HARVEST VALLEY COURT SUBDIVISION DEVELOPMENT AGREEMENT

THIS SUBDIVISION DEVELOPMENT AGREEMENT (hereinafter "Agreement"), is made and entered into this ____ day of _____, 20___, by and between HYRUM CITY, a body corporate and politic of the State of Utah, (hereinafter the "City") and _____, (hereinafter "Developer") the City or Developer may be referred to individually as" Party" or collectively as Parties:

RECITALS

WHEREAS, Developer desires to develop certain real property situated in the corporate city limits of Hyrum City, Cache County, State of Utah (hereinafter sometimes referred to as the "Property" or "Development") and legally described as follows, to wit:

All of Lots 1, 7, 8 of Block 22 plat A Hyrum City Survey, also being a part of the Northwest Quarter of Section 4 Township 10 North, Range 1 East of the Salt Lake Base and Meridian. Containing 3.72 acres more or less.

WHEREAS, Developer desires to develop the Property and Developer has submitted to the City all plats, plans (including utility), reports and other documents required for the approval of a Final Plat according to the City's outlined policies, procedures, and code, Hyrum City Code 16.16 *et seq.*; and

WHEREAS, the Parties hereto have agreed that the development of the Property will require municipal services from the City in order to serve such area and will further require the installation of certain improvements primarily of benefit to the lands to be developed and not to the City of Hyrum as a whole; and

WHEREAS, a condition for approval of the subdivision, the City and Developer shall enter into this Agreement and the parties acknowledge any action without the implementation of this Agreement is void; and

WHEREAS, City approval of the Final Plat is required for recording with the Recorder's Office of Cache County, Utah, which may be approved by the City and submitted by the Developer subject to certain requirements and conditions set forth in this Agreement; and

WHEREAS, Utah Code § 10-9a-102 provides the City's general land use authority to adopt ordinances, resolutions, rules, and may enter into development agreements.

NOW, THEREFORE, in consideration of the promises of the Parties hereto and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, it is agreed as follows:

SECTION I—GENERAL CONDITIONS

1. **Development Activities.** The terms of this Agreement shall govern all development activities of the Developer pertaining to the Property. For the purposes of this Agreement, "development activities" shall include, pursuant to Utah Code Annotated (hereinafter "U.C.A.") § 10-9a-103(8), but be not limited to, the following: any change in the use of land that creates additional demand and need for public facilities. Furthermore, for purposes of this agreement only, "development activities" shall also include the following: (1) the actual construction of improvements, (2) obtaining a permit therefore, or (3) any change in grade, contour or appearance of the Property caused by, or on behalf of, the Developer with the intent to construct improvements thereon, none of which shall occur until execution of the Agreement and City approval of the Final Plat.

2. **Time Limitations for Improvements.** All water lines, sanitary sewer collection lines, storm sewer lines and facilities, streets, curbs, gutters, sidewalks, streetlights, and trails shall be installed as shown on the Final Plat, Construction Drawings and in full compliance with the standards and specification of the City, at the time of approval of the Final Plat, subject to a two (2) year time limitation from the date of approval of the Final Plat. In the event that the Developer commences or performs any construction pursuant hereto after the passage of one (1) year from the date of approval of the Final Plat, the Developer shall resubmit the Final Plat and documentation supporting a new guaranty bond to the City Engineer for reexamination. Pursuant to U.C.A. § 10-9a-603, the City may then require the Developer to comply with the approved standards and specifications of the City at the time of resubmission. The time limitation in this section may be extended in the sole discretion of the City Council.

After one (1) years from the date of approval of the Final Plat, if any development improvements have not been completed, the City, at its sole discretion, may use the guaranty bond money to complete development improvements.

3. **Culinary Water and Sewer Treatment Capacity.** The City does not reserve or warrant water capacity or sewer treatment capacity until the issuance of a building permit. Recording of the Final Plat, execution of this Agreement, and/or recording of any lot within the Development does not constitute a reservation or warranty for water capacity and/or sewer treatment capacity.

4. **Fee-in-Lieu Payments.** In cases where a Developer shall be required by City Ordinance to install an improvement, but circumstances, as determined by the City Engineer, prevent the construction of the improvement, the Developer shall pay a fee-in-lieu of construction. The fee-in-lieu payment shall be the current cost of constructing the improvement as estimated by the City Engineer and formalized in Section II- "Special Conditions in this Agreement." The fee-in-lieu payment shall be used towards the costs of installing the required improvements, the timing of when said improvement shall be constructed shall be at the sole discretion of the City and absolve the Developer from making the improvement in the future or paying the future cost of the required improvement.

5. **Off-Site Project Improvements.** Developer may be required to install off-site improvements without participation or reimbursement from the City or surrounding property

owners, a non-exhaustive list is attached hereto as Exhibit "D". Such improvements are identified as "Project Improvements" as defined by Utah Code Annotated 11-36a-102 (14), which generally include improvements that are: 1) planned and designed to provide service for the Development; 2) necessary for the use and convenience of the occupants or users of the Development; and 3) improvements that are not identified or reimbursed as a "System Improvement" as defined by Utah Code Annotated 11-36a-102 (22).

6. **Building Permit Issuance.** No building permit for the construction of any structure within the development shall be issued by the City until all individual lots in the development are staked by licensed surveyor, the public water lines and stubs to each lot, charged fire hydrants, sanitary sewer lines and stubs to each lot, street lights and public streets (including all weather access, curb, gutter, and pavement with at least the base course completed), serving such structure have been completed and accepted by the City.

7. **Certificate of Occupancy.** No Certificates of Occupancy shall be issued by the City for any structure within the development until gas lines to the structure are installed, street signs are installed, and all electrical lines are installed.

8. **Financial Responsibilities of Developer.** Except as otherwise herein specifically agreed, the Developer agrees to install and pay for all water, sanitary sewer, and storm drainage facilities and appurtenances, and all streets, curbs, gutters, sidewalks, trails and other public improvements required by this Development as shown on the Final Plat, Construction Drawings and other approved documents pertaining to this Development on file with the City.

9. **Utility Line Installments.** Street improvements shall not be installed until all utility lines to be placed therein have been completely installed, including all individual lot service lines (water and sewer) leading in and from the main to the property line, all electrical lines, and all communication conduits.

10. **Inspection by City Officials.** The installation of all utilities shown on the Final Plat and Construction Drawings shall be inspected by the Engineering Department and/or Public Works Department of the City and shall be subject to both department's approval. The Developer agrees to correct any deficiencies in such installations in order to meet the requirements of the plans and/or specifications applicable to such installation. In case of conflict, the Hyrum City Public Works Standards and the 2025 American Public Works Association (APWA) Standards shall supersede the Final Plat and Construction Drawings, unless written exceptions have been made. Overall development approval shall be provided by the City Engineer. Developer shall provide notice to the City for intermittent inspection and allow a minimum of 48 hours (two working days) for inspection of work. Substantial completion observation shall be completed within 7 days of notice to the City. Previously installed improvements shall be exposed within thirty (30) days of the entering into this Agreement and ready to be inspected by City officials to determine adequacy and conformance to applicable standards. List as attached as Exhibit C. City shall provide written inspection reports to the developer within twenty (20) days stating deficiencies or acceptance of the work. This shall include information such as length of work by station or quantity. Acceptance of individual parts does not constitute an acceptance of the entire system and shall not be accepted until all testing has been completed.

11. **Form of Recorded Drawings.** The Developer shall provide the City Engineer with two (2) certified Record Plan Drawings upon completion of each phase of the construction. Utilities will not be initially accepted prior to as-built drawings being submitted to and approved by the City of Hyrum. The City reserves the right to request alternative forms of plans (i.e., CAD drawings, GIS images, etc.).

12. **Developer Compliance with EPA and other Regulations.** The Developer specifically represents that to the best of its knowledge all property dedicated (both in fee simple and as easements) to the City associated with this Development (whether on or off-site) is in compliance with all environmental protection and anti-pollution laws, rules, regulations, orders or requirements, including solid waste requirements, as defined by the U.S. Environmental Protection Agency Regulations at 40 C.F.R. Part 261, and that such property as is dedicated to the City pursuant to this Development, is in compliance with all such requirements pertaining to the disposal or existence in or on such dedicated property of any hazardous substances, pollutants or contaminants, as defined by the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, and regulations promulgated thereunder. The Developer, for itself and its successor(s) in interest, does hereby indemnify and hold harmless the City from any liability whatsoever that may be imposed upon the City by any governmental authority or any third Party, pertaining to the disposal of hazardous substances, pollutants or contaminants, and cleanup necessitated by leaking underground storage tanks, excavation and/or backfill of hazardous substances, pollutants or contaminants, or environmental cleanup responsibilities of any nature whatsoever on, of, or related to any property dedicated to the City in connection with this Development, provided that such damages or liability are not caused by circumstances arising entirely after the date of acceptance by the City of the public improvements constructed on the dedicated property, except to the extent that such circumstances are the result of the acts or omissions of the Developer. Said indemnification shall not extend to claims, actions or other liability arising as a result of any hazardous substance, pollutant or contaminant generated or deposited by the City, its agents or representatives, upon the property dedicated to the City in connection with this Development. The City agrees to give notice to the Developer that he must obtain a complete discharge of all City liability through such settlement. Failure of the City to give notice of any such claim to the Developer within ninety (90) days after the City of first receives a notice of such claim under the Utah Governmental Immunity Act for the same, shall cause this indemnity and hold harmless agreement by the Developer to not apply to such claim and such failure shall constitute a release of this indemnity and hold harmless agreement as to such claim.

13. **City Ownership Rights.** The Developer acknowledges and agrees that the City, as the owner of any adjacent property (the "City Property") on which off-site improvements may be constructed, or that may be damaged by the Developer's activities hereunder, expressly retains (and does not by this Development Agreement waive) its rights as property owner. The City's rights as owner may include without limitation those rights associated with the protection of the City Property from damage, and/or the enforcement of restrictions, limitations and requirements associated with activities on the City Property by the Developer as an easement recipient.

14. **Developer Vesting.** Developer, by and through execution of this agreement, receives a vested right to develop the number of lots shown and configured on the Final Plat, without interference from the City, so long as development is completed in accordance with the plans specifically shown on the Final Plat, Construction Drawings and pursuant to the statutory requirements codified by Utah State and Hyrum City Codes. Furthermore, following execution of

the Agreement, Developer's right to develop and construct in accordance with the statutory requirements at the time of execution of the Agreement shall be deemed vested.

15. **Stop Work Provision.** The City shall have the right to issue a Stop Work Order requiring the Developer to immediately cease all or specified development activities on the Project for a period not to exceed six (6) months if the City reasonably determines that:

a. The work or any portion thereof is not being performed in compliance with applicable federal, state, or local laws, ordinances, rules, regulations, or standards; or

b. The work or any portion thereof fails to comply with generally accepted industry practices and standards customarily observed in similar development projects.

c. *Issuance and Delivery of Stop Work Order.* A Stop Work Order may be delivered to the Developer by any one or more of the following means:

i. In accordance with the notice provisions set forth in this Agreement;

ii. By posting a written notice conspicuously at the Project site; or

iii. By delivery of the notice to any supervisory employee, contractor, or representative of the Developer present on the Project site.

d. *Effect of Stop Work Order.* Upon receipt or posting of the Stop Work Order, the Developer shall immediately cease all development activities identified in the Order, and shall not resume such work unless and until the City provides written authorization to proceed. The Developer shall be responsible for ensuring that all contractors, subcontractors, and workers comply with the Stop Work Order.

e. *Duration and Cure.* The Stop Work Order shall remain in effect for no longer than six (6) months from the date of issuance, unless extended by mutual written agreement of the parties or as otherwise provided by law. During the period of suspension, the Developer shall diligently correct all deficiencies identified by the City. The City shall promptly inspect any remedial work and may lift the Stop Work Order upon determining, in its reasonable discretion, that the Developer has cured the non-compliance.

f. *No Waiver.* Issuance or lifting of a Stop Work Order shall not waive or limit any other rights or remedies available to the City under this Agreement, at law, or in equity.

SECTION II—SPECIAL CONDITIONS

1. **Conformance with Approved Plans.** All development shall conform in all material respects with the approved Final Plat, including all landscape architectural plans, as

approved by the City, and any amendments thereto approved in accordance with applicable procedures.

2. **Phasing Schedule.** The Developer shall complete construction of the Project in accordance with the phasing plan submitted to and approved by the City. Each phase must be substantially completed before commencement of the next phase unless otherwise approved in writing by the City.

3. **Design and Architectural Standards**. All buildings and structures shall comply with the architectural design guidelines adopted by the City and incorporated in the Final Plat, including but not limited to materials, height restrictions, façade articulation, roof lines, and color palettes.

4. **Open Space and Common Areas.** The Developer shall construct and maintain all designated open space, trails, parks, and other common areas as shown on the approved Final Plat. Open space shall remain perpetually accessible and maintained for the benefit of residents, subject to any rules adopted by a homeowners' association (HOA) approved by the City.

5. **Homeowners' Association (HOA)**. Prior to the sale of any residential units, the Developer shall establish a duly organized HOA responsible for the maintenance and enforcement of covenants, conditions, and restrictions (CC&Rs), including landscaping, private roads, open space, and recreational amenities. The CC&Rs shall be subject to City review and approval.

6. **Private Roads and Utilities.** Where private roads or utility infrastructure are proposed, the Developer shall be responsible for their construction, ongoing maintenance, and repair, unless and until dedicated to and accepted by the City. Appropriate easements for public access and utility maintenance shall be recorded as required by the City.

7. **Landscaping Requirements**. All landscaping shall be installed in accordance with the approved Landscape Plan, including water-wise design consistent with City standards. All landscaping for each single family residence shall be completed within eighteen (18) months of issuance of the certificate of occupancy.

8. **Parking and Access**. All parking shall comply with City ordinances and the approved Final Plat. Adequate guest parking must be provided, and all access points shall be improved in accordance with City engineering standards and specifications.

9. **Lighting.** Exterior lighting shall be dark-sky compliant and shall be designed to minimize spillover onto adjacent properties. Lighting plans shall be submitted and approved prior to building permit issuance.

10. **Utility Coordination**. The Developer shall coordinate with all utility providers (including water, sewer, stormwater, gas, electricity, and telecommunications) to ensure timely installation and connection of service infrastructure. Utility plans must be approved by the City Engineer prior to commencement of construction.

11. **Stormwater and Drainage.** The Developer shall install and maintain all stormwater facilities consistent with the approved stormwater management plan. Facilities must comply with all applicable state and local stormwater regulations, including long-term maintenance obligations. The Developer shall obtain letter of approval from any applicable irrigation or canal company accepting the flow of any retention ponds or stormwater management plan.

12. **Compliance with City Code**. All development within the Property shall remain in compliance with the City Code, including all zoning, subdivision, and building regulations.

13. **Amendment Procedure**. No changes to the approved plans, phasing, or special conditions shall be made without prior written approval from the City Council, in accordance with applicable amendment procedures.

SECTION III—MISCELLANOUS

1. **Construction Site Safety.** The Developer agrees to provide and install, at its expense, adequate barricades, flaggers, warning signs and similar safety devices at all construction sites within the public right-of-way and/or other areas as deemed necessary by the City Engineer, City Public Works Department, and Traffic Engineer in accordance with any and all Federal Regulations, the City's Policies and Procedures, Utah Department of Transportation Requirements, OHSA, and Manual of Uniform Traffic Control Devices ("MUTCD") and shall not remove said safety devices until the construction has been completed.

2. **Construction Site Waste.** The Developer shall, at all times, keep the public right-of-way free from accumulation of waste material, rubbish, or building materials caused by the Developer's operation, or the activities of individual builders and/or subcontractors; shall remove such rubbish as often as necessary, but no less than daily and; at the completion of the work, shall remove all such waste materials, rubbish, tools, construction equipment, machinery, and surplus materials from the public right-of-way. The Developer further agrees to maintain the finished street surfaces so that they are free from dirt and debris. Developer shall be responsible for and remove any trash, waste material, or other materials that is taken off-site, including taken by Developer or by any other means including wind or washed away and shall cause the trash, waste material, or other materials to be properly disposed. Any excessive accumulation of dirt and/or construction materials shall be considered sufficient cause for the City to withhold building permits and/or certificates of occupancy until the problem is corrected to the satisfaction of the City. If the Developer fails to adequately clean such streets within two (2) days after receipt of written notice, the City may have the streets cleaned at the Developer's expense and the Developer shall be responsible for prompt payment of all such costs. The Developer also agrees to require all contractors within the Development to keep the public right-of-way clean and free from accumulation of dirt, rubbish, and building materials. Under no circumstances shall the Developer or any sub-contractors use open burning procedures to dispose of waste materials.

3. **Compliance with City Building Inspector, City Engineer, and City Public Works Director.** The Developer hereby agrees that it will require its contractors and subcontractors to cooperate with the City's Building Inspector, City Engineer, or City Public

Works Director by ceasing operations when winds are of sufficient velocity to create blowing dust, which, in the inspector's opinion, is hazardous to the public health and welfare.

4. **Protection Strips and Undevelopable Lots.** Developer covenants and warrants that they have not, or will not in the future, unlawfully divide real property in such a way that a parcel of property is created or left behind that cannot be developed according to the requirements of Hyrum City Code, or other applicable laws. Examples of a parcel of property that is created or left behind that cannot be developed include, but are not limited to, spite strips or protection strips, which are parcels created or left for the sole purpose of denying another property owner access to their property, parcels with insufficient square footage, parcels with insufficient buildable area, parcels that do not meet the requirements of Hyrum City Code, and parcels that do not abut on a dedicated street. When a Developer unlawfully divides property, the Developer agrees, as a remedy, to dedicate and otherwise deed ownership of these undevelopable parcels of land to the City, upon the City's written request. Nothing in this agreement shall be construed as a prohibition from the City requiring the dedication of access rights where deemed necessary for the public good, safety, etc.

5. **Consequences of Developer non-compliance with Final Plat and the Agreement.** The Developer shall, pursuant to the terms of this Agreement, complete all improvements and perform all other obligations required herein, as such improvements or obligations may be shown on the Final Plat and Construction Drawings, or any documents executed in the future that are required by the City for the approval of an amendment to the Final Plat or the Agreement, and the City may place liens on vacant lots still owned by the Developer and or withhold such building permits and certificates of occupancy as it deems necessary to ensure performance in accordance with the terms of the Agreement. The City may also take other action including filing a lawsuit to compel the completion of the items or recover the cost from the Developer if the City is required to complete the items.

6. **No Waiver of Regulation(s).** Nothing herein contained shall be construed as a waiver of any requirements of the City Code or the Utah Code Annotated, in its current form as of the date of approval of the Final Plat, and the Developer agrees to comply with all requirements of the same.

7. **Severability of Waivers.** A waiver by any party of any provision hereof, whether in writing or by course of conduct or otherwise, shall be valid only in the instance for which it is given, and shall not be deemed a continuing waiver of said provision, nor shall it be construed as a waiver of any other provision hereof.

8. **City Council Budgetary Discretion.** All financial obligations of the City arising under this Agreement that are payable after the current fiscal year are contingent upon funds for the purpose being annually appropriated, budgeted and otherwise made available by the Hyrum City Council, in its discretion.

9. **Covenants Run with the Land.** This Agreement shall run with the Property, including any subsequent, approved, amendments to the Final Plat of all, or a portion of the Property. This Agreement shall also be binding upon and inure to the benefit of the Parties hereto, their respective personal representatives, heirs, successors, grantees and assigns. It is agreed that

all improvements required pursuant to this Agreement touch and concern the Property regardless of whether such improvements are located on the Property. Assignment of interest within the meaning of this paragraph shall specifically include, but not be limited to, a conveyance or assignment of any portion of the Developer's legal or equitable interest in the Property, as well as any assignment of the Developer's rights to develop the Property under the terms and conditions of this Agreement.

10. **Liability Release.** With limitations pursuant to Utah Code Annotated § 10-9a-607, in the event the Developer transfers title to the Property and is thereby divested of all equitable and legal interest in the Property, the Developer shall be released from liability under this Agreement with respect to any breach of the terms and conditions of this Agreement occurring after the date of any such transfer of interest. In such event, the succeeding property owner shall be bound by the terms of this Agreement.

11. **Default and Mediation.** Each and every term of this Agreement shall be deemed to be a material element hereof. In the event that either Party shall fail to perform according to the terms of this Agreement, such Party may be declared in default. In the event that a Party has been declared in default hereof, such defaulting Party shall be given written notice specifying such default and shall be allowed a period of ten (10) days within which to cure said default. In the event the default remains uncorrected, the Party declaring default may elect to: (a) terminate the Agreement and seek damages; (b) treat the Agreement as continuing and require specific performance or; (c) avail itself of any other remedy at law or equity.

In the event of the default of any of the provisions hereof by either Party, which shall give rise to commencement of legal or equitable action against said defaulting Party, the Parties hereby agree to submit to non-binding mediation before commencement of action in any Court of law. In any such event, defaulting Party shall be liable to the non-defaulting Party for the non-defaulting Party's reasonable attorney's fees and costs incurred by reason of the default.

12. **No Third-Party Beneficiaries**. Except as may be otherwise expressly provided herein, this Agreement shall not be construed as or deemed to be an agreement for the benefit of any third Party or Parties, and no third Party or Parties shall have any right of action hereunder for any cause whatsoever.

13. **Applicable Laws.** It is expressly understood and agreed by and between the Parties hereto that this Agreement shall be governed by and its terms construed under the laws of the State of Utah and the City of Hyrum, Utah.

14. **Notice.** Any notice or other communication given by any Party hereto to any other Party relating to this Agreement shall be hand-delivered or sent by certified mail, return receipt requested, addressed to such other Party at their respective addresses as set forth below; and such notice or other communication shall be deemed given when so hand-delivered or three (3) days after so mailed:

If to the City: Hyrum City
60 West Main
Hyrum, UT 84319

With a copy to: Daines & Jenkins, LLP
108 North Main Street
Logan, UT 84321

If to the Developer: ______________________
____
____
____

Notwithstanding the foregoing, if any Party to this Agreement, or its successors, grantees or assigns, wishes to change the person, entity or address to which notices under this Agreement are to be sent as provided above, such Party shall do so by giving the other Parties to this Agreement written notice of such change.

15. **Word Meanings.** When used in this Agreement, words of the masculine gender shall include the feminine and neutral gender, and when the sentence so indicates, words of the neutral gender shall refer to any gender; and words in the singular shall include the plural and vice versa. This Agreement shall be construed according to its fair meaning and as if prepared by all Parties hereto, and shall be deemed to be and contain the entire understanding and agreement between the Parties hereto pertaining to the matters addressed in this Agreement.

16. **Complete Agreement.** There shall be deemed to be no other terms, conditions, promises, understandings, statements, representations, expressed or implied, concerning this Agreement, unless set forth in writing signed by all of the Parties hereto. Further, paragraph headings used herein are for convenience of reference and shall in no way define, limit, or prescribe the scope or intent of any provision under this Agreement.

17. **Indemnification.** The Developer shall indemnify, defend, and hold harmless the City and its elected and appointed officials, officers, employees, agents, and representatives (collectively, the "City Indemnitees") from and against any and all claims, demands, actions, causes of action, liabilities, damages, losses, judgments, fines, penalties, costs, and expenses (including reasonable attorneys' fees and expert witness fees) arising out of or resulting from (i) the design, construction, installation, maintenance, or failure of any public or private infrastructure improvements installed by or on behalf of the Developer, including but not limited to streets, utilities, sidewalks, curbs and gutters, and (ii) the design, construction, installation, maintenance, or failure of any stormwater retention, detention, or drainage facilities constructed as part of the Development. This indemnification shall apply regardless of whether the City has inspected or approved the infrastructure or stormwater improvements, and regardless of whether the facilities have been dedicated to or accepted by the City, unless the claim arises from the City's sole negligence or willful misconduct after formal acceptance. The obligations set forth in this Section shall survive termination or completion of this Agreement.

18. **Greenbelt Taxes.** Pursuant to Utah Code Annotated § 10-9a-603(3), The City shall require payment of all Greenbelt Taxes, if applicable, prior to Recordation of the Final Plat.

19. **Recording.** The City and Developer are authorized to record or file any notices or instruments with the Cache County Recorder's Office appropriate to assuring the perpetual enforceability of the Agreement, and the Developer agrees to execute any such instruments upon reasonable request.

20. **"Arms Length" Transaction.** The Parties hereto expressly disclaim and disavow any partnership, joint venture or fiduciary status, or relationship between them and expressly affirm that they have entered into this Agreement as independent Parties and that the same is in all respects an "arms-length" transaction.

21. **Severability.** Should any portion of this Agreement be deemed invalid or unenforceable by rule of law or otherwise, all other aspects of the Agreement shall remain enforceable and in full effect.

22. **Incorporation of Recitals and Exhibits.** The above recitals and all exhibits attached hereto are incorporated herein by this reference and expressly made a part of this Agreement.

23. **Preparation of Agreement.** The Parties hereto acknowledge that they have both participated in the preparation of this Agreement and, in the event that any question arises regarding its interpretation, no presumption shall be drawn in favor of or against any Party hereto with respect to the drafting hereof.

24. **Amendments.** This Agreement may be amended at any time upon unanimous agreement of the Parties hereto, which amendment(s) must be reduced to writing and signed by all Parties in order to become effective.

25. **Further Instruments.** The Parties hereto agree that they will execute any and all other documents or legal instruments that may be necessary or required to carry out and effectuate all of the provisions hereof.

HYRUM CITY

By: _____

Stephanie Miller, *Mayor*

ATTEST

_____

City Recorder

APPROVED AS TO CONTENT:

_____

APPROVED AS TO FORM:

City Engineer

_____

City Attorney

DEVELOPER:

_____

By:
Its:

DEVELOPER ACKNOWLEDGMENT

State of Utah)
§
County of _____)

On this _____day of _____, in the year 20____, before me _____ a notary public, personally appeared _____, and proved on the basis of satisfactory evidence to be the person(s) whose name(s) subscribed to this instrument, and acknowledge executing the same.

_____

Notary Public

EXHIBIT "A"

CONSTRUCTION/IMPROVEMENT GUARANTEE:

The Bond guaranteeing the Developer's timely and proper installation and warranty of required improvements shall be equal in value to at least one hundred-ten (110) percent of the cost of the required improvements, as estimated by the City Engineer contained in Exhibit "B". The purpose of the bond is to enable the City to make or complete the required improvements in the event of the developer's inability or failure to do so. The City need not complete the required improvements before collecting on the bond. The City may, in its sole discretion, delay taking action on the bond and allow the developer to complete the improvements if it receives adequate assurances that the improvements shall be completed in a timely and proper manner. The additional ten (10) percent shall be used to make up any deficiencies in the bond amount and to reimburse the City for collection costs, including attorney's fees, inflationary costs, etc.

All required improvements shall be completed and pass City inspections within one (1) year of the date that the Final Plat is recorded. Required improvements for plats recorded between November 1st and March 31st shall be completed by the next October 1st. For example, the required improvements for a plat recorded on February 6th, shall be completed by October 1st, in the same calendar year. Failure to meet this time frame may result in forfeiture of the bond. A written agreement to extend the completion of the improvements may be granted by the Land Use Authority Board where due to circumstances as determined by the Land Use Authority Board would delay the completion of required improvements.

All subdivision improvements shall be completed by qualified contractors in accordance with Title III General Public Works Construction Standards and Specifications. No work may be commenced on improvements intended to be dedicated to the City without approved construction drawings and a pre-construction meeting with the City.

The Bond shall be an escrow bond in favor of the City consistent with Hyrum City Code § 16.16.140. Based on a cost estimate submitted by Developer, the City Engineer shall prepare the bond estimate, revising the costs as required to match prevailing conditions for the construction and installation of all required public improvements as well as all private improvements as specified in State code pursuant to the subdivision approval process, and including a ten percent (10%) contingency fee. A performance bond shall be posted by the Developer guaranteeing the construction of all required public and said private improvements. Said bond (the bond) shall be in the form of one of the following: Cash Escrow Bond; Irrevocable Letter of Credit; Irrevocable Line of Credit. The letter of credit must cover the entire construction period and shall be automatically renewed until a release letter is obtained from the City. The form must be approved by the City Attorney and must be issued by a financial institution having an operating branch in the State of Utah that is acceptable to the City. The properly issued and executed bond, together with all required inspection fees shall be submitted to the City Administrator before the final subdivision plat is recorded with the Cache County Recorder. The bond shall be held for the minimum of an eighteen (18) month construction period and twelve (12) month warranty period for a total of thirty (30) months. The warranty period

may be increased up to twenty four (24) months if there has been evidence of prior poor performance by the developer or if other environmental conditions exist.

1. The amounts stated in the bond estimate shall be considered separate with respect to releases by Hyrum City, but each amount shall be applicable to every other part in the event of the Developer's failure to perform one or more of the improvements to the satisfaction of the City. Notwithstanding the itemization of type and cost of improvements, any sum available pursuant to the bond may be used by the City, and not released to the developer for any other improvement covered by the bond as well as the specified improvement.
2. The City Engineer, or designee, shall have authority to release to the Developer any funds held by the City. The City Engineer shall not release, prior to final acceptance, any amount(s) for each specified improvement in excess of ninety percent (90%) thereof. Before the City Engineer shall release more than fifty nine percent (59%) of such amount, related to any one or each separate improvement the City Engineer shall require that the Developer certify in writing that no material man's or mechanic's liens have been filed with respect to the required improvement(s).

MAINTENANCE GUARANTEE:

The Developer hereby warrants and guarantees to the City, for a period of one (1) years from the date of completion and final inspection by the City of the public improvements warranted hereunder, the full and complete maintenance and repair of the public improvements constructed for this Development. This warranty and guarantee is made in accordance with the Hyrum City Code and/or the Utah Code Annotated, as applicable. This guarantee applies to the streets and all other appurtenant structures and amenities lying within the rights-of-way, easements and other public properties, including, without limitation, all curbing, sidewalks, trails, drainage pipes, culverts, catch basins, drainage ditches and landscaping and all other improvements contained in Exhibit "B" of this Agreement. Any maintenance and/or repair required on utilities shall be coordinated with the owning utility company or city department.

The Developer shall maintain said public improvements in a manner that will assure compliance on a consistent basis with all construction standards, safety requirements and environmental protection requirements of the City until one (1) year following the final inspection. The Developer shall also correct and repair or cause to be corrected and repaired, all damages to said public improvements resulting from development-related or building-related activities. The City may require the Developer to guarantee and warrant that any repairs remain free from defect for a period of one (1) year following the date that the repairs pass City inspection. The City may retain the Developer's guarantee until the repairs have lasted through the warranty period, and may take action on the bond if necessary to properly complete the repairs. In the event of an emergent defect or disaster, the City may—but is not required to—take immediate measures to mitigate any damage related to the defect or disaster Except in the case of an emergency, if the Developer fails to correct any damages within thirty (30) days after written notice thereof, then said damages may be corrected by the City and all costs and charges billed to and paid by the Developer. The City shall also have any other remedies available to it as authorized by this Agreement. Any damages which occurred prior to the end of said one (1) year period which are unrepaired at the termination of said period shall remain the responsibility of the Developer.

REPAIR GUARANTEE:

The Developer agrees to hold the City, harmless for a one (1) year period, commencing upon the date of completion and final inspection by the City of the public improvements constructed for this Development, from any and all claims, damages, or demands arising on account of the design and construction of public improvements of the Property shown on the approved plans and documents for this Development; and the Developer furthermore commits to make necessary repairs to said public improvements, to include, without limitation, all improvements contained in Exhibit "B" of this Agreement, roads, streets, fills, embankments, ditches, cross pans, sub-drains, culverts, walls and bridges within the right-of-way easements and other public properties, resulting from failures caused by design and/or construction defects. This agreement to hold the City harmless includes defects in materials and workmanship, as well as defects caused by or consisting of settling trenches, fills or excavations.

Further, the Developer agrees that the City shall not be liable to the Developer during the warranty period, for any claim of damages resulting from negligence in exercising engineering techniques and due caution in the construction of cross drains, drives, structures or buildings, the changing of courses of streams and rivers, flooding from natural creeks and rivers, and any other

matter whatsoever on private property. Any and all monetary liability occurring under this paragraph shall be the liability of the Developer.

The obligations of the Developer pursuant to the "maintenance guarantee" and "repair guarantee" provisions set forth above may not be assigned or transferred to any other person or entity unless the warranted improvements are completed by, and a letter of acceptance of the warranted improvements is received from the City by, such other person or entity.

EXHIBIT "B" CITY ENGINEER'S ESTIMATE FOR COST OF IMPROVEMENTS

EXHIBIT "C" PLAT MAP

Items to expose and inspect or otherwise remedy as known:

1. Grade and reseed areas disturbed in the rear yards of 77 North and 91 North 300 East.
2. Restore yard as necessary at 256 East 100 North.
3. Install an ADS wye connecting the pond outlet pipe with the culvert at 275 East 100 North. Wye shall be encased with a controlled strength material (2-sack slurry) to minimize movement due to hydraulic forces. Topsoil shall be placed to bring the surface to grade adjacent to the existing driveway.
4. Perform a field survey showing the as-built conditions for all improvements.
5. Pressure test sewer mains after all laterals have been exposed and replaced as necessary. Camera inspection of mains shall be provided.
6. Water line shall be shown to meet proper depth and shall be pressure tested per standards. Bac-T testing shall be performed to show proper disinfection of the water system.
7. All power conduit shall be removed and replaced.
8. Installed curb and gutter shall be removed and reinstalled after all subsurface work has been completed and accepted.
9. Pond liner shall be removed and installed by a manufacturer-certified installer.
10. Irrigation connections shall be located and inspected.
11. Street pavement shall be removed as necessary and reinstalled to provide a crown along the centerline.
12. Provide a letter from Enbridge verifying the adequacy of the existing facilities (mains) to supply the development.