

FIRST AMENDMENT TO  
SUBDIVISION IMPROVEMENT AGREEMENT

This First Amendment to Subdivision Improvement Agreement (Agreement") is entered into as of this 3rd day of May, 2005 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 66488:2005 PG 1 of 9  
RANDALL A. COVINGTON  
UTAH COUNTY RECORDER  
2005 Jun 21 2:19 pm FEE 0.00 BY SB  
RECORDED FOR UTAH COUNTY ATTORNEY

1. Paragraph 15 is amended to read as follows:

In the event Developer fails to cure a Default within the 60 day cure period, County may exercise its rights under the Plat C Subdivision Bond or the Plat D Subdivision Bond, whichever secures the Developer's obligation which is in default. In the event Developer fails to cure a default and the Surety fails to cure the Developer's default under the terms of the Plat C Subdivision Bond or the Plat D Subdivision Bond, whichever secures the Developer's obligation which is in default, then County and its agents, representatives, employees, officials, and any contractor hired by County, shall have the right to enter the Subdivision, all property related to the Subdivision, and all easements and rights-of-way related to the Subdivision, and at County's sole discretion, utilize the proceeds of the applicable Subdivision Bond for the construction of the Improvements. The County shall also have the right to use the proceeds of the applicable Subdivision Bond to pay all costs, damages, and expenses arising from or related to any breach of this Agreement by Developer, including but not limited to, construction costs, engineering costs, attorney's fees, litigation costs and expenses, collection costs, administration costs, payment for materialmen's or mechanic's liens, payments to contractors or subcontractors who have provided services or materials to the Subdivision, and other costs. If the County elects to

construct the Improvements, or to make repairs to the Improvements, Developer shall be responsible for the payment of the premium for an insurance policy covering any liability, damage, loss, judgment, or personal injury to any person or property, including, but not limited to, damage to Developer or its property, as a result of the work of County, or of any contractor hired by County. The insurance company, the dollar amount, and the scope of the coverage of the insurance policy shall be determined and set by the County. If the proceeds from the applicable Subdivision Bond are inadequate to pay the cost of completion of the Improvements secured by such Subdivision Bond, the cost of any necessary repairs to the Improvements, or the cost of any other obligation under this Agreement, Developer shall be responsible for the deficiency. Additionally, County shall have the right to withhold all future permits, and the permits which have been issued related to the Development may be suspended by the County, until the Improvements or repairs are completed and full compliance with the terms of this Agreement has been obtained.

2. Exhibit D to the Subdivision Improvement Agreement, consisting of the Soldier Summit Estates Subdivision Plat C Subdivision Bond, shall be in the form attached to this First Amendment to Subdivision Improvement Agreement.

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

BOARD OF COUNTY COMMISSIONERS  
UTAH COUNTY, UTAH

By: *Jerry D. Grover*  
JERRY D. GROVER, Chairman

ATTEST: Kim T. Jackson  
Utah County Clerk/Auditor

By: *Linda Strickland*  
Deputy

APPROVED AS TO FORM:  
Carlyle K. Bryson, Utah County Attorney

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

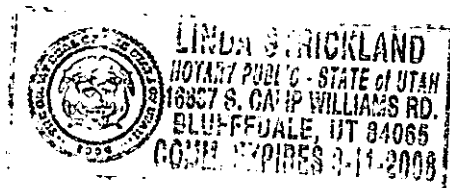
ACKNOWLEDGMENT

STATE OF UTAH                    )  
                                          ss.  
COUNTY OF UTAH                )

I, a Notary Public, hereby certify that on the 3rd day of May, 2005, Jerry D. Grover, 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]

*Linda Strickland*  
NOTARY PUBLIC



SOLDIER SUMMIT SPECIAL SERVICE  
DISTRICT

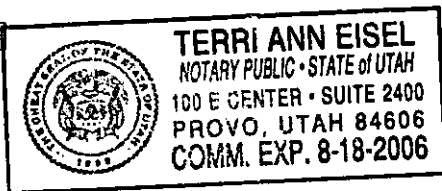
By: *Tracy A. Ellerton*  
Its: *Chairman*

ACKNOWLEDGMENT

STATE OF UTAH                    )  
                                          ss.  
COUNTY OF UTAH                )

I, a Notary Public, hereby certify that on the *18th* day of *May*, 2005, *Tracy A. Ellerton*, who being by me duly sworn, personally appeared before me and declared that he/she signed the foregoing document on behalf of the Soldier Summit Special Service District.

[SEAL]



*Terri Ann Eisel*  
NOTARY PUBLIC

SOLDIER SUMMIT RECREATION AND  
DEVELOPMENT CO., L.L.C.

By: *Brian D. Tuttle*  
Its Manager

ACKNOWLEDGMENT

STATE OF UTAH                    )  
                                          ss.  
COUNTY OF UTAH                )

I, a Notary Public, hereby certify that on the 28 day of April,  
2005, Brian D. Tuttle, who being by me  
duly sworn, personally appeared before me and declared that he signed the foregoing  
document on behalf of the Soldier Summit Recreation and Development Co. L.L.C.

[SEAL]

*Elise Clifford*  
NOTARY PUBLIC



**I.C.W. GROUP**  
**INSURANCE COMPANY OF THE WEST**  
 960 West Levoy Dr., Suite 230  
 Salt Lake City, Utah 84123

**Soldier Summit Estates Subdivision Plat C Subdivision Bond**

Bond No. \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS: that Soldier Summit Recreation and Development Company, LLC (hereafter referred to as Principal) and The Insurance Company of the West, a corporation organized under the laws of the State of California and authorized to transact surety business in the State of Utah, as Surety, are held and firmly bound unto Utah County (hereafter referred to as Obligee), in the sum of Two Million Seven Hundred Fifty-Five Thousand and no/100 Dollars (\$2,755,000.00), for the payment whereof, well and truly to be made, said Principal and Surety bind themselves, their heirs, administrators, successors, and assigns, jointly and severally firmly by these presents.

The condition of the foregoing obligation is such that, whereas the above-bounded Principal has entered into a Subdivision Development Agreement (hereafter referred to as Agreement) as of the \_\_\_\_ day of \_\_\_\_\_, 2005 with Obligee and the Soldier Summit Special Service District, to do and perform the Plat C Improvements and Plat C Warranty work described in the Agreement.

WHEREAS, said Principal is required under the term of said Agreement to furnish a bond for faithful performance of said Agreement.

WHEREAS, in the event Obligee determines that there has been a default by the Principal and notifies Principal of the default as required by the Agreement relating to the Plat C Improvements and Plat C Warranty work, and upon notice from the Obligee to the Surety of the Principal's default and failure to cure within the time provided by the Agreement, the Surety shall either (i) provide notice to Obligee within fifteen (15) days from the date of the notice to Surety, that the Surety shall cure the default by the Principal (which cure of default shall be commenced within thirty (30) days and completed within ninety (90) days from the date of the notice by Surety to Obligee) and thereafter fully and timely complete, per the terms of the Subdivision Improvement Agreement, the Plat C Improvements and Plat C Warranty work itself, through its agents, or through independent contractors; or, in the alternative, (ii) Surety shall deliver to County, within fifteen (15) days from the date of the notice to Surety from the Obligee of the Principal's default and failure to cure within the time provided by the Agreement, an amount equal to 110% of the estimated engineering costs and construction costs, as determined by the Utah County Engineer, if the County were to complete the remaining improvements, but in no event to be less than \$413,250.00 nor in excess of the penal sum of the Bond, less any County approved reduction as provided in the Agreement. , In the event the Bond funds are paid by Surety to Obligee, Obligee shall provide an accounting

to Surety regarding the use of the funds and, in the event excess funds remain, said excess shall be returned to Surety at the end of the warranty period.

NOW, THEREFORE, the condition of this obligation is such that if the Principal fully performs the Plat C Improvements and Plat C Warranty work and shall indemnify and save harmless the Oblige, its officers and agents, from any and all liability which may arise as a result of the installation of said work,

AND FURTHER, that the Principal will correct or replace any defective work or materials discovered by the Oblige (not including the Plat D Improvements which are not covered by this Bond) within a period of one year from the date of acceptance of such work by Oblige, then, Oblige shall provide express written notice to Surety that this Bond is released. Any delay by Oblige in providing the express written notice of release of the Bond shall not extend the one year warranty period.

No change, extension of time, alteration or addition to the work to be performed under the Agreement shall, in any way, affect the Principal's or Surety's obligation on this Bond, and the Surety does hereby waive notice of any change, extension of time, alteration or additions thereunder.

Notwithstanding anything contained herein, or contained in the Agreement, to the contrary, this Bond cannot expire, nor can it be released, revoked, canceled, terminated, or withdrawn, and the obligations of Principal and of Surety hereunder cannot expire, nor can they be released, canceled, terminated or withdrawn, without the prior express written consent of Utah County, acting through the Board of County Commissioners of Utah County.

The individuals signing this Bond on behalf of Surety personally warrant to Oblige that they are authorized to sign on behalf of and bind Surety to the terms of this Bond, that the terms of this Bond fall within the authority of Surety, and that all requisite approvals, resolutions, etc., have been obtained. All obligations of Surety and Principal hereunder are joint and several.

In the event it becomes necessary to bring legal action to enforce the provisions of this Bond, the prevailing party shall be entitled to a reasonable attorney's fee and associated court costs, as determined by the court.

This Bond shall be interpreted pursuant to the laws of the State of Utah, and any court action brought pursuant to this Bond shall be brought in the Courts located in the State of Utah. Time shall be of the essence of this Bond. The invalidity of any portion of this Bond shall not prevent the remainder from being carried into effect. Whenever the context of any provision shall require it, the singular number shall be held to include the plural number, and vice versa, and the use of any gender shall include the other gender.

This Bond and the Agreement constitute a fully integrated agreement and, except for the documents expressly referenced herein and in the Agreement, constitute the complete and

final agreement between the parties. No oral modifications or amendments to this Bond shall be effective, but this Bond may be modified or amended by written agreement signed by all parties.

The Parties shall not assign this Bond, or any part hereof, without the prior written consent of Utah County and Surety. No assignment shall relieve any party from any liability hereunder. Without waiving the requirement for written consents prior to any assignment, this Agreement shall be binding upon the heirs, successors, administrators, and assigns of the Parties.

All notices, demands and other communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been properly given if delivered by hand or upon deposit by certified mail, return receipt requested, postage prepaid, to the Parties at the following addresses, or at such other addresses as may be designated by notice given hereunder.

a. If to Principal:

Soldier Summit Recreation and Development, LLC  
Attn: Robert Barrus  
1040 E. 800 North  
Orem, UT 84057

With a copy to:

Mona Lyman Burton  
Holland & Hart LLP  
60 E. South Temple, Suite 2000  
Salt Lake City, Utah 84111

b. If to Obligee:

Utah County Commission  
Attn: Commission Chair  
100 E. Center St., Suite 2300  
Provo, UT 84606

With a copy to:

Utah County Attorney  
Attn: David Shawcroft  
100 E. Center St., Suite 2400  
Provo, UT 84606

c. If to Surety:



I.C.W. GROUP  
INSURANCE COMPANY OF THE WEST  
960 West Levoy Dr., Suite 230  
Salt Lake City, Utah 84123

SIGNED and SEALED this \_\_\_\_ day of \_\_\_\_\_, 2005.

**PRINCIPAL:**

**SOLDIER SUMMIT  
RECREATION  
AND DEVELOPMENT, LLC**

By: \_\_\_\_\_  
\_\_\_\_\_  
Its. Manager

Witness: \_\_\_\_\_

**SURETY:**

**INSURANCE COMPANY OF  
THE WEST**

By: \_\_\_\_\_  
\_\_\_\_\_  
Its. Attorney in Fact

Witness: \_\_\_\_\_