

## ESCROW AGREEMENT

This Escrow Agreement (the "Agreement") is dated as of the \_\_\_\_ day of \_\_\_\_, 20\_\_ and is entered into by and among \_\_\_\_\_ (the "Developer") and THE CITY OF CONCORD, a North Carolina Municipal Corporation ("Concord");

### WITNESSETH:

WHEREAS, Developer is required to meet certain requirements of the ordinances of Concord;

WHEREAS, the Developer has elected to guarantee its performance in meeting said requirements by cash escrow subject to the terms and conditions of this escrow agreement and as allowed by the Ordinances of the City of Concord.

WHEREAS, the Developer and Concord wish the Finance Director to be the Escrow Agent ("the Agent") and to hold the Escrow Fund and to disburse the Escrow Fund set forth in this Escrow Agreement.

WHEREAS, the Agent has agreed to hold and disburse such deposit on the terms and conditions set forth in this Escrow Agreement.

NOW THEREFORE, in consideration of ten dollars and other valuable consideration, the Developer and Concord agree as follows:

1. Developer Requirements:
  - a. The Developer is required to construct or cause to be constructed certain improvements on that property located at: \_\_\_\_\_.
  - b. The required improvements consist of: Description and Attached Exhibits.
  - c. The cost of the required improvements is estimated as \$ example in paragraph 3a.
2. Default: Any or all of the following shall be considered a default under this Agreement:
  - i. Developer fails to substantially complete the above-described improvements on or before Two Years from the execution date.
  - ii. Improvements do not meet standards specified in the City's ordinances, the North Carolina State Building Code, or this Agreement and Developer fails to correct any insufficiencies listed at the end of the maintenance period.
  - iii. Ownership of the property changes without the new property owner specifically assuming the obligation to maintain the improvements in accordance with this Agreement.
3. Establishment of Escrow:
  - a. The Developer shall deposit in escrow with Concord funds in the amount of Eighty-Two Thousand Seven Hundred Fifty-Five and 20/100 Dollars (\$82,755.20) the "Escrow Fund") and the mutual obligations of the Developer and Concord hereunder shall only arise upon the making of such deposit.
  - b. The term of the Escrow Agreement is either (1) for a term ending upon the date that is twelve months from the date of acceptance by the City of the improvements, or (2) disbursement in response to disbursement demands of the entire amount of the Escrow Account, whichever is earlier.
  - c. The amount of the Escrow Fund deposited by developer and delivered to Concord hereunder shall be deposited by Concord in the manner approved by the NC Local Government Commission. Said Escrow Fund shall not earn interest payable to Developer.

4. Disbursement: The Agent will disburse the Escrow Fund in accordance with the following terms and conditions:
  - a. Disbursement from the Escrow Fund to any other account of Concord, in whole or in part, shall occur in the amount set forth in any disbursement demand accompanied by a signed statement from the City Manager of the City of Concord that the disbursement demand is due to default or failure by the Developer to perform the requirements set forth in paragraph 1, above.
  - b. Upon the receipt of a disbursement demand as set forth in (a) immediately above, the Agent is instructed to deliver the amount of the demand from the Escrow Fund to Concord operating accounts in accordance with the provisions of this Escrow Agreement, provided that payment of such amounts to Concord operating accounts shall not affect any other rights or remedies available to Concord.
  - c. Upon the Agent's receipt of written notice from the City Manager of the City of Concord that the required improvements have been maintained and the term of this Escrow Agreement has expired, the Agent is instructed to deliver the remaining balance of the Escrow Fund to Developer.
5. Limitation of Agent Liability. The Developer and Concord agree that the Agent shall not be liable to Developer and/or Concord for any reason regarding the Escrow Fund except in the case of the Agent's gross negligence or intentional misconduct.
6. Investment of Escrow Fund. Subject to disbursement as provided in this Agreement, the Escrow Fund shall be held in a deposit account and shall not earn interest or income while held by the Agent.
7. Manner Of Disbursements. All Escrow Fund disbursements are to be made by official check or in some other manner consistent with Concord's standard practices and procedures.
8. Nature of Duties: Concord and/or the Agent shall have no duties or responsibilities except those expressly set forth in this Agreement. The duties of the Agent are mechanical and administrative in nature. Neither Concord nor the Agent shall, by reason of this Agreement, be deemed to have a fiduciary relationship with the Developer; and nothing in this Agreement, expressed or implied, is intended to or shall be so construed as to impose upon Concord and/or the Agent any obligations except as expressly set forth herein. Each of the Developer and Concord expressly acknowledges that neither Concord nor the Agent have made any representations or warranties to the Developer and that no act by Concord or the Agent hereafter taken, shall be deemed to constitute any representation or warranty by Concord or the Agent to the Developer, Concord or any other person or entity.
9. Reimbursement and Indemnification. The Developer and Concord jointly and severally agree to reimburse and indemnify the Agent for and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs,
10. Benefit. This Agreement is made and entered into for the sole protection and benefit of Concord and the Developer, and their successors and assigns, and no other person or persons shall have any right to action hereon or rights to the Escrow Fund at any time.
11. Assignment. The terms hereof shall be binding upon and inure to the benefit of the heirs, successors, assigns, and personal representatives of the parties hereto; provided, however, that Concord shall not assign this Agreement or any of its rights, interests,

duties or obligations hereunder or any Escrow Fund monies without the prior written consent of the Developer, and that any such assignment (whether voluntary or by operation of law) without said consent shall be void.

- 12. Amendments. This Agreement shall not be amended except by a written instrument signed by all parties hereto.
- 13. Governing Law and Jurisdiction. This Agreement and all matters relating thereto shall be governed by and construed and interpreted in accordance with the laws of the State of North Carolina. Each of the parties hereby submits and agrees to the jurisdiction of the courts of Cabarrus County, North Carolina and agrees that the other parties may, at their respective option, enforce their respective rights under the Agreement in such courts.
- 14. Entire Agreement. This Agreement contains the entire Agreement and understanding between the parties with respect to the subject matter hereof and supersedes all preexisting and/or oral agreements between them respecting the subject matter hereof. All representations and promises made by a party to another party whether in writing or orally are understood by the parties to be merged into this Agreement.
- 15. Savings Clause. Invalidation of any one or more of the provisions of this Agreement shall in no way affect any of the other provisions hereof, which shall remain in full force and effect.
- 16. Execution in Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument, and in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

IN WITNESS WHEREOF, the parties have executed this Agreement under seal as of the date first above written.

CONCORD:

THE CITY OF CONCORD, NORTH CAROLINA

By: \_\_\_\_\_  
City Manager

Attest:

\_\_\_\_\_  
City Clerk (SEAL)

Approved as to Form:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_, LLC

By: \_\_\_\_\_  
\_\_\_\_\_, Manager/Member

\_\_\_\_\_ COUNTY  
STATE OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public in and for \_\_\_\_\_  
County and State of \_\_\_\_\_, do hereby certify that \_\_\_\_\_,  
as Manager/Member of \_\_\_\_\_, personally appeared  
before me this day and acknowledged to me that he/she is the Manager/Member and that  
he/she has authority to sign on behalf of \_\_\_\_\_ and that he/she  
voluntarily signed the foregoing document for the purpose stated therein.

WITNESS my hand and Notarial Seal this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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