

**BOND AGREEMENT
FOR
COMPLETION OF PROPOSED IMPROVEMENTS**
[ESCROW FORM]

THIS BOND AGREEMENT (this “Agreement”) is made and entered into this _____ day of _____, 20____, (the “Effective Date”) by and between the City of Taylorsville, a municipal corporation of the State of Utah whose address is 2600 West Taylorsville Blvd. Taylorsville, Utah 84129 (the “City”), the undersigned owner (or soon-to-be owner) of real property located within the City (the “Developer”), and the undersigned escrow agent (“Escrow Agent”). The City, the Developer, and the Escrow Agent are sometimes referred to herein collectively as the “Parties.”

RECITALS

WHEREAS, Developer owns, or will soon own, legal title to certain real property within the City boundaries as described in Exhibit “A,” attached hereto and incorporated herein by this reference (the “Property”); and

WHEREAS, Developer has filed, or will soon file, an application (the “Application”) with the City for approval of a new commercial, substantially modified existing commercial, or residential project to be known as _____ (the “Project”) located at _____; and

WHEREAS, Developer has requested that the City approve the Project and authorize the recording of the final plat prior to construction and installation of required public improvements to be placed on or adjacent to the Property as described in Exhibit “B,” attached hereto and incorporated herein by this reference (the “Improvements”); and

WHEREAS, the City is willing to authorize the recording of the final plat for the Project conditioned on Developer’s promise to install the Improvements as specified in this Agreement and upon Developer depositing into an escrow account controlled by Escrow Agent an amount of one hundred ten percent (110%) of the total reasonable construction costs of the Improvements, as determined by the City Engineer, pursuant to this Agreement, UTAH CODE ANN. § 10-9a-604.5(3), and TAYLORSVILLE MUNICIPAL CODE § 13.02.160(H); and

WHEREAS, 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, understandings, and agreements, whether oral or written, regarding the same.

AGREEMENT

NOW, THEREFORE, in consideration of 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 hereby agree as follows:

1. **Developer’s Completion and Warranty Obligations.** Developer irrevocably acknowledges its obligation to install the Improvements without any cost to the City. Developer further hereby agrees to satisfactorily complete the installation of the Improvements in a good, workmanlike, lien-free manner within one (1) year after the Effective Date of this Agreement. Furthermore, Developer hereby warrants that the Improvements will be free of any and all defects (normal wear and tear excepted) (the “Warranty”) for a period of one (1) year after all of the Improvements have been completed and finally accepted by the City (the “Warranty Period”).
2. **Repairs.** Developer and the City hereby agree that all responsibility and liability for repairs and maintenance of the Improvements shall remain with Developer until all of the Improvements have been completed and finally accepted by the City (collectively, “Installation/Acceptance”) and after the Warranty and the Warranty Period have expired.
3. **Guarantee for Improvements.** To assure and guarantee (a) the satisfactory and timely Installation/Acceptance of the Improvements, and (b) the Warranty, Developer shall contemporaneously herewith deposit into a segregated escrow account controlled by Escrow Agent the amount of \$_____ (collectively referred to hereafter as the “Escrow Agreement” or the “Deposit”), which is attached hereto as Exhibit “D” and incorporated herein by this reference. The amount of

the Deposit shall be one hundred ten percent (110%) of the total reasonable cost of construction as determined by the City Engineer and as included in the City Engineer's estimate, attached hereto as Exhibit "C" and incorporated herein by this reference. Developer shall pay all escrow fees and other charges charged by Escrow Agent in connection with the Escrow.

4. **Release of Deposit.** If final Installation/Acceptance of the Improvements occurs within one (1) year after the Effective Date of this Agreement, then the City shall send a written direction to Escrow Agent to release and pay to Developer ninety percent (90%) of the Deposit amount. Upon its receipt of written direction from the City, Escrow Agent shall pay such portion of the Deposit to Developer. The remaining ten percent (10%) of the Deposit amount shall remain in the escrow account for the duration of the one (1) year Warranty Period. If the Improvements are free of any and all defects (normal wear and tear excepted) at the end of the one (1) year Warranty Period, then the City shall send a written direction to Escrow Agent to release and pay to Developer the remaining amount of the Escrow, whereupon Escrow Agent shall pay such balance of the Deposit to Developer. Escrow Agent understands and agrees that the Deposit shall not be disbursed without the prior written direction from the City described in this Section 4.

5. **Failure to Install or Complete Improvements/Failure of Warranty.** If (a) Installation/Acceptance of the Improvements has not occurred within one (1) year after the Effective Date of this Agreement, or (b) the installed Improvements are not free of any and all defects (normal wear and tear excepted) for the one (1) year Warranty Period after final acceptance by the City, City inspectors shall provide Developer with a notice of any deficiencies pursuant to TAYLORSVILLE MUNICIPAL CODE § 13.02.160(Q). Developer shall correct all such deficiencies within thirty (30) days from the time Developer received notification of the deficiencies. If all deficiencies are not corrected within thirty (30) days, 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 the City the remaining or full amount of the Deposit, 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 any further action or notice whatsoever) to use as much of the proceeds of the Deposit as is required, in the City's sole discretion, 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 affect such work pursuant to TAYLORSVILLE MUNICIPAL CODE § 13.02.160(S)(2). Any balance of the Deposit remaining after payment of all such costs, fees and expenses, and a reasonable reserve in an amount determined by the City at the City's sole discretion, shall be refunded to Developer.

6. **No Waiver or Estoppel.** This Agreement is irrevocable unless revoked by the mutual written consent of both the City and Developer. 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 any of 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 Deposit is adequate enough 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 hereby agrees to pay such deficiency independent of this Agreement, which amount may include, but is not limited to, any and all incidental construction, legal, administrative or engineering fees or expenses incurred by the City to affect such work. Additionally, no further permits or approvals shall be issued with respect to the Subdivision or to Developer until such deficiency is cured.

7. **Limitation on Escrow Agent's Duties.** Escrow Agent shall have no duty, responsibility, or liability whatsoever to affect the physical installation of the Improvements. 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, that such Escrow Agent shall be responsible and/or liable for any disbursements of the Deposit that occurs without prior written consent and direction from the City.

8. **Inspections.** The City shall have the right to inspect any Improvements at any time during the Construction. The City may conduct as many inspections as it deems necessary, as determined in the City's sole discretion. Developer shall notify the City in writing when underground Improvements are ready to be backfilled and hereby agrees not to backfill such trenches or excavations until such underground Improvements have been inspected and approved by the City.

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 and sub-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 one counterpart were upon the same instrument. All signed counterparts together shall constitute and be deemed to be one original.

d. Severability. The provisions of this Agreement are severable. In the event that any provision hereof is determined to be void, voidable, unenforceable or invalid, such void, voidable, unenforceable or invalid provision shall not affect the other provisions of this Agreement and the remaining provisions shall remain in full force and effect.

e. Waiver of Breach. Any waiver by either Party of any breach of any kind or character whatsoever by the other Party, 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 any 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 and executed by both the City and Developer.

h. Governing Law and Interpretation. This Agreement shall be governed, 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 attorney's fees from the non-prevailing Party, 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) business days after such notice is deposited in the United States mail, postage prepaid and certified and addressed to the respective Parties at the 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:

DEVELOPER: Name: _____
Address: _____

ESCROW AGENT: Name: _____
Address: _____

CITY: Name: City of Taylorville, Utah
2600 West Taylorsville Blvd.
Taylorsville, Utah 84129

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 prior written consent of the City.

m. No Partnership. The City and Developer do not in any way or for any purpose become partners or joint venturers with each other by this Agreement. Each Party hereto remains its own separate entity.

n. Benefit of Agreement. The benefits and protections provided by this Agreement shall inure solely to the City. The City shall not be liable for any claim or obligation of Developer.

o. Exhibits. All exhibits attached 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 this Agreement and all exhibits and writings.

p. Effective Date. The effective date of this Agreement shall be the date first written above.

WHEREOF, the Parties hereto have caused this Agreement to be signed and executed as of the Effective Date.

[SIGNATURES ON FOLLOWING PAGE.]

DEVELOPER:

By: _____

Printed Name: _____

Its: _____

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by
_____, as the _____ of
_____.

My commission expires:

Notary Public:
Residing at: _____

The Escrow Agent hereby acknowledges receipt of the Deposit in the amount of \$_____ and establishment of the escrow account and hereby irrevocably agrees to hold the Deposit in trust and disburse the Deposit strictly in accordance with the terms and conditions of this Agreement.

ESCROW AGENT:

By: _____

Printed Name: _____

Its: _____

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by
_____, as the _____ of
_____.

My commission expires:

Notary Public:
Residing at: _____

CITY OF TAYLORSVILLE:

ATTEST:

Cheryl P. Cottle, City Recorder

By: _____
Mayor Kristie S. Overson

EXHIBIT "A"
LEGAL DESCRIPTION

EXHIBIT "B"

PLAT WITH PROPOSED IMPROVEMENTS

EXHIBIT “C”
ENGINEER’S ESTIMATE

EXHIBIT “D”
EXCROW AGREEMENT