

APPENDIX IV

**SEWER EXTENSION AGREEMENT  
SANDY SUBURBAN IMPROVEMENT DISTRICT**  
(Letter of Credit)

AGREEMENT entered into between \_\_\_\_\_ (hereinafter "Developer" ), whose address is \_\_\_\_\_ , and Sandy Suburban Improvement District, (hereinafter "District"), whose address is 8855 South 700 West, Sandy, Utah 84070.

**RECITALS**

WHEREAS, the Developer proposes to install sanitary sewer pipe lines, manholes and related structures and facilities (hereinafter "Sewer Improvements"), on land located within the boundaries of, and in an area to be served by, the District, and to connect the Sewer Improvements to the District's sewer system in order to provide for collection, transmission, treatment, and disposal of sewage from the land on which the Sewer Improvements are to be installed; and

WHEREAS, said proposed Sewer Improvements are to be located at approximately \_\_\_\_\_; and

WHEREAS, the District, in accordance with its rules and regulations, cannot/will not connect the Sewer Improvements to the District's sewer system or otherwise approve or accept any work by the Developer unless an agreement with related security is made to assure completion of the Sewer Improvements according to the District's Standard Construction Documents For Sewer Extensions, and the plans and profile drawings approved by the District's engineer.

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

**AGREEMENT**

**1. INSTALLATION OF IMPROVEMENTS.**

**a. Plans and Specifications.** The Developer shall provide three (3) sets of plans and profile drawings of the Sewer Improvements and sewer system design for review and acceptance by the District. This design shall also provide for additional capacity for tributary areas if the District so directs. The District's engineer shall thereafter make its recommendations to the District, and the District shall approve or reject the Developer's plans and drawings, and may provide to Developer recommendations for changes.

**b. Installation.** Developer shall have acquired, at no expense to the District, all easements and other rights or interests reasonably required by the District for installing and maintaining that portion of the Sewer Improvements to be dedicated to and owned by the District, which easements shall be conveyed to the District in both substance and form acceptable to the District. After receipt of written approval from the District for construction, a preconstruction conference shall be held with the Developer and the District's engineer and/or inspectors. All review costs shall be paid in full to the District prior to commencement of actual construction. Upon satisfactory compliance with all of the foregoing requirements and those contained in Paragraph 2 below, the Developer shall install and complete at Developer's sole cost and expense the Sewer Improvements as shown on the plans and profile drawings approved by the District, and in accordance with the Standard Construction Documents of the District in a workman-like manner on or before the date one (1) year from date of this Agreement. During installation, no work shall be covered in any manner until the work has been fully inspected by the District Inspector. If the line is covered before said inspection, the District shall require the line to be uncovered for inspection. The actual interconnection of Developer's sewer system with the District's main line or lines shall be done at a time and in a manner approved by the District at the Developer's expense. The Developer, at the time of the initial installation, shall install appropriate wyes in the sewer main line for each connection to be serviced, and extend lateral sewer lines to a point inside of any curb, gutter and sidewalk within the property line of each connection or lot. Such lateral extension shall not end under a driveway. This work shall be subject to District inspection before the same is covered or interconnected with the main lines owned by the District. If the work is covered before such inspection, the District shall require the line to be uncovered for inspection and may disconnect the Developer's system from the District's sewer system.

**c. Connection to District Lines.** Developer's sewer system shall not be connected to the District lines until all of the following have occurred:

(i) Completion of all elements of the approved sewer design according to the approved plans and drawings and the District's Standard Construction Documents For Sewer Extensions.

(ii) All manholes shall be brought to grade and the complete sewer system shall be flushed and cleaned and documentation provided for such work.

(iii) All impact fees shall be paid in accordance with District rules and regulations.

(iv) Developer shall furnish "field-marked drawings" to the District showing the physical location of all sewer mains, laterals, wye stations, manholes and other facilities as they are actually installed. Upon full performance by Developer of all of the obligations set forth in this Agreement and compliance with the District's rules and regulations, the Developer shall be permitted to connect the Sewer Improvements to the District's sewer system and to utilize the same.

**d. Assumption of Ownership by the District.** After the Warranty Period described in paragraph 19, the District shall assume ownership of the Developer's Sewer

Improvements. The Sewer Improvements shall be free and clear of all liens and encumbrances. The District shall thereafter be the sole owner and shall operate and maintain such Sewer Improvements; however, the District shall not own or have any duty to maintain any service laterals extending from the sewer mains to any individual lots or connections.

**2. LETTER OF CREDIT.** APPLICANT hereby files, as an independent guarantee with District, for the purpose of insuring construction and installation of the Improvements and/or payment of the Fees, an **IRREVOCABLE LETTER OF CREDIT**, numbered \_\_\_\_\_, issued by \_\_\_\_\_, in the amount of \$ \_\_\_\_\_, (herein the "Proceeds"). The Letter of Credit is issued in favor of the District to the account of \_\_\_\_\_, APPLICANT herein, and is made a part of this Agreement as Exhibit \_\_\_\_ (hereinafter the "Letter of Credit"). This Letter of Credit shall be on a form acceptable to District, in an amount which is equal to the District Engineer's estimate of the cost of the Sewer Improvements (the "Base Amount" ) plus an additional 20% of such Base Amount for warranty and contingency purposes (the "Warranty Amount"). If (1) the Sewer Improvements are not completed as required by this Agreement on or before the date one (1) year after the date of this Agreement or if, (2) the Sewer Improvements are not installed strictly in accordance with paragraph 1 above, a written notice of the deficiency has been given to the Developer and the Developer fails, to respond to the notice of deficiency within ten (10) days after the notice is sent, the District may present the Letter of Credit to the issuer and, upon release of the funds from the issuer, utilize all or a portion of the proceeds to either complete the Sewer Improvements as required herein or alter or repair the Sewer Improvements to conform to the requirements hereof, and to pay for any administrative, engineering, legal, procurement, and other services incident to completion or repair of the Sewer Improvements.

A. It is expressly understood and agreed upon among the parties that this Agreement shall not relieve Developer, independent of the issuer, from the obligation to complete and fully pay for the Improvements and/or fully pay the Fees. Should Developer fail to perform its responsibilities under this Agreement in any degree, Developer agrees to compensate District for all costs, including Incidental Costs, related to Developer's Failure to Perform its obligation to complete and warrant the Improvements or pay the Fees to the extent that such costs are not adequately covered by the Proceeds.

**3. REFUND.** In the event the District determines it is necessary to demand funds secured by the Letter of Credit to satisfactorily complete construction of the Sewer Improvements or to make repairs during the warranty period, the District may Present the Letter of Credit to the issuer and utilize all or any portion of the funds secured by the Letter of Credit, and the District may cause the Sewer Improvements (or any part of them) to be constructed or completed or repaired using the funds released by the presentment of the Letter of Credit. Any funds not expended in connection with the completion or repair of the Sewer Improvements by the District shall be refunded to the Developer upon completion of the Sewer Improvements, less sums

retained by the District to cover its administrative and other expenses incurred by the District in completing or repairing the Sewer Improvements.

**4. FINAL RELEASE.** Upon full performance of all of the Developer's obligations pursuant to paragraph 1 above and paragraph 19 below, the District shall authorize release of the Letter of Credit.

**5. NON-RELEASE OF DEVELOPER'S OBLIGATIONS.** It is understood and agreed between the parties that the Letter of Credit Bond and any presentation by the District of the Letter of Credit shall not constitute a waiver by or estoppel against the District and shall not release or relieve the Developer from Developer's obligations to install and fully pay for the Sewer Improvements as required in paragraph 1 above, and the right of the District to demand bond funds shall not affect any rights and remedies of the District against the Developer for breach of any covenant herein, including the covenants of paragraphs 1 and 19 of this Agreement. Further, the Developer agrees that if the District demands funds from the issuer and performs or causes to be performed all or any portion of the work required to be performed by the Developer hereunder, that any and all costs incurred by the District in so doing which are not collected by the District by presenting the Letter of Credit shall be paid by the Developer, including construction, administrative engineering, legal, and procurement fees and costs.

**6. RULES AND REGULATIONS.** The Developer hereby agrees at all times to abide by the established rules and regulations of the District, including but not limited to, the payment of fees and charges as the same shall become due and construction of the Sewer Improvements in accordance with the District's Standard Construction Documents For Sewer Extensions.

**7. DEVELOPER'S REPRESENTATIONS.** Developer hereby acknowledges and represents to the District that:

a. Developer is the owner of the property described above and for which this Agreement is made;

b. Any streets and/or easements related to the property for which this Agreement is made, and in which the District will be required to install or maintain its facilities as a result of this Agreement have been dedicated as public streets or recorded as sanitary sewer easements in the Office of the Salt Lake County Recorder, State of Utah.

**8. IMPACT FEES.** The Developer hereby agrees to bear the total costs of constructing all sewer lines and related facilities required for the servicing of Developer's development (including extensions from existing District sewer mains to the development, the sewer collection system within the development, and laterals to each lot or connection within the development). No lot or parcel of real property shall be connected to any portion of the District's existing sewer system until the applicable impact fee shall be paid to the District for that lot or parcel. The impact fees shall be those established by the District's Board of Trustees which are in effect on the date when the impact fees are actually paid to the District.

**9. BINDING EFFECT.** The agreements herein contained shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, representatives, agents, officers, employees, successors and assigns.

**10. DEFAULT.** In the event either party hereto defaults on any of the covenants and agreements contained herein, the defaulting party shall pay all costs and expenses, including a reasonable attorney's fee, incurred by the other party in enforcing its rights hereunder whether incurred through litigation or otherwise.

**11. TREATMENT CAPACITY.** The District's obligation to provide sewer service hereunder is subject to and conditioned upon the availability of adequate treatment capacity at the sewer treatment facilities serving the District and shall be subject to any limitations, requirements and regulations which may be established and enacted from time to time by the governing body of the sewer treatment facility, or by any other governmental entity having jurisdiction over the parties hereto.

**12. COUNTERPARTS.** The fact that the parties hereto execute multiple but identical counterparts of this Agreement shall not affect the validity or efficacy of their execution, and such counterparts, taken together, shall constitute one and the same instrument, and each such counterpart shall be deemed an original.

**13. 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 remaining portions of the Agreement which shall be deemed in full force and effect as if this Agreement had been executed with the invalid portions eliminated.

**14. WAIVER.** No waiver of any of the provisions of this Agreement shall operate as a waiver of any other provision, regardless of any similarity that may exist between such provisions, nor shall a waiver in one instance operate as a waiver in any future event. No waiver shall be binding unless executed in writing by the waiving party.

**15. OTHER BONDS.** This Agreement and the Letter of Credit do not alter the obligation of Developer to provide other bonds under applicable ordinances of any city or county having jurisdiction over Developer's development. The furnishing of security in compliance with the requirements of other jurisdictions shall not adversely affect the ability of the District to present the Letter of Credit as provided herein.

**16. TIME OF ESSENCE.** The parties agree that time is of the essence in the performance of all duties herein.

**17. EXHIBITS.** Any exhibit(s) to the Agreement are incorporated herein by this reference, and failure to attach any such exhibit shall not affect the validity of this Agreement or

of such exhibit. An unattached exhibit is available from the records of the parties.

**18. WARRANTY.** The Developer hereby warrants and guarantees that the Sewer Improvements installed, and every part thereof, shall remain in good condition and free from all defects due to faulty materials or workmanship for a warranty period of one (1) year from the date of final inspection and acceptance of the same by the District, and the Developer shall promptly make all repairs, corrections, and/or replacements for all defects in workmanship, materials, and equipment during the warranty period, without additional charges or cost to the District. As security for Developer's performance under this warranty, the District shall be entitled to withhold release of the 20% Warranty Amount until the warranty period has been completed. The District shall have the right to present the Letter of Credit and utilize the funds received therefrom to make corrections and repairs on the Sewer Improvements during the warranty period as provided in paragraphs 2 and 4 hereof.

**19. CAPTIONS.** The captions preceding the paragraphs of this Agreement are for convenience only and shall not affect the interpretation of any provision herein.

**20. GOVERNING LAW.** This Agreement and the performance hereunder shall be governed by the laws of the State of Utah.

**21. ENTIRE AGREEMENT.** This Agreement contains the entire agreement of the parties with respect to the subject matter hereof, and no prior or contemporaneous promises, representations, warranties or understandings between the parties regarding the subject matter hereof, which are not contained herein shall be of any force or effect. Any amendment to this Agreement shall be made in writing and signed by the parties hereto.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized representatives this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

SANDY SUBURBAN IMPROVEMENT DISTRICT

BY: \_\_\_\_\_  
GENERAL MANAGER

DEVELOPER: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

**DEVELOPER'S ACKNOWLEDGMENT**  
**(Complete if Developer is an Individual)**

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

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, personally appeared before me \_\_\_\_\_, who being by me duly sworn, did say that he executed the foregoing document.

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

My Commission Expires: \_\_\_\_\_  
Residing at: \_\_\_\_\_

**DISTRICT'S ACKNOWLEDGMENT**

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

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ , personally appeared before me \_\_\_\_\_, who being by me duly sworn, did say that he/she is the General Manager of Sandy Suburban Improvement District, a governmental entity, and that said instrument was signed in behalf of said District by authority of its Board of Trustees and said acknowledged to me that said District executed the same.

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

My Commission Expires: \_\_\_\_\_  
Residing at: \_\_\_\_\_

**DEVELOPER'S ACKNOWLEDGMENT**  
**(Complete if Developer is a Corporation)**

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

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, personally appeared before me \_\_\_\_\_, who being by me duly sworn, did say that he is the \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ corporation, and that said instrument was signed in behalf of said corporation by authority of its bylaws (or by a resolution of its Board of Directors) and said acknowledged to me that said corporation executed the same.

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

My Commission Expires: \_\_\_\_\_  
Residing at: \_\_\_\_\_

**DISTRICT'S ACKNOWLEDGMENT**

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

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ , personally appeared before me \_\_\_\_\_, who being by me duly sworn, did say that he/she is the General Manager of Sandy Suburban Improvement District, a governmental entity, and that said instrument was signed in behalf of said District by authority of its Board of Trustees and said acknowledged to me that said District executed the same.

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

My Commission Expires: \_\_\_\_\_  
Residing at: \_\_\_\_\_



