

Summit County

Development Improvements Agreement

Packet Contains

Agreement

- Contract between Summit County and the Developer to complete the improvements as required

Development Improvements Agreement Attachments:

- Property Legal Description – Exhibit A
- Site Improvements Plan – Exhibit B
- Cost of Construction PE Estimate– Exhibit C
- Assurance – Exhibit D
- Lien Holder’s Ratification and Approval – Exhibit E
- Release – Exhibit F

Assurance Options:

- **Option A** – Letter of Credit (See Sample Format) requires approval by the Summit County Attorney
- **Option B** – Subdivision Improvements Disbursement Agreement (See Sample Format with Draw Request)
- **Option C** – Cash Bond Escrow Agreement (See Sample Format)
- **Option D** – Performance Bond (See Sample Format), to be provided by the applicant, requires approval by the Summit County Attorney
- **Option E** – Subdivision Plat Hold
- **Option F** – Building Permit Hold (See Sample Format) utilization limited to simple land divisions and improvements under \$10,000; the completion period is limited to six months and one extension.

Draw Request

- A sample of the draw request form required for release of security under certain assurance and warranty options.

DEVELOPMENT IMPROVEMENTS AGREEMENT

Project File #: _____

Project Name: _____

THIS AGREEMENT is made this _____ day of _____, 20____, by and between Summit County, a political subdivision of the State of Utah (the "**County**"), and _____, a _____, whose address is _____ (the "**Developer**"). The County and Developer are individually referred to herein as a "**Party**" and jointly referred to herein as the "**Parties**". The **Effective Date** of this Agreement shall be the date upon which it is recorded in the Office of the Summit County Recorder.

RECITALS

A. Developer is the owner of certain property situated in the County of Summit, State of Utah, more particularly described in **Exhibit A** hereto and known as the _____ (the "**Project**").

B. The Developer desires to develop "Project", hereinafter referred to as the ("**Property**") according to the approved final subdivision plat or final site plan thereof (the "**Plat**" or "**Final Site Plan**") showing a proposed subdivision or site layout for said Property.

C. The County has approved the Plat/Final Site Plan submitted by the Developer subject to certain requirements and conditions, which involve the installation and construction of utilities, landscaping (if applicable), as well as other public and private infrastructure improvements shown on the submitted construction drawings, Plat, Final Site Plan, Landscape Plan (if applicable) and documents for the Property, which is attached at **Exhibit B ("Site Improvements Plan")**.

D. In lieu of completing all landscaping and infrastructure improvements prior to Plat/Final Site Plan recordation in accordance with UCA §17-27a-604.5 or successor statute, Developer may enter into a Development Improvements Agreement with the County .

E. In doing so, the County seeks to protect the health, safety and general welfare of the community by requiring a timely completion of the Site Improvements Plan and to limit the effects of uncompleted subdivisions, including premature subdivision which leaves property undeveloped and unproductive.

F. The purpose of this Agreement is to protect the County from assuming the cost to complete the utility, landscaping, and infrastructure improvements and is not executed for the

benefit of material men, laborers, or others providing work, services or material to the Property or for the benefit of lot or home buyers in the Project.

G. The mutual promises, covenants, and obligations contained herein are authorized by State and local law and regulation.

NOW, THEREFORE, in consideration of the premises and the terms and conditions herein stated and for other valuable consideration, the adequacy of which is acknowledged by the Parties hereto, it is agreed as follows:

DEVELOPER'S OBLIGATION

- 1. Improvements:** The Developer will design, construct, and install, at his own expense, those on-site and off-site utility, landscaping (if applicable), and infrastructure improvements in accordance with the approved Site Improvements Plan and the **Cost of Construction PE Estimate**, which is attached at **Exhibit C** (together the Site Improvements Plan and the Cost of Construction PE Estimate are referred to as the **"Improvements"**). At a minimum, the Site Improvements Plan shall address culinary water, sewer, electrical power service, natural gas service, telephone service, television service, storm water drainage, trails, roads, landscaping and weed control. The Developer's obligation to complete the Improvements will be in conformance with the time schedule defined by this Agreement and will be independent of any obligations of the County contained herein.
- 2. Improvement Completion Assurance ("Assurance") Options:** To secure the construction and installation of the Improvements under this Agreement and the obligations for the warranty as set forth in ¶ 4 herein, the Developer will deposit with the County as an Assurance, 110% of the Cost of Construction PE Estimate (which includes a 10% warranty), on or prior to the Effective Date, through one of the following mechanisms:
 - **Option A.** Irrevocable Letter of Credit in the amount of \$ _____.
 - **Option B.** Subdivision Improvements Disbursement Agreement in the amount of \$ _____.
 - **Option C.** Cash in the amount of \$ _____, to be escrowed by the County Treasurer or third party escrow agent pursuant to a Cash Bond Escrow Agreement.
 - **Option D.** Performance or Surety Bond in the amount of \$ _____.
 - **Option E.** Subdivision Plat Hold.
 - **Option F.** Building Permit Hold.
 - **Option A:** Irrevocable Letter of Credit ("**Letter of Credit**") – The Letter of Credit shall be (a) irrevocable, (b) issued by a financial institution, (c) of a term

sufficient to cover the Completion and Warranty Periods, and (d) reviewed as to form by the County Attorney. The Letter of Credit will be payable upon demand to Summit County. The Letter of Credit will be payable to the County in full or in part at any time upon presentation of (i) a sight draft drawn on the issuing financial institution to which the County is entitled to draw pursuant to the terms of this Agreement and the Letter of Credit; (ii) a certification executed by an authorized representative of the County stating that the Developer is in default under this Agreement; and (iii) the original Letter of Credit.

- **Option B:** Subdivision Improvements Disbursement Agreement (“**Disbursement Agreement**”) – The Disbursement Agreement will be executed by a financial institution, the Developer and the County. The Disbursement Agreement will provide for segregation of Developer’s loan proceeds by the financial institution. Pursuant to the terms of the Disbursement Agreement, the County is entitled to draw funds, in full or in part, upon presentation of: (i) request for disbursement; and (ii) a certification executed by an authorized representative of the County stating that the Developer is in default under this Agreement; or (iii) as otherwise provided by the Disbursement Agreement. Modifications to the County’s standard Disbursement Agreement shall be reviewed by the County Attorney for acceptance as an Assurance.
- **Option C:** Cash Bond Escrow Agreement (“**Cash Bond**”) - Cash in the form of a cashier’s check or bank account in the sole ownership of the County will be escrowed with the County Treasurer or third party escrow agent pursuant to a Cash Bond. The County is entitled to draw upon these funds, pursuant to the terms of the Cash Bond. The funds will be disbursed to the County in full or in part, upon presentation of: (i) request for disbursement; and (ii) a certification executed by an authorized representative of the County stating that the Developer is in default under this Agreement; or (iii) as otherwise provided by the Cash Bond.
- **Option D:** Performance or Surety Bond (“**Performance Bond**”) – A Performance Bond shall be issued upon which the County will be entitled to draw pursuant to the terms of the Performance Bond and will include a term sufficient to cover the Completion and Warranty Periods. The funds will be disbursed to the County in full or in part, upon presentation of: (i) request for disbursement; and (ii) a certification executed by an authorized representative of the County or designee stating that the Developer is in default under this Agreement; or (iii) as otherwise provided by the Performance Bond. The Performance Bond shall be reviewed by the County Attorney for acceptance as an Assurance.
- **Option E:** Subdivision Plat Hold (“**Plat Hold**”) – A Plat Hold may be utilized as an Assurance for projects that do not contain Improvements to existing Summit

County Right-of-Way or Right-of-Way incidental to the subject Plat. The Plat and Recording fees will be held by the County. Release and recording of the Plat will require: (i) completion of the Improvements pursuant to the terms of this Agreement; (ii) County Manager acknowledgement on the Plat certifying the completion of the Improvements and extinguishment of this Agreement; and (iii) a letter from the lien holder, as indicated on the Plat, that they remain the current lien holder. Completion period for the Improvements is limited to two (2) years.

- **Option F: Building Permit Hold (“Permit Hold”)** – A Permit Hold may be utilized as an Assurance on a limited basis where there are Improvements valued at less than \$10,000. The release of the Permit Hold requires completion of the Improvements pursuant to the terms of this Agreement. The completion period is limited to six (6) months.
3. **County Standards:** The Developer will construct the Improvements according to the approved Site Improvements Plan, general industry standards, this Agreement, and applicable County regulations (the “County Standards”). The Developer shall instruct the contractor or construction manager to provide timely notice to the Developer, contractor, issuer of the Assurance and the County Engineer whenever an observation or related construction activity reveals that an Improvement does not conform to the County Standards or is otherwise defective.
 4. **Warranty Period:** The Developer warrants that the Improvements, each and every one of them, will be free from defects in materials or workmanship under normal operation for a period of twelve (12) months from the date of the County’s acceptance of the Improvements (the “**Warranty Period**”). Developer agrees to promptly correct any deficiencies in order to meet the County Standards.
 5. **Commencement and Completion Periods:** All Improvements, as outlined in the Cost of Construction PE Estimate and Site Improvements Plan, will be installed and completed within two (2) years from Plat or Final Site Plan approval (the “**Completion Period**”), with the exception of Improvements guaranteed by a Permit Hold, which requires that Improvements be completed within six (6) months.
 6. **Damage to Public Improvements:** Developer agrees that it shall repair or pay for any damage to any existing public improvements damaged during the construction of new improvements. The County shall notify Developer within a reasonable time after discovery of any claim hereunder, and Developer shall have a reasonable period of time within which to repair said damage.
 7. **Traffic Control:** During the construction of any utilities or Improvements described herein, Developer shall be responsible for controlling and expediting the movement of vehicular and pedestrian traffic through and around all construction sites and activities. Such control shall be according to the latest version of the Manual of Uniform Traffic Control Devices.

8. **Road Cuts:** Developer acknowledges that the County has regulations governing road cuts, the provisions of which shall apply to the alteration of any road necessitated by the installation of any utilities or Improvements described in this Agreement.
9. **Weed Control:** The Developer agrees to comply with Summit County Code §4-4-1, et. seq. relative to control and elimination of all noxious species of plants as identified within the Property boundaries. The Developer further agrees to coordinate with the Summit County Weed Department, prior to commencement of work, relative to inspections and importations of weed free project materials.
10. **Roads:** Developer agrees to construct, at Developer's cost, all public and private roads and public and private road improvements, within the Property, in accordance with the plans and specifications within the Site Improvements Plan. Developer agrees to install any traffic control signs and standard street name signs as required by the County and to re-vegetate all cuts and fills resulting from construction in a manner which will prevent erosion.
11. **Compliance with Law:** The Developer shall comply with all relevant federal, state and local laws and regulations in effect at the time of Plat and/or Final Site Plan approval when fulfilling its obligations under this Agreement.

COUNTY'S OBLIGATION

12. **Inspections and Notice of Defect:** The County shall conduct inspections of the Improvements from time to time. In the event that there is a deficiency in performance by Developer hereunder (during the Completion or Warranty Periods), the County may issue a **Notice of Defect** to the Developer and the issuer of the Assurance. The Developer shall have thirty (30) calendar days thereafter to cure the defect (the "**Cure Period**"). If a defect is not corrected within the Cure Period, a condition of default may be declared and an **Affidavit of Lapse of Improvements Agreement** may be issued stating that building permits, grading permits and certificates of occupancy will not be issued in connection with any lots within the Plat or Final Site Plan, and the County may request that a court of competent jurisdiction enjoin the sale, transfer or conveyance of lots within the Plat or Final Site Plan until a new Development Improvements Agreement and Assurance are accepted by the County. If the defect cannot be corrected within the Cure Period, the Developer may request an extension of the Cure Period from the County Engineer.
13. **Notice of Non Compliance with Completion Date:** The County shall issue the Developer a **Notice of Noncompliance** in the event that the Improvements are not completed by the Developer and accepted by the County within the Completion Period. If inclement weather or circumstance beyond the Developer's control prevents construction within the Completion Period, an extension to the Completion Period of up to a twelve (12)-months may be requested by the Developer and approved by the County Engineer. A written request by the Developer indicating cause and reason for an extension shall be submitted to the County Engineer not earlier than fourteen (14) calendar days prior to the expiration of the Completion Period. The request for extension will be reviewed

by the County Engineer and may only be granted in such cases where the Assurance is also extended for the life of the modified Completion Period. An approved extension will be executed as a written Addendum to this Agreement. If an extension of time is not approved by the County Engineer, an Affidavit of Lapse of Improvements Agreement may be recorded stating that building permits, grading permits and certificates of occupancy will not be issued in connection with any lots within the Plat or Final Site Plan, and the County may request that a court of competent jurisdiction enjoin the sale, transfer or conveyance of lots within the Plat or Final Site Plan until a new Development Improvements Agreement, with modified time lines, and Assurance are approved by the County.

14. **Acceptance of Improvements:** The County's acceptance of Improvements is conditioned upon (a) the presentation by Developer of the required signatures of acceptance by all entities serving the constructed Improvements, (b) clear documentation and testing that the Improvements have been completed per County Standards, and (c) the presentation by Developer of a document or documents, where appropriate, for the benefit of the County, demonstrating that the Developer owns the Improvements in fee simple title with no liens or encumbrances thereon. Acceptance of any Improvement does not constitute a waiver by the County of any rights it may have on account of any defect in or failure of the Improvement that is detected or which occurs after the acceptance. Public Improvements shall be dedicated to the appropriate public entity. Private Improvements serving more than one lot shall be assigned by separate agreement to a Home Owners Association.
15. **Reduction of Assurance:** As portions of the site Improvements are completed in accordance with this Agreement, County regulations, and the approved Site Improvements Plan, the Developer may make application to the County Engineer to reduce the amount of the original Assurance. If the County Engineer is satisfied that such portion of the Improvements have been installed and completed in accordance with County Standards, she may cause the amount of the Letter of Credit, Disbursement Agreement, Cash Bond or Performance Bond to be reduced by such amount that she deems appropriate, so that the remaining amount of the Letter of Credit, Disbursement Agreement, Cash Bond or Performance Bond adequately insures the completion of the remaining site Improvements. At the request of the Developer, the County will execute an amendment to this Agreement verifying the acceptance of said installed and completed Improvement, and waiving and releasing its right to draw upon the Assurance for installation and completion of the same. A Developer in default under this Agreement will have no right to such a reduction of the Assurance. Upon the acceptance of all site Improvements, all amounts up to 100% of the Cost of Construction PE Estimate which may be drawn under the Letter of Credit, Disbursement Agreement, Performance Bond or Cash Bond, will be released, leaving a remaining balance of 10% of the Cost of Construction PE Estimate as the warranty. Following the expiration of the Warranty Period, the full remaining balance which may be drawn under the Letter of Credit, Disbursement Agreement, Performance Bond or Cash Bond, will be released.
16. **Use of Proceeds:** The County will use funds drawn under the Assurance per ¶12 herein only for the purpose of completing the Improvements or correcting defects in or failure of the Improvements.

OTHER PROVISIONS

17. **Events of Default:** The following conditions, occurrences or actions will constitute a default by the Developer during the Completion Period or Warranty Period:
- a. Developer's failure to complete any portion of the Improvements in conformance with the County Standards within the Completion or Warranty Periods, as the case may be, and shall fail to cure such default within the Cure Period (or extended Cure Period) after receipt of written **Notice of Defect** from the County specifying the nature of such defect. The County shall be entitled to undertake such work as may be necessary and appropriate to cure such default and the County shall be reimbursed for the reasonable costs thereof either by payment of such costs within 30 days of delivery of an invoice to Developer or by obtaining funds under the Assurance set forth in ¶12 herein.
 - b. Developer's failure to satisfactorily complete each portion of the Improvements within the Completion Period, as documented by the issuance of a **Notice of Noncompliance**, or to remedy defects within the Warranty Period.
 - c. Notification to County of Developer's insolvency, the appointment of a receiver for the Developer, the filing of a voluntary or involuntary petition in bankruptcy, and the foreclosure of any lien against the Property or a portion of the Property.
18. **Measure of Damages:** The measure of damages for breach of this Agreement by Developer will be the reasonable cost of satisfactorily completing the Improvements. For Improvements upon which construction has not begun, the estimated costs of Improvements as shown on Cost of Construction PE Estimate will be prima facie evidence of the minimum cost of completion; however, neither that amount nor the Assurance amount shall establish the maximum amount of Developer's liability.
19. **County's Rights Upon Default:** When any event of default occurs, the County may exercise its rights under the Assurance and contract with a third party for completion of the Improvements. The Developer grants to the County, its successors, assigns, agents, contractors, and employee, a nonexclusive right and easement to enter the Property for the purposes of constructing, installing, maintaining, and repairing such Improvements. Alternatively, the County may assign the proceeds of the Letter of Credit, the Disbursement Agreement, Performance Bond or the Cash Bond to a subsequent party who has acquired the Property by purchase, foreclosure or otherwise who will then have the same rights of completion as the County, if and only if, the subsequent party agrees in writing to complete the unfinished Improvements and provides reasonable Assurances for the obligation. In addition, the County may also revoke certificates of occupancy, issue an Affidavit of Lapse of Improvements Agreement, and/or enjoin the sale, transfer, or conveyance of lots within the Plat or Final Site Plan, until the Improvements are completed and accepted. These remedies are cumulative in nature and are in addition to any other remedies the County has at law or in equity.

20. **Indemnification:** The Developer expressly agrees to indemnify and hold the County, its employees, agents, and assigns harmless from and against all claims, costs and liability of every kind and nature except those arising out of negligence on the part of the County, its employees, agents, and assigns, for injury or damage received or sustained by any person or entity in connection with, or on account of the performance of work at the Property pursuant to this Agreement. The Developer further agrees to aid and defend the County.
21. **No Waiver:** No waiver of any provision of this Agreement will be deemed or constitute a waiver of any other provision, nor will it be deemed or constitute a continuing waiver unless expressly provided for in a written amendment to this Agreement signed by both the County and Developer; nor will the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The County's failure to exercise any right under this Agreement will not constitute the approval of any wrongful act by the Developer or the acceptance of any Improvement.
22. **Amendment or Modification:** The Parties to this Agreement may amend or modify this Agreement only by written instrument executed on behalf of the County by the County Engineer and by the Developer or its authorized officer. Such amendment or modification will be properly notarized and recorded as an amendment to this Agreement, before it may be effective.
23. **Vested Rights:** The County does not warrant by this Agreement that the Developer is entitled to any other approval(s) required by the County, if any, before the Developer is entitled to commence development of the Property or to transfer ownership of the Property or any portion thereof.
24. **Third Party Rights:** No person or entity, who or which is not a party to this Agreement, will have any right of action under this Agreement.
25. **Scope:** This Agreement constitutes the entire agreement between the Parties and no statements, promises or inducements that are not contained in this Agreement will be binding on the Parties.
26. **Force Majure:** For the purpose of computing the Completion Period, and time periods for County action, such times in which war, civil disasters, or acts of God occur or exist, will not be included if such times prevent the Developer or County from performing their obligations under this Agreement.
27. **Severability:** If any part, term, or provision of this Agreement is held by the courts to be illegal or otherwise unenforceable, such illegality or unenforceability will not affect the validity of any other part, term, or provision hereof, and the rights of the Parties will be construed as if the illegal or unenforceable part, term, or provision was never contained within this Agreement.
28. **Benefits:** The benefits, rights and obligations of this Agreement pertaining to the Developer are personal in nature and may not be assigned without the express written consent of the County. Such consent may not be unreasonably withheld, but any unapproved assignment is voidable at the option of the County.

29. **Binding Effect:** This Agreement and the covenants contained herein shall run with the land and shall be binding upon and shall inure to the benefit of the Parties hereto and their successors, heirs and assigns; provided that, purchasers of residential lots within the Property or any homeowner's association that receives title to any portion of the Property shall not incur any liability hereunder and no person or entity, including any homeowner's association that receives title to any portion of the Property, may claim to be a third party beneficiary of the terms, conditions, or covenants of this Agreement. This Agreement shall be recorded in the Office of the Summit County Recorder and be on file with the County Engineer. All existing lien holders shall be required to subordinate their liens to the covenants contained in this Agreement.
30. **Notice:** Any notice required or permitted by this Agreement will be deemed effective either (a) when personally delivered in writing, or (b) seven (7) calendar days after notice is deposited with the U.S. Postal Service, certified, and return receipt requested, and addressed as follows:

If to Developer:

Developer's Name

Developer's Mailing Address

If to County:

Summit County Engineer
60 N. Main Street
P.O. Box 128
Coalville, UT 84017

31. **Recordation:** The County will record a copy of this Agreement in the Office of the Summit County Recorder, Coalville, Utah.
32. **Immunity:** Nothing contained in this Agreement constitutes a waiver of the County's sovereign immunity under any applicable state law, including the Governmental Immunity Act of Utah, UCA Title 63G, Chapter 7, as amended.
33. **Personal Jurisdiction and Venue:** Personal jurisdiction and venue for any civil action commenced by either Party to this Agreement whether arising out of or relating to this Agreement, Letter of Credit, Performance Bond, Disbursement Agreement, or Cash Bond will be deemed to be proper only if action is commenced in the Third District Court for Summit County, Utah. The Developer expressly waives his right to remove such action to any other court.
34. **Release:** This Agreement shall be extinguished only through formal acceptance of the Improvements and successful expiration of the Warranty Period per the provisions of this Agreement or through entering into a written **Release** between the County and the Developer (**Exhibit F**).

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed per the Effective Date as indicated.

DEVELOPER

Company Name: _____

By: _____ Signature _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____

Witness my hand and official seal.

My commission expires: _____

Notary Public

Approved as to form
Summit County Attorney

SUMMIT COUNTY

County Manager

By: _____

Signature _____

STATE OF _____)

) ss.

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____,
by _____

Witness my hand and official seal.

My commission expires: _____

Notary Public

EXHIBIT A

PROPERTY LEGAL DESCRIPTION

(Insert Legal Description of the Property after this Page)

EXHIBIT B

SITE IMPROVEMENTS PLAN

(Insert Site Improvements Plan after this Page)

EXHIBIT C

COST OF CONSTRUCTION PE ESTIMATE

(Insert Cost of Construction PE Estimate after this Page)

ASSURANCE

(Insert the proper Assurance after this Page)

LETTER OF CREDIT

Sample to be followed in issuance of Letter of Credit to Summit County, which Letter of Credit shall be printed on the Financial Institution's Letter Head

Date: _____

IRREVOCABLE LETTER OF CREDIT

Beneficiary:
Summit County, Utah
60 N. Main Street
P.O. Box 128
Coalville, Utah 84017

Applicant: _____
Developer: _____
Address: _____

Re: Irrevocable Letter of Credit No.: _____
Project Name/Phase: _____
Subdivision: _____
Exp. Date: _____, 5:00 p.m.
Summit County, Utah Local Time

SUMMIT COUNTY:

We hereby issue this Irrevocable Letter of Credit in favor of Summit County, Utah (the "County") and authorize the County to draw on _____, which is located within the State of Utah, for the Account of _____ up to an aggregate of U.S. dollars _____ (\$ _____ .00) [this amount comprises the Cost of Construction plus the 10% warranty], available by your draft at sight drawn on us. This Irrevocable Letter of Credit is issued to secure the completion and installation of improvements (the "Improvements") required under that certain Development Improvements Agreement, recorded _____ in the Office of the Summit County Recorder as Entry No. _____, Book _____, beginning at Page _____ (the "DIA").

Each draft must be accompanied (i) by a certification from the Summit County Engineer that _____ is in default under the terms and conditions set forth in the DIA; (ii) by this original Irrevocable Letter of Credit; and (iii) by a sight draft signed by the County Engineer. The original Irrevocable Letter of Credit shall be returned to the County if the sight drafts on the Irrevocable Letter of Credit have not exhausted the full amount of credit.

Each sight draft drawn under this Irrevocable Letter of Credit must state "Drawn under _____, Irrevocable Letter of Credit No. _____, dated _____, to satisfactorily complete such improvements as are required by that certain Summit County Development Improvements Agreement, dated _____, as recorded in the records of the Summit County Recorder and any modifications thereto." The _____ is entitled to rely upon the

certification from the Summit County Engineer and will have no obligation to independently verify the accuracy thereof.

This Irrevocable Letter of Credit shall expire thirty-six (36) months from the date hereon unless the County shall have released _____ from all further liability hereunder upon the timely and satisfactory completion of the Improvements.

The proceeds of said drafts may be retained and used by the County to meet any expenses arising out of the satisfactory completion of the Improvements identified in the DIA. Upon the final completion and acceptance of the performance required under the DIA by the County, there will be refunded to us by the County any balance remaining after application by the County of the sums necessary from the proceeds of the draft(s) to pay all costs, expenses and liabilities, including attorney's fees, incurred in satisfactorily completing the Improvements.

This Irrevocable Letter of Credit is issued and shall be subject to the Uniform Customs and Practice for Documentary Credits (1983 Revision), International Chamber of Commerce, Publication No. 400, to the extent that it does not conflict with Utah Code Annotated §§70A-5-101 et seq. (1953, as amended). Jurisdiction for resolution of disputes arising under this Irrevocable Letter of Credit lies in the courts of Summit County, State of Utah.

We hereby agree with drawers, endorsers and bona fide holders of drafts that all drafts drawn under and in compliance with the terms of this Irrevocable Letter of Credit shall be honored by us and payment made no later than three (3) business days after delivery of documents as specified on or before the expiration date of this Irrevocable Letter of Credit.

In the event _____ is placed into receivership, becomes insolvent, or files for bankruptcy, Summit County shall be immediately notified. Summit County may consider this a default event and require the issuance of a new irrevocable letter of credit.

Issuing Financial Institution: _____

Financial Institution Address: _____

By: _____

Financial Institution Officer Signature and Title

SUBDIVISION IMPROVEMENTS DISBURSEMENT AGREEMENT

This Agreement is entered into by and between Summit County, Utah ("**County**"), _____ ("**Bank**"), and _____ ("**Developer**"). The County, Bank, and Developer are individually referred to herein as a "**Party**" and jointly referred to herein as the "**Parties**".

RECITATIONS

The Developer has been required by the County to construct certain improvements ("**Improvements**") to _____ ("**Subdivision**") in accordance with the Summit County Code, under a Development Improvements Agreement ("**DIA**") which is attached hereto and incorporated herein by this reference.

The Bank has agreed to loan funds to the Developer for the construction of Improvements in the Subdivision.

Summit County has received an estimate, certified by a Utah State Professional Engineer, for the total costs to complete the Improvements, inclusive of any construction engineering, permit fees or other cost required to complete the Improvements ("**Cost of Construction**"), plus the 10% warranty, in the amount of \$ _____, and that this amount from the Developer's loan proceeds shall be referred to in this Agreement as the "**Funds**".

The Parties wish to insure that the Funds are disbursed only to pay for the Improvements or costs incidental to completing the Improvements.

TERMS

The Parties, for valuable consideration, the receipt and adequacy of which is acknowledged, agree as follows:

- 1) **Funds for Improvements:** Bank shall lock out the Funds on behalf of Developer within three (3) business days of execution of this Agreement. The Funds will not be paid out or disbursed to or on behalf of the Developer except as set forth in this Agreement.
- 2) **Disbursement of Funds:**
 - a. The amount of the draw upon the Funds during the **Completion Period** as set forth in the DIA shall not exceed the Cost of Construction. Except as provided under Section 3 below, the Bank shall disburse a portion of the Funds to Developer only upon the receipt of the following:
 - (i) A Draw Request stating which of the Improvements has been completed; that the County Engineer has inspected the Improvements for which payment is requested; that the work has been completed in accordance with the approved plans and

specifications; and that the sum requested to be disbursed is reasonable and consistent with the estimates which form the basis for the DIA (“**Draw Request**”).

(ii) Copies of all bills or invoices for such work as set forth in the Draw Request which has been approved by the Developer.

(iii) Copies of all testing reports as required by Summit County which pertain to the Draw Request.

(iv) Certification by the County Engineer as to the validity of the Draw Request.

(v) The Final Draw Request shall contain signatures of acceptance by all entities taking ownership of the constructed improvements.

b. During the Warranty Period as set forth in the DIA, the County shall be entitled to draw upon the Funds to repair any accepted Improvements.

- 3) **Default by Developer:** Upon default of the Developer on this obligation to Bank or default under the DIA, Bank shall cease disbursement of the Funds directly to the Developer. All funds shall thereafter be distributed directly to the County under the terms of this Agreement.
- 4) **Default Notification:** Bank shall notify the County Engineer in writing within seven (7) calendar days of the following:
 - a. Developer’s insolvency, the appointment of a receiver for the Developer or the filing of a voluntary or involuntary petition in bankruptcy respecting the Developer;
 - b. Default on this obligation to Bank; or
 - c. Foreclosure of any lien against the Property or a portion of the Property or conveyance of the Property in lieu of foreclosure.
- 5) **County’s Rights Upon Default:** County shall have all rights and privileges as set forth in Paragraph 18 of the DIA.
- 6) **Developer Consent:** Developer consents to disbursements and other conduct authorized by the provisions of this Agreement.
- 7) **Liability for Loss:** If the Bank fails to disburse Funds in accordance with the procedures as set forth under this Agreement and the County suffers loss by reason of such failure, Bank shall be liable to County for the amount of the County’s loss.
- 8) **Successors and Assigns; Termination:** This Agreement shall be binding upon the heirs, successors, receivers and assigns of all Parties and shall terminate when the County has accepted the Improvements and has extinguished the DIA following the expiration of the Warranty Period, or upon one of the following conditions: receipt by the County of the full

amount of the remaining undisbursed Funds as requested upon default or ninety-one (91) days after the filing of an Affidavit of Lapse of Improvements Agreement, whichever comes first.

- 9) **Notice:** Any notice required or permitted by this Agreement will be deemed effective either (a) when personally delivered in writing, or (b) seven (7) calendar days after notice is deposited with the U.S. Postal Service, certified, and return receipt requested, and addressed as follows:

If to Developer:

Developer's Name

Developer's Mailing Address

If to Bank:

Bank Name

Bank's Mailing Address

If to County:

Summit County Engineer
60 Main Street
P.O. Box 128,
Coalville, UT 84017

- 10) **Waiver:** Nothing contained in this Agreement constitutes a waiver of the County's sovereign immunity under any applicable state law, including the Governmental Immunity Act of Utah, UCA Title 63G, Chapter 7, as amended.
- 11) **Attorney's Fees:** Should any Party be required to resort to litigation to enforce the terms of this Agreement, the prevailing Party (plaintiff or defendant), will be entitled to costs, including reasonable attorney's fees and expert witness fees, from the opposing Part(ies). If the court awards relief to all Parties, none of the Parties shall be entitled to their costs.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the _____ day of _____, 20__.

SUMMIT COUNTY

By: _____ Date: _____
Title: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____.

Witness my hand and official seal.
My commission expires: _____

Notary Public

DEVELOPER

By: _____ Date: _____
Title: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____.

Witness my hand and official seal.
My commission expires: _____

Notary Public

BANK

By: _____ Date: _____

Title: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 20___, by
_____.

Witness my hand and official seal.
My commission expires: _____

Notary Public

CASH BOND ESCROW AGREEMENT & INSTRUCTIONS

THIS ESCROW AGREEMENT AND INSTRUCTIONS (this “**Agreement**”), is made and entered into this _____ day of _____, 20____ (“**Effective Date**”), by and among _____ (“**Developer**”); Summit County, a body corporate and politic of the State of Utah (“**County**”); and _____ (“**Escrow Agent**”), with reference to the following:

A. In connection with development of _____, the Developer and the County have entered into that certain Development Improvements Agreement, dated _____, and recorded in the Office of the Summit County Record as Entry No. _____, Book _____, beginning at Page _____, (the “**DIA**”), which is incorporated herein by this reference, whereby the Developer has agreed to construct and install various improvements (the “**Improvements**”).

B. In conjunction with the DIA, the County has received an estimate, certified by a Utah State Professional Engineer, for the total costs to complete the Improvements, inclusive of any construction engineering, permit fees or other costs required to complete the Improvements (“**Cost of Construction**”), plus the 10% warranty, in the amount of \$ _____, and that this amount shall be referred to in this Agreement as the “**Funds**”.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein the Developer, County and Escrow Agent agree as follows:

1. Establishment of Escrow; Release of Funds.

(a) Appointment of the Escrow Agent. Developer and County appoint and designate Escrow Agent as escrow agent to receive, hold, and disburse the Funds in accordance with the terms of this Agreement. Escrow Agent accepts its appointment as the escrow agent and agrees to receive, hold, and disperse the Funds in accordance with the terms of this Agreement.

(b) Funds. The Funds will be deposited into an interest bearing account designated by the Developer and County, and administered and disbursed by the Escrow Agent consistent with this Agreement.

(c) Escrow Period. The period for which the Funds will be held in escrow under this Agreement will begin as of the Effective Date and will terminate upon the disbursement of the last of the Funds in the manner provided below.

(d) Disbursement and Release of the Funds. Developer, County and Escrow Agent will observe the following process in connection with the disbursement and release of the Funds by Escrow Agent:

(i) Notice of Disbursement. Developer will provide written notice to Escrow Agent (“**Notice**”) from time to time as the need arises for the purpose of paying valid obligations incurred in connection with the construction of the Improvements. The Notice will specify and/or include: the amount to be disbursed from the Funds; a statement from Developer and/or the general contractor generally describing those particular Improvements that are being paid for with the Funds

being disbursed, that said Improvements comport with the Site Improvements Plan as set forth in the DIA, and that the County Engineer has inspected said Improvements; details as to the party or parties and amounts that should be paid in connection with each disbursement; and such other matters and directions reasonably determined by the Escrow Agent. Disbursements from the Funds are subject to written approval from the designated representative (defined below) of the County. In no event shall the disbursement exceed the Cost of Construction during the Completion Period as set forth in the DIA. The County agrees to use its best efforts to timely consent to disbursements from the Funds and will work diligently to promptly deliver such written approval once a Notice is received. The County's designated representative ("**Designated Representative**") is the Summit County Engineer ("County Engineer"). The County maintains the right to designate a substitute Designated Representative by providing written notice of such substitution in accordance with the notice provisions of this Agreement.

(ii) Delivery of the Funds. If Notice is given and written approval from the County is received, Escrow Agent will disburse to the party or parties specified in the Notice the amount(s) specified in the Notice.

(iii) Lien Releases. In connection with any payment from the Funds, Developer may require that Escrow Agent obtain an unconditional lien release with respect to the disbursement of any portion of the Funds.

(iv) Interest. All interest on the Funds will be added to the Funds.

(v) Warranty. During the Warranty Period as set forth in the DIA, the County shall be entitled to draw upon the Funds to repair any accepted Improvements.

2. Duties of Escrow Agent.

(a) Escrow Agent will exercise reasonable judgment in fulfilling its obligation under this Agreement.

(b) Escrow Agent may act upon any instruments or advice believed by it to be genuine and may assume that any person purporting to give advice or instruction hereunder, reasonably believed by it to be duly authorized, has been authorized to do so.

3. Legal Consultation. Escrow Agent may consult with legal counsel in the event of any dispute or question as to the construction of this Agreement or Escrow Agent's duties hereunder, and Escrow Agent will incur no liability and will be fully protected in acting in accordance with the opinion and the instruction of such counsel made in good faith.

4. Disputed or Adverse Claims. In the event of any disagreement relating to this Agreement resulting in adverse claims and conflicting demands being made in connection with the release of any portion of the Funds, or if at any time Escrow Agent is unable to determine, to Escrow Agent's sole satisfaction, the proper disposition of any portion of the Funds or Escrow Agent's proper actions with respect to its obligations under this Agreement, or if Developer or the County have not within 30 days of the furnishing by Escrow Agent of a notice of resignation pursuant to Section 5 hereof, appointed a successor Escrow Agent to act hereunder, the Escrow Agent, in its sole discretion will be entitled to continue to refrain or refuse to act until:

(a) the rights of the adverse claimants have been finally adjudicated or arbitrated;
or

(b) Escrow Agent has been notified in writing, signed, by all of the interested parties, that the claimants have resolved their differences.

5. Resignation of Escrow Agent. Escrow Agent may resign from the performance of its duties hereunder at any time by giving 30 days prior written notice to Developer and County, or may be removed, with or without cause, by the Developer with the written consent of the County, at any time by the giving of 30 days prior written notice to Escrow Agent. Such resignation or removal will take effect upon the appointment of a successor Escrow Agent as provided herein. Upon any such notice of resignation or removal, Developer, with the written approval of the County, will appoint a successor Escrow Agent hereunder, which will be the County Treasurer, a commercial bank, trust company, or other financial institution or other title company or agency. Upon the acceptance in writing of any appointment as Escrow Agent hereunder by a successor Escrow Agent, such successor Escrow Agent will thereupon succeed to and become vested with all the rights, powers, privileges, and duties of the retiring Escrow Agent, and the retiring Escrow Agent will be discharged from its duties and obligations under this Agreement, but will not be discharged from any liability for actions taken as Escrow Agent hereunder prior to such succession. After any retiring Escrow Agent's resignation or removal, the provisions of this Agreement will inure to its benefit as to any actions taken or omitted to be taken by it while it was Escrow Agent under this Agreement. In the event of resignation or removal of the Escrow Agent as outlined above, such retiring Escrow Agent will reasonably cooperate with the successor Escrow Agent in transitioning any remaining portion of the Funds, documents or other information or material pertaining thereto.

6. Receipt. By its execution and delivery of this Agreement, Escrow Agent acknowledges receipt of the Funds.

7. Fees. Developer will pay the compensation to the Escrow Agent for its services hereunder upon receipt of an invoice from the Escrow Agent, and may authorize the disbursement of those fees from the Funds.

8. Termination of Duties. After release of all of the Funds from escrow created by this Agreement or receipt of a written notice from the County that it has accepted the Improvements and extinguished the DIA after expiration of the Warranty Period, the duties and responsibilities of the Escrow Agent under this Agreement will cease and terminate. All remaining Funds, if any, shall be remitted to the Developer.

9. Default. In the event of default under the DIA, the County will have the right to direct Funds disbursements for the construction of the Improvements in accordance with the approved Site Improvements Plan contained within the DIA. In such event, the County will direct those disbursements by stepping into Developer's shoes for purposes of providing the notices and statements that are referred to in, and will otherwise comply with, Section 1(d) (i), above.

10. Notices. All notices, requests, demands, claims and other communications hereunder will be in writing and will be deemed given if delivered personally, sent by facsimile, or sent by nationally-recognized overnight courier or mailed by registered or certified mail (return receipt requested), postage prepaid, to the parties at the addresses set forth below (or at such other address for a party as will be specified by like notice). All such notices and other communications will be deemed

to have been received (a) in the case of personal delivery, on the date of such delivery, (b) in the case of facsimile, when the party sending such facsimile will have confirmed successful transmission of such facsimile, (c) in the case of delivery by nationally-recognized overnight courier, on the business day following dispatch, and (d) in the case of mailing, on the third business day follow such mailing.

If to Developer:

Developer's Name: _____

Developer's Address: _____

If to County:

Summit County Engineer
60 N. Main
P.O. Box 128
Coalville, Utah 84405

If to the Escrow Agent:

Escrow Agent Name: _____

Escrow Agent Address: _____

11. Computation of Time. Whenever the last day for the exercise of any privilege or the discharge of any duty under this Agreement falls upon a Saturday, Sunday, or any date on which banks in Salt Lake City, Utah are closed, the Party having such privilege or duty may exercise such privilege or discharge on the next succeeding day which is a regular business day.

12. Successors in Interest. This Agreement will be binding upon and will inure to the benefit of the Parties hereto and their permitted successors and assigns, and any reference to a Party will also be a reference to a permitted successor or assign; provided, however, this Agreement may not be assigned without the express written consent of each of the Parties hereto.

13. Number, Gender. Whenever the context so requires, the singular number will include the plural and the plural will include the singular, and the gender of any pronoun will include the other genders.

14. Captions. The titles and captions contained in this Agreement are inserted in this Agreement only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision of this Agreement. Unless otherwise specified to the contrary, all references to Sections are references to Sections of this Agreement.

15. Amendments; Integration; Waiver. To the extent permitted by law, this Agreement may be amended by a subsequent writing signed by all of the Parties. The failure of any Party at any time or times to require performance of any provisions of this Agreement will in no manner affect the right to enforce the same. No waiver by any Party of any conditions, or of the breach of any terms, provision, warranty, representation, agreement or covenant contained in this Agreement, whether by conduct or

otherwise, in any one or more instances will be deemed or construed as a further or continuing waiver of any such condition or breach of any other term, provision, warranty, representation, agreement or covenant contained in this Agreement.

16. Governing Law. This Agreement is governed by and is to be construed in accordance with the laws of the State of Utah.

17. Additional Actions and Documents. Each of the Parties agrees to take or cause to be taken such further reasonable actions, to execute, deliver and file or cause to be executed, delivered and filed such further documents and instruments, and to obtain such consents as may be reasonably necessary or as may be reasonably requested in order to fully effectuate the purposes, terms and conditions of this Agreement.

18. Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement, and any such prohibition or unenforceability in any jurisdiction will not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by law, the parties waive any provision of law which renders any such provision prohibited or unenforceable in any respect.

19. Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same Agreement. Electronically transmitted counterparts and signatures will be deemed originals and will be as effective, valid and enforceable as such.

20. Construction. This Agreement will not be construed against the Party preparing it, and will be construed without regard to the identity of the person who drafted it or the Party who caused it to be drafted and will be construed as if all Parties had jointly prepared this Agreement and it will be deemed their joint work product, and each and every provision of this Agreement will be construed as though all Parties hereto participated equally in the drafting hereof; and any uncertainty or ambiguity will not be interpreted against any one Party. As a result of the foregoing, any rule of construction that a document is to be construed against the drafting party will not be applicable.

21. Authority. Each person who signs this Agreement warrants that he or she does so with the full and legal authority to execute this Agreement on behalf of the respective Parties of this Agreement.

22. Entirety of Agreement. This Agreement sets forth the entire agreement of the Parties as to the matters set forth herein and cannot be amended except pursuant to Section 15 of this Agreement.

THIS CASH BOND ESCROW AGREEMENT AND INSTRUCTIONS are entered into by Developer, Summit County and Escrow Agent as of the Effective Date.

[SIGNATURES ON THE FOLLOWING PAGE]

DEVELOPER:

Name of Developer: _____

By: _____

Print Name: _____

Title: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____,
by _____.

Witness my hand and official seal.

My commission expires: _____

Notary Public

SUMMIT COUNTY:

SUMMIT COUNTY

By: _____

Print Name: _____

Title: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____,
by _____.

Witness my hand and official seal.

My commission expires: _____

Notary Public

PERFORMANCE BOND

(Title 63G, Chapter 6a, U.C.A. 1953, as Amended)

Sample to be followed in issuance of Performance Bond to Summit County, which Performance Bond shall be printed on the Surety's Letter Head

KNOW ALL MEN BY THESE PRESENTS:

That _____ (hereinafter referred to as the "Principal"), and _____, a corporation organized and existing under the laws of the State of _____, with its principal office in the City of _____, State of _____, designated and listed under the U.S. Department of the Treasury Circular 570 (Companies Holding Certificates of Authority as Acceptable Securities on Federal Bonds and as Acceptable Reinsuring Companies) and authorized to transact business in the State of Utah (hereinafter referred to as the "Surety"), are held and firmly bound unto **Summit County** (hereinafter referred to as the "Oblige"), in the amount of _____ DOLLARS (\$_____) [includes both the Cost of Completion and 10% warranty] for the payment whereof, the said Principal and Surety bind themselves and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Development Improvements Agreement with the Oblige, dated the _____ day of _____, 20____, recorded in the Office of the Summit County Recorder as Entry No. _____, Book _____, beginning at Page _____, (the "DIA"), to construct and install improvements as set forth therein (the "Improvements") in the County of Summit, State of Utah, Project No. _____, for the approximate sum of _____ Dollars (\$_____) [includes both the Cost of Completion and 10% warranty], which DIA is hereby incorporated herein by this reference.

NOW, THEREFORE, the condition of this obligation is such that if the said Principal shall faithfully perform the DIA in accordance with the provisions thereof, including, but not limited to, the Site Improvements Plan, Completion Period, Warranty Period, and the terms of the DIA as said DIA may be subject to modifications or changes, then this obligation shall be void; otherwise it shall remain in full force and effect.

No right of action shall accrue on this bond to or for the use of any person or corporation other than Summit County or the heirs, executors, administrators or successors of said Summit County.

The parties agree that the dispute provisions provided in the DIA apply and shall constitute the sole dispute procedures of the parties.

PROVIDED, HOWEVER, that this bond is executed pursuant to the Provisions of Title 63G, Chapter 6a, Utah Code Annotated, 1953, as amended, and all liabilities on this Bond shall be determined in accordance with said provisions to the same extent as if it were copied at length herein.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this _____ day of _____ 20 ____.

WITNESS OR ATTESTATION:

(Affix Corporate Seal)

PRINCIPAL:

By:

Title:

WITNESS:

SURETY:

By:

Attorney-in-Fact (Affix Corporate Seal)

STATE OF _____)
) ss.
COUNTY OF _____)

On this ____ day of _____, 20 ____, personally appeared before me _____, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn, did say the he/she is the Attorney-in-fact of the above-named Surety Company and that he/she is duly authorized to execute the same and has complied in all respects with the laws of Utah in reference to becoming sole surety upon bonds, undertakings and obligations, and that he/she acknowledged to me that as Attorney-in-fact executed the same.

Subscribed and sworn to before me this ____ day of _____ 20 ____.

My commission expires: _____

Resides at: _____

NOTARY PUBLIC

BUILDING PERMIT HOLD AGREEMENT

This Agreement is entered into by and between Summit County, Utah (“**County**”), and _____, (“**Developer**”). The County and Developer are individually referred to herein as a “**Party**” and jointly referred to herein as the “**Parties**”.

RECITATIONS

The Developer has been required by the County to construct certain improvements (“**Improvements**”) to _____ (“**Subdivision**”) in accordance with the Summit County Code, under a Development Improvements Agreement, dated _____, and recorded in the Office of the Summit County Recorder as Entry No. _____, Book _____, beginning at Page _____ (“**DIA**”), which is attached hereto and incorporated herein by this reference.

The County seeks to protect the health, safety and general welfare of the community by requiring a timely completion of these Improvements and to limit the effects of uncompleted subdivisions, including premature subdivision which leaves property undeveloped and unproductive.

The Developer seeks permission to secure the Improvements by allowing the County to withhold any Building Permits associated with the Subdivision (the “**Building Permit Hold**”).

TERMS

The Parties, for valuable consideration, the receipt and adequacy of which is acknowledged, agree as follows:

- 1) **Guarantee for Improvements:** The Developer agrees that Building Permits will not be issued for any lots in the Subdivision until all of the required Improvements are complete per the terms of the DIA.

- 2) **Release of Assurance:** Upon extinguishment of the DIA through formal acceptance of the Improvements per the provisions of the DIA and the expiration of the Warranty Period as set forth therein, Summit County shall release the Building Permit Hold.

- 3) **Successors and Assigns:** This Agreement shall be binding on the heirs, successors, receivers and assigns of all Parties and shall terminate when the County has accepted the Improvements and has extinguished the DIA following the expiration of the Warranty Period.

- 4) **Notice:** Any notice required or permitted by this Agreement will be deemed effective either (a) when personally delivered in writing, or (b) seven (7) calendar days after notice is deposited with the U.S. Postal Service, certified, and return receipt requested, and addressed as follows:

If to Developer:

Developer's Name

Developer's Mailing Address

If to County:

Summit County Engineer
60 N. Main Street
P.O. Box 128
Coalville, UT 84017

5) **Immunity:** Nothing contained in this Agreement constitutes a waiver of the County's sovereign immunity under any applicable state law, including the Governmental Immunity Act of Utah, UCA Title 63G, Chapter 7, as amended.

6) **Attorney's Fees:** Should either Party be required to resort to litigation to enforce the terms of this Agreement, the prevailing Party (plaintiff or defendant), will be entitled to costs, including reasonable attorney's fees and expert witness fees, from the opposing Party. If the court awards relief to both Parties, neither Party shall be entitled to its costs.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the _____ day of _____, 20____.

SUMMIT COUNTY

By: _____ Date: _____

Title: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 20___, by _____.

Witness my hand and official seal.
My commission expires: _____

Notary Public

DEVELOPER

By: _____ Date: _____

Title: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 20___, by _____.

Witness my hand and official seal.
My commission expires: _____

Notary Public

EXHIBIT F

RELEASE

WHEN RECORDED, MAIL TO:

Parcel I.D. Numbers: _____;

Space Above this Line for Recorder's Use Only

**TERMINATION AND RELEASE OF DEVELOPMENT IMPROVEMENTS
AGREEMENT FOR _____**

THIS TERMINATION AND RELEASE OF DEVELOPMENT IMPROVEMENTS AGREEMENT FOR _____ ("Release") is executed this ____ day of ____, 20__, by SUMMIT COUNTY, a political subdivision of the State of Utah ("Summit County"), with reference to the following:

A. Summit County and _____, a _____ ("_____"), are parties to that certain Development Improvements Agreement for _____, dated _____, 20__, ("Development Improvements Agreement") and recorded on _____, as Entry No. _____, in Book _____, beginning at Page _____, in the official records of the Summit County, Utah Recorder ("Official Records"), with regard to the real property more particularly described in Exhibit "A" attached to and incorporated in this Release by this reference (collectively, the "Property").

B. On and subject to the terms and conditions of this Release, Summit County desires to terminate the Development Improvements Agreement and release any of its rights, claims, liens and interests under the Development Improvements Agreement, and _____ desires to approve and agree to such termination and release.

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, Summit County releases any and all of its rights, claims, liens and interests under the Development Improvements Agreement that currently exist or may exist in the future as to the Property. This Release shall be effective, and the Development Improvement Agreement shall forever

APPROVED AND AGREED TO:

By: _____

Authorized Agent

STATE OF _____)

: ss.

COUNTY OF _____)

Personally appeared before me this ____ day of _____, 20__, the following:
_____, who acknowledged to me that he executed this Agreement as the
Authorized Agent of _____.

NOTARY PUBLIC

Residing at: _____

My Commission Expires:

EXHIBIT "A"
TO
TERMINATION AND RELEASE OF DEVELOPMENT IMPROVEMENTS AGREEMENT FOR

DRAW REQUEST NO.

Project Name: _____ **Engineering Project No:** _____

Subdivision Name: _____

For Work Accomplished Through:

Description of Work: _____

For the following work to be approved, attach Bill of Invoices approved by the Developer, Testing Reports and other documents as required.

A. Total Amount (See Total from Exhibit C):	
B. Previous Completed Work (See Total Previous Amount):	
C. Total Remaining Work (Line A-Line B):	
D. Total Amount of Work this Request:	
E. Warranty Retained (Line A x 10%):	
Total Payment This Draw Request (Line D):	

Percent Complete $\frac{\text{Line B} + \text{Line D}}{\text{Line A}} =$

DRAW REQUEST NO. _____

Project Name:

Engineering Project No:

Subdivision Name:

Engineer of Record Certification:

I hereby certify that said work has been completed in accordance with the Site Improvements Plan approved by Summit County in the Development Improvements Agreement for this Project. I also agree that the amount of the draw is reasonable and consistent with the estimates represented on the Cost of Completion PE Estimate for this Project.

By: _____ Date: _____

Company: _____

Contractor's Certification:

I hereby certify that (1) all previous progress payments received from County on account of Work done under the Development Improvements Agreement referred to above have applied to discharge in full all obligations of the Contractors incurred in connection with Work covered by prior Draw Number 1 through _____ inclusive; and (2) title to all materials and equipment incorporated in said Work or otherwise listed in or covered by this Draw Request is free and clear of all liens, claims, security interests and encumbrances (except such as covered by Assurances acceptable to County).

By: _____ Date: _____

Company: _____

Summit County Representative Recommendation:

This Application (with accompanying documentation) meets the requirements of the Development Improvements Agreement and payment in the amount of \$_____ is recommended.

By: _____ Date: _____

Summit County Engineer: _____

DRAW REQUEST NO. _____

Project Name: _____ **Engineering Project No:** _____

Subdivision Name: _____

Utilities Acknowledgement:

(Signature does not imply final acceptance by the entity)

Utility, Company or Special District Name: _____

Signature of Representative: _____

Title: _____ Date: _____

Notes or Comments:

Utility, Company or Special District Name: _____

Signature of Representative: _____

Title: _____ Date: _____

Notes or Comments:

Utility, Company or Special District Name: _____

Signature of Representative: _____

Title: _____ Date: _____

Notes or Comments:

WHEN RECORDED, MAIL TO:

SUMMIT COUNTY ENGINEER
60 N. Main Street
P.O. Box 128
Coalville, Utah 84017

Parcel I.D. Numbers: _____;

Space Above this Line for Recorder's Use Only

**AFFIDAVIT OF LAPSE OF DEVELOPMENT
IMPROVEMENTS AGREEMENT FOR**

Name of Property

BE IT KNOWN BY THOSE PRESENT:

A. That I, _____, the Summit County Engineer, pursuant to paragraphs 12, 13, 17 and 19 of that certain Development Improvements Agreement for _____, dated _____, 20__, ("Development Improvements Agreement") which was recorded on _____, as Entry No. _____, in Book _____, beginning at Page _____, in the official records of the Summit County, Utah Recorder ("Official Records"), with regard to the real property more particularly described in Exhibit "A" attached to and incorporated in this Affidavit of Lapse of Development Improvements Agreement ("Affidavit") by this reference (collectively, the "Property"), hereby certify that a default has occurred under the Development Improvements Agreement, which default has not been successfully cured to the satisfaction of the Summit County Engineer ("Default").

B. Until the Default has been successfully cured to the satisfaction of the Summit County Engineer, Summit County shall not issue building permits, grading permits, or certificates of occupancy appertaining to any portion of the Property.

EXHIBIT "A"
