

SUBDIVISION IMPROVEMENT AGREEMENT

This Subdivision Improvement Agreement (this "Agreement") is effective as of the _____ day of _____, 201__ by and between Ada County Highway District, a body corporate and politic of the State of Idaho ("ACHD") and _____ ("Developer").

RECITALS

A. ACHD is a single, countywide highway district with the exclusive general supervision and jurisdiction over all highways and public rights-of-way within Ada County, Idaho. ACHD has the power to establish design standards, establish use standards and control access to public highways, public streets, and public rights-of-ways.

B. The Developer has submitted an application to develop a parcel of real property, which development is known as _____ (the "Project"). ACHD has approved Developer's preliminary plat and issued site specific and standard conditions of approval in the ACHD staff report dated _____ ("Plat Requirements"). ACHD has approved Developer's street improvement plans. Developer's approved street improvement plans are on file with ACHD and are comprised of the following drawings which are incorporated herein by reference: _____ (**Subdivision Name**), Sheet _____, and Approved Changes, bearing an ACHD Stamp Date (the "Approved Plans").

C. ACHD policy requires developers to provide financial surety as a guarantee if the Plat Requirements have not been completed and improvements to the Project are not constructed and accepted for maintenance and/or all other required items such as, but not limited to, License Agreements, Record Drawings, and CC&RS for the project have not been approved by ACHD at the time ACHD approves Developer's final plat.

D. ACHD and Developer desire to enter into an agreement that sets forth the parties' respective rights and obligations with regard to the aforementioned subdivision improvements.

NOW THEREFORE, in consideration of the mutual covenants herein contained, and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

SECTION 1. SCOPE OF WORK

1.1 Construction of Project. Developer shall complete or cause to be completed the improvements of the Project as shown on the Approved Plans in

compliance with all ACHD standards, specifications and policies, including without limitation, ACHD's Construction Site Discharge Control Program. Such improvements shall include the installation of all necessary utility lines and other public facilities, structures, and service connections directly associated with the Project within the public right-of-way. Developer assumes full responsibility for all street, drainage, irrigation, and utility construction activity associated with the Project. Developer further assumes the responsibility to coordinate all construction activities herein with District's ROWDS Department. The Developer shall provide a bonded contractor(s) to perform all construction work.

1.2 Utility Relocation. The Developer shall be responsible for the relocation of existing utilities and District facilities necessary to construct the required street improvements, in accordance with applicable sections of District Resolution No. 330.

1.3 Licensed Engineer. Developer shall use the services of a professional engineer licensed in Idaho to furnish and complete all plans, to supervise all construction field staking or monitor construction field staking supervised by a professional land surveyor, and to ensure that the improvements comply with ACHD standards, specifications, and policies. The Developer shall assume all responsibility for any errors or omissions on approved plans prepared by Developer's engineer.

1.4 Inspections. The Developer shall pay the applicable inspection fees and arrange for timely inspection of the development by the District. The inspection shall be conducted in accordance to the Subdivision Inspection Agreement, standard plans and specifications and good engineering and construction practices. If a change in the Approved Plans or design becomes necessary, the change shall be submitted by the design engineer to the District for review and approval prior to the change being implemented on the Project.

1.5 Time for Completion. The Developer shall complete all plat Requirements and the construction of the improvements as shown on the Approved Plan by the ____ day of _____, 201__ (the "Completion Date").

1.6 Record Drawings. The Developer shall submit to ACHD a record set of as-built drawings on 11X17 paper to the District following completion of the construction of all public improvements and prior to ACHD's final acceptance of the improvements and release of any financial surety. Record Drawings shall meet the requirements of ACHD Policy Section 7108.3. The Engineer of Record shall certify the drawings.

1.7 Warranty. The Developer warrants to ACHD that all public improvements constructed with respect to the Project are free from defects, conform to good engineering and construction practices and are in compliance with all ACHD

standards, specifications and policies. The Developer further warrants that all materials and equipment installed are of good quality, new and free from defects. Any settlement of the road surface and any failure of the improvements to function as designed or failure to provide the full design capacity within the warranty period shall be deemed conclusive evidence of defective work or materials. The Developer shall promptly remedy or cause to be remedied any defects in the materials, equipment and improvements found to be defective. The Developer shall pay for any and all costs to correct any and all defects in materials, equipment and improvements. The aforementioned warranty shall run for a period of 24-months from the date of the District's written final acceptance of the street improvements for public maintenance. The District will give written notice of the defect within a reasonable period upon ACHD's discovery of such defect. Developer shall correct all defects that Developer receives notice of within the warranty period.

1.8 Storm Drainage System/Mud Tracking. At its own expense, the Developer shall ensure the public streets within and abutting the Project will be kept free of mud tracking and that the storm drainage system shall be kept free of contamination from siltation from mud tracking on the streets or other activities of the contractors within the subdivision.

SECTION 2. FINANCIAL SURETY

2.1 Financial Surety Amount. If the Plat Requirements are not completed and/or the improvements set forth in the Approved Plans are not constructed at the time of ACHD's approval of Developer's final plat, the Developer shall furnish a financial surety as a financial guarantee to ensure the proper and timely construction of the improvements by the Completion Date. The amount of the financial surety shall be 110 percent of the construction costs estimated by ACHD to complete the required improvements. The financial surety shall be in an amount and a form that is satisfactory to the District.

2.2 Release of Financial Surety. ACHD shall not be obligated to release the financial surety until the required Plat Requirements and improvements and/or documents have been accepted by ACHD and any costs incurred by ACHD under this Agreement have been paid in full. ACHD may in its discretion grant a reduction of the financial surety if a substantial portion of the required improvements have been satisfactorily constructed and inspected by ACHD. Any reduction in the financial surety does not constitute an acceptance of any portion of the street improvements by ACHD.

2.3 Failure to Timely Complete Improvements. Subject to Section 3 below, if the required Plat Requirements and/or improvements are not completed by the Completion Date, ACHD may make demand on the financial surety and proceed to complete the required improvements.

SECTION 3. EXTENSION OF TIME

3.1 Request for Extension. If during the construction process, Developer finds that the Completion Date cannot be met, Developer shall notify ACHD in writing thirty (30) days prior to such deadline. Such notice shall set forth the desired duration of the extension of the Completion Date and the reasons for requesting such an extension. The Manager of the Right-of-Way and Development Services Department for ACHD (or their designee) may, in his or her discretion, grant an extension of the Completion Date for up to a period of one (1) year, provided that (i) the Project improvements have not been identified as an urgent need, and (ii) an acceptable valid financial surety is in force at the time of the extension request. Any extension of the Completion Date by ACHD shall be in writing.

3.2 Second Request for Extension. Developer may request a second extension of the Completion Date following the procedure set forth in Section 3.1 above. ACHD's Deputy Director of Technical Services (or their designee) may, in its discretion, grant such request for such time as he or she determines to be appropriate, provided that (i) the Project improvements have not been identified as an urgent need, and (ii) an acceptable valid financial surety is in force at the time of the extension request. Any extension of the Completion Date by ACHD shall be in writing.

3.3 Payment of Additional Surety. As a condition of granting an extension of the Completion Date pursuant to either Section 3.1 or 3.2 above, ACHD may, in its discretion, require Developer to provide an additional financial surety as a financial guarantee to ensure the proper and timely construction of the improvements by the extended Completion Date. The amount of the financial surety shall be determined by ACHD in its discretion and shall reflect the updated cost estimate to complete such improvements.

3.4 Filing Fee. Developer shall pay a filing fee of \$100.00 for any requests for extensions of the Completion Date.

3.5 No Waiver. Any review of a request for an extension of time shall not be construed as a waiver of ACHD's right to draw upon the financial surety to enforce the terms of this Agreement.

SECTION 4. DEFECTIVE WORK

4.1 If the Developer defaults or neglects to carry out the work in accordance with this Agreement and fails within a ten-day period after receipt of written notice from ACHD to commence and continue to correct such default or neglect with diligence and promptness, ACHD may after such ten-day period, without any prejudice to other remedies, correct such deficiencies. In such case, ACHD may draw upon the financial surety paid by Developer and charge the reasonable cost

of correcting such deficiencies, including ACHD's expenses and compensation of any additional professional services made necessary by such default, neglect, or failure.

SECTION 5. MISCELLANEOUS

5.1 Emergency Contact Information. The Developer shall furnish ACHD with names, addresses and phone numbers of Developer's designated representative to contact in case of an emergency.

5.2 Entire Agreement. This Agreement sets forth the entire agreement and understanding of the parties relating to the subject matter herein. Notwithstanding the foregoing, this Agreement shall not relieve the Developer of any expressed or implied warranties that the Developer has given to ACHD with respect to the Project.

5.3 Compliance with Approved Plans. Neither the final certificate of completion, written acceptance of improvements for maintenance, nor ACHD's use of the aforementioned improvements, nor any terms of this Agreement, constitute ACHD's acceptance of any improvements which are not in compliance with the Plat Requirements, Approved Plans and ACHD's standards and specifications.

5.4 Amendments. This Agreement may not be modified, amended or altered except in writing signed by both parties.

5.5 Time of the Essence. Time is of the essence for the performance of this Agreement. No waiver by either party of strict and timely performance of the other shall constitute a waiver of any subsequent breach or default.

5.6 Notices. All notices given pursuant to this Agreement shall be in writing and shall be given by personal delivery, by United States Mail or other established express delivery service (such as Federal Express), postage or delivery charge prepaid, or e-mail, addressed to the appropriate party at the address set forth below.

If to ACHD:

Ada County Highway District
Right of Way and Development Services Department
3775 Adams Street
Garden City, Idaho 83714-6499

If to Developer:

5.7 Signatories. All signatories of the Agreement represent and warrant that they have the power to execute this Agreement and to bind the entity they represent to the terms of this Agreement.

5.8 Assignment. Developer shall neither assign nor transfer any of its rights and/or obligations of this Agreement without express written consent of ACHD.

5.9 Attorney Fees. The prevailing party in any legal action brought by one party against the other and arising out of this Agreement shall be entitled, in addition to any other rights and remedies it may have, to reimbursement for its expenses, including court costs and reasonable attorney fees.

IN WITNESS WHEREOF, the parties have caused this Agreement to be effective the day and year first written above.

DEVELOPER:

By:
Its:

ADA COUNTY HIGHWAY DISTRICT:

By: Timothy R. Morgan
Its: Development Review Supervisor

[Notary acknowledgments follow.]

