


CITY OF SARATOGA SPRINGS
INSTALLATION OF IMPROVEMENTS
AND BOND AGREEMENT

Lakeside Plat 27
Bond Number: 16CA001


ENT 13254:2016 PG 1 of 10
JEFFERY SMITH
UTAH COUNTY RECORDER
2016 Feb 18 10:07 am FEE 103.00 BY JB
RECORDED FOR SARATOGA SPRINGS CITY

(CASH FORM)

THIS AGREEMENT is made by and between Woodside Homes of Utah LLC (hereinafter "Developer"), whose address is 460 West 50 North, Suite #200 and the City of Saratoga Springs, a municipal corporation of the State of Utah (hereinafter "City"), whose address is 1307 North Commerce Dr. Suite 200, Saratoga Springs, Utah, 84045

WHEREAS, Developer desires to subdivide and/or to receive permit(s) to develop certain property located within the City, which project is known as Lakeside Plat 27, located at approximately 2740 S Redwood Road, in the City of Saratoga Springs, Utah; and

WHEREAS, pursuant to Utah Code § 10-9a-604.5 and City Code § 19.12.05, the City is authorized to require a cash deposit or cash bond ("Performance Bond") guaranteeing that certain subdivision improvements ("Performance Bond Improvements") will be installed in a timely manner and that all of the improvements, including the Performance Bond Improvements, and all other subdivision improvements, once installed, shall remain in good condition and free from all defects in materials and workmanship for a one year period following completion ("Warranty Bond"); and

WHEREAS, the City will not approve the subdivision or issue a permit unless Developer promises to install and warrant certain improvements as herein provided and security is provided for that promise and the promises herein in the aggregate amount of \$ 112,485.92.

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Installation of Improvements. The attached Engineer's Estimate contains a list of required improvements including the improvements currently installed, the Performance Bond Improvements, and other improvements that have yet to be installed by the Developer (collectively "Bonded Improvements"). The Bonded Improvements are not exhaustive and are only representative of the improvements for which there is a public need for a Performance Bond and Warranty bond. Developer shall install all the Bonded Improvements as well as: (a) all improvements shown on the plans, specifications, and drawings previously reviewed and approved by the City in connection with the above-described project; and (b) all improvements required by the Planning Commission and City Council approvals, applicable development agreement, City ordinance or regulation, or City standard or specification (collectively "Subdivision Improvements"). Developer shall install the Performance Bond Improvements, Bonded Improvements, and Subdivision Improvements within 24 months from the date of this Agreement. Developer further agrees to pay the total cost of obtaining and installing the Bonded and Subdivision Improvements, including the cost of acquiring easements.

2. Cash Deposit/Bond. The Developer has delivered to the City cash or a cashier's check in the aggregate amount of \$ 112,485.92 ("Bond") for deposit with the City in its accounts, which the Developer and the City stipulate to be a reasonable preliminary estimate of the

cost of the Performance Bond Improvements (“Performance Bond” or “Performance Bond amount”), or \$102,259.93, plus 10% of the Engineer’s Estimate of all of the Bonded Improvements (“Warranty Bond” or “Warranty Bond amount”), or \$10,225.99, to cover the Warranty Period in paragraph 3.

The Developer agrees that if (1) the Performance Bond Improvements are not completed as required by this Agreement within the time period specified in Paragraph 1 above, or (2) the Performance Bond Improvements are not installed strictly in accordance with Paragraph 1 above and strictly in accordance with City regulations, written notice of the deficiency has been given to the Developer, and Developer has failed to remedy the deficiency within 10 days after notice, or (3) the Warranty Bond Improvements fail or need to be repaired during the Warranty Period specified in Paragraph 3, then in any of these events the City may use some or all of the Performance or Warranty Bond amount to install or repair any or all of the Performance or Warranty Improvements. The City may also use any of the bond amount to cover its administrative costs, attorney fees, litigation costs, or any other cost incurred by the City related to the installation or repair of the Improvements. The Performance Bond and Warranty Bond shall sometimes be collectively referred to as “Bond” or “Bond Amount.”

3. Warranty. The Developer hereby guarantees that the Bonded Improvements installed, and every part hereof, together with the surface of the land and any improvements thereon restored by the Developer, shall remain in good condition and free from all defects in materials and workmanship during the Warranty Period, as defined below, and the Developer shall promptly make all repairs, corrections, and replacements for all defects in workmanship, materials, or equipment during the Warranty Period, without charge or cost to the City. The City may at any time during the Warranty Period inspect, photograph, or televise the Bonded Improvements and notify the Developer of the condition of the Bonded Improvements. The Developer shall thereupon immediately make any repairs or corrections required by this Paragraph. For purposes of this Agreement, “Warranty Period” means the one-year period beginning on the date on which the Bonded Improvements are certified complete by the City.

Developer agrees that if work to replace or repair the Bonded Improvements is not commenced within 10 calendar days of written notice from City, weather permitting, and completed in a reasonable time, then the City may withdraw all or any part of the Warranty Bond amount, in a single or in multiple withdrawals. Further, City shall have the right to withdraw all or any part of the Warranty Bond amount if work is not completed prior to 30 days before expiration of the one-year warranty period.

4. Progress Releases. The City agrees to allow progress releases from the Performance Bond amount as the work progresses as provided herein. The City shall, when requested in writing, inspect the construction, review any necessary documents and information, determine if the work completed complies with City construction standards and requirements, and review the Engineer’s Estimate in Exhibit A. After receiving and approving the request, the City shall, in writing, authorize disbursement to the Developer from the Performance Bond amount in the amount of such estimate. At least 20% of the funds originally deposited to cover the Performance Bond amount shall be retained until all required improvements are installed, inspected, and accepted. Except as provided in this Agreement, the City shall not release or disburse any funds from the Bond. The City shall not authorize more than four progress payments in total. No progress payments or releases will be made until Developer has paid an administrative fee to the City as specified in the City’s Fee

Schedule. No progress releases will be made from the Warranty Bond amount once the Bonded Improvements enter the Warranty Period as specified in paragraph 3.

5. **Refund or Withdrawal.** In the event the City determines it is necessary to withdraw funds from the Bond to complete, construct, repair, or replace the Performance Bond Improvements and/or Bonded Improvements, the City may withdraw all or any part of the Bond and may cause the Performance Bond Improvements or Bonded Improvements (or any part of them) to be constructed, completed, replaced, or repaired using the funds received from the Bond. If any such work is required, the City may also keep an additional 15% of the cost of such work as payment for the City's overhead and administrative costs in completing the improvements and administering and enforcing this Agreement. Any funds not expended in connection with the completion of said Performance Bond Improvements and/or Bonded Improvements by the City shall be refunded to Developer upon completion of the improvements.

6. **Preliminary Release.** At the time(s) herein provided, the City may authorize release of all funds in the Performance Bond. The Warranty Bond amount shall be retained by the City as security for the obligations in paragraph 3 and may be withdrawn by the City as provided in Paragraphs 3 and 5 above for any breach of such an obligation. The release provided for in this Paragraph shall occur when the City certifies in writing that the Subdivision Improvements are complete, which shall be when all of the Subdivision Improvements have been installed as required, fully inspected, and approved in writing by the City, and after "as-built" drawings have been supplied as required.

7. **Final Release.** Upon full performance of all of Developer's obligations pursuant to this Agreement, including the warranty obligations of Paragraph 3, the City shall notify the Developer in writing of the final release of the Bond. After giving such notice, the City shall relinquish all claims and rights in the Bond, minus any amounts retained pursuant to this Agreement.

8. **Non-Release of Developer's Obligations.** It is understood and agreed between the parties that the establishment and availability to the City of the Bond as herein provided, and any withdrawals from the Bond by the City, shall not constitute a waiver or estoppel against the City and shall not release or relieve the Developer from its obligation to install and fully pay for the Subdivision Improvements as required in Paragraph 1 above. The right of the City to withdraw from the Bond shall not affect any rights and remedies of the City against the Developer for breach of any covenant herein, any breach of any applicable development agreement, failure to comply with conditions of approval, or failure to comply with City ordinances and regulations. Further, the Developer agrees that if the City withdraws from the Bond and performs or causes to be performed the installation or any other work required of the Developer hereunder, then any and all costs incurred by the City in so doing which are not collected by the City by withdrawing from the Bond, shall be paid by the Developer, including administrative, engineering, legal, and procurement fees and costs.

9. **Dedication.** Where dedication is required by the City, the Developer shall dedicate to the City the areas shown on the subdivision or development plat as public streets and as public easements, provided however, that Developer shall indemnify the City and its representatives from all liability, claims, costs, and expenses of every nature, including attorney's fees, which may be incurred by the City in connection with such public streets and public easements, until the same are accepted by the City following installation and final inspection of all of the Subdivision Improvements and approval thereof by the City.

10. Connection and Maintenance. Upon performance by Developer of all obligations set forth in this Agreement and compliance with all applicable ordinances, resolutions, rules, and regulations of the City, whether now or hereafter in force, including payment of all connection, review, and inspection fees, the City shall permit the Developer to connect any public improvement to the City's water, sewer, secondary water, and storm drainage systems and shall thereafter utilize and maintain public improvements to the extent and in the manner now or hereafter provided in the City's regulations.

11. Inspection. The Subdivision Improvements, their installation, and all other work performed by the Developer or its agents pursuant to this Agreement shall be inspected at such times as the City may reasonably require and prior to closing any trench containing such Subdivision Improvements. Developer shall provide City with not less than 48 hours' notice, not counting Fridays, Saturdays, and Sundays, notifying City that Developer will be closing a trench to allow City sufficient time to send its representatives to inspect the Subdivision Improvements. The City will not send its representatives until Developer has paid all outstanding fees, and Developer agrees to not close any trenches until such fees have been paid and City representatives have inspected said trenches.

12. Ownership. Public improvements covered herein shall become the property of the City upon Preliminary Release, as defined herein, and the Developer shall thereafter advance no claim or right of ownership, possession, or control of the public improvements. This paragraph shall in no way relieve Developer of its obligations under paragraph 3, or any other provision of this Agreement, to warranty and guarantee that the Warranty Bond Improvements remain in good condition and free from all defects in materials and/or workmanship for a period of one year after Preliminary Release.

13. As-Built Drawings. The Developer shall furnish to the City, upon completion of the Subdivision Improvements, drawings showing the Subdivision Improvements, actual location of water, secondary water, and sewer laterals including survey references, and any related structures or materials as such have actually been constructed by the Developer. The City shall not be obligated to release the Bond until as-built drawings have been provided to the City.

14. Amendment. Any amendment, modification, termination, or rescission (other than by operation of law) that affects this Agreement shall be made in writing, signed by the parties, and attached hereto.

15. Successors. No party shall assign or transfer any rights under this Agreement without the prior written consent of the other first obtained, which consent shall not be unreasonably withheld. When validly assigned or transferred, this Agreement shall be binding upon and inure to the benefit of the legal representatives, successors, and assigns of the parties hereto.

16. Other Improvement Obligations. The obligations of Developer under this Agreement are exclusive of, and shall not be interpreted to relieve Developer of, any obligations contained in any applicable development agreement, City ordinance or regulation, or City standard or specification. Developer expressly acknowledges that additional improvements may be required pursuant to any applicable development agreement, City ordinance or regulation, or City standard or specification and that this Agreement does not supersede, replace, or take precedence over such

additional requirements or obligations. Developer further agrees that its obligation to complete and warrant the Performance Bond Improvements and/or Bonded Improvements is and shall not be conditioned upon the commencement of actual construction work in the subdivision or development, upon the sale of any lots or part of the subdivision or development, or the issuance of any permits include building or occupancy permits.

17. Other Events Constituting Failure to Perform. In addition to those events previously or subsequently described herein, the following shall be considered failure to perform or breach of this Agreement, the occurrence of which shall entitle City to invoke any and all remedies outlined in this Agreement or any and all remedies it may have in equity or at law: Developer's abandonment of the project as determined by City, which is defined as expiration of building permits due to inactivity, expiration of approvals per City Code, or inactivity for a period of 6 months or longer excluding the months of November through February; Developer'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; and/or the project property being conveyed in lieu of foreclosure. In the event the Developer files a bankruptcy petition, Developer hereby agrees to waive the automatic stay provisions of the Bankruptcy Code and agrees that City may proceed with exercising any and all remedies herein or any remedies in equity or law.

18. Access to Property. Should City elect to use the Bond to complete, repair, or replace the Improvements, Developer expressly grants to City, and any contractor or other agent hired by City, the right of access to the project property.

19. Notices. Any notice given under this Agreement shall be in writing and shall be delivered personally, mailed by first class or express mail, or sent by e-mail at or to the following addresses:

NAME OF DEVELOPER: Woodside Homes of Utah, LLC
 c/o INSERT NAME OF AGENT HERE (or current registered agent): Garrett Seely
 ADDRESS: 460 West 50 North, Suite #200
 CITY, STATE: Salt Lake City, UT 84101
 INSERT EMAIL OF AGENT HERE: Garretts@woodsidehomes.com

City of Saratoga Springs
 c/o Mark Christensen (or current City Manager)
 1307 N. Commerce Drive, Suite 200
 Saratoga Springs, UT 84045
 markc@saratogaspringscity.com

Notice shall be deemed given when actually received if personally delivered, the earlier of the day actually received or the third business day after the notice is deposited in the United States mail properly addressed and postage prepaid if sent by mail, or the date a delivery receipt is received if sent by e-mail.

20. Severability. Should any portion of this Agreement for any reason be declared invalid or unenforceable, the invalidity or unenforceability of such portion shall not affect the validity of any of the remaining portions and the same shall be deemed in full force and effect as if this Agreement had been executed with the invalid portions eliminated.

21. **Governing Law.** This Agreement and the performance hereunder shall be governed by the laws of the State of Utah.

22. **Counterparts.** The fact that the parties hereto execute multiple but identical counterparts of this Agreement shall not affect the validity or efficacy of their execution, and such counterparts, taken together, shall constitute one and the same instrument, and each such counterpart shall be deemed an original.

23. **Waiver.** No waiver of any of the provisions of this Agreement shall operate as a waiver of any other provision, regardless of any similarity that may exist between such provisions, nor shall a waiver in one instance operate as a waiver in any future event. No waiver shall be binding unless executed in writing by the waiving party.

24. **Captions.** The captions preceding the paragraphs of this Agreement are for convenience only and shall not affect the interpretation of any provision herein.

25. **Integration.** This Agreement, together with its exhibits and the approved plans and specifications referred to, contains the entire and integrated agreement of the parties as of its date, and no prior or contemporaneous promises, representations, warranties, inducements, or understandings between the parties pertaining to the subject matter hereof, which are not contained herein, shall be of any force or effect. However, this Agreement shall not affect any fully-executed agreements that are lawfully approved if said agreements do not conflict with the provisions herein.

26. **Attorney Fees.** In the event either party hereto defaults in any of the covenants or agreements contained herein, the defaulting party shall pay all costs and expenses, including reasonable attorney fees, incurred by the other party in enforcing its rights hereunder whether incurred through litigation or otherwise. In the case either party chooses to use in-house counsel, attorney fees shall be determined by the average hourly rate of a local attorney with the same level of experience and expertise.

27. **Other Bonds.** This Agreement and the Bond do not alter the obligation of Developer to provide other bonds under applicable ordinances or rules of any other governmental entity (including the City) having jurisdiction over Developer. The furnishing of security in compliance with the requirements of the ordinances or rules of the City or other jurisdictions shall not adversely affect the ability of the City to draw on the Bond as provided herein.

28. **Time of Essence.** The parties agree that time is of the essence in the performance of all duties herein.

29. **Exhibits.** Any exhibit(s) to this Agreement are incorporated herein by this reference, and failure to attach any such exhibit shall not affect the validity of this Agreement or such exhibit. An unattached exhibit is available from the records of the parties.

30. **Indemnification.** Developer agrees to indemnify, defend, and save harmless City, its officers, employees, and agents from and against any and all claims, lawsuits, damages, proceedings, and liability which may arise as a result of the installation of the Subdivision Improvements and any action of Developer pursuant to this Agreement. This includes any claims of any third-party in paragraph 31 below. City shall have the option to either provide its own defense, with all costs for

DEVELOPER'S ACKNOWLEDGEMENT

(Complete if Developer is an Individual)

STATE OF UTAH)
 : ss.
COUNTY OF _____)

On this _____ day of _____, 20____, personally appeared before me _____, the signer(s) of the foregoing instrument who duly acknowledged to me that he/she/they executed the same.

NOTARY PUBLIC
Residing in _____ County, _____

(Complete if Developer is a Corporation)

STATE OF UTAH)
 : ss.
COUNTY OF _____)

On this _____ day of _____, 20____, personally appeared before me _____, who being by me duly sworn did say that he/she is the _____ of _____ a _____ corporation, and that the foregoing instrument was signed on behalf of said corporation by authority of its Board of Directors, and he/she acknowledged to me that said corporation executed the same.

NOTARY PUBLIC
Residing in _____ County, _____.

such being borne by Developer in accordance with paragraph 26, or require that Developer undertake the defense of City.

31. No Third-Party Beneficiaries. 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, subsequent purchasers, builders, or developers, or others. City shall not be liable to claimants or others for obligations of Developer under this Agreement. City 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 no obligation to make payments to, give notices on behalf of, or otherwise have obligations to any alleged claimants under this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized representatives this 22 day of Jan, 2016.

CITY:

DEVELOPER:

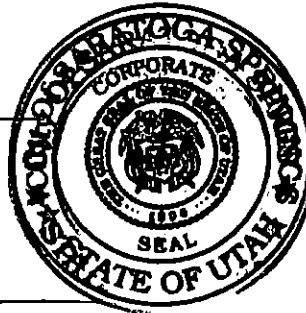
CITY OF SARATOGA SPRINGS

By: [Signature]
Mark Christensen, City Manager

By: Woodside Homes of Utah, LLC
Garrett Seely
Its: Authorized Agent

ATTEST:

[Signature]
City Recorder



APPROVED AS TO FORM:

[Signature]
Kevin S. Thurman, City Attorney

(Complete if Developer is a Partnership)

STATE OF UTAH)
 : ss.
COUNTY OF _____)

On this _____ day of _____, 20____, personally appeared before me _____ who being by me duly sworn did say that he/she/they is/are the _____ of _____, a partnership, and that the foregoing instrument was duly authorized by the partnership at a lawful meeting held by authority of its by-laws and signed in behalf of said partnership.

NOTARY PUBLIC
Residing in _____ County, _____.

(Complete if Developer is a Limited Liability Company)

STATE OF UTAH)
 : ss.
COUNTY OF UTAH)

On this 18 day of February, 2016, personally appeared before me Conitt Seely who being by me duly sworn did say that he or she is the Agent of Woodside, a limited liability company, and that the foregoing instrument was duly authorized by the Members/Managers of said limited liability company.

Nicolette Fike
NOTARY PUBLIC
Residing in ~~County~~, UTAH,
Swatogaspings

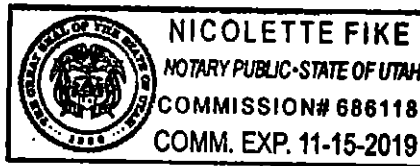




Exhibit A

Saratoga Springs Bond Calculation
 Project: Lakeside Shoreline Trail
 By: Janelle Wright
 Date: 1-12-2016

Earthwork

Earthwork Description	Unit	Quantity	Cost per Unit	Total Cost	Est. % Complete
Clear and Grub Site	ACRE	0.48	\$2,875.00	\$1,370.18	
Offsite Import/Export	CY	2,000	\$11.50	\$23,000.00	
Cut/Fill and Compaction	CY	2,160	\$1.73	\$3,726.00	
Subtotal				\$28,096.18	

Erosion Control

Erosion Control Description	Unit	Quantity	Cost per Unit	Total Cost	Est. % Complete
Erosion Control*	Acre	0.48	\$2,875.00	\$1,380.00	
Subtotal				\$1,380.00	

* Erosion control bond funds shall be eligible for release only after the City Inspector has determined that the site is stabilized and all construction activity has been completed.

Storm Drain & Land Drain

Storm Drain Description	Unit	Quantity	Cost per Unit	Total Cost	Est. % Complete
15" RCP	LF	288	\$28.75	\$8,280.00	
Wetland Crossing	EA	2	\$2,500.00	\$5,000.00	
Flared End Section	EA	8	\$230.00	\$1,840.00	
Subtotal				\$15,120.00	

Street Improvements

Street Improvements Description	Unit	Quantity	Cost per Unit	Total Cost	Est. % Complete
Remove and dispose of existing trail	LF	125	\$3.45	\$431.25	
10' Sidewalk w/ 8" Road Base and 10" compacted sub-grade	LF	770	\$36.75	\$28,297.50	
12' Trail with 8" roadbase and 10" compacted sub-grade	LF	960	\$16.25	\$15,600.00	
Retaining Wall (8' to 10')	LF	390	\$29.00	\$11,310.00	
Rest Areas	EA	2	\$575.00	\$1,150.00	
"End of Trail" sign	EA	1	\$300.00	\$300.00	
Subtotal				\$57,088.75	

* Denotes exception may be granted if weather prohibits paving

Miscellaneous

Miscellaneous Description	Unit	Quantity	Cost per Unit	Total Cost	Est. % Complete
As-Builts	EA	1	\$575.00	\$575.00	
Subtotal				\$575.00	

Total Improvement Cost **\$102,289.93**

Building permit approval

Performance Bond Amount (Estimated Cost of Remaining Improvements) **\$102,289.93**

Inspector

Warranty Bond Amount (10% of Total Improvement Cost) **\$10,228.99**

Bond To Be Posted (Performance Bond + Warranty Bond) (GL # 10 - 280000 for Cash Bonds) **\$112,488.92**

Minimum Retainage Before Start of Warranty **\$30,677.98**

Review and Inspection Fees - GL # 10-3419-100 **\$4,189.97**

This Invoice Must
Accompany Payment

Mark T. Edwards

Lockable Fuse Box Fees - GL # 10-3424-100 **\$0.00**

Date Building Dept contacted:

Total Fees Due **\$4,189.97**