

**STATE OF NORTH CAROLINA**

**PERFORMANCE GUARANTEE**  
**(Letter of Credit)**

**COUNTY OF DURHAM**

DATE OF EXECUTION: \_\_\_\_\_

NAME OF OBLIGOR: \_\_\_\_\_  
(as it appears on the Financial Responsibility/Ownership Form)

NAME OF TRUSTEE: \_\_\_\_\_

NAME AND ADDRESS  
OF OBLIGEE: COUNTY OF DURHAM  
Durham County Engineering Department  
c/o Sedimentation and Erosion Control Officer  
120 East Parrish St., 1<sup>st</sup> floor  
Durham, NC 27701

PLAN/PROJECT NAME: \_\_\_\_\_

DURHAM COUNTY JOB CONTROL NUMBER: \_\_\_\_\_

SITE LOCATION: \_\_\_\_\_ Durham County, North Carolina.

WHEREAS, OBLIGOR intends to develop a certain tract or parcel of land situated at site location described above and consisting of approximately \_\_\_\_\_ acres, in its entirety or in phases; and

WHEREAS, OBLIGEE, requires that sufficient performance security be provided to guarantee the proper operation, maintenance and completion of the necessary soil erosion control measures; and

WHEREAS, OBLIGOR has agreed to provide the OBLIGEE with such security by means of one or more Irrevocable Letters of Credit and by the designation of the above named TRUSTEE, under this Performance Guarantee in the event of breach or default by OBLIGOR;

NOW THEREFORE, in consideration of the mutual promises and covenants hereafter set forth, the mutuality and sufficiency of which is hereby acknowledged, the parties do hereby agree as follows:

1. TRUSTEE hereby represents and certifies to the OBLIGEE, that the cost of the soil erosion control measures as of the date of execution first written above, and required by the OBLIGEE, for the Plan is estimated to be no greater than \$\_\_\_\_\_.
2. Prior to any grading or disturbance of the soil at the site location, the OBLIGOR shall furnish to the OBLIGEE and TRUSTEE, an Irrevocable Letter of Credit which names the County of Durham as beneficiary and shall be issued for a period of one year from the date of issue with a provision to automatically renew for consecutive one-year periods until such

time as the OBLIGEE releases the surety, and shall be in an amount equal to 125% of the aggregate amounts set forth above for on-site improvements, or \$ \_\_\_\_\_.

3. Said Irrevocable Letter of Credit shall be payable on demand by OBLIGEE for the purpose herein expressed, and without condition other than the certification by the OBLIGEE that the OBLIGOR has defaulted under its obligations to perform or install the erosion control measures specified herein within the time provided therefore.
4. Upon completion of the requirements necessary for the issuance of a Land Disturbing Permit, including this obligation to provide sufficient performance security, all as required by the Durham City/County Sedimentation and Erosion Control Ordinance, (hereinafter referred to as the "Ordinance"), the OBLIGEE shall issue to the OBLIGOR, a Land Disturbing Permit. The issuance of said Permit shall be sufficient to bind the OBLIGOR and TRUSTEE, to comply with the terms of the Ordinance and this Performance Guarantee.
5. The conditions of this obligation is such that if OBLIGOR shall well and truly perform and fulfill all the obligations of the Plan in accordance with the undertakings, covenants, terms, and conditions of said Plan and the Ordinance; and shall also as well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of any and all duly authorized modifications of said Plan or Ordinance that may hereafter be made, notice of which modifications to the TRUSTEE being hereby waived, then, this obligation shall be void; otherwise to remain in full force and virtue until such time as the OBLIGOR has completed the measures set forth herein. The OBLIGOR hereby agrees that the termination or modification of any contract to perform land disturbing services on this site between the OBLIGOR and TRUSTEE and a third party shall not relieve said OBLIGOR of its obligations under this Performance Guarantee.
6. Whenever the OBLIGOR fails to comply with the Ordinance or the approved plan or permit or any modifications thereto, the Sedimentation and Erosion Control Officer shall notify the TRUSTEE and the OBLIGOR of same. The OBLIGOR shall promptly remedy the default or condition to the satisfaction of the Sedimentation and Erosion Control Office. If the default is not timely cured, TRUSTEE shall promptly (1) complete the stabilization of the site in accordance with the terms and conditions of the approved plan or any modifications thereto, or (2) obtain a bid or bids for completing the stabilization of the site in accordance with the terms and conditions of the approved Plan or any modifications thereto, and upon determination by TRUSTEE of the lowest responsible bidder, arrange for a contract between such bidder and TRUSTEE, and make available as work progresses sufficient funds to pay the cost of completion; but not exceeding, including other costs and damages for which the TRUSTEE may be liable hereunder, the amount set forth above.
7. The conditions of the work to be performed shall be deemed complete when approved by the Sedimentation and Erosion Control Officer, in accordance with the plans approved by Durham County in connection with the development herein described or as modified by Durham County in order to insure compliance with the goals of the Ordinance. In the event the OBLIGOR has not stabilized the site according to the terms and conditions of the approved plan on or before the permit's expiration date, unless otherwise extended by mutual agreement of the OBLIGOR and the Sedimentation and Erosion Control Officer, then the OBLIGOR shall be deemed in violation of the Ordinance and the OBLIGOR and TRUSTEE shall proceed to complete said work in the manner set forth herein.

8. This Guarantee shall be binding upon the parties hereto, their heirs, successors and assigns and shall be construed in accordance with the laws of the state of North Carolina. All actions relating in any way to this contract shall be brought in the General Court of Justice in the County of Durham and the State of North Carolina.

**IN WITNESS WHEREOF**, the above-bounden parties have executed this instrument under their several seals on the date indicated above, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

**OBLIGOR:**

BY: \_\_\_\_\_ (SEAL)  
Authorized Signature of Individual or Officer

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

TELEPHONE: \_\_\_\_\_

ATTEST: \_\_\_\_\_

\_\_\_\_\_  
Name and Title

**TRUSTEE**

BY: \_\_\_\_\_ (SEAL)  
Authorized Signature of Individual or Officer

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

TELEPHONE: \_\_\_\_\_

ATTEST: \_\_\_\_\_

\_\_\_\_\_  
Name and Title