## AGREEMENT FOR ASSIGNMENT OF SURETY FUNDS AS A PERFORMANCE GUARANTEE

This Agreement for Assignment of Surety Funds as a Performance Guarantee ("Agreement"), is made and entered into this _____ day of _______________, 20__, among the City of Thornton, a Colorado municipal corporation ("City"), and_______________, Inc., a Colorado corporation ("Principal"); and _____________________, a ____________ corporation ("Financial Institution"). The City, the Principal, and Financial Institution may be referred to herein individually as "Party" and collectively as "Parties."

RECITALS

WHEREAS, Principal has executed a Developer's Agreement ("DA"), in connection with the _________________________________ ("Project"), which DA requires the Principal to construct certain specified public and private improvements ("Improvements") to complete the Project or has been issued a Construction Permit to construct Improvements; and

WHEREAS, the Thornton City Code and/or the DA also require the Principal to provide a performance guarantee to insure performance and construction of the Improvements; and

WHEREAS, Principal and the City agree that the Principal shall assign to the City funds to be deposited in the Financial Institution, as the performance guarantee, to meet the surety obligations of the DA Agreement or Construction Permit; and

WHEREAS, the Financial Institution agrees to hold the funds deposited by the Principal pursuant to this Agreement, upon the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the mutual promises and conditions contained herein, the Parties hereto agree as follows:

### 1. DEPOSIT OF FUNDS—ASSIGNMENT

a. Principal agrees to deposit the sum of **$_______________________** ("the Funds") with the Financial Institution to serve as the performance guarantee to meet the Principal's obligations under the DA Agreement and/or a Construction Permit. The Funds shall equal, at a minimum, one hundred percent of the funds prescribed by the Development Engineering Manager to construct the Improvements.

b. Principal shall deposit the Funds in a [account type] _________________ Account No.___________ in [branch name] of the Financial Institution; the account will be in the name of the Principal.

c. The Principal agrees than upon such deposit and by execution of this Agreement, the Principal, hereby assigns all rights, title and interest in and to the Funds to the City and thereby gives the City full power and authority to demand, collect and receive said funds from the Financial Institution when necessary to complete construction of the Improvements.

d. The funds assigned to the City shall be available for release to the City, in full or in part as provided herein, upon the City's notice to the Principal and upon presentation of a request for withdrawal of the Funds, or a portion thereof, to the Financial Institution, as provided herein.

## 2. CONSTRUCTION OF IMPROVEMENTS

a. All construction of the Improvements and necessary restoration shall be in accordance with the approved construction plans and in accordance with the City's Standards and Specifications as required by Section 2.00 of the Construction Permit.

b. The cost and responsibility to acquire any traffic control permits and any permits required for construction of the Improvements shall be at the sole responsibility of the Principal.

c. Construction of the Improvements shall be completed no later than **365 days** after construction begins unless the City, in its sole discretion, has granted a written extension of time.

## 3. TREATMENT OF THE FUNDS

a. Performance Guarantee

(1) The Funds shall serve as surety funds and the performance guarantee to secure performance of the Principal's obligations under the DA Agreement and/or Construction Permit. The Funds shall remain deposited with the Financial Institution until initial acceptance of the Improvements by the City, provided, however, partial early release of the Funds may be allowed as described below, and except for Maintenance Funds.

(2) The Principal agrees to deposit additional funds whenever a change in circumstances has occurred to make additional surety necessary as a guaranty of performance by the Principal; as determined by the City. Such request for additional funds will be by written notice to the Principal that additional funds are required to be deposited, as prescribed in the DA Agreement and/or Construction Permit, and the City may extend performance as set forth in the notice for additional funds.

(3) The Parties agree that partial release of the Funds may occur prior to initial acceptance of the Improvements, as prescribed in the DA Agreement and/or Construction Permit. The Funds may be partially released by the City if the Development Engineering Manager or designee has determined that a major stage of or a phase of the construction of the Improvements has been satisfactorily completed. To allow partial release, the Principal will submit a written request for partial withdrawal of the Funds to the City, and if approved, the City will submit the request to the Financial Institution, in a form as prescribed by the Financial Institution, to either transfer a portion of the funds to another account owned by the Principal or the Funds will be sent to the Principal by the Financial Institution.

b. Maintenance Funds

(1) Principal agrees that **15% of the Funds or $10,000,** whichever is greater ("Maintenance Funds"), shall be held by the Financial Institution as an additional form of performance guarantee to ensure against potential costs to the City related to defective materials or workmanship and to ensure performance of all maintenance and warranty repairs properly undertaken as required by Construction Permit. The Maintenance Funds for public improvements shall be held for a period of **two years** ("Warranty Period") from the date of initial acceptance of the Improvements by the City, or until Final Acceptance is granted, whichever occurs later in accordance with the Standards and Specifications.

(2) The Principal agrees to properly maintain and promptly correct any deficiencies in construction and/or make any emergency repairs to the Improvements upon written request to the Principal by the City during the Warranty Period. Principal also agrees to promptly reimburse the City for any emergency repairs, as determined by the City, performed by the City or its agents during the Warranty Period when notified by the City of the cost of such repairs.

c. Demand for Withdrawal of the Funds/Release

(1) A Notice of Demand for any or all of the Funds or the Maintenance Funds may be made by the City upon written notice made and addressed to both the Principal and the Financial Institution requesting withdrawal of the Funds. The Notice of Demand shall designate the amount of the Funds to be withdrawn and shall be signed by the Development Engineering Manager or designee. The Financial Institution agrees to immediately release the funds to the City upon receipt of the Notice of Demand and in accordance with the City's instructions contained in said Notice.

(2) Any funds still held under this Agreement that have not been otherwise withdrawn shall be released when the **final acceptance letter** is issued by the City.

## 4. RIGHT TO WITHDRAW THE FUNDS

a. Failure of the Principal to construct any Improvements in compliance with the DA Agreement, Construction Permit, approved construction plans, or the City's Standards and Specifications shall result in the City exercising its right to withdrawal of any or all of the Funds held under this Agreement by submitting a Notice for Demand of such Funds.

b. Failure by Principal to have the Improvements under initial acceptance within 365 days after construction was begun, absent any extensions granted by the City shall result in the City exercising its right to withdrawal any and all of the Funds held under this Agreement by submitting a Notice for Demand for such Funds.

c. Failure by Principal to post additional surety funds as required by the City shall result in the City exercising its rights to withdrawal any and all of the Funds held under this Agreement by submitting a Notice of Demand for such Funds.

d. Failure by Principal to make necessary maintenance or warranty repairs during the Warranty Period shall result in the City exercising its right to withdrawal any or all of the Maintenance Funds held under this Agreement by submitting a Notice for Demand of such Maintenance Funds.

## 5. NOTICE

Any notice required by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by regular United States mail, postage prepaid, addressed to the Party to whom such notice is to be given at the address set forth below, or at such other address as has been previously furnished in writing, to the other Parties. Such notice shall be deemed to have been given when deposited in the United States mail.

City of Thornton:
Development Engineering Manager
City of Thornton
9500 Civic Center Drive
Thornton, CO 80229-4326

Principal:

____________________
____________________
____________________

Financial Institution:

_________

**6. ENTIRE AGREEMENT**

Except for the Construction Permit and DA Agreement, this Agreement represents the entire Agreement between the Parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the Parties.

**7. VENUE**

This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in the County of Adams, State of Colorado.

**8. SEVERABILITY**

In the event any of the provisions, or applications thereof, of this Agreement is held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions, or applications thereof, shall not be affected.

**9. BINDING EFFECT**

This Agreement shall insure to the benefit of, and be binding upon, the Parties, their respective legal representatives, successors, heirs, and assigns; provided, however, that nothing in this paragraph shall be construed to permit the assignment of this Agreement except as otherwise expressly authorized herein.

**10. ASSIGNMENT**

None of the Parties may assign its rights or obligations under this Agreement without the other Parties prior written consent.

**11. AUTHORITY TO EXECUTE**

Each Party assures and guarantees that it possesses the legal authority to enter into this Agreement and states that the person(s) executing this Agreement on behalf of each Party warrant(s) that they have full authorization to execute this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date written below.

___________________________________

___________________________________
Signature of Principal

___________________________________
Print Name and Title

STATE OF COLORADO )
)ss.
COUNTY OF ______ )

Acknowledged before me this ______ day of ________________, 2026, by ________________________ as ______________________ of Fuller Land Investments, Inc., a Colorado corporation, on its behalf.

WITNESS my hand and official seal.

My commission expires: __________________________________.

________________________________________
NOTARY PUBLIC

## ACCEPTANCE BY FINANCIAL INSTITUTION

The undersigned hereby accepts the foregoing Assignment of ______________________ (Account Number) in the sum of $ __________________________ with payment of same to be made upon demand by the City of Thornton in accordance with the terms and conditions of this Agreement and with no other condition of partial or full withdrawal of said deposit.

_________________________________
Name of BANK or other Institution

Address:
_________________________________
_________________________________
_________________________________

Telephone: ________________________

By: ______________________________
Signature of Authorized Personnel

Print Name: _______________________

Title: _____________________________

STATE OF COLORADO )
)ss.
COUNTY OF ______ )

Acknowledged before me this ______ day of _______________, 2026, by ______________________ as _____________________ of _____________, a Colorado limited liability company, on its behalf.

WITNESS my hand and official seal.

My commission expires: ________________________________.

____________________________________
NOTARY PUBLIC

**CITY OF THORNTON, COLORADO**

______________________________
Cassie Free
Development Engineering Manager

ATTEST:

______________________________
Kristen N. Rosenbaum, City Clerk

APPROVED AS TO FORM:

______________________________
Tami Yellico, City Attorney