

PRELIMINARY SUBDIVISION IMPROVEMENT AGREEMENT

This Agreement is entered into as of this 17th day of November, 1998 by and between Utah County, a subdivision of the State of Utah (hereinafter "County"), Soldier Summit Special Service District (hereinafter "District"), and Soldier Summit Recreation and Development Co., L.L.C., a Utah limited liability company (hereinafter "Developer").

ENT 132058 BK 4904 PG 396
RANDALL A. COVINGTON
UTAH COUNTY RECORDER
1998 Dec 17 12:55 pm FEE 0.00 BY SS
RECORDED FOR UTAH COUNTY ATTORNEY

RECITALS

Whereas, Developer is pursuing the purchase and final development and sale of a subdivision known as the Soldier Summit Estates Subdivision, Plats C and D, (collectively hereinafter "Subdivision"), located at Soldier Summit, Utah within the boundaries of the County; and

Whereas, the lots in the Subdivision are non-conforming lots of record, having been previously approved by the Town of Soldier Summit, a disincorporated municipality; and

Whereas, before lots in the Subdivision can be sold, the County must receive proper assurance that certain improvements in the Subdivision will be completed by the Developer. Said improvements include completion of gravel roads and road improvements meeting County specifications, completion of a water system to provide water service to each lot meeting State and County standards, such fire protection as may be required by County Zoning Ordinances, the Utah County Code, the Urban Wildland Interface Rules and other applicable requirements, completion of railroad crossing improvements, installation of underground power lines, and completion of other improvements as may be required by the County to comply with County requirements (collectively referred to herein as the "New Improvements"); and

Whereas, the County is currently holding certain security pledged to complete the improvements which were required by the Town of Soldier Summit (the "Old Improvements"), which Old Improvements would not comply with County requirements and would not allow the County to issue building or occupancy permits for residential dwellings; and

Whereas, the value of the security for the Old Improvements is not sufficient to cover the costs of the New Improvements; and

Whereas, the Developer has agreed, conditioned upon the Developer acquiring title to the Subdivision property, to substitute as security for completion of the Old Improvements, a cash bond or surety bond, with a surety approved by the County, in an amount equal to the estimated cost, as approved by the County, of completing the New Improvements in accordance with plans to be submitted by Developer and to be approved by the County, the District, and the State as required;

Now, therefore, conditioned upon the Developer acquiring title to the Subdivision property, the County, the District and Developer agree as follows:

1. As soon as reasonably practical from the date of this Agreement, but not later than 180 days from the date of this Agreement, unless extended by agreement of the County and the District, the Developer shall cause to be submitted to the County and to the District, detailed plans and drawings of the New Improvements for approval by the County and by the District. The detailed plans of the water system will also be submitted to the State Board of Health for its approval. Such plans for the New Improvements shall also be submitted to such other agencies of the State or County for approval as may be required prior to construction of the New Improvements. Developer shall also provide sufficient documentation, as determined by County, to establish that: (i) Developer is the owner of the Subdivision property; (ii)

Developer is the owner of all property by which the Subdivision gains access to the public right-of-way from U.S. Highway 6 to the south side of the railroad right-of-way; (iii) Developer is the owner of all property upon which the New Improvements will be located; and (iv) Developer has acquired all interest of Soldier Summit Development in the bonding (trust deeds and cash) currently existing for the Old Improvements.

2. Upon receiving necessary approvals for the final plans for the New Improvements from the County, the State Board of Health, the District and such other agencies as Utah County deems necessary, the Developer will prepare final updated cost estimates for completion of the New Improvements in accordance with the approved plans.
3. Within thirty (30) days after the approval of the cost estimates by the County, Developer will post with the County either a cash bond or a surety bond from a surety approved by the County in an amount equal to the amount of the approved estimated costs. The bond agreement (cash or surety) shall be in such form and shall contain such terms as designated by the County.
4. At or before the time the Developer posts the cash or surety bond with the County in the amount of the approved cost estimates to complete the New Improvements, in accordance with paragraph 3 above, the Developer shall also furnish to the County evidence satisfactory to the County that Developer has sufficient developed and State approved water rights to serve the needs of the Subdivision, and that the District has approved the water system. As part of the construction of the water system, a new line will be installed from the first water tank constructed in the water system which line will then connect into the main line of the Soldier Summit Special Service District water system allowing the District's water system

to bypass the old railroad car storage tank. At or before the time of the posting of the bond for the New Improvements, Developer will transfer to the District all of the water rights required to serve the Subdivision. Upon completion of the water system, and after inspection and approval of the water system by the District, Developer will transfer the water system to the District, without cost to the District, except for any excess capacity reimbursement as described in paragraph no. 5 herein below.

5. In the event that the District, in good faith, determines that the approved water system contains excess capacity (capacity which will allow additional connections to the District water system and which exceeds the capacity required by applicable County, State, District and other requirements to serve the Subdivision) the District will, after completion, inspection, approval and transfer of the water system to the District, make a determination as to the Developer's actual expenses incurred exclusively in constructing the excess capacity (not to exceed the reasonable costs of said construction). The District will then determine the dollar amount of the cost of the excess capacity for which the Developer will be entitled to a reimbursement, which reimbursement amount, without interest, shall be paid exclusively either (i) through a credit which may be used by the Developer, to offset impact fees which may be imposed by the District to connect properties, located within the District and benefitted by the excess capacity, to the District water system, or (ii) through impact fees which may be collected by the District from other developers who connect properties, located within the District and benefitted by the excess capacity, to the District water system. Any reimbursement balance not utilized or paid within seven (7) years from the date of this Agreement shall automatically expire.

6. Upon the posting of the cash or surety bond in accordance with the condition set forth herein above, the County will reconvey the trust deeds being held as security for completion of the Old Improvements to the Developer and turn over to the Developer the cash which is currently being held by the County as security for completion of the Old Improvements.
7. In addition, Developer agrees that it will not sell, or allow to be sold, any lot in the Subdivision, until the cash or surety bond for the New Improvements has been posted with the County in accordance with the conditions set forth herein above. The County will only issue building permits and occupancy permits to lot purchasers in accordance with County zoning, building, fire, health and other regulations and requirements. The lots in the Subdivision shall have the status of non-conforming lots of record.
8. Upon furnishing evidence to the County that the New Improvements have been constructed and paid by Developer, the County will release the cash bond or surety bond to the extent of such completion. Notwithstanding anything in the previous sentence to the contrary, however, the County shall not be obligated to release the bond down to an amount less than the then estimated cost to complete the remaining New Improvements. Developer hereby agrees to construct the New Improvements, and to complete said construction on or before October 1, 2001. Notwithstanding the existence or release of the bond, or any portion thereof, Developer shall be liable and responsible for the construction of the New Improvements. Developer shall indemnify and hold County, District and their agents harmless from all costs, expenses, and liabilities incurred by County or District, or their agents, arising out of or related to, directly or indirectly, this Agreement, or the performance

- of or failure to perform this Agreement, including attorney's fees and litigation expenses and costs.
9. Developer agrees that each purchaser of a lot will be advised, in writing, at the time of the purchase, that the County will only issue building permits and occupancy permits to lot purchasers in accordance with County zoning, building, fire, health and other regulations and requirements, and that the lots in the Subdivision have the status of non-conforming lots of record.
 10. Nothing contained in this Agreement shall be construed as creating an agency, partnership or joint venture relationship between County, District and Developer.
 11. This Agreement shall be governed and construed in accordance with the laws of the State of Utah. This Agreement constitutes the entire agreement among the parties pertaining to the subject matter hereof and supercedes all prior oral and written agreements and understandings pertaining thereto. No covenant, representation or condition not expressed in this Agreement shall affect or be deemed to interpret, change or restrict the express provisions hereof.
 12. This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, executors, administrators, successors, legal representatives and assigns. Provided, however, that any assignment of this Agreement by Developer shall be void unless the Developer obtains the prior express written consent of County and District.
 13. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original. The individual signing this Agreement on behalf of the Developer warrants that he has the authority to sign on behalf of and bind the Developer and that this Agreement has

been properly authorized and approved by Developer. This Agreement may be recorded in the office of the Utah County Recorder.

14. No failure or delay in exercising any right, power or privilege hereunder on the part of any party shall operate as a waiver hereof. No waiver shall be binding unless executed in writing by the party making the waiver.
15. Time is of the essence in performing the obligations hereunder.
16. Notwithstanding anything contained herein to the contrary, this Agreement shall automatically become null and void if Developer does not acquire title to the Subdivision property on or before December 31, 1998.
17. Nothing contained herein shall abrogate that certain Agreement of Extension between County and Soldier Summit Development, dated February 27, 1996; however, in the event Developer acquires title to the Subdivision on or before December 31, 1998, and posts the bond for the New Improvements, as described herein, the Agreement of Extension and the agreements referenced therein, shall be abrogated.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first hereinabove written.

BOARD OF COUNTY COMMISSIONERS
UTAH COUNTY, UTAH

By: 

GARY R. HERBERT, Chairman

ATTEST: Arlin V. Kuhni
Utah County Clerk/Auditor

By: *Lynette Strickland*
Deputy

APPROVED AS TO FORM:

Carlyle K. Bryson, Utah County Attorney

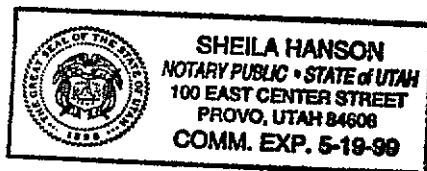
By: *Carlyle K. Bryson*
Deputy Utah County Attorney

ACKNOWLEDGMENT

STATE OF UTAH)
 ss.
COUNTY OF UTAH)

I, a Notary Public, hereby certify that on the 17th day of November, 1998, Gary R. Herbert, who being duly sworn, personally appeared before me and declared that he signed the foregoing document on behalf of the Board of County Commissioners of Utah County, Utah.

[SEAL]



Sheila Hanson
NOTARY PUBLIC

SOLDIER SUMMIT SPECIAL SERVICE
DISTRICT

By: *Gary R. Herbert*
Its: Chairman

ACKNOWLEDGMENT

STATE OF UTAH)
 ss.
COUNTY OF UTAH)

