

**ROY CITY  
ESCROW GUARANTEE AGREEMENT**

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

**\*\*\*\*\* PARTIES \*\*\*\*\***

**"APPLICANT":** \_\_\_\_\_

a(n): \_\_\_\_\_ (corporation, limited liability company, partnership, individual).

address: \_\_\_\_\_

city: \_\_\_\_\_ state: \_\_\_\_\_ zip: \_\_\_\_\_

telephone: ( \_\_\_\_ ) \_\_\_\_\_, facsimile: ( \_\_\_\_ ) \_\_\_\_\_

**"DEPOSITORY":** \_\_\_\_\_

address: \_\_\_\_\_

city: \_\_\_\_\_ state: \_\_\_\_\_ zip: \_\_\_\_\_

telephone: ( \_\_\_\_ ) \_\_\_\_\_, facsimile: ( \_\_\_\_ ) \_\_\_\_\_

**"CITY":** Roy City, a municipal corporation of the State of Utah,  
address: 5051 South 1900 West, Roy City, Utah 84067,  
telephone: (801) 774-1000, facsimile: (801) 774-1030.

**\*\*\*\*\* RECITALS \*\*\*\*\***

**WHEREAS**, APPLICANT desires to post the following improvement guarantee(s) (check):

\_\_\_\_\_ Off-site improvement guarantee

\_\_\_\_\_ On-site improvement guarantee

with the CITY for \_\_\_\_\_  
(description or name of project)

located at \_\_\_\_\_  
(address of project)

**WHEREAS**, Roy City ordinances require APPLICANT to guarantee the construction of certain improvements prior to the actual issuance of any permit(s)/approval(s) related to the above-described project; and

**WHEREAS**, the terms of the issuance of said permit(s)/approval require APPLICANT to complete the following improvements, (herein "the Improvements") (check one and complete):

\_\_\_\_\_ specified in Exhibit \_\_\_\_\_, attached hereto and incorporated herein by this reference;

- or -

\_\_\_\_\_ described as follows: \_\_\_\_\_; and

**WHEREAS**, CITY will not grant said permit(s)/approval(s) until adequate provision has been made to guarantee completion of the Improvements, if any, and to warrant the Improvements shall be maintained and remain free from any defects or damage, which improvements and required warranty are estimated to cost \$ \_\_\_\_\_, and which improvements shall be installed under the direction and supervision of and in accordance with the specifications of CITY; and

**WHEREAS**, provision has been made by law whereby APPLICANT may file a guarantee acceptable to CITY to secure the actual construction of the Improvements in a manner satisfactory to CITY prior to the issuance of said permit(s)/approval(s).

**NOW THEREFORE**, in consideration of the premises and other valuable consideration, the parties agree as follows:

**\* \* \* \* \* TERMS AND CONDITIONS \* \* \* \* \***

1. **PURPOSE FOR AGREEMENT.** The parties hereto expressly acknowledge that the purpose of this Agreement is not only to guarantee the proper completion of the Improvements named herein, but also, among other things, to eliminate and avoid the harmful effects of unauthorized subdivisions and other land developments which may leave property and/or improvements improperly completed, undeveloped and/or unproductive.

2. **UNRELATED OBLIGATIONS OF APPLICANT.** The benefits and protection provided by this Agreement shall inure solely to CITY and not to third parties, including, but not limited to, lot purchasers, contractors, subcontractors, laborers, suppliers, or others. DEPOSITORY and CITY shall not be liable to claimants or others for obligations of APPLICANT under this Agreement. CITY shall further have no liability for payment of any costs or expenses of any party who attempts to make a claim under this Agreement, and shall have under this Agreement no obligation to make payments to, give notices on behalf of, or otherwise have obligations to any alleged claimants under this Agreement.

3. **AGREEMENT DOCUMENTS.** All data which is used by CITY to compute the cost of or otherwise govern the design and installation of the improvements is hereby made a part of this Agreement, and is incorporated herein by this reference. If this Agreement covers improvements and/or fees required in a subdivision, this Agreement then incorporates herein by reference the subdivision plat and all data required by Title 11 of the Roy City Code or its successor ordinance.

4. **COMPLETION DATE.** APPLICANT shall complete the Improvements: (check one and complete)

\_\_\_\_\_ within a period of \_\_\_\_\_  Year(s)  Months (check one) from the date this Agreement was entered into;

- or -

\_\_\_\_\_ as specified in Exhibit \_\_\_\_\_, attached hereto and incorporated herein by this reference.

5. **FEES.** If this Agreement covers fees required as part of a subdivision, APPLICANT shall pay the Fees required by CITY for the entire subdivision prior to the issuance of any building permit for the first lot in the subdivision.

6. **SPECIFIC ENFORCEMENT.** APPLICANT and DEPOSITORY have entered into this Agreement with CITY for the purpose of guaranteeing construction of the Improvements and/or payment of the Fees. CITY shall be entitled to specifically enforce APPLICANT'S obligation under this Agreement to construct and install the Improvements in a manner satisfactory to CITY, and to pay the Fees. CITY shall also be entitled to specifically enforce DEPOSITORY'S own performance required by this Agreement.

7. **APPLICANT'S INDEPENDENT OBLIGATION.** APPLICANT EXPRESSLY ACKNOWLEDGES, UNDERSTANDS AND AGREES that its obligation to complete and warrant the Improvements and/or pay the Fees and/or fulfill any other obligation under this Agreement, Roy City ordinances, or other applicable law is independent of any obligation or responsibility of CITY, either express or implied. APPLICANT agrees that its obligation to complete and warrant the Improvements and/or pay the Fees is and shall not be conditioned upon the commencement of actual construction work in the subdivision or development or upon the sale of any lots or part of the subdivision or development. APPLICANT further acknowledges (a) that its contractual obligation to complete and warrant the Improvements and/or pay the Fees pursuant to this Agreement is independent of any other remedy available to CITY to secure proper completion of the Improvements and/or payment of the Fees; (b) that APPLICANT may not assert as a defense that CITY has remedies against other entities or has other remedies in equity or at law that would otherwise relieve APPLICANT of its duty to perform as outlined in this Agreement or preclude CITY from requiring APPLICANT'S performance under this Agreement; and (c) that APPLICANT has a legal obligation, independent of this Agreement, to timely complete and pay for the Improvements in full and/or timely pay the Fees in full.

8. **APPLICANT'S OBLIGATION FOR COSTS.** Should APPLICANT Fail to Perform its responsibilities under this Agreement in any degree, APPLICANT agrees to compensate CITY for all costs, including Incidental Costs, related to APPLICANT'S Failure to Perform its obligation to complete and warrant the Improvements or pay the Fees to the extent that such costs are not adequately covered by the Proceeds.

9. **INCIDENTAL COSTS.** "Incidental Costs," as used in this Agreement, shall mean engineering and architect fees, administrative expenses, court costs, attorney's fees (whether incurred by in-house or independent counsel), insurance premiums, mechanic's or materialmen's liens, and/or any other cost and interest thereon incurred by CITY, occasioned by APPLICANT'S and/or DEPOSITORY'S

failure to perform any and/or all obligations under this Agreement.

10. **FAILURE TO PERFORM.** "Failure to Perform" or "Fail to Perform," as used in this Agreement, shall mean, in addition to those events previously or subsequently described herein, the non-performance in a timely manner by a party to this Agreement of any obligation, in whole or in part, required of such party by the terms of this Agreement or required by Roy City ordinance or other applicable law. In addition, the following shall also be considered Failure to Perform on the part of APPLICANT: APPLICANT'S abandonment of the project as determined by CITY; APPLICANT'S insolvency, appointment of a receiver, or filing of a voluntary or involuntary petition in bankruptcy; the commencement of a foreclosure proceeding against the project property; or the project property being conveyed in lieu of foreclosure. The occurrence of such shall give the other party or parties the right to pursue any and all remedies available at law, in equity, and/or otherwise available pursuant to the terms of this Agreement.

11. **ESCROW ACCOUNT.** As an independent guarantee to CITY, for the purpose of insuring construction and installation of the Improvements and/or payment of the Fees, 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 \$ \_\_\_\_\_, (herein the "Proceeds"), entitled, \_\_\_\_\_, (insert name of Escrow Account), (herein the "Account").

12. **EXTENT OF DEPOSITORY LIABILITY: INDEPENDENT OBLIGATION.** 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 for incidental costs incurred by CITY in attempting to enforce DEPOSITORY'S obligations under this Agreement or in completing and/or repairing the Improvements and/or paying the Fees as a result of DEPOSITORY'S Failure to Perform its obligations under this Agreement. Furthermore, this paragraph shall not limit the right of CITY to pursue any and all remedies it may have in equity or at law as a result of DEPOSITORY'S Failure to Perform 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 commencement of actual construction work in the subdivision or development, or upon the sale of any lots or any part of the subdivision or development. 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 Improvements and/or payment of the Fees; (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.

13. **REDUCTION OF PROCEEDS.** As the Improvements are initially accepted by CITY and/or the Fees are paid, a portion of the Proceeds may be released to APPLICANT upon APPLICANT'S written request. Such requests may be made only once every 30 days. The amount of any requested release shall be determined in the sole discretion of CITY. No releases shall be authorized until such time as CITY has inspected the Improvements and found them to be in compliance with CITY standards and/or verified that the Fees have been paid. Payment of Fees and/or completion of Improvements, even if verified by CITY, shall not entitle APPLICANT to an automatic release of any part of the Proceeds. The release of any Proceeds shall require the prior written authorization of CITY.

14. **FINAL ACCEPTANCE.** Notwithstanding the fact that certain of the Proceeds may be released upon partial completion of the Improvements, neither shall any partial release nor shall any full release of the Proceeds constitute final acceptance of the Improvements by CITY. Final acceptance of the Improvements shall be official only upon written notice to APPLICANT from CITY expressly acknowledging such.

15. **WARRANTY OF IMPROVEMENTS.** Following initial acceptance of the Improvements, APPLICANT hereby warrants that the Improvements shall be maintained and remain free from defects or damage as determined by CITY, such that the Improvements continue to meet CITY standards for two years following said initial acceptance.

16. **RETAINAGE.** APPLICANT and DEPOSITORY expressly agree that, notwithstanding any partial release of any of the Proceeds requested by APPLICANT and/or granted by CITY, the Proceeds shall not be released below 10% of the estimated cost of the Improvements, (herein the "Retainage"), as specified herein, for two years following initial acceptance of the Improvements. The Retainage shall be held to insure that the Improvements do not have any latent defects or damage as determined by CITY, such that the Improvements do not continue to meet CITY standards for two years after said initial acceptance. Notwithstanding said Retainage, APPLICANT shall be responsible for any substandard, defective, or damaged Improvements if the Retainage is inadequate to cover any such Improvements. At the request of APPLICANT, the Retainage or any part thereof may be replaced with a performance guarantee of a type and form approved by CITY. APPLICANT, contractor, subcontractor, or other person providing the replacement guarantee shall be responsible for any substandard or defective Improvements if the Proceeds of said replacement guarantee are inadequate to cover any such Improvements.

17. **APPLICANT INDEMNIFICATION.** APPLICANT agrees to indemnify, defend, and save harmless CITY, its elected officials, officers, employees, agents, and volunteers from and against any and all liability which may arise as a result of the installation of the

Improvements prior to CITY'S initial acceptance of the Improvements as defined herein, and from and against any and all liability which may arise as a result of any improvements which are found to be defective during the two-year warranty period covered by this Agreement. With respect to APPLICANT'S agreement to defend CITY, as set forth above, CITY shall have the option to either provide its own defense, with all costs for such being borne by APPLICANT, or require that APPLICANT undertake the defense of CITY.

18. **RELEASE OF PROCEEDS.** In the event the Improvements have been installed to the satisfaction of CITY and/or the Fees have been paid pursuant to this Agreement and Roy City ordinances within the above stated time period(s), CITY agrees to execute a written release of the remaining Proceeds.

19. **DEMAND FOR AND USE OF PROCEEDS.** In the event the Improvements are not installed to the satisfaction of CITY and/or the Fees are not paid pursuant to this Agreement and Roy City ordinances within the above stated time period(s) and/or APPLICANT fails to perform any obligation under this Agreement or Roy City ordinances, DEPOSITORY shall remit to CITY, upon CITY'S written demand, the Proceeds. CITY may use and expend all the Proceeds or such lesser amount as may be estimated by CITY to be necessary to complete the Improvements and/or pay the Fees as required herein. If, upon CITY'S written notice to DEPOSITORY of Applicant's Failure to Perform, the Proceeds are not remitted to CITY within 30 days of demand, then CITY'S costs of obtaining the Proceeds and/or completing the Improvements and all incidental costs shall be added to the amount due CITY from DEPOSITORY, and shall be paid to CITY in addition to and with the Proceeds.

20. **INADEQUATE PROCEEDS.** If the Proceeds are inadequate to pay the cost of the completion of the Improvements according to CITY standards, for whatever reason, including previous reductions, APPLICANT shall be responsible for the deficiency independent of DEPOSITORY. Additionally, no further approvals, permits or business licenses shall be issued, and/or any existing approvals, permits or business licenses applicable to the payment of the Fees of the location of the Improvements may be immediately suspended or revoked by the City Manager until the Improvements are completed and/or the Fees are paid, or, until a new guarantee acceptable to the City has been executed to insure completion of the remaining Improvements and/or payment of the Fees. Furthermore, the cost of completion of the Improvements shall include reimbursement to CITY for all costs including, but not limited to, construction costs and any Incidental Costs incurred by CITY in completing the Improvements and/or collecting the Proceeds.

21. **ACCESS TO PROPERTY.** Should CITY elect to use the Proceeds to complete the Improvements, APPLICANT herein expressly grants to CITY and any contractor or other agent hired by CITY the right of access to the project property to complete the Improvements.

22. **IMPROVEMENT STANDARDS.** Improvements shall be done according to the specifications and requirements of the CITY. All work shall be subject to the inspection of CITY. Any questions as to conformity with CITY specifications or standards, technical sufficiency of the work, quality, and serviceability shall be decided by the City Engineer. The City Engineer's decision shall be final and conclusive.

23. **SUBSTANDARD IMPROVEMENTS.** Should any Improvements prove to be substandard or defective within the two year warranty period discussed above, CITY shall notify APPLICANT in writing of such substandard or defective Improvements. APPLICANT shall then have 15 days from notice from the CITY in which to commence repair of the Improvements, and a reasonable amount of time, as determined by CITY, which shall be specified in the notice, to complete repair of the Improvements. Should APPLICANT fail to either commence repair of the Improvements or complete repair of the Improvements within the required time periods, CITY may exercise its option to remedy the defects and demand payment for such from APPLICANT, should the Proceeds be insufficient to cover the costs incurred by CITY.

24. **INSURANCE.** Should CITY elect to install, complete, or remedy any defect or damage in the Improvements, APPLICANT shall be responsible for the payment of the premium for an insurance policy covering any liability, damage, loss, judgment, or injury to any person or property, including, but not limited to, damage to APPLICANT or its property as a result of the work of any contractor or agent hired by CITY to complete or remedy the Improvements. The minimum dollar amount and the scope of coverage of the insurance policy shall be determined and set by CITY. APPLICANT shall indemnify, defend, and hold harmless CITY, its officers, employees, and agents for any liability which exceeds the insurance policy limit. CITY, at its option, may collect and expend the Proceeds to make the premium payments should APPLICANT fail to pay said premium. No permit, approval or business license shall be issued by CITY, and any existing permit, approval, or business license shall be suspended until said premium is initially paid and a bond is in place to cover subsequent payments.

25. **NOTICE.** Notice to APPLICANT, DEPOSITORY 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.

26. **MECHANIC/MATERIAL LIENS.** Should CITY elect to complete or remedy the Improvements, APPLICANT shall indemnify, defend, and hold harmless CITY from and against any liability which exceeds the Proceeds for the payment of any labor or material liens as a result of any work of any contractor (including subcontractors and materialmen of any such contractor or agent) hired by CITY or which may arise due to either a defect in or failure of this Agreement or insufficient Proceeds to cover such costs.

27. **WAIVER.** The failure by any party to insist upon the immediate or strict performance of any covenant, duty, agreement, or condition of this Agreement or to exercise any right or remedy consequent upon a failure to perform thereof shall not constitute a waiver of any such failure to perform or any other covenant, agreement, term, or condition. No waiver shall effect or alter the remainder of this Agreement, but each and every other covenant, agreement, term, and condition hereof shall continue in full force and effect with respect to any other then existing or subsequently occurring failure to perform.

28. **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, 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.

29. **TIME IS OF THE ESSENCE.** Time is of the essence of this Agreement. In case either party shall fail to perform the obligations on its part at the time fixed for the performance of such obligations by the terms of this Agreement, the other party may pursue any and all remedies available in equity or law.

30. **GOVERNING LAW.** 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 Roy City ordinances in effect at the time of the execution of this Agreement. However, the parties expressly acknowledge that any subdivision or other development regulations enacted after the execution of this Agreement, which are reasonably necessary to protect the health, safety, and welfare of the citizens of CITY, shall also apply to the subdivision or development which is the subject of this Agreement.

31. **SUCCESSORS.** "APPLICANT," "DEPOSITORY," and "CITY," as used in this Agreement, shall also refer to the heirs, executors, administrators, successors, and/or assigns of APPLICANT, DEPOSITORY and CITY respectively.

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

33. **INTEGRATION.** 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.

34. **MODIFICATION.** Except as otherwise authorized by this Agreement, this instrument may be amended or modified only by an instrument of equal formality signed by the respective parties.

35. **CAPTIONS.** The titles or captions of this Agreement are for convenience only and shall not be deemed in any way to define, limit, extend, augment, or describe the scope, content, or intent of any part or parts of this Agreement.

36. **SEVERABILITY.** 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.

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

**"APPLICANT"**

By: \_\_\_\_\_

Title: \_\_\_\_\_  
(Signature must be notarized on following pages.)

**"DEPOSITORY"**

By: \_\_\_\_\_

Title: \_\_\_\_\_  
(Signature must be notarized on following pages.)

**"CITY"**

\_\_\_\_\_  
MAYOR

**ATTEST:**

\_\_\_\_\_  
CITY RECORDER

**APPROVED AS TO CONTENT:**

By \_\_\_\_\_  
Development Services Department

\_\_\_\_\_  
Date

By \_\_\_\_\_  
City Engineer

\_\_\_\_\_  
Date

**APPROVED AS TO FORM:**

By \_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Date

**APPLICANT NOTARIZATION**

**COMPLETE ONLY IF APPLICANT IS AN INDIVIDUAL**

State of \_\_\_\_\_ )  
:ss  
County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, personally appeared before me \_\_\_\_\_ *[name of person(s)]*, whose identity is personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to this instrument, and acknowledged that he/she/they executed the same.

\_\_\_\_\_  
Notary Public

**COMPLETE ONLY IF APPLICANT IS A CORPORATION**

State of \_\_\_\_\_ )  
:ss  
County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, personally appeared before me \_\_\_\_\_ *[name of person(s)]*, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who affirmed that he/she is the \_\_\_\_\_ *[title]*, of \_\_\_\_\_ *[name of corporation]*, a corporation, and said document was signed by him/her in behalf of said corporation by authority of its bylaws or of a Resolution of its Board of Directors, and he/she acknowledged to me that said corporation executed the same.

\_\_\_\_\_  
Notary Public

**COMPLETE ONLY IF APPLICANT IS A PARTNERSHIP**

State of \_\_\_\_\_ )  
:ss  
County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, personally appeared before me \_\_\_\_\_ *[name of person(s)]*, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who affirmed that he/she is the \_\_\_\_\_ *[title]*, of \_\_\_\_\_ *[name of partnership]*, a partnership, and that the foregoing instrument was duly authorized by the partnership at a lawful meeting held or by authority of its bylaws and signed in behalf of said partnership.

\_\_\_\_\_  
Notary Public

**COMPLETE ONLY IF APPLICANT IS A LIMITED LIABILITY COMPANY**

State of \_\_\_\_\_ )  
:ss  
County of \_\_\_\_\_ )

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

\_\_\_\_\_  
Notary Public

**DEPOSITORY NOTARIZATION**

State of \_\_\_\_\_ )  
County of \_\_\_\_\_ ) :ss

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, personally appeared before me \_\_\_\_\_ *[name of person]*, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who affirmed that he/she is the \_\_\_\_\_ *[title]*, of \_\_\_\_\_ *[name of corporation]*, a corporation, and that said document was signed by him/her in behalf of said corporation by authority of its bylaws or of a Resolution of its Board of Directors, and he/she acknowledged to me that said corporation executed the same.

\_\_\_\_\_  
Notary Public