

BOND AGREEMENT
(IRREVOCABLE LETTER OF CREDIT)
FOR COMPLETION OF IMPROVEMENTS

All property owners on record with Tooele County MUST be listed as the applicants. They must sign and have their signatures notarized. Only those listed as owners of the property can enter into an Irrevocable Letter of Credit Bond Agreement.

[IRREVOCABLE LETTER OF CREDIT BEHIND THIS PAGE]
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BOND AGREEMENT
(IRREVOCABLE LETTER OF CREDIT FORM)

THIS AGREEMENT, (herein "Agreement"), is entered into this _____ day of _____, 20_____.

******* PARTIES *******

"APPLICANT": _____

a(n) _____ (corporation, partnership,
individual),

address: _____,

telephone: (_____) _____, facsimile: (_____) _____;

"CITY": Tooele City, a municipal corporation of the State of Utah,

address: 90 North Main Street, Tooele City, Utah 84074,

telephone: (435) 843-2120 facsimile: (435) 843-2129.

******* RECITALS *******

WHEREAS, APPLICANT desires the following permits and/or approvals (check and complete):

_____ Subdivision Recordation

_____ Building Permit

from CITY for _____

(description or name of project)

located at _____; and

(street address of project)

WHEREAS, Tooele City ordinances require APPLICANT to pay, prior to the actual issuance of any permit(s)/approval(s), the following described fees: **a 4% inspection fee based on the engineer estimate of the project (not to include a percentage of the 20% warranty amount)**, estimated to be \$_____, **any fee as required by a Reimbursement Agreement based upon Latecomer contracts**, and **A \$250.00 ADMINISTRATIVE FEE (See ¶ 31 below)** (herein the "Fees"); and

WHEREAS, the terms of the issuance of said permit(s)/approval require APPLICANT to complete the following improvements, (herein "the Improvements"):

- As specified in the evaluation letter of the CITY Engineer, or his designee, included as Exhibit "A," regarding the cost of such improvements, attached hereto and incorporated herein by this reference;

- and-

- ▶ As specified in the final plat and approved construction drawings for _____ on file with the CITY Engineer, incorporated herein by this reference; and

WHEREAS, CITY will not grant said permit(s)/approval(s) until adequate provision has been made to guarantee completion of the Improvements and to warrant the Improvements from any defects, which improvements and required warranty are estimated to cost \$ _____ (See Exhibit A attached), and which improvements shall be installed under the direction and supervision of and in accordance with the specifications of CITY; and

WHEREAS, provision has been made by law whereby APPLICANT shall file a guarantee acceptable to CITY to secure the construction of the Improvements in a manner satisfactory to CITY;

NOW, THEREFORE, in consideration of the premises and other valuable consideration, the parties agree as follows:

******* TERMS AND CONDITIONS *******

1. ADDITIONAL DEFINITIONS.

- 1.1. "APPLICANT" and "CITY," as used in this Agreement, shall also refer to all heirs, executors, administrators, successors, and/or assigns of APPLICANT and CITY, respectively.
- 1.2. "Incidental Costs," as used in this Agreement, shall mean engineering and architect fees, administrative expenses, court costs, attorney's fees (whether incurred by in-house or independent counsel), insurance premiums, mechanic's or materialmen's liens, and/or any other cost and interest thereon incurred by CITY, occasioned by APPLICANT'S failure to perform any and/or all obligations under this Agreement.
- 1.3. "Failure to Perform" or "Fail to Perform," as used in this Agreement, shall mean, in addition to those acts specified previously, the non-performance in a timely manner by a party to this Agreement of any obligation, in whole or in part, required of such party by the terms of this Agreement or required by Tooele City ordinance or other applicable law. The occurrence of such shall give the other party or parties the right to pursue any and all remedies available at law, in equity, and/or otherwise available pursuant to the terms of this Agreement.

2. PURPOSE FOR AGREEMENT. The parties hereto expressly acknowledge that the purpose of this Agreement is not only to guarantee the proper completion of the Improvements named herein, but also, among other things, to eliminate and avoid the harmful effects of subdivisions and other land developments which may leave property and/or improvements improperly completed, undeveloped, unproductive, or cluttered with construction debris and waste items.

3. UNRELATED OBLIGATIONS OF APPLICANT. The benefits and protection provided by this Agreement shall inure solely to CITY and not to third parties, including, but not limited to, lot purchasers, contractors, subcontractors, laborers, suppliers, or others. CITY shall not be liable to claimants or others for obligations of APPLICANT under this Agreement. CITY shall further have no liability for payment of any costs or expenses of any third party who attempts to make a claim under this Agreement, and shall have under this Agreement no obligation to make payments to, give notices on behalf of, or otherwise have obligations to any alleged third party claimants under this Agreement.

4. AGREEMENT DOCUMENTS. All data which is used by CITY to compute the cost of or otherwise govern the design and installation of the Improvements is hereby made a part of this Agreement, and is incorporated herein by this reference. If this Agreement covers improvements and/or fees required in a subdivision, this Agreement then incorporates herein by reference the subdivision plat and all data required by the Tooele City Code.

5. COMPLETION DATE. APPLICANT shall complete the Improvements:

- ▶ ***Within a period of 1 year from the date of final plat or project approval by CITY.***

6. FEES. APPLICANT shall pay the Fees required by CITY for the entire subdivision or project prior to the issuance of any building permit.

7. SPECIFIC ENFORCEMENT. APPLICANT has entered into this Agreement with CITY for the purpose of guaranteeing construction of the Improvements. CITY shall be entitled to specifically enforce APPLICANT'S obligation under this Agreement to construct and install the Improvements in a manner satisfactory to CITY.

8. **APPLICANT'S INDEPENDENT OBLIGATION.** APPLICANT EXPRESSLY ACKNOWLEDGES, UNDERSTANDS, AND AGREES that its obligation to complete and warrant the Improvements and/or fulfill any other obligation under this Agreement, Tooele City ordinances, or other applicable law is independent of any obligation or responsibility of CITY, either express or implied. APPLICANT agrees that its obligation to complete and warrant the Improvements is and shall not be conditioned upon the commencement of actual construction work in the subdivision or development or upon the sale of any lots or part of the subdivision or development. APPLICANT further acknowledges (a) that its contractual obligation to complete and warrant the Improvements pursuant to this Agreement is independent of any other remedy available to CITY to secure proper completion of the Improvements; (b) that APPLICANT may not assert as a defense that CITY has remedies against other entities or has other remedies in equity or at law that would otherwise relieve APPLICANT of its duty to perform as outlined in this Agreement or preclude CITY from requiring APPLICANT'S performance under this Agreement; and (c) that APPLICANT has a legal obligation, independent of this Agreement, to timely complete and pay for the Improvements in full.

9. **APPLICANT'S OBLIGATION FOR COSTS.** Should APPLICANT Fail to Perform its responsibilities under this Agreement in any degree, APPLICANT agrees to compensate CITY for all costs, including Incidental Costs, related to APPLICANT'S Failure to Perform its obligation to complete and warrant the Improvements to the extent that such costs are not adequately covered by the Proceeds.

10. **LETTER OF CREDIT.** APPLICANT hereby files, as an independent guarantee with CITY for the purpose of insuring construction and installation of the Improvements, an **IRREVOCABLE LETTER OF CREDIT**, (herein the "Letter of Credit"), numbered _____, issued by _____, in the amount of \$ _____, (herein the "Proceeds"). The Letter of Credit is issued in favor of CITY to the account of _____,

APPLICANT herein, and is made a part of this Agreement as Exhibit B . APPLICANT further agrees not to make demand for the Proceeds prior to the time period(s) stated above.

11. **REDUCTION OF PROCEEDS.** As the Improvements are inspected by CITY, a portion of the Proceeds may be released to APPLICANT upon APPLICANT'S written request. Such requests may be made only once every 30 days. The amount of any requested release shall be determined in the sole discretion of CITY. No release shall be authorized until such time as CITY has inspected the Improvements and found them to be in compliance with CITY standards. Completion of Improvements, even if verified by CITY, shall not entitle APPLICANT to an automatic release of any part of the Proceeds. The release of any Proceeds shall be evidenced by the written authorization of CITY attorney, pursuant to Tooele City Code § 7-19-12.

12. **FINAL ACCEPTANCE.** Notwithstanding the fact that certain of the Proceeds may be released upon partial completion of the Improvements, neither shall any partial release nor shall any full release of the Proceeds constitute final acceptance of the Improvements by CITY. Final acceptance of the Improvements shall be in accordance with Tooele City Code.

13. **WARRANTY OF IMPROVEMENTS.** Following final acceptance of the Improvements, APPLICANT hereby warrants that the Improvements shall remain free from defects or damage as determined by CITY, such that the Improvements continue to meet CITY standards for one year following said final acceptance. APPLICANT also warrants for a period of 12 months from final acceptance that rights-of-way, vacant lots, and other areas within the project site or subdivision that are accessible to the APPLICANT or within the APPLICANT'S control shall be kept reasonably clean and free from any construction debris, waste items, and mounds of soil, rocks, concrete, asphalt, and other debris.

14. **RETAINAGE.** APPLICANT expressly agrees that, notwithstanding any partial release of any of the Proceeds requested by APPLICANT and/or granted by CITY, CITY shall not release below 1/6 (one-sixth) of the Proceeds, (herein the "Retainage") for one year following final acceptance of the Improvements. The Retainage shall be held to insure that the Improvements do not have any latent defects or damage as determined by CITY, such that the Improvements do not continue to meet CITY standards. Retainage shall also be held to insure that rights-of-way, vacant lots, and other areas within the project site or subdivision that are accessible to the APPLICANT or within the APPLICANT'S control are kept reasonably clean and free of any construction debris, waste items, and mounds of soil, rocks, concrete, asphalt, and other debris. Notwithstanding said Retainage, APPLICANT shall be responsible for any substandard, defective, or damaged Improvements if the Retainage is inadequate to cover any such Improvements. At the request of APPLICANT, the Retainage or any part thereof may be replaced with a performance bond of a type and form approved by CITY. APPLICANT, contractor, subcontractor, or other person providing the replacement bond shall be responsible for any substandard or defective Improvements if the Proceeds of said replacement bond are inadequate to cover any such Improvements.

15. **APPLICANT INDEMNIFICATION.** APPLICANT agrees to indemnify, defend, and save harmless CITY, its officers, employees, and agents from and against any and all liability which may arise as a result of the installation of the Improvements prior to CITY'S final acceptance of the Improvements as defined herein, and from and against any and all liability which may arise as a result of any improvements which are found to be defective during the one-year warranty period covered by this Agreement. With respect to APPLICANT'S agreement to defend CITY, as set forth above, CITY shall have the option to either provide its own defense, with all costs for such being borne by APPLICANT, or require that APPLICANT undertake the defense of CITY.

16. **RELEASE OF PROCEEDS.** In the event the Improvements have been installed to the satisfaction of CITY pursuant to this Agreement and Tooele City ordinances within the above stated time period(s), CITY agrees to execute a written release of the remaining Proceeds.

17. **DEMAND FOR AND USE OF PROCEEDS.** In the event the Improvements are not installed to the satisfaction of CITY pursuant to this Agreement and Tooele City ordinances within the above stated time period(s), and/or APPLICANT fails to perform any obligation under this Agreement or Tooele City ordinances, the entity issuing the Letter of Credit shall remit to CITY, upon CITY'S written demand, the Proceeds of the Letter of Credit. CITY may use and expend all the Proceeds or such lesser amount as may be estimated by CITY to be necessary to complete the Improvements as required herein.
18. **INADEQUATE PROCEEDS.** If the Proceeds are inadequate to pay the cost of the completion of the Improvements according to CITY standards, for whatever reason, including previous reductions, APPLICANT shall be responsible for the deficiency independent of the Letter of Credit. Additionally, no further permits or business license shall be issued, and/or any existing permits or business licenses applicable to the location of the Improvements may be immediately suspended or revoked by the CITY until the Improvements are completed or until a new bond acceptable to CITY has been executed to insure completion of the remaining Improvements. Furthermore, the cost of completion of the Improvements shall include reimbursement to CITY for all costs, including, but not limited to, construction costs and any Incidental Costs incurred by CITY in completing the Improvements and/or collecting the Proceeds.
19. **INCIDENTAL COSTS.** If upon written demand of CITY the Proceeds are not remitted to CITY within 30 days of said demand, then CITY'S costs of obtaining the Proceeds, including the City Attorney's Office costs or outside attorney's fees and court costs, shall be added to the amount due CITY from APPLICANT and shall be included with the Proceeds remitted to CITY.
20. **ACCESS TO PROPERTY.** Should CITY elect to use the Proceeds to complete the Improvements, APPLICANT herein expressly grants to CITY, and any contractor or other agent hired by CITY, the right of access to the project property to complete the Improvements.
21. **SUBSTANDARD IMPROVEMENTS.** Should any Improvements prove to be substandard or defective within the one year warranty period discussed above, CITY shall notify APPLICANT in writing of such substandard or defective Improvements. APPLICANT shall then have 15 days from notice from CITY in which to commence repair of the Improvements, and a reasonable amount of time, as determined by CITY, which shall be specified in the notice, to complete repair of the Improvements. Should APPLICANT fail to either commence repair of the Improvements or complete repair of the Improvements within the required time periods, CITY may exercise its option to remedy the defects and demand payment for such from APPLICANT, should the Proceeds be insufficient to cover the costs incurred by CITY.
22. **INSURANCE.** Should CITY elect to install, complete, or remedy any defect or damage in the Improvements, APPLICANT shall be responsible for the payment of the premium for an insurance policy covering any liability, damage, loss, judgment, or injury to any person or property, including, but not limited to, damage to APPLICANT or its property as a result of the work of any contractor or agent hired by CITY to complete or remedy the Improvements. The minimum dollar amount and the scope of coverage of the insurance policy shall be determined and set by CITY. APPLICANT shall indemnify, defend, and hold harmless CITY, its officers, employees, and agents for any liability which exceeds the insurance policy limit. CITY, at its option, may collect and expend the Proceeds to make the premium payments should APPLICANT fail to pay said premium. No permit, approval or business license shall be issued by CITY, and any existing permit, approval, or business license shall be suspended until said premium is initially paid and a bond is in place to cover subsequent payments. APPLICANT further agrees to indemnify, defend, and hold harmless CITY, its officers, agents, and employees for or from any damage or loss suffered or any judgment resulting from the work of any contractor or agent hired by CITY on behalf of APPLICANT.
23. **NOTICE.** Notice to APPLICANT or CITY shall be mailed or delivered to the address shown in this Agreement. The date notice is received at the address shown in this Agreement shall be the date of actual notice, however accomplished.
24. **MECHANIC/MATERIAL LIENS.** Should CITY elect to complete or remedy the Improvements, APPLICANT shall indemnify, defend, and hold harmless CITY from and against any liability which exceeds the bond amount for the payment of any labor or material lien as a result of any work of any contractor (including subcontractors and materialmen of any such contractor or agent) hired by CITY or which may arise due to either a defect in or failure of this Agreement or insufficient Proceeds to cover such costs.
25. **FAILURE TO PERFORM.** In addition to those events previously or subsequently described herein, the following shall be considered Failure to Perform on the part of APPLICANT, the occurrence of which shall entitle CITY to invoke any and all remedies outlined in this Agreement or any and all remedies it may have in equity or at law: APPLICANT'S abandonment of the project as determined by CITY; APPLICANT'S insolvency, appointment of a receiver, or filing of a voluntary or involuntary petition in bankruptcy; the commencement of a foreclosure proceeding against the project property; the project property being conveyed in lieu of foreclosure.
26. **WAIVER.** The failure by any party to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement or to exercise any right or remedy consequent upon a failure to perform thereof shall not constitute a waiver of any such failure to perform or any other covenant, agreement, term, or condition. No waiver shall affect or alter the remainder of this Agreement, but each and every other covenant, agreement, term, and condition hereof shall continue in full force and effect with respect to any other then existing or subsequently occurring failure to perform.
27. **ATTORNEYS FEES.** In the event there is a failure to perform under this Agreement and it becomes reasonably necessary for any party to employ the services of an attorney in connection therewith (whether such attorney be in house or outside counsel), either with or without litigation, on appeal or otherwise, the losing party to the controversy shall pay to the successful party reasonable attorneys fees incurred by such party, and, in addition, such costs and expenses as are incurred in enforcing this Agreement.
28. **TIME IS OF THE ESSENCE.** Time is of the essence of this Agreement. In case either party shall fail to perform the obligations

on its part at the time fixed for the performance of such obligations by the terms of this Agreement, the other party may pursue any and all remedies available in equity, or law.

29. **GOVERNING LAW.** This Agreement shall be interpreted pursuant to, and the terms thereof governed by, the laws of the State of Utah. This Agreement shall be further governed by Tooele City ordinances in effect at the time of the execution of this Agreement. However, the parties expressly acknowledge that any subdivision or other development regulations enacted after the execution of this Agreement, which are reasonably necessary to protect the health, safety, and welfare of the citizens of CITY, shall also apply to the subdivision or development which is the subject of this Agreement.

30. **INDUCEMENT; INTEGRATION; MODIFICATION; CAPTIONS; SEVERABILITY.**

30.1. The making and execution of this Agreement has not been induced by any representations, statements, warranties, or agreements other than those herein expressed.

30.2. This Agreement embodies the entire understanding of the parties, and there are no further or other agreements or understandings, written or oral, in effect between the parties relating to the subject matter herein.

30.3. Except as otherwise authorized by this Agreement, this instrument may be amended or modified only by an instrument of equal formality signed by the respective parties.

30.4. The titles or captions of this Agreement are for convenience only and shall not be deemed in any way to define, limit, extend, augment, or describe the scope, content, or intent of any part or parts of this Agreement.

30.5. If any portion of this Agreement is declared invalid by a court of competent jurisdiction, the remaining portions shall not be affected thereby, but shall remain in full force and effect.

31. **ADMINISTRATIVE FEE.** The parties agree that APPLICANT will pay a non-refundable \$250.00 administrative fee to CITY to administer the bond and bond agreement.

WHEREUPON, the parties hereto have set their hands the day and year first above written.

"APPLICANT"

By _____

Title _____
(Signature must be notarized on following page.)

"CITY"

MAYOR

CITY ENGINEER

ATTEST:

CITY RECORDER

APPROVED AS TO CONTENT:

CITY BUILDING OFFICIAL

APPROVED AS TO FORM:

CITY ATTORNEY

APPLICANT NOTARY

(Complete only if **APPLICANT** is an **Individual**.)

STATE OF _____)
 :SS
COUNTY OF _____)

On this ____ day of _____, 20____, personally appeared before me, _____
_____, the signer(s) of the foregoing instrument who duly acknowledged to me that he/she/they executed the same.

NOTARY PUBLIC

(Complete only if **APPLICANT** is a **Corporation**.)

STATE OF _____)
 :SS
COUNTY OF _____)

On this ____ day of _____, 20____, personally appeared before me, _____
_____, who being by me duly sworn did say that he/she is the _____ of _____
_____, corporation, and that the foregoing instrument was signed in behalf of said corporation by authority of
its Board of Directors, and he/she acknowledged to me that said corporation executed the same.

NOTARY PUBLIC

(Complete only if **APPLICANT** is a **Partnership**.)

STATE OF _____)
 :SS
COUNTY OF _____)

On this ____ day of _____, 20____, personally appeared before me, _____
_____, who being by me duly sworn did say that he/she/they is/are the _____ of _____
_____, a partnership, and that the foregoing instrument was duly authorized by the partnership at a
lawful meeting held or by authority of its bylaws and signed in behalf of said partnership.

NOTARY PUBLIC

(Complete only if **APPLICANT** is a **Limited Liability Company**.)

STATE OF _____)
 :SS
COUNTY OF _____)

On this ____ day of _____, 20____, personally appeared before me, _____
_____, who being by me duly sworn did say that he/she/they is/are the _____ of _____
_____, by authority of its members or its articles of organization, and he/she acknowledged to me that said
limited liability company executed the same.

NOTARY PUBLIC