

RESTORATION AND REVEGETATION AGREEMENT

THIS RESTORATION AND REVEGETATION AGREEMENT (the "Agreement") is made and entered into by and between the City of West Jordan, a Utah municipal corporation, (the "City") and _____, a Utah _____, (the "Property Owner").

WHEREAS, Property Owner owns property located within the City, which property is more particularly described in Exhibit "A", and referred to herein as the "Property"; and

WHEREAS, Property Owner desires to obtain a land disturbance permit from the City in order to perform work upon the Property that will result in removal or disturbance of existing vegetation and drainage patterns; and

WHEREAS, in order to obtain a land disturbance permit, Property Owner is required to revegetate and stabilize all disturbed areas, to implement appropriate erosion control measures and to provide satisfactory financial security to ensure the installation and warranty of such revegetation, stabilization and erosion control measures; and

WHEREAS, if further development does not occur upon the Property in a timely manner, Property Owner is required to restore the property as nearly as practicable to its original grading, and Property Owner is required to provide satisfactory financial security to ensure such restoration; and

WHEREAS, the City will not grant the land disturbance permit until Property Owner promises to provide and warrant the required revegetation and stabilization of the disturbed areas and the erosion control measures in accordance with the terms and conditions of this Agreement and to provide satisfactory financial security securing the same; and

WHEREAS, the City will not grant the land disturbance permit until Property Owner promises to provide satisfactory financial security securing restoration of the Property.

NOW, THEREFORE, in consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Effective Date. The effective date of this Agreement shall be _____, 2018 (the "Effective Date").

2. Revegetation and Stabilization. Property Owner hereby agrees to revegetate or cause to be revegetated the disturbed slopes and areas located upon the Property in conjunction with the grading performed at approximately _____ utilizing _____ (insert address) native materials and to provide erosion control and slope and area stabilization for all such disturbed areas (the "Disturbed Areas"). Property Owner agrees to maintain, repair, reseed,

and replant all revegetation, stabilization and erosion control measures for the Disturbed Areas as required and approved by the City Engineer. Initial installation of revegetation shall be completed no later than ninety (90) days after the Effective Date.

3. Restoration of Property. If Property Owner does not proceed with further construction of City-approved development upon the Property within one hundred eighty (180) days after the Effective Date, Property Owner shall restore the Property as nearly as practicable to the Property's condition before disturbance.
4. Replacement Financial Security. It is anticipated that further development activity may affect the Property and that Property Owner may provide financial security for said development activity. The City Engineer may determine to accept other financial security as a replacement for this Agreement. Property Owner shall be notified in writing of the City Engineer's determination. If replacement security is accepted, this Agreement shall terminate on the termination date set forth in the City Engineer's written acceptance.
5. Financial Guarantee. Property Owner hereby files, as an independent financial security with City for the purpose of insuring Property Owner's performance of its obligations as set forth here, a financial guarantee as follows (check applicable form):

Cash Deposit.

Property Owner hereby deposits with the City a cash guarantee in the amount of \$ _____ (the "Proceeds"). The City shall not be required to pay any interest to Property Owner on any sums deposited pursuant to this Agreement. The Property Owner acknowledges that any interest earned by the City on the deposited sums shall be retained by the City as reimbursement and an offset for the cost of administering this Agreement.

Escrow Account. (Depository is a Required Party)

Property Owner hereby assigns and sets over to City all its right, title and interest in the principle of that certain Escrow Account held by _____
(Insert Depository Name)

in the amount of \$ _____ entitled, _____
(Insert Amount) (Insert Location Name)

(Account Number)

The Account shall be held by a federally insured bank, savings and loan, or credit union, and the Proceeds shall be available to City at an office located within fifty (50) miles of City.

[] **Irrevocable Letter of Credit.**

Property Owner hereby files with City an Irrevocable Standby Letter of Credit, (herein the “Letter of Credit”), number _____ used by _____

(Account Number)

(Issuer)

a(n) _____ Corporation (the “Issuer”), located at _____;
(State) (Issuer Address)

_____; _____; in the
(Issuer Telephone) (Issuer Facsimile)

Amount of \$ _____ (the “Proceeds”).
(Letter of Credit Amount)

The Letter of Credit is issued in favor of City to the account of _____, Property Owner herein, and is made a part of this Agreement and attached hereto as Exhibit “B”. The Letter of Credit shall be issued by a federally insured bank, savings and loan, or credit union, authorized to do business in Utah, and the Proceeds shall be available to the City by presenting a site draft at an office located within fifty (50) miles of City. The Letter of Credit shall contain the following provision:

It is a condition of this Letter of Credit that it shall be deemed automatically extended without amendment for one (1) year from the present or any future expiration date unless at least sixty (60) days prior to such expiration date City is notified by registered letter, return receipt requested, or overnight courier service that Issuer elects not to consider the Letter of Credit renewed for any such period.

(b) Demand of Proceeds. For Cash Deposit, City shall provide thirty (30) days written notice prior to expending the Proceeds. For Escrow Account, Depository shall remit the Proceeds to City within thirty (30) days of City’s written demand. For Irrevocable Letter of Credit, Issuer shall remit the Proceeds to city within thirty (30) days of City’s written demand or as otherwise noted in the Irrevocable Letter of Credit.

6. Restoration. If construction of a City-approved development has not commenced upon the Property within one hundred eighty (180) days after the Effective Date, Property Owner shall restore the Property as nearly as practicable to the Property’s condition before disturbance.

7. Revegetation.

A. Initial Inspection and Reduction. After Property Owner has completed the initial revegetation and the City has inspected and approved such initial revegetation, the City may reduce the Proceeds by 50-percent (“Initial Reduction”) of the revegetation amount. Such reduction shall be approved in writing by the City Engineer. The City Engineer shall not approve the reduction unless installations is in compliance with supplier and manufacturer recommendations; i.e. the seed rate based on Pure Live Seed (P.L.S.) and

the seed protection being appropriate for slope length, soil type, vegetation used and weather conditions.

B. Second Inspection. Twenty-four (24) months following the date of the Initial Reduction, the City shall inspect the Disturbed Areas to verify that growth has occurred and that any slopes and/or areas that have been disturbed are stabilized; i.e. lack of rill or gully erosion (the “Second Inspection”). The Property Owner shall replant, reseed and stabilize all non-stabilized areas within the Disturbed Areas during the aforesaid twenty-four month period and take all other actions necessary to provide erosion control and slope and area stabilization within the Disturbed Areas. The technical standards method of evaluating erosion will be utilized for inspection. This method of evaluating erosion consists of comparing plant production, soil cover, and erosion on the revegetated areas with an adjacent undisturbed site. Either the quadrant frame method or step transect method may be employed to measure the comparison. Either method shall be performed at several randomly selected locations.

C. Second Reduction. If the City approves the revegetation, stabilization and erosion control measures installed and maintained by the Property Owner based upon the Second Inspection, the Proceeds may be reduced by an amount equal to ninety percent (90%) of the original revegetation amount (the “Second Reduction”). Such reduction shall be approved in writing by the City Manager. The retained amount shall remain in force during the Warranty and Maintenance Period described herein. If the City does not approve the revegetation, stabilization and erosion control measures installed and maintained by the Property Owner, Property Owner shall replant, reseed and stabilize all non-stabilized areas of the Disturbed Areas as required. If any areas need to be replanted, reseeded or stabilized, the City may retain a portion of the Proceeds to insure such work is done or may expend such portions of the Proceeds necessary to accomplish the work.

D. Warranty and Maintenance Period. After approval of the revegetation, stabilization and erosion control measures and Second Reduction, a twelve (12) month warranty and maintenance period (“Warranty and Maintenance Period”) shall commence from the date of the Second Reduction. The Property Owner shall replant, reseed and stabilize all non-stabilized areas of the Disturbed Areas during the Warranty and Maintenance Period and take all other actions necessary to provide erosion control and slope and area stabilization within the Disturbed Areas.

E. Warranty Inspection. At the end of the Warranty and Maintenance Period, the City shall inspect the Disturbed Areas to verify that revegetation growth has taken hold and that the Disturbed Areas are established and stabilized; i.e. lack of rill or gully erosion. The technical standards method of evaluating erosion will be utilized for inspection. This method of evaluating erosion consists of comparing plant production, soil cover, and erosion on the revegetated areas with an adjacent undisturbed site. Either the quadrant frame method or step transect method may be employed to measure the comparison. Either method shall be performed at several randomly selected locations.

- F. Final Release. If the City determines that the revegetation growth has taken hold and the Disturbed Areas are established and reasonably free from erosion at the end of the Warranty and Maintenance Period, the remaining portion of the Proceeds may be released to Property Owner. Final release shall be evidenced in writing by the City Manager. If the City does not approve the revegetation, stabilization and erosion control measures installed and maintained by the Property Owner at the end of the Warranty and Maintenance Period, Property Owner shall replant, reseed and stabilize all non-stabilized areas of the Disturbed Areas as required. If any areas need to be replanted, reseeded or stabilized the City may retain a portion of the Proceeds to insure such work is done or may make written demand for remittance of the Proceeds to the City.
8. Expenditure of Proceeds. In the event the City determines Property Owner is in default under the terms of this Agreement, the City may expend all or a portion of the Proceeds. The City may expend the Proceeds to restore the Property, complete or repair revegetation, stabilization, erosion control measures or warranty repairs and corrections. Prior to expending the Proceeds, the City shall notify Property Owner of the default and demand performance hereunder. If Property Owner has not cured its default within thirty (30) days of the notice (the "Notice Period"), or in the case of a default that cannot reasonably be cured within the Notice Period, if Property Owner has not diligently commenced to cure such default within the Notice Period and thereafter diligently pursued the cure of said default, the City shall have the right to expend the Proceeds and may cause the required restoration, revegetation, stabilization and erosion control measures to be installed, completed or repaired using such funds and to make warranty repairs and corrections. The Notice Period shall be thirty (30) days or, if the city reasonably determines that human safety will be threatened or irreparable property damage will occur, then such shorter period of time as the City may reasonably specify in its notice of default.
9. Non-Release of Property Owner's Obligations. It is understood and agreed between the parties that the establishment and availability to the City of the Proceeds as herein provided and any release or expenditure by the City of Proceeds pursuant to this Agreement, shall not constitute a waiver by or estoppel against the City and shall not release or relieve the Property Owner from Property Owner's obligation to install and fully pay for the revegetation and restoration required herein, and the right of the City expend the Proceeds shall not affect any rights and remedies of the City against the Property Owner for breach of any covenant herein. Further, the Property Owner agrees that if the City expends the Proceeds to perform or cause to be performed all or any portion of the work and installation of restoration, revegetation, stabilization and erosion control measures required of the Property Owner hereunder, then any and all costs incurred by the City in so doing which exceed the Proceeds shall be paid by the Property Owner to the City, including administrative, engineering, legal, labor and materials, and other procurement fees and costs.

10. Notices. Any notice required or desired to be given hereunder shall be deemed sufficient if delivered personally or sent by certified mail, postage prepaid, return receipt requested, addressed to the respective parties at their last known addresses.
11. Severability. Should any portion of this Agreement for any reason be declared invalid or unenforceable, the invalidity or unenforceability of such portion shall not affect the validity of any of the remaining portions and the same shall be deemed in full force and effect as if this Agreement had been executed with the invalid portions eliminated.
12. Governing Law. This Agreement and the performance hereunder shall be governed by the laws of the State of Utah.
13. Binding Effect. This Agreement shall inure to the benefit of, and be binding upon, the parties hereto, their respective officers, agents, representatives, successors and assigns.
14. Default. The parties herein each agree that should they default in any of the covenants or agreements contained herein, the defaulting party shall pay all costs and expenses, including a reasonable attorneys fee which may arise or accrue from enforcing this Agreement, or in pursuing any remedy provided hereunder or by the statutes or other laws of the State of Utah, whether such remedy is pursued by filing suit or otherwise, and whether such costs and expenses are incurred with or without suit or before or after judgment.
15. Amendment. Any amendment or modification of this Agreement shall be made in writing signed by the parties hereto.
16. Fees. Property owner or applicant acknowledges and agrees to pay all fees under the Uniform Schedule of Fees and Service Charges (“Schedule”). All fees are subject to change without notice. If the Schedule changes after the Parties have entered into this Agreement, Property owner or applicant agrees to pay the fee amount in accordance with the most recently adopted Schedule at the time the fee is due.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by and through their respective duly authorized representatives as of the Effective Date.

CITY OF WEST JORDAN

ATTEST:

Mayor Jim Riding

Melanie S. Briggs, City Clerk

Approved as to Legal Form:

West Jordan City Attorney

PROPERTY OWNER

By: _____

Its: _____

Property Owner Acknowledgment

STATE OF _____)
:SS
COUNTY OF _____)

On this _____ day of _____, 20____, personally appeared before me, _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the forgoing instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

My commission expires:

Residing in _____ County,

NOTARY PUBLIC

For Escrow Only

DEPOSITORY, _____ a (n) _____
corporation, (Name of depository) (State of incorporation)

hereby acknowledges that it has, on deposit to the credit of Property Owner in the Account referenced above, the sum mentioned as the Proceeds; that it is aware of, understands, and agrees to each provision of this Agreement; that it agrees to make disbursement of the Proceeds of the Account only within the terms as outlined in this Agreement; and that it will hold the Proceeds in the Account indefinitely until such time as City, in writing, either demands the Proceeds be remitted to City or otherwise releases Depository from its obligation to hold the Proceeds. Should Depository fail to timely perform its obligations as outlined herein or as required by law, Depository shall be liable to City for the actual costs incurred by City in attempting to enforce Depository's obligations under this Agreement. Depository expressly acknowledges, understands, and agrees that its obligation under this Agreement is independent of any obligation of City, either express or implied. Depository agrees that its performance is not and shall not be conditioned upon the sale of any lots or any part of any subdivision or development. Depository further acknowledges:

- (a) that its obligation to perform under this Agreement is independent of any other remedy available to City to secure proper completion of the restoration and revegetation;
- (b) that Depository may not assert as a defense that City has remedies against other persons or entities or has other remedies in equity or at law that would otherwise relieve Depository of its duty to perform as outlined in this Agreement, or preclude City from requiring Depository's performance under this Agreement; and
- (c) that Depository 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 Property Owner of its duty to perform as outlined in this Agreement, or preclude City from requiring Property Owner's performance under this Agreement.

Notice to Depository shall be by mail at the address:

Depository telephone number: (____) _____, Depository facsimile: (____) _____;

DEPOSITORY (for Escrow Only)

By _____

Title _____

Depository Acknowledgment

STATE OF _____)
:SS
COUNTY OF _____)

On this ____ day of _____, 20____, personally appeared before me, _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the forgoing instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

My Commission Expires:

Residing in _____ County,

NOTARY PUBLIC

Exhibit “A”

Property Description

Exhibit “B”

Letter of Credit