

MAINTENANCE ESCROW AGREEMENT

For *[Insert SCM names and Development Name]*

Account # _____

THIS AGREEMENT made pursuant to Town of Kernersville Watershed Protection and Stormwater Ordinances, and entered into this ____ day of _____, 20__, by and between The TOWN OF KERNERSVILLE, a North Carolina municipal corporation, party of the first part (hereinafter referred to as “Town”; and *[Insert Name of Developer]* (hereinafter referred to as “Developer”), and *[Insert Homeowners or Association name]* (hereinafter referred to as the “Association”) parties of the second part, hereby employ *[Insert Name of the Escrow Officer]* of *[Insert Name of the Bank]*, as Escrow Agent party of the third part (hereinafter referred to as "Escrow Agent"), with its principal place of business at *[Insert Full Address of Escrow Officer office]*, and in connection with the Stormwater Control Measures of *[Insert Name of the Development or project]* project at *[Insert Full Address of Project or Development]*.

WITNESSETH:

WHEREAS, the Town’s Watershed Protection and Stormwater Ordinances (hereinafter referred to as “Stormwater Ordinances”), requires the establishment of an escrow account to ensure that adequate funds are available to provide for the long-term maintenance, and/or replacement/reconstruction of the Stormwater Control Measures (hereinafter referred to as “SCMs”) (maintenance activities include, but are not limited to, sediment removal and structural, biological or vegetative replacement, repairs, or reconstruction).

WHEREAS, the Stormwater Ordinances, requires both an initial payment by the Developer and either annual sinking fund payments by the Association (if it has taken ownership of the SCMs) or by the Developer (if it still retains ownership of the SCMs) to fund the escrow account.

WHEREAS, the Stormwater Ordinances requires the Developer to pay into the escrow account an initial payment equal to fifteen percent (15%) of the initial construction cost of the SCMs prior to plat recordation or issuance of construction permits, whichever occurs first.

WHEREAS, the Stormwater Ordinances requires the Association (if it has taken ownership of the SCMs) or the Developer (if it still retains ownership of the SCMs) to pay into the escrow account the total amount of sinking fund budget (corresponding to eighty-five percent (85%) of the initial construction cost of the SCMs according to the following schedule: two-thirds (2/3) of the amount shall be deposited into the escrow account within the first five (5) years and the full amount shall be deposited within ten (10) years following initial construction of the SCMS.

WHEREAS, the Developer is developing a *[Insert type of Project]* known as *[Insert Name of the Project]*, to be maintained by a home owners association, a property owners association or similar entity, and desires to provide the Town a financial guarantee to assure that adequate funds are available to provide for the long-term maintenance, and/or replacement/reconstruction of the SCMs at *[Insert Name of the Project]* and has established an Escrow Account for such purpose.

WHEREAS, the parties have agreed that the Escrow Agent is acceptable to all parties to act in such capacity;

NOW, THEREFORE, in consideration of the foregoing premises, it is hereby agreed:

1. The Developer has deposited in escrow the sum of _____ dollars (\$_____) with the Escrow Agent, to guarantee that adequate funds are available to provide for the long-term maintenance and/or replacement/reconstruction of the SCMs as required by the Stormwater Ordinances and in accordance with approved construction plans and specifications.

2. The Association (if it has taken ownership of the SCMs) or Developer (if it still retains ownership of the SCMs) shall pay the sum of _____ dollars (\$_____) to the Escrow Agent within ten (10) years following initial construction of the SCMs (funds shall be deposited each year into the escrow account) to guarantee that adequate funds are available to provide for the long-term maintenance and/or replacement/reconstruction of the SCMs as required by the Stormwater Ordinances and in accordance with approved construction plans and specifications.

3. The Escrow Agent agrees to hold said funds and to pay out said funds only upon receipt of "Proper Authorization" as hereinafter defined. "Proper Authorization" shall mean authority in written form from the Town stating that a disbursement is authorized either:

(a) To the Association, or to any party designated in writing by the Association, upon delivery of "Proper Authorization" from the Town authorizing such payment. The Town, through the Town's Stormwater Division, shall issue such "Proper Authorization" upon approval of the expenditure.

(b) To the Town upon delivery of a "Proper Authorization" from the Town's Stormwater Division, upon its determination that the SCMs are not performing adequately or as intended or are not properly maintained in accordance with the Stormwater Ordinances and the Town has determined that pursuant to the Stormwater Ordinances it must perform any such uncompleted maintenance and/or replacement/reconstruction activities and use the escrow funds on deposit with the Escrow Agent for such purposes.

4. The Developer or the Association, whichever is responsible, agrees to comply with the requirement of the Stormwater Ordinances that any funds drawn down from the escrow account shall be replaced in accordance with the schedule of anticipated work used to create the sinking fund budget.

5. The Escrow Agent hereby acknowledges that it will hold the funds referred to in Items 1 and 2 above and represents that it has no obligation whatsoever to any of the parties hereto except to release said funds within ten (10) calendar days upon delivery of "Proper Authorization" from the Town, and the Developer or Association does hereby release and hold the Escrow Agent harmless from any and all claims whatsoever by it against the Escrow Agent for releasing such funds to the Town in accordance with the terms of this Agreement.

6. In the event that this escrow agreement should fail for any reason to cover the costs of maintenance or repair, including any deficiency as to form or execution, then Developer and the Association, and their successors, transferees, or assigns, acknowledge that whichever party is deemed responsible by the Town is subject to being charged for the costs of such maintenance and/or replacement/reconstruction; and such costs shall be enforced in the nature of a debt as provided by the applicable Ordinances and State laws.

IN WITNESS WHEREOF, the parties have hereto set their hands and seals, this _____ day of _____, 20____.

{SIGNATURES APPEAR ON THE FOLLOWING PAGES}

PARTY OF THE FIRST PART:

TOWN OF KERNERSVILLE

By: _____
Dawn H. Morgan, Mayor

ATTESTED TO:

Keith Hooker, Town Clerk

STATE OF NORTH CAROLINA)
COUNTY OF _____)

I, _____, a Notary Public of Forsyth County, North Carolina, do hereby certify that _____ personally came before me this day and acknowledged that she is the Town Clerk of the Town of Kernersville, a North Carolina municipal corporation, and that by authority duly given as the act of the Town of Kernersville, the foregoing instrument was signed in its name by its Mayor, sealed with its corporate seal and attested by her as its Town Clerk.

Witness my hand and official seal, this the _____ day of _____, 20____.

Notary Public

Print/Type Name: _____

My Commission Expires: _____

(SEAL)

PARTY OF THE SECOND PART:

DEVELOPER:

By: _____ (SEAL)

Name: _____

Its: _____ (Title)

STATE OF NORTH CAROLINA)
COUNTY OF _____)

**DEVELOPER
ACKNOWLEDGEMENT**

I, _____, a Notary Public of _____ County, North
Carolina, do hereby certify that _____, the _____ of
_____ personally came before me this day and acknowledged the execution and
sealing of the foregoing instrument as _____ on behalf of and as the act of
the company referred to in this acknowledgment.

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

Notary Public

Print/Type Name: _____

My Commission Expires: _____

(SEAL)

**PARTY OF THE SECOND PART:
ASSOCIATION:**

By: _____ (SEAL)

Name: _____

Its: _____ (Title)

STATE OF NORTH CAROLINA)
COUNTY OF _____)

**ASSOCIATION
ACKNOWLEDGEMENT**

I, _____, a Notary Public of _____ County, North
Carolina, do hereby certify that _____, the
_____ of _____ personally came before
me this day and acknowledged the execution and sealing of the foregoing instrument as
_____ on behalf of and as the act of the company referred to in this
acknowledgment.

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

Notary Public

Print/Type Name: _____

My Commission Expires: _____

(SEAL)

PARTY OF THE THIRD PART:

NAME OF BANK:

ESCROW AGENT:

By: _____ (SEAL)

Name: _____

Its: _____ (Title)

STATE OF NORTH CAROLINA)
COUNTY OF _____)

ESCROW AGENT
ACKNOWLEDGEMENT

I, _____, a Notary Public of _____ County, North
Carolina, do hereby certify that _____, the
_____ of _____ personally came before
me this day and acknowledged the execution and sealing of the foregoing instrument as
_____ on behalf of and as the act of the company referred to in this
acknowledgment.

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

Notary Public

Print/Type Name: _____

My Commission Expires: _____

(SEAL)