

## **Appendix F**

### Land Disturbance Ordinance

# THE CITY OF WEST JORDAN, UTAH

A Municipal Corporation

RESOLUTION NO. \_\_\_\_\_

## A RESOLUTION OF THE CITY COUNCIL OF CITY OF WEST JORDAN ESTABLISHING REQUIREMENTS PERTAINING TO REVEGEGATION BONDS WHICH ARE REQUIRED IN CONNECTION WITH DEVELOPMENTS WITHIN THE CITY

Whereas, the City Council of the City of West Jordan has reviewed Title 81 - Land Disturbance Ordinance and the Land Disturbance Design and Construction Standards and now wishes to adopt a Revegetation Agreement and Bond to assist with the implementation of the ordinance and standards; and

Whereas, the City Council desires to establish requirements for the posting of revegetation bonds in connection with developments within the City; and

Whereas, the City Council has determined that in order to protect the public health, safety and welfare that revegetation bonds will be required in certain cases before land disturbance permits are issued within the City.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST JORDAN, UTAH, THAT:

Section 1. Revegetation Bond Requirements. In cases where the City determines that revegetation, whether interim or permanent, is necessary, no land disturbance permit shall be issued by the City until a satisfactory revegetation bond estimate is prepared by the Developer for the intended improvements, is approved by the City Engineer, and is posted by the Developer with the City. The amount of the bond shall be posted to ensure that revegetation of disturbed areas will occur within twenty-one (21) calendar days after completion of final grading.

Following the completion of the initial revegetation, the City Engineer or designee shall inspect the work to be certain that installation is as per supplier and/or manufacturer recommendations i.e. seed rate based on Pure Live Seed (P.L.S.) and the seed protection is appropriate for slope length, soil type, vegetation used and weather conditions. Upon approval of the City Engineer, the bond amount may be reduced by 50% (the "Initial Reduction"). If the work is not approved, the Developer shall replant and/or reseed and/or stabilize any non stabilized areas which are designated by the City Engineer.

Twenty-four months following 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). Upon approval of the City, the remaining bond shall be reduced to equal ten-percent (10%) of the entire original bond amount (the "Second Reduction") which shall remain in force during the Warranty Period described below. If the work is not approved, the Developer shall replant and/or reseed and/or stabilize all areas within the initial area of disturbance and take all other actions reasonably necessary as directed by the City Engineer to provide erosion control and slope and/or area stabilization within the initial area of disturbance. In such case the Second Reduction shall be postponed until the City determines that the remedial work has stabilized the initial area of disturbance.

A twelve (12) month warranty period (the "Warranty Period") shall commence from the date of the Second Reduction. At the end of the Warranty Period, the City Engineer will make an inspection to determine whether or not the revegetation growth has taken hold and 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 to make this determination. 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. Upon determining that the revegetation growth has taken hold and the disturbed areas are established and reasonably free from erosion, the City Engineer shall authorize the release of the remaining bond.

Section 2. Severability. If any section, part or provision of this Resolution is held invalid or unenforceable, such invalidity or unenforceability shall not affect any other portion of this Resolution, and all sections, parts and provisions of this Resolution shall be severable.

Section 3. Effective Date. This Resolution shall become effective immediately upon its passage.

Adopted by the City Council of West Jordan, Utah, this \_\_\_\_ day of \_\_\_\_\_, 2004.

CITY OF WEST JORDAN

ATTEST:

By: \_\_\_\_\_  
Mayor Bryan D. Holladay

\_\_\_\_\_  
MELANIE BRIGGS  
City Recorder

Voting by the City Council:

"AYE" "NAY"

Rob Bennett	_____	_____
Kathy Hilton	_____	_____
Mike Kellermeyer	_____	_____
Stuart Richardson	_____	_____
Kim V. Rolfe	_____	_____
Lyle C. Summers	_____	_____
Mayor Bryan D. Holladay	_____	_____

CITY RECORDER'S CERTIFICATE OF PUBLICATION

I, Melanie Briggs, certify that I am the City Recorder of the City of West Jordan, Utah, and that the foregoing Resolution was posted at the following locations on the \_\_\_\_ day of \_\_\_\_\_, 2004: West Jordan City Hall, 8000 South Redwood Road, West Jordan, Utah; West Jordan Library, 1970 West 7800 South, West Jordan, Utah and the Community Oriented Policing Substation, 7061 South 1700 West, West Jordan, Utah.

MELANIE BRIGGS  
City Recorder

[SEAL]

**REVEGETATION AGREEMENT  
REDUCTION REQUEST**

I. Developer Information Required

A. Project Name: \_\_\_\_\_  
Project's Address: \_\_\_\_\_

B. Owner's Name: \_\_\_\_\_  
Owner's Address: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_

C. Depository Institution: \_\_\_\_\_  
Institutions Address: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_

D. The Revegetation Reduction Requested:

- Initial Reduction
- The Second Reduction
- Other (Attach description)
- Warranty Period begins (date): \_\_\_\_\_
- Warranty Period final Reduction

E. Total dollar amount of reduction \$ \_\_\_\_\_

F. Developers Certification:

The work described has been completed in accordance with the City of West Jordan Resolution No. 04-00, a resolution establishing requirements pertaining to revegetation bonds which are required in connection with developments within the City. It is understood and agreed that a final 10% of the entire original bond amount will not be released until an 24-month warranty has passed and the revegetation has been approved and accepted by the City.

Date: \_\_\_\_\_

\_\_\_\_\_  
Developer's Signature

**Revegetation Bond Inspection**

II Observation of Revegetation

A. Description of Revegetation requested

- Initial Reduction
- The Second Reduction
- Other Reduction
- Warranty Period

B. Approval or Reduction of the Reduction (attach description of rejection)

- 9 Initial Reduction
- 9 The Second Reduction
- 9 Other Reductions
- 9 Warranty Period

C. Dollar amount of reduction recommended \$ \_\_\_\_\_

D. Revegetation Reduction Certification

All work associated with the indicated reduction appears to / does not meet the criteria set forth in Resolution No. 04-00, a resolution establishing requirements pertaining to revegetation bonds which are required in connection with developments within the City. The reasons why this request does not meet the criteria is attached.

Date: \_\_\_\_\_

\_\_\_\_\_  
City Engineer

Project: \_\_\_\_\_

Type of Reduction Requested and Date: \_\_\_\_\_

III. Accounting Review

1. Remaining Revegetation Bond amount:

Original bond amount: \_\_\_\_\_

Previous Reductions:

Initial Reduction: \_\_\_\_\_

The Second Reduction: \_\_\_\_\_

Other Reductions: \_\_\_\_\_

Warranty Period Reduction: \_\_\_\_\_

Recommended Reduction: \_\_\_\_\_

Balances Remaining after Release \_\_\_\_\_

**REVEGETATION AGREEMENT**

(Escrow Deposit Form)

THIS AGREEMENT is made and entered into by and between City of West Jordan, a Utah municipal corporation, hereinafter referred to as the "City" and \_\_\_\_\_, a Utah \_\_\_\_\_ company, hereinafter referred to as "Developer" and \_\_\_\_\_, a Utah or federally chartered bank or savings and loan association authorized to do business in the State of Utah, whose address is \_\_\_\_\_, (hereafter "Bank").

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

WHEREAS, Developer desires to obtain a land disturbance permit from the City in order to regrade the Property which grading will result in removal and/or disturbance of existing vegetation and drainage patterns; and

WHEREAS, in order to obtain a land disturbance permit, Developer is required to revegetate and stabilize all disturbed areas, to implement appropriate erosion control measures and to post a satisfactory bond ensuring the installation and warranty of such revegetation, stabilization and erosion control measures; and

WHEREAS, the City will not grant the land disturbance permit until Developer 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 a satisfactory guarantee securing the same.

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. Revegetation and Stabilization. Developer hereby agrees to revegetate or cause to be revegetated the disturbed slopes and/or areas located within \_\_\_\_\_ of the Project in conjunction with the construction of \_\_\_\_\_ utilizing native materials and to provide erosion control and slope and/or area stabilization for all such disturbed areas (the "Disturbed Areas"). Developer 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.
2. Escrow Account – As an independent guarantee to City, for the purpose of insuring Developer’s performance of its obligations as set forth herein, Developer hereby assigns and sets over to CITY all rights, title, and interest in the principle of that certain Escrow Account held by Bank in the amount of \$ \_\_\_\_\_ (herein the "Proceeds") entitled, (insert amount) \_\_\_\_\_, (hereinafter "Account"). (insert name and account number of Escrow Account)
3. Initial Inspection and Reduction. After Developer has completed the initial revegetation and the City has inspected and approved such initial revegetation the City may reduce the guarantee by

50-percent (“Initial Reduction”). Such reduction shall be approved by the City Manager in writing. The City Manager shall not approve the reduction unless the installation is in compliance with supplier and/or 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.

4. Second Inspection. Twenty-four (24) months following 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 Developer 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/or 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.
5. Second Reduction. If the City approves the revegetation, stabilization and erosion control measures installed and maintained by the Developer based upon the Second Inspection, the guarantee may be reduced to an amount equal to ten percent (10%) of the amount (the “Second Reduction”). Such reduction shall be approved by the City Manager in writing. The ten percent (10%) retained amount shall remain in force during the Warranty Period described herein. If the City does not approve the revegetation, stabilization and erosion control measures installed and maintained by the Developer, Developer 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 guarantee to insure such work is done or may make written demand for remittance of the Proceeds to the City as provided herein.
6. Warranty Period. After approval of the revegetation, stabilization and erosion control measures and the Second Reduction, a twelve (12) month warranty period (“Warranty Period”) shall commence from the date of the Second Reduction. The Developer shall replant, reseed and stabilize all non-stabilized areas of the Disturbed Areas during the Warranty Period and take all other actions necessary to provide erosion control and slope and/or area stabilization within the Disturbed Areas.
7. Warranty Inspection. At the end of the Warranty 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.
8. Final Reduction. 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 Period, the remaining portion of the Proceeds may be released to Developer. Final release shall be evidenced by a Resolution of the City council. If the City does not approve the revegetation,

stabilization and erosion control measures installed and maintained by the Developer at the end of the Warranty Period, Developer 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 guarantee to insure such work is done or may make written demand for remittance of the Proceeds to the city as provided herein.

9. Demand for and Use of Proceeds. In the event the City determines Developer is in default under the terms of this Agreement, Bank shall withdraw upon the City's written demand, remit Proceeds to the City. The City may expend the proceeds to complete or repair revegetation, stabilization, erosion control measures or warranty repairs and corrections to be installed, completed, replanted, reseeded or stabilized using the funds received from the Escrow Deposit. Prior to mailing demand on the guarantee, the City shall notify Developer of the default and demand performance hereunder. If Developer has not cured its default within the Notice Period, or in the case of a default that cannot reasonably be cured within the Notice Period, if Developer 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 make demand on the guarantee and may cause the required revegetation, stabilization and/or erosion control measures to be installed, completed or repaired using such funds and/or to make warranty repairs and corrections. The Notice Period shall be ten (10) days or if the City reasonably determines that human safety will be threatened or irreparable property damage will occur than such shorter period of time as the City may reasonably specify in its notice of default.
10. Non-Release of Developer's Obligations. It is understood and agreed between the parties that the establishment and availability to the City of the guarantee as herein provided and any withdrawals from the Escrow Deposit by the City shall not constitute a waiver by or estoppel against the City and shall not release or relieve the Developer from Developer's obligation to install and fully pay for the revegetation, stabilization and erosion control measures as required herein, and the right of the City to make demand for and to use Proceeds shall not affect any rights and remedies of the City against the Developer for breach of any covenant herein, including the covenants of paragraph 1 of this Agreement. Further, the Developer agrees that if the City uses Proceeds to perform or cause to be performed all or any portion of the work and installation of revegetation, stabilization and erosion control measures required of the Developer hereunder, then any and all costs incurred by the City in so doing which exceed the Proceeds collected by the City shall be paid by the Developer to the City, including administrative, engineering, legal, labor and materials, and other procurement fees and costs.
11. 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.
12. 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.
13. Governing Law. This Agreement and the performance hereunder shall be governed by the laws of the State of Utah.

14. 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.
15. 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.
16. Amendment. Any amendment or modification of this Agreement shall be made in writing signed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by and through their respective duly authorized representatives as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

DEVELOPER

DEPOSITORY

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

CITY OF WEST JORDAN

ATTEST:

\_\_\_\_\_  
Mayor Bryan Holladay

\_\_\_\_\_  
Melanie S. Briggs, City Recorder

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 that he/she/they executed the same.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:

Residing in \_\_\_\_\_ County, \_\_\_\_\_

(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 are the  
\_\_\_\_\_, of \_\_\_\_\_, a partnership,  
and that the foregoing instrument was duly signed by the partnership at a lawful meeting held or by  
authority of its bylaws and signed in behalf of said partnership.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:

Residing in \_\_\_\_\_ County, \_\_\_\_\_

**(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

My Commission Expires:

Residing in \_\_\_\_\_ County, \_\_\_\_\_

**(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/they acknowledged to that said limited  
liability company executed the same.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:

Residing in \_\_\_\_\_ County, \_\_\_\_\_

DEPOSITORY NOTARY

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 \_\_\_\_\_, a \_\_\_\_\_ 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

My Commission Expires:

Residing in \_\_\_\_\_ County, \_\_\_\_\_

**Exhibit "A"**

Property Description

**REVEGETATION AGREEMENT**

(Letter of Credit Form)

THIS AGREEMENT is made and entered into by and between City of West Jordan, a Utah municipal corporation, hereinafter referred to as the "City" and \_\_\_\_\_, a Utah \_\_\_\_\_, hereinafter referred to as "Developer" .

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

WHEREAS, Developer desires to obtain a land disturbance permit from the City in order to regrade the Property which grading will result in removal and/or disturbance of existing vegetation and drainage patterns; and

WHEREAS, in order to obtain a land disturbance permit, Developer is required to revegetate and stabilize all disturbed areas, to implement appropriate erosion control measures and to post a satisfactory bond ensuring the installation and warranty of such revegetation, stabilization and erosion control measures; and

WHEREAS, the City will not grant the land disturbance permit until Developer 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 a satisfactory Letter of Credit securing the same.

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. Revegetation and Stabilization. Developer hereby agrees to revegetate or cause to be revegetated the disturbed slopes and/or areas located within \_\_\_\_\_ of the Project in conjunction with the construction of \_\_\_\_\_ utilizing native materials and to provide erosion control and slope and/or area stabilization for all such disturbed areas (the "Disturbed Areas"). Developer 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.
  
2. Letter of Credit. Developer hereby files, as an independent guarantee with City for the purpose of insuring Developer's performance of its obligations as set forth here, an Irrevocable Letter of Credit, (herein the "Letter of Credit"), numbered \_\_\_\_\_, issued by \_\_\_\_\_, a(n) \_\_\_\_\_ Corporation,  
 (Issuer) (State)

located at \_\_\_\_\_; \_\_\_\_\_:  
 (Issuer Address) (Issuer telephone)

\_\_\_\_\_, in the amount of, \$ \_\_\_\_\_, (herein  
 (Issuer facsimile)  
 the Proceeds").

The Letter of Credit is issued in favor of CITY to the account of \_\_\_\_\_, Developer herein, and is made a part of this Agreement and attached hereto as Exhibit "B". Developer shall ensure that the Letter of Credit shall contain the following provisions:

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 thirty (30) 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.

3. Initial Inspection and Reduction. After Developer has completed the initial revegetation and the City has inspected and approved such initial revegetation, the City may reduce the guarantee by 50-percent ("Initial Reduction") such reduction shall be approved in writing by the City Manager. The city Manager shall not approve the reduction unless installations is in compliance with supplier and/or 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.
4. 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 Developer 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/or 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.
5. Second Reduction. If the City approves the revegetation, stabilization and erosion control measures installed and maintained by the Developer based upon the Second Inspection, the guarantee may be reduced to an amount equal to ten percent (10%) of the original amount (the "Second Reduction"), such reduction shall be approved in writing by the City Manager. The 10 percent (10%) retained amount shall remain in force during the Warranty Period described herein. If the City does not approve the revegetation, stabilization and erosion control measures installed and maintained by the Developer, Developer 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 guarantee to insure such work is done or may written demand for remittance of the Proceeds to the City as provided herein.
6. Warranty Period. After approval of the revegetation, stabilization and erosion control measures and Second Reduction, a twelve (12) month warranty period ("Warranty Period") shall commence from the date of the Second Reduction. The Developer shall replant, reseed and stabilize all non-stabilized areas of the Disturbed Areas during the Warranty Period and take all other actions necessary to provide erosion control and slope and/or area stabilization within the Disturbed Areas.

7. Warranty Inspection. At the end of the Warranty 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.
8. 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 Period, the remaining portion of the Proceeds may be released to Developer. Final release shall be evidenced by a Resolution of the City Council. If the City does not approve the revegetation, stabilization and erosion control measures installed and maintained by the Developer at the end of the Warranty Period, Developer 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 guarantee to insure such work is done or may make written demand for remittance of the Proceeds to the City.
9. Demand for the Use of Proceeds. In the event the City determines Developer is in default under the terms of this Agreement, the City may demand the Proceeds of the Letter of Credit. The City may expend the Proceeds to complete or repair revegetation, stabilization, erosion control measures or warranty repairs and corrections to be installed, completed, replanted, reseeded or stabilized using the funds received from the Letter of Credit. Prior to making demand on the guarantee, the City shall notify Developer of the default and demand performance hereunder. If Developer has not cured its default within the Notice Period, or in the case of a default that cannot reasonably be cured within the Notice Period of said notice, if Developer 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 make demand on the guarantee and may cause the required revegetation, stabilization and/or erosion control measures to be installed, completed or repaired using such funds and/or to make warranty repairs and corrections. The Notice Period shall be ten (10) 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.
10. Non-Release of Developer's Obligations. It is understood and agreed between the parties that the establishment and availability to the City of the guarantee as herein provided and any release or demand on the guarantee by the City shall not constitute a waiver by or estoppel against the City and shall not release or relieve the Developer from Developer's obligation to install and fully pay for the revegetation, stabilization and erosion control measures as required herein, and the right of the City to demand and use Proceeds shall not affect any rights and remedies of the City against the Developer for breach of any covenant herein, including the covenants of paragraph 1 of this Agreement. Further, the Developer agrees that if the City uses Proceeds to perform or cause to be performed all or any portion of the work and installation of revegetation, stabilization and erosion control measures required of the Developer hereunder, then any and all costs incurred by the City in so doing which exceed the Proceeds collected by the City shall be paid by the Developer to the City, including administrative, engineering, legal, labor and materials, and other procurement fees and costs.

11. 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.
12. 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.
13. Governing Law. This Agreement and the performance hereunder shall be governed by the laws of the State of Utah.
14. 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.
15. 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.
16. Amendment. Any amendment or modification of this Agreement shall be made in writing signed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by and through their respective duly authorized representatives as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

DEVELOPER

DEPOSITORY

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

CITY OF WEST JORDAN

ATTEST:

\_\_\_\_\_  
Mayor Bryan Holladay

\_\_\_\_\_  
Melanie S. Briggs, City Recorder

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 that he/she/they executed the same.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:

Residing in \_\_\_\_\_ County, \_\_\_\_\_

(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 are the  
\_\_\_\_\_, of \_\_\_\_\_, a partnership,  
and that the foregoing instrument was duly signed by the partnership at a lawful meeting held or by  
authority of its bylaws and signed in behalf of said partnership.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:

Residing in \_\_\_\_\_ County, \_\_\_\_\_

**(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

My Commission Expires:

Residing in \_\_\_\_\_ County, \_\_\_\_\_

**(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/they acknowledged to that said limited  
liability company executed the same.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:

Residing in \_\_\_\_\_ County, \_\_\_\_\_

**Exhibit "A"**

Property Description

**REVEGETATION AGREEMENT**

(Surety Form)

THIS AGREEMENT is made and entered into by and between City of West Jordan, a Utah municipal corporation, hereinafter referred to as the "City" and \_\_\_\_\_, a Utah \_\_\_\_\_ company, hereinafter referred to as "Developer" and \_\_\_\_\_, a corporation authorized to do business in the State of Utah, whose address is \_\_\_\_\_, (hereafter "Surety").

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

WHEREAS, Developer desires to obtain a land disturbance permit from the City in order to regrade the Property, which will result in removal and/or disturbance of existing vegetation and drainage patterns; and

WHEREAS, in order to obtain a land disturbance permit, Developer is required to revegetate and stabilize all disturbed areas, to implement appropriate erosion control measures and to post a satisfactory bond ensuring the installation and warranty of such revegetation, stabilization and erosion control measures; and

WHEREAS, the City will not grant the land disturbance permit until Developer 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 a satisfactory guarantee securing the same.

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. Revegetation and Stabilization. Developer hereby agrees to revegetate or cause to be revegetated the disturbed slopes and/or areas located within \_\_\_\_\_ of the Property in conjunction with the construction of \_\_\_\_\_ utilizing native materials and to provide erosion control and slope and/or area stabilization for all such disturbed areas (the "Disturbed Areas"). Developer 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.
  
2. Surety Bond.
  - a. Amount. Developer shall execute and deliver to the City a Surety Bond in the amount of \_\_\_\_\_ dollars and no/100ths (\$ \_\_\_\_\_) to secure Developer's obligations as set forth herein.
  
  - b. Extent of Surety Liability: Independent Obligation. Surety hereby acknowledges that it is aware of, understands, and agrees to each provision of this Agreement. Except as otherwise provided by law or by this Agreement, the extent of Surety's obligation to guarantee

Developer's performance under this Agreement shall be limited to the Proceeds of this surety bond. This paragraph shall not limit the right of City to pursue any and all remedies it may have in equity or at law as a result of Surety's failure to perform under this Agreement. Surety expressly acknowledges that its obligation under this Agreement is independent of any obligation of City either expressed or implied. Surety agrees that its performance is not 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 any part of the subdivision or development. Surety further acknowledges:

- (1) That its obligation to perform under this Agreement is independent of any other remedy available to City to secure proper completion of the Improvements.
- (2) That Surety 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 Surety of its duty to perform as outlined in this Agreement, or preclude City from requiring Surety's performance under this Agreement; and
- (3) That Surety 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 Developer of its duty to perform as outlined in this Agreement, or preclude City from requiring Applicant's performance under this Agreement.

In recognition whereof, Surety agrees to its obligations and commitment in this bond agreement by having a duly authorized representative execute this agreement, with such authorization being evidenced by a power of attorney attached hereto as Exhibit "B", and incorporated by this reference.

3. Initial Inspection and Reduction. After Developer has completed the initial revegetation and the City has inspected and approved such initial revegetation, the City may reduce the guarantee by 50-percent ("Initial Reduction"). Such reduction shall be approved by the City Manager in writing. The City Manager shall not approve the reduction unless the installation is in compliance with supplier and/or 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.
4. Second Inspection. Twenty-four (24) months following 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 Developer 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/or 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.
5. Second Reduction. If the City approves the revegetation, stabilization and erosion control measures installed and maintained by the Developer based upon the Second Inspection, the

guarantee may be reduced to an amount equal to ten percent (10%) of the amount (The “Second Reduction”). Such reduction shall be approved by the City Manager in writing. The ten percent (10%) retained amount shall remain in force during the Warranty Period described herein. If the City does not approve the revegetation, stabilization and erosion control measures installed and maintained by the Developer, Developer 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 guarantee to insure such work is done or may make written demand for remittance of the Proceeds to the City as provided herein.

6. Warranty Period. After approval of the revegetation, stabilization and erosion control measures and the Second Reduction, a twelve (12) month warranty period (“Warranty Period”) shall commence from the date of the Second Reduction. The Developer shall replant, reseed and stabilize all non-stabilized areas of the Disturbed Areas during the Warranty Period and take all other actions necessary to provide erosion control and slope and/or area stabilization within the Disturbed Areas.
7. Warranty Inspection. At the end of the Warranty 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.
8. 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 Period, the remaining portion of the Proceeds may be released to Developer. Final release shall be evidenced by a Resolution of the City Council. If the City does not approve the revegetation, stabilization and erosion control measures installed and maintained by the Developer at the end of the Warranty Period, Developer 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 guarantee to insure such work is done or may make written demand for remittance of the Proceeds to the City as provided herein.
9. Demand for and Use of Proceeds. In the event the City determines Developer is in default under the terms of this Agreement, City may make demand upon the Surety Bond. The City may expend the Proceeds to complete or repair revegetation, stabilization, erosion control measures or warranty repairs and corrections to be installed, completed, replanted, reseeded or stabilized. Prior to mailing demand on the guarantee, the City shall notify Developer of the default and demand performance hereunder. If Developer has not cured its default within the Notice Period, or in the case of a default that cannot reasonably be cured within the Notice Period, if Developer 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 make demand on the guarantee and may cause the required revegetation, stabilization and/or erosion control measures to be installed, completed or repaired using such funds and/or to make warranty repairs and corrections. The Notice Period shall be ten (10) 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.

10. Non-Release of Developer's Obligations. It is understood and agreed between the parties that the establishment and availability to the City of the guarantee as herein provided and any withdrawals from the Escrow Deposit by the City shall not constitute a waiver by or estoppel against the City and shall not release or relieve the Developer from Developer's obligation to install and fully pay for the revegetation, stabilization and erosion control measures as required herein, and the right of the City to make demand for and to use Proceeds shall not affect any rights and remedies of the City against the Developer for breach of any covenant herein, including the covenants of paragraph 1 of this Agreement. Further, the Developer agrees that if the City uses Proceeds to perform or cause to be performed all or any portion of the work and installation of revegetation, stabilization and erosion control measures required of the Developer hereunder, then any and all costs incurred by the City in so doing which exceed the Proceeds collected by the City shall be paid by the Developer to the City, including administrative, engineering, legal, labor and materials, and other procurement fees and costs.
11. 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.
12. 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.
13. Governing Law. This Agreement and the performance hereunder shall be governed by the laws of the State of Utah.
14. 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.
15. 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.
16. Amendment. Any amendment or modification of this Agreement shall be made in writing signed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by and through their respective duly authorized representatives as of the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

DEVELOPER

DEPOSITORY

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

CITY OF WEST JORDAN

ATTEST:

\_\_\_\_\_  
Mayor Bryan Holladay

\_\_\_\_\_  
Melanie S. Briggs, City Recorder

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 that he/she/they executed the same.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:

Residing in \_\_\_\_\_ County, \_\_\_\_\_

(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 are the  
\_\_\_\_\_, of \_\_\_\_\_, a partnership,  
and that the foregoing instrument was duly signed by the partnership at a lawful meeting held or by  
aughority of its bylaws and signed in behalf of said partnership.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:

Residing in \_\_\_\_\_ County, \_\_\_\_\_

**(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

My Commission Expires:

Residing in \_\_\_\_\_ County, \_\_\_\_\_

**(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/they acknowledged to that said limited  
liability company executed the same.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:

Residing in \_\_\_\_\_ County, \_\_\_\_\_

DEPOSITORY NOTARY

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 \_\_\_\_\_, a  
\_\_\_\_\_ 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

My Commission Expires:

Residing in \_\_\_\_\_ County, \_\_\_\_\_

**Exhibit "A"**

Property Description