

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

**ENGINEERING DIVISION  
CITY OF GRASS VALLEY  
125 East Main Street  
Grass Valley, CA 95945**

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

DOCUMENTARY TRANSFER TAX \$ -0- GC 6103  
\_\_\_\_\_  
COMPUTED ON FULL VALUE OF PROPERTY CONVEYED  
\_\_\_\_\_  
OR COMPUTED ON FULL VALUE LESS LIENS AND  
ENCUMBRANCES REMAINING AT TIME OF SALE

SIGNATURE OF DECLARANT OR AGENT DETERMINING TAX

## **SUBDIVISION IMPROVEMENT AGREEMENT**

This Subdivision Improvement Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2024, by and between the CITY of Grass Valley, a municipal corporation, hereinafter referred to as "CITY," and GVC Property 18, a limited liability company, hereinafter referred to as "SUBDIVIDER."

### **RECITALS**

A. SUBDIVIDER has presented to the CITY a final map of a proposed subdivision of land located within the corporate limits of the CITY that has been prepared in accordance with the Subdivision Map Act of the State of California, the subdivision ordinances of the CITY, and the tentative map of the Subdivision, 18PLN-45, previously approved by the CITY Council on XXXX date.

B. The proposed subdivision of land is commonly known and described as Loma Rica Ranch, and is hereinafter referred to as the "Subdivision" or the "Project."

C. SUBDIVIDER has requested approval of the final map prior to the construction and completion of the public improvements, including, but not limited to streets, highways, public ways, sidewalks, curbs, gutters, public utility facilities, storm drainage facilities, and drainage in or appurtenant to the Subdivision, and other public improvements that are required by the Subdivision Map Act, the subdivision ordinances of the CITY, the tentative map (and approvals given in connection therewith), and final grading plan, if any, approved by the CITY. The foregoing improvements are hereinafter referred to as "the Required Improvements."

D. Pursuant to Government Code section 66462 and the applicable provisions of the Subdivision Map Act, SUBDIVIDER and the CITY enter into this Agreement for the timely construction and completion of the Required Improvements and the furnishing of the security therefore, acceptable to the City Engineer and City Attorney, for the Project.

E. SUBDIVIDER's execution of this Agreement and the provision of the security are made in consideration of the CITY's approval of the final map for the Project.

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

## **1. PERFORMANCE OF WORK**

SUBDIVIDER agrees to furnish, construct and install at SUBDIVIDER's own expense the Required Improvements as shown on the plans and specifications of the Subdivision, a copy of which is on file in the office of the City Engineer and is identified as Grading Permit 18-04, and is incorporated herein by reference, along with any changes or modifications as may be required by the City Engineer or the City Engineer's designee (hereinafter "City Engineer") due to errors, omissions, or changes in conditions. The plans and specifications of the Required Improvements may be modified by the SUBDIVIDER as the development progresses, subject to the prior written approval of the City Engineer. The total estimated cost of the Required Improvements, as determined by the project engineer, is One Million Four Hundred Thousand Dollars (\$1,400,000.00).

SUBDIVIDER is prohibited from commencing work on any improvement unless and until all plans and specifications for such improvement have been submitted to and approved by the City Engineer, or his or her designee. Approval by the City Engineer shall not relieve SUBDIVIDER from ensuring that all Public Improvements conform to all other requirements and standards set forth in this Agreement.

All of the work on the Required Improvements is to be done at the places, of the materials, and in the manner and at the grades, all as shown upon the approved plans and specifications and the City's Improvement Standards and Specifications, to the satisfaction of the City Engineer.

## **2. INJURY TO PUBLIC IMPROVEMENTS, PUBLIC PROPERTY OR PUBLIC UTILITIES**

SUBDIVIDER shall replace or repair, or have replaced or repaired, all public improvements, public utility facilities, and surveying or subdivision monuments which are destroyed or damaged in the performance of any work under this Agreement. SUBDIVIDER shall bear the entire cost of replacement or repairs of any and all public or private utility property damaged or destroyed in the performance of any work done under this Agreement, whether such property is owned by the United States or any agency thereof, or the State of California, or any agency or political subdivision thereof, or by the CITY or any public or private utility corporation or by any combination of such owners. Any repair or replacement shall be to the satisfaction of the City Engineer.

## **3. INSPECTION**

SUBDIVIDER shall, at all times, maintain proper facilities and safe access for inspection of the public improvements by the CITY and to the shops wherein any work is in preparation. Upon completion of the work, the SUBDIVIDER must request a final inspection by the City Engineer or the City Engineer's representative. If the City Engineer or the designated representative determine that the work has been completed in accordance with this Agreement, then the City Engineer shall certify the completion of the public improvements to the City Council. No improvements shall be finally accepted unless all aspects of the work have been inspected and determined to have been completed in accordance with the Improvement Plans and City standards. SUBDIVIDER shall bear all costs of plan check, inspection and certification.

## **4. OBLIGATION TO WARN PUBLIC DURING CONSTRUCTION**

Until final acceptance of the Required Improvements by the City Council, SUBDIVIDER shall give good and adequate warning to the public of each and every dangerous condition existing in said improvements, and will take reasonable actions to protect the public from such dangerous condition.

## **5. SUPERINTENDENCE BY SUBDIVIDER**

SUBDIVIDER shall require each contractor and subcontractor to have a competent foreman on the job at all times when that contractor or subcontractor, or any employee or agent thereof, is performing work on the Required Improvements. In addition, SUBDIVIDER shall maintain an office with a telephone and SUBDIVIDER or a person authorized to make decisions and to act for SUBDIVIDER in SUBDIVIDER's absence shall be available on the job site within three (3) hours of being called at such office by the CITY during the hours of 9:00 A.M. through 5:00 P.M., Monday through Friday, or any other day or time when work is being performed on the Required Improvements.

## **6. WORK; TIME FOR COMMENCEMENT AND PERFORMANCE**

Work on the Required Improvements must be commenced by the SUBDIVIDER on or before the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ and Work on the Required Improvements shall be completed on or before the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_; provided, however, that the Required Improvements shall not be deemed to be completed until accepted in writing by the CITY.

Time is of the essence of this Agreement. The dates for commencement and completion of the Required Improvements may not be extended, except as provided in this paragraph. The City Engineer may extend the dates for a maximum of one hundred and eighty (180) days due to delays in the work actually caused by inclement weather, riots, strikes, lockouts, fires, earthquakes, floods and conditions resulting therefrom, or for other reason beyond the control of the SUBDIVIDER. Extension of the dates for any other cause or beyond one hundred and eighty (180) days shall be made only by the City Council. Extensions shall be granted only upon a showing of good cause by the SUBDIVIDER. The City Council or City Engineer, as appropriate, shall be the sole and final judge as to whether good cause has been shown to entitle the SUBDIVIDER to an extension.

Requests for extension of the commencement and/or completion date shall be in writing and delivered to the CITY in the manner hereinafter specified for service of notices prior to the commencement and/or completion date. An extension of time, if any, shall be granted only in writing, and an oral extension shall not be valid or binding on the CITY.

In the event the CITY extends the time of commencement and/or completion of the Required Improvements, such extension may be granted without notice by the CITY to the SUBDIVIDER's surety, and shall in no way release any guarantee or security given by the SUBDIVIDER pursuant to this Agreement, or relieve or release those providing an improvement security pursuant to this Agreement. The surety or sureties, if any, in executing the securities shall be deemed to have expressly agreed to any such extension of time.

In granting any extension of time, the CITY may require new or amended improvement security in amounts increased to reflect increases in the costs of constructing the Required Improvements or impose other conditions to protect its interests and ensure the timely completion of the Required Improvements.

## **7. UTILITIES**

SUBDIVIDER shall assume all costs for utility and cable television undergrounding and/or relocation which is not the responsibility of the cable television, gas, electric, telephone, or other utility company under the terms of the franchises with the CITY or otherwise imposed upon the utility companies by law.

SUBDIVIDER shall provide utility services, including water, power, gas, and telephone service to serve each parcel, lot, or unit of land within the Project in accordance with all applicable federal, state, and

local laws, rules, and regulations, including, but not limited to, the regulations, schedules and fees of the utilities or agencies providing such services.

## **8. IMPROVEMENT SECURITY**

Concurrently with the execution of this Agreement, the SUBDIVIDER shall provide a faithful performance security to secure faithful performance of this Agreement (the “faithful performance” security). SUBDIVIDER shall also provide a payment security to secure payment to the contractor, subcontractors and to persons renting equipment or furnishing labor or materials to them for the work (the “payment security”) and shall secure the obligations set forth in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code of the State of California.

The total amount of the faithful performance and payment security shall be equal to the cost of the remaining improvements (\$1,400,000) plus twenty five percent (25%), in the total amount of One Million Seven Hundred and Fifty Thousand Dollars (\$1,750,000.00).

SUBDIVIDER shall also file with this Agreement a “guarantee and warranty security” in the amount of ten percent (10%) of the total estimated cost of the Required Improvements, One Hundred Forty Thousand Dollars and zero cents (\$140,000.00), to guarantee and warrant the Required Improvements for a period of one year following their completion and acceptance against any defective work or labor done, or defective materials furnished.

All required securities shall be in a form approved by the City Attorney. Any bonds submitted as security pursuant to this section shall be executed by a surety company authorized to transact a surety business in the State of California with a rating by A.M. Best of no less than A:VII or as approved by the City Attorney. These bonds shall be furnished on the forms enclosed following this Agreement and shall be satisfactory to the CITY. The bonds shall be obtained from a responsible corporate surety (or sureties) acceptable to the CITY, which is licensed by the State of California to act as surety upon bonds and undertakings and which maintains in this State at least one office for the conduct of its business. The surety (or sureties) shall furnish reports as to its financial condition from time to time as requested by the CITY. The premiums for said bonds shall be paid by SUBDIVIDER.

Any bonds submitted as security pursuant to this section shall be furnished by companies who are authorized and licensed by the Insurance Commissioner as “admitted surety insurers.” Bonds must be approved by CITY. Before approving the proposed surety and in order to assess the sufficiency of the Surety, the Surety shall provide the CITY with an original of a certificate from the clerk of Nevada County that the certificate of authority of the insurer has not been surrendered, revoked, canceled, annulled, or suspended or, in the event that it has, that renewed authority has been granted.

No change, alteration, or addition to the terms of this Agreement or the plans and specifications incorporated herein shall in any manner affect the obligation of the sureties, except as otherwise provided by the Subdivision Map Act.

The securities shall be irrevocable, shall not be limited as to time (except as to the one-year guarantee and warranty period) and shall provide that they may be released, in whole or part, only upon the written approval of the City Engineer and as provided in paragraph 11. All securities provided pursuant to this Agreement shall expressly obligate the surety for any extension of time authorized by the CITY for SUBDIVIDER’s completion of the Required Improvements, whether or not the surety is given notice of such an extension by the CITY.

The Attorney-in-Fact (resident agent) who executes the securities on behalf of the surety company must attach a copy of his/her Power of Attorney as evidence of his authority. A notary shall acknowledge the power as of the date of the execution of the surety bond that it covers.

## **9. RELEASE OF SECURITY**

Any unused portion of the guarantee and warranty security may be released one year after acceptance of the Required Improvements by the City Council. The amount to be released shall first be reduced by the amount deemed necessary by the CITY to correct any defects in the Required Improvements that are known or believed by the CITY to exist at the end of the guarantee and warranty period.

The payment security may be released thirty-five (35) days after passage of the time within which claims of lien are required to be recorded pursuant to Article 3 of Chapter 2 of Title 15 of Part 4 of Division 3 of the Civil Code (commencing with Section 3114), but in no event shall such security be released prior to one hundred and twenty (120) days after acceptance of the Required Improvements by the City Council. The amount to be released shall first be reduced by the total of all claims on which an action has been filed and notice thereof given in writing to the CITY. The CITY expressly may require the surety not to release the amount of security deemed necessary by CITY to assure payment of reasonable expenses and fees, including reasonable attorney's fees.

The faithful performance security may be released upon acceptance of the Required Improvements by the City Council.

The SUBDIVIDER shall pay to the CITY all fees imposed in connection with the construction and inspection of the Required Improvements. These fees must be paid in full prior to the CITY's acceptance of the Required Improvements. The fees referred to above are not necessarily the only CITY fees, charges or other costs that have been, or will be, imposed on the Subdivision and its development, and this Agreement shall in no way exonerate or relieve the SUBDIVIDER from paying such other applicable fees, charges, and/or costs.

## **10. DEFENSE, INDEMNIFICATION AND HOLD HARMLESS**

The SUBDIVIDER shall defend, indemnify, and hold harmless the CITY, its officers, employees, agents, and elective and appointive boards from any and all claims, losses, damages, including property damage, personal injury, including death, costs, including attorney fees, litigation costs, and liability of any kind or nature directly or indirectly arising out of or in any way connected with performance under this Agreement and/or the construction of the Required Improvements by the SUBDIVIDER, contractor or any subcontractor, or of any person directly or indirectly employed by, or acting as agent for the SUBDIVIDER, contractor or any subcontractor, save and except those matters arising from the sole, active negligence of the CITY.

This defense, indemnification and hold harmless provision shall extend to claims, losses, damage, injury, costs, including attorney fees, and liability for injuries occurring after completion of the construction of the Required Improvements as well as during construction, and shall apply regardless of whether or not the CITY has prepared, supplied or approved the plans and/or specifications for the Required Improvements or has inspected or accepted the same. Acceptance of insurance required under this Agreement shall not relieve SUBDIVIDER from liability under this defense, indemnification and hold harmless provision. SUBDIVIDER's obligation to indemnify shall survive the expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by CITY.

It is expressly understood and agreed that the foregoing provisions will survive termination of this Agreement.

The parties intend that this provision shall be broadly construed to effectuate its purpose.

## **11. ENVIRONMENTAL WARRANTY**

Prior to the acceptance of any dedications or improvements by the CITY, SUBDIVIDER shall certify and warrant that: neither the property to be dedicated nor SUBDIVIDER are in violation of any environmental law and neither the property to be dedicated nor the SUBDIVIDER are subject to any existing, pending, or threatened investigation by any federal, state or local governmental authority under or in connection with any environmental law. Neither SUBDIVIDER nor any third party will use, generate, manufacture, produce, or release, on, under, or about the property to be dedicated, any hazardous substance, except in compliance with all applicable environmental laws. SUBDIVIDER has not caused or permitted the release of, and has no knowledge of the release or presence of, any hazardous substance on the property to be dedicated or the migration of any hazardous substance from or to any other property adjacent to, or in the vicinity of, the property to be dedicated. SUBDIVIDER's prior and present use of the property to be dedicated has not resulted in the release of any hazardous substance on the property to be dedicated. SUBDIVIDER shall give prompt written notice to the CITY at the address set forth herein of:

- a. Any proceeding or investigation by any Federal, State or local governmental authority with respect to the presence of any hazardous substance on the property to be dedicated or the migration thereof from or to any other property adjacent to, or in the vicinity of, the property to be dedicated;
- b. Any claims made or threatened by any third party against the CITY or the property to be dedicated relating to any loss or injury resulting from any hazardous substance; and
- c. SUBDIVIDER's discovery of any occurrence or condition on any property adjoining or in the vicinity of the property to be dedicated that could cause the property to be dedicated or any part thereof to be subject to any restrictions on its ownership, occupancy, use for the purpose for which it is intended, transferability, or suit under any environmental law.

As used in this Agreement, the term "hazardous substance" includes any hazardous or toxic substance or material or waste, including but not limited to all types of gasoline, oil, and other petroleum hydrocarbons, asbestos, radon, polychlorinated biphenols (PCBs), or any other chemical, material, controlled substance, object, condition, waste, living organism or any combination thereof which is or may be hazardous to human health or safety or to the environment due to its radioactivity, ignitability, corrosivity, reactivity, explosivity, toxicity, carcinogenicity, mutagenicity, phytotoxicity, infectiousness or other harmful properties of effects, which is now, or in the future becomes, listed, defined or regulated in any manner by any Federal, State, or local City based directly or indirectly upon such properties.

## **12. SUBDIVIDER'S INSURANCE**

SUBDIVIDER shall not commence any work under this Agreement before obtaining, and shall maintain in force at all times during the duration and performance of this Agreement, the policies of insurance specified in this Section. Such insurance must have the written approval of the CITY as to limit, form, and amount, and shall be placed with insurers with an A.M. Best rating of no less than A:VII.

Prior to the execution of this Agreement and prior to the commencement of any work, the SUBDIVIDER shall furnish to the CITY, and the CITY must approve, original certificates of insurance and endorsements effecting coverage for all policies required by the Agreement. SUBDIVIDER shall not allow any contractor or subcontractor to commence work until similar insurance first shall have been so obtained by such contractor or subcontractor and approved by the CITY. Certificates shall be signed by a person authorized by the insurer, or insurers, to bind coverage on their behalf. Certificate of insurance and endorsements shall be on standard Acord, Department of Insurance, and Insurance Services Office

approved forms or on forms approved by the CITY. As an alternative to providing the CITY with approved forms of certificates of insurance and endorsements, the SUBDIVIDER may provide complete, certified copies of all required insurance policies, including endorsements, effecting the coverage required by this Section. At any time, at the written request of the CITY, SUBDIVIDER agrees to furnish one or more copies of each required policy including declarations pages, conditions, provisions, endorsements, and exclusions. Such copies shall be certified by an authorized representative of each insurer.

a. No Suspension of Insurance. Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, cancelled, terminated by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the CITY.

b. Deductibles. Upon request by the CITY, SUBDIVIDER shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

c. Coverages Shall Not Limit Obligations. The requirement as to types, limits, and the CITY's approval of insurance coverage to be maintained by SUBDIVIDER are not intended to, and shall not in any manner, limit or qualify the liabilities and obligations assumed by SUBDIVIDER under the Agreement.

d. Required Limits. SUBDIVIDER and its contractors and subcontractors shall, at their expense, maintain in effect at all times during the term of this Agreement, not less than the following coverage and limits of insurance, which shall be maintained with insurers and under forms of policy satisfactory to the CITY. The maintenance of SUBDIVIDER and its contractors and subcontractors of the following coverage and limit of insurance is a material element of the Agreement. The failure of SUBDIVIDER or of any of its contractors or subcontractors to maintain or renew coverage or to provide evidence of renewal may be treated by the CITY as a material breach of this Agreement.

(1) Workers' Compensation Insurance. SUBDIVIDER shall maintain, during the term of this Agreement, Workers' Compensation insurance for all of SUBDIVIDER's employees as required by Labor Code section 3700 of the State of California and Employer's Liability Act, including Longshoremen's and Harbor Workers' Act ("Acts"), if applicable. Employer's Liability limits shall not be less than one million dollars (\$1,000,000) per occurrence. The SUBDIVIDER shall execute a certificate in compliance with Labor Code section 1861, on the form provided in the Contract Documents. The insurer shall agree to waive all rights of subrogation against the CITY, its officers, officials, and employees for losses arising from work falling within the terms of this Agreement. SUBDIVIDER shall indemnify and hold harmless the CITY for any damage resulting to it, including attorney fees, from failure of either SUBDIVIDER or any contractor or subcontractor to take out and maintain such insurance.

(2) Commercial General Liability Insurance. SUBDIVIDER shall maintain during the term of this Agreement such commercial general liability insurance as shall insure the CITY, its elective and appointive boards and commissions, officers, agents and employees, SUBDIVIDER and any contractor or subcontractor performing work covered by this Agreement. The insurance shall include, but not be limited to, protection against claims arising from death, bodily or personal injury, or damage to property resulting from actions, failures to act, or operations of SUBDIVIDER, any contractor's or subcontractor's operations hereunder, whether such operations are by SUBDIVIDER or any contractor or subcontractor or by anyone directly or indirectly employed by either SUBDIVIDER or

any contractor or subcontractor. The amount of insurance coverage shall not be less than one million dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) per policy aggregate. As an alternative to the policy aggregate the SUBDIVIDER may have an aggregate limit of one million dollars (\$1,000,000) per project apply. Coverage shall be at least as broad as Insurance Services Office “occurrence form CG 00 01 (ed. 10/01)” covering commercial general liability or its equivalent.

(3) Endorsements. SUBDIVIDER shall see that the commercial general liability insurance shall include, or be endorsed to include, the following:

(a) Provision or endorsement naming the City of Grass Valley, its officers, employees, agents, boards, commissions, and volunteers as Additional Insureds with respect to liability arising out of the performance of any work under this Agreement.

(b) Provision or endorsement stating that insurance is Primary insurance with respect to the CITY, its officers, employees, agents, boards, commissions, and volunteers, to the extent the CITY is an additional insured. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents, boards, commissions, and volunteers shall be excess of the SUBDIVIDER’s insurance and shall not contribute with it.

(c) Provision or endorsement stating that the SUBDIVIDER’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability (cross-liability).

(d) Provision or endorsement stating that any failure to comply with reporting or other provisions of the policies including breaches of representations shall not affect coverage provided to the CITY, its officers, employees, agents, boards, commissions, and volunteers.

### **13. PREVAILING WAGE**

In the event it is determined that the SUBDIVIDER is required to pay prevailing wages for the work performed under this Agreement, the SUBDIVIDER shall pay all penalties and wages as required by applicable law.

### **14. MAINTENANCE OF PUBLIC IMPROVEMENTS AND LANDSCAPING**

The CITY shall not be responsible or liable for the maintenance or care of the Public Improvements until the CITY approves and accepts them. The CITY shall exercise no control over the Public Improvements until accepted. Any use by any person of the Public Improvements, or any portion thereof, shall be at the sole and exclusive risk of the SUBDIVIDER at all times prior to the CITY’s acceptance of the Public Improvements. SUBDIVIDER shall maintain all the Public Improvements in a state of good repair until they are completed by SUBDIVIDER and approved and accepted by the CITY, and until the security for the performance of this Agreement is released. Maintenance shall include, but shall not be limited to, repair of pavement, curbs, gutters, sidewalks, signals, parkways, water mains, and sewers; maintaining all landscaping in a vigorous and thriving condition reasonably acceptable to the CITY; removal of debris from sewers and storm drains; and sweeping, repairing, and maintaining in good and safe condition all streets and street improvements. It shall be SUBDIVIDER’s sole and exclusive responsibility to initiate all maintenance work, but if it shall fail to do so, it shall promptly perform such maintenance work when notified to do so by the CITY. If SUBDIVIDER fails to properly prosecute its maintenance obligation under this section, the CITY may do all work necessary for such maintenance and the cost thereof shall be the responsibility of SUBDIVIDER and its surety under this Agreement. The CITY shall not be



responsible or liable for any damages or injury of any nature in any way related to or caused by the Public Improvements or their condition prior to acceptance.

## **15. TITLE TO REQUIRED IMPROVEMENTS**

The CITY shall not accept any real property to be dedicated or the Required Improvements unless they are constructed in conformity with the approved plans and specifications, approved modifications, if any, the approved final or parcel map, and City Improvement Standards and Specifications, to the satisfaction of the City Engineer. Until such time as the Required Improvements are accepted by the CITY, SUBDIVIDER shall retain title and shall be responsible for, and bear the risk of loss to, any of the improvements constructed or installed.

Title to and ownership of any real property to be dedicated and the Required Improvements constructed under this Agreement by SUBDIVIDER shall vest absolutely in the CITY upon completion and acceptance in writing of such Required Improvements by CITY. The CITY shall not accept the Required Improvements unless title to the Required Improvements is entirely free from lien. Prior to acceptance, SUBDIVIDER shall supply the CITY with appropriate lien releases, at no cost to and in a form acceptable to the CITY.

## **16. REPAIR OR RECONSTRUCTION OF DEFECTIVE WORK**

If, within a period of one year after final acceptance by the City Council of the Required Improvements, any improvement or part of any improvement furnished and/or installed or constructed, or caused to be installed or constructed by SUBDIVIDER, or any of the work done under this Agreement materially fails to fulfill any of the requirements of this Agreement or the specifications referred to herein, SUBDIVIDER shall without delay and without any cost to CITY, repair, replace or reconstruct any defective or otherwise unsatisfactory part or parts of the improvements. If the SUBDIVIDER fails to act promptly or in accordance with this requirement, or if the exigencies of the situation require repairs or replacements to be made before the SUBDIVIDER can be notified, then the CITY may, at its option, make the necessary repairs or replacements or perform the necessary work, and SUBDIVIDER shall pay to CITY the actual cost of such repairs plus fifteen percent (15%) within thirty (30) days of the date of billing for such work by CITY.

## **17. SUBDIVIDER NOT AGENT OF CITY**

Neither SUBDIVIDER nor any of SUBDIVIDER's agents, contractors, or subcontractors are or shall be considered to be agents of the CITY in connection with the performance of SUBDIVIDER's obligations under this Agreement.

## **18. NOTICE OF BREACH AND DEFAULT**

- a. The following shall constitute a default under this Agreement:
  - (1) If SUBDIVIDER refuses or fails to prosecute the work on the Required Improvements, or any part thereof, with such diligence as will ensure its completion within the time specified, or any extension thereof, or fails to complete the Required Improvements within such time;
  - (2) If SUBDIVIDER should be adjudged a bankrupt, or SUBDIVIDER should make a general assignment for the benefit of SUBDIVIDER's creditors, or if a receiver should be appointed in the event of SUBDIVIDER's insolvency; or
  - (3) If SUBDIVIDER or any of SUBDIVIDER's contractors, subcontractors, agents or employees should violate any of the provisions of this Agreement.

b. In the event of SUBDIVIDER's default, SUBDIVIDER shall be deemed to be in breach of this Agreement and the CITY may serve written notice upon SUBDIVIDER and SUBDIVIDER's surety, if any, of the breach of this Agreement. SUBDIVIDER shall have fifteen (15) days from receipt of written notice by the CITY to cure any default.

c. The CITY reserves to itself all remedies available to it at law or in equity for breach of SUBDIVIDER's obligations under this Agreement. The CITY shall have the right, subject to this section, to draw upon or utilize the appropriate security to mitigate the CITY damages in event of default by SUBDIVIDER. The right of the CITY to draw upon or utilize the security is additional to and not in lieu of any other remedy available to the CITY. It is specifically recognized that the estimated costs and security amounts may not reflect the actual cost of construction or installation of the improvements and, therefore, the CITY's damages for SUBDIVIDER's default shall be measured by the cost of completing the required improvements. The sums provided by the improvement security may be used by the CITY for the completion of the public improvements in accordance with the improvement plans and specifications contained herein. The improvement security includes the Payment Security, Faithful Performance Security, Guarantee and Warranty Security, Monument Security and any other improvement security required by Section 10 of this Agreement.

d. In the event of SUBDIVIDER's default under this Agreement, SUBDIVIDER authorizes the CITY to perform such obligation twenty (20) days after mailing written notice of default to SUBDIVIDER and to SUBDIVIDER's Surety, if SUBDIVIDER has not cured the default, and agrees to pay the entire cost of such performance by the CITY.

e. The CITY may take over the work and prosecute the same to completion, by contract or by any other method the CITY may deem advisable, for the account and at the expense of SUBDIVIDER, and SUBDIVIDER's Surety shall be liable to the CITY for any excess cost or damages occasioned the CITY thereby; and, in such event, the CITY, without liability for so doing, may take possession of, and utilize in completing the work, such materials, appliances, plant and other property belonging to SUBDIVIDER as may be on the site of the work and necessary for performance of the work. Failure of SUBDIVIDER to comply with the terms of this Agreement shall constitute consent to the filing by CITY of a notice of violation against all the lots in the Subdivision or to rescind the approval or otherwise revert the Subdivision to acreage. The remedy provided by this Subsection is in addition to and not in lieu of other remedies available to the CITY. SUBDIVIDER agrees that the choice of remedy or remedies for SUBDIVIDER's breach shall be within the discretion of the CITY.

f. In the event that SUBDIVIDER fails to perform any obligation hereunder, SUBDIVIDER agrees to pay all costs and expenses incurred by the CITY in securing performance of such obligations, including staff time, costs of suit and reasonable attorneys' fees.

g. The failure of the CITY to take an enforcement action with respect to a default, or to declare a breach, shall not be construed as a waiver of that default or breach or subsequent default or breach of SUBDIVIDER.

SUBDIVIDER recognizes that by approval of the final map for Subdivision, the CITY has conferred substantial rights upon SUBDIVIDER, including the right to sell, lease, or finance lots within the Subdivision, and has taken the final act necessary to subdivide the property within the Subdivision. As a result, the CITY will be damaged to the extent of the cost of installation of the improvements by SUBDIVIDER's failure to perform its obligations under this Agreement, including, but not limited to, SUBDIVIDER's obligation to complete construction of the improvements by the time established in this Agreement. The CITY shall be entitled to all remedies available to it pursuant to this Agreement and the

Subdivision Laws in the event of a default by SUBDIVIDER. It is specifically recognized that the determination of whether a reversion to acreage or rescission of the Subdivision constitutes an adequate remedy for default by the SUBDIVIDER shall be within the sole discretion of the CITY.

## **19. ACCEPTANCE OF IMPROVEMENTS; AS-BUILT OR RECORD DRAWINGS**

Upon the total or partial acceptance of the Public Improvements by the CITY, SUBDIVIDER shall file with the Recorder's Office of the County of Nevada a notice of completion for the accepted Public Improvements in accordance with California Civil Code section 3093, at which time the accepted Public Improvements shall become the sole and exclusive property of CITY without payment therefore. Notwithstanding the foregoing, the CITY may not accept any Public Improvements unless and until SUBDIVIDER provides one (1) set of "as-built" or record drawings or plans to the City Engineer for all such Public Improvements. The drawings shall be certified and shall reflect the condition of the Public Improvements as constructed, with all changes incorporated therein.

## **20. BUILDING PERMIT SIGN-OFF OR ISSUANCE OF CERTIFICATE OF OCCUPANCY**

The CITY will not final or sign off as complete any building permit or issue any certificate of occupancy for any building constructed within the Subdivision until and after such time as the CITY accepts the Required Improvements.

## **21. NOTICES**

All notices required under this Agreement shall be in writing, and delivered in person or sent by registered or certified mail, postage prepaid.

Notices required to be given to CITY shall be addressed as follows:

Timothy M. Kiser, PE, City Manager  
CITY OF GRASS VALLEY  
125 East Main Street  
Grass Valley, CA 95945

with a courtesy copy to:

Michael G. Colantuono, City Attorney  
Colantuono, Highsmith & Whatley, PC  
420 Sierra College Drive, Suite 140  
Grass Valley, CA 95945-5091

Notices required to be given to SUBDIVIDER shall be addressed as follows:

GVC Property, LLC  
12885 Alcosta Blvd, Ste A  
San Ramon, CA 94583

Any party may change such address by notice in writing to the other party and thereafter notices shall be addressed and transmitted to the new address.

## **22. WAIVER**

The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement.

### **23. ATTORNEY FEES**

In the event any legal action is brought to enforce or interpret this Agreement, the prevailing party shall be entitled to an award of reasonable attorney fees, in addition to any other relief to which it may be entitled.

### **24. PERSONAL NATURE OF SUBDIVIDER'S OBLIGATIONS/ASSIGNMENT**

All of SUBDIVIDER's obligations under this Agreement are and shall remain the personal obligations of SUBDIVIDER notwithstanding a transfer of all or any part of the property within the Subdivision subject to this Agreement, and SUBDIVIDER shall not assign any of its obligations under this Agreement without the prior written consent of the CITY.

### **25. ACQUISITION AND DEDICATION OF EASEMENTS OR RIGHTS-OF-WAY.**

If any of the Required Improvements are to be constructed or installed on land not within the Subdivision or an already existing public right-of-way, no construction or installation shall be commenced before:

- a. The irrevocable offer of dedication or conveyance to the CITY of appropriate rights-of-way, easements or other interests in real property, and appropriate authorization from the property owner to allow construction or installation of the Required Improvements, or
- b. The issuance of an order of possession by a court of competent jurisdiction pursuant to the State Eminent Domain Law. SUBDIVIDER shall comply in all respects with any such order of possession.

Nothing in this paragraph shall be construed as authorizing or granting an extension of time to SUBDIVIDER for completion of the Required Improvements.

### **26. COMPLIANCE WITH LAWS.**

SUBDIVIDER, its agents, employees, contractors, and subcontractors shall comply with all federal, state and local laws in the performance of the work required by this Agreement including, but not limited to, obtaining all applicable permits and licenses.

### **27. NO VESTING OF RIGHTS**

Entering into this Agreement shall not be construed to vest SUBDIVIDER's rights with respect to any change in any zoning or building law or ordinance.

### **28. APPROVALS BY THE CITY.**

Any approval or consent that is to be given by the CITY under this Agreement shall be in writing, and any approval or consent that is not in writing shall not be binding on the CITY.

### **29. CONSTRUCTION AND INTERPRETATION**

It is agreed and acknowledged by SUBDIVIDER that the provisions of this Agreement have been arrived at through negotiation, and that SUBDIVIDER has had a full and fair opportunity to revise the provisions

of this Agreement and to have such provisions reviewed by legal counsel. Therefore, the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not apply in construing or interpreting this Agreement.

### **30. SUCCESSORS AND ASSIGNS -- COVENANT RUNNING WITH THE LAND.**

This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the respective parties. A memorandum of this Agreement in the form attached hereto shall be recorded in the Office of the Recorder of Nevada County concurrently with the final map or parcel map of the Subdivision. This Agreement shall constitute a covenant running with the land and an equitable servitude upon the real property within the Subdivision.

### **31. SEVERABILITY.**

The provisions of this Agreement are severable. If any portion of this Agreement is held invalid by a court of competent jurisdiction, the remainder of the Agreement shall remain in full force and effect unless amended or modified by mutual written consent of the parties.

### **32. ACTIONS.**

Any action by any party to this Agreement, or any action concerning a security furnished pursuant thereto, shall be brought in the appropriate court of competent jurisdiction within the County of Nevada, State of California, notwithstanding any other provision of law which may provide that such action may be brought in some other location. The law governing this Agreement is the law of the State of California.

### **33. INTEGRATION.**

This Agreement is an integrated agreement. It supersedes all prior negotiations, representations, or agreements, either written or oral.

### **34. MODIFICATION.**

This Agreement may be amended only by a written instrument signed by the parties. SUBDIVIDER shall bear all costs of amendments to this Agreement that are requested by the SUBDIVIDER, which shall not be effective until mutually agreed by the parties in writing.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as follows:

CITY OF GRASS VALLEY

By: \_\_\_\_\_  
Jan Arbuckle, Mayor

ATTEST:

\_\_\_\_\_  
Taylor Whittingslow, CITY Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael G. Colantuono, CITY Attorney

SUBDIVIDER

By: \_\_\_\_\_  
Thomas A. Baldacci, President

Dated: \_\_\_\_\_  
(Attach Acknowledgment Form)