**Subdivision Public Improvement**

**Performance Security Bond**

**KNOW ALL PERSONS BY THESE PRESENTS:**

 That we,      , of       as “*Principal*”, and      , a corporation, duly licensed to conduct a general surety business in the state of South Dakota, as “*Surety*”, are held and firmly bound unto the City of Sioux Falls, a municipal corporation, as “*Obligee*”, in the penal sum of       Dollars lawful money of the United States, for the payment of which well and truly to be made, we bind ourselves, our heirs, successors, executors, and administrators, jointly and severally, firmly by these presents.

 WHEREAS, the Principal and the Obligee have entered into a Subdivision Construction Agreement for completion and warranty of subdivision improvements (“*Agreement*”) which is hereby incorporated by reference and attached hereto as **Exhibit A**, dated     , whereby the Principal has agreed to install and complete certain designated Public Improvements, as a condition to approval of a Final Plat which Agreement is hereby referred to and made a part hereof; and

 WHEREAS, the Principal is required under the terms of the Agreement to furnish a Performance Security and Warranty Security for the faithful performance and warranty of Public Improvements, which the Obligee has determined must be completed once work has commenced and are described as more fully set forth in the Agreement. It is agreed that capitalized terms herein shall have the meaning ascribed to them under the Agreement.

NOW, THEREFORE, if the Principal shall well and truly, at its own cost and expense, at or within the time required under the Agreement, faithfully install and complete the Public Improvements, in substantial compliance with the plans and specifications for such Public Improvements, then this obligation shall be void, otherwise to remain in full force and effect, subject to the following conditions.

1. In the event the Principal shall fail to complete the Public Improvements within the time allowed by the Agreement, or any extension thereof, as may be granted by the Obligee, then the Surety shall complete the Public Improvements and deliver them to the Obligee for approval or, at the election of the Obligee, the Surety shall tender to the Obligee the amount necessary, in no event to exceed the penal sum hereof, based upon estimates provided by the Obligee, to carry out completion and/or repair or replacement of the Public Improvements, it being further understood that upon completion, any unexpended funds shall be returned to the Surety.
2. This bond shall be continuously in effect and shall remain in full force and effect until (a) the Public Improvements have been installed and accepted by the Obligee and the Warranty Period is complete, or (b) the release and surrender of this bond, including the portion provided for under No. 3 below, by the Obligee; whichever shall first occur.
3. It is further understood that ten percent (10%) of the Engineer’s Estimate shall remain in effect and continue after completion and acceptance of the Public Improvements by the Obligee during the Warranty Period to guarantee the Public Improvements against any defective work or labor done, or defective materials furnished, in the performance of the Public Improvements as more fully delineated in the Agreement.
4. The Surety hereby stipulates and agrees that no change, extension of time, altercation or addition to the terms of the Agreement, or to the work to be performed thereunder, or to the specifications relating to the Public Improvements shall, in any way, affect its obligation on this bond, and the Surety does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Agreement, or to the work or to the specifications.
5. As part of the obligation secured hereby and in addition to the penal sum specified hereunder, there shall be included costs and reasonable expenses and fees, including reasonable attorneys’ fees, incurred by the Obligee in successfully enforcing such obligation, all to be taxed as costs and included in any judgment of record.
6. No right of action shall accrue hereunder to or for the use of any persons, firm, or corporation, other than the Obligee. The rights and obligations under this bond are for the exclusive benefit of the Obligee and may not be assigned, hypothecated or transferred for any purpose, unless consented to, in writing, executed by the Principal and the Surety.
7. The Surety waives any defense related to the impossibility, illegality, incapacity, bankruptcy, or receivership of the Principal in connection with the obligation of the Principal hereunder and the Surety further expressly waives any defense to the extent that it may require the creditor to proceed against the Principal as a condition precedent to any claim or demand hereon.
8. The parties agree that if this is also to include a Payment Bond that said Bond shall be signed and attached hereto.

*(Initial Only One)*

 \_\_\_\_\_\_\_\_ The parties hereto agree this **shall also include** a Payment Bond

\_\_\_\_\_\_\_\_ The parties hereto agree that this **shall not be** a Payment Bond

1. Surety represents and warrants that its Best credit rating is A- or better.

Signed and dated this \_\_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_.

**Principal:**

 By:

 Printed Name

 Title

STATE OF                       )

                   :SS

COUNTY OF                  )

On this \_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_\_, before me, the undersigned officer, personally appeared \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

   (SEAL) Notary Public—State of:

 My Commission Expires:

Signed and dated this \_\_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_.

**Surety:**

 By:

 Printed Name

 Title

STATE OF                       )

                   :SS

COUNTY OF                  )

On this \_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_\_, before me, the undersigned officer, personally appeared \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

   (SEAL) Notary Public—State of:

 My Commission Expires:

**Exhibit A**

(Subdivision Construction Agreement)