

PUBLIC IMPROVEMENT CONSTRUCTION AND ASSURANCE AGREEMENT
(Cash, Escrow, 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: _____ facsimile: (____) _____;

"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.

"Depository" (for Escrow Only) _____
a(n) _____ (corporation, partnership, individual),
address: _____,
telephone: (_____) _____, facsimile: (_____) _____;

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 "Depository" as used in this Agreement, shall also refer to all heirs, executors, administrators, successors, and assigns of Applicant, City and Depository, 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 Depository'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. (Depository is a Required Party)

Applicant hereby assigns and sets over to City all its right, title, and interest in the principle of that certain Escrow Account held by Depository in the amount of \$_____, entitled, _____ (insert amount) _____ (the "Account" or "Proceeds").
(insert name and account number of the Escrow Account)

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.

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)

The 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, Depository 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 Depository 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. 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.

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.

(e) 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.

(f) 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.

(g) 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.

(h) 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.**

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, _____

DEPOSITORY hereby acknowledges that it has, on deposit to the credit of Applicant in the Account 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 of the Account only within the terms as outlined in this Agreement; and that it will hold the Proceeds in the Account indefinitely until such time as City, in writing, either demands the Proceeds be remitted to City or otherwise releases Depository from its obligation to hold the Proceeds. Should Depository fail to timely perform its obligations as outlined herein or as required by law, Depository shall be liable to City for the actual costs incurred by City in attempting to enforce Depository's obligations under this Agreement. Depository expressly acknowledges, understands, and agrees that its obligation under this Agreement is independent of any obligation of City, either express or implied. Depository 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. Depository 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 Depository 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 Depository of its duty to perform as outlined in this Agreement, or preclude City from requiring Depository's performance under this Agreement; and

(c) that Depository 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.

DEPOSITORY (for Escrow Only)

By _____

Title _____

Depository 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: _____

Residing in _____ County, _____

NOTARY PUBLIC

EXHIBIT A
ESTIMATED COST OF PUBLIC IMPROVEMENTS
[Insert city engineer's estimate for cost of public improvements here.]

ADDENDUM 1
PUBLIC LANDSCAPING IMPROVEMENTS
[Insert Addendum 1 here, if applicable]

ADDENDUM 2
NON-PUBLIC IMPROVEMENTS
[Insert Addendum 2 here, if applicable]

ADDENDUM 1 – PUBLIC LANDSCAPING IMPROVEMENTS
(Cash, Escrow, Letter of Credit Form)

1. **Incorporation and Definitions.** This Addendum 1 is hereby incorporated into the Public Improvement Construction and Assurance Agreement (the “Agreement”) to which it is attached. The purpose of Addendum 1 is to describe the separate warranty and release provisions for the landscaping portion of the Public Improvements to be completed by Applicant as required by the terms of the issuance of permits and approvals (the “Public Landscaping Improvements”).

2. **Effect of Addendum.** The Agreement shall apply to Public Improvements and Public Landscaping Improvements. This Addendum shall provide the warranty and release provisions applicable to Public Landscaping Improvements.

ADDITIONAL TERMS AND CONDITIONS
FOR PUBLIC LANDSCAPING IMPROVEMENTS

3. **Additional Definitions.** Terms defined in the Agreement shall have the same meaning as set forth therein unless otherwise defined herein. In addition:

(a) “Landscaping Assurance” shall mean the portion of the Proceeds attributable to the Public Landscaping Improvements as shown in Exhibit A to Addendum 1. The Landscaping Assurance shall be 100% of the estimated cost of the Public Landscaping Improvements as set forth in “Exhibit A to Addendum 1,” attached hereto and incorporated herein by reference. The Landscaping Assurance shall apply only to Public Landscaping Improvements.

(b) “Landscaping Warranty Commencement Date,” shall mean the date specified in writing by the City Manager for commencement of the warranty period for the Public Landscaping Improvements, or if not so specified, the date on which the City Manager executes the written authorization for the Landscaping Warranty Reduction as hereinafter described.

(c) “Landscaping Warranty Period,” shall mean the period of time commencing on the Landscaping Warranty Commencement Date and terminating on the same month and day one (1) year later.

(d) “Public Landscaping Improvements,” shall mean the landscaping portion of the Public Improvements.

4. **Reduction and Release of Landscaping Assurance.**

(a) **Interim Reductions.** There will be no interim reductions for the Landscaping Assurance, except if seasonal weather conditions prevent the public landscaping improvements from being completed, tested and inspected, the financial assurance may be reduced upon substantial completion of the public landscaping system, as determined by the city engineer. To the extent reasonably practical, the completed portion of the public landscaping improvements must be inspected by the City and found by the city engineer to be in full compliance with City ordinances, standards and specifications, and the approved engineering drawings. The amount of

the interim landscaping reduction shall be determined by the city engineer and shall not exceed seventy five percent (75%) of the initial assurance amount for the public landscaping system.

(b) Landscaping Assurance Reduction. After all Public Landscaping Improvements are complete, or substantially complete if weather prevents completion, Applicant may request reduction of the Landscaping Assurance. The reduction shall be determined and authorized as set forth in the Agreement. A portion of the Landscaping Assurance (the "Landscaping Retainage") will be retained throughout the Warranty Period. The Landscaping Retainage will be in an amount determined by the city engineer and will be at least ten percent (10%) of the initial amount.

(c) Final Release of Landscaping Retainage. Upon completion of the Landscaping Warranty Period, and verification by the City Engineer and the City Manager that the Public Landscaping Improvements have been installed and repaired to the satisfaction of the City pursuant to the Agreement, the Compliance Requirements and supplier and manufacturer recommendations, City agrees to release the Landscaping Retainage.

(d) Separate Acceptance and Release. Public Landscaping Improvements may be accepted separately from other Public Improvements. The Landscaping Retainage may be released separately.

5. Warranty and Maintenance of Landscaping Improvements.

(a) Warranty of Public Landscaping Improvements. Applicant hereby warrants that the Public Landscaping Improvements shall remain free from defects in materials, workmanship or design as determined by City, such that they continue to meet the Compliance Requirements for one (1) year after the Landscaping Warranty Commencement Date.

(b) Warranty Inspection and Punch List. The Warranty Inspection and Punch List will be performed and prepared, and compliance will be required as set forth in the Agreement. A separate Warranty Inspection and Punch List may be performed and prepared for the Public Landscaping Improvements.

(c) Maintenance of Public Landscaping Improvements. Applicant will submit to the City a maintenance plan for public landscaping. During the Warranty Period, the City will follow the public landscaping maintenance plan. Landscaping failure within the Warranty Period will be presumed to be due to defective materials or workmanship if the City certifies that the City, or its contractor, substantially followed the public landscaping maintenance plan.

6. Final Inspection.

(a) Final Landscaping Inspection and Punch List. At the end of the Landscaping Warranty Period, Applicant shall request and the City shall perform a City inspection as set forth in the Agreement. If the City substantially follows the public landscaping maintenance plan and the landscaping area has eroded, or plant material has died or has not shown growth, the Applicant will replant, reseed and stabilize all defective landscaping areas and complete all applicable Final Punch List items.

(b) Written Release Required. Final Release of the Landscaping Assurance shall be as set forth in the Agreement, and may be performed separately from other Public Improvements. The City shall authorize Final Release only after the City Manager determines that the plant material is not defective. If any defective landscaping is not repaired, the City may retain a portion of the Landscaping Assurance to insure such work is done or may make written demand for remittance of the proceeds of the Landscaping Assurance to the City.

EXHIBIT A to Addendum 1
ESTIMATED COST OF LANDSCAPING IMPROVEMENTS

ADDENDUM 2 – NONPUBLIC IMPROVEMENTS
(Cash, Escrow, Letter of Credit Form)

1. **Incorporation and Definitions.** This Addendum 2 is hereby incorporated into the Public Improvement Construction and Assurance Agreement (the “Agreement”) to which it is attached. The purpose of Addendum 2 is to provide a financial Assurance for nonpublic improvements (the “Nonpublic Improvements”) to be completed by Applicant as required by the terms of the issuance of permits and approvals for the Project.

2. **Effect of Addendum.** The Agreement shall apply to Public Improvements and Nonpublic Improvements, except the following enumerated sections of the Agreement shall **not** apply to Nonpublic Improvements: Recital D, 2(d), 2(e), 9(b), 9(c), 9(d), 10 and 11. In all other sections, the term “Public Improvement(s)” shall also include Nonpublic Improvements.

ADDITIONAL TERMS AND CONDITIONS
FOR NONPUBLIC IMPROVEMENTS

3. **Additional Definitions.** Terms defined in the Agreement shall have the same meaning as set forth therein unless otherwise defined herein. In addition:

(a) “Nonpublic Improvement Assurance” shall mean the portion of the Proceeds attributable to the Nonpublic Improvements as shown in Exhibit A to Addendum 2. The Nonpublic Improvement Assurance shall be 100% of the estimated cost of the Nonpublic Improvements as set forth in “Exhibit A to Addendum 2,” attached hereto and incorporated herein by reference. The Nonpublic Improvement Assurance shall apply only to Nonpublic Improvements.

(b) “Nonpublic Improvements” shall mean improvements required as a condition of the permits and approvals of the Project that will not be dedicated for public use.

4. **Reduction and Release of Nonpublic Improvement Assurance.**

(a) Interim Reductions. There will be no interim reductions for the Nonpublic Improvement Assurance.

(b) Warranty Period. There will be no warranty period and no Retainage for Nonpublic Improvements.

(c) Separate Acceptance and Release. Nonpublic Improvements may be accepted separately from Public Improvements.

5. **Release of Nonpublic Improvement Assurance.** After the City has inspected and approved the Nonpublic Improvements, the City may release the Nonpublic Improvement Assurance. Such release will be approved in writing by the City Manager if all Nonpublic Improvements meet the Compliance Requirements. Nonpublic Improvements will not be accepted by the City.

EXHIBIT A to Addendum 2
ESTIMATED COST OF NONPUBLIC IMPROVEMENTS

PUBLIC IMPROVEMENT WARRANTY AGREEMENT
(Cash, Escrow, Letter of Credit Form)

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

PARTIES

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

"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.

"Depository" (for Escrow Only) _____
a(n) _____ (corporation, partnership, individual),
address: _____,
telephone: (_____) _____, facsimile: (_____) _____;

EXHIBITS AND ADDENDA

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

RECITALS

A. Applicant constructed the public improvements identified in Exhibit A (the "Public Improvements") for _____
(description or name of project)

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

B. The Applicant has dedicated, or intends to dedicate, the Public Improvements for public use, and Applicant unconditionally warrants that the Public Improvements comply with the City's written standards for design, materials and workmanship and will not fail in any material respect as a result of poor workmanship or materials.

C. The estimated cost of the Public Improvements is set forth in Exhibit A. As used in this Agreement, the term "Public Improvements" shall also include public landscaping improvements unless otherwise stated.

D. Applicant is required to file a financial assurance to secure the warranty of the Public Improvements, which financial assurance must be in a form acceptable to City and in an amount

equal to 10% of the estimated cost of the Public Improvements or 10% of the developer's reasonable proven cost of completion.

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 attached hereto are hereby incorporated into this Agreement by reference.

2. **Additional Definitions.**

(a) "Applicant", "City" and "Depository" as used in this Agreement, shall also refer to all heirs, executors, administrators, successors, and assigns of Applicant, City and Depository, 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; or (ii) Applicant's insolvency, appointment of a receiver, or filing of a voluntary or involuntary petition in bankruptcy.

(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 specified in writing by the City Manager. If not so specified, the Warranty Commencement Date will be either: (i) the date on which the City Manager executes the written authorization for a warranty reduction; or (ii) if there is no warranty reduction, the Effective Date of this Agreement. If the Project includes public landscaping improvements, the Landscaping Warranty Commencement Date may be a different date but will be set in the same manner.

(e) "Warranty Period," as used in this Agreement, shall mean the period of time commencing on the Warranty Commencement Date or Landscaping Warranty Commencement Date and terminating on the same month and day of the following year unless the City determines for good cause that a one-year period would be inadequate to protect the public health, safety and welfare and has substantial evidence on record as required by City Code.

3. **Agreement Documents.** All data that 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.

4. **Certification and Warranty.** Applicant represents and certifies that the Public Improvements were constructed in compliance 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"). Applicant hereby unconditionally warrants that Public Improvements comply with the City's written standards for design, materials and workmanship and will not fail in any material respect as a result of poor workmanship or materials such that they will continue to meet the Compliance Requirements throughout the Warranty Period. The Applicant shall be responsible for replacement and repair of all defects.

5. Specific Enforcement. Applicant has entered into this Agreement with City for the purpose of warranty of the Public Improvements. City shall be entitled to specifically enforce Applicant's obligation under this Agreement to repair and replace defective Public Improvements in a manner satisfactory to City. City shall also be entitled to specifically enforce Depository'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.

6. 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 repair or replacement 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 obligations under this Agreement, City of West Jordan ordinances, or other applicable law, are independent of any obligation or responsibility of City, either express or implied. Applicant agrees that its warranty is and shall be unconditional. Applicant further acknowledges that: (i) Applicant's warranty is independent of any other remedy available to City to secure proper repair or replacement 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 warrant the Public Improvements.

7. Financial Assurance.

(a) Proceeds. As an independent financial assurance to City for the purpose of warranting the Public Improvements, Applicant provides herewith financial assurance in the amount of ten percent (10%) of the estimated cost of the Public Improvements inclusive of Public Landscaping Improvements or ten percent (10%) of the developer's reasonable proven cost of completion. The financial assurance is as follows (check applicable form):

[] Cash Deposit.

Applicant hereby deposits with the City a cash financial assurance 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. (Depository is a Required Party)

Applicant hereby assigns and sets over to City all its right, title, and interest in the principle of that certain Escrow Account held by Depository in the amount of \$ _____, entitled, _____ (insert amount) _____ (the "Account" or "Proceeds").
(insert name and account number of the Escrow Account)

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

[] Irrevocable Letter of Credit.

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 \$ _____,
(Issuer Telephone) (Issuer Facsimile) (Letter of Credit Amount)

(the "Proceeds").

The 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 is issued by a federally insured bank, savings and loan, or credit union, authorized to do business in Utah, and the Proceeds will be available to the City by presenting a site draft at an office located within fifty (50) miles of City. The Letter of Credit will 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, Depository 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.

8. Inspection; Release of Proceeds; Termination of Warranty Period.

(a) **Compliance Required.** Release of the warranty assurance shall not be authorized until such time as the Warranty Period has terminated and City has inspected the Public Improvements and found them to be free of defects in materials and workmanship or completed, replaced and repaired such that they meet the Compliance Requirements. Completion of the Warranty Period shall not entitle Applicant to an automatic release of any part of the Proceeds.

(b) **Inspection and Punch List.** At the end of the Warranty Period, Applicant shall request a City inspection. Public landscaping improvements may be inspected separately. If Applicant fails to request an inspection, discovered defects will be presumed to have arisen during the Warranty Period and Applicant shall honor the Warranty. City will perform the requested inspection within fifteen (15) calendar days of Applicant's request and shall provide to Applicant a written list of defective conditions that require completion, repair or replacement (the "Punch List"). City may but is not obligated to initiate the inspection without request. The Punch List will expire forty-five (45) calendar days after it is prepared. If Applicant fails to complete, replace and repair the Punch List items within forty-five (45) days: (i) Applicant will be required to request and pay for the City to perform an additional inspection and prepare a new Punch List; (ii) such failure shall constitute a Failure to Perform; and (iii) Applicant will continue to be responsible for defective conditions and the damages, if any, caused by defective conditions that are not remedied.

(c) **Maintenance of Public Improvements.** During the Warranty Period it will be the City's obligation to provide maintenance of Public Improvements. Maintenance of Public Landscaping will be pursuant to a maintenance plan prepared by Applicant and submitted to and approved by City. Landscaping failure within the Warranty Period shall be presumed to be due to defective materials or workmanship if the City certifies that the City, or its contractor, substantially followed the approved maintenance plan.

(d) **Final Release.** Release of the Proceeds (the "Final Release") shall occur after completion of the Warranty Period, inspection, and verification by the City Engineer and the City Manager that the Public Improvements have been replaced or repaired to the satisfaction of City pursuant to this Agreement and the Compliance Requirements. Public Landscaping Improvements may be completed, inspected and Proceeds released separately.

(e) **Written Release Required.** The Final Release shall be only by written acknowledgment signed by the West Jordan City Manager. Public landscaping improvements must be expressly addressed.

9. Use of Proceeds. In the event of defective materials or workmanship, or if the 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, replace and repair the defective 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, replacing and repairing the defective Public Improvements.

(b) **Inadequate Proceeds.** If the Proceeds are inadequate to reimburse the City for the cost of completion, for whatever reason, 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, replace and repair the defective Public Improvements, Applicant herein expressly grants to City, and any contractor or other agent hired by City, the right of access to the Project property for that purpose.

10. Remedies. 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.

11. 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 any defects. 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 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 the Public Improvements.

12. 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 Depository 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.

13. 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.

14. 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.

15. 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.

(e) 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.

(f) 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.

(g) 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.

(h) 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.

16. 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.**

In witness whereof, the Parties have executed this Public Improvement Warranty Agreement as of this _____ day of _____, 2014 (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: _____

Residing in _____ County, _____

NOTARY PUBLIC

DEPOSITORY hereby acknowledges that it has, on deposit to the credit of Applicant in the Account 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 of the Account only within the terms as outlined in this Agreement; and that it will hold the Proceeds in the Account indefinitely until such time as City, in writing, either demands the Proceeds be remitted to City or otherwise releases Depository from its obligation to hold the Proceeds. Should Depository fail to timely perform its obligations as outlined herein or as required by law, Depository shall be liable to City for the actual costs incurred by City in attempting to enforce Depository's obligations under this Agreement. Depository expressly acknowledges, understands, and agrees that its obligation under this Agreement is independent of any obligation of City, either express or implied. Depository 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. Depository 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 Depository 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 Depository of its duty to perform as outlined in this Agreement, or preclude City from requiring Depository's performance under this Agreement; and

(c) that Depository 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.

DEPOSITORY (for Escrow Only)

By _____

Title _____

Depository 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: _____

Residing in _____ County, _____

NOTARY PUBLIC

EXHIBIT A
ESTIMATED COST OF PUBLIC IMPROVEMENTS
[Insert city engineer's estimate for cost of public improvements here.]