

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

THIS BOND AGREEMENT (this “*Agreement*”) is made and entered into this ___ day of _____ 20__, by and between the city of **COTTONWOOD HEIGHTS**, a municipal corporation of the state of Utah whose address is 1265 East Fort Union Blvd., Suite 250, Cottonwood Heights, UT 84047 (“*City*”), and by the undersigned owner or developer of real property that is located within the City (“*Owner*”).

RECITALS :

A. Owner owns legal title to the real property (the “*Property*”) that is particularly described on exhibit “A” annexed hereto.

B. Owner has filed, or soon will file, an application (the “*Application*”) with City for approval of the subdivision or other development of the Property.

C. Owner has requested City to approve the Application prior to construction and installation of certain improvements (the “*Improvements*”) required by ordinance to be placed in or adjacent to the Property in connection with such subdivision or development. The Improvements are particularly described on exhibit “B” annexed hereto.

D. Owner has requested that City temporarily defer Owner’s obligation to install the Improvements.

E. City is willing to defer Owner’s obligation to install the Improvements conditioned on Owner’s promise to install the Improvements and on Owner causing a letter of credit to be issued to City to assure installation of the Improvements, all on the terms and conditions specified in this Agreement.

F. The parties intend to set forth herein their entire agreement regarding the subject deferral and to supercede hereby and to consolidate herein all of their prior negotiations and agreements, whether oral or written, regarding the same. This Agreement shall be construed in accordance with the requirements of the COTTONWOOD HEIGHTS CODE OF ORDINANCES, as currently adopted or as hereafter amended.

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. **Owner’s Completion and Warranty Obligations.** Owner irrevocably acknowledges its obligation to install the Improvements without cost to City and hereby agrees to satisfactorily complete the installation of the Improvements in a good, workmanlike, lien-free

manner by the following deadline (the “*Deadline*”): (a) two years after the date of this Agreement, if the Improvements are in connection with a subdivision of the Property, or (b) _____ months after the date of this Agreement, for all other Improvements. Further, Owner hereby warrants that the Improvements will be free of defects (normal wear and tear excepted) for a period of one year after all of the Improvements have been installed and finally accepted by City.

Section 2. **Repairs.** All responsibility for repair and maintenance of the Improvements shall remain with Owner until all of the Improvements have been installed and finally accepted by City (collectively, “*Installation/Acceptance*”) and the warranty in section 1 above (the “*Warranty*”) has expired.

Section 3. **Performance Guaranty.** To guaranty (a) the satisfactory and timely Installation/Acceptance of the Improvements, and (b) the Warranty (all as provided in section 1 above), contemporaneously herewith Owner shall cause to be provided to City, as sole holder and beneficiary, irrevocable standby letter of credit no. _____ (the “*LC*”) dated ____ _____ 20__ from _____ Bank (“*Issuer*”) in the principal amount of \$ _____ (the “*Committed Amount*”). A photocopy of the LC is attached hereto as exhibit “C” and is incorporated herein by this reference. Owner hereby assigns, transfers and sets over unto City all of Owner’s right, title and interest in and to the full proceeds of the LC and all right and authority to demand and collect from the Issuer up to the full Committed Amount in the event of any default or noncompliance with Owner’s obligations under this Agreement. City agrees to not make demand for or collect the proceeds of the LC based on Owner’s failure to timely construct the Improvements until on or after the applicable Deadline for completion of such construction. The LC shall remain in continuous, irrevocable effect for a period of at least 16 months after the applicable Deadline (i.e.–40 months after the date of this Agreement, for subdivision improvements, and 22 months after the date of this Agreement, for all other improvements).

Section 4. **Release of LC.** If final Installation/Acceptance of the Improvements occurs by the applicable Deadline, then City thereupon shall release and waive its right to draw and collect 90% of the Committed Amount. The remaining 10% of the Committed Amount shall remain committed and held intact for City’s sole benefit until one year after final Installation/Acceptance of the Improvements, at which time (provided that the Improvements are then free of defects, normal wear and tear excepted) City shall release and waive its right to draw and collect the remaining 10% of the Committed Amount.

Section 5. **Failure to Install Improvements.** If (a) Installation/Acceptance of the Improvements has not occurred by the applicable Deadline, or (b) the installed Improvements are not free of defects (normal wear and tear excepted) for one year after final acceptance by City, then City shall be deemed fully authorized (without further action or notice whatsoever) to demand, draw, collect and receive from Issuer as much of the Committed Amount (not previously released as provided in section 4 above) as is required (in City’s 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, administrative, legal or engineering expenses incurred by City to complete such work.

Section 6. **Limitation on Issuer Liability.** Issuer shall have no duty, responsibility or liability whatsoever for installation or repair of the Improvements except for the irrevocable duty, liability and responsibility to promptly honor City's drafts or demands for payment under the LC as provided in this Agreement.

Section 7. **No Waiver or Estoppel.** This Agreement is irrevocable unless revoked by the mutual consent of Owner and City. Neither this Agreement nor the providing of the LC by Owner and the acceptance of the LC by City shall constitute a waiver or estoppel by or against City concerning the Improvements, nor shall any such matters in any way relieve Owner 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 Committed Amount is adequate to pay for the satisfactory Installation/Acceptance of the Improvements or the satisfactory fulfillment of the Warranty.

Section 8. **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) 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.

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

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

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

(m) Reimbursement of City's Costs. Owner shall reimburse City's legal fees and costs incurred in connection with this Agreement promptly upon the City's request.

(n) No Surety Bond Implied. Use of the word "bond" in this Agreement does not mean or imply that a surety bond (issued by an insurer or otherwise) is part of the LC, the Committed Amount, or any other assurances to City under this Agreement.

[Signature pages follow].

CITY:

ATTEST:

COTTONWOOD HEIGHTS, a Utah municipality

By: _____
Kory Solorio, Recorder

By: _____
Kelvyn H. Cullimore, Jr., Mayor

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

The foregoing instrument was acknowledged before me this ____ day of _____
20__ by **KELVYN H. CULLIMORE, JR.** and **KORY SOLORIO** as the Mayor and the Recorder,
respectively, of the city of **COTTONWOOD HEIGHTS**, a Utah municipality.

Notary Public

528624.2

Exhibit "A"
to Bond Agreement for
Completion of Proposed Improvements

(Insert Description of Property)

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

(Attach Detailed List of Improvements)

Exhibit "C"
to Bond Agreement for
Completion of Proposed Improvements

(Attach copy of Irrevocable Letter of Credit)