Bond Agreement for Completion of Proposed Improvements
(Escrow Form)

THIS BOND AGREEMENT (this "*Agreement*") is made and entered into effective __ _____ 20__, by and among the city of **COTTONWOOD HEIGHTS**, a Utah municipality whose address is 2277 East Bengal Boulevard, Cottonwood Heights, UT 84121 ("*City*"), by the undersigned owner of real property that is located within City ("*Owner*"), and by the undersigned escrow agent ("*Escrow Agent*").

R E C I T A L S :

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 as specified in this Agreement, and on Owner's deposit into an escrow controlled by Escrow Agent of the estimated cost of the Improvements, to be held as specified in this Agreement.

F. 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.

A G R E E M E N T :

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**. Owner and City agree that all responsibility for repair and maintenance of the Improvements remains with Owner until all of the Improvements have been installed and finally, affirmatively accepted by City in writing (collectively, "*Installation/Acceptance*") and the warranty in section 1 above (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 Owner shall deposit into a segregated escrow account (the "*Escrow*") controlled by Escrow Agent the sum of $_____ (the "*Deposit*"). Owner 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 as specified in this Agreement.

Section 4. **Release of Bond**. If final Installation/Acceptance of the Improvements occurs by the applicable Deadline, then upon Owner's written request City promptly shall send a written direction to Escrow Agent to release and pay Owner 90% of the amount of the Deposit. Upon its receipt of such direction, Escrow Agent shall pay such portion of the Deposit to Owner. Further, if one year after final Installation/Acceptance of the Improvements, the Improvements are then free of defects, normal wear and tear excepted, then upon Owner's written request City promptly shall send a written direction to Escrow Agent to release and pay to Owner the remaining 10% of the Deposit remaining in the Escrow, whereupon Escrow Agent shall pay such balance of the Deposit to Owner.

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 may at any time thereafter send a written direction to Escrow Agent to release and pay to City as much of the Deposit 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 or engineering expenses incurred by City to complete such work. Any balance of the Deposit remaining after payment of all of such costs, fees and expenses shall be refunded to Owner following City's final acceptance of the Improvements and expiration of the Warranty.

Section 6. **No Waiver or Estoppel**. Neither this Agreement, the escrow of the Deposit by Owner nor the acceptance of the Deposit 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 Deposit is adequate to pay for the satisfactory Installation/Acceptance of the Improvements or the satisfactory fulfillment of the Warranty.

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.

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 Deposit or any other assurances to City under this Agreement.

DATED effective the date first above written.

OWNER:

_____

By:_____
Its:_____
Address: _____
_____

STATE OF _____)
: ss.
COUNTY OF _____)

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

_____
Notary Public

ESCROW AGENT:

_____

By:_____
Its:_____
Address: _____
_____

STATE OF _____)
: ss.
COUNTY OF _____)

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

_____
Notary Public

CITY:

ATTEST:

COTTONWOOD HEIGHTS, a Utah municipality

By:_____
Paula Melgar, Recorder

By:_____
Michael J. Peterson, Mayor

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

The foregoing instrument was acknowledged before me this ____ day of _____ 20__ by **MICHAEL J. PETERSON** and **PAULA MELGAR** as the Mayor and the Recorder, respectively, of the city of **COTTONWOOD HEIGHTS**, a Utah municipality.

_____
Notary Public

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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)