

JEFFERSON COUNTY

Land Development

SITE IMPROVEMENTS BONDING & BOND SURETY POLICY

(Effective Date: September 2, 2010)

All required bonding shall be provided by the owner/developer, approved by staff, and in place prior to the recordation of the subdivision final plat or the issuance of a permit for a land development project, in accordance with this policy.

1. **Projects That Require Construction Bonds & Bond Surety:**

When required, the owner/developer shall provide a construction bond as a guarantee that the site improvements will be completed and installed in accordance with the approved plans. The construction bond shall be secured with an acceptable form of surety. Projects requiring a construction bond and bond surety are as follows:

- A. Approved subdivisions of land requiring site/infrastructure improvements; and
- B. Commercial (for-profit & non-profit), industrial, institutional, religious facilities, and multi-family residential development projects, etc., that require a site plan and site improvements.

2. **Bonding Arrangements:**

- A. Bonding arrangements cannot be made prior to Planning Commission approval of a project.
- B. The owner/developer's engineer of record shall provide a complete and accurate bond estimate in a format acceptable to the Chief County Engineer. The bond estimate shall be based on the estimated costs of the site improvements utilizing current market rates. However, in no event shall the estimated cost be less than the unit costs provided by the Jefferson County Engineering Department. The unit costs are subject to change from time to time, as deemed necessary by the Chief County Engineer.
- C. A 15% contingency amount shall be added to the bond estimate. However, for projects with estimated construction costs under \$100,000.00, the minimum bond contingency amount shall be \$15,000.00.
- D. After the Chief County Engineer approves the construction bond amount, the developer shall submit the bond surety to the Bonding Administrator. The Bonding Administrator will then prepare the

construction bond documents (**See Appendix A**). Upon notification by the Bonding Administrator that the construction bond and bond surety documents are in order and in accordance with this Construction Bond and Bond Surety Policy, the County Commission president or County Administrator may affix their signature to the bond; this will constitute acceptance by the County Commission of Jefferson County, with no additional approvals required by them. All such action shall be reported to the County Commission as an agenda information item at their next meeting.

3. Length of Construction Bonds:

The initial bond shall be effective for a 2-1/2 year period. The developer shall have 2-1/2 years to complete the site improvements and infrastructure work unless time extensions are granted in accordance with this policy.

4. Time Extensions of Construction Bonds:

Upon written request by the developer, the staff may grant two additional 1-1/2 year time extensions for completion of all site improvements, for a total of 5-1/2 years, provided that:

- A. All occupied dwelling units are served by a road that is totally improved with the exception of the top/finish coat of asphalt; and
- B. All erosion and sediment control measures are in place in accordance with the approved sediment and erosion control plan and functioning properly; and
- C. The stormwater management facilities are in place and functioning as either temporary sediment traps per the sediment and erosion control plan, or as permanent stormwater management basins that are protected from discharging sediment from undisturbed areas on the project site. In either case, the stormwater management facility shall itself be stabilized; and
- D. Existing infrastructure that has failed is satisfactorily reconstructed; or redesigned if necessary and additional surety provided; and
- E. Elements of the preliminary plat or site plan that are not constructed, are reviewed for compliance with the current design standards; and the preliminary plat or site plan elements not meeting current standards, at the discretion of the Chief County Engineer and where practical, are redesigned or modified to meet current standards; and
- F. The bond amount is re-evaluated to determine if the amount is still adequate; and
- G. The bond amount is increased and additional surety provided if the bond amount is determined to be inadequate; and

- H. The owner/developer paid the non-refundable processing fee for the bond time extension request, in accordance with the prevailing fee schedule.

Time extensions beyond the 5-1/2 year time period may only be considered by the County Commission and may be granted for justifiable reasons on a case-by-case basis.

5. Approved Forms of Bond Surety:

- A. Acceptable forms of bond surety are limited as follows:

1. Irrevocable Letter-of-Credit (see Appendix B) from any FDIC-insured bank or lending institution within 150 miles of Charles Town, West Virginia; or
2. Cash-in-Escrow (see Appendix B) that is escrowed at any FDIC-insured bank or lending institution within 150 miles of Charles Town, West Virginia; or
3. Performance/Surety Bond (see Appendix B) from an acceptable surety bond provider; shall be allowed for projects with estimated construction cost equal to or greater than \$50,000.

- B. Surety documents shall be formatted as required by this policy unless other format is approved by the County Administrator or the County Commission in writing.

- C. Parties other than the owner/developer may provide the surety and execute the construction bond; provided, however, that the third-party adds their signature to the statement of acceptance on the associated construction plans and plat.

6. Renewal of Bond Surety:

- A. Irrevocable Letters-of-Credit:

The owner/developer or surety provider is required to renew any surety before it expires and provide evidence of renewal to the Bonding Administrator a minimum of 30 days prior to the surety's expiration date.

Approximately 90 days prior to the expiration of a letter-of-credit, the Bonding Administrator will notify the developer and the bank that an irrevocable letter-of-credit is due to expire and needs to be renewed by the bank. However, failure on the County's part to provide 90 days notice shall not preclude the County from their right to call-in sureties in

the form of a letter-of-credit prior to their expiration. The onus is on the owner/developer to renew the letter of credit before it expires.

B. Cash-in-Escrow:

Surety in the form of cash-in-escrow will not have an expiration date and shall run for the duration of the construction bond/project.

C. Surety Bonds:

Surety in the form of a surety bond shall be in effect for a minimum of one (1) year and shall automatically renew for additional minimum terms of one (1) year unless, and until, the surety provider shall give sixty (60) days prior written notice by certified mail, return receipt requested, to:

Bonding Administrator
Jefferson County Engineering Department
116 East Washington Street, Suite 100
Charles Town, WV 25414

of its intent to terminate the surety bond at the expiration of the sixty (60) day period.

7. Land Development Site Inspections:

After the initial installation of the erosion and sediment control devices have been inspected and approved, all subsequent land development milestone site inspections, re-inspections, and legitimate complaint inspections shall be performed at a cost to the owner/developer in accordance with the prevailing fee schedule. County discretionary inspections shall not be assessed the fee.

8. Bond Reductions & Bond Releases:

A. As installation of the site improvements progresses, the owner/developer may make written request for periodic bond reductions. Bond reduction requests shall be for a minimum of \$100,000 of work but not more than 3 requests may be submitted per calendar year. The developer's engineer shall submit an itemized bond reduction request in a format acceptable to the Chief County Engineer.

For projects under \$100,000, the full bond amount plus the \$15,000 contingency amount shall remain in full force until the project's bond is fully released; and

For bond estimates equal to or less than \$333,333, the initial bond amount may be reduced in a pro-rated manner through periodic bond

reductions to a minimum of \$100,000 plus the full initial bond contingency amount (\$15,000 min to \$50,000 max), and shall remain in force until the project's bond is fully released; and

For bond estimates greater than \$333,333, the initial bond amount plus the contingency amount may be reduced in a pro-rated manner through periodic bond reductions to a minimum of \$100,000, or 10% of the total initial bond amount, whichever is greater, plus the contingency amount (minimum \$50,000); and shall remain in force until the work is 100% complete and the project's bond is fully released.

- B. Upon completion of all site improvements, the owner/developer may make a written request for final release of the remaining bond amount. The owner/developer's engineer shall submit an itemized bond release request in a format acceptable to the Chief County Engineer.

In the event that a previously approved and released component of the site improvements has failed before the final bond release, the developer shall be responsible for correcting, repairing or replacing the failed site improvement. No further bond reductions or final bond release shall occur until the developer has corrected, repaired, or replaced the failed site improvement to the satisfaction of the Chief County Engineer; or the developer has re-posted the bond surety necessary to cover the costs of the repair or replacement of the failed component, to the satisfaction of the Chief County Engineer.

- C. Upon review and approval of the bond reduction request or the bond release request by the staff, the Bonding Administrator will submit a County Commission agenda item request in accordance with the County Commission's policy. The County Commission will schedule the item on their agenda and the staff will appear before the County Commission at their regularly scheduled meeting and present the request to them for their consideration and approval.
- D. The owner/developer shall pay a non-refundable processing fee for each bond reduction request and bond release request, in accordance with the prevailing fee schedule.

9. Default by the Owner/Developer:

In the event the owner/developer defaults in their obligation to complete the required site improvements and infrastructure work, the County Commission may "call-in" the bond and use the surety to complete the project. All costs incurred by the County shall be recoverable and are considered valid charges against the surety; this includes, but is not limited to, construction costs, administrative costs, and legal fees, including costs incurred for both in-house and/or contracted services.

10. Tolling of Bonding:

During periods of economic downturn (i.e., downturn in housing market due to economic conditions, loss of source of project financing/capitol necessary to begin the project, etc.), as determined by the Jefferson County Commission, the owner/developer may defer construction and obtain temporary partial release of construction bond and surety on projects that are recorded and bonded, but have not started construction of site improvements and/or sold any lots or portions of the subdivided parcel. This is known as "Tolling of Bonding". Tolling of Bonding shall only be allowed to occur one time on each phase of each subdivision project. A bond of \$10,000 shall remain in place during the course of any tolling of bonding agreement.

The "Agreement Regarding Bonding Obligations and Declaration of Covenants, Conditions and Restrictions" (**see Appendix C**) shall be executed by the developer.

The tolling of construction shall require that no construction and installation of site improvements shall be allowed to start until the developer has re-posted the full bond amount, and that the bond amount shall be in accordance with the bonding unit cost figures in effect at that time; and

The tolling of construction shall require the recording of a document in the County Clerk's office - for purposes of notifying the public through title search - that the lots are restricted from being sold, and that no building permits will be issued on these lots until the developer has restored the full bond amount and the restriction is lifted by the Jefferson County Commission via a document recorded in the County Clerk's Office; and

The tolling of bonding shall have a sunset provision whereby the lots shall be un-platted (merged) upon expiration of the sunset provision, unless the bond and surety are re-posted in its entirety prior to the sunset provision expiration date. The owner/developer shall execute a merger deed at the time of executing the agreement. The merger deed shall be held by the Bonding Administrator and only recorded in the Office of the County Clerk upon expiration of the sunset provision and upon directive of the County Commission of Jefferson County, unless the bond and surety are re-posted in its entirety prior to the sunset provision expiration date; and

The tolling of construction shall not apply to projects where construction of the site improvements has already begun.

The Owner/Developer, or their agent, acknowledges receipt of the Jefferson County Site Improvements Bonding and Bond Surety Policy.

(Owner/Developer/Agent)

(print name)

(title)

(company/organization name)

(mailing address)

(city) (state) (zip code)

Signature: _____ Date: _____

Appendix A

Bond Agreement Forms

Form No.	Type	Surety Type	Project Type
A-1	Bond Agreement	Irrevocable Letter of Credit	Subdivision
A-2	Bond Agreement	Irrevocable Letter of Credit	Site Plan
A-3	Bond Agreement	Cash-in-Escrow	Subdivision
A-4	Bond Agreement	Cash-in-Escrow	Site Plan
Performance/Surety Bond – See Appendix B			

Form A-1
(Subdivisions)

BOND AGREEMENT - IRREVOCABLE LETTER-OF-CREDIT

KNOW ALL MEN BY THESE PRESENTS, that the undersigned,
(Applicant/Developer Name & Subdivision Name), (Mailing/Street Address, City,
State, Zip Code), is held and firmly bound to the COUNTY COMMISSION OF
JEFFERSON COUNTY, a West Virginia public corporation with control and
supervisory functions over the Jefferson County Planning Commission, in the penal
sum of

\$ _____ *(Dollar amount in figures)*

_____ *(Dollar amount in words),*

for the completion of erosion and sediment control devices, storm water management
measures, site grading & drainage, roadways, water and sewer systems, utility lines,
paving, property corners, and all other site improvements and associated
appurtenances, for the payment of which, well and truly to be made, it binds itself, its
successors in title and assigns.

The condition of the above obligation is such that, whereas, the Jefferson County
Planning Commission has approved and consented to the recordation in the Office of
the County Clerk of Jefferson County, the Final Plat of the
(Name of Subdivision), (Phase of Subdivision), (Lot Numbers) and residue, a
subdivision of lands of (Name of Property Owner), the property is located (Route No.,
Road Name, Mile Marker, etc.), which is to consist of (No. and type of lots), on (No.
of Acres), more or less, with roadways and appurtenances thereto, for the purpose of
selling such lots and appurtenances thereto to buyers thereof, and whereas, the site
improvements required to be made on such subdivision, as required by the Jefferson
County Subdivision Ordinance and the construction plans have not yet been made,
which improvements are detailed in Planning Commission file no. (JCPC file no.).

NOW THEREFORE, if the developer of the (Applicant/Developer Name &
Subdivision Name), shall well and truly complete the construction and installation of
such site improvements by (bond expiration date), and pay all costs attendant

thereto, in compliance with the Jefferson County Subdivision Ordinance, then this bond shall be wholly null and void; otherwise, it shall remain in full force and effect.

A. The County Commission of Jefferson County, West Virginia, shall execute and deliver to the Maker hereof complete or partial satisfaction of this bond when the same is requested by the Maker hereof, according to the following provisions:

1. A complete satisfaction and exoneration shall be granted by the County Commission of Jefferson County upon presentation of evidence by the Maker that all terms and conditions of this bond have been satisfied.
2. Requests for partial satisfaction may be made from time to time; provided that such requests are for no less than the minimum amounts established by the Site Improvements Bonding & Bond Surety Policy; partial satisfaction shall be granted upon presentation of evidence by the Maker that work equal in value to the amount of the satisfaction requested, has been completed and that all terms and conditions of the surety sought to be partially satisfied have been satisfied.

However, in the event that a previously approved and released component of the site improvements has failed before the final bond release, the developer shall be responsible for correcting, repairing or replacing the failed site improvement. No further bond reductions or final bond release shall occur until the developer has corrected, repaired, or replaced the failed site improvement to the satisfaction of the Chief County Engineer; or the developer has re-posted the bond surety necessary to cover the costs of the repair or replacement of the failed component, to the satisfaction of the Chief County Engineer.

3. The County Commission of Jefferson County shall not consent to any satisfaction under provisions 1 and 2 above, until being first provided with a written statement from the County Engineer certifying that

required improvements have been satisfactorily completed.

Furthermore, the County Commission of Jefferson County shall not consent to any satisfaction under provisions 1 or 2 above, until the Maker has paid the County Commission of Jefferson County a fee, in accordance with the prevailing fee schedule, for each site inspection (after the erosion & sediment control devices have been inspected and approved) performed by the County Engineer at the request of the Maker.

B. The Bond is secured by an Irrevocable Letter-of-Credit (LOC #), dated the _____ day of (Month, Year), from (Bank Name), (Mailing Address, City, State, Zip), which is on file in the offices of the Jefferson County Department of Planning & Zoning and the Engineering Department. By acceptance of the above irrevocable letter-of-credit as security, the following conditions shall apply:

1. The Irrevocable Letter-of-Credit in the amount of \$_____ shall be attached to this document and made a part hereof; and
2. The irrevocable letter of credit shall be clearly written to provide the beneficiary with direct and immediate access to the loan funds upon submission by the beneficiary of a written and signed draft request; and
3. An irrevocable letter-of-credit shall remain in full force and effect as security for this Bond until such time as the bond is released.

The letter of credit shall be renewed by (Name of Applicant/Developer Name & Subdivision Name), thirty (30) days prior to the expiration of the letter-of-credit, in order to provide uninterrupted security for this bond.

EXPIRATION DATES FOR ALL LETTERS-OF-CREDIT SHALL BE EITHER JANUARY 15TH OR JULY 15TH OF A GIVEN YEAR.

4. Signed draft requests against the irrevocable letter-of-credit will be made by the Jefferson County Commission (beneficiary) for one or both of the two following reasons:
 - A. Failure on the part of (Applicant/Developer Name & Subdivision Name), to complete improvements according to the terms of this bond.
 - B. Failure on the part of (Applicant/Developer Name & Subdivision Name), to renew the irrevocable letter-of-credit thirty (30) days prior to the expiration date.
5. Drafts made against the irrevocable letter-of-credit by the Jefferson County Commission will be used exclusively for the purpose of completion of site improvements herein required.
6. Drafts made against the irrevocable letter-of-credit for reason 4A above, will be used by the Jefferson County Commission to complete or procure the completion of improvements herein above required.
7. Drafts made against the irrevocable letter-of-credit for reason 4B above, will be escrowed with a local bank or savings and loan association by the Jefferson County Commission and will be held, during the life of this bond, for the purpose of guaranteeing improvements herein above required.

Witness the following signatures and seals:

WITNESS:

(Applicant/Developer Name)

(Subdivision Name)

By: _____

Date: _____

Print Name: _____

Title: _____

Date: _____

WITNESS:

COUNTY COMMISSION OF JEFFERSON
COUNTY,
WEST VIRGINIA

By: _____

Date: _____

Print Name: _____

Title: _____

Date: _____

Form A-2
(Site Plans)

BOND AGREEMENT - IRREVOCABLE LETTER-OF-CREDIT

KNOW ALL MEN BY THESE PRESENTS, that the undersigned, (Owner/Developer Name), (Mailing/Street Address, City, State, Zip Code), is held and firmly bound to the COUNTY COMMISSION OF JEFFERSON COUNTY, a West Virginia public corporation with control and supervisory functions over the Jefferson County Planning Commission, in the penal sum of

\$ _____ *(Dollar amount in figures)*
_____ *(Dollar amount in words),*

for the completion of erosion and sediment control devices, storm water management measures, site grading & drainage, roadways, water and sewer systems, utility lines, paving, property corners, and all other site improvements and associated appurtenances, for the payment of which, well and truly to be made, it binds itself, its successors in title and assigns.

The condition of the above obligation is such that, whereas, the Jefferson County Planning Commission has approved and consented to the issuance of Improvement Location Permit(s) for property located on (describe location of property, lot no., route no., street name, etc.), which is to consist of (generally describe the project), with associated site improvements and appurtenances thereto, on (# of acres), more or less, and whereas the improvements required to be made on such project, as required by the Jefferson County Improvement Location Permit Ordinance, have not yet been made, which improvements are detailed in Planning Commission File No. (JCPC file no.)

NOW THEREFORE, if the developer of the (Owner/Developer Name), shall well and truly complete the construction and installation of such site improvements by (bond expiration date), and pay all costs attendant thereto, in compliance with the Jefferson County Improvement Location Permit Ordinance and Subdivision Ordinance, then this bond shall be wholly null and void; otherwise, it shall remain in full force and effect.

A. The County Commission of Jefferson County, West Virginia, shall execute and deliver to the Maker hereof complete or partial satisfaction of this bond when the same is requested by the Maker hereof, according to the following provisions:

1. A complete satisfaction and exoneration shall be granted by the County Commission of Jefferson County upon presentation of evidence by the Maker that all terms and conditions of this bond have been satisfied.
2. Requests for partial satisfaction may be made from time to time; provided that such requests are for no less than the minimum amounts established by the Site Improvements Bonding & Bond Surety Policy; partial satisfaction shall be granted upon presentation of evidence by the Maker that work equal in value to the amount of the satisfaction requested, has been completed and that all terms and conditions of the surety sought to be partially satisfied have been satisfied.

However, in the event that a previously approved and released component of the site improvements has failed before the final bond release, the developer shall be responsible for correcting, repairing or replacing the failed site improvement. No further bond reductions or final bond release shall occur until the developer has corrected, repaired, or replaced the failed site improvement to the satisfaction of the Chief County Engineer; or the developer has re-posted the bond surety necessary to cover the costs of the repair or replacement of the failed component, to the satisfaction of the Chief County Engineer.

3. The County Commission of Jefferson County shall not consent to any satisfaction under provisions 1 and 2 above, until being first provided with a written statement from the County Engineer certifying that required improvements have been satisfactorily completed.

Furthermore, the County Commission of Jefferson County shall not

consent to any satisfaction under provisions 1 or 2 above, until the Maker has paid the County Commission of Jefferson County a fee, in accordance with the prevailing fee schedule, for each site inspection (after the erosion & sediment control devices have been inspected and approved) performed by the County Engineer at the request of the Maker.

B. The Bond is secured by an Irrevocable Letter-of-Credit (LOC #), dated the _____ day of (Month, Year), from (Bank Name), (Mailing Address, City, State, Zip), which is on file in the offices of the Jefferson County Department of Planning & Zoning and the Engineering Department. By acceptance of the above irrevocable letter-of-credit as security, the following conditions shall apply:

1. The Irrevocable Letter-of-Credit in the amount of \$_____ shall be attached to this document and made a part hereof; and
2. The irrevocable letter of credit shall be clearly written to provide the beneficiary with direct and immediate access to the loan funds upon submission by the beneficiary of a written and signed draft request; and
3. An irrevocable letter-of-credit shall remain in full force and effect as security for this Bond until such time as the bond is released.

The letter of credit shall be renewed by (Name of Applicant/Developer Name & Subdivision Name), thirty (30) days prior to the expiration of the letter-of-credit, in order to provide uninterrupted security for this bond.

EXPIRATION DATES FOR ALL LETTERS-OF-CREDIT SHALL BE EITHER JANUARY 15TH OR JULY 15TH OF A GIVEN YEAR.

4. Signed draft requests against the irrevocable letter-of-credit will be made by the Jefferson County Commission (beneficiary) for one or both of the two following reasons:
 - A. Failure on the part of (Applicant/Developer Name & Subdivision Name), to complete improvements according to the terms of this bond.
 - B. Failure on the part of (Applicant/Developer Name & Subdivision Name), to renew the irrevocable letter-of-credit thirty (30) days prior to the expiration date.
5. Drafts made against the irrevocable letter-of-credit by the Jefferson County Commission will be used exclusively for the purpose of completion of site improvements herein required.
6. Drafts made against the irrevocable letter-of-credit for reason 4A above, will be used by the Jefferson County Commission to complete or procure the completion of improvements herein above required.
7. Drafts made against the irrevocable letter-of-credit for reason 4B above, will be escrowed with a local bank or savings and loan association by the Jefferson County Commission and will be held, during the life of this bond, for the purpose of guaranteeing improvements herein above required.

Witness the following signatures and seals:

WITNESS:

(Applicant/Developer Name)

(Project Name)

By:_____

Date:_____

Print Name:_____

Title:_____

Date:_____

WITNESS:

COUNTY COMMISSION OF JEFFERSON
COUNTY,
WEST VIRGINIA

By:_____

Date:_____

Print Name:_____

Title:_____

Date:_____

Form A-3
(Subdivisions)

BOND AGREEMENT – CASH-IN-ESCROW

KNOW ALL MEN BY THESE PRESENTS, that the undersigned,
(Applicant/Developer Name & Subdivision Name), (Mailing/Street Address, City,
State, Zip Code), is held and firmly bound to the COUNTY COMMISSION OF
JEFFERSON COUNTY, a West Virginia public corporation with control and
supervisory functions over the Jefferson County Planning Commission, in the penal
sum of

\$ _____ *(Dollar amount in figures)*

_____ *(Dollar amount in words),*

for the completion of erosion and sediment control devices, storm water management
measures, site grading & drainage, roadways, water and sewer systems, utility lines,
paving, property corners, and all other site improvements and associated
appurtenances, for the payment of which, well and truly to be made, it binds itself, it
successors in title and assigns.

The condition of the above obligation is such that, whereas, the Jefferson County
Planning Commission has approved and consented to the recordation in the Office of
the County Clerk of Jefferson County, the Final Plat of the
(Name of Subdivision), (Phase of Subdivision), (Lot Numbers) and residue, a
subdivision of lands of (Name of Property Owner), the property is located (Route No.,
Road Name, Mile Marker, etc.), which is to consist of (No. and type of lots), on (No.
of Acres), more or less, with roadways and appurtenances thereto, for the purpose of
selling such lots and appurtenances thereto to buyers thereof, and whereas, the site
improvements required to be made on such subdivision, as required by the Jefferson
County Subdivision Ordinance and the construction plans have not yet been made,
which improvements are detailed in Planning Commission file no. (JCPC file no.).

NOW THEREFORE, if the developer of the (Applicant/Developer Name &
Subdivision Name), shall well and truly complete the construction and installation of
such site improvements by (bond expiration date), and pay all costs attendant

thereto, in compliance with the Jefferson County Subdivision Ordinance, then this bond shall be wholly null and void; otherwise, it shall remain in full force and effect.

A. The County Commission of Jefferson County, West Virginia, shall execute and deliver to the Maker hereof complete or partial satisfaction of this bond when the same is requested by the Maker hereof, according to the following provisions:

1. A complete satisfaction and exoneration shall be granted by the County Commission of Jefferson County upon presentation of evidence by the Maker that all terms and conditions of this bond have been satisfied.
2. Requests for partial satisfaction may be made from time to time; provided that such requests are for no less than the minimum amounts established by the Site Improvements Bonding & Bond Surety Policy; partial satisfaction shall be granted upon presentation of evidence by the Maker that work equal in value to the amount of the satisfaction requested, has been completed and that all terms and conditions of the surety sought to be partially satisfied have been satisfied.

However, in the event that a previously approved and released component of the site improvements has failed before the final bond release, the developer shall be responsible for correcting, repairing or replacing the failed site improvement. No further bond reductions or final bond release shall occur until the developer has corrected, repaired, or replaced the failed site improvement to the satisfaction of the Chief County Engineer; or the developer has re-posted the bond surety necessary to cover the costs of the repair or replacement of the failed component, to the satisfaction of the Chief County Engineer.

3. The County Commission of Jefferson County shall not consent to any satisfaction under provisions 1 and 2 above, until being first provided with a written statement from the County Engineer certifying that

required improvements have been satisfactorily completed.

Furthermore, the County Commission of Jefferson County shall not consent to any satisfaction under provisions 1 or 2 above, until the Maker has paid the County Commission of Jefferson County a fee, in accordance with the prevailing fee schedule, for each site inspection (after the erosion & sediment control devices have been inspected and approved) performed by the County Engineer at the request of the Maker.

B. The Bond is secured by Escrow Agreement, dated the _____ day of (Month, Year), from (Bank Name), (Mailing Address, City, State, Zip), which is on file in the offices of the Jefferson County Department of Planning & Zoning and the Engineering Department. By acceptance of the above Escrow Agreement as security, the following conditions shall apply:

1. The Escrow Agreement shall be in the amount of \$ _____ shall be attached to this construction bond agreement and made a part hereof; and
2. The Escrow Agreement shall be clearly written to provide the beneficiary with direct and immediate access to the loan funds upon submission by the beneficiary of a written and signed draft request; and
3. An Escrow Agreement shall remain in full force and effect as security for this Bond until such time as the bond is released.
4. Signed draft requests against the Escrow Agreement will be made by the Jefferson County Commission (beneficiary) for failure on the part of (Applicant/Developer Name & Subdivision Name), to complete the improvements according to the terms of this construction bond.
5. Drafts made against the Escrow Agreement by the Jefferson County Commission will be used exclusively for the purpose of completion of

site improvements herein required.

Witness the following signatures and seals:

WITNESS: *(Applicant/Developer Name)*
(Subdivision Name)

_____ By: _____

Date: _____ Print Name: _____

Title: _____

Date: _____

WITNESS: COUNTY COMMISSION OF JEFFERSON
COUNTY,
WEST VIRGINIA

_____ By: _____

Date: _____ Print Name: _____

Title: _____

Date: _____

Form A-4
(Site Plans)

BOND AGREEMENT – CASH-IN-ESCROW

KNOW ALL MEN BY THESE PRESENTS, that the undersigned, (Owner/Developer Name), (Mailing/Street Address, City, State, Zip Code), is held and firmly bound to the COUNTY COMMISSION OF JEFFERSON COUNTY, a West Virginia public corporation with control and supervisory functions over the Jefferson County Planning Commission, in the penal sum of

\$ _____ *(Dollar amount in figures)*
_____ *(Dollar amount in words),*

for the completion of erosion and sediment control devices, storm water management measures, site grading & drainage, roadways, water and sewer systems, utility lines, paving, property corners, and all other site improvements and associated appurtenances, for the payment of which, well and truly to be made, it binds itself, its successors in title and assigns.

The condition of the above obligation is such that, whereas, the Jefferson County Planning Commission has approved and consented to the issuance of Improvement Location Permit(s) for property located on (describe location of property, lot no., route no., street name, etc.), which is to consist of (generally describe the project), with associated site improvements and appurtenances thereto, on (# of acres), more or less, and whereas the improvements required to be made on such project, as required by the Jefferson County Improvement Location Permit Ordinance, have not yet been made, which improvements are detailed in Planning Commission File No. (JCPC file no.)

NOW THEREFORE, if the developer of the (Owner/Developer Name), shall well and truly complete the construction and installation of such site improvements by (bond expiration date), and pay all costs attendant thereto, in compliance with the Jefferson County Improvement Location Permit Ordinance and Subdivision Ordinance, then this bond shall be wholly null and void; otherwise, it shall remain in full force and effect.

A. The County Commission of Jefferson County, West Virginia, shall execute and deliver to the Maker hereof complete or partial satisfaction of this bond when the same is requested by the Maker hereof, according to the following provisions:

1. A complete satisfaction and exoneration shall be granted by the County Commission of Jefferson County upon presentation of evidence by the Maker that all terms and conditions of this bond have been satisfied.
2. Requests for partial satisfaction may be made from time to time; provided that such requests are for no less than the minimum amounts established by the Construction Bonding & Bond Surety Policy; partial satisfaction shall be granted upon presentation of evidence by the Maker that work equal in value to the amount of the satisfaction requested, has been completed and that all terms and conditions of the surety sought to be partially satisfied have been satisfied.

However, in the event that a previously approved and released component of the site improvements has failed before the final bond release, the developer shall be responsible for correcting, repairing or replacing the failed site improvement. No further bond reductions or final bond release shall occur until the developer has corrected, repaired, or replaced the failed site improvement to the satisfaction of the Chief County Engineer; or the developer has re-posted the bond surety necessary to cover the costs of the repair or replacement of the failed component, to the satisfaction of the Chief County Engineer.

3. The County Commission of Jefferson County shall not consent to any satisfaction under provisions 1 and 2 above, until being first provided with a written statement from the County Engineer certifying that required improvements have been satisfactorily completed.

Furthermore, the County Commission of Jefferson County shall not

consent to any satisfaction under provisions 1 or 2 above, until the Maker has paid the County Commission of Jefferson County a fee, in accordance with the prevailing fee schedule, for each site inspection (after the erosion & sediment control devices have been inspected and approved) performed by the County Engineer at the request of the Maker.

B. The construction bond is secured by an Escrow Agreement, dated the _____ day of *(Month, Year)*, from *(Bank Name)*, *(Mailing Address, City, State, Zip)*, which is on file in the offices of the Jefferson County Department of Planning & Zoning and the Engineering Department. By acceptance of the above escrow agreement as security, the following conditions shall apply:

1. The Escrow Agreement shall be in the amount of \$_____ and shall be attached to this construction bond agreement and made a part hereof; and
2. The Escrow Agreement shall be clearly written to provide the beneficiary with direct and immediate access to the funds upon submission by the beneficiary of a written and signed draft request; and
3. An Escrow Agreement shall remain in full force and effect as security for this Bond until such time as the bond is released.
4. Signed draft requests against the Escrow Agreement will be made by the Jefferson County Commission (beneficiary) for failure on the part of *(Applicant/Developer Name & Site Plan Name)*, to complete improvements according to the terms of this construction bond.
5. Drafts made against the Escrow Agreement by the Jefferson County Commission will be used exclusively for the purpose of completion of site improvements herein required.

Witness the following signatures and seals:

WITNESS:

(Applicant/Developer Name)

(Project Name)

By:_____

Date:_____

Print Name:_____

Title:_____

Date:_____

WITNESS:

COUNTY COMMISSION OF JEFFERSON

COUNTY,

WEST VIRGINIA

By:_____

Date:_____

Print Name:_____

Title:_____

Date:_____

Appendix B

Bond Surety Forms

Form No.	Surety Type	Project Type
B-1	Irrevocable Letter of Credit	Subdivision
B-2	Irrevocable Letter of Credit	Site Plan
B-3	Cash-in-Escrow	Subdivision
B-4	Cash-in-Escrow	Site Plan
B-5	Surety Bond	Subdivision & Site Plan

Form B-1
(Irrevocable Letter-of-Credit - Subdivision)

Bank Name
Address
Telephone Number

Date

County Commission of Jefferson County
110 East Washington Street
P.O. Box 250
Charles Town, WV 25414

Re: Irrevocable Letter-of-Credit # _____ Amount \$ _____

Dear Jefferson County Commission:

By this letter, (Bank Name) hereby establishes an Irrevocable Letter-of-Credit, No. _____, and authorizes you to draw on us for the account of (Project Name/Borrower) up to an aggregate amount of \$ _____, subject to the terms and conditions stated herein.

Draws under this Letter-of-Credit are available by your draft presented to our Bank at its (Bank's Location), on or before its expiration on (January 15th or July 15th of a given year), and accompanied by the following documents:

1. A certification executed and signed by a duly authorized member of the County Commission of Jefferson County, West Virginia, that (Project Name/Borrower) has failed to perform its obligation under, and according to, the terms of that certain construction bond agreement, attached hereto and made a part hereof; and
2. The original Letter-of-Credit.

We hereby agree that drafts under and in compliance with the terms of this Letter-of-Credit will be duly honored if presented as aforesaid on or before its expiration on (January 15th or July 15th of a given year).

Except as otherwise stated herein, this credit is subject to the Uniform Commercial Code and shall be construed under the laws of the State of West Virginia. Any draft upon this Letter-of-Credit shall be marked "Drawn under (Bank Name) Letter-of-Credit" for (Project Name/Borrower) dated (Date of Letter-of-Credit).

Very Truly Yours,
(Bank Name)
(Signature of Bank Officer)
(Type Bank Officer's Name & Title)
(Date)

Form B-2
(Irrevocable Letter-of-Credit – Site Plan)

Bank Name
Address
Telephone Number

Date

County Commission of Jefferson County
110 East Washington Street
P.O. Box 250
Charles Town, WV 25414

Re: Irrevocable Letter-of-Credit # _____ Amount \$ _____

Dear Jefferson County Commission:

By this letter, (Bank Name) hereby establishes an Irrevocable Letter-of-Credit, No. _____, and authorizes you to draw on us for the account of (Project Name/Borrower) up to an aggregate amount of \$ _____, subject to the terms and conditions stated herein.

Draws under this Letter-of-Credit are available by your draft presented to our Bank at its (Bank's Location), on or before its expiration on (January 15th or July 15th of a given year), and accompanied by the following documents:

1. A certification executed and signed by a duly authorized member of the County Commission of Jefferson County, West Virginia, that (Project Name/Borrower) has failed to perform its obligation under, and according to, the terms of that certain construction bond agreement, attached hereto and made a part hereof; and
2. The original Letter-of-Credit.

We hereby agree that drafts under and in compliance with the terms of this Letter-of-Credit will be duly honored if presented as aforesaid on or before its expiration on (January 15th or July 15th of a given year).

Except as otherwise stated herein, this credit is subject to the Uniform Commercial Code and shall be construed under the laws of the State of West Virginia. Any draft upon this Letter-of-Credit shall be marked "Drawn under (Bank Name) Letter-of-Credit" for (Project Name/Borrower) dated (Date of Letter-of-Credit).

Very Truly Yours,
(Bank Name)
(Signature of Bank Officer)
(Type Bank Officer's Name & Title)
(Date)

Form B-3
(Cash-in-Escrow – Subdivision)

ESCROW AGREEMENT

THIS AGREEMENT dated this ____ day of (Month, Year), by and between (Owner/Developer Name), having their address at (Mailing/Street Address), (City), (State), (Zip Code), party of the first part, and (Bank Name), (Mailing/Street Address), (City), (State), (Zip Code), as Escrow Agent for the County Commission of Jefferson County, West Virginia, party of the second part.

WITNESSETH that the party of the first part has this day deposited with the party of the second part the sum of (Dollar Amount in Words), (Dollar Amount in Figures), as security for its undertaking to complete construction of the required erosion and sediment control devices, storm water management measures, site grading and drainage, paving, roadways, water and sewer systems, utility lines, paving, property corners, and all other site improvements and appurtenances to serve the (Subdivision Name), (Phase), as more particularly described in Planning Commission File (JCPC file no). This construction is to be subject to the supervision and approval of the County Commission of Jefferson County acting by and through the Jefferson County Engineering Department. Construction must be completed by (required completion date).

The parties hereto agree that the escrow agent shall hold the respective funds as security for the performance of said undertakings by the party of the first part, and that respective funds may not be released to the party of the first part without the approval in writing of the County Commission of Jefferson County.

In case of default, the escrow agent shall be obliged to turn over to the County Commission of Jefferson County the escrowed funds or any part thereof, for the completion of the required installations and improvements.

ATTEST: (Owner/Developer Name)

BY: _____
DATE: _____ PRINT NAME: _____
TITLE: _____
DATE: _____

ATTEST: (Bank Name)

BY: _____
DATE: _____ PRINT NAME: _____
AFFIX BANK SEAL TITLE: _____
DATE: _____

Form B-4
(Cash-in-Escrow – Site Plan)

ESCROW AGREEMENT

THIS AGREEMENT dated this _____ day of (Month, Year), by and between (Owner/Developer Name), having their address at (Mailing/Street Address), (City), (State), (Zip Code), party of the first part, and (Bank Name), (Mailing/Street Address), (City), (State), (Zip Code), as Escrow Agent for the County Commission of Jefferson County, West Virginia, party of the second part.

WITNESSETH that the party of the first part has this day deposited with the party of the second part the sum of (Dollar Amount in Words), (Dollar Amount in Figures), as security for its undertaking to complete construction of the required erosion and sediment control devices, storm water management measures, site grading & drainage, roadways, water and sewer systems, utility lines, paving, property corners, and all other site improvements and associated appurtenances to serve the (Site Plan Name), as more particularly described in Planning Commission File (JCPC file no). This construction is to be subject to the supervision and approval of the County Commission of Jefferson County acting by and through the Jefferson County Engineering Department. Construction must be completed by (required completion date).

The parties hereto agree that the escrow agent shall hold the respective funds as security for the performance of said undertakings by the party of the first part, and that respective funds may not be released to the party of the first part without the approval in writing of the County Commission of Jefferson County.

In case of default, the escrow agent shall be obliged to turn over to the County Commission of Jefferson County the escrowed funds or any part thereof, for the completion of the required installations and improvements.

ATTEST: _____ *(Owner/Developer Name)*
BY: _____

DATE: _____ PRINT NAME: _____
TITLE: _____
DATE: _____

ATTEST: _____ *(Bank Name)*
BY: _____

DATE: _____ PRINT NAME: _____
AFFIX BANK SEAL TITLE: _____
DATE: _____

Jefferson County, West Virginia

Subdivision & Site Plan

PERFORMANCE BOND

INSTRUCTIONS

1. The following forms shall be used when a performance/surety bond is used. There shall be no deviation from this form without written approval of Jefferson County Commission or the County Administrator.
2. The full legal name, business address, and telephone number of both the Principal(s) and Surety(ies) shall be inserted in the spaces designated "Principal" and "Surety" on the face of the form. The Bond shall be signed by the person authorized to act on behalf of the Principal and the Surety. Where such person is signing in a representative capacity (e.g., an attorney-in-fact), but is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved, evidence of his authority shall be furnished. For a power-of-attorney from a surety company to execute bonds, a certified copy of such power-of-attorney shall be submitted.
3. Surety, Fidelity, and Insurance Companies executing the Bond must be licensed to transact business in West Virginia by the West Virginia Insurance Commissioner. The surety provider shall provide to the County Commission of Jefferson County, the Obligee, a "Certificate of Good Standing" from the West Virginia Offices of the Insurance Commissioner. If the Surety Company was not organized under the laws of West Virginia, the bond must be countersigned by a resident agent licensed in West Virginia. The Company must have an A.M. Best rating of "A-", or better, with a Financial Size Category (FSC) of "VI" , or higher.
4. The name of each person signing this Bond must be typed or legibly printed in the space provided.
5. The "DATE BOND EXECUTED", as shown on the face of the Bond, must be

the same as, or later than, the Bond Agreement that the Surety Bond secures.

6. The performance bond shall be submitted to:

Jefferson County Engineering Department
P.O. Box 716
116 East Washington Street
Charles Town, WV 25414

Attention: Bonding Administrator

Phone: 304-728-3257

(Remainder of Page Intentionally Left Blank)

Form B-5

Jefferson County, West Virginia

Performance Bond

(Land Development Infrastructure & Site Improvements)

BOND NO.	DATE BOND EXECUTED:													
PRINCIPAL(S)/CO-PRINCIPAL(S): (Legal Name(s), Status, Business Address(es) and Phone Numbers) (Hereinafter "Principal" whether one or more than one)	TYPE OF ORGANIZATION: (check one) <input type="checkbox"/> Individual <input type="checkbox"/> Partnership or Joint Venture <input type="checkbox"/> Limited Liability Company <input type="checkbox"/> Corporation <input type="checkbox"/> Other (specify) _____ STATE OF INCORPORATION OR ORGANIZATION:													
SURETY(IES): (Name(s), Business Address(es) and Phone Numbers) A.M. Best No. _____ A.M. Best Rating _____ A.M. Best F.S.C. _____ (Herein after "Surety" whether one or more than one)	SUM OF BOND: <table border="1" style="margin-left: auto; margin-right: auto; border-collapse: collapse; text-align: center;"> <tr> <th colspan="3">Bond Amount in Dollar Figures</th> </tr> <tr> <th style="width: 33%;">Million(s)</th> <th style="width: 33%;">Thousand(s)</th> <th style="width: 33%;">Hundred(s)</th> </tr> <tr> <td>\$</td> <td></td> <td></td> </tr> </table> <table border="1" style="margin-left: auto; margin-right: auto; border-collapse: collapse; text-align: center;"> <tr> <th>Bond Amount in Words</th> </tr> <tr> <td> </td> </tr> <tr> <td> </td> </tr> <tr> <td> </td> </tr> </table> Project Approval Date: ____/____/____ Project Name: _____ JCPC Project File No. _____	Bond Amount in Dollar Figures			Million(s)	Thousand(s)	Hundred(s)	\$			Bond Amount in Words			
Bond Amount in Dollar Figures														
Million(s)	Thousand(s)	Hundred(s)												
\$														
Bond Amount in Words														

KNOW ALL MEN BY THESE PRESENTS, that, we, the Principal and Surety hereto recite and declare that:

1. We are held and firmly bound to the Obligee, the County Commission of Jefferson County, West Virginia (herein after called "County"), a political subdivision of the State of West Virginia, in the sum written above in lawful money of the United States of America, to be paid to the County, its successors or assigns, for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by this Bond.
2. The condition of this Bond is that if the Principal shall in every respect discharge its obligations under the project identified above and satisfactorily complete the required site improvements and appurtenances, as required by law, the approved plans (JCPC File No.) and/or permits, by (bond expiration date), then this Bond shall be void; otherwise, this Bond shall remain in full force until discharged in accordance with its terms, as determined by the County. This Bond shall only be terminated upon written release by the County Commission of Jefferson County, stating that the Principal/Developer has well and truly performed and fulfilled the obligations required under the approved subdivision or site plan and this Bond.
3. If Principal fails to complete its obligations, the County shall notify the Principal and Surety that they are in default. If such obligations are not then completed by the Principal and Surety within fifteen (15) days after notification by the County, the Surety shall pay the full penal sum amount of the Bond to the County within thirty (30) days of the initial notification referenced above. Payment by the Surety shall not be conditional on suit by the County. The County may extend the time period for completion of the Principal's and Surety's obligations; any time extension granted shall be in writing.
4. Surety expressly Waives any right to receive notice of, review, or approve any revisions to the approved project plans, and no such revision shall in any way affect the obligation of the Surety under this Bond.
5. In the event that any suit, action, or proceeding is brought by the County in order to enforce the provisions of this Bond, it is expressly agreed and understood that, regardless of when the breach of the underlying project obligations occurs, or the breach of this Bond occurs, the measure of damages recoverable shall be computed as the costs of completion or correction, or both, of the work required to be completed under the project, (1) at the time the work is actually completed and/or corrected to local and state approval and acceptance, or (2) at the time of final judgment of a court of competent jurisdiction; it is further expressly agreed and understood that the measure of damages shall include expenses attributable, but not limited to, administrative costs, litigation costs, attorney's fees, maintenance costs, deterioration, inflation, and any cost increases arising from delay occasioned by litigation, action, or proceedings necessary to enforce the provision of this

Bond.

6. Nothing in the Bond shall be construed as creating an obligation upon the County to pay for the completion or correction of the work guaranteed under the provisions of this Bond.
7. In the event that a previously approved and released component of the site improvements has failed before the final bond release, the developer shall be responsible for correcting, repairing or replacing the failed site improvement. If the developer fails to make the required corrections, repairs or replacement of the failed work, then this bond surety may be used for this purpose. No further bond reductions or final bond release shall occur until the developer has corrected, repaired, or replaced the failed site improvement to the satisfaction of the Chief County Engineer; or the developer has posted the additional bond surety - if an inadequate bond surety amount remains under this bond to cover the costs of the repair or replacement of the failed component - in an amount to the satisfaction of the Chief County Engineer.
8. By signatures, hereto, the Principal and the Surety do hereby expressly Waive any objection that they, or either of them, might interpose in the authority of the County to require each and every provision of the foregoing Bond.

(Remainder of This Page Intentionally Left Blank. Signature Page Follows)

BOND NO. _____

IN WITNESS WHEREOF, the parties hereto have caused this BOND to be executed under the Seal as of the day and year on the date set forth above.

PRINCIPAL / CO-PRINCIPAL

SIGNATURE: _____(SEAL)

NAME: _____

(Typed)

TITLE: _____

(Typed)

SIGNATURE: _____(SEAL)

NAME: _____

(Typed)

TITLE: _____

(Typed)

(Notary Certification Shall Be On The Same Page As The Signatures Being Notarized)

STATE OF _____, COUNTY OF _____, to wit:

I _____, a Notary Public in and for the State and County aforesaid, do hereby certify that _____

and _____, as _____

and _____, respectively of the _____,

whose names are signed to the foregoing, this day personally appeared before me in my State and County aforesaid and acknowledged their signatures above (and the Corporate Seal as the genuine Seal of the said corporation).

Given under my hand this _____ day of _____, 20_____.

My Commission Expires: _____

BOND NO. _____

IN WITNESS WHEREOF, the parties hereto have caused this BOND to be executed under the seal as of the day and year on the date set forth above.

CORPORATE SURETY

NAME: _____
(Typed)

ADDRESS: _____
(Mailing Address)

TELEPHONE NO.: _____
(City) (State) (Zip Code)
(Typed)

STATE OF INCORPORATION OR ORGANIZATION: _____

LIABILITY LIMIT: _____

Attorney(s)-In-Fact

SIGNATURES: 1. _____ (SEAL) 2. _____ (SEAL)

NAME: _____
(Typed) (Typed)

TITLE: _____
(Typed) (Typed)

(Notary Certification Shall Be On The Same Page As The Signatures Being Notarized)

STATE OF _____, COUNTY OF _____, to wit:

I _____, a Notary Public in and for the State and County aforesaid, do hereby certify that _____ and _____, as _____ and _____, respectively of the _____, whose names are signed to the foregoing, this day personally appeared before me in my State and County aforesaid and acknowledged their signatures above (and the Corporate Seal as the genuine Seal of the said corporation).

Given under my hand this _____ day of _____, 20_____.

My Commission Expires: _____

Appendix C

Tolling of Bonding Agreement

**AGREEMENT REGARDING BONDING OBLIGATIONS AND
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

(Subdivision/Project Name)

THIS AGREEMENT REGARDING BONDING OBLIGATIONS AND DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (this "Declaration") is made and entered into as of the ____ day of _____, 20__, by [*INSERT NAME OF PROPERTY OWNER*] ("Declarant"), and the **COUNTY COMMISSION OF JEFFERSON COUNTY, WEST VIRGINIA** (the "County Commission").

WHEREAS, Declarant is the owner of a certain tract of land located in Jefferson County, West Virginia, legally described in **Exhibit A** attached hereto (the "Land"); and

WHEREAS, the Land has been legally subdivided (the "Subdivision") into _____ (____) single family lots (the "Lots") pursuant to and in accordance with the subdivision ordinance of Jefferson County, West Virginia in effect on _____ (the "Subdivision Ordinance"), and as shown on that certain [*INSERT NAME OF SUBDIVISION PLAT*] recorded in the Office of the Clerk of the County Commission of Jefferson County, West Virginia, in [*INSERT RECORDING INFO*] (the "Final Plat"); and

WHEREAS, Declarant posted a bond with the County Commission, in the form of [*a letter-of-credit/cash-in-escrow/surety bond*], in the amount of \$_____ (the "Existing Infrastructure Bond") to secure the completion of all infrastructure improvements to be made in connection with the development of the Subdivision (the "Infrastructure Improvements") as itemized on that certain Construction Bond – Estimate, dated _____ (the "Bond Estimate"), and approved by the Jefferson County Department of Planning, Zoning & Engineering (the "Department") on _____; and

WHEREAS, due to [*INSERT REASONS FOR DELAY IN DEVELOPMENT*], the Declarant has decided to delay construction of the Infrastructure Improvements and, accordingly, has requested that the County Commission modify the Declarant's original bonding obligations with respect to the Subdivision (the "Original Bonding Obligations") until such time as the Declarant commences construction of the Infrastructure Improvements; and

WHEREAS, the County Commission has determined that it is in the best interests of Jefferson County to modify the Original Bonding Obligations until such time as the Declarant commences construction of the Infrastructure Improvements subject to the condition that Declarant execute and record this Declaration which shall run with the Land and be enforceable by the County Commission.

NOW, THEREFORE, in consideration of the premises and the covenants and agreements hereinafter set forth, Declarant declares as follows:

1. **Incorporation of Recitals; Defined Terms.** The foregoing recitals are hereby incorporated into this Declaration by this reference as if fully set forth herein. Capitalized terms used herein and not defined or cross-referenced herein shall have the meanings ascribed to such terms in the Subdivision Ordinance.

2. **Modification of Original Bonding Obligations.**

- (a) The County Commission's agreement to modify the Original Bonding Obligations shall be subject to the satisfaction of the following condition precedent (the "Modification Conditions"):
 - (i) The Declarant submits to the Department a surety in the amount of \$10,000 as a Site Stability Bond.

- (b) Upon satisfaction of the Modification Condition, the County Commission shall return the Existing Infrastructure Bond to the Declarant and the Original Bonding Obligations shall be deemed modified as follows:
 - (i) Unless and until Declarant commences the construction of any Infrastructure Improvements, the Declarant's bonding obligations with respect to Subdivision shall be limited to posting a \$10,000 surety as a Site Stability Bond with the County Commission and complying with the provisions of the Bonding Policy with respect to the Site Stability Bond; provided, however, that no infrastructure improvements shall be required to be made to the Land as a condition of keeping the Site Stability Bond in place.

 - (ii) No Infrastructure Improvements, including without limitation any Site Stability Work, shall occur or be permitted on the Land (other than continuance of an agricultural use existing on the land prior to this agreement, and/or mowing and other routine maintenance required to preserve the appearance of the Land and the health and safety of the community) unless and until the Declarant submits to the Department, and the Department approves, a new cost estimate for all Infrastructure Improvements, and the Declarant posts an approved surety with the County Commission in the amount of 115% of said estimate in accordance with the Bonding Policy (the "New Infrastructure Bond"). Upon posting of the New Infrastructure Bond, and provided Declarant is not then in default under this Declaration, the County Commission shall return the Site Stability Bond to the Declarant.

 - (iii) Once the New Infrastructure Bond has been posted with the County Commission, the County Commission shall hold the New Infrastructure Bond in accordance with the Bonding Policy and the Declarant shall thereafter comply with all provisions of the Bonding Policy. The County Commission shall be under no obligation to grant further modifications to the Declarant's

bonding obligations with respect to the Subdivision. The provisions of this Section 2(b)(iii) shall survive termination of this Declaration.

3. **Covenant Not to Commence Construction.** In consideration of the County Commission’s agreement to modify the Original Bonding Obligations, Declarant covenants and agrees that prior to satisfying the conditions set forth in Section 2(b)(ii) above, Declarant shall not commence, or cause any third party to commence, the construction of any Infrastructure Improvements, including without limitation any Site Stability Work.
4. **Covenant Prohibiting Construction of Homes or Sale or Transfer of Lots.** In consideration of the County Commission’s agreement to modify the Original Bonding Obligations, Declarant covenants and agrees that prior to satisfying the conditions set forth in Section 2(b)(ii) above, (a) Declarant shall not commence, or cause any third party to commence, the construction of any single family residence or other structure on any portion of the Land, and (b) Declarant shall not sell or transfer any Lot. Notwithstanding the foregoing, Declarant may transfer the entire Subdivision to a single transferee subject to the terms and provisions of this Declaration; provided, that such transferee expressly assumes the obligations of Declarant under this Declaration by a written agreement satisfactory to the County Commission.
5. **Covenant to Maintain “Good Standing” with the State of West Virginia.** In consideration of the County Commission’s agreement to modify the Original Bonding Obligations, Declarant covenants and agrees that prior to satisfying the conditions set forth in Section 2(b)(ii) above, Declarant shall continually maintain “good standing” with the State of West Virginia with regard to this parcel/property. This shall include:
 - (a) Maintaining a current and valid organization/business certificate, license, or any other document required by the West Virginia Secretary of State to conduct business in the the State of West Virginia. The Declarant shall be in default of this agreement if at any time during the term of this agreement the organization/business is dissolved or revoked by the West Virginia Secretary of State and its good standing is allowed to lapse; and
 - (b) Not be delinquent on the real estate property taxes by more than 30 calendar days from the first payment due date set by the Jefferson County Assessor. The Declarant shall be in default of this agreement if at any time during the term of this agreement, the real estate property taxes on this property are delinquent more than 30 calendar days.

The Declarant shall provide to the County Commission, on a periodic basis as determined by the County Commission and/or their staff, documentation evidencing that the Declarant is continually maintaining good standing with the State of West Virginia, to the satisfaction of the County Commission.

6. **Default.**

- (a) The failure of Declarant to observe or perform any of the covenants, conditions or obligations of this Declaration shall constitute a default under this Declaration. If Declarant fails to cure any default within thirty (30) days after the issuance of a notice by the County Commission, specifying the nature of the default; the County Commission may exercise any rights and remedies it may have hereunder or applicable law. Notwithstanding the foregoing, Declarant shall not be entitled to any notice of a violation of the covenant not to sell or transfer any Lot under Section 4(b) of this Declaration.

- (b) The County Commission shall have the right to bring any proceedings at law or in equity against the Declarant for violating or attempting to violate or defaulting upon any of the provisions contained in this Declaration, and to recover actual damages for any such violation or default. Such proceeding shall include the right to restrain by injunction any violation or threatened violation by the Declarant or any other person of any of the terms, covenants or conditions of this Declaration, or to obtain a decree to compel performance of any such terms, covenants or conditions. All of the remedies permitted or available to the County Commission under this Declaration or at law or in equity shall be cumulative and not alternative, and the invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy. In any action brought by the County Commission pursuant to these provisions, the County Commission will be entitled to costs (including but not limited to its reasonable attorneys' fees). In addition, the County Commission shall have the right to draw on the Site Stability Bond and apply the proceeds thereof in accordance with the Bonding Policy.

- (c) The maximum length of time for tolling the bond shall be four (4) years. At the time of executing this agreement, the Declarant shall execute a merger deed that merges the lots back into the parent tract. The merger deed shall be held by the Bonding Administrator for the Jefferson County Commission. If the Declarant fails to repost the New Infrastructure Bond and the Bond Surety within four (4) years of the date of this agreement, the County Commission shall have the right to record the merger deed and revoke all project approvals; and the \$10,000 surety for the Site Stability Bond shall be forfeited to the County Commission. The merger deed may not be recorded by the County Commission if the Declarant reposts the Construction Bond and Bond Surety prior to expiration of the four (4) year tolling period; in such case, the merger deed shall be returned by the County

Commission to the Declarant. In the event of recordation of the merger deed, the parent tract and residue parcel shall retain all future development rights under the land development ordinances in effect at the time the future application for land development is presented to the County.

7. **Waiver.** No waiver by the County Commission of any default under this Declaration shall be effective or binding unless made in writing by the County Commission and no such waiver shall be implied from any failure of the County Commission to take any action with respect to any default or violation.
8. **Binding Effect.** The terms of this Declaration shall constitute covenants running with the land and shall bind the Land described herein and inure to the benefit of and be binding upon the Declarant and all parties having any right, title or interest in the Land (or any part thereof), their heirs, successors, successors-in-title and assigns. This Declaration is not intended to supersede, modify, amend or otherwise change the provisions of any prior instrument affecting the land burdened hereby.
9. **Amendment of Declaration.** This Declaration may not be amended except by a written agreement executed by the Declarant and the County Commission and recorded in the Office of the County Clerk of Jefferson County, West Virginia.
10. **Declaration Shall Continue Notwithstanding Breach.** It is expressly agreed that no breach of this Declaration shall entitle the Declarant to cancel, rescind, or otherwise terminate this Declaration
11. **Term of this Declaration.** This Declaration shall be effective as of the date first above written and shall continue in full force and effect until the Declarant satisfies the conditions set forth in Section 2(b)(ii) above. Upon the termination of this Declaration, all rights and privileges derived from and all duties and obligations created and imposed by the provisions of this Declaration, except for the provisions of Section 2(b)(iii) above, shall terminate and have no further force or effect.
12. **Recordation.** This agreement shall be recorded in the Office of the Clerk of the Jefferson County Commission in both the name of the developer and the project name. It shall be the Declarant's responsibility to record the agreement and provide the Bonding Administrator with confirmation of such recordation in the form of the deed book and page number reference.

(Subdivision Name)

Jefferson County Planning Commission File No. _____

(Applicant/Developer Name)

By: _____ Date: ____/____/____

Print Name: _____ Title: _____

(Notary Certification Shall Be On The Same Page As The Signatures Being Notarized)

STATE OF _____, COUNTY OF _____, to wit:

I _____, a Notary Public in and for the State and County aforesaid, do hereby certify that _____ and _____, as _____ and _____, respectively of the _____, whose names are signed to the foregoing, this day personally appeared before me in my State and County aforesaid and acknowledged their signatures above (and the Corporate Seal as the genuine Seal of the said corporation).

Given under my hand this ____ day of _____, 20____.

My Commission Expires: _____

COUNTY COMMISSION OF JEFFERSON COUNTY, WEST VIRGINIA

By: _____ Date: ____/____/____

Print Name: _____, President

(Notary Certification Shall Be On The Same Page As The Signatures Being Notarized)

STATE OF _____, COUNTY OF _____, to wit:

I _____, a Notary Public in and for the State and County aforesaid, do hereby certify that _____ and _____, as _____ and _____, respectively of the _____, whose names are signed to the foregoing, this day personally appeared before me in my State and County aforesaid and acknowledged their signatures above (and the Corporate Seal as the genuine Seal of the said corporation).

Given under my hand this ____ day of _____, 20____.

My Commission Expires: _____

ATTEST:

Jennifer S. Maghan
Clerk, County Commission of Jefferson County, WV