

**Bond Agreement for Completion
of Improvements
(Irrevocable Letter of Credit Form)**

THIS BOND AGREEMENT (this “*Agreement*”) is made and entered into effective _____, by and between **HERRIMAN**, a municipal corporation of the State of Utah, whose address is 5355 West Herriman Main Street, Herriman, Utah 84096 (the “*City*”), and the undersigned owner (or soon to be owner) of real property located within the City (referred to in this Agreement as “*Developer*”).

RECITALS:

A. Developer owns, or will soon own, legal title to the real property (the “*Property*”) described on exhibit “A.”

B. Developer has filed, or soon will file, a request with the City for approval of a subdivision known as or to be known as _____ (“*Subdivision*”).

C. Developer has requested that the City allow recording of the final plat of the Subdivision prior to construction and installation of the required public improvements (the “*Improvements*”) on or adjacent to the Property in connection with the Subdivision. The Improvements and an engineer’s estimated cost of completion are described on exhibit “B.”

D. The City is willing to allow the recording of the final plat for the Subdivision conditioned on (i) Developer’s promise to install the Improvements as specified in this Agreement, and (ii) Developer’s deposit with the City of an irrevocable letter of credit in the amount equal to the engineer’s estimated cost of competitions as set forth on exhibit “B.”

E. The parties intend to set forth herein their entire agreement regarding the Improvements, and to supersede hereby and to consolidate herein all of their prior negotiations and agreements, whether oral or written, regarding the same.

AGREEMENT:

NOW, THEREFORE, in consideration of the recitals above, the mutual covenants and undertakings of the parties hereto, and for other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

Section 1. **Developer’s Completion and Warranty Obligations.** Developer irrevocably acknowledges its obligation to install the Improvements without cost to the City and hereby agrees to complete the installation of the Improvements in a good, workmanlike, lien-free manner within two (2) years after the date of this Agreement. Further, Developer hereby warrants that the Improvements will be free of defects, poor workmanship, or materials (normal wear and tear excepted) for a period of one (1) year after all of the Improvements have been installed and finally accepted by the City (the “*Warranty*”).

Section 2. **Repairs.** Developer and the City agree that all responsibility for repair and maintenance of the Improvements remains with Developer until all of the Improvements have been installed, inspected, and finally accepted by the City (collectively, “*Installation/Acceptance*”) and the Warranty has expired.

Section 3. **Escrow.** To assure and guaranty (a) the satisfactory and timely Installation/Acceptance of the Improvements, and (b) the Warranty, Developer shall contemporaneously herewith deposit with the City an irrevocable letter of credit (referred to as the “*Letter of Credit*”), dated _____, issued by _____ (“*Issuer*”), number _____ in the principal amount of \$_____, substantially in the form as set forth in exhibit “C.” The amount of the Letter of Credit is the engineer’s estimated cost of completion of the Improvements as set forth on exhibit “B.”

Section 4. **Reduction of Letter of Credit.** In addition to the reduction with respect to the warranty described below, Developer may request a one-time reduction in the amount of the Letter of Credit if an element or elements of the Improvements (*i.e.*, storm drain, roadway, parks and open space, and/or culinary and irrigation water) have been constructed to the satisfaction of the City. In such event, the amount of the Letter of Credit will be reduced by fifty percent (50%) of the amount identified with respect to such element or elements delineated on exhibit “B.” Upon Installation/Acceptance of all the Improvements, the Letter of Credit shall be reduced to an amount equal to ten percent (10%) of the engineer’s estimated cost of completion of the Improvements as set forth on exhibit “B.” Further, if one (1) year after final Installation/Acceptance of the Improvements, the Improvements are then free of defects, normal wear and tear excepted, the City will release the remaining amount of the Letter of Credit.

Section 5. **Failure to Install Improvements/Failure of Warranty.** If (a) Installation/Acceptance of the Improvements has not occurred within two (2) years after the date of this Agreement, or (b) the Improvements are not free of defects (normal wear and tear excepted) for one (1) year after Installation/Acceptance, then the City may unilaterally (without consent or approval of any kind from Developer) at any time thereafter may demand and receive from the Issuer the (remaining or full) amount of the Letter of Credit (full or any amount). The City shall be deemed fully authorized (without further action or notice whatsoever) to use as much of the proceeds of the Letter of Credit as is required (in the City’s sole opinion) to satisfactorily complete installation of the Improvements and/or to repair any defects therein, including (without limitation) the cost of any and all incidental construction, legal, administrative, or engineering fees or expenses incurred by the City to effect such work. Any balance of the proceeds of the Letter of Credit remaining after payment of all of such costs, fees, and expenses, and a reasonable reserve, in an amount determined by the City, shall be paid to Developer.

Section 6. **No Waiver or Estoppel.** This Agreement is irrevocable unless revoked by the mutual consent of Developer and the City. Neither this Agreement nor deposit of the Letter of Credit by Developer and the acceptance of the Letter of Credit or this Agreement by the City, shall constitute a waiver or estoppel by or against the City concerning the Improvements; nor shall any such matters in any way relieve Developer from the obligations to (a) timely achieve satisfactory Installation/Acceptance of the Improvements, or (b) fully perform under the Warranty, regardless of whether or not the Letter of Credit is adequate to pay for the satisfactory

Installation/Acceptance of the Improvements or the satisfactory fulfillment of the Warranty. If the Letter of Credit is inadequate to pay for the cost of Improvements for whatever reason, Developer agrees to pay such deficiency independent of this Agreement, which amount may include any and all incidental construction, legal, administrative, or engineering fees or expenses incurred by the City to effect such work. Additionally, no further permits or approvals shall be issued with respect to the Subdivision or to the Developer until such deficiency is cured.

Section 7. **Limitation on Issuer's Duties.** The Issuer of the Letter of Credit has no duty, responsibility, or liability whatsoever to effect the physical installation of the Improvements. Issuer's only duty hereunder is to hold and distribute the Letter of Credit in accordance with the terms and provisions of the Letter of Credit, provided, however, such Issuer shall be responsible and/or liable for disbursements of the Credit that occur without the written direction of the City.

Section 8. **Inspection.** The City shall have the right to inspect Improvements during construction. The Developer shall notify the City in writing when underground improvements are ready to be backfilled and agrees not to backfill such trenches or excavations until such underground improvements have been inspected by the City.

Section 9. **General Provisions.** The following provisions are also an integral part of this Agreement:

(a) **Binding Agreement.** This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the respective parties hereto.

(b) **Captions.** The headings used in this Agreement are inserted for reference purposes only and shall not be deemed to define, limit, extend, describe, or affect in any way the meaning, scope, or interpretation of any of the terms or provisions of this Agreement or the intent hereof.

(c) **Counterparts.** This Agreement may be signed in any number of counterparts with the same effect as if the signatures upon any counterpart were upon the same instrument. All signed counterparts shall be deemed to be one original.

(d) **Severability.** The provisions of this Agreement are severable, and should any provision hereof be void, voidable, unenforceable, or invalid, such void, voidable, unenforceable, or invalid provision shall not affect the other provisions of this Agreement.

(e) **Waiver of Breach.** Any waiver by either party of any breach of any kind or character whatsoever by the other, whether such be direct or implied, shall not be construed as a continuing waiver of, or consent to, any subsequent breach of this Agreement.

(f) **Cumulative Remedies.** The rights and remedies of the parties hereto shall be construed cumulatively, and none of such rights and remedies shall be exclusive of, in lieu of, or a limitation of any other right, remedy, or priority allowed by law.

(g) Amendment. This Agreement may not be modified except by an instrument in writing signed by the parties hereto.

(h) Interpretation. This Agreement shall be interpreted, construed, and enforced according to the substantive laws of the state of Utah.

(i) Attorneys' Fees. In the event any action or proceeding is brought by either party regarding this Agreement, the prevailing party shall be entitled to recover its costs, expert witness fees, and reasonable attorneys' fees, whether such sums are expended with or without suit, at trial, or on appeal.

(j) Notice. Any notice or other communication required or permitted to be given hereunder shall be deemed to have been received (a) upon personal delivery or actual receipt thereof or (b) within two (2) days after such notice is deposited in the United States mail, postage prepaid and certified and addressed to the respective addresses set forth herein or to such other address(es) as may be supplied by a party to the other from time to time in writing.

(k) Time of Essence. Time is the essence of this Agreement.

(l) Assignment. Developer may not assign or otherwise convey its rights or delegate its duties under this Agreement without the express written consent of the City.

(m) No Partnership. The City and Developer do not by this Agreement in any way or for any purpose become partners or joint venturers with each other.

(n) Benefit of Agreement. The benefits and protection provided by this Agreement shall inure solely to the City. The City shall not be liable for any claim or obligation of Developer. City may, in its sole and absolute discretion, interplead the an funds from the Letter of Credit (full or any amount thereof) with a court pursuant to Utah R. Civ. P. 67.

(o) Exhibits. All exhibits annexed to this Agreement are expressly made a part of this Agreement as though completely set forth herein. All references to this Agreement, either in this Agreement itself or in any such writings, shall be deemed to refer to and include the Agreement and all exhibits and writings.

DATED effective the date first above written.

DEVELOPER:

By: _____
Its: _____
Print Name: _____
Address: _____

The Issuer hereby acknowledges that the Letter of Credit has been issued pursuant to this Agreement and hereby irrevocably agrees to hold the Letter of Credit in trust and disburse such funds strictly in accordance with the terms and conditions of this Agreement.

ISSUER:

Name of Issuer: _____
(Print Name of Issuer)

By: _____
Its: _____
Print Name: _____
Address: _____

CITY:

HERRIMAN

ATTEST:

By: _____
Jackie Nostrom, Recorder

By: _____
Nathan Cherpeski, City Manager

Exhibit “A”
to Bond Agreement for
Completion of Improvements

[legal description]

Exhibit “B”
to Bond Agreement for
Completion of Improvements

[Improvements and an engineer estimated cost of completion]

Exhibit “C”

to Bond Agreement for
Completion of Improvements

[Letter of Credit]
(Cannot expire before 12 months from the
date of this Agreement if Letter of Credit automatically renews or 36 months from the date of this
Agreement)