

BOND AGREEMENT

(SURETY FORM)

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

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

"APPLICANT":

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

"SURETY":

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

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

address: 437 North Wasatch Drive, Layton, Utah 84041
telephone: (801) 336-3590, facsimile: (801) 546-8535.

******* 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
- ___ Warranty Only
- ___ OTHER (explain):

from CITY for

(description or name of project)

located at _____; and
(street address of project)

WHEREAS, the terms of the issuance of said permit(s)/approval 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

- or -

___ in the case of the issuance of a building permit, a minimum \$1,000.00 bond is charged as a guarantee for the completion of all adjacent off-site improvements and structures and of the on-site improvement.

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 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", "SURETY,"and "CITY," as used in this Agreement, shall also refer to the heirs, executors, administrators, successors, and/or assigns of APPLICANT, SURETY, 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 by APPLICANT'S and/or SURETY'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.
- 1.4. "Penal Sum," as used in this Agreement, shall mean the estimated cost to install and warrant the Improvements, as such costs are set forth under the "RECITALS" 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 which 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. SURETY 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 who 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.

4. **AGREEMENT DOCUMENTS.** All data which is used by CITY to compute the cost of or otherwise govern the design and installation of the Improvements is made a part of this Agreement and is incorporated herein by this reference. If this Agreement covers improvements required in a subdivision, this Agreement then incorporates by reference the subdivision plat and all data required by Section 18.16.030 of the Layton City Code or its successor ordinance.

5. **COMPLETION DATE.** APPLICANT shall complete the Improvements (check one 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. **SPECIFIC ENFORCEMENT.** APPLICANT and SURETY have entered this Agreement with CITY for the purpose of guaranteeing construction of the Improvements. 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 specifically enforce SURETY'S own performance and/or SURETY'S guarantee of APPLICANT'S performance required by this Agreement.

7. **EXTENT OF SURETY LIABILITY; INDEPENDENT OBLIGATION.** Except as otherwise provided by law and/or this Agreement, the extent of SURETY'S obligation to guarantee APPLICANT'S performance under this Agreement shall be limited to the Penal Sum of this surety bond, (herein the "Proceeds"). Notwithstanding the foregoing, however, should SURETY fail to timely perform its obligations as outlined herein or as required by law, the aforesaid limitation shall not apply. SURETY shall be liable to CITY for all costs incurred by CITY in completing and/or repairing the Improvements, along with any and all Incidental Costs incurred by CITY in attempting to enforce SURETY'S obligations under this Agreement or in completing and/or repairing the Improvements as a result of SURETY'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 SURETY'S failure to perform under this Agreement. SURETY expressly acknowledges that its obligation under this Agreement is independent of any obligation of CITY, either express or implied. SURETY 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. SURETY further acknowledges that its obligations under this Agreement are independent of any other remedy available to CITY to secure proper completion of the Improvements, and, therefore, acknowledges that SURETY 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 SURETY of its duty to perform as outlined in this Agreement, or preclude CITY from requiring SURETY'S performance under this Agreement.

8. **APPLICANT'S INDEPENDENT OBLIGATION.** APPLICANT EXPRESSLY ACKNOWLEDGES, UNDERSTANDS, AND AGREES that its obligation to complete and warrant the Improvements 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 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 pursuant to this Agreement is independent of any other remedy available to CITY to secure proper completion of the Improvements; (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 © that APPLICANT has a legal obligation, independent of this Agreement, to timely complete and pay for the Improvements in full.

9. **APPLICANT OBLIGATION INDEPENDENT OF SURETY.** IT IS EXPRESSLY UNDERSTOOD AND AGREED UPON AMONG THE PARTIES that this Agreement shall not relieve APPLICANT, independent of SURETY, from the obligation to complete and fully pay for the Improvements. 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 to the extent that such costs are not adequately covered by the Proceeds.

10. **JOINT AND SEVERAL LIABILITY.** APPLICANT and SURETY shall be jointly and severally liable upon this surety bond, which shall remain in full force and effect until the Improvements are completed, accepted, and any guaranty or warranty period has passed, pursuant to the provisions of this Agreement, Layton City ordinances, or other applicable law. If APPLICANT shall well and truly perform and fulfill all the undertakings covenants, terms, conditions, and agreements of this Agreement during the term of this Agreement and any extensions that may be granted by CITY, with or without notice to SURETY, and during the life of any guaranty required under the Agreement, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of the Agreement that may hereafter be made, notice of which modifications to SURETY being hereby expressly waived by SURETY, then this obligation shall be void. Otherwise it shall remain in full force and effect.

11. **REDUCTION OF PROCEEDS.** As the Improvements are accepted by CITY, 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. 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.

12. **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.

13. **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.

14. **RETAINAGE.** APPLICANT expressly agrees that, notwithstanding any partial release of any of the Proceeds requested by APPLICANT and/or granted by CITY, CITY shall not release the Proceeds below 90% 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 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 said replacement bond shall be responsible for any substandard, defective, or damaged Improvements if the Proceeds of said replacement bond are inadequate to cover any such Improvements.

15. **APPLICANT INDEMNIFICATION.** APPLICANT agrees to indemnify, defend, and save harmless CITY, its officers, employees, and agents from and against any and all liability which 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 which may arise as a result of any improvements which 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.

16. **SURETY OPTIONS; LIMITATION.** 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(s), SURETY shall have the option to either remit to CITY the Proceeds applicable to the Improvements, or otherwise cause the installation of the Improvements.

17. **COSTS FOR REVOCATION.** In addition to the amount of the bond, SURETY or APPLICANT agree to provide Two Thousand Five Hundred Dollars (\$2,500.00) to CITY upon CITY's first demand for revocation of the bond or any part thereof. If provided by SURETY, said amount may be added to the costs of the underlying bond. If provided by APPLICANT, said amount shall be a cash bond posted with CITY. These funds are to compensate CITY for its initial expenses in pursuing the revocation of this bond.

18. **INADEQUATE PROCEEDS.** If the Proceeds are inadequate to pay the cost of the completion of the Improvements according to CITY standards, or to pay any Incidental costs, for whatever reason, including previous reductions, APPLICANT shall be responsible for the deficiency,

independent of SURETY. Additionally, no further permits or business license shall be issued, and/or any existing permits or business licenses applicable to the location of the Improvements may be immediately suspended or revoked until the Improvements are completed, or until a new bond acceptable to CITY has been executed to insure completion of the remaining Improvements. 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.

19. **INCIDENTAL COSTS.** If, upon CITY'S written notice to SURETY of APPLICANT'S Failure to Perform, the Proceeds are not remitted to CITY within 30 days of demand, or the Improvements are not installed within a reasonable time period determined by CITY, then CITY'S costs of obtaining the Proceeds and/or completing the Improvements and all Incidental Costs shall be added to the amount due CITY from SURETY, and shall be paid to CITY in addition to and with the Proceeds. In such case, SURETY expressly acknowledges that its obligation shall no longer be limited to the Penal Sum of this surety bond.

20. **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.

21. **SUBSTANDARD IMPROVEMENTS.** Should any Improvements prove to be substandard or defective within the one year warranty period discussed above, CITY shall notify APPLICANT and/or SURETY in writing of such substandard or defective Improvements. APPLICANT and/or SURETY 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 and/or SURETY 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 and/or SURETY, should the Proceeds be insufficient to cover the costs incurred by CITY.

22. **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 which 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.

23. **NOTICE.**

- 23.1. SURETY hereby waives notice of any change or modification to this Agreement, including, but not by way of limitation, any extensions of time that may be granted or agreed to by CITY.
- 23.2. Notice to APPLICANT, SURETY, 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.

24. **MECHANIC/MATERIAL LIENS.** Should CITY elect to complete or remedy the Improvements, APPLICANT shall indemnify, defend, and hold CITY harmless from and against any costs or liability which exceed the Proceeds for the payment of any labor or material lien resulting from the work of any contractor (including subcontractors and materialmen of any such contractor) or agent hired by CITY or which may arise due to either a defect in or failure of SURETY'S guarantee, or insufficient Proceeds to cover such costs.

25. **FAILURE TO PERFORM.** In addition to those events previously or subsequently described herein, the following shall also 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 otherwise 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; the project property being conveyed in lieu of foreclosure; SURETY'S failure to fulfill its obligations under this Agreement.

26. **WAIVER.** The failure by any party to insist upon the strict performance of any covenant, duty, agreement, term, or condition of this Agreement or to exercise any right or remedy consequent of any Failure to Perform shall not constitute a waiver of any covenant, duty, agreement, term, or condition. No waiver shall affect 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.

27. **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 attorney's fees incurred by such party and, in addition, such costs and expenses as are incurred in enforcing this Agreement.

28. **TIME OF THE ESSENCE.** Time is of the essence of this Agreement. In case any 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 or parties may pursue any and all remedies available in equity, at law, and/or pursuant to the terms of this Agreement.

29. **GOVERNING LAW.** This agreement shall be interpreted pursuant to, and the terms 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 which is the subject of this Agreement.

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

- 30.1. The making and execution of this Agreement has been induced by no representations, statements, warranties, or agreements other than those herein expressed.
- 30.2. This Agreement embodies the entire understanding of the parties and, unless otherwise specified in this Agreement, there are no further or other agreements or understandings, written or oral, in effect between the parties, relating to the subject matter herein.
- 30.3. 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.
- 30.4. 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 describe the scope, content, or intent of any part or parts of this Agreement.
- 30.5. 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]

SEE EXHIBIT

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

"APPLICANT"

"SURETY"

By _____ By

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

(Affix corporate seal; signature must be notarized on pages following; also must attach power of attorney.)

"

MAYOR

CITY MANAGER

ATTEST:

CITY RECORDER

APPROVED AS TO CONTENT:

By _____ Date
CITY Community Development Department

By _____ Date
CITY Public Works Department

APPROVED AS TO FORM:

By _____ Date
CITY Attorney's Office

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

SURETY 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