

AGREEMENT  
FOR  
SUBDIVISION IMPROVEMENTS  
(Letter of Credit)

THIS AGREEMENT (the "Agreement") is made and executed this 7<sup>th</sup> day of November, 2016, by and between SADDLEBACK PASTURES, L.C., a Utah limited liability company, ("Subdivider"), whose address is 925 West 100 North, Suite F, P.O. Box 540478, North Salt Lake, UT, 84504, and TOOELE COUNTY, a body politic and corporate of the State of Utah, ("County"), whose address is 47 South Main Street, Room 213, Tooele, Utah, 84074.

WITNESSETH:

THAT, WHEREAS, the Subdivider has laid out, platted, and received final approval for a proposed subdivision of land in Tooele County, said Subdivision to be known as *Pastures At Saddleback P.U.D. Plat 3* (the "Subdivision"); and

WHEREAS, the Subdivider has substantially completed the construction and installation ("Substantial Completion") of the street and other improvements (collectively, the "Improvements") required by law to be placed in or abutting the Subdivision and the County has conditionally accepted the Improvements as having achieved Substantial Completion;

WHEREAS, the Subdivider is ready to file for recordation the final plat (the "Plat") of the Subdivision in the Offices of the Tooele County Recorder; and

WHEREAS, under County ordinances, rules and regulations, final approval and recordation of the Plat in the aforesaid circumstances cannot be given unless

the Subdivider files with the County a form of financial assurance for the purpose of warranting the materials and workmanship of the Improvements for one year following Substantial Completion Date (defined below); and

WHEREAS, the Subdivider desires to provide such financial assurance by obtaining a letter of credit (the "Letter of Credit") from a duly chartered state or national bank or savings and loan institution.

NOW, THEREFORE, in consideration of the mutual promises, terms and conditions hereof, the parties agree as follows:

1. As of the date of this Agreement, the County hereby conditionally accepts the Improvements and conditionally stipulates that the Subdivider has achieved Substantial Completion of the Improvements. The date of this Agreement is therefore also deemed the "Substantial Completion Date". The Improvements are those required by law and County rules and regulations and as set forth in the "Description of Improvements" attached hereto as Exhibit "A", which Exhibit is made a part of this Agreement by this reference thereto.

2. The Subdivider agrees that the Improvements that it has installed and constructed, and every part thereof, will remain in good condition for a period of one (1) year after the Substantial Completion Date (the "One Year Warranty"), and Subdivider hereby agrees to make all repairs to and maintain the Improvements, and every part thereof, in good condition during the One Year Warranty period at no cost to the County. It is further agreed and understood that the identifying necessity for repairs and maintenance of the work rests with the County Engineer, whose decision upon the matter shall be final and binding upon the Subdivider, and the guaranty hereby stipulated shall extend to and include, but

shall not be limited to the entire street, subgrade, base, and surface and all backfill and compacting as well as the working surface, gutters, horse paths, culverts, driveway access and other accessories that are or may be affected by the construction operations. Whenever during the One Year Warranty period in the judgment of the County Engineer, said work shall be in need of repairs, maintenance, or rebuilding, he shall cause a written notice to be served the Subdivider, and thereupon the Subdivider shall undertake and complete such repairs, maintenance or rebuilding. If the Subdivider fails to timely complete the repairs, maintenance or rebuilding, the County shall have such repairs made and the cost of such repairs shall be reimbursed to the County from the Letter of Credit, or if the Letter of Credit is insufficient to pay for said work, by the Subdivider.

3. In addition to making the foregoing covenants, the Subdivider has obtained the Letter of Credit for the above-referenced sum as a financial assurance as required by law for the purpose of guaranteeing the One Year Warranty of the Improvements. The Letter of Credit is established by Northwest Farm Credit Services, PCA (the "Bank"), in the amount of \$66,312.50. The Letter of Credit is to be established in favor of the County to the account of the Subdivider, a copy of which is attached hereto and is made a part of this Agreement, as to all of its provisions by this reference thereto.

4. The Subdivider hereby assigns and sets over to the County all of the right, title and interest of the Subdivider in the full proceeds of the Letter of Credit and does hereby also transfer and assign to the County the right to make demand and collect from the Bank the proceeds thereof in the event of any default or non-

compliance in the performance for which this Letter of Credit is posted and filed.

5. In the event of default or non-compliance with the provisions hereof by the Subdivider, it is agreed the County may demand the proceeds of the Letter of Credit and collect the same from the Bank. Upon such collection, the County may use and expend said proceeds for the sole purpose of repairing, replacing and/or completing the Improvements or causing the same to be done, and, the County shall return to the Subdivider any and all funds which may prove to be in excess of the actual cost to the County to repair, replace and/or complete the Improvements.

7. It is expressly understood, covenanted and agreed between the parties that the Letter of Credit and this Agreement and the acceptance thereof by the County shall not constitute a waiver or estoppel against the County and shall not relieve or be interpreted to relieve the Subdivider from the obligation to repair, replace, and/or complete and fully pay for the Improvements in or abutting the Subdivision named herein as required. Further, the Subdivider expressly covenants and agrees that in the event the County exercises the default or non-compliance provisions hereof and pursuant thereto collects the proceeds of the Letter of Credit and performs the repair, replacement, and/or completion of the Improvements required of the Subdivider hereunder, or causes the same to be done, that any and all costs incurred by the County in so doing will be paid by the Subdivider, including administrative, engineering and legal fees and costs. If the amount collected by the County from the Letter of Credit on a default or non-compliance as aforesaid, is not sufficient to pay the total cost of construction and installation, the Subdivider also hereby expressly covenants and agrees to assume

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and pay all deficiency amounts that may occur.

9. Final inspection by the County Engineer shall be made after the One Year Warranty period and after all repair, replacement and/or completion work has been completed and before release of the Letter of Credit. All defects shall be corrected before acceptance by Tooele County. Final acceptance shall be in writing by the County after written approval is provided by the County Engineer. Upon final acceptance, the County shall release the Letter of Credit and/or refund to the Subdivider any funds drawn from the Letter of Credit in excess of the actual costs paid or incurred by the County pursuant to this Agreement.

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SIGNATURES FOLLOW ON NEXT PAGE]

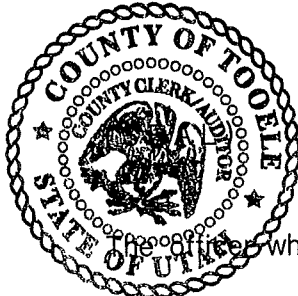
IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed this 9<sup>th</sup> day of November, 2016.

ATTEST:

TOOELE COUNTY

Marilyn K. Lilette  
County Clerk

By: [Signature]  
Print: Sharon Milne  
Title: County Commissioner



The officer who signs this Agreement hereby certify that this Agreement and the covenants represented thereby was duly authorized under the Certificate of Organization and Operating Agreement of the Subdivider.

IN WITNESS WHEREOF, the Subdivider has caused its name to be hereunto affixed by its duly authorized officer this 7<sup>th</sup> day of November, 2016.

SADDLEBACK PASTURES, L.C.,  
a limited liability company

By: [Signature]  
Christopher F. Robinson, Manager

EXHIBIT "A"

"DESCRIPTION OF IMPROVEMENTS"

[SEE ATTACHED]

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