

Financial Guarantee AGREEMENT

THIS AGREEMENT dated this ____ day of _____, 200____, by and between

_____ (property owner),

_____ (contractor), and San Juan County

("County") relating to Permit No. _____, for improvements located at

_____ (project name),

_____ (street address,

city, zip), parcel number _____. The project is for a

_____ (type of project), and the size of the project totals _____ acres.

WHEREAS, the San Juan County Department of Community Development issued to the property owner _____ Permit Number _____, and

WHEREAS, as a condition of such permit issuance, the property owner is required to comply with San Juan County Code sections _____ and has opted to or is required to provide a suitable guaranty for the completion of certain facilities and improvements on the Property. Such improvements are set forth in the plans on file with the Department of Community Development. The estimated costs for the completion of such improvements are designated and set forth on **Exhibit "A"** attached hereto and by this reference incorporated herein. The estimated cost of the improvements is \$_____, and

WHEREAS, by this Agreement, the parties desire to allow for the completion of the improvements as set forth on the plans filed with the Department of Community Development, pursuant to San Juan County Code sections _____ and pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants, conditions, and agreements contained herein, the parties agree as follows:

1. **GUARANTEE OF FINANCIAL SURETIES**. The property owner has established a financial guarantee in the amount of 115% percent of the estimated total cost of construction of the site disturbance improvements. The financial guarantee totals \$_____. Said guarantee, in the form indicated below, has been established as security for the complete and satisfactory performance of _____.

Cash Deposit	[]
Irrevocable Letter of Credit	[]
Escrow Account	[]
Surety Bond	[]

A true and accurate copy of said guarantee (or in the case of a cash deposit, a copy of the check and receipt documenting payment) is attached and incorporated herein as **Exhibit B**.

2. **FINAL COMPLETION**. The improvements shall be completed in accordance with the approved plans and construction schedule, with final completion no later than _____, 20____. If the financial guarantee has an expiration date, the improvements shall be completed at least 30 days prior to the expiration date, unless an extension has been requested by the property owner and granted by the County. Any request for extension must be submitted in writing at least 10 days prior to the final

completion date designated herein. Upon final and satisfactory completion of the improvements, as certified by property owner's design professional(s) and the County, the financial guarantee shall be released and this agreement shall be of no further force or effect. Partial releases are not permitted.

3. **FAILURE TO COMPLETE**. In the event the property owner shall fail to satisfactorily complete the improvements by the date specified above, or within the time allowed by any written extension granted by the County, the County or its agent shall have the right to enter onto the property to complete the improvements, and to draw the financial guarantee to cover the costs of the improvements plus administrative costs.

4. **ATTORNEY'S FEES**. In the event of any dispute between the parties as to their rights, duties, or obligations under this Agreement, the prevailing party shall be entitled to recover, in addition to all other remedies, legal or equitable, available under Washington law, its costs and reasonable attorney fees whether incurred through mediation, arbitration, or litigation. The amount of such reasonable attorney fees shall be fixed by the court or the courts in which suit or action, including any appeal therein, is tried, heard or decided.

5. **VENUE AND GOVERNING LAW**. This agreement shall be construed under and governed by the laws of the State of Washington. Venue for any dispute arising under this agreement shall be _____.

IN WITNESS WHEREOF, the parties have executed this Agreement effective the day and year first above written.

Property Owner Signature _____

Title _____

Date _____

Property Owner Mailing Address _____

City State Zip

Phone _____

State of Washington)
)ss.
County of San Juan)

On this _____ day of _____, 20____, before me, the undersigned notary public in and for the State of Washington, personally appeared _____, known or identified to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that ___he executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public in and for the State of Washington

Residing at _____, Washington

Commission Expires: _____

Contractor Signature (if applicable) _____

Title _____

Date _____

Contractor Mailing Address

City State Zip

Phone

State of Washington)
)ss.
County of San Juan)

On this _____ day of _____, 20____, before me, the undersigned notary public in and for the State of Washington, personally appeared _____, known or identified to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that ___he executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public in and for the State of Washington

Residing at _____, Washington

Commission Expires: _____

Mike Thomas, San Juan County Manager

Date

EXHIBIT A -- Estimate of Completion Costs

EXHIBIT B -- Financial Guarantee

EXHIBIT C – Construction Schedule

Financial Guarantees

- A.** For some types of development, County codes require a financial guarantee to ensure completion of required improvements. This section outlines the requirements associated with these financial guarantees. In accordance with RCW 36.32.590 this section does not apply to any state agency or unit of local government.

- B.** San Juan County accepts the following types of financial guarantees:
 - 1. Irrevocable letter of credit from a bank or credit union.
 - 2. Cash deposit with the County.
 - 3. Cash deposit, for the benefit of the County, into an escrow account managed by an independent financial institution.
 - 4. Surety bond.

- C.** Financial guarantees shall cover 115% of the expected cost of the work.

- D.** The expiration date of the guarantee shall be at least thirty (30) days after the expected final approval date for the project.

- E.** Project cost estimates shall be prepared by the qualified professional who prepares the associated plans.

- F.** Failure to complete work or correct deficiencies in accordance with a financial guarantee agreement and approved plans shall be cause for the County to draw on the financial guarantee to stabilize the site and/or complete the work. In addition to direct costs for the work, the County may withdraw funds to cover administrative costs. Prior to taking action, the County shall give the property owner written notice by both first class mail and certified mail.

- G.** Release of financial guarantee. Financial guarantees shall not be released until the actions guaranteed by the agreement have been completed and demonstrated to function. When completed, the qualified professional and property owner shall provide the Department with written approval of the project, and the Department will conduct an inspection to verify that it has been completed according to approved plans. The time period for completion may be extended by written agreement of the applicant and director. If it is anticipated that improvements will be completed over a period of time, separate financial guarantees should be provided so they may be released as components of the project are approved. Partial releases from a single financial guarantee are not permitted.

- H.** Signatures of property owners and contractors shall be notarized.

- I.** Financial Guarantee Agreements. A financial guarantee agreement, signed by the property owner and approved by the County, shall accompany each financial guarantee. Required elements of financial guarantee agreements include:
 - 1. Name, mailing address, and phone number of the property owner. If someone other than the property owner provides the financial guarantee (e.g., developer, contractor), their name, mailing address and phone number (in addition to that of the property owner).
 - 2. Description of the project location including section, township, range and address (if available).
 - 3. Tax Parcel number(s).
 - 4. Size of parcel/project in acres.

5. Reference to improvements being completed in accordance with the San Juan County Code and approved plans on file with the Department.
6. Permit number.
7. Exhibit A – Description of required improvements and cost estimate for completion of the improvements provided by a qualified professional.
8. A statement that the applicant has established a financial guarantee to ensure completion of required improvements in the amount of 115% of the estimated cost, with the amount listed.
9. Type of guarantee.
10. Exhibit B – original financial guarantee (for cash deposit, a copy of the check and receipt).
11. Exhibit C - A completion schedule for the required improvements. Anticipated completion date for the project must be at least thirty (30) days before expiration of the financial guarantee.
12. A statement that this agreement is considered a contract between the parties.
13. A statement that if the County is forced to take action under this agreement, the obligation of the property owner to complete the required work is not discharged.
14. A statement that, after the improvements are completed and demonstrated to function, the qualified professional and property owner will provide written notice of completion to the Department. After final inspection by the Department and confirmation that work was completed and the improvements are functioning in accordance with approved plans, the County shall release the financial guarantee.
15. A statement acknowledging that partial releases are not permitted. (Note: If improvements will be completed in phases, the applicant should provide separate financial guarantees with separate agreements.)
16. A statement that if the required improvements are not completed and approved by the qualified professional and property owner prior to the established completion date, or within the time allowed by a written extension granted by the director, the County may, after providing written notice by first class mail, withdraw the necessary funds from the financial guarantee and complete the improvements or an equivalent project. In addition to contracting or other costs to complete the work, the County may also withdraw funds to cover administrative costs. Any remaining funds after completion of improvements shall be returned to the party that provided the financial guarantee.
17. Process for renegotiating the agreement, including an option for the property owner to extend the agreement and the time frame for the project to allow for additional monitoring and/or for additional work to ensure the proper function of the improvement.
18. Process for transferring the agreement, with County approval, to a property owner or contractor's successor.
19. Governing laws shall be the laws of the State of Washington. The venue for any dispute shall be San Juan County.
20. Notarized signature block for the property owner(s).
21. If the financial guarantee is provided by someone other than the property owner (e.g., contractor), notarized signature block for that party, in addition to that for the property owner.
22. Signature block for approval by the County Manager.