

"SEDIMENT AND EROSION CONTROL SURETY AGREEMENT"

Instrument prepared by: Raleigh City Attorney's Office
Brief Description for Index: Surety Agreement
Wake County Parcel ID No(PIN): _____
Mail After Recording to: Wake County Courthouse
City Clerk's Office, P.O. Box 590
Raleigh, N.C. 27602

STATE OF NORTH CAROLINA

AGREEMENT

COUNTY OF WAKE

THIS AGREEMENT, being made and entered into this the _____ day of _____, 20__ (City Staff fills in), by and between _____ hereinafter called "**DEVELOPER**", _____ hereinafter called the "**CONTRACTOR**" and the City of Raleigh, a municipal corporation organized under the laws of the State of North Carolina, hereinafter called the "**CITY**":

W I T N E S S E T H:

THAT WHEREAS, **DEVELOPER** is the holder of a leasehold interest in certain real property as evidenced by a memorandum of lease signed _____, 201_, for property recorded at Book ____ Page ____ in the Wake County Register of Deeds; and said property is shown in Book of Maps ____ Page ____

WHEREAS, the **DEVELOPER** has submitted plans and data to the **CITY** for the development of said property to be known as set forth in City file number:

S _____ [APPROPRIATE FILE NUMBER MUST
PA _____ BE INDICATED]
SP _____
MI _____

Transaction #: _____

said plans are on file with the **CITY** and are made a part of this Agreement; and

WHEREAS, the **CITY** has heretofore granted approval of said plans, approval having been conditioned, in part, upon the **DEVELOPER** satisfactorily stabilizing the following disturbed area

listed on Exhibit A; said Exhibit A is made a part of this Agreement, and

WHEREAS, the **CITY** has reasonably estimated and determined that the cost of the permanent stabilization of said disturbed area will be in the sum of dollars (U.S. \$ _____) lawful money of the United States of America; said estimate is attached to this Agreement as Exhibit B and is made a part of this Agreement, and

WHEREAS, **DEVELOPER** acknowledges its obligation to satisfactorily stabilize all said disturbed area listed on Exhibit A in accordance with approved plans and applicable governmental standards and has hired **CONTRACTOR** to permanently stabilize all disturbed area listed on Exhibit A, and the **CITY** is An unnamed third party beneficiary to the **DEVELOPER/CONTRACTOR** contract, and

WHEREAS, the **CITY** is authorized to receive security to assure the permanent stabilization of the disturbed area; and

WHEREAS, the **DEVELOPER**, desires to obtain city land disturbing permits for the addresses listed on Exhibit A.

NOW, THEREFORE, in consideration for the **CITY** issuing land disturbing permits listed on Exhibit A; the receipt of which is hereby acknowledged, and for the **CITY** agreeing to accept security for the permanent stabilization of the disturbed area, and other consideration:

1) The **DEVELOPER** and **CONTRACTOR** agree to post with the **CITY** security in the form of:

_____ an irrevocable letter of credit

_____ an endorsed negotiable certificate of deposit

_____ cash (checks must be certified and will be cashed)

The security is in an amount of dollars (U.S.\$ _____), lawful money of the United States of America. The security shall be conditioned upon the faithful performance by **DEVELOPER** and **CONTRACTOR** of all terms and conditions of this Agreement, all costs, including renewals and penalties of the security shall be paid by the **DEVELOPER** and **CONTRACTOR**.

DEVELOPER and **CONTRACTOR** acknowledge that any bond is from a institution or firm which does not have any ownership, occupancy, or equity interest, in the development other than having an interest merely as security for the performance of an obligation. So long as the permanent stabilization of the disturbed area listed on **Exhibit A** is not completed and approved by the **CITY**, the bond must remain in full force and effect; failure to keep the bond in full force and effect shall be a breach of this agreement entitling the **CITY** to call upon any or all of the security.

2) The **DEVELOPER** and **CONTRACTOR** guarantee that all disturbed area listed on **Exhibit A** will satisfactorily be stabilized in accordance with applicable governmental standards.

3) The **DEVELOPER** hereby authorizes the **CITY** and the bonding company, their employees, agents and independent contractors, at their independent option, after the occurrence of a breach hereby, to enter onto the subject property to satisfactorily stabilize any disturbed area shown on the approved land disturbing permit.

4) Prior to calling any security for a breach of paragraph number two above, the **CITY** will provide at least sixty days written notice to **DEVELOPER**. Notice shall be deemed given by depositing such in the United States Mail, first class, and addressed:

TO **DEVELOPER**:

Contact Name/Position/Title
Address:

Telephone #:

TO **CONTRACTOR**:

Contact Name/Position/Title
Address:

Telephone #:

5) The **CITY** agrees to release and return the security and access rights and this agreement shall become null and void when the **DEVELOPER** or **Contractor**, upon the permanent stabilization of all of the disturbed area listed on **Exhibit A**.

6) This Agreement shall not relieve the **DEVELOPER** from any obligation to permanently stabilize the disturbed area listed on **Exhibit A**. The calling of the security herein authorized shall not bar the **CITY** from exercising any other rights it may have.

7) To the extent permitted by North Carolina law, the parties hereto for themselves, their agents, officials, employees and servants agree not to discriminate in any manner on the basis of race, color, creed, national origin, sex, age, handicap, or sexual orientation with reference to the subject matter of this Contract. The parties further agree, to the extent permitted by law, to conform with the provisions and intent of City of Raleigh Ordinance 1969-889, as amended. This provision is hereby incorporated into this Contract for the benefit of the City of Raleigh and its residents, and may be enforced by action for specific performance, injunctive relief, or other remedy as provided by law. This provision shall be binding on the successors and assigns of the parties with reference to the subject matter of this Contract.

8) **IRAN DIVESTMENT ACT CERTIFICATION**
Contractor certifies that, as of the date listed below, it is not on the Final Divestment List as created by the State Treasurer pursuant to N.C.G.S. § 147-86.55, et seq. In compliance with the requirements of the Iran Divestment Act and N.C.G.S. § 147-86.59, Contractor shall not utilize in the performance of the contract any subcontractor that is identified on the Final Divestment List.

9) This Agreement shall be binding upon the heirs, successors, and assigns of the parties. The word **DEVELOPER** shall be construed to include any subsequent owner of the real estate referred to herein.

10) Contractor shall comply with E-Verify, the federal E-Verify program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law and as in accordance with N.C.G.S. §64-25 et seq. In addition, to the best of Contractor's knowledge, any subcontractor employed by Contractor as a part of this Contract shall be in compliance with the requirements of E-Verify and N.C.G.S. §64-25 et seq.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed on the day and year first above written.

DEVELOPER

By: _____ (SEAL)
_____ (SEAL)
_____ (Print
Name and Title)

ATTEST:

_____ (SEAL)
_____ (Print Name and Title)

CONTRACTOR

By: _____ (SEAL)
_____ (SEAL)
_____ (Print
Name and Title)

ATTEST:

_____ (SEAL)
_____ (Print Name and Title)

THE CITY OF RALEIGH

By: _____
_____ (Print Name)
_____ (Print Title)

ATTEST:

City Clerk & Treasurer (SEAL)

Approved As To Form:

(Deputy) City Attorney

NORTH CAROLINA

WAKE COUNTY

I, Notary Public of the County and State aforesaid, certify that _____, personally appeared before me this day _____ and acknowledged that he/she is the _____ of the City of Raleigh and that by authority duly given in Resolution No. (1985)-971, the foregoing instrument was signed as the act of the City of Raleigh in its name by its City Manager, sealed with its municipal seal and attested by Gail G. Smith as its City Clerk.

WITNESS my hand and official stamp or seal this _____ day of _____, 20____.

(SEAL)

Notary Public

My Commission Expires: _____

STATE OF NORTH CAROLINA

INDIVIDUAL
ACKNOWLEDGEMENT

COUNTY OF _____

I, _____, a Notary Public do hereby certify that _____, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

This the ___ day of _____, 20__.

Notary Public

(Seal)

My Commission Expires:

NORTH CAROLINA

CORPORATE
ACKNOWLEDGEMENT

COUNTY OF _____

This is to certify that on the ____ day of _____, 20__, before me personally came _____, with whom I am personally acquainted, who, being be me duly sworn, says that (s) he is the _____ of _____, and acknowledges on behalf of the corporation the due execution of the foregoing instrument, and that the said instrument is the act and deed of said corporation.

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

Notary Public

(SEAL)

My Commission Expires: _____

NORTH CAROLINA

COUNTY OF _____

L.L.C. COMPANY
ACKNOWLEDGEMENT

I, _____, a Notary Public for said County and State, do hereby certify that _____, Manager of _____, a limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

Witness my hand and official stamp or seal, this ___ day of _____, 20__.

(SEAL)

Notary Public

My Commission Expires:_____

STATE OF NORTH CAROLINA

COUNTY OF _____

PARTNERSHIP
ACKNOWLEDGEMENT

I, _____, a Notary Public for said County and State, do hereby certify that _____, general partner of _____, a _____ partnership, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the partnership.

Witness my hand and official stamp or seal, this the ___ day of _____, 20__.

(SEAL)

NOTARY PUBLIC

My Commission Expires:_____

EXHIBIT A

Permit Address

Disturbed Area (acres)

EXHIBIT B

Stabilization Cost Estimate

(see section 4 of *City's Guidelines for Land Disturbing Activities*
for estimate guidance)
