

Stormwater Device 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 recorded at Book _____, Page _____ Wake County Register of
Deeds; and said property is shown on 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:

P	_____	
S	_____	[APPROPRIATE FILE NUMBER <u>MUST</u>
PA	_____	BE INDICATED]
GH	_____	

SP	_____	
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 **DEVEL-**
OPER satisfactorily installing, constructing and completing the
following stormwater device(s) listed on **Exhibit A** said; **exhibit A**
is made a part of this Agreement:

WHEREAS, the **CITY** has reasonably estimated and determined that the cost of construction, installation, and completion of said stormwater device(s) 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 construct all said stormwater device(s) listed on **Exhibit A** in accordance with approved plans and applicable governmental standards; and

WHEREAS, the **CITY** is authorized to receive security to assure the satisfactory completion of such stormwater device(s); and

WHEREAS, the **DEVELOPER**, prior to completing stormwater device(s) on **Exhibit A**, desires to obtain city permits for the addresses listed on **Exhibit C**. **Exhibit C** is made a part of this Agreement.

NOW, THEREFORE, in consideration for the **CITY** issuing permits prior to installation and construction of the stormwater device(s) listed on **Exhibit A**; the receipt of which is hereby acknowledged by **DEVELOPER**, and for the **CITY** agreeing to accept security for the completed stormwater devices, and other consideration:

1) The **DEVELOPER** agrees 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, which is 1.25 times the cost of the uncompleted stormwater device(s) construction. The security shall be conditioned upon the faithful performance by **DEVELOPER** of all terms and conditions of this Agreement, all costs, including renewals and penalties of the security shall be paid by the **DEVELOPER**. Withdrawals from the security may be in one or more payments.

DEVELOPER acknowledges that any letter of credit is from a financial institution 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 any stormwater device(s) on **Exhibit A** is not completed and approved by the **CITY**, any letter of credit must be renewed at least one month prior to its expiration; failure to renew a letter of credit by this deadline shall be a breach of this agreement entitling the **CITY** to call upon any or all of the security. No letter of credit shall require the City to present a sight draft to a financial institution located outside Raleigh, North Carolina. No endorsed negotiable certificate of deposit shall require the City to present it to a financial institution located outside Raleigh, North Carolina.

2) The **DEVELOPER** guarantees that all stormwater device(s) listed on **Exhibit A** will satisfactorily be installed, completed, and constructed in accordance with applicable governmental standards.

3) The **DEVELOPER** hereby authorizes the **CITY**, its employees, agents and independent contractors, at its option, after the occurrence of a breach hereby, to enter onto the subject property to satisfactorily complete any stormwater device(s) shown on the approved construction plan.

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 completion of all the stormwater device (s) listed on **Exhibit A** furnished to the **CITY** and the **CITY** accepts form 511 as-built as certificate of completion.

6) This Agreement shall not relieve the **DEVELOPER** from any obligation to construct stormwater device (s). 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:

_____(SEAL)
City Clerk & Treasurer

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____.

(SEAL)

Notary Public

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

List of Stormwater Devices

EXHIBIT B

Construction Estimates for each device and overall

EXHIBIT C

List what lot(s) are served by which stormwater device(s). List
out each lot number.
