

BOND AGREEMENT
(FINANCIAL INSTITUTION GUARANTEE FORM)

THIS AGREEMENT (herein "Agreement") is entered into this _____ day of _____, 20_____.

***** **PARTIES** *****

"APPLICANT":

a(n) _____ (corporation, partnership, individual),
address: _____,
telephone: (_____) _____, facsimile: (_____) _____;

"GUARANTOR":

address: _____,
telephone: (_____) _____, facsimile: (_____) _____;

"CITY": Layton City, a municipal corporation of the State of Utah,

address: 437 North Wasatch Drive, Layton, Utah 84041,
telephone: (801) 336-3800, facsimile: (801) 336-3811

***** **RECITALS** *****

WHEREAS, APPLICANT desires the following permits and/or approvals (check and complete):

- ___ a conditional use permit (permit # _____)
- ___ subdivision recordation
- ___ a building permit (permit # _____)
- ___ final electrical inspection
- ___ an occupancy permit (permit # _____)
- ___ a business license
- ___ OTHER (explain):

from CITY for _____
(description or name of project)

located at _____; and
(street address of project)

WHEREAS, Layton City ordinances require APPLICANT to pay, prior to the actual issuance of any permit(s)/approval(s), the following described fees: _____, estimated to be \$_____, (herein the "Fees"); and

WHEREAS, the terms of the issuance of said permit(s)/approval(s) require APPLICANT to complete the following improvements (herein "the Improvements"): (check one and complete)

- ___ specified in Exhibit _____, attached hereto and incorporated herein by this reference;
- or -
- ___ described _____ as _____ follows:
_____; and

WHEREAS, CITY will not grant said permit(s)/approval(s) until adequate provision has been made to guarantee completion of the Improvements, if any, and to warrant the Improvements from any defects, which Improvements and required warranty are estimated to cost \$_____, and which Improvements shall be installed under the direction and supervision of and in accordance with the specifications of CITY; and

WHEREAS, provision has been made by law whereby APPLICANT may file, in lieu of final completion of the Improvements prior to development approval, a guarantee acceptable to CITY to secure the actual construction of the Improvements in a manner satisfactory to CITY, and/or may file, in lieu of payment of the Fees, a guarantee acceptable to CITY to guarantee payment of the Fees in order to obtain pertinent CITY approvals prior to the issuance of said permits.

NOW, THEREFORE, in consideration of the premises and other valuable consideration, the parties agree as follows:

* * * * * **TERMS AND CONDITIONS** * * * * *

1. ADDITIONAL DEFINITIONS.

- 1.1. "APPLICANT", "GUARANTOR," and "CITY," as used in this Agreement, shall also refer to the heirs, executors, administrators, successors, and/or assigns of APPLICANT, GUARANTOR, and CITY, respectively.
- 1.2. "Incidental Costs," as used in this Agreement, shall mean engineering and architect fees, administrative expenses, court costs, attorney's fees (whether incurred by in-house or independent counsel), insurance premiums, mechanic's or materialmen's liens, and/or any other cost and interest thereon incurred by CITY, occasioned directly or indirectly by APPLICANT's failure to perform any and/or all obligations under this Agreement.
- 1.3. "Failure to Perform" or "Fail to Perform," as used in this Agreement, shall mean, in addition to those acts specified previously, the non-performance in a timely manner by a party to this Agreement of any obligation, in whole or in part, required of such party by the terms of this Agreement or required by Layton City ordinance or other applicable law. The occurrence of such shall give the other party or parties the right to pursue any and all remedies available at law, in equity, and/or otherwise available pursuant to the terms of this Agreement.

2. PURPOSE FOR AGREEMENT. The parties hereto expressly acknowledge that the purpose of this Agreement is not only to guarantee the proper completion of the Improvements named herein, but also, among other things, to eliminate and avoid the harmful effects of unauthorized subdivisions and other land developments that may leave property and/or Improvements improperly completed, undeveloped, and/or unproductive.

3. UNRELATED OBLIGATIONS OF APPLICANT. The benefits and protection provided by this Agreement shall inure solely to CITY and not to third parties, including, but not limited to, lot purchasers, contractors, subcontractors, laborers, suppliers, or others. GUARANTOR and CITY shall not be liable to claimants or others for obligations of APPLICANT under this Agreement. CITY shall further have no liability for payment of any costs or expenses of any party that attempts to make a claim under this Agreement, and shall have under this Agreement no obligation to make payments to, give notices on behalf of, or otherwise have obligations to any alleged claimants under this Agreement. The provisions of this paragraph are not intended to relieve CITY of any obligation it may have with respect to GUARANTOR or APPLICANT under the terms and conditions of this Agreement.

4. AGREEMENT DOCUMENTS. All data used by CITY to compute the cost of or otherwise govern the design and installation of the Improvements is hereby made a part of this Agreement and incorporated herein by this reference. If this Agreement covers improvements and/or fees required in a subdivision, this Agreement then incorporates herein by reference the subdivision plat and all data required by Section 8-6-112 of the Layton City Code or its successor ordinance.

5. COMPLETION DATE. APPLICANT shall complete the Improvements: (check and complete)

_____ within a period of _____ years/months (circle one) from the date this Agreement was entered into;

- or -

_____ as specified in Exhibit _____, attached hereto and incorporated herein by this reference.

6. FEES. If this Agreement covers fees required as part of a subdivision, APPLICANT shall pay the Fees required by CITY for the entire subdivision prior to the issuance of any building permit for the first lot in the subdivision.

7. SPECIFIC ENFORCEMENT. APPLICANT and GUARANTOR have entered into this Agreement with CITY for the purpose of guaranteeing construction of the Improvements and/or payment of the Fees. CITY shall be entitled to specifically enforce APPLICANT's obligation under this Agreement to construct and install the Improvements in a manner satisfactory to CITY and to pay the Fees. CITY shall also be entitled to specifically enforce GUARANTOR's own performance required by this Agreement.

8. APPLICANT'S INDEPENDENT OBLIGATION. APPLICANT EXPRESSLY ACKNOWLEDGES, UNDERSTANDS, AND AGREES that its obligation to complete and warrant the Improvements and/or pay the Fees and/or fulfill any other obligation under this Agreement, Layton City ordinances, or other applicable law is independent of any obligation or responsibility of CITY, either express or implied. APPLICANT agrees that its obligation to complete and warrant the Improvements and/or pay the Fees is and shall not be conditioned upon the commencement of actual construction work in the subdivision or development or upon the sale of any lots or part of the subdivision or development. APPLICANT further acknowledges (a) that its contractual obligation to complete and warrant the Improvements and/or pay the Fees pursuant to this Agreement is independent of any other remedy available to CITY to secure proper completion of the Improvements and/or payment of the Fees; (b) that APPLICANT may not assert as a defense that CITY has remedies against other entities or has other remedies in equity or at law that would otherwise relieve APPLICANT of its duty to perform as outlined in this Agreement or preclude CITY from requiring APPLICANT's performance under this Agreement; and (c) that APPLICANT has a legal obligation, independent of this Agreement, to timely complete and pay for the Improvements in full and/or timely pay the Fees in full.

9. APPLICANT'S OBLIGATION FOR COSTS. Should APPLICANT Fail to Perform its responsibilities under this Agreement in any degree, APPLICANT agrees to compensate CITY for all costs, including Incidental Costs, related to APPLICANT's Failure to Perform its obligation to complete and warrant the Improvements or pay the Fees to the extent that such costs are not adequately covered by the Proceeds.

10. **GUARANTOR'S BOND COMMITMENT.** Pursuant to the terms and conditions of this Agreement, GUARANTOR agrees to pay and disburse to CITY (herein the "Bond Commitment") an amount not to exceed \$ _____ (herein the "Proceeds"). GUARANTOR's Bond Commitment to CITY is made for the express purpose of insuring construction and installation of the Improvements and/or payment of the Fees on a timely basis and in accordance with this Agreement. GUARANTOR shall pay and disburse to CITY the Proceeds, or a portion thereof, upon receipt from CITY of a written request for disbursement of the Proceeds. Said written request may take the form of a letter from CITY and shall include the following: (a) a statement that APPLICANT has failed to perform its obligations as required by the terms and conditions of this Agreement; (b) a written summary of those events that constitute the Failure to Perform on the part of the APPLICANT; (c) a written statement that CITY agrees to use the Proceeds solely for the completion, construction, and installation of the Improvements as outlined pursuant to the terms of this Agreement; and (d) a statement that CITY agrees to return to GUARANTOR all unexpended Proceeds upon the completion of the APPLICANT's obligations under this Agreement.

11. **EXTENT OF GUARANTOR LIABILITY: INDEPENDENT OBLIGATION.** GUARANTOR hereby acknowledges that it is aware of, understands, and agrees to each provision of this Agreement and that it agrees to make disbursement of the Proceeds for the benefit of CITY as provided by this Agreement, until such time as CITY, in writing, releases GUARANTOR from its obligation to disburse the Proceeds. Should GUARANTOR fail to timely perform its obligations as outlined herein or as required by law, GUARANTOR shall be liable to CITY for all costs incurred by CITY in completing and/or repairing the Improvements and/or paying the Fees, along with any and all incidental costs incurred by CITY in attempting to enforce GUARANTOR's obligations under this Agreement or in completing and/or repairing the Improvements and/or paying the Fees as a result of GUARANTOR's Failure to Perform its obligations under this Agreement. Furthermore, this paragraph shall not limit the right of CITY to pursue any and all remedies it may have in equity or at law as a result of GUARANTOR's Failure to Perform under this Agreement. GUARANTOR EXPRESSLY ACKNOWLEDGES, UNDERSTANDS, AND AGREES that its obligation under this Agreement is independent of any obligation of CITY, either express or implied. GUARANTOR agrees that its performance is not and shall not be conditioned upon the commencement of actual construction work in the subdivision or development, or upon the sale of any lots or any part of the subdivision or development. GUARANTOR further acknowledges (a) that its obligation to perform under this Agreement is independent of any other remedy available to CITY to secure proper completion of the Improvements and/or payment of the Fees; (b) that GUARANTOR may not assert as a defense that CITY has remedies against other persons or entities or has other remedies in equity or at law that would otherwise relieve GUARANTOR of its duty to perform as outlined in this Agreement or preclude CITY from requiring GUARANTOR's performance under this Agreement; and (c) that GUARANTOR may not assert as a defense that CITY has remedies against other entities or has other remedies in equity or at law that would otherwise relieve APPLICANT of its duty to perform as outlined in this Agreement or preclude CITY from requiring APPLICANT's performance under this Agreement.

12. **REDUCTION OF PROCEEDS.** As the Improvements are accepted by CITY and/or the Fees are paid, a portion of the Proceeds may be released to APPLICANT upon APPLICANT's written request. Such requests may be made only once every 30 days. The amount of any requested release shall be determined in the sole discretion of CITY. No release shall be authorized until such time as CITY has inspected the Improvements and found them to be in compliance with CITY standards and/or has verified that the Fees have been paid. Payment of Fees and/or completion of Improvements, even if verified by CITY, shall not entitle APPLICANT to an automatic release of any part of the Proceeds. The release of any Proceeds shall be evidenced by the written authorization of CITY.

13. **FINAL ACCEPTANCE.** Notwithstanding the fact that certain of the Proceeds may be released upon partial completion of the Improvements, neither shall any partial release nor shall any full release of the Proceeds constitute final acceptance of the Improvements by CITY. Final acceptance of the Improvements shall be official only upon written notice to APPLICANT from CITY expressly acknowledging such.

14. **WARRANTY OF IMPROVEMENTS.** Following final acceptance of the Improvements, APPLICANT hereby warrants that the Improvements shall remain free from defects or damage as determined by CITY, such that the Improvements continue to meet CITY standards for one year following said final acceptance.

15. **RETAINAGE.** APPLICANT and GUARANTOR expressly agree that notwithstanding any partial release of any of the Proceeds requested by APPLICANT and/or granted by CITY, the Proceeds shall not be released below 80 percent of the estimated cost of the Improvements (herein the "Retainage"), as specified herein, for one year following final acceptance of the Improvements. The Retainage shall be held to insure that the Improvements do not have any latent defects or damage as determined by CITY, such that the Improvements do not continue to meet CITY standards for one year after said final acceptance. Notwithstanding said Retainage, APPLICANT shall be responsible for any substandard, defective, or damaged Improvements if the Retainage is inadequate to cover any such Improvements. At the request of APPLICANT, the Retainage or any part thereof may be replaced with a performance bond of a type and form approved by CITY. APPLICANT, contractor, subcontractor, or other person providing the replacement bond shall be responsible for any substandard or defective Improvements if the Proceeds of said replacement bond are inadequate to cover any such Improvements.

16. **APPLICANT INDEMNIFICATION.** APPLICANT agrees to indemnify, defend, and save harmless CITY, its officers, employees, and agents from and against any and all liability that may arise as a result of the installation of the Improvements prior to CITY's final acceptance of the Improvements as defined herein, and from and against any and all liability that may arise as a result of any Improvements that are found to be defective during the one-year warranty period covered by this Agreement. With respect to APPLICANT's agreement to defend CITY, as set forth above, CITY shall have the option to either provide its own defense, with all costs for such being borne by APPLICANT, or require that APPLICANT undertake the defense of CITY.

17. **RELEASE OF PROCEEDS.** In the event the Improvements have been installed to the satisfaction of CITY and/or the Fees have been paid pursuant to this Agreement and Layton City ordinances within the above stated time period(s), CITY agrees to execute a written release of the remaining Proceeds.

18. **GUARANTOR OPTIONS; LIMITATION.** In the event the Fees are not paid pursuant to this Agreement and Layton City ordinances within the above stated time period, GUARANTOR shall remit to CITY, within 30 days of CITY's written demand, an amount of the Proceeds equal to that amount of the Fees that have not been paid. In the event the Improvements are not installed to the satisfaction of CITY pursuant to this Agreement and Layton City ordinances within the above stated time period, GUARANTOR shall have the obligation to either remit to CITY the Proceeds applicable to the Improvements, or otherwise cause the installation of the Improvements. Should GUARANTOR elect to cause the installation of the Improvements, GUARANTOR shall notify CITY, in writing, of its election to do so, in which event CITY agrees that it shall not require disbursement of the Proceeds and shall allow GUARANTOR to act in the stead of APPLICANT and be responsible for the completion of the Improvements. If GUARANTOR elects to cause the installation of the Improvements, GUARANTOR shall have all the duties and responsibilities of APPLICANT described in this Agreement,

and GUARANTOR agrees to assume, be responsible for, and perform all of APPLICANT's obligations and responsibilities hereunder. Moreover, GUARANTOR's obligations under this Agreement shall continue in favor of CITY should GUARANTOR thereafter Fail to Perform as required herein. Should GUARANTOR fail to timely notify CITY of its election to cause the installation of the Improvements, GUARANTOR shall be deemed to have waived its election to cause the installation of the Improvements.

19. **INADEQUATE PROCEEDS.** If the Proceeds are inadequate to pay the cost of the completion of the Improvements according to CITY standards, for whatever reason, including previous reductions, APPLICANT shall be responsible for the deficiency independent of GUARANTOR. Additionally, no further permits or business licenses shall be issued, and/or any existing permits or business licenses applicable to the payment of the Fees or to the location of the Improvements may be immediately suspended or revoked by the City Manager until the Improvements are completed and/or the Fees are paid, or until a new bond acceptable to CITY has been executed to insure completion of the remaining Improvements and/or payment of the Fees. Furthermore, the cost of completion of the Improvements shall include reimbursement to CITY for all costs including, but not limited to, construction costs and any Incidental Costs incurred by CITY in completing the Improvements and/or collecting the Proceeds.

20. **INCIDENTAL COSTS.** If, within 30 days of CITY's written notice to GUARANTOR of APPLICANT's Failure to Perform, either the Proceeds are not remitted to CITY or GUARANTOR fails to provide to CITY written notice of GUARANTOR's election pursuant to paragraph 18 above, then CITY's costs of (1) obtaining the Proceeds from GUARANTOR, (2) compelling GUARANTOR to cause the installation of the Improvements, and/or (3) completing the Improvements and all Incidental Costs shall be added to the amount due CITY from GUARANTOR and shall be paid to CITY in addition to and with the Proceeds.

21. **ACCESS TO PROPERTY.** Should CITY elect to use the Proceeds to complete the Improvements, APPLICANT herein expressly grants to CITY and any contractor or other agent hired by CITY the right of access to the project property to complete the Improvements.

22. **SUBSTANDARD IMPROVEMENTS.** Should any Improvements prove to be substandard or defective within the one year warranty period discussed above, CITY shall notify APPLICANT in writing of such substandard or defective Improvements. APPLICANT shall then have 15 days from notice from CITY in which to commence repair of the Improvements, and a reasonable amount of time, as determined by CITY, which shall be specified in the notice, to complete repair of the Improvements. Should APPLICANT fail to either commence repair of the Improvements or complete repair of the Improvements within the required time periods, CITY may exercise its option to remedy the defects and demand payment for such from APPLICANT, should the Proceeds be insufficient to cover the costs incurred by CITY.

23. **INSURANCE.** Should CITY elect to install, complete, or remedy any defect in or damage to the Improvements, APPLICANT shall be responsible for the payment of the premium for an insurance policy covering any liability, damage, loss, judgment, or injury to any person or property, including, but not limited to, damage to APPLICANT or its property as a result of the work of any contractor or agent hired by CITY to complete or remedy the Improvements. The minimum dollar amount and the scope of coverage of the insurance policy shall be determined and set by CITY. APPLICANT shall indemnify, defend, and hold harmless CITY, its officers, employees, and agents for any liability that exceeds the insurance policy limit. CITY, at its option, may collect and expend the Proceeds to make the premium payments should APPLICANT fail to pay said premium. No permit, approval or business license shall be issued by CITY, and any existing permit, approval, or business license shall be suspended until said premium is initially paid and a bond is in place to cover subsequent payments. APPLICANT further expressly agrees to indemnify, defend, and hold harmless CITY, its officers, agents, and employees for or from any damage or loss suffered or any judgment resulting from the work of any contractor or agent hired by CITY to install, complete, or remedy any defect in or damage to the Improvements.

24. **NOTICE.** Notice to APPLICANT or CITY shall be mailed or delivered to the address shown in this Agreement. The date notice is received at the address shown in this Agreement shall be the date of actual notice, however accomplished.

25. **MECHANIC/MATERIAL LIENS.** Should CITY elect to complete or remedy the Improvements, APPLICANT shall indemnify, defend, and hold harmless CITY from and against any liability that exceeds the bond amount for the payment of any labor or material liens as a result of any work of any contractor (including subcontractors and materialmen of any such contractor or agent) hired by CITY or that may arise due to either a defect in or failure of this Agreement or insufficient Proceeds to cover such costs.

26. **FAILURE TO PERFORM.** In addition to those events previously or subsequently described herein, the following shall be considered Failure to Perform on the part of APPLICANT, the occurrence of which shall entitle CITY to invoke any and all remedies outlined in this Agreement or any and all remedies it may have in equity or at law: APPLICANT's abandonment of the project as determined by CITY; APPLICANT's insolvency, appointment of a receiver, or filing of a voluntary or involuntary petition in bankruptcy; the commencement of a foreclosure proceeding against the project property; or the project property being conveyed in lieu of foreclosure.

27. **WAIVER.** The failure by any party to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement or to exercise any right or remedy consequent upon a failure to perform thereof shall not constitute a waiver of any such failure to perform or any other covenant, agreement, term, or condition. No waiver shall effect or alter the remainder of this Agreement, but each and every other covenant, agreement, term, and condition hereof shall continue in full force and effect with respect to any other then existing or subsequently occurring failure to perform.

28. **ATTORNEYS FEES.** In the event there is a failure to perform under this Agreement and it becomes reasonably necessary for any party to employ the services of an attorney in connection therewith (whether such attorney be in house or outside counsel), either with or without litigation, on appeal or otherwise, the losing party to the controversy shall pay to the successful party reasonable attorneys fees incurred by such party, and, in addition, such costs and expenses as are incurred in enforcing this Agreement.

29. **TIME IS OF THE ESSENCE.** Time is of the essence of this Agreement. In case either party shall fail to perform the obligations on its part at the time fixed for the performance of such obligations by the terms of this Agreement, the other party may pursue any and all remedies available in equity or law.

30. **GOVERNING LAW.** This Agreement shall be interpreted pursuant to, and the terms thereof governed by, the laws of the State of Utah. This Agreement shall be further governed by Layton City ordinances in effect at the time of the execution of this Agreement. However, the parties expressly acknowledge that any subdivision or other development regulations enacted after the execution of this Agreement, which are reasonably necessary to protect the health, safety, and welfare of the citizens of CITY, shall also apply to the subdivision or development that is the subject of this Agreement.

31. **INDUCEMENT; INTEGRATION; MODIFICATION; CAPTIONS; SEVERABILITY.**

- 31.1. The making and execution of this Agreement has been induced by no representations, statements, warranties, or agreements other than those herein expressed.
- 31.2. This Agreement embodies the entire understanding of the parties, and there are no further or other agreements or understandings, written or oral, in effect between the parties relating to the subject matter herein.
- 31.3. Except as otherwise authorized by this Agreement, this instrument may be amended or modified only by an instrument of equal formality signed by the respective parties.
- 31.4. The titles or captions of this Agreement are for convenience only and shall not be deemed in any way to define, limit, extend, augment, or described the scope, content, or intent of any part or parts of this Agreement.
- 31.5. If any portion of this Agreement is declared invalid by a court of competent jurisdiction, the remaining portions shall not be affected thereby, but shall remain in full force and effect.

[THIS SPACE INTENTIONALLY LEFT BLANK]

WHEREUPON, the parties hereto have set their hands the day and year first above written.

"APPLICANT"

"GUARANTOR"

By _____ By

Title _____
(Signature must be notarized on following page.)

Title _____
(Signature must be notarized on following page.)

"

MAYOR

CITY MANAGER

ATTEST:

CITY RECORDER

APPROVED AS TO CONTENT:

By _____ CITY Community Development Department _____ Date

By _____ CITY Public Works Department _____ Date

APPROVED AS TO FORM:

By _____ CITY Attorney's Office _____ Date

APPLICANT NOTARY

(Complete only if APPLICANT is an Individual.)

STATE OF _____)
: SS
COUNTY OF _____)

On this ____ day of _____, 20__, personally appeared before me _____, the signer(s) of the foregoing instrument who duly acknowledged to me that he/she/they executed the same.

NOTARY PUBLIC

(Complete only if APPLICANT is a Corporation.)

STATE OF _____)
: SS
COUNTY OF _____)

On this ____ day of _____, 20____, personally appeared before me _____, who being by me duly sworn did say that he/she is the _____ of _____, a _____ corporation, and that the foregoing instrument was signed in behalf of said corporation by authority of its Board of Directors, and he/she acknowledged to me that said corporation executed the same.

NOTARY PUBLIC

(Complete only if APPLICANT is a Partnership.)

STATE OF _____)
: SS
COUNTY OF _____)

On this ____ day of _____, 20____, personally appeared before me _____, who being by me duly sworn did say that he/she/they is/are the _____ of _____, a partnership, and that the foregoing instrument was duly authorized by the partnership at a lawful meeting held or by authority of its by-laws and signed in behalf of said partnership.

NOTARY PUBLIC

GUARANTOR NOTARY

STATE OF _____)
: SS
COUNTY OF _____)

On this ____ day of _____, 20____, personally appeared before me _____, who being by me duly sworn did say that he/she is the _____ of _____ a _____ corporation, and that the foregoing instrument was signed in behalf of said corporation by authority of its Board of Directors, and he/she acknowledged to me that said corporation executed the same.

NOTARY PUBLIC