

RECORDING REQUESTED BY:  
TOWN ENGINEER

WHEN RECORDED RETURN TO:  
Town Engineer  
Town of Windsor  
P. O. Box 100  
Windsor, CA 95492-0100

File No.:

SPACE ABOVE THIS LINE FOR RECORDER'S USE

SUBDIVISION IMPROVEMENT AGREEMENT  
FOR \_\_\_\_\_

THIS AGREEMENT, by and between the Town of Windsor, a municipal corporation of the State of California, (hereinafter designated as TOWN), and \_\_\_\_\_ (hereinafter designated as SUBDIVIDER).

WHEREAS, TOWN, by Town of Windsor Town Council Resolution No. \_\_\_\_\_, dated \_\_\_\_\_, has approved SUBDIVIDER's tentative map of the above named Major Subdivision, subject to certain conditions including the construction and acceptance of certain Public Works Improvements by the Town; and

WHEREAS, all conditions of the tentative map have been met but for those Public Works Improvements described below; and

WHEREAS, for the purpose of complying with the Town of Windsor Subdivision Ordinance, as amended, the Subdivision Map Act, and for the purpose of causing the final map of the above named subdivision to be approved and the major subdivision to be finalized, this agreement is entered into pursuant to the requirements of said Ordinance and the Subdivision Map Act.

NOW THEREFORE, TOWN and SUBDIVIDER agree as follows:

PART I

SUBDIVIDER's Public Works Improvements are more fully set forth in the Public Works Subdivision Improvement Plans approved by and on file with the Town Engineer's office. The department identified in Exhibit A for each such part shall be the "responsible department" for ratification, plan approval, revisions and inspections, etc. All questions as to the responsible department shall be referred to the Town Engineer for determination.

PART II

SUBDIVIDER has the responsibility of providing for the design and construction of certain specified Public Works Improvements for the subject subdivision and has submitted certain plans entitled "\_\_\_\_\_" and dated \_\_\_\_\_, 20\_\_ ("Public Works Improvement Plans") for the construction of Public Works Improvements, which plans shall be approved by and be on file in the Town Engineer's office and are and incorporated herein and made a part hereof, (hereinafter termed "Public Works Improvements"). These plans have been reviewed and approved as meeting TOWN approved standards. However, TOWN has not made an independent investigation of the job site, soils conditions, and all other conditions that might affect the design and construction of the Public Works Improvements. It is the responsibility of SUBDIVIDER to design and construct the Public Works Improvements in such a manner as to ensure compliance with this agreement, applicable federal, state and local laws and standards, and accomplishment of the Public Works Improvement's purposes. In the event that job conditions require changes in the

approved Public Works Improvement plans, a request for such deviation must be submitted in writing by SUBDIVIDER's engineer for approval by the responsible department; no deviation will be allowed without such approval.

### PART III

SUBDIVIDER shall, in accordance with the Public Works Improvement plans, complete or cause to be completed the Public Works Improvements to the satisfaction of TOWN Engineer within two years of the Effective Date of this Agreement. The dates for commencement and completion of the work of construction may be extended as herein provided. The Town Engineer shall extend said dates for delays in said work actually caused by riots, strikes, lockouts, fires, earthquakes, flood and conditions resulting therefrom. Extension of said dates for any other cause shall be made only by the Town Council. The Town Engineer and Town Council shall be the sole and final judge as to whether good cause has been shown to entitle SUBDIVIDER to an extension. Any extension granted pursuant to this paragraph shall not obligate TOWN in any manner to grant other requests for extension.

Any request for extension of any commencement and completion date shall be in writing, shall fully state the facts and grounds relied upon for said extension, and shall be delivered to TOWN in the manner hereinafter specified for services of notices. Extensions shall be granted in writing and any purported oral extension or purported oral agreement to make an extension shall not be valid for any purpose whatsoever.

In the event it is deemed necessary by the TOWN to extend the time of commencement or completion of the work to be done under this Agreement beyond the dates specified herein, such extension shall in no way release any guarantee given by SUBDIVIDER pursuant to this Agreement, or relieve or release those providing Public Works Improvement security pursuant to this Agreement. The sureties in executing the bonds and/or other providers of security shall be deemed to stipulate and agree that no change, extension of time, alteration or addition to the term of the Agreement or to the work to be performed thereunder or the specifications accompanying the same including, but not limited to, the Public Works Improvement plan shall in any way affect its obligations on the bond or other instrument, and to waive notice of any such change, extension of time, alteration or addition to the terms of the Agreement or to the work or to the specifications.

The granting of any extension may be conditioned upon SUBDIVIDER providing TOWN with increased Inspection Fees and new or amended surety bonds or other security in amounts increased to reflect increases in the cost of constructing the required Public Works Improvements that have occurred prior to the granting of the extension, and the cost of additional inspection services.

### PART IV

SUBDIVIDER shall notify the responsible department at least one working day in advance of:

1. The date work is commenced;
2. Work stoppage of more than one day;
3. The accomplishment of work on a Saturday, Sunday, or legal holiday;
4. Completion of the Public Works Improvements.

SUBDIVIDER shall allow TOWN's duly authorized representative access to the Public Works Improvement at all times and shall furnish them with every reasonable facility for ascertaining that the methods, materials, and workmanship comply with the requirements and intent of the Public Works Improvement plans. TOWN may reject defective work and require its repair, replacement, or removal by SUBDIVIDER all at no expense to TOWN. All work shall meet the standards set forth in the Town of Windsor Subdivision Ordinance and the standards of the Town Engineer's office and all other applicable federal, state and local laws and standards, department contrary approval notwithstanding, and otherwise shall conform to the Public Works Improvement plans.

### PART V

The estimated cost of constructing the Public Works Improvements as adjusted for inflation is agreed to be \$\_\_\_\_\_ ("construction costs"). In addition to the full amount of the security, there shall be included costs and reasonable expenses and fees including attorney's and expert's fees incurred in enforcing the obligation secured. Where the use of a set aside letter is acceptable to and approved by the Town Engineer as security, such security must include an additional 20% of the estimated construction cost.

PART VI

A copy of the Subdivision Final Map shall be on file in the Town Engineer’s office and made a part hereof. SUBDIVIDER agrees that within two years of the Effective Date of this Agreement, all monuments not previously set will be set within the Subdivision as shown on said map. The estimated cost of the monumenting described is agreed to be \$\_\_\_\_\_. SUBDIVIDER hereby guarantees payment of the cost of such monumenting. SUBDIVIDER shall immediately notify TOWN in writing when the monumenting has been completed and paid for in full and shall present to TOWN evidence of such payment and receipt thereof by the surveyor/engineer.

PART VII

SUBDIVIDER shall, prior to the TOWN's approval of Subdivision's Final Map, deliver to TOWN's Engineer the following security subject to acceptance by the TOWN’s Engineer and in a form satisfactory to Town Attorney:

- A. PERFORMANCE BOND: Either a cash deposit, a corporate surety bond issued by an admitted surety insurer, or an instrument of credit, whichever is required by the Town’s Engineer, equivalent to one hundred per cent (100%) of the estimate set forth in PART V and sufficient to assure TOWN that the Public Works Improvement work described in PART I will be satisfactorily completed.
- B. LABOR AND MATERIALS BOND: Either a cash deposit, a corporate surety bond issued by an admitted surety insurer, or an instrument of credit, whichever is required by the Town’s Engineer, equivalent of one hundred per cent (100%) of the estimate set forth in PART V and sufficient to assure TOWN that SUBDIVIDER's contractors, subcontractors, and other persons furnishing labor or materials shall be paid therefor.
- C. MONUMENTATION BOND: Either a cash deposit or a corporate surety bond issued by an admitted surety insurer, whichever is required by TOWN's Engineer, equivalent to the amount set forth in PART VI and sufficient to satisfy the requirements of Article 9, Chapter 4, of the Subdivision Map Act.
- D. If required by TOWN, a cash deposit, corporate surety bond issued by an admitted surety insurer, or instrument of credit, whichever is required by the Town’s Engineer, sufficient to assure TOWN that the surface water drainage of the subdivision shall not interfere with the use of neighboring property, including public streets and highways.

TOWN shall be the sole indemnitee named on any instrument required by this agreement. Any instrument or deposit required by this PART VII shall conform with the provisions of Chapter 5 of the Subdivision Map Act.

PART VIII

Prior to the TOWN's approval of SUBDIVIDER's final map, SUBDIVIDER shall pay to the responsible department all fees necessary to cover the cost of inspection of the part(s) of the Public Works Improvements which will be inspected by TOWN.

PART IX

Upon completion of the Public Works Improvements, SUBDIVIDER shall comply with Section 3093 of the Civil Code and shall forthwith deliver to the Town Engineer a copy of the Notice of Completion required by said section bearing a certification of recordation by the County's Recorder.

TOWN shall not be required to release any security relating to satisfactory completion of the Public Works Improvements until acceptance of the Public Works Improvements by TOWN in the case of Public Works Improvements to be dedicated for public use or in the case of Public Works Improvements which will not be dedicated and accepted by TOWN until SUBDIVIDER has submitted certification by a registered civil engineer that the Public Works Improvement work has been constructed in accordance with the approved plans and specifications and the Public Works Improvements have passed any final inspections required by the responsible department. In addition, release of security will be predicated upon the receipt of any required maintenance and/or warranty agreements and security therefor.

Security given to secure payment to the Contractor, subcontractors, and to persons furnishing labor, materials, or equipment may, five days after passage of the time within which claims of lien are required to be recorded pursuant to Section 3114 et

seq. of the Civil Code and after all the conditions set forth in the paragraph above have been met, be reduced to an amount equal to the amount of all claims therefor filed and of which notice has been given to TOWN. The balance of the security shall be released upon settlement of all such claims and obligations for which the security was given.

TOWN shall not be required to release any security relating to monumenting until SUBDIVIDER has presented to TOWN evidence that the cost of monumenting has been paid and that the surveyor/engineer doing such work has received such payment.

#### PART X

In the event that either the Public Works Improvements are not completed to the satisfaction of TOWN in accordance with this Agreement or the monumenting work is not completed within the time specified by this agreement, or any duly executed extension thereof, TOWN, in addition to any other remedy at law or equity, may complete such work with its own forces or by contract. In the event of such default by SUBDIVIDER and TOWN's subsequent undertaking, SUBDIVIDER and any person, firm, partnership, entity, corporation, or association claiming any interest in the real property hereinabove described and each of them shall fully reimburse TOWN. The amount of such obligation or reimbursement shall not be limited by the amount of the estimates hereinabove set forth or by such security as may have been provided to TOWN in connection with this agreement, but rather shall be such amount as necessary to fully compensate the Town for its effort and/or expense in completing such work.

#### PART XI

SUBDIVIDER acknowledges that if construction of the required Public Works Improvements is not made, TOWN may, in addition to any other remedy at law or equity or in this agreement, withhold building and zoning permits until the Public Works Improvements have been satisfactorily completed. Building and zoning permits include, but are not limited to, certificates of occupancy for all lots within the subdivision. SUBDIVIDER hereby agrees to notify TOWN in the event of sale or transfer of ownership of any part of this project.

#### PART XII

Unless specifically extended by written agreement of the parties, this agreement shall automatically terminate upon a reversion to acreage of the entire subdivision.

#### PART XIII

SUBDIVIDER hereby warrants that the design and construction of the Public Works Improvements will not adversely affect any portion of adjacent properties and that all work will be performed in a proper manner. SUBDIVIDER agrees to and shall indemnify, defend, release, and save harmless TOWN, and each of its elective and appointive boards, commissions, officers, agents and employees, from and against any and all loss, claims, suits, liabilities, actions, damages, or causes of action, including without limitation, attorney's fees and costs and fees of litigation ("Liability"), of every kind, nature and description directly or indirectly arising from an act or omission of SUBDIVIDER, its employees, agents, or independent contractors in connection with SUBDIVIDER's actions and obligations hereunder; provided, however, to the extent that this Agreement constitutes a construction contract pursuant to California Civil Code §2783 SUBDIVIDER's duty to indemnify, defend, release and save harmless pursuant to this provision shall not apply to liability arising from the sole or active negligence or willful misconduct of the Town.

- A. That TOWN does not, and shall not, waive any rights provided herein against SUBDIVIDER because of the acceptance by TOWN, or the deposit with TOWN by SUBDIVIDER, of any of the insurance policies described in Part XIV hereof.
- B. SUBDIVIDER's duty and obligations to defend, indemnify and save harmless herein shall apply, regardless of whether or not TOWN has prepared, supplied, or approved of plans and/or specifications for the subdivision, and regardless of whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

SUBDIVIDER agrees that the use of any and all Public Works Improvements required to be constructed pursuant to this Agreement shall be, at all times prior to final acceptance by Town, at the sole and exclusive risk of SUBDIVIDER.

## PART XIV

Concurrently with the execution hereof, SUBDIVIDER shall obtain or cause to be obtained and filed with the TOWN, all insurance required under this paragraph, and such insurance shall have been approved by the Risk Manager of TOWN, or his/her designee, as to form, amount and carrier. Prior to the commencement of work under this Agreement, SUBDIVIDER's general contractor shall obtain or cause to be obtained and filed with the Risk Manager, all insurance required under this paragraph, and such insurance shall have been approved by the Risk Manager of TOWN, as to form, amount and carrier. SUBDIVIDER shall not allow any contractor or subcontractor to commence work until all insurance required for SUBDIVIDER and SUBDIVIDER's general contractor shall have been so obtained and approved. Said insurance shall be maintained in full force and effect until the Public Works Improvements are completed and accepted by TOWN. All requirements herein provided shall appear either in the body of the insurance policies or as endorsements and shall specifically bind the insurance carrier.

A. **Minimum Scope of Insurance.** Coverage shall be at least as broad as:

- 1) Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
- 2) Insurance Services Office form covering Automobile Liability, code 1 (any auto).
- 3) Workers' Compensation Insurance as required by the State of California and Employers' Liability Insurance.

B. **Minimum Limits of Insurance.** SUBDIVIDER shall maintain limits no less than:

- 1) General Liability: \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- 2) Automobile Liability: \$2,000,000 per accident for bodily injury and property damage.
- 3) Workers' Compensation statutory limit and Employer's Liability: \$1,000,000 per accident for bodily injury or disease.

C. **Deductibles and Self-Insured Retention.** Any deductibles or self-insured retentions must be declared to and approved by the Town. At the option of the Town, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Town, its officers, officials, employees and volunteers; or the SUBDIVIDER shall provide a financial guarantee satisfactory to the Town guaranteeing payment of losses and related investigations, claim administration and defense expenses.

D. **Other Insurance Provisions.** The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

- 1) The Town, its officers, officials, employees and volunteers are to be covered as insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the SUBDIVIDER; and with respect to liability arising out of work or operations performed by or on behalf of the SUBDIVIDER including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the SUBDIVIDER's insurance, or as a separate owner's policy.
- 2) For any claims related to this project, the SUBDIVIDER's insurance coverage shall be primary insurance as respects the Town, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Town, its officers, officials, employees, or volunteers shall be excess of the SUBDIVIDER's insurance and shall not contribute with it.
- 3) SUBDIVIDER's workers compensation insurance shall be endorsed to waive all rights of subrogation against the Town, its officials, officers, employees and volunteers.

4) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the Town.

E. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.

F. **Verification of Coverage.** SUBDIVIDER shall furnish the TOWN with Original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on forms provided by the TOWN or on other than the TOWN's forms or a separate owner's policy, provided those forms or policies are approved by the TOWN and/or amended to conform to the TOWN's requirements. All certificates and endorsements are to be received and approved by the TOWN before work commences. The TOWN reserves the right to require that the SUBDIVIDER deliver to the TOWN, at Subdivider's expense, complete, certified copies of all insurance policies required pursuant to this Agreement, including all required endorsements.

G. **Subcontractors.** SUBDIVIDER shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

H. **Variations.** The Risk Manager for the Town may approve a variation in the foregoing insurance requirements, upon a determination that the coverages, scope, limits and forms of such insurance are either not commercially available or that the Town's interests are otherwise fully protected."

#### PART XV

MAINTENANCE BOND: SUBDIVIDER guarantees the Public Works Improvements to be free of defects in material and workmanship for a period of one (1) year following the TOWN's acceptance of Public Works Improvements. Upon acceptance of any subdivision Public Improvements by the Town Council, SUBDIVIDER shall provide security in the form of a bond or other security acceptable to the TOWN's Engineer to guarantee the Public Works Improvements throughout a one year warranty period. The amount of the warranty security for accepted Public Works Improvements shall not be less than ten percent (10%) of the cost of construction of the Public Works Improvements, and shall be retained for the one-year warranty period by TOWN.

#### PART XVI

SUBDIVIDER shall procure, pay the cost of, and deliver to TOWN, prior to acceptance of any dedication by TOWN, a policy or policies of title insurance satisfactory to TOWN and insuring TOWN's title to all real property dedicated to TOWN by SUBDIVIDER.

The TOWN will comply with the provisions of Section 66462.5 of the Government Code (Subdivision Map Act) relevant to right-of-way acquisition.

#### PART XVII

The individuals signing in their capacities as officers of corporations hereby warrant that they have the right, power, and authority to bind their respective corporations as anticipated by the provisions of this agreement. Such warranty has been relied upon as a material inducement by TOWN in entering into this agreement and, in the absence of such inducement, TOWN would not have executed this agreement.

#### PART XVIII

In the event either party brings an action or proceeding for damages arising out of the other's performance under this Agreement or to establish the right or remedy of either party, the prevailing party shall be entitled to recover reasonable attorney's fees and costs as a part of such action or proceeding.

#### PART XIX

Except as otherwise expressly provided in this Agreement, and excepting only items of routine maintenance, ordinary wear and tear and unusual abuse or neglect, SUBDIVIDER guarantees all work executed by SUBDIVIDER and/or SUBDIVIDER's agents, and all supplies, materials and devices of whatsoever nature incorporated in, or attached to the work, or otherwise delivered to TOWN as a part of the work pursuant to the Agreement, to be free of all defects of workmanship and materials for a period of one year after initial acceptance of the entire work by TOWN. SUBDIVIDER shall repair or replace any or all such work or material, together with all or any other work or materials which may be displaced or damaged in so doing, that may prove defective in workmanship or material within said one year guarantee period without expense or charge of any nature whatsoever to TOWN. SUBDIVIDER further covenants and agrees that when defects in design, workmanship and materials actually appear during the guarantee period, and have been corrected, the guarantee period shall automatically be extended for an additional year to insure that such defects have actually been corrected.

In the event the SUBDIVIDER shall fail to comply with the conditions of the foregoing guarantee within thirty (30) days time, after being notified of the defect in writing, TOWN shall have the right, but shall not be obligated, to repair or obtain the repair of the defect, and SUBDIVIDER and SUBDIVIDER's surety shall be liable to and shall pay to TOWN on demand all costs and expense of such repair, including any damages and/or excess costs incurred by TOWN in preparing or obtaining repair of such defects. Notwithstanding anything herein to the contrary, in the event that any defect in workmanship or material covered by the foregoing guarantee results in a condition which constitutes an immediate hazard to the public health, safety, or welfare, TOWN shall have the right to immediately repair, or cause to be repaired, such defect, and SUBDIVIDER shall pay to TOWN on demand all costs and expense of such repair. The foregoing statement relating to hazards to health and safety shall be deemed to include either temporary or permanent repairs which may be required as determined in the sole discretion and judgment of TOWN.

If TOWN, at its sole option, makes or causes to be made the necessary repairs or replacements or performs the necessary work, SUBDIVIDER shall pay, in addition to actual costs and expenses of such repair or work, an additional amount as necessary to fully compensate the TOWN for its effort and/or expense incurred.

#### PART XX

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

#### PART XXI

If SUBDIVIDER refuses or fails to obtain prosecution of the work, or any severable part thereof, with such diligence as will insure its completion within the time specified, or any extension thereof, or fails to obtain completion of said work within such time, or if SUBDIVIDER should be adjudged as bankrupt, or should make a general assignment for the benefit of SUBDIVIDER's creditors, or if a receiver should be appointed, or if SUBDIVIDER, or any of SUBDIVIDER's contractors, subcontractors, agents or employees should violate any of the provisions of this Agreement, the Town Engineer may serve written notice on SUBDIVIDER and SUBDIVIDER's surety or holder of other security of breach of this Agreement, or of any portion, thereof, and default of SUBDIVIDER.

#### PART XXII

In the event of any such notice of breach of this Agreement, SUBDIVIDER's surety shall have the duty to take over and complete the work and the Public Works Improvements herein specified; provided, however, that if the surety, within thirty (30) days after the serving upon it of such notice of breach, does not give TOWN written notice of its intention to take over the performance of the contract, and does not commence performance thereof within thirty (30) days after notice to TOWN of such election, TOWN may take over the work and prosecute the same to completion, by contract or by any other method TOWN may deem advisable, for the account and at the expense of SUBDIVIDER and SUBDIVIDER's surety shall be liable to TOWN for any damages and/or reasonable and documented excess costs occasioned by TOWN thereby; and, in such event, TOWN, 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 therefor.

#### PART XXIII

All notices herein required shall be in writing, and delivered in person or sent by registered mail, postage prepaid.

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

Town Engineer  
8400 Windsor Road  
PO Box 100  
Windsor CA 95492-0100

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

PART XXIV

This Agreement will not be assigned without the prior written consent of TOWN and any purported assignment without such prior written consent shall be void.

PART XXV

The SUBDIVIDER is obligated to protect the public safety during all phases of the work, and shall erect and maintain all barricades, signs and warning devices necessary to ensure public protection. In the event that Town discovers a condition on the site which in its determination constitutes an immediate danger to public safety, and SUBDIVIDER cannot respond at once, Town may erect any barriers, signs and warning devices it deems necessary. In such event, SUBDIVIDER shall pay for the labor of Town’s crews at the current Town’s recovery rate per hour per worker; plus the cost of any materials used and a reasonable fee for use of any barricades found necessary. In no event shall SUBDIVIDER pay less than one-hour minimum per worker assigned if City takes action pursuant to this paragraph.

PART XXVI: Labor Code:

By executing this Agreement, Subdivider acknowledges that the construction of the Public Works Improvements may be subject to California Labor Code Sections 1720-1861 including those provisions related to the payment of prevailing wages and if so Subcontractor shall comply and cause any of its contractors and/or subcontractors to comply with any said applicable Labor Code Sections. If in the event that it is determined that the Subdivider or any of its contractors or subcontractors violated prevailing wage law with respect to the work performed under this Agreement, the Subdivider shall pay all penalties and back wages as required by applicable law and shall waive any rights that Subdivider may have against the Town and shall indemnify, defend and hold harmless Town for and from any claims and/or liabilities arising from any such violations. The Subdivider’s attention is specifically directed to Labor Code Sections 1720 et. seq.. Copies of prevailing wage rates are on file at the Town’s Clerk’s office.



PART XXVII: MISCELLANEOUS PROVISIONS

- A. **Discrimination.** During the performance of this Agreement, SUBDIVIDER shall not discriminate against any contractor, subcontractor, employee or applicant for employment because of race, religion, creed, color, national origin, ancestry, gender, sexual orientation, age or physical or mental disability in violation of any applicable law.
- B. **No Third Party Beneficiaries.** Nothing in this agreement does or is intended to create an interest in any third party
- C. **Amendment.** This Agreement may be amended only by a written instrument executed by both Parties.
- D. **Construction.** This Agreement is the product of negotiation and compromise on the part of both Parties and that the Parties agree that, notwithstanding Civil Code section 1654, any uncertainty in the Agreement shall not be construed against the drafter of the Agreement.
- E. **Governing Law; Venue.** This Agreement shall be enforced and interpreted under the laws of the State of California and of the Town of Windsor. Any action arising from or brought in connection with this Agreement shall be venued in a court of competent jurisdiction in the County of Sonoma, State of California.
- F. **Non-Waiver.** The Town’s failure to enforce any provision of this Agreement or the waiver thereof in a particular instance shall not be construed as a general waiver of any part of such provision.
- G. **Severability.** If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.
- H. **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between Town and SUBDIVIDER shall survive the termination of this Agreement.
- I. The effective date of this agreement is the date executed by the Town of Windsor
- J. **Other Special Conditions.**

EXECUTED ON \_\_\_\_\_, 20\_\_, AT WINDSOR, CALIFORNIA

ON BEHALF OF TOWN:  
TOWN OF WINDSOR

ON BEHALF OF SUBDIVIDER:

\_\_\_\_\_  
Linda Kelly, Town Manager

\_\_\_\_\_

RECOMMENDED FOR APPROVAL:

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\_\_\_\_\_  
Richard W. Burt, Town Engineer

\_\_\_\_\_  
James Bergman, Planning Director

\_\_\_\_\_  
Heather Ippoliti, Risk Manager

APPROVED AS TO FORM

\_\_\_\_\_  
Robin Donoghue  
Windsor Town Attorney

**ATTACH NOTARY PUBLIC ACKNOWLEDGMENT**

**EXHIBIT A**

**SUBDIVISION NAME:** \_\_\_\_\_

**File No.** \_\_\_\_\_

**IMPROVEMENT:**

RESPONSIBLE DEPARTMENT	INSPECTION FEES	SURETY AMOUNT
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1.

2.

TOTAL

**SECURITY:**

CASH     BOND     INSTRUMENT OF CREDIT     CERTIFICATE OF DEPOSIT

- 1. (A) PERFORMANCE \$  
    (B) PERFORMANCE USING INSTRUMENT OF CREDIT,  
    WITH 20% ADDITIONAL SURETY
- 2. LABOR AND MATERIALS \$
- 3. MAINTENANCE    Received at this time?    Yes     No  \$
- 4. MONUMENTATION \$