

**PUBLIC IMPROVEMENT CONSTRUCTION AND ASSURANCE AGREEMENT  
(Cash, Escrow, Dedicated Funds in Construction Loan, Letter of Credit Form)**

**This Public Improvement Construction and Assurance Agreement** (the "Agreement") is entered into as of the Effective Date, by and between the parties described below for the purpose of guaranteeing the completion and warranty of improvements hereinafter described.

**PARTIES**

**"Applicant":** \_\_\_\_\_  
a(n) \_\_\_\_\_ (corporation, partnership, individual),  
address: \_\_\_\_\_,  
telephone: (\_\_\_\_) \_\_\_\_\_, email: \_\_\_\_\_;

**"City":** City of West Jordan, a municipal corporation of the State of Utah, Attn: Engineering Division,  
8000 South Redwood Road, West Jordan, Utah 84088. Telephone (801)569-5070, facsimile:  
(801)569-5099.

**"Financial Institution"** (for all non-cash assurances) \_\_\_\_\_  
a(n) \_\_\_\_\_ (corporation, partnership, individual),  
address: \_\_\_\_\_,  
telephone: (\_\_\_\_) \_\_\_\_\_, email: \_\_\_\_\_;

**EXHIBITS AND ADDENDA**

The following exhibits are attached hereto: Exhibit A – Estimated Cost of Public Improvements.

The following addenda are attached hereto, as applicable: Addendum 1 – Public Landscaping Improvements; Addendum 2 – Non-public Improvements.

**RECITALS**

A. Applicant desires the following permits and approvals (check and complete):

\_\_\_\_\_ Record subdivision  
\_\_\_\_\_ Site plan  
\_\_\_\_\_ Building permit  
\_\_\_\_\_ Other (explain): \_\_\_\_\_

from City for \_\_\_\_\_  
(description or name of project)

located at \_\_\_\_\_ (the "Project").  
(street address of project)

B. The terms of the issuance of said permits and approvals require Applicant to complete improvements that are intended to be dedicated for public use (hereinafter "the Public Improvements"), including the following:

(1) Those specified in any and all applicable agreements, which documents are incorporated herein by this reference; and

(2) Those specified in the approved engineering drawings for the Project, incorporated herein by this reference; and

(3) Those set forth in Exhibit "A," attached hereto and incorporated herein by this reference; and

(4) Those set forth in Addendum 1 and Exhibit A to Addendum 1.

C. City will not grant said permits and approvals until adequate provision has been made to assure completion of the Public Improvements, which shall be installed in accordance with the ordinances, standards and specifications of City.

D. Applicant is further required to warrant the Public Improvements.

E. The estimated cost of the Public Improvements, exclusive of landscaping, is set forth in Exhibit "A." The estimated cost of the landscaping portion of the Public Improvements (the "Public Landscaping Improvements") is set forth separately in "Exhibit A to Addendum 1." As used in this Agreement, the term "Public Improvements" shall also include "Public Landscaping Improvements" unless otherwise stated.

F. In lieu of final completion of the Public Improvements, Applicant determined to provide financial assurance to secure the construction and warranty of the Public Improvements, which financial assurance must be in a form acceptable to City and in an amount equal to 100% of the estimated cost of the Public Improvements.

**Now, therefore,** in consideration of the premises and other valuable consideration, the Applicant and City (each a "Party," and collectively the "Parties") agree as follows:

## **TERMS AND CONDITIONS**

1. **Incorporation of Recitals.** The foregoing recitals are hereby incorporated into this Agreement and are made a part hereof. Exhibits and addenda attached hereto are hereby incorporated into this Agreement by reference.

### **2. Additional Definitions.**

(a) "Applicant", "City" and "Financial Institution" as used in this Agreement, shall also refer to all heirs, executors, administrators, successors, and assigns of Applicant, City and Financial Institution, respectively.

(b) "Failure to Perform" or "Fail to Perform," as used in this Agreement, shall mean the non-performance in a timely manner by a Party of any obligation, in whole or in part, required of such Party by the terms of this Agreement or required by City of West Jordan ordinance or other applicable law. In addition, Applicant's Failure to Perform shall also include: (i) abandonment of the Project as determined

by City; (ii) Applicant's insolvency, appointment of a receiver, or filing of a voluntary or involuntary petition in bankruptcy; (iii) the commencement of a foreclosure proceeding against the Project property; or (iv) conveyance of the Project or property in lieu of foreclosure.

(c) "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 liens, and any other cost and interest thereon incurred by City, occasioned by Applicant's Failure to Perform as hereinafter defined.

(d) "Warranty Commencement Date," as used in this Agreement, shall mean the date of City acceptance as set forth in the West Jordan City Code.

(e) "Warranty Period," as used in this Agreement, shall mean the period of time commencing on the Warranty Commencement Date and terminating on the same month and day of the following year.

3. **Purpose for Agreement.** The Parties expressly acknowledge that the purpose of this Agreement is not only to guarantee the proper completion of the Public Improvements, but also, among other things, to eliminate and avoid the harmful effects of unauthorized subdivisions and other land developments which may leave property or improvements improperly completed, undeveloped or unproductive.

4. **Agreement Documents.** All data which is used by City to compute the cost of or otherwise govern the design and installation of the Public Improvements is hereby made a part of this Agreement and is incorporated herein by this reference, including but not limited to applicable provisions of the West Jordan City Code.

5. **Construction Completion.** Applicant shall construct and complete the Public Improvements within a period of two (2) years after the Effective Date or, if this Agreement covers improvements required in a subdivision, two (2) years after the date of recording the final subdivision plat. Construction shall comply with: (a) the approved development plan, preliminary and final approved site plan(s) and preliminary and final approved subdivision plat(s) for the Project, as applicable; (b) the approved engineering drawings, conveyance documents, title reports and other documents submitted during the City's review and approval process of the Project; (c) any and all agreements including but not limited to the development agreement, deferral agreement, and other agreements for the Project, as applicable; (d) all applicable federal, state and local laws and regulations; and (e) the City of West Jordan Public Improvement Standards, Specifications and Plans (collectively, the "Compliance Requirements").

6. **Specific Enforcement.** Applicant has entered into this Agreement with City for the purpose of ensuring construction of and providing warranty for the Public Improvements. City shall be entitled to specifically enforce Applicant's obligation under this Agreement to construct and install the Public Improvements in a manner satisfactory to City. City shall also be entitled to specifically enforce Financial Institution's own performance to remit payment as required by this Agreement up to the amount of the Proceeds without any further consent or instruction by Applicant.

## 7. **Applicant's Obligation for Costs.**

(a) **Applicant Liable for all Costs.** Should Applicant Fail to Perform in any degree, Applicant agrees to compensate City for all costs, including but not limited to, cost of construction and Incidental Costs related to Applicant's Failure to Perform, except to the extent that the City has received compensation from the Proceeds.

(b) **Independent Obligation.** Applicant expressly acknowledges, understands, and agrees that its obligation to complete and warrant the Public Improvements and fulfill any other obligation under this Agreement, City of West Jordan 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 Public Improvements 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 part of the subdivision or development. Applicant further acknowledges that: (i) Applicant's contractual obligation to complete and warrant the Public Improvements pursuant to this Agreement is independent of any other remedy available to City to secure proper completion of the Public Improvements; and (ii) 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 (iii) Applicant has a legal obligation, independent of this Agreement, to timely complete and pay for the Public Improvements in full.

## **8. Financial Assurance.**

(a) **Proceeds.** As an independent guarantee to City for the purpose of insuring and warranting installation of the Public Improvements, Applicant shall provide financial assurance in the amount of 100% of the estimated cost of the Public Improvements inclusive of Public Landscaping Improvements. The financial assurance is as follows (check applicable form):

### **[ ] Cash Deposit.**

Applicant hereby deposits with the City cash in the amount of \$\_\_\_\_\_ (the "Proceeds"). The City shall not be required to pay any interest to Developer on any sums deposited pursuant to this Agreement. The Developer acknowledges that any interest earned by the City on the deposited sums shall be retained by the City as reimbursement and an offset for the cost of administering this Agreement.

### **[ ] Escrow Account or Dedicated Funds in a Construction Loan.** (Financial Institution must sign Agreement and Acknowledgement hereby attached)

Applicant hereby assigns and sets over to City all its right, title, and interest in the principal of funds set aside and dedicated within a Construction Loan Account or withdrawn from the Construction Loan Account and/or deposited into a certain Escrow Account held by Financial Institution in the amount of \$\_\_\_\_\_, entitled, \_\_\_\_\_ (the "Account" or "Proceeds"). (identify the name, account number, and account type (escrow or construction loan))

The Account shall be held by a federally insured bank, savings and loan, or credit union, and the Proceeds shall be available to City at an office located within fifty (50) miles of City.

### **[ ] Irrevocable Letter of Credit.** (Financial Institution must sign acknowledgment hereby attached)

Applicant hereby files with City an Irrevocable Standby Letter Of Credit, (herein the "Letter of Credit"), numbered\_\_\_\_\_, issued by\_\_\_\_\_,  
(Issuer)

a(n)\_\_\_\_\_ Corporation (the "Issuer"), located at\_\_\_\_\_;

(State)

(Issuer Address)

\_\_\_\_\_, \_\_\_\_\_, in the amount of \$\_\_\_\_\_, (the "Proceeds")  
 (Issuer Telephone) (Issuer Facsimile) (Letter of Credit Amount)

This Letter of Credit is issued in favor of City to the account of \_\_\_\_\_, Applicant herein, and is made a part of this Agreement and attached hereto as Exhibit "B". The Letter of Credit shall be issued by a federally insured bank, savings and loan, or credit union, authorized to do business in Utah, and the Proceeds shall be available to the City by presenting a site draft at an office located within fifty (50) miles of City. The Letter of Credit shall contain the following provision:

It is a condition of this Letter of Credit that it shall be deemed automatically extended without amendment for one (1) year from the present or any future expiration date unless at least sixty (60) days prior to such expiration date City is notified by registered letter, return receipt requested, or overnight courier service that Issuer elects not to consider the Letter of Credit renewed for any such period.

(b) Demand of Proceeds. For Cash Deposit, City shall provide thirty (30) days written notice prior to expending the Proceeds. For Escrow Account or a Dedication of Funds in a Construction Loan Account, Financial Institution shall remit the Proceeds to City within thirty (30) days of City's written demand. For Irrevocable Letter of Credit, Issuer shall remit the Proceeds to city within thirty (30) days of City's written demand or as otherwise noted in the Irrevocable Letter of Credit.

## 9. System Reductions.

(a) Compliance Required. Reduction amounts shall be determined in the sole discretion of City and as otherwise provided by this Agreement and City ordinance. No reduction or release shall be authorized until such time as City has inspected the Public Improvements and found them to satisfactorily meet the Compliance Requirements. Completion of Public Improvements, even if verified by City, shall not entitle Applicant to an automatic release of any part of the Proceeds.

(b) System Reductions. Not more frequently than once every thirty (30) calendar days, Applicant may request a partial release of the Proceeds upon completing all Public Improvements for a system category specified in Exhibit "A;" provided that a system release for landscaping improvements may be approved by the city engineer upon substantial completion in accordance with the West Jordan City Code. After the Public Improvements for the system category are inspected by the City, the amount of reduction shall be determined by the City Engineer. Except as otherwise allowed by the West Jordan City Code for landscaping improvements, the reduction shall not exceed 90% of the amount set forth in Exhibit "A" for the system category in which reduction is sought. System reductions shall be evidenced by the written authorization of the West Jordan City Engineer. System reductions shall not apply to Public Landscaping Improvements.

(c) Warranty Reduction. Applicant may request a warranty reduction after all Public Improvements for the Project are complete; provided that, Public Landscaping Improvements may be completed separately, and Proceeds associated with Public Landscaping Improvements may be reduced and retained separately. The amount of the reduction shall be determined by the City Manager after recommendation of the City Engineer and shall not exceed ninety percent (90%) of the Proceeds (the "Warranty Reduction"). The Warranty Reduction shall be evidenced by the written authorization of the West Jordan City Manager. Applicant expressly agrees that, notwithstanding any system reduction(s)

requested by Applicant or granted by City, an amount equal to ten percent (10%) of the Proceeds shall be retained (the "Retainage") until final release.

- (d) Release of Retainage. Release of the Retainage shall occur as set forth below.

#### **10. Warranty and Maintenance of Public Improvements.**

(a) Warranty of Public Improvements. Applicant hereby unconditionally warrants that the Public Improvements shall remain free from defects in materials, workmanship or design such that the Public Improvements continue to meet the Compliance Requirements throughout the Warranty Period, and for Public Landscaping Improvements, the Landscaping Warranty Period. The Applicant shall be responsible for replacement and repair of all defects.

(b) Warranty Inspection and Punch List. After all Public Improvements for the Project are complete, Applicant shall request, in writing, a City inspection (the "Warranty Inspection"); provided that, Public Landscaping Improvements may be completed and inspected separately. City shall perform the Warranty Inspection within fifteen (15) calendar days and shall provide to Applicant a written list of substandard or defective conditions that require completion or repair (the "Punch List"). The Punch List will expire forty-five (45) calendar days after it is prepared. If Applicant fails to complete and repair the Punch List items within forty-five (45) days or a written request for reinspection or certificate of completion is not submitted, the following shall apply: i) Developer shall be responsible for the cost of each additional inspection and preparation of additional Punch Lists; ii) the Public Improvements shall not be accepted by the City, the Warranty Period shall not commence and the Developer will remain responsible for all cost and expense of repairing the improvements, including, without limitation, administrative costs, labor and materials costs; iii) the Developer shall be responsible for all additional deterioration and damage caused by the failure to timely correct defective conditions or request the reinspection; and iv) the City shall have the right to make demand on the proceeds of the financial assurance for incomplete, unsatisfactory or defective items..

(c) Commencement of the Warranty Period and the Landscaping Warranty Period. The Warranty Period shall commence on the date of Public Improvement Acceptance as set forth in West Jordan City Code. Public Landscaping Improvements may be accepted separately and be subject to a different Warranty Commencement Date.

(d) Maintenance of Public Improvements. During the Warranty Period it will be the City's obligation to provide maintenance of the Public Improvements, except that the City shall not be obligated to maintain Public Landscaping Improvements unless Developer has submitted, and the City has approved a maintenance plan for Public Landscaping Improvements.

#### **11. Final Release of Proceeds.**

(a) Final Release. Final Release shall occur only after completion of the applicable Warranty Period, inspection, and verification by the City Engineer and the City Manager that the Public Improvements have been installed and repaired to the satisfaction of City pursuant to this Agreement and the Compliance Requirements. Public Landscaping Improvements may be completed, inspected and applicable portions of the Proceeds released separately. Final Release shall be evidenced in writing by the West Jordan City Manager.

- (b) Final Inspection and Final Punch List. Applicant may request a City inspection (the "Final

Inspection”) upon completion of the following: (i) the Warranty Period for Public Improvements exclusive of landscaping; and (ii) the Landscaping Warranty Period for Public Landscaping Improvements. City shall perform the Final Inspection within fifteen (15) calendar days and shall provide to Applicant a written list of substandard or defective conditions that require completion or repair (the “Final Punch List”). Applicant shall then have forty-five (45) calendar days to complete and repair the Final Punch List items, at which time City will conduct a re-inspection. If Applicant fails to complete and repair the Final Punch List items within forty-five (45) days or a written request for reinspection or certificate of completion is not submitted, the following shall apply: i) Developer shall be responsible for the cost of each additional inspection and preparation of additional corrections lists; ii) the Developer shall be responsible for all additional deterioration and damage caused by the failure to timely correct defective conditions or request the reinspection; and iii) the City shall have the right to make demand on the proceeds of the financial assurance for incomplete, unsatisfactory or defective items.

**12. Use of Proceeds.** In the event the Public Improvements are not installed to the satisfaction of City pursuant to this Agreement and the Compliance Requirements, the Punch List items or Final Punch List items are not timely completed, or Applicant otherwise Fails to Perform, City may use and expend all the Proceeds, or such lesser amount as may be necessary, to complete and repair the Public Improvements to satisfactory condition.

(a) **Cost of Completion.** The cost of completion shall include, but not be limited to, construction costs and any Incidental Costs incurred by City in completing and repairing the Public Improvements.

(b) **Inadequate Proceeds.** If the Proceeds are inadequate to reimburse the City for the cost of completion, for whatever reason, including previous system reductions, Applicant shall be responsible for the deficiency independent of the financial assurance. Additionally, no further permits or business licenses shall be issued, and City may immediately pursue any and all remedies for failure to comply, including suspension or revocation of any existing permits or business licenses, as permitted by the West Jordan City Code, state and federal law.

(c) **Access to Property.** Should City elect to use the Proceeds to complete and repair the Public Improvements to satisfactory condition, Applicant herein expressly grants to City, and any contractor or other agent hired by City, the right of access to the Project property in order to complete and repair all of the Public Improvements.

**13. Failure to Perform.** A Party’s Failure to Perform shall give the other Party the right to pursue any and all remedies available at law, in equity, or otherwise available pursuant to the terms of this Agreement.

#### **14. Applicant Indemnification and Insurance.**

(a) **Indemnification.** Applicant agrees to indemnify, defend, and save harmless City, its officers, employees, agents and volunteers from and against any and all liability which may arise as a result of the installation and maintenance of the Public Improvements prior to Final Acceptance as described herein, and from and against any and all liability which may arise as a result of any Public Improvements which are defective. This indemnification requirement includes indemnification for claims for attorney’s fees, court cost and litigation expenses, of whatever type and amount. 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.

(b) **Insurance.** Should City elect to install, complete, or remedy any defect in or damage to the

Public 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 Public 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 may be suspended until said premium is initially paid and a financial assurance 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 Public Improvements.

**15. No Third-Party Beneficiaries.** 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. City and Financial Institution 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.

**16. Attorney's 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.

**17. 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, at law, and pursuant to the terms of this Agreement.

**18. Notice; Inducement; Integration; Modification; Captions; Severability; Governing Law; No Waiver.**

(a) 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.

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

(c) 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.

(d) This Agreement may be amended or modified only by a written instrument executed by the Parties. 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.

(e) 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.

(f) 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 City of West Jordan 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 Project which is the subject of this Agreement.

(g) 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 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.

**19. Effect of Agreement; Release of Claims.** Nothing in this Agreement shall be construed to relieve Applicant of any obligations imposed on Applicant by Federal or State laws, City and County ordinances, regulations, or standards. **It is the intent of the Parties that that this Agreement serve as a complete release and waiver by Applicant of any and all claims Applicant has or may claim to have with respect to the City's application of the 2009 City Code to the Project or the imposition of any requirement expressly set forth in this Agreement. Moreover, Applicant hereby releases and waives any and all claims Applicant may have against the City with respect to any land use application submittals, acceptances, approvals, denials or processing with respect to the Project occurring prior to the Effective Date.**

## SIGNATURE PAGE

**In witness whereof**, the Parties have executed this Public Improvement Construction and Assurance Agreement as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the “Effective Date”).

**CITY OF WEST JORDAN**

**ATTEST:**

By \_\_\_\_\_

\_\_\_\_\_  
West Jordan City Clerk

Title \_\_\_\_\_

**APPROVED AS TO LEGAL FORM:**

\_\_\_\_\_  
West Jordan City Attorney

**APPLICANT**

By \_\_\_\_\_

Title \_\_\_\_\_

**Applicant Acknowledgment**

STATE OF \_\_\_\_\_)  
:SS  
COUNTY OF \_\_\_\_\_)

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, personally appeared before me, \_\_\_\_\_, 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 the forgoing instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC

Residing in \_\_\_\_\_ County, \_\_\_\_\_

## FINANCIAL INSTITUTION AGREEMENT AND ACKNOWLEDGMENT

**FINANCIAL INSTITUTION hereby agrees and acknowledges** that it has, on deposit to the credit of Applicant in the Account or dedicated and set aside in a construction loan referenced above, the sum mentioned as the Proceeds; that it is aware of, understands, and agrees to each provision of this Agreement; that it agrees to make disbursement of the Proceeds only within the terms as outlined in this Agreement; and that it will hold the Proceeds indefinitely until such time as City, in writing, either demands the Proceeds be remitted to City or otherwise releases Financial Institution from its obligation to hold the Proceeds. Should Financial Institution fail to timely perform its obligations as outlined herein or as required by law, Financial Institution shall be liable to City for the actual costs incurred by City in attempting to enforce Financial Institution's obligations under this Agreement. Financial Institution expressly acknowledges, understands, and agrees that its obligation under this Agreement is independent of any obligation of City, either express or implied. Financial Institution agrees that its performance is not and shall not be conditioned upon the sale of any lots or any part of any subdivision or development. Financial Institution 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 Public Improvements;
- (b) that Financial Institution 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 Financial Institution of its duty to perform as outlined in this Agreement, or preclude City from requiring Financial Institution's performance under this Agreement; and
- (c) that Financial Institution 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.

### FINANCIAL INSTITUTION

By \_\_\_\_\_

Title \_\_\_\_\_

STATE OF \_\_\_\_\_)

:SS

COUNTY OF \_\_\_\_\_)

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, personally appeared before me, \_\_\_\_\_, 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 the forgoing instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

My Commission Expires: \_\_\_\_\_

Residing in \_\_\_\_\_ County, \_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC