

Wasatch County Weed Bond Agreement

THIS AGREEMENT, (herein "Agreement") is entered into this _____ day of _____, 20__

“APPLICANT”:_____

a(n):_____

(individual, corporation, partnership, limited liability company, trust, other)

“COUNTY”: Wasatch COUNTY, political Subdivision of the State of Utah

*** NOTICES ***

All notices, requests, demands and other communications required under this Agreement, except for normal, daily business communications, shall be in writing. Such written communication shall be effective upon personal delivery to any party or upon being sent by overnight mail service; or by regular mail, postage prepaid and addressed to the respective parties as follows:

IF TO APPLICANT:

Name: _____
Mailing Address: _____
City: _____ State: _____ Zip: _____
Telephone: (____) _____ Fax: (____) _____
E-mail Address: _____

IF TO COUNTY:

Wasatch COUNTY
Attn: Engineering Department
25 North Main St.
Heber City, Utah 84032

*** RECITALS ***

WHEREAS, Wasatch COUNTY ordinances require APPLICANT to post a cash bond with the County to ensure that noxious weeds will be controlled while the project is being developed until the development is turned over to the Home Owner's Association for ongoing maintenance; and

WHEREAS, COUNTY will not grant said permit(s) / approval(s) until adequate provision has been made to guarantee proper control of noxious weeds, the estimated cost of which is \$_____; and

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

*** TERMS AND CONDITIONS ***

1. ADDITIONAL DEFINITIONS.
 - 1.1 "APPLICANT," and "COUNTY," as used in this Agreement, shall also refer to all heirs, executors, administrators, successors, and/or assigns of APPLICANT and COUNTY, respectively.
 - 1.2 "Costs," as used in this Agreement, shall mean any and all costs for weed control or mitigation incurred by COUNTY, occasioned by APPLICANT'S failure to perform any and/or all obligations under this Agreement.
 - 1.3 "Failure to Perform" or "Fail to Perform," as used in this Agreement, shall mean, failure to make necessary and reasonable actions to prevent or eradicate noxious weeds from the property as determined by the Wasatch County Weed board or its designee.
2. PURPOSE FOR AGREEMENT. The parties hereto expressly acknowledge that the purpose of this Agreement is to ensure proper control of noxious weeds while the project is being developed.
3. UNRELATED OBLIGATIONS OF APPLICANT. The benefits and protection provided by this Agreement shall inure solely to COUNTY and not to third parties, including, but not limited to, lot purchasers, contractors, subcontractors, laborers, suppliers, or others. COUNTY shall not be liable to claimants or others for obligations of APPLICANT under this Agreement. COUNTY shall 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.
4. AGREEMENT DOCUMENTS. All data which is used by COUNTY to compute the cost of or otherwise determine what is reasonable and necessary for proper weed control is hereby made a part of this Agreement.
5. APPLICANT'S INDEPENDENT OBLIGATION. APPLICANT EXPRESSLY ACKNOWLEDGES, UNOERSTANDS, AND AGREES that its obligation to ensure proper weed control is independent of any other remedy available to COUNTY to secure proper weed control.
6. APPLICANT'S OBLIGATION FOR COSTS. Should APPLICANT Fail to Perform its responsibilities under this Agreement in any degree, APPLICANT agrees to compensate COUNTY for all costs, including Incidental Costs, related to the APPLICANTS Failure to Perform its obligation to ensure proper weed control to the extent that such costs are not adequately covered by the proceeds of the bond herein.
7. PERFORMANCE GUARANTEE. APPLICANT hereby assigns and sets over to COUNTY, as an independent guarantee with COUNTY for the purpose of insuring compliance with the weed control plan, the sum of \$ _____ in cash, or by check (herein the "Proceeds"). The Applicant understands and agrees that any check will be negotiated and the proceeds will be deposited in the Accounts of Wasatch County to be held until used or released under the provisions of this contract.
8. APPLICANT INDEMNIFICATION. APPLICANT agrees to indemnify, defend, and save harmless COUNTY, its officers, employees, and agents from and against any and all liability which may arise as a result the COUNTY'S efforts to control weeds within the development. With respect to APPLICANTS agreement to defend COUNTY, as set forth above, COUNTY 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 COUNTY.
9. RELEASE OF PROCEEDS. Upon such time as the development has been completed and the Home Owner's Association (or lot owners) have by written agreement undertaken the obligation for weed control within the development, The Proceeds herein, less any proceeds used for weed control pursuant to the provisions herein, shall be returned to the APPLICANT.
10. USE OF PROCEEDS. In the event the Developer fails to perform reasonable and necessary weed control efforts in the COUNTY'S discretion, COUNTY may use and expend all the Proceeds or such

lesser amount as may be deemed by COUNTY to be necessary to effect proper weed control on the project.

11. **INADEQUATE PROCEEDS.** If the Proceeds are inadequate to pay the cost of proper weed control, APPLICANT shall be responsible for the deficiency independent of the performance guarantee set forth in paragraph seven of this Agreement. Additionally, no further permits or business licenses shall be issued, and/or any existing 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 County Manager, until any noxious weeds have on the project have been properly controlled, or, until a new bond acceptable to the COUNTY has been executed to insure proper weed control.
12. **ACCESS TO PROPERTY.** Should COUNTY elect to use the Proceeds to implement a weed control program on the project, APPLICANT herein expressly grants to COUNTY, and any contractor or other agent of COUNTY, the right of access to the project property to complete the Improvements.
13. **NOTICE.** Notice to APPLICANT or COUNTY 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.
14. **FAILURE TO PERFORM.** In addition to those events previously or subsequently described herein, the following shall be considered Failure to Perform on the part of APPLICANT, the occurrence of which shall entitle COUNTY to invoke any and all remedies outlined in this Agreement or any and all remedies it may have in equity or at law: APPLICANT'S abandonment of the project as determined by COUNTY; 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; the project property being conveyed in lieu of foreclosure.
15. **WAIVER.** 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 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.
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 or law.
18. **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 Wasatch County 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 COUNTY, shall also apply to the subdivision or development which is the subject of this Agreement. Any proceedings to enforce or adjudicate this Agreement shall be conducted in a court of competent jurisdiction in Utah County, Utah.
19. **INDUCEMENT; INTEGRATION; MODIFICATION; CAPTIONS; SEVERABILITY.**
 - 19.1 The making and execution of this Agreement has been induced by no representations, statements, warranties, or agreements other than those herein expressed.
 - 19.2 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.
 - 19.3 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.

19.4 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.

19.5 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

***** SIGNATURE REQUIREMENTS *****

SIGNATURE(S) FROM A CORPORATION. If Applicant is a Corporation, this Agreement shall be signed by the President. If someone other than the President signs on behalf of the company, a “Corporate Resolution” must be attached, and should verify that the person signing the agreement can bind the corporation.

SIGNATURE(S) FROM A PARTNERSHIP. If Applicant is a Partnership, this agreement shall be signed by the General Partner.

SIGNATURE(S) FROM A LIMITED LIABILITY COMPANY. If Applicant is a Limited Liability Company, this Agreement shall be signed by a Managing Member. COUNTY may request a copy of the Articles of Organization.

SIGNATURE(S) FROM A TRUST. If Applicant is a trust, this Agreement shall be signed by a Trustee.

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

“APPLICANT”

By: _____

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

“COUNTY”

COUNTY MANAGER

ATTEST:

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

