



## MAINTENANCE ESCROW AGREEMENT

For Stormwater Management System

Account #

**THIS AGREEMENT** made pursuant to City of Winston-Salem Stormwater Runoff Ordinance, and entered into this \_\_\_ day of \_\_\_\_\_, 201\_ by and among The CITY OF WINSTON-SALEM, a North Carolina municipal corporation, party of the first part (hereinafter referred to as “CITY”) and \_\_\_\_\_ (hereinafter referred to as “Developer”) and \_\_\_\_\_ (hereinafter referred to as the “Association”), parties of the second part, hereby designate \_\_\_\_\_, as Escrow Agent party of the third part (hereinafter called “Escrow Agent”), with its principal place of business at \_\_\_\_\_, and in connection with the Stormwater Management System(s) of the \_\_\_\_\_ project at \_\_\_\_\_.

### WITNESSETH:

**WHEREAS**, the Storm Water Runoff Ordinance of the CITY, requires the establishment of an escrow account to ensure that adequate funds are available to provide for the operation, long-term maintenance, inspection, repair, and replacement/reconstruction of Stormwater Best Management Practices Structures, as defined in section 75-107 of the City Code (hereinafter “BMPs”) (such as, but not limited to, sediment removal, structural, biological or vegetative replacement, major repair, or reconstruction).

**WHEREAS**, the Storm Water Runoff Ordinance of the CITY, requires both an initial Developer contribution (the “Initial payment) and either Association payment of annual sinking funds to fund the escrow account (if it has taken ownership) or annual payment by the developer if it still retains ownership of the Stormwater Management Structure BMPs.

**WHEREAS**, the Storm Water Runoff Ordinance of the CITY requires the Developer to pay into the escrow account an initial payment equal to fifteen (15) per cent of the initial construction cost of the structural BMPs prior to plat recordation or issuance of construction permits.

**WHEREAS**, the Storm Water Runoff Ordinance of the CITY requires the Association, if it has taken ownership or legal or managerial authority/control, or Developer, if it still retains ownership and legal and managerial authority/control of the structure, if construction has not been finally completed in accordance with the Stormwater Management Permit (the “Permit”), if the Stormwater Director has not approved the completed construction, if the Developer has not complied with all annual inspections required by the City, if the Permit has not been reissued to the Association, or if all current and future phases of the subdivision which constitutes the Property or of which the Property will be a part have not been constructed or transferred to the Association, to pay into the escrow account an amount satisfactory to support the operation, maintenance and annual inspection of the Structural BMPs), as defined in section

75-107 of the City Code and as indicated in a sealed engineer's estimate, according to the following schedule: two-thirds (2/3) shall be deposited into the escrow account within the first five (5) years of the date that the Permit is issued and the full amount shall be deposited within ten (10) years of the date that the Permit is issued.

**WHEREAS**, the Developer is developing a single-family development known as \_\_\_\_\_, and desires to provide the CITY a financial guarantee to assure that adequate funds are available to provide for the operation, long-term maintenance, inspection, repair and replacement/reconstruction of Stormwater Management Structures BMPs at \_\_\_\_\_ 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 \$\_\_\_\_\_ with the Escrow Agent, to guarantee that adequate funds are available to provide for the operation, long-term maintenance, inspection, repair, and replacement/reconstruction (sediment removal, structural, biological or vegetative replacement, major repair, or reconstruction) of BMPs, as required by the Storm Water Runoff Ordinance of the CITY of Winston-Salem and in accordance with approved construction plans and specifications, the Operation and Maintenance Agreement among the Developer, the Association, and the City, the Operation and Maintenance Manual(s), and the Permit (as those terms are defined in the Operation and Maintenance Agreement).

2. The Association, if it has taken ownership or legal or managerial authority/control, or the Developer, if it still retains ownership and legal and managerial authority/control of the Stormwater Management Structure(s), if construction has not been finally completed in accordance with the Permit, if the Stormwater Director has not approved the completed construction, if the Developer has not complied with all annual inspections required by the City, if the Permit has not been reissued to the Association, or if all current and future phases of the subdivision which constitutes the Property or of which the Property will be a part have not been constructed or transferred to the Association, shall pay a sum of \$\_\_\_\_\_ which is equal to two-thirds of the total amount satisfactory to support the operation, maintenance and annual inspection of the Structural BMPs), as defined in section 75-107 of the City Code and as indicated in a sealed engineer's estimate, to the Escrow Agent within five (5) years following the date of the initial construction of the structural BMP's (taken to be the date of as-built record approval by the City) and shall pay the remaining one-third (\$\_\_\_\_\_) to the Escrow Agent within ten (10) years following the date of the initial construction of the structural BMP's (funds shall be deposited each year into the escrow account) to guarantee that adequate funds are available to provide for the operation, long-term maintenance, inspection, repair, and replacement/reconstruction (sediment removal, structural, biological or vegetative replacement, major repair, or reconstruction) of the BMPs, as required by the Storm Water Runoff Ordinance of the CITY of Winston-Salem and in accordance with approved construction plans and specifications, the Operation and Maintenance Agreement among the Developer, the Association, and the City, the Operation and Maintenance Manual(s), and the Permit (as those terms are defined in the Operation and Maintenance Agreement). The amounts of the Association's payments

into the Escrow Account (or the Developer's additional payments, if the Developer still retains ownership and legal and managerial authority/control of the Stormwater Management Structure(s), if construction has not been finally completed in accordance with the Permit, if the Stormwater Director has not approved the completed construction, if the Developer has not complied with all annual inspections required by the City, if the Permit has not been reissued to the Association, or if all current and future phases of the subdivision which constitutes the Property or of which the Property will be a part have not been constructed or transferred to the Association), will be calculated in accordance with guidelines issued by the Stormwater Director and/or the City Council. The Association will allocate a portion of the Association's annual assessments to the Escrow Account, sufficient to timely discharge the Association's obligations to pay into the Escrow Account. The amount of the Association's annual assessments that the Association allocates each year to the Escrow Account will be calculated by taking the sum total that the Association owes for the given period of time, and dividing it by the number of years left in the period of time. Thus, if the Association owes twelve thousand dollars (\$12,000) in the first five (5) years after the initial construction of the structural BMP's, and the Association is formed one (1) year after the initial construction of the structural BMP's, the Association's annual allocation to the Escrow Account will be twelve thousand dollars (\$12,000) divided by four (4) years or three thousand dollars (\$3,000).

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 City of Winston-Salem, stating to which party funds shall be disbursed and in what amount. The document will be executed by a city official, stating his/her office and that he/she is duly authorized to issue the "Proper Authorization", and the official's signature shall be notarized. Escrow Agent is limited to an obligation to pay the funds as directed in the "Proper Authorization" and is not to render any judgment or exercise any discretion concerning the reason for the disbursement, the amount, or to whom it is to be made.

The CITY and the Developer and/or the Association acknowledge that disbursements are to be either:

(a) To the Association, or to any party designated in writing by the Association, upon delivery of "Proper Authorization" from the City of Winston-Salem authorizing such payment. The City of Winston-Salem, through the Stormwater Division, shall issue such "Proper Authorization" if the City approves the expenditure.

(b) To the City of Winston-Salem upon delivery of a "Proper Authorization" from the Stormwater Division of the CITY, upon its determination that the BMPs are not performing adequately or as intended, or are not properly maintained in accordance with the Storm Water Runoff Regulations, the Operation and Maintenance Agreement among the Developer, the Association, and the City, the Operation and Maintenance Manual(s), or the Permit (as those terms are defined in the Operation and Maintenance Agreement), and the City of Winston-Salem has determined that, pursuant to the Ordinance, it must take over and perform any such uncompleted operation, maintenance, inspections, repairs, and replacement/reconstruction, 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 Ordinance that any funds drawn down from the escrow account shall be replaced in accordance with the schedule of anticipated work used to originally fund the sinking fund budget by the Association.

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 10 (ten) calendar days upon delivery of "Proper Authorization" from the City of Winston-Salem, in the amount and to the party so indicated in the "Proper Authorization", 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 City of Winston-Salem, in accordance with the terms of this Agreement. Escrow Agent agrees to use commercially reasonable best efforts to comply with the terms of this Agreement. The City of Winston-Salem, Developer, and Association all agree to release Escrow Agent of any liability and the Developer and the Association agree to hold Escrow Agent harmless from any and all claims for any actions taken pursuant to the funds in this Escrow Account; provided that the City, the Developer, and the Association agree to the foregoing if and only if, and only to the extent that, the disbursement of funds has been made in accordance with a Proper Authorization by the City of Winston-Salem. The Escrow Agent retains the ability to terminate this agreement providing a 15 (fifteen) business-day advance notice to the CITY and to the Developer or Association. In the event of such termination by the Escrow Agent, the funds in the Escrow Account will be disbursed according to the City's instruction, contained in a "Proper Authorization", if such is provided, or otherwise, as instructed by the City. If the Escrow Agent solicits instruction from the City and none is provided, within 15 (fifteen) business days of the Escrow Agent's written request, then, the Escrow Agent, will disburse the funds in the Escrow Account by check delivered to the CITY, payable jointly to the CITY and the Association.

6. In the event that this escrow agreement should fail for any reason to cover the costs of operation, maintenance, inspection, repair, and replacement/reconstruction, including any deficiency as to form or execution, then, the Developer, the Association, and their successors, transferees, or assigns, acknowledge that whichever party is deemed responsible by the CITY is subject to being charged for the costs of such maintenance and repair, and such costs shall be enforced in the nature of a debt as provided by the applicable Ordinances and State laws, provided that, once construction has been finally completed in accordance with the Permit, the Stormwater Director has approved the completed construction, the Developer has complied with all annual inspections required by the City, the Permit has been reissued to the Association, or all current and future phases of the subdivision which constitutes the Property or of which the Property will be a part have been constructed or transferred to the Association, the Developer shall no longer be responsible for any obligations arising from events or circumstances occurring after the date the BMP is transferred and the Permit is reissued.

7. Any notice which any party, hereto, may send to the other pertaining to this Agreement shall be in writing and shall be considered delivered when deposited in the United States mail, certified with postage prepaid. The addresses are as stated below:

if to the City:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

if to the Developer:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

if to the Association:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

if to the Escrow Agent:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**IN WITNESS WHEREOF**, the parties have hereto set their hands and seals, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

{SIGNATURES APPEAR ON THE FOLLOWING PAGES.}

**SEPARATE SIGNATURE PAGE TO  
MAINTENANCE ESCROW AGREEMENT  
FOR STORMWATER MANAGEMENT SYSTEM**

**PARTY OF THE FIRST PART:**

**CITY OF WINSTON-SALEM**

By: \_\_\_\_\_  
Keith Huff, Stormwater Director

**ATTESTED TO:**

\_\_\_\_\_  
City 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 he/she is the City Clerk of the City of Winston-Salem, a North Carolina municipal corporation, and that by authority duly given as the act of the City of Winston-Salem, the foregoing instrument was signed in its name by its Mayor, sealed with its corporate seal and attested by him/her as its City Clerk.

Witness my hand and official seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public  
Print/Type Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

(SEAL)

Approved as to form and legality.  
This \_\_\_ day of \_\_\_\_\_, 20\_\_  
By \_\_\_\_\_ Attorney

**SEPARATE SIGNATURE PAGE TO  
MAINTENANCE ESCROW AGREEMENT  
FOR STORMWATER MANAGEMENT SYSTEM**

**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\_\_.

\_\_\_\_\_ My Commission Expires: \_\_\_\_\_  
Notary Public

(SEAL)





