



**AGREEMENT TO CONSTRUCT PUBLIC AND/OR
PRIVATE SUBDIVISION IMPROVEMENTS**

THIS AGREEMENT is made this ____ day of _____ 20____, by and between the City of Clovis, New Mexico, municipal corporation, whose address is 321 N. Connelly, Clovis, New Mexico 88101, and _____, a _____, whose address is

Subdivider

_____ and whose telephone number is (_____) _____.

RECITALS

1. **Recitals.** The Subdivider is developing certain lands within the planning jurisdiction of the City of Clovis, Curry County, New Mexico, described as follows:

The Subdivider certifies that the property is owned by _____. The Subdivider
Owner

has submitted and the City has approved a preliminary plat of the above described property to be titled

Subdivision

As a result of the development of the Subdivision, the Subdivision Ordinance (Section 18.60.300, Clovis City Code) requires the Subdivider, at no cost to the City, to install certain public and/or private improvements, which are reasonably related to the development of the Subdivision, and to financially guarantee the construction of the improvements as a prerequisite to development of the Subdivision.

2. **Improvements and Construction Deadline.** The Subdivider agrees to install and complete the public and/or private improvements described in Exhibit "A", the required infrastructure listing ("Improvements"), to the satisfaction of the City, on or before the ____ day of _____, 20____ ("Construction Completion Deadline"), at no cost to the City. The Improvements are shown in greater detail on the Subdivider's proposed and approved plans, which have been filed with the City.
3. **Work Order Requirements.** The City agrees to issue a work order after:
 - A. The Subdivider causes to be submitted all documents, and meets all requirements listed in the Subdivision Ordinance and Construction Standards.
 - B. The Subdivider complies with all applicable laws, ordinances and regulations, including, but not limited to the City Subdivision Ordinance, the City Construction Standards Regulations, the City Excavation Ordinance, the applicable Stormwater Ordinance, and pays the required City fees.
4. **Financial Guaranty:** Pursuant to Section 18.60.300 of the Clovis City Code, the Subdivider must provide the City with a financial guaranty equal to the estimated cost of construction of the improvements, as approved by the City Engineer. The financial guaranty shall be irrevocable and may be in the form set out in the ordinance. The City must be able to call the financial guaranty at any time up to and including sixty (60) days immediately following the Construction Completion Deadline.

To meet the Subdivision Ordinance requirements, the Subdivider designates the following method(s) for meeting the financial guaranty requirements:

- Performance of Property Bond
- Private or Public Escrow Agreement
- Letter of Credit
- Assignment of Receivables
- Deposit of Certified Funds or Surety Agreement

("The appropriate documents shall be submitted in original form for approval by the City prior to the issuance of a work order and the commencement of construction of any of the improvements).

5. **Notice to Start of Construction:** Before construction begins, the Subdivider shall deliver an acceptable Notice to Proceed to the City and shall arrange for a preconstruction conference and all required inspections.
6. **Completion, Acceptance and Termination:** When the City receives Subdivider's final acceptance request, the City shall review it for completeness and accuracy. If the request is acceptable, the City shall approve the request and issue a certificate of completion. After the City approves the final acceptance request, the City will promptly release this Agreement and the financial guaranty. Final acceptance of the improvements shall occur one (1) year after the completion of the last improvement installed. Thereafter, the Subdivider's obligations to the City pursuant to this Agreement shall terminate, with the exception of any warranty requirements set forth in the Subdivision Ordinance and Construction Standards.
7. **Conveyance of Property Rights.** When the improvements are completed, if the City does not own the real property upon or in which the public Improvements are constructed, the Subdivider will convey to the City all real and personal property rights which the City deems reasonably necessary, and all public improvements, free and clear of all claims, encumbrances and liens before the City will accept the public improvements. Conveyance may be made by appropriate dedication on the final plat of the Subdivision.
8. **Reduction of Financial Guaranty Upon Partial Completion.** Subdividers shall be entitled to a reduction of the Financial Guaranty as a result of completing construction of part of the Improvements as set forth in Section 18.60.300(c). After the City receives and approves the required documents, the City shall issue a partial certificate of completion and acceptance for the completed public improvements and a certificate of partial certificate of completion for completed private improvements.
9. **Indemnification:** Until the improvements are accepted by the City, the developer shall be solely responsible for maintaining the premises upon which the improvements are being constructed in a safe condition. The developer agrees to defend, indemnify and hold harmless the City and its officials, agents and employees from any claims, actions, suits or other proceedings arising from or out of the negligent acts or omissions of the developer, its agents, representatives, contractors or subcontractors or arising from the failure of the developer, its agents, representatives, contractors or subcontractors to perform any act or duty required of the developer herein; provided, however, to the extent if at all, Section 56-7-1 NMSA 1978 is applicable to his Agreement.
10. **Assignment.** This Agreement shall not be assigned without the prior written consent of the City and the Subdivider and the express written concurrence of any financial institution or surety which has undertaken to guarantee the completion of the improvements. The City's approval will not be withheld unreasonably. If so assigned, this Agreement shall extend to and be binding upon the successors and assigns of the parties hereto.
11. **Release.** If the Subdivision or any part thereof is sold, conveyed or assigned, the City will not release the Subdivider from its obligations under this Agreement and will continue to hold the Subdivider responsible for all improvements until a successor in interest to the Subdivider has entered into a Subdivision Improvements Agreement with the City. Thereafter, if the Subdivider's successor in interest has provided a substitute financial guaranty acceptable to the City, the City will release this Agreement and any related Financial Guaranty.

- 12. **Payment for Incomplete Improvements.** If the Subdivider fails to satisfactorily complete construction of the Improvements by the Construction Complete Deadline, the City may construct or cause the Improvements to be constructed as shown on the final plat and in the approved plans and specifications. The Subdivider shall be jointly and severally liable to pay to, and indemnify the City for the total cost, including, but not limited to engineering, legal and contingent costs, together with any damages, either direct or consequential, which the City may sustain as a result of Subdivider's failure to perform as a required by this Agreement. If the direct or indirect costs and damages to the City exceed the amount of the City's Claim of Lien or any Financial Guaranty, the Subdivider shall be liable to, and shall pay, the City for all such costs and damages. The surety or sureties shall be jointly and severally liable to pay to and indemnify the City for the total cost to the extent of their obligations pursuant to any Financial Guaranty.
- 13. **Binding on Subdivider's Property.** The provisions of this Agreement constitute covenants running with Subdivider's Property for the benefit of the City and its successors and assigns until terminated, and are binding on the Subdivider and the Owner and their heirs, successors and assigns.
- 14. **Notice.** For the purposes of giving formal written notice, including notice of change of address, the Subdivider's and the City's addresses are as stated in the first paragraph of this Agreement. Notice may be given either in person or by certified U.S. mail, postage paid. Notice will be considered to have been received within three days after the notice is mailed if there is no actual evidence of receipt.
- 15. **Entire Agreement.** This Agreement contains the entire agreement of the parties and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.
- 16. **Changes to Agreement.** Changes to this Agreement are not binding unless made in writing, signed by both parties.
- 17. **Construction and Severability.** If any part of this Agreement is held to be invalid or unenforceable, the remainder of the Agreement will remain valid and enforceable if the remainder is reasonably capable of completion.
- 18. **Captions.** The captions to the sections or paragraphs of this Agreement are not part of this Agreement and will not affect the meaning or construction of any of its provisions.
- 19. **Form not Changed.** Subdivider agrees that changes to this form are not binding unless initialed by the Subdivider and signed by the City's Attorney on this form.
- 20. **Authority to Execute.** If the Subdivider signing below is not the Owner of the Subdivision, the Owner must execute this Agreement.

Executed on the date stated in the first paragraph of this Agreement.

SUBDIVIDER:
 By: _____
 Title: _____
 Date: _____

OWNER (if applicable):
 By: _____
 Title: _____
 Date: _____

CITY OF CLOVIS
 By: _____
 Director of Building Safety
 Date: _____

SUBDIVIDER'S NOTARY

STATE OF NEW MEXICO }
COUNTY OF CURRY }

This instrument was acknowledged before me on ____ day of _____,
20____, by _____, _____ of
Name Title

Subdivider

(S E A L)

My Commission Expires: _____
Notary Public

CITY'S NOTARY

STATE OF NEW MEXICO }
COUNTY OF CURRY }

This instrument was acknowledged before me on ____ day of _____,
20____, by _____, _____ of
Name Title

Subdivider

(S E A L)

My Commission Expires: _____
Notary Public

EXHIBIT "A" AND "POWER OF ATTORNEY" ATTACHED

Date

City Manager
City of Clovis
P.O. Box 760
Clovis, NM 88102-0760

RE: Loan Reserve for _____
Subdivider's name as stated in Agreement to Construct Subdivision

Project Name: _____

Dear Mr. _____:
City Manager

This is to advise the City of Clovis that, at the request of _____,
Name

_____ in Clovis, New Mexico, holds as a loan reserve the sum of
Financial Institute

_____ Dollars (\$ _____ .00).
Written Amount

("Loan Reserve") for the exclusive purpose of providing the financial guaranty which the City of Clovis

requires _____ and to provide for the installation
Subdividers name as stated in agreement

of the improvements which must be constructed at _____.
Name of Subdivision Project

The amount of the Loan Reserve is 100% of the City's estimated cost of the Project, as required by the City of Clovis Subdivision Ordinance. The improvements are identified in the agreement between the City of Clovis and Subdivider Agreement.

1. **Reduction of Reserve:** If the Director of Public Works for the City of Clovis, or that person's authorized designee, determines that it is appropriate to release a specified amount of the loan reserves as a result of the Subdivider's construction or a portion of the required infrastructure, then the Director of Public Works, or that person's authorized designee, may execute an "Authorization to Release" which will authorize the Financial Intuition to release a specified amount from the loan reserves. The Authorization to Release will state the amount of the "Reduced Loan Reserve Balance" which must be maintained following the reduction. The Reduced Loan Reserve Balance shall not be reduced by more than 90% of the City's estimated cost of the Project until the Project is accepted by the City. When the Financial Institution receives the Authorization to Release, which has been signed by the City, the Financial Institution may reduce the loan reserve to the Reduced Loan Reserve Balance.
2. **Liability of Financial Institution.** Although the City may approve the Financial Institution's release of a part of the loan reserves, the approval will not constitute the City's final acceptance of part or all of the Project. However, no matter what agreement exists between the Subdivider and the City, the total liability of the Financial Institution to the City with respect to the loan reserves established pursuant to this Loan Reserve Letter shall at all times be limited to the lesser of the amount stated in this Loan Reserve Letter or the latest Reduced Loan Reserve Balance authorized in writing by the City, and the Financial Institution's liability to the City under this Loan Reserve Letter shall cease upon termination of the loan reserve as provided in Section 4 herein.

3. Draw on Reserve. If by _____ as stated in the agreement date of _____/_____/_____,
Deadline Date
 _____/_____/_____, the improvements described in the Agreement have not been fully installed, inspected, approved and accepted by the City, then, upon presentation between the deadline of _____/_____/_____, and (60 days thereafter) _____/_____/_____, inclusive, the City may demand payment from the Financial Institution up to the lesser of the amount stated in this Loan Reserve Letter or the latest Reduced Loan reserve Balance authorized in writing by the City of Clovis. The City may demand payment by delivering to the Financial Institution a certified "Demand for Payment" executed by the CAO or the CAO's authorized designee, which shall state that the Subdivider has failed to comply with the terms of this Agreement and also shall state the estimated cost of completing the improvements specified in the Agreement ("Estimated Cost of Completion".) Upon receipt of the Demand for Payment, the Financial Institution promptly shall draw from the loan reserves by cashier's check to the City of Clovis the amount of 100% of the estimated cost of completion, not to exceed the lesser of the total Loan Reserve amount stated in this Loan Reserve Letter or the latest Reduced Loan Reserve Balance authorized in writing by the City. The Financial Institution shall deliver the cashier's check promptly to the City.
4. Termination of Reserve. This loan reserve is for the benefit of the City and shall be irrevocable until the occurrence of one of the following:
- A. Thirty (30) days after the City accepts the completed improvements specified in the Agreement; or
 - B. City delivery of the Demand for Payment and the Financial Institution's payment to the City of Clovis by cashier's check as required in Section 3 herein; or
 - C. Expiration of the date (30 days after)) _____/_____/_____; or
Completion Deadline
 - D. Written termination of this Loan Reserve Letter, signed by the City Manager of the City of Clovis.

Very truly yours,

 Financial Institution

By: _____

Title: _____

ACCEPTED:
 CITY OF CLOVIS, NEW MEXICO

By: _____
 City Manager

Date: _____