

**AGREEMENT TO DEFER POSTING OF PERFORMANCE GUARANTEE**

THIS AGREEMENT is made this 21<sup>st</sup> day of July, 2010, between THE DEPOT INVESTMENTS, LLC and WALKERA DEVELOPMENT, L.C. ("BALLARD"), whose address is 7654 South 5400 West, Payson, Utah 84651, and PAYSON CITY CORPORATION (PAYSON), whose address is 439 West Utah Avenue, Payson, Utah 84651.

WHEREAS, PAYSON regulates the development of real property within the boundaries of Payson City; and

WHEREAS, the development ordinances of Payson City require applicants to post a performance guarantee prior to the recordation of the Final Plat to ensure the proper installation of development infrastructure of a development; and

WHEREAS, the City Council of Payson City amended a portion of Section 19.3.5 of Title 19, Zoning Ordinance and Section 20.30.3 of Title 20, Subdivision Ordinance regarding the timing of posting of a guarantee assurance; and

WHEREAS, the amended ordinance allows the City Council to delay the posting of a guarantee assurance pursuant to certain criteria.

NOW THEREFORE, BALLARD and PAYSON agree to the following terms and conditions:

1. PAYSON will allow the recording of the Final Plat for the Depot Subdivision located on parcel numbers 30:025:0011 and 30:025:0235 prior to posting an infrastructure performance guarantee bond pursuant to Section 19.3.5 and Section 20.30.3 of the Payson City Ordinances. The legal description of the subdivision is described as follows:

A PARCEL OF LAND LYING WITHIN THE NORTH 1/4  
CORNER OF SECTION 8, TOWNSHIP 9 SOUTH,  
RANGE 2 EAST, SALT LAKE BASE & MERIDIAN,  
UTAH COUNTY, UTAH, MORE PARTICULARLY  
DESCRIBED AS FOLLOWS:

COMMENCING AT A UTAH COUNTY BRASS CAP



MONUMENT MARKING THE NORTH 1/4 CORNER OF SAID SECTION 8; THENCE S89°37'28"E 470.54 FEET TO THE POINT OF BEGINNING;

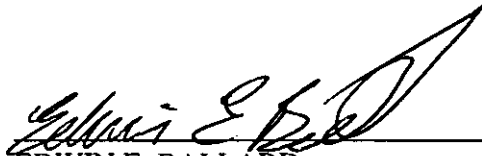
THENCE EAST 328.07 FEET; THENCE S01°00'00"W 9.34 FEET; THENCE S89°26'37"E 333.60 FEET; THENCE S00°44'13"W 671.00 FEET; THENCE S00°27'52"E 214.59 FEET; THENCE S37°51'39"W 1117.20 FEET; THENCE N01°00'00"E 1461.15 FEET; THENCE N00°14'00"E 273.41 FEET; THENCE ALONG THE ARC OF A 25.00 FOOT RADIUS CURVE TO THE RIGHT A DISTANCE OF 14.03 FEET, (THE CHORD BEARS N16°18'57"E 13.85 FEET); THENCE N01°00'00"E 32.51 FEET TO THE POINT OF BEGINNING. CONTAINING 20.40 ACRES.

2. PAYSON and BALLARD agree that the subdivision is located in the S-1, Special Highway Service Zone and the R-MF, Residential Multi-Family Zone and is located along an existing public street containing required infrastructure.
3. BALLARD, his successors and/or assigns, agrees to post a performance guarantee for the Depot Subdivision or any phase of the Depot Subdivision in accordance with the Payson City Ordinances prior to commencement of any construction. BALLARD also understands and agrees that no building permits will be issued for new construction until the required improvements are installed, inspected and proper approvals given by Payson City.
4. Complete Agreement. This Agreement contains the complete Agreement concerning the arrangement between the parties with respect to the posting of an infrastructure performance guarantee, and shall supersede all other agreements between the parties, written or oral. This Agreement does not waive other conditions of approval for the subdivision.
5. Modification of Agreement. Any modification of this Agreement or additional obligations assumed by either party in connection with this Agreement shall be binding only if evidenced in writing and signed by each party.
6. Partial Invalidity. The invalidity of any portion of this Agreement will not and shall not be deemed to affect the validity of any other provision of this Agreement. In the event that any provision of this Agreement is held to be invalid, the parties agree that the remaining provisions shall remain in full force and effect.
7. Choice of Law. This Agreement, performance hereunder and enforcement of

the terms contained herein shall be construed in accordance with and pursuant to the laws of the State of Utah.

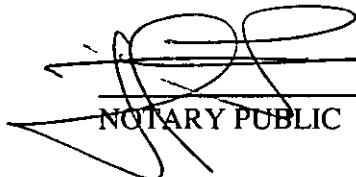
- 8. Waiver. The failure of either party to this Agreement to insist upon the performance of any of the terms and conditions contained herein, or the waiver of any breach of any of the term and conditions contained herein, shall not be construed as thereafter waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver has occurred.
- 9. Attorney's Fees. In the event that any action is filed to enforce the terms of this Agreement, the unsuccessful party in the action shall pay to the successful party, in addition to all the sums that either party may be called on to pay, a reasonable sum for the successful party's attorney's fees and costs.
- 10. Indemnity. BALLARD agrees to indemnify, protect, and save and hold harmless PAYSON, its employees and agents, from and against all losses, damages, injuries, claims, demands, and expenses, including attorneys' fees and court costs of whatsoever nature, arising out of the non posting of a performance guarantee prior to recordation of the final plat.
- 11. Assignment. This Agreement shall be binding upon any and all successors and assigns of either all or any portion of the Property. This Agreement may not be assigned to someone other than a purchaser of the Property without written authorization by Payson City.

DATED this 21<sup>st</sup> day of July, 2010.

  
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 EDWIN E. BALLARD,  
 Manager of The Depot Investments, LLC &  
 Walkera Development, L.C.

STATE OF UTAH )  
   : ss  
 COUNTY OF UTAH)

On the 21st day of July, 2010, personally appeared before me, a Notary Public in and for the State of Utah, **EDWIN E. BALLARD**, the signer of the above **AGREEMENT TO DEFER POSTING OF PERFORMANCE GUARANTEE**, who duly acknowledged to me that he executed the same.

  
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 NOTARY PUBLIC



  
RICHARD D. MOORE, MAYOR

STATE OF UTAH )  
: ss  
COUNTY OF UTAH)

On the <sup>17<sup>th</sup></sup> ~~21<sup>st</sup>~~ day of <sup>August</sup> ~~July~~, 2010, personally appeared before me, a Notary Public in and for the State of Utah, **RICHARD D. MOORE, Mayor of Payson City**, the signer of the **AGREEMENT TO DEFER POSTING OF PERFORMANCE GUARANTEE**, who duly acknowledged to me that he executed the same.

  
NOTARY PUBLIC

