

# SUBDIVISION IMPROVEMENTS AGREEMENT

## (NAME OF SUBDIVISION) SUBDIVISION

**THIS AGREEMENT**, dated this \_\_\_\_\_ day of \_\_\_\_\_, 2007, between the COUNTY COUNCIL OF GRAND COUNTY, UTAH (hereinafter referred to as "COUNTY") and (Legal Name of Property Owner/ SUBDIVIDER) (hereinafter referred to as "SUBDIVIDER").

**WHEREAS**, SUBDIVIDER has submitted to the COUNTY for approval and execution a final plat designated (Name of Subdivision) and dated (date of plat), hereinafter referred to as "the Plat" or "the Subdivision"); and

**WHEREAS**, the COUNTY has fully considered said plat, the proposed development and the improvements of the land therein and the effect on the neighboring properties by reason of the proposed development; and

**WHEREAS**, engineered subdivision improvements and construction plans and specifications (Required Improvements) have been submitted to the COUNTY and approvals have been received from all necessary and requested COUNTY referral agencies and consultants, or representatives, including, but not limited to:

1. Grand Water and Sewer Service Agency (GWSSA), pertaining to water and sewer system improvements;
2. Sunrise Engineering Inc., consultants to the GWSSA, pertaining to water and sewer system improvements;
3. State of Utah Health Department, Division of Drinking Water, pertaining to water system improvements;
4. Horrocks Engineers, consultants to the COUNTY, pertaining to the streets and roads, driveways, drainage and trail system improvements; and
5. Moab Valley Fire District; pertaining to fire protection issues.

**WHEREAS**, the COUNTY is willing to approve and execute said plat upon the agreement of the SUBDIVIDER to the matters hereinafter described subject to any conditions established by the County Council, and subject to all requirements, terms and conditions of the *Grand County Land Use Code* except as modified by this plat approval, and subject to the *Grand Construction Standards* and other applicable laws, rules and regulations; and

**WHEREAS**, the COUNTY and SUBDIVIDER mutually acknowledge that the matters set forth herein are reasonable conditions and requirements to be imposed by COUNTY in connection with its approval of the Plat, and that such matters are necessary to protect promote and enhance the public welfare; and

**WHEREAS**, it is further mutually acknowledged that the COUNTY is entitled to other assurance that the matters hereinafter agreed to will be performed as agreed to by the SUBDIVIDER, and in that regard the Statutes of the State of Utah pertaining to COUNTY planning and the existing ordinances of Grand County, State of Utah, pertaining to Subdivision Improvements Agreements provide that the collateral used as security for the construction of the agreed upon Required Improvements may include cash, bond, or other collateral acceptable to the County Council; and

**WHEREAS**, SUBDIVIDER has submitted and the COUNTY has agreed to accept (form of collateral) as the form of collateral to guarantee the Required Improvements, as specified in Exhibit A (reference by title and date a specific set of construction improvement plans), which is attached hereto and incorporated herein by this reference.

**NOW, THEREFORE, IN CONSIDERATION OF THE ABOVE PREMISES, AND THE APPROVAL, EXECUTION, AND ACCEPTANCE OF THE PLAT BY THE COUNTY, IT IS FURTHER AGREED AS FOLLOWS:**

### **IMPROVEMENTS TO BE COMPLETED**

SUBDIVIDER agrees to construct the Required Improvements as specified in Exhibit A (reference by title and date a specific set of construction improvement plans), consistent with the requirements of the County Council, the *Grand County Land Use Code*, and the *Grand Construction Standards* and other applicable laws, rules and regulation.

### **COLLATERAL (TYPE OF COLLATERAL)**

In order to secure the Required Improvements to be completed by the SUBDIVIDER, and so long as, and to the extent that, Required Improvements to service a particular lot or lots remain unfinished, the SUBDIVIDER agrees to guarantee such performance of the unfinished Improvements with type of credit to 100 percent of the cost of such unfinished Required Improvements, plus a collateral overage of 25 percent of the cost of such unfinished Required Improvements.

### **RELEASE OF (TYPE OF COLLATERAL) OR OTHER GUARANTEE**

If and to the extent that the SUBDIVIDER provides another form of collateral acceptable to the COUNTY at the date of this Agreement, such as cash, bond, or other collateral, the guarantee may be partially or fully released.

In addition, from time to time, as the Improvements are completed, SUBDIVIDER may apply in writing to the COUNTY for a partial or full release of the cash, bond, or other collateral, or substitute collateral. Each collateral release request shall be summarized on the County's Collateral Release Form and must show, or include the following:

1. Dollar amount of (original) collateral guarantee,
2. Improvements completed, including dollar value,
3. Improvements not completed, including dollar value,
4. Amount of (all) previous releases,
5. Amount of collateral guarantee requested released,
6. Release or waivers of mechanics liens of all parties who have furnished work, services, or materials for the Required Improvements, and
7. Reasonable fee, if the COUNTY requires any, to cover the cost of administration and inspections.

Upon receipt of the application, the COUNTY, or its agent, shall inspect the Required Improvements, both those completed and those uncompleted. If the COUNTY determines from the inspection that the Required Improvements shown on the application have been completed, as provided herein, a portion of the collateral supporting the commitment guarantee shall be

released. The release shall be made in writing signed by the COUNTY. The amount to be released shall be the total amount of the collateral:

1. Less, 100 percent of the costs of the Required Improvements not completed; and
2. Less, any collateral overage (25%) that is applicable to the costs of the Required Improvements not completed.

Prior to the final collateral release and acceptance of the subdivision by the County, the SUBDIVIDER shall furnish a good and sufficient maintenance bond in the amount of 10 percent of the contract price for the Required Improvements with a reputable and solvent corporate surety in favor of the County, to indemnify the County against any repairs that may become necessary to any part of the construction work performed in connection with the subdivision arising from defective workmanship or materials used therein, for a full period of 2 years from the date of final acceptance of the entire project.

### **TIME OF COMPLETION**

SUBDIVIDER agrees to complete the Required Improvements within *(time period you feel appropriate, this usually between 18 and 24 months or 36 months, maximum)* months from the date of execution of this Agreement.

The COUNTY may, at their discretion, extend the completion dates for the Required Improvements. Both the COUNTY and SUBDIVIDER shall sign any such extension.

### **DEFAULT**

The following conditions, occurrences, or actions will constitute default by SUBDIVIDER;

1. Failure to commence construction of any part of the Required Improvements within 9 months from the date of the execution of the Agreement.
2. Failure to complete the Required Improvements materially consistent with the approved engineering plans and specifications as part of this Plat, or any approved changes of such plans and specifications.
3. Failure to complete the Required Improvements within the stated or extended times for completion.
4. The appointment of a receiver for the SUBDIVIDER or the filing of a voluntary or involuntary petition in bankruptcy respecting the SUBDIVIDER.
5. COUNTY determines that the bond, cash, deed of trust, or other collateral, either will terminate, will lapse, or be withdrawn, prior to the actual and substantial completion of the Required Improvements.

### **REMEDIES**

In the event of default, the COUNTY may draw on (withdraw funds from) the commitment guarantee. The COUNTY will have the right, but no obligation, to complete the Required Improvements itself or contract with a third party for completion, and the SUBDIVIDER hereby warrants that in the event of default, the COUNTY, its successors, assigns, agents, contractors, and employees, a nonexclusive right and easement to enter the subdivision for the purposes of construction, maintaining, and repairing such Required Improvements. Alternatively, the COUNTY may assign the proceeds of the guarantee to a subsequent SUBDIVIDER or lender who has acquired the Subdivision, or a portion thereof, by purchase, foreclosure, or otherwise who will then have the same rights of completion as the COUNTY, if and only if, the subsequent

SUBDIVIDER or lender agrees in writing to complete the unfinished Required Improvements.

**COLLATERAL PROCEEDS**

In the event of a default, collateral proceeds shall be utilized as follows:

- 1. All collateral proceeds must be applied to the unfinished Required Improvements.
- 2. Any excess collateral proceeds after completing the Required Improvements are payable to the SUBDIVIDER.
- 3. The COUNTY has no obligation to utilize any funds, other than the collateral proceeds, to complete any of the Required Improvements.

**RECORDING**

After receiving approval of the Plat, SUBDIVIDER shall record this Agreement with the Recorder of Grand County, Utah.

**MISCELLANEOUS**

- 1. This agreement is binding upon and inure to the benefit of the heirs, representatives, transferees, successors, and assignees of the parties.
- 2. The paragraph headings are descriptive only and neither implies nor limits the substantive material.
- 3. The failure to enforce or the waiver of any specific requirements or parts of this Agreement by either party shall not be construed as a general waiver of this Agreement.
- 4. Should any part of this Agreement be declared invalid by a court of competent jurisdiction, the valid parts of this Agreement remain in effect.
- 5. SUBDIVIDER is not an agent or employee of the COUNTY.

**GRAND COUNTY COUNCIL**

**SUBDIVIDER**

\_\_\_\_\_  
Gene Ciarus, Council Chairman

\_\_\_\_\_  
*(Name of SUBDIVIDER) This needs to be the name that will be on the plat*

ATTEST:

\_\_\_\_\_  
Diana Carroll, Clerk/Auditor

State of Utah    )  
                          )  
County of Grand)

Subscribed and sworn to before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2007 by

\_\_\_\_\_.