

Upon Recording Return to:  
Brigham City Recorder  
20 N. Main Street  
Brigham City, UT 84302

## ESCROW AGREEMENT

**THIS AGREEMENT** is made and entered into by and between HERITAGE LAND DEVELOPMENT, LLC, hereinafter called "Subdivider" and BRIGHAM CITY CORPORATION, a municipal corporation, hereinafter called "City" and BANK OF UTAH, hereinafter called "Escrow Holder".

### WITNESSETH:

**WHEREAS**, Subdivider has caused to be subdivided under the regulations and ordinances of Brigham City certain property located in said City known as CARDAMINE SUBDIVISION PHASE 2, consisting of certain lots and improvements as specifically designated on the subdivision plat and engineering documents. A copy of the subdivision plat is attached hereto as Exhibit "A" and made part of this Agreement; and

**WHEREAS**, Subdivider has agreed and undertaken to complete the construction and installation of onsite and offsite improvements and facilities in accordance with the terms of the Brigham City ordinances, the costs of which are set forth in the Engineer's Estimate thereof, a copy of which is attached hereto and marked as Exhibit "B" and made a part of this Agreement; and

**WHEREAS**, the parties have agreed that to insure the completion of such onsite and offsite improvements and facilities by Subdivider on or before the 31<sup>st</sup> day of October, 2023, the sum of **\$250,472.00**, shall be deposited or held as undisbursed loan funds with the Escrow Holder in favor of the City for the purpose of guaranteeing to City that the onsite and offsite improvements and facilities are timely completed in accordance with the terms and conditions of this Agreement as hereinafter stated.

**NOW, THEREFORE**, for and in consideration of the promises and the covenants, terms and conditions as hereinafter set forth, it is agreed by Subdivider, City and Escrow Holder as follows, to wit:

1. Subdivider shall either have on deposit or held as undisbursed loan funds with Escrow Holder by the 31<sup>st</sup> day of October, 2023, the sum of **\$250,472.00**, as the remaining costs for installation of onsite and offsite improvements including the required 10% warranty as specifically itemized in the Engineer's Estimate attached hereto as Exhibit "B" for the purpose of guaranteeing the completion by the Subdivider of such onsite and offsite improvements on or before the 31<sup>st</sup> day of October, 2025.
2. All parties hereto agree that the escrow funds may be used in the following manner only, to wit:
  - (a) Subdivider shall notify Brigham City Public Works Department of its intent to install or commence installation of each onsite and offsite improvements not less than 24 hours prior to commencement of work so that the City may inspect, verify, and approve such installation prior to covering.
  - (b) Upon completion of such onsite and offsite improvements, Subdivider may file with City a written request for withdrawal from escrow for payment of such improvements or installations. Upon approval and acceptance by the City Engineer or designee, City will authorize Escrow Holder to disburse said dedicated funds up to the Engineer's Estimate to the Subdivider, contractor, or agent furnishing such services, as requested by Subdivider.

(c) Immediately upon completion of all onsite and offsite improvements as set forth in Engineer's Estimate, Exhibit "B", Subdivider shall provide to City a mylar copy of subdivision "As-Built Drawings." Upon approval and acceptance of improvements and facilities by the City Engineer or designee, City shall grant "Conditional Acceptance" of the subdivision improvements, City shall immediately in writing to Escrow Holder, authorize the release and payment of all remaining funds to Subdivider, except the 10% warranty.

(d) Immediately upon conclusion of the subdivision improvements one year warranty period, which commenced on the day City granted Conditional Acceptance, City shall once again inspect subdivision improvements and if found to be satisfactory, City shall grant "Final Acceptance" of all improvements, record a release of financial guarantee, and shall in writing to Escrow Holder, authorize the release and payment to Subdivider of the 10% warranty.

(e) As each payment by the Escrow Holder to Subdivider, contractor, or agent is made, Escrow Holder and/or Subdivider shall secure from such contractor or persons performing services good and sufficient lien waivers covering such work and materials.

(f) Nothing contained herein shall prevent Subdivider from paying any or all costs of improvement from separate financial sources or funds, should Subdivider determine to do so.

(g) Escrow Holder shall only release escrow funds after receiving written authorization from City to release said funds, notwithstanding time periods noted herein.

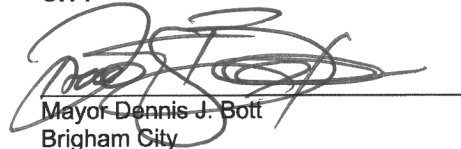
3. Subdivider agrees that they shall complete all onsite and offsite improvements on said subdivision within two years from the date hereof, to wit:

On or before the 31<sup>st</sup> day of October, 2025., and in the event the Subdivider fails to complete such improvements within said time frame, then and in that event, the Escrow Holder shall disburse directly to the City such funds or parts thereof as City may request as reimbursement for improvements caused to be constructed by the City for or on behalf of the City in completing the onsite and offsite improvements and facilities on said Subdivision.

4. In no event shall the Escrow Holder charge or claim a lien against any of the proceeds held hereunder for the benefit of the City for any other debt or obligation owed by Subdivider.
5. This Agreement shall be binding upon and inure to the benefit of the respective parties hereto, their successors, heirs and assigns.
6. Subdivider agrees to pay to the Escrow Holder all fees charged by the Escrow Holder for its services and the performance of its duties and obligations under this instrument.
7. Subdivider by entering into this Agreement agrees to escrow the amount of money as determined by the Engineer's Estimate. The Subdivider further understands that Subdivider shall be responsible for the actual costs of installation of the improvements, should the actual costs vary from the Engineer's Estimate.
8. If any party defaults in the terms, covenants and conditions of this agreement, the defaulting party shall pay all costs, expenses and attorney's fees for enforcement of the agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement this 7<sup>th</sup> day of November, 2023, by the City acting by authority of its governing body, Subdivider by authority of its governing body and the Escrow Holder by authority of its governing body, granted to it pursuant to bylaws of resolutions authorizing the same.

CITY

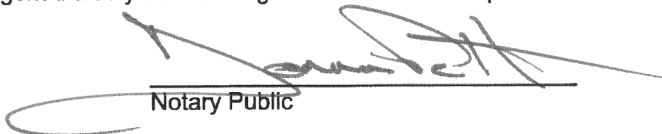
  
Mayor Dennis J. Bott  
Brigham City

## CORPORATE ACKNOWLEDGMENT

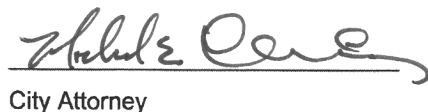
STATE OF UTAH                    )  
  : §  
COUNTY OF BOX ELDER        )

On 7<sup>th</sup> day of November, 2023, Personally appeared before me **Dennis J. Bott**. Who being duly sworn by me did say, for himself that he is the said authorized agent of Brigham City Corporation, and that within the foregoing instrument was signed in behalf of said Brigham City Corporation, and that the said authorized agent did duly acknowledge to me that said corporation executed the same.



  
Notary Public

APPROVED AS TO FORM

  
City Attorney

11/2/23  
Date

**SUBDIVIDER**

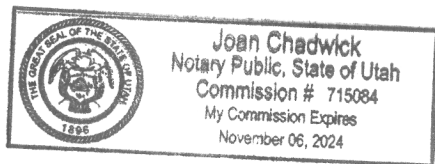
  
\_\_\_\_\_  
Jay Stocking, Manager  
Heritage Land Development, LLC

**LIMITED LIABILITY ACKNOWLEDGMENT**

STATE OF UTAH                    )  
  : §  
COUNTY OF BOX ELDER        )

On this 30 day of October, 2023, **Jay Stocking**, manager, for and on behalf of Heritage Land Development, LLC, personally appeared before me, the undersigned notary public in and for said state and county, being duly sworn, acknowledged to me, that he is the Manager of Heritage Land Development, LLC, a Utah Limited Liability Company, and that within and foregoing instrument was signed in behalf of said corporation, and said authorized agent did duly acknowledge to me that said corporation executed the same.

  
\_\_\_\_\_  
Notary Public



**ESCROW HOLDER**

Tiffany Butth

Tiffany Butler  
AVP Commercial Loan Documentation Team  
LeadBank of Utah

**CORPORATE ACKNOWLEDGMENT**

STATE OF UTAH )  
COUNTY OF Weber : §

On the 31 day of October, 2023, personally appeared before me, **Tiffany Butler**, who being by me duly sworn did say, for herself that she is the said authorized agent of Bank of Utah, and that within and foregoing instrument was signed in behalf of said corporation, and said agent did duly acknowledge to me that said corporation executed the same.

Rebecca Poll  
Notary Public

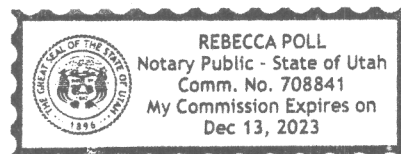


Exhibit "A"

Cardamine Subdivision Phase 2

Legal Description



**BOUNDARY DESCRIPTION**

Part of Lots 3, 4 and 5, Block 12, Five Acre Plat located in part of the Northwest Quarter of Section 12, Township 9 North, Range 2 West of the Salt Lake Base and Meridian described as follows:

Commencing at the Southeast Corner of Section 12, Township 9 North, Range 2 West of the Salt Lake Base and Meridian monumented with a Brass Cap, thence N00°17'21"W 3423.41 feet along the east line of said section; thence West 3835.19 feet to POINT OF BEGINNING and running

thence S 00°32'08" W 114.50 feet;

thence S 35°56'03" E 75.46 feet;

thence S 00°32'19" W 80.11 feet;

thence S 89°27'41" E 5.04 feet;

thence S 00°26'33" W 70.00 feet;

thence S 00°32'08" W 215.00 feet;

thence N 89°27'41" W 105.00 feet;

thence along Cardamine Subdivision, Phase 1 the next eleven courses:

1) thence N 44°27'46" W 14.14 feet;

2) thence N 89°27'01" W 60.00 feet;

3) thence S 45°30'16" W 14.15 feet;

4) thence N 89°27'41" W 105.00 feet;

5) thence N 00°32'08" E 365.78 feet;

6) thence N 03°26'09" W 60.14 feet;

7) thence N 89°27'52" W 25.06 feet;

8) thence Westerly, 39.50 feet along a curve to the left having a radius of 530.00 feet, a central angle of 04°16'12" and a chord that bears S 88°24'02" W 39.49 feet;

9) thence S 86°15'57" W 36.45 feet;

10) thence N 46°35'58" W 13.61 feet;

11) thence N 00°32'08" E 109.43 feet;

thence S 89°27'52" E 355.00 feet to the point of beginning, containing 3.709 acres, more or less.



## Exhibit "B"

Engineer's Estimate

**Alliance Consulting Engineers, Inc.**

150 EAST 200 NORTH SUITE P

Logan, UT 84321

Cost estimate for Cardamine Phase 2

(for bond purposes only)


Date: 10/30/2023

Updated:

No.	Item	Quantity		Unit Price	Sub- Total
<b>ROAD CONSTRUCTION</b>					
	1 Base & Asphalt	23450	S.F.	\$3.75	\$87,938
KH 10/25/23	2 Import	790	C.Y.	\$32.00	<del>-\$25,280</del>
KH 10/25/23	3 Clear and Grub, excavation	1	L.S. @	\$12,000	<del>-\$12,000</del>
	4 Sidewalk	1220	L.F. @	\$28.00	\$34,160
KH 10/25/23	5 Cut/ remove asphalt	0	S.F.	\$2.50	<del>-\$0</del>
	6 SWPPP	1	Each	\$7,000.00	\$7,000
KH 10/25/23	7 Curb & Gutter	1220	L.F. @	\$28.00	<del>-\$34,160</del>
<b>WATER LINE</b>					
KH 10/25/23	8 8" Water Main	645	L.F. @	\$65.00	<del>-\$41,925</del>
KH 10/25/23	9 8" Gate Valves w/collars	3	Each	\$2,800.00	<del>-\$8,400</del>
KH 10/25/23	10 8" Water line Tees, Bends	1	Each	\$1,500.00	<del>-\$1,500</del>
KH 10/25/23	11 Fire Hydrant adjustment	0	Each	\$1,500.00	<del>-\$0</del>
KH 10/25/23	12 Fire Hydrants/ blow off hydrants	1	Each	\$7,800.00	<del>-\$7,800</del>
KH 10/25/23	13 Connect to Existing Water Lines	2	Each	\$1,400.00	<del>-\$2,800</del>
KH 10/25/23	14 Plug	1	Each	\$1,500.00	<del>-\$1,500</del>
KH 10/25/23	15 Water Service Laterals	520	L.F. @	\$50.00	<del>-\$26,000</del>
<b>SEWER SYSTEM</b>					
KH 10/25/23	16 8" P.V.C. Main Line	555	L.F. @	\$60.00	<del>-\$33,300</del>
KH 10/25/23	17 tie to existing sewer stub	1	Each	\$1,500.00	<del>-\$1,500</del>
KH 10/25/23	18 Sewer Services	14	Each	\$2,000.00	<del>-\$28,000</del>
KH 10/25/23	19 Manholes w/ collars	2	Each	\$6,000.00	<del>-\$12,000</del>
<b>IRRIGATION SYSTEM</b>					
KH 10/25/23	20 4" PVC Main Line	0	L.F. @	\$20.00	<del>-\$0</del>
KH 10/25/23	21 6" PVC Main Line	678	L.F. @	\$56.00	<del>-\$37,968</del>
KH 10/25/23	22 6" Valve/bend/tee w/collar	1	Each	\$1,500.00	<del>-\$1,500</del>
KH 10/25/23	23 Irrigation lateral	12	Each	\$3,000.00	<del>-\$36,000</del>
<b>STORM DRAINAGE SYSTEM</b>					
KH 10/25/23	24 15" RCP Storm Pipe"	302	L.F. @	\$56.00	<del>-\$16,912</del>
KH 10/25/23	25 18" RCP storm pipe	81	L.F. @	\$70.00	<del>-\$5,670</del>
KH 10/25/23	26 24" RCP storm pipe	0	L.F. @	\$45.00	<del>-\$0</del>
KH 10/25/23	27 connect to existing stub	1	Each	\$1,500.00	<del>-\$1,500</del>
KH 10/25/23	28 Catch basin/ junction box	6	Each	\$4,000.00	<del>-\$24,000</del>
KH 10/25/23	29 Storm manhole	0	Each	\$3,200.00	<del>-\$0</del>
	30 Pond grading, sod, sprinkler system	1	L.S. @	\$35,000.00	\$35,000
<b>MISCELLANEOUS</b>					
	31 ADA ramp	2	Each	\$2,300.00	\$4,600
MB 06/26/23	32 Light Pole (paid with line #34)	1	Each	\$2,000.00	<del>-\$2,000</del>
	36 Chip and seal	23450	S.F.	\$0.65	\$15,243
MB 06/26/23	34 Electrical (from City Power - PAID)	1	Each	\$35,657.85	<del>-\$35,658</del>
KH 10/25/23	35 Power trenching and conduit	1200	L.F. @	\$20.00	<del>-\$24,000</del>
KH 10/25/23	36 Dewatering	1	Each	\$40,000.00	<del>-\$40,000</del>
KH 10/25/23	37 Gas casing	1	Each	\$6,000.00	<del>-\$6,000</del>
	38 Testing	1	Each	\$6,000.00	\$6,000
	Subtotal				<del>\$605,313</del> \$189,941
	10% Guarantee (Warranty)				\$60,531

**TOTAL IMPROVEMENTS + GUARANTEE**~~\$665,844~~ \$250,472

Reviewed &amp; Approved:


  
City Engineer
6/15/23 Estimate to be replaced by  
this Estimate. Edits shown in blue.Date: 10/30/2023