

NORTH CAROLINA
DURHAM COUNTY

THIS RIGHT OF ENTRY AGREEMENT is made and entered into this the ___ day of ___, 20___, by and between McCormack Baron Salazar Development, Inc, hereinafter referred to as "Option Holder", and the CITY OF DURHAM, a North Carolina municipal corporation, hereinafter referred to as "City".

WITNESSETH:

WHEREAS, Option Holder is considering purchasing property from City and desires to conduct certain tests on the Property and City is willing to grant permission to the Option Holder to enter onto the Property as stated herein.

THEREFORE, in consideration of one dollar (\$1.00) to City in hand paid, the receipt of which is hereby acknowledged, the parties hereby agree as follows:

1. By this agreement, the Option Holder gains right of entry to that property located on the 19.83 acre Site formerly known as Rolling Hills (the "Property.")
2. The term of this right of entry shall be for a period of twelve (12) months from the date of this agreement. If, however, the Option Holder obtains right of possession to the Property pursuant to a subsequent written agreement, then the term of this right of entry shall end upon said right of possession becoming effective.
3. The City grants to the Option Holder, its contractors, agents, employees and assigns a right to enter upon the Property and to conduct site assessments, soil tests, ground water sampling and analysis or any other tests that City may deem appropriate in order to evaluate the Property for potential development and use. Option Holder will choose the location of the sampling points and will take reasonable precautions to minimize the impact of the work on the Property.
3. Option Holder agrees to comply with all local, state and federal laws, rules and ordinances applicable to the work, and further agrees to exercise due care in performing all work on the Property. Option Holder will be responsible for determining the location of all underground utilities prior to the commencement of any work.
4. INDEMNIFICATION: (a) To the maximum extent allowed by law, Option Holder shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise from any negligent or willfully wrongful actions by the Option Holder pursuant to this Right of Entry. In performing its duties under this subsection "a", Option Holder shall at Option Holder's sole expense defend Indemnitees with legal counsel reasonably acceptable to City.

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(b) Definitions. As used in subsections "a" and "c" of this section--"Charges means claims, judgments, costs, damages, losses, demands, liabilities, obligations, fines, penalties, settlements, and expenses (included within "Charges" are interest and reasonable attorney's fees assessed as part of any such item. "Indemnitees" means City and its officers, officials, independent contractors, agents, and employees, and does not include Option Holder.

(c) Limitations of Option Holder's Obligation. Subsection "a" of this section shall not require Option Holder to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the actions, in whole or in part, of Indemnitees.

(d) The City shall defend, indemnify, and save harmless Option Holder, its general partners, officers, officials, independent contractors, agents, and employees, from and against all Charges arising from Environmental Contamination to, on, under, or around the Property except for such Environmental Contamination caused in whole by Option Holder, its general partners, officers, officials, independent contractors, agents, and employees.

5. [Insert here insurance provisions, as determined by the Risk Manager.]
6. Neither party shall be responsible for lost profits or other consequential damages that may arise out of a breach of this agreement.
7. For any change to the condition of the Property caused by the Option Holder, the Option Holder will restore the Property to its condition as it existed prior to its actions, reasonable wear and tear excepted.
8. This agreement constitutes the entire understanding between the parties with respect to the activities contemplated by this agreement. All prior agreements or understandings, whether oral or written, are superseded. This agreement may be amended only by a written document duly executed by the parties.
9. Each day, prior to entering the premises or upon leaving the premises for the day, McCormack Baron Salazar, its general partners, officers, officials, independent contractors, agents, and/or employees shall the Project Manager at the Department of Community Development.
10. This agreement is governed by the laws of the State of North Carolina.

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IN WITNESS WHEREOF, as of the day and year first above written, the foregoing Right of Entry has been duly executed by duly authorized agents of the parties hereto.

CITY OF DURHAM

By _____
City Manager

ATTEST:

CITY OF DURHAM

City Clerk

McCormack Baron Salazar Development, Inc.

By
Kevin McCormack, President

ATTEST:

Secretary

(Affix corporate seal here)

**NORTH CAROLINA
DURHAM COUNTY**

I, a Notary Public in and for the aforesaid County and State certify that _____ personally appeared this day, and acknowledged that he or she is the _____ City Clerk of the City of Durham, a municipal corporation, and that by authority duly given and as the act of the City, the foregoing contract or agreement was signed in its corporate name by its _____ City Manager, sealed with its corporate seal, and attested by its said City Clerk or Deputy City Clerk. This the _____ day of _____, 2011.

Notary Public

My Commission Expires

**STATE OF MISSOURI
COUNTY OF ST. LOUIS**

I, a Notary Public in and for the aforesaid County and State, certify that _____ personally appeared before me this day and stated that he or she is Secretary of McCormick Baron Salazar Development, Inc., a corporation, and that by authority duly given and as the act of the corporation, the foregoing contract or agreement with the City of Durham was signed in its name by its President, whose name is Kevin McCormack, sealed with its corporate seal, and attested by him/herself as its said Secretary or Assistant Secretary. This the _____ day of _____, 2011.

Notary Public

My Commission Expires

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This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act. This the _____ day of _____, 2011.

Finance Officer