Fact. Applicant, hereby, makes, constitutes, and appoints the City, with full power of substitution, as Applicant's true and lawful attorney-in-fact, in Applicant's name, place, and stead, and for its use and benefit, such that the City, acting as attorney-in-fact for the Applicant, may execute and deliver a deed conveying the easements referenced in Paragraphs A, B, and C, above, from Applicant to City, and the City may file said deed in the Forsyth County Registry, to evidence that City has exercised its right pursuant to this contract, to obtain the contemplated easements. The foregoing power of attorney is a special and durable power of attorney, coupled with an interest; it is irrevocable, and shall survive a declaration that the Applicant is incompetent or bankrupt, the making of an assignment for the benefit of Applicant's creditors, the appointment of a receiver, guardian, or trustee for Applicant's property, and any other action affecting the status of Applicant. This power of attorney may be exercised by citing the name of the Applicant, and executing any instrument over the signature of the attorney-in-fact, acting for the Applicant.

E. Upon the CCUC's acceptance of the extensions, the Applicant shall not have any claim or ownership to the extensions and shall not have any right to charge others for connecting to these extensions.

F. Upon acceptance of the extensions by the CCUC, the Applicant warrants the parts, labor and service for any and all defects in the extensions that arise within one year following the date of the City's acceptance of the extensions.

G. Indemnification of the City. The Applicant will indemnify, hold and keep harmless the CCUC, the City and their respective officers, agents and employees from and against all claims, damages, losses and expenses - including attorney's fees - arising out of or resulting from the construction of these extensions and caused in whole or in part by any negligent or willful act or omission of the Applicant, the Applicant's Contractor(s), a subcontractor thereof, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

In any and all claims against the CCUC or the City or their respective officers, agents or employees, by any employee of the Applicant, Applicant's Contractor(s) and any subcontractor thereof, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Applicant, Applicant's Contractor(s) and any subcontractor thereof, under Workers' Compensation Acts, Disability Benefit Acts or other employee benefits acts.

Without limiting the foregoing, the provisions of Paragraph G shall apply without limitation to any claim or action in the nature of trespass, inverse condemnation, nuisance or similar claim or action for damage to real and/or personal property.

H. This Agreement may not be assigned in whole or in part, without the prior written consent of the City.

III.

IN WITNESS WHEREOF, the Applicant has caused this instrument to be executed by its duly authorized representatives; and the City/County Utility Commission has approved this instrument and caused the same to be executed in the name of the City of Winston-Salem by the City/County Utilities Director, and attested by the City Secretary, all as of the day and year first above written.

PEM INVESTMENTS, LLC

By: Pennston Corp, Managing Member

By: Bruce Hubbard  
Bruce Hubbard, Vice-President/Sec/Treasurer

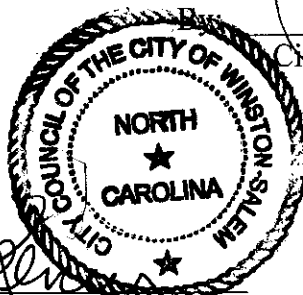
(SEAL)

ATTEST:

By: Mary S. Hubbard  
President or Assistant Secretary

CITY OF WINSTON-SALEM

[Signature]  
City/County Utilities Director



ATTEST:

By: [Signature]  
City Clerk

Approved as to form and legality this  
15 day of November,  
2021

By: [Signature]  
Deputy City Attorney

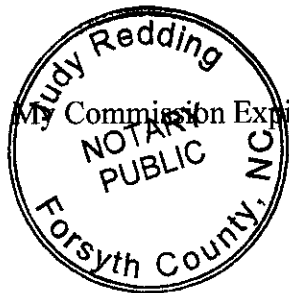
North Carolina STATE Forsyth COUNTY

This 28th day of September, 2021, personally came before me, Judy Redding, a Notary Public of Forsyth, County Mary S. Hubbard (President or Asst-Secretary), who being by me duly sworn, says that he/she knows the Common Seal of Pennston Corp. and is acquainted with Bruce Hubbard, who is the Vice-President/Sec/Treasurer of said Corporation, and saw the said President sign the foregoing or annexed instrument, and saw the said Common Seal of said Corporation affixed to said instrument by said President, and that he/she, the said MARY S. Hubbard (President or Asst-Secretary), signed his/her name in attestation of the execution of said instrument in the presence of said President of said Corporation.

I certify that I am not a party to the attached instrument.

WITNESS my hand and notarial seal, this the 28th day of September 2021.

Judy Redding  
Notary Public

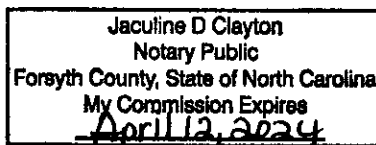


**NORTH CAROLINA - Forsyth County**

I, Jaculine D. Clayton, a Notary Public of Forsyth County, North Carolina, do hereby certify that Sandra Keeney personally appeared before me this day and acknowledged that she is the City Clerk of the City of Winston-Salem, a municipal corporation, and that by authority duly given and as the act of the said municipal corporation, the foregoing instrument was signed in its name by its City/County Utility Director, sealed with its Corporate Seal, and attested by her as its City Clerk.

WITNESS my hand and notarial seal, this the 15th day of November 2021.

Jaculine D. Clayton  
Notary Public



<---- (SEAL)

My Commission Expires: April 12, 2024