TETON COUNTY, WYOMING
FINANCIAL ASSURANCE AGREEMENT
(for Surety Bonds)

THIS FINANCIAL ASSURANCE AGREEMENT (this "**Agreement**") is entered into this ____ day of _____, 20__, by and between _____, a _____ ("**Developer**"), and **TETON COUNTY, WYOMING**, a body corporate and a politic of the State of Wyoming ("**County**").

RECITALS

A. Developer desires to have County [describe with specificity what action Developer has requested that County take--i.e., issue a certain type of permit, approve a certain type of plan, etc.] in connection with the construction and installation of improvements on the property [describe project] located [describe property] (the "**Project**"); and

B. The Board of County Commissioners of Teton County, Wyoming has approved permit number [insert permit number] subject to the Conditions of Approval described in that certain Findings of Fact, Conclusions of Law and Order Granting [insert full title of Findings of Fact] (the "**Findings of Fact**") dated [insert date], which hereby is incorporated into this Agreement by this reference; and

C. Developer and County have entered into a [insert full name of Agreement (i.e., Subdivision Improvements Agreement)] dated [insert date] (the "**County Agreement**" and collectively, with this Agreement and the Findings of Fact, the "**Project Agreements**"), governing the terms of the Project, which hereby is incorporated into this Agreement by this reference; and

D. Under applicable County ordinances, rules and regulations, the County may give authority for the above-described construction only on the condition that Developer makes provision to warrant the satisfactory construction and installation, within the time period required, under the direction and supervision of and in accordance with the specifications of the County Engineer or Planning Director, of all required improvements particularly described and set forth above, which improvements (public improvements only), if required by the County, must be free of defects for a period of one (1) year after their final approval and/or acceptance by the County, normal wear and tear excepted, and, which improvements are estimated to cost the sum of [insert amount of cost estimate]; and

E. Developer desires to cause a surety bond to be issued for the benefit of County to guarantee the satisfactory construction and installation of said required improvements [conform description to project].

NOW, THEREFORE, in consideration of the foregoing Recitals (which are incorporated herein by this reference), the covenants and conditions hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Developer and County hereby agree as follows:

1. Completion of Construction of Improvements. [Conform to description of Project] Developer hereby agrees to complete construction of the improvements within [insert the time frame in which work needs to be completed], and also, hereby warrants that said improvements (public improvements only) will be free of defects, normal wear and tear excepted, for a period of one (1) year after installation and final approval and/or acceptance by the County, as applicable. Developer and the County agree that all responsibility for construction, maintenance and repair of any improvements remains with Developer until all of the improvements have been finally approved and/or accepted by the County. Developer also hereby agrees to comply with the terms of the Project Agreements in connection with the construction of the improvements.

2. Financial Assurance. Developer, to guarantee the construction and installation of said improvements within the required time for completion hereby provides County with a Surety Bond dated [insert date of Bond], issued by [insert name of issuer] in the principal amount of [insert amount of Bond] (the "**Bond**"), which amount is at least one hundred twenty-five percent (125%) of the cost identified by Developer in the form of an estimate from a licensed professional engineer, licensed landscape architect or other licensed or certified professional and approved by the County Engineer or Planning Director, or its respective designees. The Surety Bond is issued in favor of County as security for the satisfaction of developer's obligations in favor of the County under the Project Agreements. A copy of the Surety Bond is attached hereto as **Exhibit "A"** and hereby is incorporated into this Agreement by this reference.

3. Term of Bond. The Bond shall continue in effect until all obligations under all Project Agreements have been satisfied and approved and accepted in writing by the County. In the event the County receives written notice of cancellation from the issuer of the Bond, Developer must provide County with a substitute bond or replacement financial security, in form and substance acceptable to the Planning Director, or its designee, in its sole discretion, in accordance with this Agreement and the Land Development Regulations, at least thirty (30) days prior to the cancellation of the Bond then in effect. Failure to provide a substitute bond or other acceptable financial assurance at least thirty (30) days prior to the cancellation of the Bond then in effect shall authorize the County to immediately make a claim on the Bond up to the maximum amount of the Bond. If another form of financial assurance is delivered, it shall comply with Section [insert new Section reference] of the Land Development Regulations.

4. Warranty. At the County's discretion, all public improvements required under the Project Agreements shall be warranted to be free from defect in material and workmanship by Developer for a period of _____ (___) year(s) (the "**Warranty Period**") following final approval and acceptance of such improvements, as applicable, by the County. The warranty shall extend only to such replacement and/or repair as may be required during the Warranty Period in excess of routine maintenance for ordinary wear and tear. The Bond issued to the County to secure the Project in the face amount existing at the time of final inspection shall continue to be held by the County during the Warranty Period (the "**Warranty Period Financial Assurance**"). The amount of the Warranty Period Financial Assurance in no way limits Developer's warranty as required by this Section. Following notification by the County Engineer or Planning Director, or its respective designee, of the need for such work, Developer shall replace and/or repair the defective public improvements within thirty (30) days and in the event of Developer's failure to do

so, the County may draw upon the Warranty Period Financial Assurance to complete such repairs. If the Warranty Period Financial Assurance is insufficient to cover the cost of such repairs, Developer shall pay to the County, on demand, the deficiency. The Warranty Period Financial Assurance will be released in accordance with the financial assurance release provision set forth in this Agreement and in the Land Development Regulations.

5. Review of Amount of Financial Assurance. Unless otherwise determined by the Planning Director, or its designee, in its discretion, the amount of the financial assurance required by the County to secure the Project may be reviewed by the County in its sole discretion, but not more than once annually, beginning on the first anniversary of the Findings of Fact, for the purpose of adjusting the amount of financial assurance required. If change orders are required during the course of construction which increase the costs of the Project by more than five percent (5%) for any one line item on the budget or by more than ten percent (10%) in the aggregate, the amount of financial assurance shall be adjusted accordingly. The Developer shall notify the County in writing of any such change and deliver to the County the replacement and/or additional Bond or other financial assurance to cover the increased amount within thirty (30) days of receipt of notice from the County regarding such increase.

6. Partial Release of Financial Assurance. Upon request of Developer in writing, and upon receipt of a certificate by the County Engineer, or its designee, that the improvements are installed or completed according to the approved plans and specifications and otherwise in accordance with the County's requirements, the Planning Director, or its designee, may release a portion of the financial assurance, in its discretion, provided that the amount retained for financial assurance shall not be less than one hundred twenty-five percent (125%) of the remaining cost to complete the improvements. In no event shall the financial assurance be reduced to less than twenty-five percent (25%) of the initial face amount of the Bond. Under no circumstances shall such partial release constitute acceptance of the improvements upon which such partial release is granted. In connection with a request for a partial release of the financial assurance, Developer shall pay the County a partial release fee as set forth in the Fee Schedule.

7. Release of Financial Assurance. After full and faithful performance of the Project Agreements by Developer, and after expiration of the warranty period described in Section 4 above and compliance by Developer with the Land Development Regulations, the County Treasurer will release all financial assurance posted to secure faithful performance of the Project Agreements. If Developer requests final inspection for the purpose of obtaining a release of a financial assurance and the County Engineer, or its designee, determines that the improvements or other work required by the County have not been satisfactorily completed, the Developer shall pay the fees set forth in the Fee Schedule for each additional inspection that must be scheduled by the County.

8. Events of Default. The occurrence of any of the following events or conditions shall constitute an "**Event of Default**" under this Agreement:

(a) The failure of Developer to perform or observe any of the covenants, conditions or provisions of any Project Agreement, within three (3) days of Developer's receipt of written notice regarding the default with respect to exigent circumstances, as determined by the County, unless such default occurs within _____, in which case there will be no cure period.

(b) The failure of Developer to perform or observe any of the covenants, conditions or provisions of any Project Agreement, within thirty (30) days of Developer's receipt of written notice regarding the default with respect to non-exigent circumstances, as determined by the County, unless such default occurs within _____, in which case there will be no cure period.

(c) A substitute Bond is not provided to County as required under this Agreement.

(d) Construction or installation of the improvements ceases for more than fifteen (15) consecutive days.

(e) Any warranty, representation, covenant or statement contained in this Agreement, any of the Project Documents or any other document or instrument executed or delivered in connection with the Project, or made or furnished to the County by or on behalf of Developer, that shall be or shall prove to have been false when made or furnished.

(f) The filing by Developer (or against Developer to which Developer acquiesces or that is not dismissed within forty-five (45) days after the filing thereof) of any proceeding under the federal bankruptcy laws now or hereafter existing or any other similar statute now or hereafter in effect; the entry of an order for relief under such laws with respect to Developer; or the appointment of a receiver, trustee, custodian or conservator of all or any part of the assets of Developer.

(g) A material adverse change occurs in Developer's financial condition, the insolvency of Developer, or the execution by Developer of an assignment for the benefit of creditors.

(h) The liquidation, termination or dissolution of Developer.

(i) Any levy or execution upon, or judicial seizure of, any portion of the improvements.

(j) If Developer is a natural person, the death of Developer.

(k) The County in good faith believes itself insecure.

9. Remedies. Upon the occurrence of any Event of Default, or any event which with the passage of time or the giving of notice, or both, would constitute an Event of Default, and at

any time while such Event of Default is continuing, County may do one or more of the following, in County's sole discretion:

(a) Make a claim on the Bond and collect from the issuer of said Bond the amount thereof;

(b) Proceed to protect and enforce its rights and remedies under any of the Project Agreements;

(c) Refuse to (i) issue any permits, (ii) perform inspections, or (iii) issue a certificate of occupancy;

(d) Use as much of the funds paid to it by the issuer of the Bond as may be necessary to complete the installation or repair of the required public improvements so that such improvements can be and are finally approved and/or accepted by the County, including reimbursement to the County of direct or incidental fees, costs and expenses related to construction, administrative, management, engineering and legal services, as may be incurred by the County to complete said installation or repair, whether such work was performed by employees of the County (in which case such fees shall be calculated at an hourly rate as if the County had hired an independent third party to complete such work) or by contracting with others not employed by the County, and payment of any outstanding bills for work done by any such person in connection with the Project;

(e) Commence action against Developer for any cost, fee or expense described in subsection (d) in excess of the funds paid to the County by the issuer of the Bond; or

(f) Avail itself of any other relief or remedy to which County may be legally or equitably entitled.

10. Additional Remedies. Notwithstanding anything to the contrary contained in this Agreement, in addition to the remedies set forth in Section 9 above, even if no Event of Default has occurred, County shall have the right and authority to make a claim on the Bond under the following circumstances:

(a) County shall have the right and authority to make a claim on the Bond if it is _____. Determination that Developer is failing or will fail to complete improvements is not required. County will hold such funds until such time as Developer has provided a new surety bond or other financial assurance in conformance with this Agreement and the Land Development Regulations.

(b) County shall have the right and authority to make a claim on the Bond if the County Engineer or Planning Director, or its designee, determines, in its discretion, that Developer has not or will not construct any or all of the improvements [describe obligation] in accordance with the plans and specifications approved by the County.

11. County's Costs and Expenses. Developer shall reimburse County for all construction, administrative, management, engineering and legal fees, costs and expenses as may be incurred by County to complete the Project, whether such fees were incurred by the County by its employees (in which case such fees shall be calculated at a hourly rate as if the County had hired an independent third party to complete such work) or by contracting with others not employed by the County. Developer shall also reimburse the County for payment of any outstanding bills for work done by any such person in connection with the Project.

12. No Relief From Obligations. It is expressly understood, covenanted and agreed between the parties, however, that the delivery by Developer and the acceptance by County of the Bond shall not constitute a waiver or estoppel against County and shall not relieve Developer from the obligation to construct, install and fully pay for the required improvements regardless of whether or not the funds committed by the Bond hereunder are adequate to pay for the satisfactory installation of said improvements as well as to guarantee that said improvements, including without limitation off-site public improvements, are free of defects, normal wear and tear excepted, for one (1) year after they have been finally approved and/or accepted by the County, if required by the County in its discretion.

13. Other Provisions.

(a) This Agreement contains the entire agreement between the parties relating to the transaction contemplated hereby and all other prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged herein.

(b) No change, alteration, amendment, modification or waiver of any of the terms or provisions hereof shall be valid unless the same be in writing and signed by the parties.

(c) Each of the provisions of this Agreement shall be deemed severable and, in the event any provision or provisions in this Agreement are deemed or become unenforceable for any reason, the remaining provisions shall remain in full force and effect to the full extent permitted by law.

(d) The section headings throughout this Agreement are for convenience and reference only, and shall in no way be deemed to define, limit, or add to the meaning of any provision of this Agreement.

(e) This Agreement shall be construed according to the laws of the State of Wyoming. Venue for the resolution of any disputes related to the Project or this Agreement shall be exclusive in the state courts of Wyoming.

(f) Any notice required or permitted to be delivered to a party shall be in writing and shall be deemed to be delivered when personally delivered to the party or five (5) days following deposit in the U.S. Mail, postage prepaid, Certified or Registered Mail, with Return Receipt Requested, addressed to the following address or to such other address as the party may designate in a written notice to the other party:

If to County to: Teton County
Attn: _____
P.O. Box 3594
Jackson, WY 83001

If to Developer to: _____
Attn: _____
_____
_____

(g) This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall be deemed to be a single instrument. A facsimile or electronic duplicate of this Agreement or any signature shall be considered for all purposes as an original.

[signature page follows]

IN WITNESS WHEREOF, the parties have signed this Agreement or caused it to be signed by their duly authorized officers the day and year first hereinabove set forth.

DEVELOPER:

_____,
a _____

By: _____
Name: _____
Title: _____

Mailing Address:

_____
_____

COUNTY:

TETON COUNTY, WYOMING

By: _____
Name: _____
Title: _____

<u>Exhibit "A"</u>

Form of Surety Bond