

**BOND AGREEMENT
FOR
COMPLETION OF PROPOSED IMPROVEMENTS**
[IRREVOCABLE LETTER OF CREDIT 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 issuing financial institution (“Issuer”). The City, the Developer, and the Issuer 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 boundary line adjustment and issuance of the Starbucks building permit, conditioned on Developer’s promise to install the Improvements as specified in this Agreement and upon Developer depositing with the City an irrevocable letter of credit in the 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

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 with the City an irrevocable letter of credit dated _____, issued by _____ (the “Issuer”), number _____, in the principal amount of \$_____ (collectively referred to hereafter as the “Letter of Credit” 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. Although the letter of credit issued pursuant to this Agreement shall be irrevocable, Developer has the option of posting

a new irrevocable letter of credit in the future to replace the irrevocable letter of credit accompanying this Agreement. Such replacement of the letter of credit shall not revoke this Agreement or any of its terms, and this Agreement and all of its terms and provisions shall remain in full force and effect.

4. Assignment of Letter of Credit. Developer hereby assigns, transfers and sets over to the City all of Developer's right, title and interest in and to the Letter of Credit and all proceeds of the Letter of Credit, and also hereby assigns, transfers and sets over to the City the right to demand and collect from the Issuer of the Letter of Credit the full proceeds thereof in the event of any default or non-compliance in the performance for which this bond is posted and filed.

5. Release of Deposit. If final Installation/Acceptance of the Improvements, as determined by the City, occurs within one (1) year after the Effective Date of this Agreement, then the City shall release ninety percent (90%) of the Deposit amount back to Developer. The City shall retain the remaining ten percent (10%) of the Deposit amount 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, as determined by the City, then the City shall release the remaining ten percent (10%) of the Deposit amount back to Developer.

6. 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 demand and receive from the Issuer the remaining or full amount of the Deposit. The City shall be deemed fully authorized (without any 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 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 proceeds of the Letter of Credit 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.

7. Future Design Modifications. The Parties acknowledge that the final design and configuration of the entire Project is uncertain at this time and may be altered by Developer in compliance with applicable laws of the City. If such alternate designs or configurations comply with the City's applicable laws, then the requirements for the Improvements that are subject to this Agreement shall be modified by the Parties to account for the future design or configuration. This Agreement shall not be construed to prevent such modifications or to require the installation of Improvements that are not required by any approved alternative configuration or design. This paragraph shall not be construed to require the City to approve any alternative design or configuration unless those alternatives comply with applicable City laws and are approved by the City through the City's applicable process and comply with applicable standards.

8. 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 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 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 Property or to Developer until such deficiency is cured.

9. Limitation on Issuer's Duties. The Issuer of the Letter of Credit has no duty, responsibility, or liability whatsoever to affect the physical installation of the Improvements. Issuer's only duty hereunder is to hold and distribute the Deposit in accordance with the terms and provisions of this Agreement; provided, however, that such Issuer shall be responsible and/or liable for any disbursements of the Deposit that occur without prior written consent and direction from the City.

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

l. Time of Essence. Time is the essence of this Agreement.

m. 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.

n. 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.

o. 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.

p. 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.

q. 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 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 OF LETTER OF CREDIT:

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

CITY ENGINEER'S ESTIMATE

EXHIBIT D

LETTER OF CREDIT