

**CONSTRUCTION
PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS:

That we, _____, as Principal, and _____, a corporation as Surety, duly licensed to conduct a general surety business in the State of Arizona, are held and firmly bound unto the TOWN OF ORO VALLEY, as Obligee, in the penal sum of _____ Dollars (\$_____), for which payment, well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

WHEREAS, Principal and Obligee have entered into an Assurance Agreement for Completion of Improvements (the Agreement), dated _____, whereby Principal has agreed to install and complete certain construction/stabilization improvements, as a condition to approval of OV# _____, which Agreement is hereby referred to and made a part hereof; and

WHEREAS, Principal is required under the terms of the Agreement to furnish a guaranty for the faithful performance of specified construction/stabilization improvements as described in Exhibit "A", attached hereto.

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

1. The Town may take steps to utilize the assurances, upon the occurrence of any of the following:
 - a. In order to abate any unsafe conditions as determined by the Town Engineer, Building Official or Planning and Zoning Director.
 - b. Failure of the Principal to respond within ten (10) days to cure a violation once a violation notice has been issued.
 - c. When, in any way, the Principal or their agent fails to follow the approved plan and does not correct the situation within sixty (60) days of notice by the Town.
 - d. Abandonment of the Project. A project will be presumed abandoned when there has been no development activity for six (6) months as determined by the Planning and Zoning Director.
2. In the event of any of the occurrences in Section 26.6.J.1, the Planning and Zoning Director shall issue a notice to the property owner and obligor of the assurances of pending forfeiture of assurances.

- a. The Principal shall respond to the Planning and Zoning Director in writing within ten (10) days of receipt of the notice to request a hearing with the Planning and Zoning Director, otherwise forfeiture shall occur.
 - b. Upon a determination by the Planning and Zoning Director or his/her designee, the Town may utilize the assurances for completing the improvements in accordance with OVZCR Section 26.6A.
3. This bond shall remain in full force and effect until (a) the improvements have been installed and accepted by Obligee, or (b) the release and surrender of this bond by Obligee, whichever shall first occur.
4. It is further understood that ten percent (10%) of the face amount of this bond shall remain in effect and continue after completion and acceptance of the improvements by the Obligee for a period of one year from the date of acceptance to guaranty the improvements against any defective work or labor done, or defective materials furnished, in the performance of the improvements.
5. Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Agreement, the work to be performed hereunder or to the specifications relating to the improvements shall, in any way, affect its obligation on this bond, and Surety does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Agreement, the work or the specifications.
6. 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 Obligee in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.
7. No right of action shall accrue hereunder to or for the use of any persons, firm or corporation, other than Obligee. The rights and obligations under this bond are for the exclusive benefit of Obligee and may not be assigned, hypothecated or transferred for any purpose, unless consented to in writing by Obligee and executed by Principal and Surety.
8. Surety waives any defense related to the impossibility, illegality, incapacity, bankruptcy or receivership of Principal in connection with the obligation of Principal hereunder and 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.

WITNESS my hand and seal this _____ day of _____, 20_____.

PRINCIPAL:

SURETY:

By: _____

By: _____

Date: _____

Attorney-in-Fact

Company: _____

Address: _____

City/Zip Code: _____

Telephone: _____

Date: _____

CORPORATE ACKNOWLEDGEMENT(S)

STATE OF ARIZONA)

) ss:

COUNTY OF PIMA)

On this _____ day of _____, 20__ before me personally appeared _____ to me known, who, being by me duly sworn, did depose and say that he/she reside(s) in Pima County, Arizona and that he/she is the Principal _____ of the _____, the corporation which executed the Construction Performance Bond; that he/she knows the seal of the corporation; that the seal affixed to the instrument is the corporate seal; that is/was so affixed by order of the Board of Directors of the corporation, and that he/she signed his/her name to the instrument by like order.

NOTARY PUBLIC

My Commission Expires: _____

STATE OF ARIZONA)

) ss:

COUNTY OF PIMA)

On this _____ day of _____, 20_____ before me personally appeared _____ known to me to be the person whose name is subscribed to this instrument as the Attorney-in-Fact of _____ of _____ and acknowledged to me that he/she subscribed the name of _____ as Surety, and his/her own name as Attorney-in-Fact.

NOTARY PUBLIC

My Commission Expires: _____

EXHIBIT "A"