NOTE TO APPLICANT: Wasatch County will not accept this Bond Agreement unless it is filled out completely. This document is to be signed and notarized by the Applicant, financial institution, and by the County. Failure to complete this form in its entirety may result in rejection of the bond agreement and no permits/approvals will be issued.

For office use only

☐ $300 Processing Fee Paid
Check # _____

Wasatch County
Letter of Credit Performance and Warranty Bond Agreement

THIS AGREEMENT, (herein "Agreement") is entered into this_____**day of**_____**, 20**_____between the following:

"APPLICANT": _____

A (n): _____
(individual, corporation, partnership, limited liability company, trust, other)

"County": Wasatch County, a political subdivision of the State of Utah.

***** NOTICES *****

All notices, requests, demands, and other communications required under this Agreement shall be in writing. Such written communication shall be effective upon personal delivery to any party, upon receipt by facsimile, or upon receipt by regular, expedited, or overnight mail service, postage prepaid and addressed to the respective parties as follows:

IF TO APPLICANT:

Attn:_____

Address:_____

City:_____**State:**_____**Zip:** _____

Telephone: (_) _____

Facsimile: (_) _____

IF TO COUNTY[1]:

Wasatch County
Attn: ☐ Engineering Department
25 N Main Street
Heber City, Utah 84032
Telephone: (435) 654-3180
Facsimile: (435) 654-0283

☐ Planning Department
55 South 500 East
Heber City, Utah 84032
Telephone: (435) 657-3205

Any party with an address change must notify the other parties by giving written notice within fifteen (15) days.

[1] Typically, infrastructure improvements are processed through the engineer, and other improvements are through planning.

***** RECITALS *****

WHEREAS, Applicant desires to post a performance and warranty bond with the County for:

_____

(DESCRIPTION OR NAME OF PROJECT) ("Project")

- located at:

_____

(ADDRESS OF PROJECT)

WHEREAS, the terms of the issuance of said permit(s) and approval(s) and/or recording of a plat for the Project require Applicant to complete and warrant certain improvements (herein "the Improvements"), as more fully described herein.

WHEREAS, attached Exhibit A shows the improvements covered by this Agreement which need to be completed and warranted, and attached Exhibit B show any additional improvements covered by this Agreement which need to be warranted;

WHEREAS, County will not grant said permit(s) and approval(s) and/or allow the recording of the Project plat until adequate provisions has been made to guarantee completion of the improvements which are estimated to cost **$_____, ("Completion Cost")** as shown in Exhibit A, and to warrant the improvements from any defects, which improvements and required warranty are estimated to cost **$_____,[2] ("Warranty Cost")** as shown in Exhibits A & B**,** and which Improvements shall be installed under the direction and supervision of and in accordance with the specifications of County;

WHEREAS, the Applicant will complete the improvements by **_____[3]; ("Completion Date");**

WHEREAS, provision has been made by law whereby Applicant may file, in lieu of final completion of the Improvements prior to the issuance of the permit(s) and approval(s) and/or recording of the Project plat, a guarantee acceptable to County to secure the actual construction of the Improvements in a manner satisfactory to County in order to obtain pertinent County approvals prior to the issuance of said permit(s);

WHEREAS, the County prefers cash bonds, but may, in the discretion of the County, accept letters of credit from an FDIC insured financial institution for the performance assurances;

WHEREAS, the Applicant hereby requests the county consider this as its request that the county accept a letter of credit in place of a cash bond for the performance assurances;

WHEREAS, the County requires cash for all warranty obligations.

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" and "County," as used in this Agreement, shall also refer to the heirs, executors, administrators, successors, and/or assigns of Applicant and County, 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

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[2] There are separate lines for the cost to complete the improvements and the improvements warranted because if the Developer has completed part of the required infrastructure, they would not be required to post a performance bond to the extent the improvements had been completed, but would still be required to post the full 10% warranty bond for all required improvements.

[3] The Planning Director or the Engineering Coordinator will review the Completion Date to see if it appears reasonable, but in any event, it shall be the Applicants responsibility to complete the improvements by the Completion Date.

interest thereon incurred by County, occasioned 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 Wasatch County 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 which may leave property and/or improvements improperly completed, undeveloped and/or unproductive.

3. **REQUIRED IMPROVEMENTS.** Applicant hereby agrees to complete and warrant the improvements and repairs specified in Exhibit A attached hereto. Applicant hereby agrees to warrant the improvements specified in Exhibit B attached hereto. Required improvements are not just improvements that will be owned and maintained by the County, but may include improvements that will be owned by SSDs, HOAs, and private property owners, but which were included in development approvals. Exhibit A and B (if any), must be reviewed for completeness, and the accuracy of the estimate, by the engineering coordinator or the planning director. Written evidence of their approval must be included with Exhibit A and Exhibit B (if any).

4. **COMPLETION DATE.** Applicant hereby agrees they shall complete the Improvements in accordance with County Standards and approved plans by the Completion Date.

5. **UNRELATED OBLIGATIONS OF APPLICANT.** The benefits and protection provided by this Agreement shall inure solely to County and not to third parties, including, but not limited to, lot purchasers, contractors, subcontractors, laborers, suppliers, or others. County shall not be liable to claimants or others for obligations of Applicant under this Agreement. County 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.

6. **AGREEMENT DOCUMENTS.** All data which is used by County to compute the cost of or otherwise govern the design and installation of the Improvements is hereby 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 herein by reference the subdivision plat. If there is a Development Agreement, then this Agreement incorporates herein by reference the Development Agreement. If a land use application was approved by the land use authority for the project which is the subject of the Improvements, this Agreement incorporates herein by reference the land use authority approval and associated land use application.

7. **FEES**. This Agreement shall not be processed and executed by the County until the Applicant has paid the appropriate bond processing fee as set forth in the County's Consolidated Fee Schedule.

8. **SPECIFIC ENFORCEMENT.** Applicant has entered into this Agreement with County for the purpose of guaranteeing construction of the Improvements. County shall be entitled to specifically enforce Applicant's obligation under this Agreement to construct, install and warrantee the Improvements in a manner satisfactory to County.

9. **APPLICANT'S INDEPENDENT OBLIGATION.** Applicant EXPRESSLY ACKNOWLEDGES, UNDERSTANDS, AND AGREES that its obligation to complete and warranty the Improvements and/or fulfill any other obligation under this Agreement, Wasatch County ordinances, or other applicable law is independent of any obligation or responsibility of County, either express or implied. Applicant agrees that its obligation to complete and warranty 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 warranty the Improvements pursuant to this Agreement is independent of any other

remedy available to County to secure proper completion of the Improvements; (b) that Applicant may not assert as a defense that County 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 County 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 as well as warranty the Improvements.

10. **APPLICANT'S OBLIGATION FOR COSTS.** Should Applicant Fail to perform its responsibilities under this Agreement in any degree, Applicant agrees to compensate County for all costs, including Incidental Costs, related to Applicant's Failure to Perform its obligation to complete and warranty the Improvements to the extent that such costs are not adequately covered by the Proceeds, as defined below.

11. **LETTER OF CREDIT.** As an independent guarantee to County, for the purpose of insuring construction and installation of the Improvements, the Applicant has agreed to provide to County a Letter of Credit in the amount not less than the Completion Cost, which amount is part of the proceeds ("Proceeds"). The Letter of Credit shall be attached hereto as Exhibit C. The Letter of Credit shall meet all of the following requirements:
    - It shall state it is subject to Utah law;
    - It shall state the Venue for any disputes/ enforcement actions shall be Utah 4th District Court in Wasatch County;
    - Expire at least 12 months after the Completion Date;
    - It shall be Irrevocable;
    - Issued by an FDIC insured institution;
    - Issuing institution shall be domestic to the United States of America, and shall be licensed to do business in Utah;
    - Any rules, policies, practices, guidelines, or laws the Letter of Credit references, besides Utah Code and Wasatch County Code, shall be provided with the Letter of Credit;
    - Any other factor or criteria the County needs in its reasonable discretion to ensure the County can efficiently and effectively enforce the letter of credit and thereby ensure the improvements are completed.

    It is recommended that the Applicant provide a sample letter of credit to the County for review prior to obtaining a letter of credit that may not meet the requirements of the County.

12. **CASH.** As an independent guarantee to County, for the purpose of insuring the warranty of the Improvements, the Applicant has agreed to provide to County Cash in the amount of Warranty Cost, which amount is part of the proceeds ("Proceeds").

13. **COUNTY OBLIGATION TO PRESERVE FUNDS:** County will only use the Proceeds provided by the Applicant for construction and installation, and warranty of the Improvements, and reasonable costs incidental to these uses. County shall maintain and hold the Proceeds in a manner consistent with Utah Law and prudent government practices until it is either used in a manner consistent with this Agreement, or it is returned to Applicant. Proceeds that are not used to for the improvements and incidental costs shall be returned to Applicant in a reasonable time after the Applicant requests the Proceeds, after the improvements have been completed and approved by the County for the Performance Costs, and after the warranty period has passed for the Warranty Costs.

14. **PARTIAL RELEASE OF PROCEEDS**: As portion of the Improvements are accepted by County, a portion of the Proceeds may be released upon Applicant's written request to County. After two partial releases, the request for releases shall be accompanied by a $200 fee to cover County administrative costs. No releases shall be authorized until such time as County has inspected the requested portion of Improvements and found them to be in compliance with County standards. Completion of Improvements, even if verified by County, shall not entitle Applicant to an automatic release of any part of the Proceeds. The release of any Proceeds shall authorized by the County, which authorization shall not be unreasonably delayed. The County will not authorize the release of more than 110% of the cost to complete the remaining incomplete Improvements, or 25% of the total cost of the Improvements, whichever is greater, until Final Acceptance. The County will not authorize the release of the 10% warranty bond amount for all of the Improvements until after the warranty period has passed.

15. **FINAL ACCEPTANCE.** Final acceptance means the acceptance by the County of the installed Improvements as meeting County standards and approved plans. The Applicant and the County agree the

County will not issue any certificates of occupancy until the Improvements are complete, and any terms of the Development Agreement are hereby referenced and incorporated, and may be considered by the County in the release of any Proceeds.

16. **WARRANTY OF IMPROVEMENTS.** Following final acceptance of the installation of the Improvements, Applicant hereby warranties that the Improvements shall remain free from defects or damage as determined by County, such that the Improvements continue to meet County standards for a minimum of one year after Final Acceptance, or two years upon a finding by the County that the requirements of Utah Code Ann. § 17-27a-604.5 have been met. If this section is left blank, the one year period shall apply.

Applicant shall warranty the Improvements (CHECK ONE):

____ For a period of one year from the date of final acceptance of the installed improvements; **OR**

____ In accordance with Utah Code § 17-27a-604.5, for a period of two years from the date of final acceptance of the installed improvements.*

*I,_____, Wasatch County Engineer, hereby certify that a two year period is warranted because there are unstable soil conditions within the subdivision or development area and/or extreme fluctuations in climatic conditions in the area making it impracticable to discover substandard or defective performance within a one-year period.

_____
Wasatch County Engineer

17. **APPLICANT INDEMNIFICATION.** Applicant agrees to indemnify, defend, and save harmless County and 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 County'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 or two-year warranty period covered by this Agreement. With respect to Applicant's agreement to defend County, as set forth above, County 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 County.

18. **FINAL RELEASE OF PROCEEDS.** In the event the Improvements have been installed to the satisfaction of County and final acceptance of the installed Improvements has occurred, County agrees to execute a written release of the remaining performance assurance Proceeds upon request of the Applicant. In the event that all or part of the Proceeds remain after the Warranty Period has passed, County agrees to execute a written release of the remaining Proceeds upon request of the Applicant.

19. **DEMAND FOR AND USE OF PROCEEDS.** In the event the Improvements are not installed to the satisfaction of County and WASATCH County ordinances within the above stated time period(s), the Improvements prove to be substandard or defective within the one or two year warranty period discussed above, and/or the Applicant fails to perform any obligation under this Agreement or Wasatch County ordinances, County may use and expend all the Proceeds or such lesser amount as may be estimated or required by County to be necessary to complete the Improvements as required herein and to make any repairs covered by the Warranted Improvements.

17. **INADEQUATE PROCEEDS.** If the Proceeds are inadequate to pay the cost of the completion or repair of the Improvements according to County standards or approved plans, for whatever reason, including previous reductions, Applicant shall be responsible for the deficiency. Additionally, no further permits or business licenses shall be issued and/or existing permits or business licenses may immediately suspended or revoked by the County until the Improvements are completed or repaired, or, until a new bond acceptable to County has been executed to ensure completion of the remaining Improvements. Furthermore, the cost of completion of the Improvements shall include reimbursement to County for all costs, including, but not limited to, construction costs and any Incidental Costs incurred by County in completing the Improvements and/or collecting the Proceeds.

18. **ACCESS TO PROPERTY.** Should County elect to use the Proceeds to complete and/or repair the Improvements, Applicant herein expressly grants to County, and any contractor or other agent hired by County, the right of access to the project property and/or repair the Improvements.

19. **SUBSTANDARD IMPROVEMENTS.** Should any Improvements prove to be substandard or defective within the one or two year warranty period discussed above, County shall notify Applicant in writing of

such substandard or defective Improvements. Applicant shall then have 15 days from notice from County in which to commence installation or repair of the Improvements, and a reasonable amount of time, as determined by County and in County's sole discretion, which shall be specified in the notice, to complete installation or repair of the Improvements. Should Applicant fail to either commence installation or repair of the Improvements or complete installation or repair of the Improvements within the required time periods, County may exercise its option to remedy the defects and demand payment for such from Applicant, should the Proceeds bond be insufficient to cover the costs incurred by County.

20. **INSURANCE.** Should County elect to install, complete, or remedy any defect or damage in 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 County 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 County. Said insurance policy is on option in which County may elect to purchase in County's sole discretion. Applicant shall indemnify, defend, and hold harmless County, its officers, employees, and agents for any liability which exceeds the insurance policy limit, should County, 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 County to install, complete, or remedy any defect in or damage to the Improvements.

21. **NOTICE.** Notice to Applicant or County shall be mailed or delivered to the address shown in this Agreement. The notice date shall be the date the notice is actually received, or three days after the mail is sent registered mail at the address shown in this Agreement, whichever is first.

22. **MECHANIC/MATERIAL LIENS.** Should County elect to complete, remedy, or repair the improvements, Applicant shall indemnify, defend, and hold harmless County from and against any liability which 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 material men of any such contractor or agent) hired by County or which may arise due to either a defect in or failure of this Agreement or insufficient Proceeds to cover such costs.

23. **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 County 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 reasonably determined by County; 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; and/or the project property being conveyed in lieu of foreclosure.

24. **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.

25. **ATTORNEYS FEES.** In the event an action or proceeding is instituted for the 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), 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. County's attorney fees shall be determined by the average hourly rate of a local attorney with the same level of expertise and experience.

26. **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.

27. **GOVERNING LAW.** This Agreement shall be interpreted pursuant to, and the terms thereof governed by, the laws of the State of Utah and Wasatch County. The venue for any disputes which cannot be resolved by the parties shall be the Utah 4th District Court in Wasatch County.

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

28.1. The making and execution of this Agreement has been induced by no representations, statements, warranties, or agreements other than those herein expressed.

28.2. 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.

28.3. 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.

28.4. 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.

28.5. 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.

***** SIGNATURE REQUIREMENTS *****

SIGNATURE(S) FROM A CORPORATION. If Applicant is a Corporation, this Agreement shall be signed by the President. If someone other than the President signs on behalf of the company, a "Corporate Resolution" must be attached, and should verify that the person signing the agreement can bind the corporation.

SIGNATURE(S) FROM A PARTNERSHIP. If Applicant is a Partnership, this agreement shall be signed by the General Partner.

SIGNATURE(S) FROM A LIMITED LIABILITY COMPANY. If Applicant is a Limited Liability Company, this Agreement shall be signed by a Managing Member. County may request a copy of the Articles of Organization.

SIGNATURE(S) FROM A TRUST. If Applicant is a trust, this Agreement shall be signed by a Trustee.

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

APPLICANT

By: _____

Title: _____

(Signature must be notarized on pages following.)

By: _____

Title: _____

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

COUNTY

_____

COUNTY MANAGER

ATTEST:

_____

COUNTY CLERK

APPROVED AS TO FORM:

By: _____

County Attorney's Office

For Landscaping or Amenity Improvements Only:

By: _____

Planning Department

APPLICANT NOTARIZATION

(Notary must complete the correct certificate)

COMPLETE ONLY IF APPLICANT IS AN INDIVIDUAL

State of_____)
:ss
County of_____)

On this_____day of_____, 20_____, personally appeared before me _____*[name of person(s)]*, whose identity is personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to this instrument, and acknowledged 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 _____*[name of person(s)]*, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who affirmed that he/she is the_____*[title]*, of_____*[name of corporation]*, a corporation, and said document was signed by him/her in behalf of said corporation by authority of its bylaws or of a Resolution 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 _____*[name of person(s)]*, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who affirmed that he/she is the_____*[title]*, of_____*[name of partnership]*, a partnership, and that the foregoing instrument was duly authorized by the partnership at a lawful meeting held or by authority of its bylaws and signed in behalf said partnership.

_____
Notary Public

COMPLETE ONLY IF APPLICANT IS A LIMITED LIABILITY COMPANY

State of_____)
:ss
County of_____)

On this_____day of_____, 20_____, personally appeared before me _____*[name of person(s)]*, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who affirmed that he/she is the_____*[title],* of_____*[name of LLC]*, limited liability company, by authority of its members or its articles of organization, and he/she acknowledged to me that said limited liability company executed the s ame.

_____
Notary Public

COMPLETE ONLY IF APPLICANT IS A TRUST

State of_____)
:ss
County of_____)

On this_____day of_____, 20_____, personally appeared before me _____*[name of person(s)]*, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who affirmed that he/she is the_____*[title]*, of_____*[name of trust]*, and that the foregoing instrument was signed in behalf of said trust and he/she acknowledged to me that said trust executed the same.

_____

Please Attach Exhibits
Exhibit A – Performance and Warranty Bond Improvements
Exhibit B – Warranty Bond Improvements not included in Exhibit A, if any
Exhibit C – Letter of Credit