

SECURITY OF PERFORMANCE BOND AGREEMENT

THIS AGREEMENT is made and executed this ____ day of _____, 20__ by and between _____, hereinafter called the "Developer," _____, a State chartered mortgage banking institution duly registered to do business in the State of Utah, hereinafter called the "Bank," and **Magna Water District**, hereinafter called the "District."

WHEREAS, the Developer desires to install water and/or sewer improvements in a subdivision of land to be known as _____ located at approximately _____, Salt Lake County, State of Utah with the cost of said culinary water, secondary water, and/or sewer improvements being reasonably valued at \$_____.

WHEREAS, the District's rules and regulations require that the Developer provide adequate security of performance for the proper and complete installation of said improvements in accordance with the District's specifications, rules, and regulations.

WHEREAS, the Developer desires to provide the required security of performance through an escrow account established with the Bank in the amount of 1.1 times the reasonable value of said improvements.

NOW THEREFORE, in consideration of all the premises, the parties hereby mutually agree as follows:

1. The Developer agrees to complete said improvements under the direction and supervision of the District and in accordance with the standards, specifications, rules, and regulations of the District within one year from the date that the final plat of said development is approved by Salt Lake County, Salt Lake City or West Valley City, whichever has jurisdiction over the development.
2. The Developer hereby assigns and transfers to the District all of its right and title to that certain escrow account which has been established by the Developer with the Bank in the amount of \$_____, with said funds being allocated and segregated as follows:

Culinary Water Improvements	\$
Secondary Water Improvements	\$
Sewer Improvements	\$_____.
Total Improvements	_____.
+ 10% Warrantee	_____.
TOTAL ESCROW FUNDS	\$

3. In the event that said improvements are installed to the satisfaction of the District within the one year time period set forth in paragraph one above, the District agrees to release said escrow funds as stated in paragraphs four and five below.

4. The District has the sole power to authorize the release of any or all of said escrow funds. Each release of such funds shall be upon written request by the Developer which identifies the specific portion of work completed and certifies that no material or mechanic liens have been filed with respect to the particular improvement and that any funds so released shall be applied first to payment of all subcontractors, suppliers, and service providers for services and materials associated with that portion of the work. The District shall authorize each such release in writing. No more than 80% of the escrow funds for a particular improvement may be released prior to the final acceptance thereof by the District.
5. After final acceptance of a particular improvement by the District, 100% of the amount pertaining to that improvement shall be released to the Developer upon written request as specified in paragraph four above.
6. The 10% warrantee amount shall be retained in the escrow account until two years after all of the subject improvements have been accepted by the District and shall thereafter be refunded upon written request to the Bank by the Developer countersigned by the District.
7. Upon certification by the District to the Bank that the Developer has failed to comply with its obligations to properly install any of the subject improvements as agreed herein and in a separate Extension Agreement between the Developer and the District, the Bank shall pay to the District **all** amounts remaining in the escrow account. The District shall be the sole judge of determining whether the Developer is in default. All such funds paid to the District shall be placed in a special account. The District may thereafter cause the improvements to be made, completed, repaired, or replaced and may pay for the same with the funds in the special account. The District may also be paid up to 15% of the costs of completing said improvements for the District's overhead and administrative expenses associated therewith from the funds in the special account. Any funds remaining in the special account thereafter shall be returned to the escrow account if the two year warrantee period has not expired or to the Developer if the two year warrantee period has expired. Amounts returned to the escrow account shall be allocated as directed by the District.
8. The Developer agrees to inform all of its subcontractors and suppliers of the release provisions of this Bond Agreement prior to their provision of any materials or services
9. The Bank agrees to provide to the District, upon request, certification of the total amount remaining in the escrow account and a complete statement of the releases associated with each separate improvement, including the date, amount, and payee of each such release as well as the amount remaining for each improvement.
10. It is agreed that violation of any state or federal law, statute, or regulation with respect to said development project may be considered grounds for declaration of default of the

Developer's obligations hereunder.

11. This Agreement shall be governed in all respects by the laws of the State of Utah and shall inure to the benefit of and bind the heirs, personal representatives, successors, and assigns of the respective parties.
12. This Agreement may not be amended or modified except by a subsequent written agreement executed by the parties hereto.
13. If any provisions herein shall be held to be invalid or unenforceable, such provision shall not affect the validity of the remainder of the Agreement, the parties hereto stipulating that all of the provisions hereof shall be deemed severable and independent.
14. Waiver of any particular duty or condition under this Agreement shall not constitute a waiver for any other duty or condition, regardless of whether it is a like, related, or subsequent duty or condition.

IN WITNESS WHEREOF, the following parties have executed this Agreement.

DEVELOPER

COMPANY _____

By: _____

Name/Title: _____

DEVELOPER ACKNOWLEDGMENT

State of Utah }

: ss.

County of _____ }

On the ____ day of _____, 20____, _____ personally appeared before me and duly acknowledged to me that he or she executed the foregoing instrument, and if executing it on behalf of a corporation or other entity, also acknowledged and certified to me that he or she was and is duly authorized by said corporation or entity to execute the foregoing instrument on behalf of said corporation or entity and to thereby bind the corporation or entity to its terms.

Notary Public

BANK

COMPANY _____
By: _____
Title: _____

BANK ACKNOWLEDGMENT

State of Utah }
 : ss.
County of _____ }

On the ____ day of _____, 20____, _____ personally appeared before me and duly acknowledged to me that he or she executed the foregoing instrument, and if executing it on behalf of a corporation or other entity, also acknowledged and certified to me that he or she was and is duly authorized by said corporation or entity to execute the foregoing instrument on behalf of said corporation or entity and to thereby bind the corporation or entity to its terms.

Notary Public

MAGNA WATER DISTRICT

By: _____
Title: _____

MAGNA WATER DISTRICT ACKNOWLEDGMENT

State of Utah }
 : ss.
County of _____ }

On the ____ day of _____, 20____, _____ personally appeared before me and duly acknowledged to me that he or she executed the foregoing instrument, and if executing it on behalf of a corporation or other entity, also acknowledged and certified to me that he or she was and is duly authorized by said corporation or entity to execute the foregoing instrument on behalf of said corporation or entity and to thereby bind the corporation or entity to its terms.

Notary Public