

WHEN RECORDED, RETURN TO:

Wasatch County Planning Department
Attn: Doug Smith
188 North Main
Heber City, UT 84032

Tax Parcel No. 00-0007-8431

Ent 362481 Bk 1021 Pg 281-305
Date: 10-SEP-2010 12:17:27PM
Fee: \$60.00 Check Filed By: MM
ELIZABETH PALMIER, Recorder
WASATCH COUNTY CORPORATION
For: WASATCH COMMONS DEVELOPMENT

**WASATCH COMMONS APARTMENTS – PHASE 1
PERFORMANCE GUARANTEE AGREEMENT**

~~–0000–~~

This Performance Guarantee Agreement (“Agreement”) is entered into as of this _____ day of September, 2010, by and between Cardinal Funding, L.C., a Utah limited liability company (“Cardinal”), and Wasatch County, a political subdivision of the State of Utah (“County”). Cardinal and the County are hereinafter referred to individually as a “Party” and collectively as the “Parties.” This Agreement supersedes and replaces any previous agreements entered into or representations made by and between Cardinal and the County involving the subject matter of this Agreement.

RECITALS

WHEREAS, Cardinal has a legal interest in certain real property described in the Wasatch Commons Phase 1 Plat (“Plat”), an unrecorded copy of which is attached as Exhibit A and incorporated herein by this reference, which real property is located in the unincorporated portion of the County; and

WHEREAS, Cardinal has requested approval to develop Lot 1 of the Plat as a multifamily development consisting of 117.5 Equivalent Residential Units which will be utilized in the construction and occupancy of 168 multifamily apartment units (“Project”), which is commonly known as Wasatch Commons Apartments; and

WHEREAS, Cardinal is the owner of certain real property described on Exhibit B which is attached hereto and incorporated herein by this reference (the “Cardinal Parcel”); and

WHEREAS, Wasatch County ordinances requires that a bond to guarantee construction of certain onsite and offsite improvements (“Improvements”) which are listed on Exhibit C, which is attached hereto and incorporated herein by this reference, be submitted to County prior to the actual issuance of any permit(s)/approval(s) related to the above-described Project; and

WHEREAS, this Agreement satisfies the requirement that such bond be posted to guarantee and warrant the Improvements; and

WHEREAS, the terms of the issuance of said permit(s)/approval(s) require the completion of the Improvements; and

WHEREAS, County will not grant said permit(s)/approval(s) until adequate provision has been made to guarantee completion of the Improvements, if any, and to warrant the Improvements from any defects, which Improvements shall be installed under the direction and supervision of and in accordance with the specifications of County; and

WHEREAS, provision has been made by law whereby there may be filed, in lieu of final completion of the Improvements prior to development approval, a guarantee acceptable to County to secure the actual construction of the Improvements in a manner satisfactory to County in order to obtain pertinent County approvals prior to the issuance of said permit(s)/approval(s); and

WHEREAS, the Property is being funded by and will be encumbered by a mortgage or deed of trust insured or endorsed by the U.S. Department of Housing and Urban Development (“HUD”) and HUD has required that Cardinal post a Performance Bond-Dual Obligee (“Bond”) naming Rimrock Construction, LLC as Principal, and Wells Fargo Bank, N. A., the Government National Mortgage Association, and U.S. Department of Housing and Urban Development as Obligees; and

WHEREAS, since the Bond does not list County as obligee, it is necessary to enter into this agreement to protect County from any failure to complete the construction of the Improvements and to ensure that that the Improvements are constructed and installed per County Code. The obligations contained herein are in lieu of a performance bond naming County as an obligee; and

WHEREAS, Cardinal has acknowledged that it has significant financial interest in the construction of the Project and the installation of the Improvements and has agreed to undertake the obligations set forth in this Agreement to guarantee the construction and installation of the Improvements and, therefore, hereby agrees to be bound by this Agreement notwithstanding the fact that County is not named as an obligee in the Bond.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and provisions set forth herein, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. ADDITIONAL DEFINITIONS:

- 1.1. "Cardinal" and "County," as used in this Agreement, shall also refer to all agents, heirs, executors, administrators, successors, and/or assigns of Cardinal and County, respectively.
- 1.2. "Improvements," as used in this Agreement, shall mean the specific improvements to be constructed for the Project which are identified by general categories on Exhibit C; provided, however, that the scope of such improvements is more specifically identified in that certain "Contractor's and/or Mortgagor Cost Breakdown Schedule of Values" dated March 15, 2010 and signed by Wasatch Commons Apartments, L.C., a Utah limited liability company ("Commons Apartments") and delivered to County concurrently with the execution of this Agreement.
- 1.3. "Incidental Costs," as used in this Agreement, shall mean engineering and architect fees, administrative expenses, court costs, attorney's fees (whether incurred by in-house or independent counsel), insurance premiums, mechanic's or materialmen's liens, and/or any other cost and interest thereon incurred by County, occasioned by Cardinal's failure to perform any and/or all obligations under this Agreement.
- 1.4. "Failure to Perform" or "Fail to Perform," as used in this Agreement, shall mean, in addition to those acts specified previously, the non-performance in a timely manner by a party to this Agreement of any obligation, in whole or in part, required of such party by the terms of this Agreement or required by Wasatch County ordinance or other applicable law. The occurrence of such shall give the other party or parties the right to pursue any and all remedies available at law, in equity, and/or otherwise available pursuant to the terms of this Agreement.

2. **PURPOSE FOR AGREEMENT.** The parties hereto expressly acknowledge that the purpose of this Agreement is not only to guarantee the proper completion of the Improvements named herein, but also, among other things, to eliminate and avoid the harmful effects of unauthorized subdivisions and other land developments which may leave property and/or improvements improperly completed, undeveloped, and/or unproductive.

3. **REQUIRED IMPROVEMENTS.** Wasatch Commons Apartments, L.C., a Utah limited liability company ("Commons Apartments"), as the Developer of the Project, has the primary obligation to construct and install the Improvements and to guarantee that the Improvements are free from defects for one (1) year from the date of acceptance of such Improvements by County. Cardinal hereby agrees to complete the construction and

installation of the Improvements which are generally specified in Exhibit C-1 and which are more specifically described in the "Plans and Specifications" for such Improvements which have been submitted to and approved by County in connection with the application for and issuance of the building permit for such Improvements as such Plans and Specifications are listed in Exhibit C-2, both exhibits being attached hereto and incorporated herein by this reference, and to repair any defects to the Improvements for a period of one (1) year from the date of acceptance of such Improvements by County. All Improvements shall be constructed in accordance with applicable law, County ordinances and the Plans and Specifications.

4. **COMPLETION DATE.** Construction of the Improvements shall be completed within a period of two (2) years from the date of this Agreement.
5. **UNRELATED OBLIGATIONS OF CARDINAL.** The benefits and protection provided by this Agreement shall inure solely to County and not to any third party, including, but not limited to, renters or lessees of apartments or units, lot purchasers, contractors, subcontractors, laborers, suppliers, the public generally or others. No party other than those set forth in Section 1.1 above shall have any right to enforce any provision of this Agreement. County shall not be liable to claimants or others for obligations of Cardinal under this Agreement. Neither County nor Cardinal shall further have any 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 under this Agreement to make payments to, give notices on behalf of, or otherwise have obligations to any alleged claimants under this Agreement. Nothing contained herein shall be construed to obligate County for the payment of any costs or expenses which shall be incurred in the construction or installation of the Improvements.
6. **AGREEMENT DOCUMENTS.** All data which is used by County to compute the cost of or otherwise govern the design and installation of the Improvements is hereby made a part of this Agreement, and is incorporated herein by this reference. If this Agreement covers improvements required in a subdivision, this Agreement then incorporates herein by reference the subdivision plat.
7. **FEES.** This Agreement shall not be processed and executed by the County until the Cardinal has paid the appropriate bond processing fee as set forth in the County's Consolidated Fee Schedule.
8. **SPECIFIC ENFORCEMENT.** Cardinal has entered into this Agreement with County for the purpose of guaranteeing construction of the Improvements. County shall be entitled to specifically enforce Cardinal's obligation under this Agreement to construct and install the Improvements in a manner satisfactory to County.
9. **CARDINAL'S INDEPENDENT OBLIGATION.** Cardinal expressly acknowledges, understands, and agrees that its obligation to complete the construction and installation of, and to warrant such construction and installation of the Improvements and/or fulfill

any other obligation under this Agreement, Wasatch County ordinances, or other applicable law is independent of any obligation or responsibility of County, either express or implied. Cardinal agrees that its obligation to complete and warrant the Improvements is not and shall not be conditioned upon the commencement of actual construction work in the subdivision or development or upon the sale of any lots or part of the subdivision or development. Cardinal further acknowledges: (a) that its contractual obligation to complete and warrant the Improvements pursuant to this Agreement is independent of any other remedy available to County to secure proper completion of the Improvements; (b) that Cardinal may not assert as a defense that County has remedies against other entities or has other remedies in equity or at law that would otherwise relieve Cardinal of its duty to perform as outlined in this Agreement or preclude County from requiring Cardinal's performance under this Agreement; and (c) that Cardinal has a legal obligation, independent of this Agreement, to timely complete the construction and installation of the Improvements and to pay in full any and all costs incurred for such construction and installation.

10. **CARDINAL'S OBLIGATION FOR COSTS.** Should Cardinal Fail to Perform its responsibilities under this Agreement in any degree, Cardinal agrees to compensate County for all costs, including Incidental Costs, related to Cardinal's Failure to Perform its obligation to complete and warrant the Improvements.
11. **SURETY BOND.** Prior to the commencement of construction of the Bonds, Commons Apartments shall file, as an independent guarantee for the purpose of insuring construction and installation of the Improvements, a Performance Bond-Dual Obligee ("Bond"), numbered 6611108, issued by Safeco Insurance Company of America, in the amount of \$11,903,414 (herein the "Proceeds") with the U.S. Department of Housing and Urban Development. The Bond is issued in favor of Wells Fargo Bank, N. A., the Government National Mortgage Association, and the U.S. Department of Housing and Urban Development, as Obligees, and the form of the Bond to be filed is made a part of this Agreement as Exhibit D. Notwithstanding the fact that County is not named as an Obligee under the Bond, Cardinal's obligations to County to guarantee the construction and installation of the Improvements under this Agreement shall remain in full force and effect.
12. **FINAL ACCEPTANCE.** Final acceptance of the Improvements shall be official only upon written notice from County expressly acknowledging such.
13. **WARRANTY OF IMPROVEMENTS.** Following final acceptance of the Improvements, Cardinal hereby warrants that the Improvements shall remain free from defects or damage as determined by County, such that the Improvements continue to meet County standards for one (1) year from the date of acceptance by County as determined by County upon final inspection of same. Cardinal's obligations to warrant the Improvements is independent of the August 17, 2010 letter from Rimrock Construction, LLC warranting the Improvements for a period of one (1) year following the issuance of occupancy permits, a copy of which is attached as Exhibit E.

14. **CARDINAL INDEMNIFICATION.** Cardinal agrees to indemnify, defend, and save harmless County and its officers, employees, and agents from and against any and all claims, actions, suits, and liability, including costs and attorney fees, which may arise as a result of the construction or installation of the Improvements prior to County's final acceptance of the Improvements as defined herein, and as a result of any Improvement which is found to be defective during the one (1) year warranty period covered by this Agreement. With respect to Cardinal's agreement to defend County, as set forth above, County shall have the option to either provide its own defense, with all costs for such being borne by Cardinal, or require that Cardinal undertake the defense of County.
15. **INADEQUATE PROCEEDS.** If the Proceeds are inadequate to pay the cost of the completion of the Improvements according to County standards, for whatever reason, including previous reductions, Cardinal shall be responsible for the deficiency independent of the Bond. Additionally, no further permits or business licenses shall be issued and existing permits or business licenses applicable to the Improvements may be immediately suspended or revoked by the County Manager until the Improvements are completed or until a new bond acceptable to County has been executed to ensure completion of the remaining Improvements. Furthermore, the cost of completion of the Improvements shall include reimbursement to County for all costs, including, but not limited to, construction costs and any Incidental Costs incurred by County in completing the Improvements and enforcing this Agreement. The costs incurred by County shall constitute a valid lien on the Cardinal Parcel described on Exhibit B which shall be collected at the same time and in the same manner as County general property taxes.
16. **ACCESS TO PROPERTY.** Should County elect to complete the Improvements, Cardinal herein expressly grants to County, and any contractor or other agent hired by County, the right of access to the project property to complete the Improvements.
17. **SUBSTANDARD IMPROVEMENTS.** Should any Improvements prove to be substandard or defective within the warranty period discussed above, County shall notify Cardinal in writing of such substandard or defective Improvements. Cardinal shall then have fifteen (15) days from notice from County in which to commence repair of the Improvements and a reasonable amount of time, as determined by County, which shall be specified in the notice, to complete repair of the Improvements. Should Cardinal fail to either commence repair of the Improvements or complete repair of the Improvements within the required time periods, County may exercise its option to remedy the defects and demand payment for such from Cardinal.
18. **INSURANCE.** Should County elect to install, complete, or remedy any defect or damage in the Improvements, Cardinal shall be responsible for the payment of the premium for an insurance policy covering any liability, damage, loss, judgment, or injury to any person or property, including, but not limited to, damage to Cardinal or its property as a result of the work of any contractor or agent hired by County to complete or remedy the Improvements. The minimum dollar amount and the scope of coverage of the

insurance policy shall be determined and set by County. Cardinal shall indemnify, defend, and hold harmless County, its officers, employees, and agents for any liability which exceeds the insurance policy limit. County, at its option, may collect and expend the Proceeds to make the premium payments should Cardinal fail to pay said premium. No permit, approval or business license shall be issued by County, and any existing permit, approval, or business license shall be suspended, until said premium is initially paid and a bond is in place to cover subsequent payments. Cardinal further agrees to indemnify, defend, and hold harmless County, its officers, agents, and employees from any damage or loss suffered or any judgment against County resulting from the work of any contractor or agent hired by County on behalf of Cardinal.

19. **FAILURE TO PERFORM.** In addition to those events previously or subsequently described herein, the following shall be considered Failure to Perform on the part of Cardinal, the occurrence of which shall entitle County to invoke any and all remedies outlined in this Agreement or any and all remedies it may have in equity or at law: (i) Cardinal's abandonment of the project as determined by County; (ii) Cardinal's insolvency, appointment of a receiver, or filing of a voluntary or involuntary petition in bankruptcy; (iii) the commencement of a foreclosure proceeding against the project property; and/or (iv) the Project property being conveyed in lieu of foreclosure.
20. **WAIVER.** The failure by any party to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement or to exercise any right or remedy consequent upon a failure to perform thereof shall not constitute a waiver of any such failure to perform or any other covenant, agreement, term, or condition. No waiver shall effect or alter the remainder of this Agreement, but each and every other covenant, agreement, term, and condition hereof shall continue in full force and effect with respect to any other then existing or subsequently occurring failure to perform.
21. **ATTORNEYS FEES.** In the event an action or proceeding is instituted for the failure to perform under this Agreement and it becomes reasonably necessary for any party to employ the services of an attorney in connection therewith (whether such attorney be in house or outside counsel), the losing party to the controversy shall pay to the successful party reasonable attorneys fees incurred by such party, and, in addition, such costs and expenses as are incurred in enforcing this Agreement. If in house counsel is used, attorney fees shall be determined by using the average hourly rate of a local, Wasatch County attorney with the same level of expertise and experience.
22. **TIME IS OF THE ESSENCE.** Time is of the essence of this Agreement. In case either party shall Fail to Perform the obligations on its part at the time fixed for the performance of such obligations by the terms of this Agreement, the other party may pursue any and all remedies available in equity, or law.

23. **INDUCEMENT; INTEGRATION; MODIFICATION; CAPTIONS;
SEVERABILITY.**

- 23.1. The making and execution of this Agreement has been induced by no representations, statements, warranties, or agreements other than those herein expressed.
- 23.2. This Agreement embodies the entire understanding of the parties, and there are no further or other agreements or understandings, written or oral, in effect between the parties relating to the subject matter herein.
- 23.3. Except as otherwise authorized by this Agreement, this instrument may be amended or modified only by an instrument of equal formality signed by the respective parties.
- 23.4. The titles or captions of this Agreement are for convenience only and shall not be deemed in any way to define, limit, extend, augment, or describe the scope, content, or intent of any part or parts of this Agreement.
- 23.5. If any portion of this Agreement is declared invalid by a court of competent jurisdiction, the remaining portions shall not be affected thereby, but shall remain in full force and effect.

[signature pages follow immediately]

SIGNATURE PAGE
TO
PERFORMANCE GUARANTEE AGREEMENT

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

Cardinal:

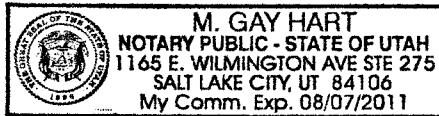
Cardinal Funding, L.C.,
A Utah limited liability company

By: _____

[Handwritten Signature]
John R. Thackeray
Its: Manager

STATE OF UTAH)
 :SS
COUNTY OF SALT LAKE)

On this 9 day of September 2010, personally appeared before me John R. Thackeray, who acknowledged to me that he executed the foregoing agreement in his capacity as Manager of Cardinal Funding, L.C., a Utah limited liability company.



[Handwritten Signature]

Notary Public

SIGNATURE PAGE
TO
PERFORMANCE GUARANTEE AGREEMENT

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

County:

Michael K. Davis

Wasatch County Manager

ATTEST:

Brent R. Titcomb

County Clerk

APPROVED AS TO CONTENT:

By: *Michael K. Davis*

County Department
 Planning Engineering

Date: September 10, 2010

APPROVED AS TO FORM:


By: *Scott W. [Signature]*

County Attorney's Office

Date: September 10, 2010

STATE OF UTAH)
) SS:
COUNTY OF WASATCH)

The foregoing instrument was acknowledged before me this 10th day of September, 2010, by Michael K. Davis, who executed the foregoing instrument in his capacity as the Wasatch County Manager and by Brent Titcomb, who executed the foregoing instrument in his capacity as the Wasatch County Clerk Auditor.

 NOTARY PUBLIC
SANDRA HANSEN
25 North Main
Heber City, UT 84032
COMMISSION EXPIRES
March 31, 2011
STATE OF UTAH

Sandra Hansen

NOTARY PUBLIC
Residing at: Midway UT

My Commission Expires: 3-31-2011

EXHIBIT A
TO
PERFORMANCE GUARANTEE AGREEMENT

[Unrecorded Plat]

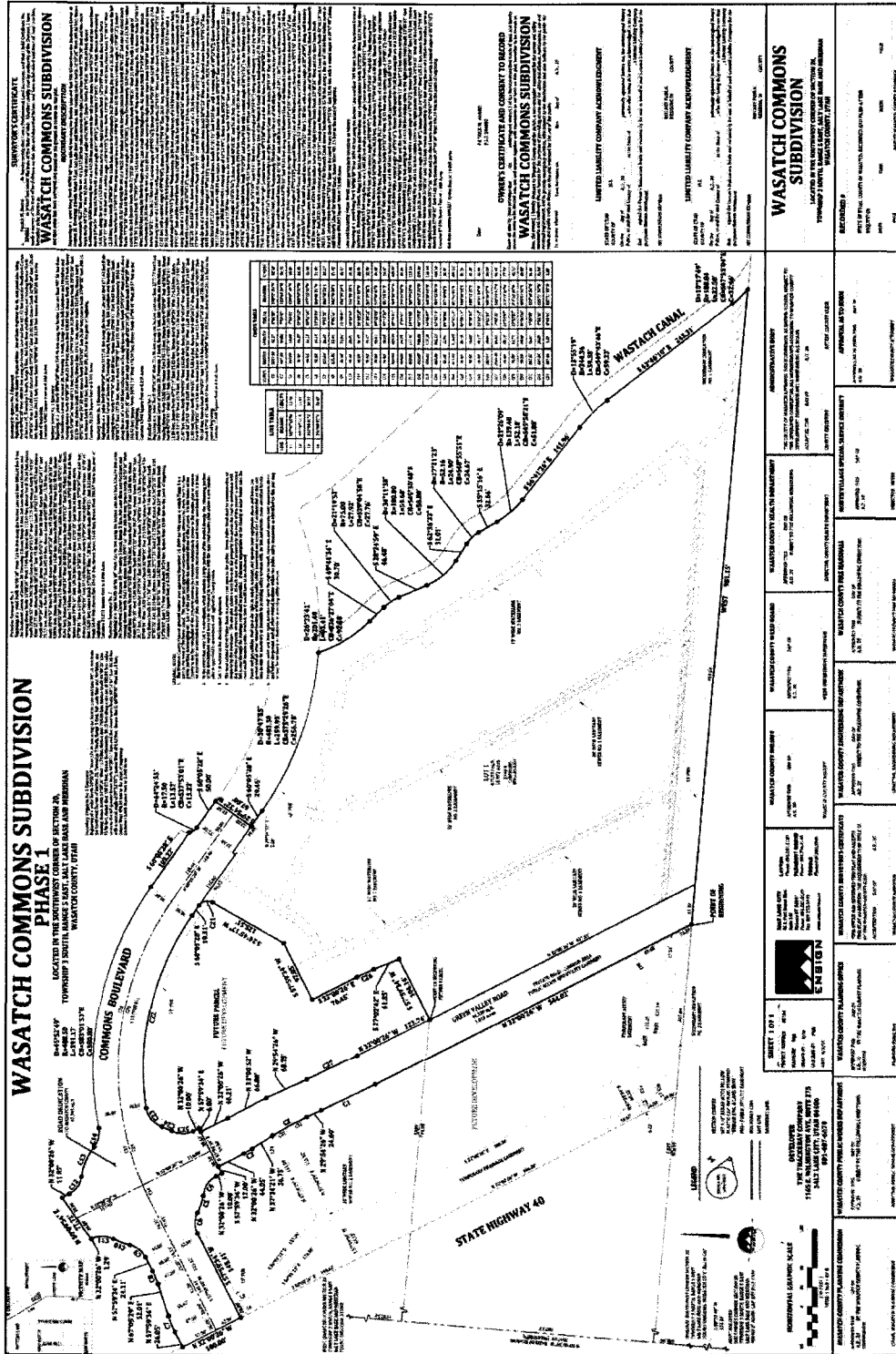


EXHIBIT B
TO
PERFORMANCE GUARANTEE AGREEMENT

[Legal Description]

Real property located in Wasatch County, State of Utah, and more particularly described as follows:

Beginning at a point being North 00°06'58" West 686.96 feet along the Section Line and East 928.93 feet from the Southwest Corner of Section 20, Township 3 South, Range 5 East, Salt Lake Base and Meridian; and running

thence North 32°00'26" West 544.02 feet;

thence Northwesterly 92.27 feet along the arc of a 2,517.50 foot radius curve to the right (center bears North 57°59'34" East and the chord bears North 30°57'26" West 92.26 feet with a central angle of 02°06'00");

thence North 29°54'26" West 24.60 feet;

thence Northwesterly 59.80 feet along the arc of a 447.00 foot radius curve to the left (center bears South 60°05'34" West and the chord bears North 33°44'24" West 59.76 feet with a central angle of 07°39'55");

thence North 37°34'21" West 36.75 feet;

thence Northwesterly 14.86 feet along the arc of a 153.00 foot radius curve to the right (center bears North 52°25'39" East and the chord bears North 34°47'23" West 14.86 feet with a central angle of 05°33'55");

thence North 32°00'26" West 44.05 feet;

thence South 57°59'34" West 12.00 feet;

thence North 32°00'26" West 10.00 feet;

thence Northwesterly 34.27 feet along the arc of a 35.50 foot radius curve to the left (center bears South 57°59'34" West and the chord bears North 59°39'32" West 32.95 feet with a central angle of 55°18'12");

thence Northwesterly 31.12 feet along the arc of a 94.50 foot radius curve to the right (center bears North 02°41'22" East and the chord bears North 77°52'35" West 30.98 feet with a central angle of 18°52'06");

thence Southwesterly 33.19 feet along the arc of a 35.50 foot radius curve to the left (center bears South 21°33'28" West and the chord bears South 84°46'31" West 31.99 feet with a central angle of 53°33'54");

thence South 57°59'34" West 145.41 feet to the Easterly Right-of-Way Line of State Highway No. 40;

thence North 32°00'26" West 100.00 feet along the Easterly Right-of-Way Line of said State Highway No. 40;

thence North 57°59'34" East 26.05 feet;

thence Northeasterly 26.20 feet along the arc of a 165.00 foot radius curve to the right (center bears South 32°00'26" East and the chord bears North 62°32'31" East 26.17 feet with a central angle of 09°05'55");

thence North 67°05'29" East 52.01 feet;

thence Northeasterly 21.44 feet along the arc of a 135.00 foot radius curve to the left (center bears North 22°54'31" West and the chord bears North 62°32'32" East 21.42 feet with a central angle of 09°05'55");

thence North 57°59'34" East 24.11 feet;

thence Northeasterly 31.61 feet along the arc of a 35.50 foot radius curve to the left (center bears North 32°00'26" West and the chord bears North 32°29'14" East 30.57 feet with a central angle of 51°00'41");

EXHIBIT B
TO
PERFORMANCE GUARANTEE AGREEMENT

[Legal Description]

thence Northeasterly 26.91 feet along the arc of a 94.50 foot radius curve to the right (center bears South 83°01'07" East and the chord bears North 15°08'20" East 26.82 feet with a central angle of 16°18'53");

thence Northwesterly 34.27 feet along the arc of a 35.50 foot radius curve to the left (center bears North 66°42'14" West and the chord bears North 04°21'20" West 32.95 feet with a central angle of 55°18'12");

thence North 32°00'26" West 1.29 feet;

thence North 50°09'54" East 77.72 feet;

thence South 32°00'26" East 11.87 feet;

thence Southeasterly 34.27 feet along the arc of a 35.50 foot radius curve to the left (center bears North 57°59'34" East and the chord bears South 59°39'32" East 32.95 feet with a central angle of 55°18'12");

thence Southeasterly 50.41 feet along the arc of a 94.50 foot radius curve to the right (center bears South 02°41'22" West and the chord bears South 72°01'42" East 49.82 feet with a central angle of 30°33'53");

thence Southeasterly 30.50 feet along the arc of a 35.50 foot radius curve to the left (center bears North 33°15'15" East and the chord bears South 81°21'31" East 29.57 feet with a central angle of 49°13'32");

thence Southeasterly 391.17 feet along the arc of a 488.50 foot radius curve to the right (center bears South 15°58'17" East and the chord bears South 83°01'53" East 380.80 feet with a central angle of 45°52'49");

thence South 60°05'28" East 103.22 feet;

thence Southeasterly 13.57 feet along the arc of a 17.50 foot radius curve to the left (center bears North 74°19'27" East and the chord bears South 37°53'00" East 13.23 feet with a central angle of 44°24'55");

thence South 60°05'28" East 50.00 feet;

thence South 29°54'32" West 67.00 feet

thence South 60°05'28" East 29.46 feet;

thence Southeasterly 259.90 feet along the arc of a 483.50 foot radius curve to the left (center bears North 29°54'32" East and the chord bears South 75°29'25" East 256.78 feet with a central angle of 30°47'55") to the Westerly Line of the Wasatch Canal;

thence Southeasterly 93.41 feet along the arc of a 201.49 foot radius curve to the left (center bears North 66°49'47" East and the chord bears South 36°27'04" East 92.57 feet with a central angle of 26°33'41") along said Westerly Line of the Wasatch Canal;

thence South 49°44'54" East 30.70 feet along said Westerly Line of the Wasatch Canal;

thence Southeasterly 27.92 feet along the arc of a 75.00 foot radius curve to the right (center bears South 40°15'06" West and the chord bears South 39°04'58" East 27.76 feet with a central angle of 21°19'52") along said Westerly Line of the Wasatch Canal;

thence South 28°24'59" East 46.48 feet along said Westerly Line of the Wasatch Canal;

thence Southeasterly 59.68 feet along the arc of a 100.00 foot radius curve to the left (center bears North 61°35'01" East and the chord bears South 45°30'48" East 58.80 feet with a central angle of 34°11'38") along said Westerly Line of the Wasatch Canal;

thence South 62°36'33" East 31.01 feet along said Westerly Line of the Wasatch Canal;

EXHIBIT B
TO
PERFORMANCE GUARANTEE AGREEMENT

[Legal Description]

thence Southeasterly 24.90 feet along a the arc of 52.16 foot radius curve to the right (center bears South 27°23'27" West and the chord bears South 48°55'52" East 24.67 feet with a central angle of 27°21'23") along said Westerly Line of the Wasatch Canal;
thence South 35°15'16" East 32.66 feet along said Westerly Line of the Wasatch Canal;
thence Southeasterly 52.18 feet along a the arc of 139.48 foot radius curve to the left (center bears North 54°44'44" East and the chord bears South 45°58'21" East 51.88 feet with a central angle of 21°26'09") along said Westerly Line of the Wasatch Canal;
thence South 56°41'26" East 141.96 feet along said Westerly Line of the Wasatch Canal;
thence Southeasterly 59.38 feet along a the arc of 244.36 foot radius curve to the right (center bears South 33°18'34" West and the chord bears South 49°43'47" East 59.23 feet with a central angle of 13°55'19") along said Westerly Line of the Wasatch Canal;
thence South 42°46'10" East 243.31 feet along said Westerly Line of the Wasatch Canal;
thence Southeasterly 32.50 feet along a the arc of 180.84 foot radius curve to the left (center bears North 47°13'50" East and the chord bears South 47°55'04" East 32.46 feet with a central angle of 10°17'49") along said Westerly Line of the Wasatch Canal;
thence West 981.15 feet to the point of beginning.
Contains 696,863 Square Feet or 15.998 Acres

LESS AND EXCEPTING therefrom the following described parcel:

Lot 1, Wasatch Commons Subdivision Phase 1, according to the official plat thereof recorded September 10, 2010 as Entry No. 362478 in Book 1021 beginning at Page 177 of the official records of Wasatch County, State of Utah.

ALSO LESS AND EXCEPTING therefrom any portion of Commons Boulevard as shown on the the official plat of Wasatch Commons Subdivision Phase 1 on file in the official records of Wasatch County, State of Utah, as referenced above.

EXHIBIT C-1
TO
PERFORMANCE GUARANTEE AGREEMENT

[Schedule of Improvements]

The Improvements which are the subject of this Agreement are as follows:

Line	Div.	Trade Item	Trade Description
1	3	Concrets	Forming materials and labor, concrete, gypcrete, steel reinforcing
2	4	Masonry	Unit masonry stone veneer, precast stone
3	5	Metals	Steel stair stringers & handrail, steel columns and beams
4	6	Rough Carpentry	Labor & Mat for Wd framing & wd trusses. Labor only to install windows.
5	6	Finish Carpentry	Labor for base, casing & trim, doors, frames, door hardware & Bath Acc
6	7	Waterproofing	Foundation Waterproofing, Caulking
7	7	Insulation	Batt Insulation in floors / walls, blown-in in the attic, firestopping
8	7	Roofing	Asphalt Shingle, Single Pty Roofing
9	7	Sheet Metal	Aluminum soffit, fascia and trim, gutters and downspouts, vents
10	8	Doors	Material only for base, casing and trim, doors, frames, and door hardware
11	8	Windows	Vinyl window material (Labor included in line #4 Rough C)
12	8	Glass	Mirrors
13	9	Lath and Plaster	Stucco
14	9	Drywall	Drywall
15	9	Tile Work	Tile
16	9	Acoustical	none
17	9	Wood Flooring	none
18	9	Resilient Flooring	Resilient Flooring
19	9	Painting and Decorating	Paint, FRP panels, Wallcoverings.
20	10	Specialties	Mailboxes, fireplaces, fire ext, signage (Bath Acc. labor in line#5 Finish)
21	11	Special Equipment	none
22	11	Cabinets	Material and Labor for Cabinets and laminate countertops
23	11	Appliances	Appliances
24	12	Blinds and Shades, Artwork	Blinds
25	12	Carpets	Carpet Flooring
26	13	Special Construction	Fire Sprinkler System
27	14	Elevators	none
28	15	Plumbing and Hot Water	Plumbing rough-in, fixtures and equipment
29	15	Heat and Ventilation	HVAC equipment
30	15	Air Conditioning	Included in line item #29 Heat and Ventilation
31	16	Electrical	Electrical, fire alarm system
32		Subtotal (Structures)	
33		Accessory Structures	Clubhouse, Maintenance / Storage and Garages
34		Total (Lines 32 and 33)	
35	2	Earth Work	Clear and Grub, excavation and backfill, slab prep, rough and finish grading
36	2	Site Utilities	Water, Sewer, Storm Drain, Electrical
37	2	Roads and Walks	Paving, curb and gutter, sidewalks
38	2	Site Improvements	dumpsters, water features, site signage
39	2	Lawns and Planting	Landscaping

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TO
PERFORMANCE GUARANTEE AGREEMENT

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5	C0.2	ABBREVIATION & GENERAL NOTES
6	C0.3	PLAT
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9	C1.1	SITE PLAN
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15	C1.7	SITE PLAN (OFFSITE CONSTRUCTION)
16	C2.0	OVERALL GRADING AND DRAINAGE PLAN
17	C2.1	GRADING AND DRAINAGE PLAN
18	C2.2	GRADING AND DRAINAGE PLAN
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30	C3.6	UTILITY PLAN (OFFSITE CONSTRUCTION)
31	C3.7	UTILITY PLAN (OFFSITE CONSTRUCTION)
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34	C4.2	SWPPP
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EXHIBIT D
TO
PERFORMANCE GUARANTEE AGREEMENT

[Form of Bond]

Performance Bond-Dual Obligee

**U.S. Department of Housing
and Urban Development**
Office of Housing
Federal Housing Commissioner

OMB Approval No. 2502-0470
(exp. 5/31/2010)

Project Name: Wasatch Commons Apartments
Project No.: 105-35169

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. HUD may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

This information collection is necessary to ensure that viable projects are developed. It is important to obtain information from applicants to assist HUD in determining if nonprofit organizations initially funded continue to have the financial and administrative capacity needed to develop a project and that the project design meets the needs of the residents. The Department will use this information to determine if the project meets statutory requirements with respect to the development and operation of the project, as well as ensuring the continued marketability of the projects. This information is required in order to obtain benefits. This information is considered non-sensitive and no assurance of confidentiality is provided.

Know All Men By These Presents, That We, Rimrock Construction, LLC, a Utah limited liability company of 11635 S. 700 E., Suite 100 Draper, Utah 84020, as Principal, (hereinafter called the Principal) and Safeco Insurance Company of America, a Washington Corporation, as Surety, (hereinafter called the Surety) are held and firmly bound unto Wasatch Commons Apartments, L. C. Owner, (hereinafter called the "Owner-Obligee") and unto Wells Fargo Bank, N. A., the Government National Mortgage Association and U.S. Department of Housing and Urban Development (hereinafter called the "Lender") as their respective interests may appear, as OBLIGEEES, in the sum of Eleven Million Nine Hundred Three Thousand Four Hundred Fourteen Dollars (\$11,903,414.00), lawful money of the United States of America, for the payment of which Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has entered into a Construction Contract dated TBD, 2010 with Owner-Obligee for the construction of a Housing Project designated as Wasatch Commons Apartments, project no. 105-35169 a copy of which Construction Contract is by reference made a part hereof; and

WHEREAS, Lender has agreed to lend to Owner-Obligee a sum of money to be secured by a mortgage on said project and to be used in making payments under said Contract, and desires protection as its interests may appear, in event of default by Principal under said Contract, said protection to be subject to the performance by the Obligees, or either of them, of the obligations to Principal in connection with said Contract.

NOW, THEREFORE, the condition of this obligation is such that, if Principal shall well and truly perform all the undertakings, covenants, terms, conditions and agreements of said Contract on its part, and fully indemnify and save harmless Obligees from all cost and damage which they may suffer by reason of failure so to do, and fully reimburse and repay Obligees all outlay and expense which Obligees may incur in making good any such default, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The foregoing, however, is subject to the following further provisions:

1. The Surety shall not be liable under this Bond to the Obligees, or either of them, unless the said Obligees, or either of them, shall make payments to the Principal strictly in accordance with the terms of said Contract as to payments, and shall perform all the other obligations to be performed under said Contract at the time and in the manner therein set forth.

2. Surety agrees that any right of action that either of Obligees herein might have under this bond may be assigned to the Secretary of Housing and Urban Development, acting by and through the Federal Housing Commissioner, and that such assignment will in no manner invalidate or qualify this instrument.

3. No suit, action, or proceeding by reason of any default whatever shall be brought on this bond after two years from the day on which the final payment under the Contract falls due.

4. The prior written approval of Surety shall be required with regard to any changes or alterations in said Contract where the cost thereof, added to prior changes or alterations, causes the aggregate cost of all changes and alterations to exceed 10 percent of the original Contract price; but, except as to the foregoing, any alterations which may be made in the terms of the Contract, or in the work to be done under it, or the giving by the Obligees of any extension of time for the performance of the Contract, or any other forbearance on the part of either the Obligees or Principal to the other, shall not in any way release Surety or Principal of the obligations of this instrument, notice to Surety of any such alteration, extension, or forbearance being hereby waived.

5. The aggregate liability of Surety hereunder to the Obligees or their assigns is limited to the penal sum above stated, and Surety, upon making any payment hereunder, shall be subrogated to, and shall be entitled to an assignment of, all rights of the payee, either against Principal or against any other party liable to the payee in connection with the loss which is the subject of the payment.

SIGNED and SEALED this TBD day of _____, 2010.

Witness as to Principal

Rimrock Construction, LLC (SEAL)
(Principal)

By: _____

Safeco Insurance Company of America
(Surety)

By: _____

Eric Schmalz, Attorney-in-Fact

\$11,903,414.00

Safeco Insurance Company of America
(Surety)

PERFORMANCE BOND-DUAL OBLIGEE

No. 6611108

On Behalf of
Rimrock Construction, LLC to

Wasatch Commons Apartments, L. C.
Wells Fargo Bank, N. A.
Secretary of Housing and Urban Development
The Government National Mortgage Association

Date TBD, 2010
Expires _____, 20____

EXHIBIT E
TO
PERFORMANCE GUARANTEE AGREEMENT

[Rimrock Warranty Letter]



August 17, 2010

RE: Wasatch Commons Apartments

Mike Davis
Wasatch County Manager
25 North Main Street
Heber, UT 84032

Dear Mr. Davis.

As you are aware, Rimrock Construction, LLC has been contracted by Wasatch Commons Apartments L.C. to build the Wasatch Commons Apartments in Wasatch County. As the contractor, Rimrock Construction is obligated to warranty all work performed at the project for a period of one year following substantial completion (meaning occupancy permit). The warranty is as follows:

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

This warranty includes the work done for public improvements and on public rights-of-way. This applies to excavation, grading, utilities, curb, gutter, sidewalks, paving and landscaping. All work on this project has been designed according to Wasatch County Standards and the plans have been reviewed and approved by Wasatch County. Rimrock will comply with those standards as designed.

In the event that the developer (Wasatch Commons Apartments, L.C.) becomes insolvent or sells the property prior to the expiration of the one year warranty period, Rimrock Construction will consider Wasatch County to be the beneficiary of the warranty, as outlined above, for work which the County would normally require a warranty bond.

Please contact me if you have further questions related to this matter.

Respectfully,



Bradley D. Christofferson
President
Rimrock Construction, LLC.
cc: file

11635 South 700 East, #100 • Draper, UT 84020 tel 801-676-7625 fax 801-676-0208