

Bond Agreement for Completion of Proposed Improvements (Escrow Form)

THIS BOND AGREEMENT (this "*Agreement*") is made and entered into effective _____, 20__, by and among **Herriman**, a municipal corporation of the State of Utah whose address is 5355 West Herriman Main Street, Herriman, Utah 84096 (the "*City*"), the undersigned, who is the owner (or soon to be owner) of real property that is located within the City (referred to in this Agreement as "*Developer*"), and the undersigned escrow agent ("*Escrow Agent*").

RECITALS:

A. Developer owns, or will soon own, legal title to the real property (the "*Property*") that is particularly described on exhibit "A" annexed hereto.

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

C. Developer has requested that the City allow the Owner to proceed with subdivision plat recording before completion of Improvements (the "*Improvements*") required as a condition precedent to subdivision plat recording. The Improvements are described on exhibit "B" annexed hereto.

D. The City is willing to permit the recording of the final plat for the Subdivision conditioned on Developer's promise to install the Improvements as specified in this Agreement, and on Developer's deposit into an escrow controlled by Escrow Agent of the estimated cost as determined by the City of the Improvements, to be held as specified in this Agreement.

E. The parties intend to set forth herein their entire agreement regarding the subject deferral and escrow, and to supercede 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 satisfactorily 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 (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 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 (all as provided in section 1 above), contemporaneously herewith Developer shall deposit into a segregated escrow account (the "*Escrow*") controlled by Escrow Agent for the amount and in the sum of \$_____ (the "*Deposit*"), which is the estimated cost of the Improvements, including contingency. Developer shall pay all escrow fees and other charges charged by Escrow Agent in connection with the Escrow. Escrow Agent hereby acknowledges the Deposit and the establishment of the Escrow, and hereby irrevocably agrees to hold and disburse the Deposit only in accordance with the express terms of this Agreement.

Section 4. **Release of Deposit.** If an element of the Improvements (i.e., storm drain, roadway, parks and open space and/or culinary and irrigation water) has been constructed to the reasonable satisfaction of the City, then the City will release fifty percent (50%) of the Deposit that is associated with such element. Upon Installation/Acceptance of an element of the Improvements, the City will release forty percent (40%) of the Deposit that is associated with such element. 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 Deposit.

Section 5. **Failure to Install Improvements.** If (a) Installation/Acceptance of the Improvements has not occurred within two (2) years after the date of this Agreement, or (b) the installed Improvements are not free of defects for one (1) year after final acceptance by the City, then the City may unilaterally (without consent or approval

of any kind from Developer) at any time thereafter send a written direction to Escrow Agent to release and pay to City the amount (full or any amount) of the Deposit in the Escrow, less any disbursement authorized by the City, whereupon Escrow Agent shall pay such amount to the City within ten (10) days after receipt of such written direction. The City shall be deemed fully authorized (without further action or notice whatsoever) to use as much of the Deposit 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 City to effect such work. Any balance of the Deposit remaining after payment of all of such costs, fees and expenses, and retaining a reserve in an amount determined by the City shall be refunded 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 the escrow of the Deposit by Developer and the acceptance of the Deposit 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, all as provided in section 1 above, regardless of whether or not the Deposit is adequate to pay for the satisfactory Installation/Acceptance of the Improvements or the satisfactory fulfillment of the Warranty. If the Deposit 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 Escrow Agent's Duties.** Escrow Agent shall have no duty, responsibility or liability whatsoever to effect the physical installation of the Improvements. Instead, Escrow Agent's only duty hereunder is to hold and distribute the Deposit in the Escrow in accordance with the terms and provisions of this Agreement provided, however, Escrow Agent shall be responsible and/or liable for disbursements of the Deposit that occur without the written direction of the City as provided in section 4 hereof.

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, or in lieu or 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. 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. City shall not be liable for any claim or obligation of Developer. City may, in its sole and absolute discretion, interplead the Deposit (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: _____
Print Name: _____
Its: _____
Address: _____

The Escrow Agent hereby acknowledges that there are funds in the amount of \$_____ that have been set aside pursuant to this Agreement for payment of the Improvements, and Escrow Agent agrees to hold such funds in trust and dispose of such funds strictly in accordance with the terms and conditions of this Agreement.

ESCROW AGENT:

BANK:

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

HERRIMAN CITY:

ATTEST:

By: _____
Jackie Nostrom, Recorder

By: _____
Nathan Cherpeski, City Manager

Exhibit “A”
to Bond Agreement for
Completion of Proposed Improvements

[legal description]

Exhibit “B”

to Bond Agreement for
Completion of Proposed Improvements

[Improvements and Cost Allocation Schedule]