

**MAINTENANCE ACCOUNT 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, 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 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 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 guarantee to assure that adequate funds will be available to provide for the long-term maintenance, and/or replacement/reconstruction of the SCMs at *[Insert Name of the Project]*

**WHEREAS**, the parties have agreed that a Segregated Account is acceptable to all parties to provide said guarantee;

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

1. The Association (if it has taken ownership of the SCMs) or Developer (if it still retains ownership of the SCMs) shall fund a segregated account in the amount of *[10% of cost of SCM construction]* \$\_\_\_\_\_ within five (5) years following initial approval by the Town of the construction of the SCM(s) 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. The funds shall be deposited each year in the amount of no less than *[2% if cost of SCM construction]* \$\_\_\_\_\_ per year. The initial deposit shall be made within thirty (30) days of the initial approval of construction.

2. The Developer or the Association agrees to maintain the segregated account and to utilize 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 Developer or 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 segregated account funds on deposit for such purposes.

3. The Developer or the Association, whichever is responsible, agrees that any funds drawn down from the segregated account shall be replaced in accordance with the schedule indicated in Item 1 above.

4. The Developer and/or the Association, hereby acknowledges that it will release said funds within ten (10) calendar days upon delivery of "Proper Authorization" from the Town,

5. In the event the segregated account established in accordance with this 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/or 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 he 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 him 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)