

31 PAGE DOCUMENT

**TOWN OF PALISADE SUBDIVISION IMPROVEMENTS AGREEMENT**  
Wine Valley Estates

**THIS AGREEMENT** is made and entered into this 7 day of November 2006 by and between the TOWN OF PALISADE, COLORADO, a municipal corporation, whose address is 175 East Third Street, Palisade, Colorado (hereinafter referred to as the "Town"), and WINE VALLEY DEVELOPMENT LLC, whose address is 917 Main Street, Grand Junction, CO 81501 (hereinafter referred to as the "Developer").

**RECITALS**

**WHEREAS**, Developer has filed an application with the Town for the subdivision of certain property to be known as Wine Valley Estates, a tract of land located in the Town of Palisade, County of Mesa, State of Colorado, containing approximately 12.21 acres, as more fully described in Exhibit A, attached hereto and incorporated herein by this reference, herein referred to as the ("Subdivision" or the "Property"), which is intended to be improved as a single family residential development; and

**WHEREAS**, the Developer, as a condition of approval of the Final Plat of Wine Valley Estates desires to enter into Subdivision Improvements Agreement, as provided for by Section 17-8, of the Palisade Municipal Code; and

**WHEREAS**, the Town seeks to protect the health, safety and general welfare of the community by requiring the completion of various improvements in the Subdivision and limit the harmful effects of substandard subdivisions, including premature subdivision, which leaves property undeveloped and unproductive; and

**WHEREAS**, pursuant to Section 17-10, of the Palisade Municipal Code, the Developer is required to provide security or collateral sufficient to insure completion of the public improvements and other necessary subdivision improvements described in the Preliminary Plan and the Subdivision Final Plat for the Property, and all accompanying documents, drawings, and plans; and

**WHEREAS**, the purpose of this Agreement is to protect the Town from the cost of completing subdivision improvements itself and is not executed for the benefit of material supplies, laborers, or others providing work, services or material to the Subdivision or for the benefit of lot owners or occupants in the Subdivision; and

**WHEREAS**, the mutual promises, covenants and obligations contained in this Agreement are authorized by State law and Chapter 17 of the Palisade Municipal Code.

**NOW, THEREFORE**, for and in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Town and the Developer agree as follows:

**SECTION 1**  
**DEFINITIONS**

- 1.1 Agreement. This Subdivision Improvements Agreement for the Wine Valley Estates Subdivision, between Developer and the Town.
- 1.2 Board of Trustees. The governing body of the Town of Palisade, Colorado.
- 1.3 Developer. Wine Valley Development, LLC, and its successors and assigns.
- 1.4 Property or Subdivision. The real property known as the Wine Valley Estates Subdivision, as more fully described in Exhibit "A", attached hereto and incorporated herein by this reference.
- 1.5 Subdivision Final Plat. The Final Plat for the Wine Valley Estates, Subdivision, as approved by the Board of Trustees.
- 1.6 Town. The Town of Palisade, Colorado, a municipal corporation.

**SECTION 2**  
**TERM**

The term of this Agreement and the vested property rights expressly established under this Agreement shall commence on the effective date of the Town ordinances or resolutions approving this Agreement and the Subdivision Final Plat and shall continue until the third (3<sup>rd</sup>) anniversary of the effective date. After the expiration of the term, this Agreement may be terminated and will then be of no further force or effect except as to any maintenance requirements for the public and common areas contained herein, and the warranty of public and other Subdivision improvements; provided, however, that any such termination shall not affect (a) the annexation of the Property to the Town; (b) any common law vested rights obtained prior to such termination; (c) the prior conveyance of any lots or parcels within the Subdivision; (d) any right arising from other Town permits, approvals or other entitlements for the Property which were granted or approved prior to, concurrently with, or subsequent to the approval of this Agreement and the Subdivision Final Plat; or (e) the parties' rights pursuant to subsection 18.5 below.

**SECTION 3**  
**SCOPE OF THIS AGREEMENT**

3.1 Purpose. This Agreement is intended to set forth the parties' understanding and agreement as to the subdivision of the Property pursuant to Article 23 of Title 31 of the Colorado Revised Statutes and Chapter 17 of the Palisade Municipal Code; as to the nature of the development proposed for Subdivision; as to the procedures, limitations and standards applicable

to the construction of public and private improvements to be installed to serve the Subdivision; as to the responsibilities of the parties for various costs, fees and charges; and as to such other matters the parties believe can be adequately addressed at this time. This Agreement is not intended to address those matters which are more appropriately considered at the time of actual development of lots contained within the Subdivision. The Town reserves all rights to review, approve, or deny any future permit applications submitted in accordance with the ordinances and policies of the Town then in effect.

3.2 Town's Rights Reserved. It is not the intention of the parties in any way to diminish or limit the Town's legislative, quasi-judicial, or other non-delegable discretionary powers or to impose on the Town any duty, beyond its ordinances and regulations as they may from time to time exist, nor to impose any special obligation on the Town to approve or accept any future filings, applications, plans, drawings, security documents, improvements, and conveyances. It is furthermore the express intention of the parties that nothing in this Agreement shall be construed to void the rights and obligations of the parties as set forth herein, to the extent such rights and obligations are consistent with law. The parties expressly agree they will fully perform this Agreement to the extent it is consistent with the law.

#### **SECTION 4** **NATURE OF THE SUBDIVISION**

This Subdivision is zoned Residential 1 and consists of 34 Lots, and FIVE (5) other Tracts on 12.21 acres, for an overall density of 2.78 units per acre, with 1.72 acres of dedicated park or open space and 2.81 acres of dedicated public streets.

#### **SECTION 5** **IMPROVEMENTS AND WARRANTY - GENERAL PROVISIONS**

5.1 Construction of Improvements. In accordance with Chapter 17 of the Palisade Municipal Code, all water service lines and laterals, water mains, fire hydrants and other water distribution facilities necessary to provide treated water service for this Subdivision; any irrigation lines and related appurtenances, laterals and mains necessary to provide non-potable irrigation service for this Subdivision (if required); all wastewater collection lines and related improvements necessary to provide wastewater service for this Subdivision; other required utilities for this Subdivision; any drainage structures required for this Subdivision; street improvements within the Subdivision including pavement, curbs, gutters and sidewalks, survey monuments, and other on-site or off-site public or required Subdivision improvements, as shown in the accompanying plans applicable to this Subdivision including any field changes required by the Town due to unknown site conditions; this Agreement; and any other improvements required by Chapter 17 of the Palisade Municipal Code, the Town's engineering design standards, and the Mesa County Road and Bridge Specifications, shall be installed and completed at the expense of the Developer. The public and other necessary Subdivision improvements shall be designed and built in conformance with all Town engineering design standards, the Mesa County Road and

Bridge specifications and all requirements contained in Chapter 17 of the Palisade Municipal Code. All such public or other required Subdivision improvements shall be designed and approved by a registered professional engineer retained by the Developer. All drawings and plans for such improvements shall be stamped by the engineer.

5.2 Compaction Standards. Trench compaction and road subgrade and base course compaction standards and criteria shall be reviewed and approved by the Town prior to the commencement of construction.

5.3 Schedule of Improvements to be Constructed by Developer. The schedule of on-site and off-site improvements to be constructed by the Developer, showing in detail the public and other required Subdivision improvements, including shallow utilities, that it is responsible for constructing, and the cost therefore, is attached hereto as Exhibit "B" and incorporated herein by this reference. Separate Exhibits shall be provided for any construction for which the Developer will receive a credit against traffic impact fees otherwise payable, or for which a subsequent recapture agreement will be executed, as delineated in other Sections of this Agreement. Unless otherwise authorized by the Town Planner, no work shall be commenced on such improvements by the Developer until such time as the performance guarantee pursuant to Section 9 of this Agreement has been furnished to the Town.

5.4 Warranty by Developer. The Developer shall warrant any and all public improvements constructed by Developer which are conveyed or dedicated to the Town pursuant to this Agreement, or its Subdivision Final Plat application, for a period of eighteen (18) months from the date the Town's Engineer conducts a final inspection and certifies that the same conform with the approved specifications, and the Board of Trustees authorizes a reduction in the security as set forth in subsection 9.4 below. Specifically, but not by way of limitation, the Developer shall warrant the following:

5.4.1 That the title conveyed shall be good and its transfer rightful; and

5.4.2 Any and all facilities conveyed shall be free from any security interest or other lien or encumbrance; and

5.4.3 Any and all facilities so conveyed shall be free of any and all defects in materials or workmanship.

In addition, all other Subdivision improvements such as shallow utility installations and other improvements as shown in the Subdivision application, and approved construction drawings submitted to the Town for this Subdivision shall be warranted for a period of eighteen (18) months following completion and approval, as provided above.

5.5 Town Inspections. The Town shall have the right to make engineering inspections and require testing during construction of the public and other required Subdivision improvements in such reasonable intervals as the Town may request. Inspection, acquiescence

and approval of any engineering inspector of the construction of physical facilities, at any particular time, shall not constitute the approval by the Town of any phase of the construction of such public and other required improvements. Such approvals shall be made by the Town only after completion of construction and the establishment of property pins for each lot or parcel, and in the manner hereinafter set forth.

5.6 Final Approval by Town Engineer. Upon completion of construction by the Developer of such public and other required Subdivision improvements, the Town Engineer or Public Works Director shall perform a final inspection of the improvements and certify with specificity its conformity or lack thereof to the approved specifications. The Developer shall make all corrections necessary to bring the improvements into conformity with Town standards and the utility, drainage and street improvement plans and others, as approved. The Town shall be under no obligation to release the performance guarantee, or provide any water service or wastewater collection service, street maintenance, zoning clearances, or certificates of occupancy until all such facilities are brought into conformance with the specifications and finally approved by the Town Engineer or Public Works Director.

5.7 Provision of As-Built Drawings. Developer shall provide all necessary engineering designs, surveys, field surveys, and "as built" drawings for all public improvements and other utilities improvements approved by the Town Engineer or Public Works Director. All "as built" drawings shall be prepared in the manner required by the Town Engineer or Public Works Director. The Developer shall pay for any incidental services related to the construction of the public improvements and other utility improvements, at its sole cost and expense.

5.8 Conveyance of Public Improvements. All public improvements constructed by Developer in accordance with this Agreement, including all water lines, mains, laterals, fire hydrants and related improvements, wastewater collection mains, laterals and related improvements; public street improvements including required pavement, curbs, gutters and sidewalks shall be dedicated or conveyed to the Town. Upon completion of construction in conformity with the plans, and any properly approved changes, the Developer shall convey to the Town, by bill of sale, all physical facilities constructed by Developer necessary for the extension, maintenance and repair of municipal utility services and other public facilities. Acceptance of said conveyance shall be made by the Town by majority vote of the Board of Trustees. Following such dedication or conveyance, the Town shall be solely responsible for the maintenance of such improvements, unless otherwise provided in this Agreement, except for any correction work required during the warranty period set forth in subsection 5.4 above.

5.9 Construction Schedule. Notwithstanding any provisions contained in the Colorado Vested Property Rights statutes, Section 24-68-101 *et. seq.* C.R.S. to the contrary, Developer agrees that construction of such public and other required Subdivision improvements shall be completed no later than the dates set forth in Exhibit "B". Where Developer is prevented from commencing or completing any of the public and other required Subdivision improvements

within the time periods set forth in the construction schedule or otherwise set forth in this Agreement due to an unforeseeable cause or delay beyond the control and without the fault or negligence of the Developer, the times for commencement and/or completion of such improvements shall be extended in an amount equal to the time lost due to such delay if a request is made in writing to the Town by the Developer. Delays beyond the control of Developer shall include, but not be limited to, acts of neglect by the Town, fires, floods, epidemics, abnormal weather conditions, strikes, freight embargos or acts of God. Time extensions, however, will not be granted for rain, snow, wind or other natural phenomena at normal intensity within Mesa County. Delays attributable to and within the control of the Developer's contractors, subcontractors or suppliers shall be deemed to be delays within the control of the Developer.

5.10 Improvements Required Prior to Issuance of Zoning Clearances for Building Permits and Certificates of Occupancy. No zoning clearance necessary to obtain a building permit for construction of any building within the Subdivision shall be issued until all of the required improvements, as specified in this Agreement, have been substantially completed and approved by the Town Engineer or Town Planner. No certificate of occupancy for any building within the Subdivision shall be issued until all required improvements have been fully installed and approved by the Town Engineer or Town Planner.

#### **SECTION 6** **OFF-SITE STREET IMPROVEMENTS**

The Developer shall: Extend the existing water main from the project to Lincoln Court and extend new water main from the project to Logan Street on the south. Additionally the Developer shall extend a portion of Rodeo Road past the project property toward Logan Street.

Developer acknowledges that such requirement(s) are roughly proportional to the impacts generated from development of the Property.

#### **SECTION 7** **DRAINAGE IMPROVEMENTS**

Pursuant to conditions imposed by the Board of Trustees, the Developer shall: Install storm water drainage facilities including catch basins, storm drains, and a detention pond.

Developer acknowledges that such requirement(s) are roughly proportional to the impacts generated from development of the Property.

#### **SECTION 8** **WATER AND WASTEWATER SERVICES AND IMPROVEMENTS**

8.1 Construction of Treated Water Distribution System. The Developer, at its sole expense, shall design, purchase, and install all elements of a municipal treated water distribution

system to fully service the Subdivision including but not limited to water mains, fire hydrants, pipe lines, and service line laterals to lot lines as required by the Town's engineering design standards, and all other appurtenant facilities necessary to provide treated municipal water service to the Subdivision. All required improvements and the construction and installation of such improvements shall be in accordance with the design drawings, plans and specifications submitted with the Subdivision Final Plat, as approved by the Town.

**8.2 Construction and Conveyance of Irrigation System.** The Developer, at its sole expense, shall design, purchase and install all elements of a non-potable irrigation system to fully service the Subdivision including all lines, valves, service lines to the lot lines as required by the Town's regulations, and service risers. All required improvements and the construction and installation of such improvements shall be in accordance with the design drawings, plans and specifications submitted with the Subdivision Final Plat, and approved by the Town, and in accordance with applicable provisions of the Town's engineering design standards.

Prior to the sale of any lot within the Subdivision, the Developer shall convey to the Homeowner's Association by separate legal instrument(s) the irrigation system, all real property and associated easements necessary for operation and maintenance of the irrigation system, and shall also transfer to the Association sufficient irrigation water rights as approved by the Town.

**8.3 Construction of Wastewater Collection System.** The Developer, at its sole expense, shall design, purchase, and install all elements of the wastewater collection system to fully service the Subdivision, including service lines to the lot lines, pursuant to the provisions of this Agreement and applicable provisions of the Town's engineering design standards. Such wastewater collection system shall be constructed in accordance with the design drawings, plans and specifications submitted with the application for the Subdivision Final Plat, and as approved by the Town.

**8.4 Provision of Wastewater Service by the Town.** Upon completion of the treated water distribution system and the wastewater collection system by the Developer, and upon approval by the Town Engineer or Public Works Director and acceptance by the Town, the Town agrees to provide domestic water service and wastewater treatment and collection service to the Subdivision upon Developer or other property owner making a written request for such service and the payment of any required plant investment (tap) fees and connection charges. Provision of water or wastewater service by the Town within the Subdivision shall be made pursuant to agreement by the Town and on a first come/first served basis with other water and wastewater service customers, subject to system capacity and any prior commitments, and at the then applicable rate. Except as may otherwise be provided in this Agreement, a lot owner shall not receive any preferences for or assurance of the availability of water service or wastewater service from the Town until the plant investment (tap) fees are paid.

**SECTION 9**  
**PERFORMANCE GUARANTEE**

9.1 Security Required. In order to secure the construction and installation of the public and other required Subdivision improvements, whether on-site or off-site, above described and as shown in the approved design drawings and specifications submitted with the application for the Preliminary Plan and Subdivision Final Plat, for which Developer is responsible, and in accordance with Section 17-10 of the Palisade Municipal Code, Developer shall furnish the Town with: (a) cash to be deposited in an escrow account that is acceptable to the Town pursuant to the Escrow and Disbursement Agreement attached hereto as Exhibit "C" and incorporated herein by this reference;

9.2 Delivery of Security. Developer shall furnish to the Town the security required by this Section and Section 17-10 of the Palisade Municipal Code prior to the recording of the Subdivision Final Plat. Unless expressly authorized by the Town Engineer and the Town Planner, the Developer shall not commence any work within the Subdivision until such approved security is furnished to the Town. Developer shall not convey any lot within the Subdivision to any third party until such approved security is delivered to the Town.

9.3 Security Standards; Payment Upon Default. The initial performance bond or letter of credit, if applicable, issued pursuant to this Agreement shall bear an expiration date of not earlier than two (2) years from the date of issuance. The Developer shall renew such security as necessary in order to secure the performance and completion of the public and other required on-site and off-site Subdivision improvements in accordance with this Agreement and Section 17-10 of the Palisade Municipal Code, without further notice from the Town. The performance bond, letter of credit, or escrow funds shall be payable at any time upon presentation of an affidavit by the Town stating Developer is in default under this Agreement, has received notice of such default as required by subsection 9.7 of this Agreement, and has failed to cure such default within the time set forth in subsection 9.7 of this Agreement. The performance bond, or letter of credit, or Escrow and Disbursement Agreement shall be in good and sufficient form as approved by the Town Attorney. In the event of a default by the Developer and compliance with the terms of subsection 9.7 of this Agreement, the surety or financial institution shall disperse funds, upon written request by the Town, or the escrow fund may be drawn upon, showing the proposed payee and the amount to be paid. Copies of any such request shall be sent to the Developer at its last known address.

9.4 Partial Release of Security. Upon completion of a certain class of the improvements by the Developer, such as wastewater facilities by way of example, evidenced by a detailed cost breakdown of the completed improvements, the amount of any security issued pursuant to this Agreement may be reduced by up to one hundred percent (100%) of the approved estimated cost for the installation of such class of improvements, upon application of the Developer, and approval by the Town Engineer or Town Planner. Upon completion of all of the public and other required on-site and off-site Subdivision improvements by the Developer,

and upon final inspection and approval by the Town Engineer or Public Works Director of all such improvements, the Board of Trustees shall further authorize the reduction of the amount of the security guaranteeing the public and other required Subdivision improvements to ten percent (10%) of the total actual cost of such improvements.

9.5 Full Release of Security. Any performance guarantee issued pursuant to this Agreement shall be fully released and discharged by action of Board of Trustees upon expiration of the eighteen (18) month warranty period, and the correction of any defects discovered during such warranty period. In the event that the correction of defects are not satisfactorily completed upon the expiration of the eighteen (18) month warranty period, the Town may require a new performance guarantee and withhold zoning clearances until a new improvements guarantee is recorded.

9.6 Notice of Defect by Developer's Engineer. Developer shall instruct its engineer, in writing, to promptly provide written notice to Developer and the Town Engineer whenever Developer's engineer becomes aware that an improvement required by this Agreement does not conform to applicable Town or Mesa County standards or approved specifications or is otherwise defective. Developer shall provide the Town with a copy of its written instructions directing Developer's engineer to report any defects.

9.7 Notice of Default. Upon the Developer's failure to perform its obligations under this Agreement, all other applicable plans, drawings, specifications and other documents submitted by the Developer to the Town as approved, within the time periods set forth in this Agreement, the Town may give written notice to Developer of the nature of the default and an opportunity to be heard before the Board of Trustees concerning such default. If such default has not been remedied within thirty (30) days of receipt of the notice or of the date of any hearing before the Board of Trustees, whichever is later, (or such reasonable time period as is necessary to cure the default provided that Developer has commenced in good faith to cure the default), the Town may then give written notice to the Developer and any surety on the performance bond, issuer of a letter of credit, or escrow agent that the Town, as agent for the Developer, is proceeding with the task of installing the public and other required Subdivision improvements in whole or in part.

9.8 Power of Attorney Granted. The Developer hereby designates and irrevocably appoints the Palisade Town Administrator, as its Attorney-In-Fact and agent for the purpose of completing all public and other necessary improvements required by this Agreement in the event of a default by the Developer. This Agreement shall be filed in the office of the Clerk and Recorder of Mesa County, Colorado, and shall constitute constructive notice of this Agreement and the power of attorney provided herein. This Agreement and power of attorney contained herein may be enforced by the Town pursuant to all legal, and equitable remedies available, including an action for specific performance in a court of competent jurisdiction.

9.9 Increase in Amount of Security. If a substantial amount of time elapses between the time of posting of the security and actual construction of the improvements, the Town

reserves the right to require a reasonable increase in the amount of the applicable security, if necessary because of estimated increased costs of construction.

9.10 Cost Estimate Not Binding. The purpose of the cost estimate described in subsection 9.1 above and Exhibit "B" is solely to determine the amount of security required and may be revised from time to time to reflect the actual costs. No representations are made as to the accuracy of these estimates, and the Developer agrees to pay the actual cost of all such public and other required on-site and off-site Subdivision improvements. Neither the estimated costs nor the amount of the security establishes the maximum amount of the Developer's liability.

9.11 Attorney's Fees. If any legal proceedings are commenced concerning the Town's election to complete the public and/or other required Subdivision improvements, as agent for the Developer, against the Developer, its surety, or issuer of the letter of credit, the substantially prevailing party shall be entitled to its costs and reasonable attorney's fees (including legal assistant's fees) or the reasonable value of salaried attorney's time (including legal assistant's time).

## **SECTION 10** **INDEMNIFICATION AND INSURANCE**

10.1 Indemnification By Contractors. Any contractor employed by the Developer who performs work within rights-of-way or easements dedicated to the Town or within other property owned by the Town shall indemnify and hold harmless the Town of Palisade, its officers, employees, insurers, and self-insurance pool, from and against all liability, claims, and demands, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with work performed by such contractor for the Developer within Town rights-of-way, easements or other property, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of such contractor, any subcontractor of the contractor, or any officer, employee, representative, or agent of such contractor or of any subcontractor of the contractor, or which arise out of any workers compensation claim of any employee of the contractor or of any employee of any subcontractor of the contractor. The contractor shall agree to investigate, handle, respond to, and provide a defense for and defend against, any such liability, claims or demands at the sole expense of such contractor. The contractor shall also agree to bear all other costs and expenses related thereto, including court costs and attorney fees, whether or not any such liability, claims, or demands alleged are groundless, false, or fraudulent.

10.2 Insurance Required. Any contractor employed by the Developer to perform work within rights-of-way or easements dedicated to the Town or within any other property owned by the Town, shall agree to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands and other obligations assumed by such contractor pursuant to subsection 10.1 of this Agreement. Such insurance shall be in addition to

any other insurance requirements imposed by the Developer or by law. Any such contractor shall not be relieved of any liability, claims, demands or other obligations to be assumed pursuant to subsection 10.1 above by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.

10.3 Nature and Amounts of Insurance. Any contractor employed by the Developer to perform work within rights-of-way and easements dedicated to the Town or other property owned by the Town shall procure and maintain, and shall cause any subcontractor of such contractor to procure and maintain, the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to the Town. All coverages shall be continuously maintained to cover all liability, claims, demands and other obligations to be assumed by such contractor pursuant to subsection 10.1 above. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

10.3.1 Workers Compensation Insurance to cover obligations imposed by applicable Colorado law for any employee engaged in the performance of work, and Employers' Liability insurance with minimum limits of \$500,000.00 each accident, \$500,000.00 disease-policy limit, and \$500,000.00 disease-each employee. Evidence of qualified self-insured status may be substituted for the Workers' Compensation requirements of this paragraph.

10.3.2 General Liability Insurance with minimum combined single limits of \$1,000,000.00 each occurrence and \$1,000,000.00 aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual, and employee acts), blanket contractual independent contractors, products, and completed operations. The policy shall include coverage for explosion, collapse, and underground hazards. The policy shall contain a severability of interests provision.

10.3.3 Comprehensive Automobile Liability Insurance with minimum combined single limits for bodily injury and property damage of not less than \$1,000,000.00 each occurrence and \$1,000,000.00 aggregate with respect to each of a contractor's owned, hired or non-owned vehicles assigned to or used in performance of services within the Town's rights-of-way, easements and other property. The policy shall contain a severability of interests provision.

The policies required by paragraphs 10.3.2 and 10.3.3 above shall be endorsed to include the Town of Palisade and the Town's officers and employees as additional insureds. Every policy required above shall be primary insurance, and any insurance carried by the Town, its officers, or its employees, or carried by or provided through any insurance pool of the Town, shall be excess and not contributory insurance to that provided by the Developer's contractors. No additional insured endorsement to the policy required by paragraph 10.3.2 above shall

contain any exclusion for bodily injury or property damage arising from completed operations. A contractor shall be solely responsible for deductible losses under any policy required above.

Upon request by the Town, the Developer shall provide the Town with a certificate of insurance to be completed by the contractor's insurance agent as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect. The certificate shall identify the contract and shall provide that the coverages afforded under the policy shall not be canceled, terminated or materially changed until at least thirty (30) days prior written notice has been given to the Town.

10.4 Indemnification by Developer. In addition to the indemnification required in subsection 10.1 above, the Developer hereby expressly agrees to indemnify and hold the Town harmless from and against all claims, costs and liability of every kind and nature, for injury or damage received or sustained by any person or entity, excluding Town officers, agents or employees, in connection with, or on account of the performance of work within the Subdivision and elsewhere by such party, or its agents, contractors or employees pursuant to this Agreement. The Developer further agrees to aid and defend the Town in the event that the Town is named as a defendant in any action concerning the performance of work by the Developer, or its agents, contractors or employees pursuant to this Agreement except where such suit is brought by the Developer. The Developer shall not be considered an agent or employee of the Town for any purpose.

10.5 Governmental Immunity. The parties hereto understand and agree that the Town is relying on, and does not waive or intend to waive by any provision contained in this Section, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, Sections 24-10-101, *et.seq.*, C.R.S., as from time to time amended, or otherwise available to the Town, its officers, or its employees.

## **SECTION 11** **PUBLIC PARKS AND OPEN SPACE**

11.1 Dedication. In accordance with Section 17-9 of the Palisade Municipal Code, the Developer shall dedicate to the Town 0.644 acres (Tract D) for parks and/or open space for public use, as more fully described on the Subdivision Final Plat. Said dedications shall be made to the Town, free and clear of all liens and encumbrances, concurrently with the recording of the Subdivision Final Plat.

11.2 Cash in Lieu of Dedication. In accordance with Section 17-9 of the Palisade Municipal Code, the Developer shall pay a fee in lieu of a park and open space dedication in the amount of \$33,000, based on a calculation of one thousand dollars (\$1,000.00) per lot. Such fees shall be paid by the Developer to the Town prior to Subdivision Final Plat recording.

Developer acknowledges that such requirements are roughly proportional to the impacts resulting from development of the Property.

**SECTION 12**  
**TRANSPORTATION IMPACT FEE**

In accordance with Article XXI of Chapter 16 of the Palisade Municipal Code, a transportation impact fee is hereby assessed in the amount of \$ 1,589 per lot x 33 lots = \$ 52,437 as and for transportation impact fees.

**CHECK ONE BELOW**

\_\_\_\_\_ Developer shall pay the above specified transportation impact fees prior to the recording of the Subdivision Final Plat.

  X   In accordance with Section 16-465 of the Palisade Municipal Code, the Developer has requested that the Town defer the payment of the above described transportation impact fees until a zoning clearance for a building permit is issued for improvements on lot(s) within the Subdivision, as permitted by Section 29-20-104.5, C.R.S.; and the Board of Trustees has approved such request. The purchaser of each lot within the Subdivision shall pay a transportation impact fee, in accordance with the fee schedule then in effect at the time a zoning clearance is applied for, prior to the issuance of a zoning clearance for a building permit by the Town's Planning and Zoning Enforcement Officer.  
The Developer hereby indemnifies and holds harmless the Town from all loss or damage which the Town may suffer, including attorneys fees and litigation expenses, based upon any claim by the zoning clearance applicant or others that deferral of the transportation impact fee payment is unenforceable for any reason; and Developer shall remain secondarily responsible for the payment of the applicable transportation impact fee.

Developer acknowledges that the requirements contained in this Section are roughly proportional to the impacts generated from development of the Subdivision.

**SECTION 13**  
**REIMBURSEMENT OF COSTS**

13.1 Review Costs and Fees. The Developer shall pay to the Town the actual cost to the Town for engineering, surveying, consultant planning services, and legal services rendered in connection with the Developer's subdivision application. Said costs shall be paid prior to the recording of the Subdivision Final Plat. Provided, however, upon request, the Developer shall receive detailed invoices reflecting the nature and description of each charge so incurred by the Town.

13.2 Inspection Costs. Prior to the approval and acceptance of the construction and installation of the public and other required subdivision improvements, the Developer shall pay

to the Town the actual cost of all inspections of such improvements made or conducted at the direction of the Town Administrator, Town Engineer, or Public Works Director.

#### **SECTION 14** **FINAL PLAT APPROVAL**

The Town agrees to approve the Subdivision Final Plat provided that said Subdivision Final Plat is in conformance with the Preliminary Plan, drainage, street improvements, and utility plans submitted to and approved by the Town, as well as all of the requirements of applicable law, subject to the terms and conditions of this Agreement.

#### **SECTION 15** **ENFORCEMENT**

15.1 Default; Notice; Termination. In the event of any default or breach by the Developer of a covenant, term, condition, or obligation under this Agreement, and if such default or breach continues after notice thereof and opportunity of a hearing as set forth in subsection 9.7 of this Agreement, this Agreement may be forthwith terminated, at the option of the Town. Any declaration of termination of the Agreement shall be effective only after and upon a resolution to that effect duly adopted by the Board of Trustees. All rights concerning remedies or attorney's fees shall survive any termination of this Agreement.

15.2 Legal Action. The parties to this Agreement shall have all rights available at law or in equity to enforce the terms of this Agreement, including the right of specific performance. In the event that any action is filed or maintained by any party in relation to this Agreement, the substantially prevailing party shall be entitled to its costs and reasonable attorney's fees (including legal assistant's fees) or the reasonable value of salaried attorney's time (including legal assistant's time).

15.3 Other Remedies Available to Town. In the event the Developer fails to construct any public or other required on-site and off-site Subdivision improvements in accordance with the terms and conditions of this Agreement, following the issuance of the performance guarantee as set forth in Section 9 of this Agreement, the Town may exercise any of the remedies set forth in Section 9 of this Agreement. Alternatively, the Town may assign the proceeds of the letter of credit, performance bond, or escrow funds to a subsequent Developer or a lender who has acquired the Subdivision by purchase, foreclosure or otherwise who will then have the same rights of completion as the Town if and only if the subsequent developer or lender agrees in writing to complete the unfinished improvements. In addition, the Town also may suspend Subdivision Final Plat approval during which time the Developer will have no right to sell, transfer, or otherwise convey tracts or lots within the Subdivision without the express written approval of the Town or until the improvements are completed and accepted by the Town provided, however, such suspension shall not effect (a) the annexation of the Subdivision to the Town; (b) the prior conveyance of any lots or parcels within the Subdivision; (c) any right arising from Town permits, approvals or other entitlements for the Property which were granted

or approved prior to, concurrently with, or subsequent to the approval of this Agreement and the Subdivision Final Plat; or (d) the parties rights pursuant to subsection 18.5 below. These remedies are cumulative in nature; except that during the warranty period, the Town's only remedy will be to draw funds under the letter of credit, performance bond or escrow funds.

#### **SECTION 16** **CONVEYANCES PROHIBITED**

16.1 Recording of Subdivision Final Plat Required. The Developer shall not grant, sell or convey any lot, lots, or other properties subject to this Agreement prior to the recording of the approved Subdivision Final Plat.

16.2 Improvements Agreement Required. If this Agreement is only for a portion or Phase of a Subdivision for which a valid Subdivision Final Plat already exists, the Developer shall not grant, sell or convey any lot or lots not covered by this or a previous Improvements Agreement without the express written consent of the Town. The intent of this subsection is to prevent the sale of legally platted lots within the Subdivision for which public infrastructure does not exist or for which an Improvements Agreement has not yet been executed.

#### **SECTION 17** **VESTED RIGHTS - VACATION OF FINAL PLAT**

17.1 Vested Property Rights. Developer shall have vested property rights to develop the Subdivision for a period of three (3) years from the effective date of this Agreement. The Developer shall be entitled to all rights, privileges, and remedies arising from such vesting for said period in accordance with Article II of Chapter 17 of the Palisade Municipal Code and Sections 24-68-101 *et. seq.*, C.R.S.

17.2 Vacation of Final Plat. Failure of the Developer to complete construction of the public and other on-site and off-site Subdivision improvements required by this Agreement within the times provided herein and following the delivery of the notice described in subsection 15.1 hereof and the expiration of the thirty (30) day time period described in subsection 15.1 without cure by Developer, the vested property rights associated with the Subdivision Final Plat and this Agreement shall be forfeited. Upon such an event, the Board of Trustees of the Town of Palisade may enact an ordinance vacating the Subdivision Final Plat and upon the effective date of such ordinance, the Subdivision and any permits issued in connection therewith shall be null, void, and of no effect. The Developer shall then be prohibited from granting, selling or conveying any additional lots within the Property. All property rights dedicated to the Town of Palisade for public purposes shall remain the property of the Town and shall be considered liquidated damages. Provided, however, vacation of the Subdivision Final Plat shall not affect (a) the annexation of the Subdivision to the Town; (b) the prior conveyance of any lots or parcels within the Subdivision; (c) any right arising from other Town permits, approvals or other entitlements for the Subdivision which were granted or approved prior to, concurrently with, or subsequent to the approval of the Subdivision Final Plat; or (d) the parties' rights pursuant to

subsection 18.5 below.

**APPROVAL OF THE SUBDIVISION FINAL PLAT AND THIS AGREEMENT  
CREATES A VESTED PROPERTY RIGHT PURSUANT TO SECTION 24-68-103,  
C.R.S., AS AMENDED.**

17.3 Certificate of Compliance. It is agreed that upon completion of all improvements which are the subject of this Agreement, expiration of the warranty period as provided herein, and compliance with all of the terms of this Agreement, the Town shall execute a resolution or certificate stating that all improvements have been constructed in compliance with this Agreement.

**SECTION 18  
MISCELLANEOUS PROVISIONS**

18.1 Waiver of Defects. In executing this Agreement, Developer waives all rights it may have concerning defects, if any, of the form or substance of this Agreement, and the formalities whereby it is executed; concerning the power of the Town to impose conditions on Developer as set forth herein; and concerning the procedure, substance and form of the ordinances or resolutions adopting this Agreement.

18.2 Failure to Exercise Rights. No waiver of any provision of this Agreement will be deemed or constitute a waiver of any other provision, nor will it be deemed or constitute a continuing waiver unless expressly provided for by written amendment to this Agreement signed by both the Town and the Developer; nor will the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The Town's failure to exercise any right under this Agreement will not constitute the approval of any wrongful act by the Developer or the acceptance of any improvement.

18.3 Complete Agreement. This Agreement together with the Subdivision Final Plat contain all of the understandings, conditions and agreements between the Town and Developer relating to the Subdivision at this time, and no other prior or current representation, oral or written, shall be effective or binding upon the Town and Developer, except for representations made by the Developer, or its agent, or the Board of Trustees, or Town staff members at public hearings concerning approval of the Subdivision Final Plat, not in conflict with the express provisions of this Agreement.

18.4 Enabling Resolutions or Ordinances Required. To the extent required by law and by the terms of this Agreement, the obligations and covenants of the Town are conditional upon the adoption by the Town of appropriate enabling ordinances or resolutions.

18.5 Attorney's Fees. In the event that any action is filed or maintained by any party in relation to this Agreement, the substantially prevailing party shall be entitled to its costs and

reasonable attorney fees (including legal assistant's fees) or the reasonable value of a salaried attorney's time (including legal assistant's time). All rights concerning remedies or attorney's fees shall survive termination of this Agreement.

18.6 Authorization. The signatories to this Agreement affirm and warrant that they are fully authorized to enter into and execute this Agreement, and all necessary actions, notices, meetings, and/or hearings pursuant to any law required to authorize their execution of this Agreement have been made.

18.7 Amendments. This Agreement may be amended from time to time by written Agreement duly authorized by the parties to this Agreement.

18.8 Representations of Town Officials. It is expressly understood that the Town cannot be legally bound by the representations of any of its officers or agents or their designees except in accordance with the Palisade Municipal Code and ordinances, and that the Developer, when dealing with the Town, acts at its own risk as to any representation or undertaking by the Town or its officers or agents or their designees which is subsequently held unlawful by a court of law, which is in accordance with the laws of the State of Colorado. Provided, however, that this subsection shall not be construed to limit the rights and remedies of the parties otherwise provided by law.

18.9 Covenants. The provisions of this Agreement shall be binding on all subsequent owners of the Property as covenants running with the Property, to be released only by the Town of Palisade, and the benefits and burdens of this Agreement shall bind and inure to the benefit of all estates and interests in the Property and all successors in interest to the parties to this Agreement, except as otherwise provided herein.

18.10 Notices. Any notice required or permitted by this Agreement will be deemed effective when personally delivered in writing, or three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified, and return receipt requested, addressed as follows:

If to Town: 175 East Third Street  
Palisade, Colorado 81526  
Attn: Town Planner

With a copy to: Carter & Sands, P.C.  
P.O. Box 192  
Rifle, Colorado 81650  
Attn: Edward P. Sands

If to Developer: Wine Valley Development, LLC  
917 Main Street  
Grand Junction, CO 81501

Attn: Leeds Foyil

These addresses shall remain valid until notice of a change of address is given to the other party in accordance herewith.

18.11 Time of the Essence. Time is of the essence of this Agreement.

18.12 Jurisdiction and Venue of Courts. This Agreement is made and delivered within the State of Colorado, and the laws of the State of Colorado shall govern its interpretation, validity, and enforceability. Personal jurisdiction and venue for any civil action commenced by either party to this Agreement whether arising out of or relating to the Agreement, a letter of credit, Escrow and Disbursement Agreement, or performance bond will be deemed to be proper only if such action is commenced in the District Court for Mesa County, Colorado. The Developer, escrow agent and issuer of any letter of credit or performance bond pursuant to this Agreement, expressly waive their right to bring such action in or to remove such action to any other court, whether State or federal.

18.13 Rights of Persons Not a Party. No person or entity who or which is not a party to this Agreement will have any right of action under this Agreement, except that if the Town does not exercise its rights within sixty (60) days following an event of default, a purchaser of a tract or unit in the Subdivision may bring an action in mandamus to compel the Town to exercise its rights.

18.14 Provisions Deemed Severable. If any part, term or provision of this Agreement is held by the courts to be illegal or otherwise unenforceable, such illegality or unenforceability will not affect the validity of any other part, term, or provision, and the rights of the parties will be construed as if the part, term, or provision was never part of the Agreement.

18.15 Assignment of Rights; Release of Obligations. The benefits of this Agreement to the Developer are personal and may not be assigned without the express written approval of the Town. Such approval may not be unreasonably withheld, but any unapproved assignment is void. Notwithstanding the foregoing, the burdens of this Agreement are personal obligations of the Developer and also will be binding on the heirs, successors, and assigns of the Developer. There is no prohibition on the right of the Town to assign its rights under this Agreement. The Town will release the original Developer's performance guarantee if it accepts new security from any developer or lender who obtains the Property.

18.16 No Waiver of Immunity. Nothing contained in this Agreement constitutes a waiver of the Town's sovereign immunity or governmental immunity under any applicable State law.

18.17 Recordation of Agreement. The Town shall record a copy of this Agreement in the office of the Clerk and Recorder of Mesa County, Colorado.







**EXHIBIT "A"**

**LEGAL DESCRIPTION**

Beginning at the NE corner of the Duncan Subdivision whose East Line is recorded as bearing S00deg43'09"W and all bearings contained herein to be relative thereto: thence S89deg51'24"E along the South right of way of Highway 6 and 24 226.91 feet: thence leaving said south right of way S00deg01'11"W 157.35 feet: thence S89deg51'36"W 208.03 feet to the West line of Five Iron Subdivision; thence along said West line S00deg 09'40"W 82.21 feet; thence S00deg02'00"E 1042.06 feet; thence leaving said West line S89deg17'49" 314.29 feet; thence N65deg56'08"W 149.35 feet to the East Line of said Duncan Subdivision; thence along said East line N00deg43'09"E 1225.41 feet to the point of beginning, Mesa County, Colorado. Said real property contains 12.19 acres more or less.

**EXHIBIT "B"**

**RE: WINE VALLEY ESTATES SUBDIVISION**

**LOCATION:** South of Hwy 6 Frontage Road and East of Elberta Avenue  
**ONSITE IMPROVEMENTS -** Vineyard Avenue, Cabernet Avenue, Rodeo Road  
**OFFSITE IMPROVEMENTS -** Waterline extensions to Lincoln Court and Logan Street

Intending to be legally bound, the undersigned Developer hereby agrees to provide throughout this Subdivision as shown on the above-named Subdivision Final Plat dated this 27 Day of October, 2006. The following improvements shall be constructed in accordance with the Town of Palisade standards and specifications.

| ITEM  | QUANTITY  | UNIT        | UNIT COST   | TOTAL COST       | Completion Date |
|---|-----------|-------------|-------------|------------------|-----------------|
| Street Grading  | 1         | lump sum    | \$25,000.00 | \$25,000         |                 |
| Street Base   | 3,407     | tons        | \$25.00     | \$85,175         |                 |
| Street Paving   | 1,372     | tons        | \$68.00     | \$93,296         |                 |
| Conc. Pvmf (v-pans)   | 360       | square feet | \$5.00      | \$1,800          |                 |
| Attached Curb Gutter and Sidewalk                           | 5,048     | lineal feet | \$30.00     | \$151,440        |                 |
| 12 inch storm drain   | 123       | lineal feet | \$30.00     | \$3,690          |                 |
| 18 inch storm drain   | 900       | lineal feet | \$70.00     | \$63,000         |                 |
| 24 inch storm drain   | 240       | lineal feet | \$90.00     | \$21,600         |                 |
| Remove 18 inch storm drain                                  | 760       | lineal feet | \$5.00      | \$3,800          |                 |
| Catch basins  | 3         | each        | \$1,500.00  | \$4,500          |                 |
| Storm drain manholes  | 9         | each        | \$1,500.00  | \$13,500         |                 |
| 8 inch sewer  | 2,284     | lineal feet | \$50.00     | \$114,200        |                 |
| Sewer Manholes  | 7         | each        | \$1,500.00  | \$10,500         |                 |
| House Laterals  | 34        | each        | \$500.00    | \$17,000         |                 |
| 8 inch water  | 4,244     | lineal feet | \$35.00     | \$148,540        |                 |
| Fire Hydrants   | 4         | each        | \$1,500.00  | \$6,000          |                 |
| water valves  | 10        | each        | \$400.00    | \$4,000          |                 |
| Street Lights   | 3         | each        | \$2,000.00  | \$6,000          |                 |
| street signs  | 5         | each        | \$250.00    | \$1,250          |                 |
| Gas/electric/Phone/CATV *                                   | 0         | lump sum    | \$0.00      | \$0              |                 |
| Irrigation  | 1         | lump sum    | \$26,000.00 | \$26,000         |                 |
| Open Space Landscaping                                      | 1         | lump sum    | \$10,000.00 | \$24,000         |                 |
| Retaining Wall  | 4,000     | square feet | \$20.00     | \$80,000.00      |                 |
| Guardrail / Handrail  | 470       | lineal feet | \$45.00     | \$21,150.00      |                 |
| Precast Barriers  | 2         | each        | \$500.00    | \$1,000.00       |                 |
| <b>PROJECT SUB-TOTAL</b>                                    |           |             |             | <b>\$926,441</b> |                 |
| <b>SUPERVISION</b>  | <b>4%</b> |             |             | <b>\$37,058</b>  |                 |
| <b>TOTAL ESTIMATED COST OF IMPROVEMENTS AND SUPERVISION</b> |           |             |             | <b>\$963,499</b> |                 |

\* Show costs for installing gas, electric, phone and cable television improvements or provide suitable evidence to the Town that performance guarantees have been given directly to the utilities companies involved.

The above improvements shall be constructed in accordance with all Town requirements and specifications, and conformance with this provision shall be determined solely by the Town of Palisade or it's duly authorized agent. The improvements shall be constructed in accordance with the time schedule shown above.

**EXHIBIT "C"**

**TOWN OF PALISADE SUBDIVISION IMPROVEMENTS  
ESCROW AND DISBURSEMENT AGREEMENT**

**THIS AGREEMENT** is entered into on November 7, 2006, by and between THE TOWN OF PALISADE, COLORADO, a municipal corporation, whose address is Town Hall, 175 East Third Street, Palisade, Colorado; and WINE VALLEY DEVELOPMENT, LLC, a Colorado corporation/limited liability company, whose address is 917 Main Street, Grand Junction, CO 81501 ("Developer"); and American National Bank ("Escrow Agent").

**RECITALS:**

A. Whereas, the Town and Developer entered into a Subdivision Improvements Agreement dated November 7, 2006 ("Subdivision Improvements Agreement") containing terms and conditions regarding the subdivision and development of certain property described as Wine Valley Estates, as more fully described on the Final Plat of Wine Valley Estates, recorded in the records of the Mesa County Clerk and Recorder on the 8th day of November, 2006, in Book 4289, at Page 603, as Document No. 2347825 ("Property"); and

B. Whereas, in accordance with the Subdivision Improvements Agreement, Developer is required to deposit the sum of \$ 1,059,848.90 ("Escrow Funds"), an amount equal to one hundred ten percent (110%) of the estimated cost of constructing and installing certain described public and other required subdivision improvements, to guarantee the construction and installation of such improvements; and the Town and Developer have selected Escrow Agent to hold and disburse the Escrow Funds.

**NOW, THEREFORE**, in consideration of the recitals described above, the mutual covenants and conditions contained in this Escrow and Disbursement Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Town, Developer, and Escrow Agent agree as follows:

**SECTION 1  
CONSTRUCTION OF IMPROVEMENTS**

Developer agrees to complete the construction and installation of the public and other required subdivision improvements in accordance with all terms and conditions contained in the Subdivision Improvements Agreement. Such construction and installation shall be at Developer's sole expense.

**SECTION 2**  
**FUNDS HELD IN ESCROW**

Concurrently with the execution of this Escrow and Disbursement Agreement, Developer shall deposit the sum of \$ 1,059,848.90 with Escrow Agent. Escrow Agent agrees to hold this amount in escrow, and any additional amounts deposited in accordance with the terms of the Subdivision Improvements Agreement. Any interest earned on the funds deposited shall belong to the Developer.

**SECTION 3**  
**DUTIES OF ESCROW AGENT**

The duties of the Escrow Agent shall be as follows:

3.1 Disbursement of Funds. During the term of this Escrow and Disbursement Agreement, Escrow Agent shall hold and disburse the Escrow Funds strictly in accordance with the terms and provisions of this Escrow and Disbursement Agreement.

3.2 Limited Liability. The Town and Developer agree and acknowledge that Escrow Agent assumes no liability in connection with this Escrow and Disbursement Agreement except for gross negligence or willful misconduct; that Escrow Agent shall never be responsible for the validity, correctness or genuineness of any document or notice referred to in this Escrow and Disbursement Agreement; that Escrow Agent is under no duty or obligation to ascertain the identity, authority or rights of the other parties (or their agents) executing or delivering or purporting to execute or to deliver this Escrow and Disbursement Agreement or any documents, papers or payments deposited or called for under this Escrow and Disbursement Agreement; and that Escrow Agent may seek advice from its own legal counsel and shall be fully protected in any action taken by it in good faith in accordance with the opinion of its counsel.

3.3 Disputes. If Escrow Agent is unable to determine at any time to whom the Escrow Funds should be delivered, or if a dispute develops between the Town and the Developer concerning to whom the Escrow Funds should be delivered, then in such event, the Escrow Agent shall deliver the Escrow Funds in accordance with the joint written instructions of the Town and Developer. In the even such written instructions are not received by Escrow Agent within ten (10) days after Escrow Agent has issued a written request for instructions to the Town and Developer, Escrow Agent shall have the right to pay the Escrow Funds into the registry of the Mesa County District Court and interplead the Town and Developer. Escrow Agent shall then be fully discharged of any obligation in connection with this Escrow and Disbursement Agreement. Escrow Agent shall be entitled to recover its reasonable attorneys' fees, related costs, and expenses from the Town and Developer in commencing such action.

**SECTION 4**  
**INDEMNIFICATION OF ESCROW AGENT**

Town and Developer agree to indemnify and hold Escrow Agent harmless from and against all claims, actions, causes of action, judgments, damage, loss, liability, costs and expenses including, but not limited to, attorneys' fees, expenses, and court costs, arising out of or in any way resulting from the construction and installation of the required public and other subdivision improvements on the Property as required by the Subdivision Improvements Agreement.

**SECTION 5**  
**PARTIES' CONSENT**

The Town and Developer hereby expressly consent to the disbursement of funds and other conduct of the Escrow Agent as authorized by the provisions of this Escrow and Disbursement Agreement.

**SECTION 6**  
**ESCROW AGENT FEES**

Any fees charged by the Escrow Agent shall be paid by the Developer.

**SECTION 7**  
**DISBURSEMENT OF ESCROW FUNDS**

Escrow Agent shall disburse the Escrow Funds as follows:

7.1 Partial Disbursements. Upon completion of a certain class of improvements by the Developer, such as wastewater collection facilities by way of example, Escrow Funds shall be paid to the Developer in an amount equal to up to one hundred percent (100%) of the approved estimated cost for the installation of such class of improvements upon application by the Developer, and approval by the Town's Engineer or Town Planner. In order for Developer to receive such partial disbursement, the following shall be presented to the Escrow Agent:

7.1.1 A disbursement request signed by a professional engineer licensed by the State of Colorado ("Developer's Engineer"), which shall state which class of improvements have been completed; that Developer's Engineer has inspected the improvements for which payment is requested; that the work has been completed in accordance with approved plans and specifications; and that the sum requested to be disbursed is reasonable and consistent with the estimate contained in Exhibit "B" of the Subdivision Improvements Agreement; and

7.1.2 All bills or invoices for such work which have been approved by the

Developer; and

7.1.3 Written approval of such partial disbursement executed by the Town Engineer or Town Planner.

7.2 Disbursements Upon Completion of Improvements. Upon written certification by the Developer and the Town Engineer that the Developer has completed all of the required public and other subdivision improvements in accordance with the Subdivision Improvements Agreement, and that there are no liens, encumbrances or other restrictions on the improvements, and that such improvements have been inspected and approved by the Town Engineer or Public Works Director, the Town's Board of Trustees shall execute a resolution verifying the acceptance of the improvements and authorizing the Escrow Agent to disburse to the Developer all remaining funds except an amount equal to ten percent (10%) of the total actual cost for construction and installation of the public and other required subdivision improvements, as certified by the Developer and the Town Engineer. The Escrow Agent shall then disburse all remaining funds except an amount equal to ten percent (10%) of the actual total cost for construction and installation of the required public and other subdivision improvements, as certified by Developer and the Town Engineer, upon receiving such certification.

The remaining funds shall be retained by Escrow Agent for a period of eighteen (18) months from the date of the Board of Trustees resolution verifying the acceptance of the improvements. Provided, however, during said period all or part of such funds shall be disbursed upon written certification by the Town Administrator or her designee that: any of the public improvements and other necessary subdivision improvements constructed by the Developer in accordance with the Subdivision Improvements Agreement are defective in materials or workmanship; that following notice, the Developer has failed to perform the corrective work necessary to remedy such defects in accordance with the Subdivision Improvements Agreement; and the Town, pursuant to the Subdivision Improvement Agreement, is proceeding with the task of correcting the defective materials or work. Such Escrow Funds shall then be disbursed by Escrow Agent to the Town or other payee authorized by the Town in such amounts as designated by the Town.

7.3 Disbursements Upon Default. Upon written certification by the Town Administrator or her designee that: the Developer is in default under the Subdivision Improvements Agreement and has failed to perform its obligations under such Agreement, in accordance with all plans, drawings, specifications, and other documents submitted to the Town as approved, within the time period set forth in the Subdivision Improvements Agreement; and that the Town, as agent for the Developer, is proceeding with the task of installing or completing the required public and other subdivision improvements on the Property, as specified in the Subdivision Improvements Agreement, in whole or in part; the Escrow Agent shall then disburse Escrow Funds to the Town or other payee authorized by the Town, in such amounts as requested by the Town.

**SECTION 8**  
**TERMINATION OF AGREEMENT**

Upon the full completion of the construction and installation of the public improvements and other necessary subdivision improvements as designated in the Subdivision Improvements Agreement; and upon expiration of the eighteen (18) month warranty period set forth in the Subdivision Improvements Agreement, as certified by the Town Engineer or Town Planner, Escrow Agent shall disburse any remaining Escrow Funds to Developer and this Escrow and Disbursement Agreement shall then terminate, and no parties shall have any further rights, duties or obligations under this Escrow and Disbursement Agreement.

**SECTION 9**  
**MISCELLANEOUS PROVISIONS**

9.1 Waiver of Defects. In executing this Escrow and Disbursement Agreement, the parties waive all rights they may have concerning defects, if any, of the form of this Agreement, the formalities whereby it is executed; and concerning the procedure, substance and form of the ordinances or resolutions adopting this Escrow and Disbursement Agreement.

9.2 Complete Agreement. This Escrow and Disbursement Agreement, together with the Subdivision Improvements Agreement, contain all of the understandings, conditions and agreements between the Town and the Developer relating to the escrow and disbursement of funds for the construction and installation of the required public and other subdivision improvements, and no other prior or current representation, oral or written, shall be effective or binding upon the Town and Developer.

9.3 Attorneys' Fees. In the event that any action is filed or maintained by any party in relation to this Escrow and Disbursement Agreement, the substantially prevailing party shall be entitled to its costs and reasonable attorneys' fees (including legal assistant's fees) or the reasonable value of a salaried attorney's time (including legal assistant's time). All rights concerning remedies or attorneys' fees shall survive termination of this Escrow and Disbursement Agreement.

9.4 Authorization. The signatories to this Escrow and Disbursement Agreement affirm and warrant that they are fully authorized to enter into and execute this Escrow and Disbursement Agreement, and all necessary actions, notices, meetings, and/or hearings pursuant to any law required to authorize their execution of this Escrow and Disbursement Agreement have been made or will be made.

9.5 Amendments. This Escrow and Disbursement Agreement may be amended from time to time by written agreement duly authorized by the parties against whom such amendment

m: Sec. 3  
Es SOS RECORDS,  
ARTICLES OF  
INCORPORATION,  
ETC.

9.6 Notices. All notices required or given by the terms of this Escrow and Disbursement Agreement shall be made by personal delivery or by certified first class mail, postage pre-paid, return receipt requested, to the parties at their addresses listed below. All notices shall be effective upon personal delivery or mailing. These addresses shall remain valid until notice of a change of address is given to all parties.

If to Town: Town of Palisade, Palisade Board of Trustees  
175 East Third Street  
Palisade, CO 81526  
Attn: Town Planner

With a copy to: Carter & Sands, P.C.  
P.O. Box 192  
Rifle, CO 81650  
Attn: Edward P. Sands, Esq.

If to Developer: Wine Valley Development LLC  
917 Main Street  
Grand Junction, CO 81501  
Attn: Leeds Foyil

If to Escrow Agent: American National Bank  
Attention: Brad Krebil  
131 North 6<sup>th</sup> Street  
Grand Junction, CO 81501

9.7 Time of the Essence. Time is of the essence of this Agreement.

9.8 Colorado Law Applicable. This Escrow and Disbursement Agreement is made and delivered within the State of Colorado, and the laws of the State of Colorado shall govern its interpretation, validity and enforceability.

9.9 Jurisdiction of Courts. Personal jurisdiction and venue for any civil action commenced by any of the parties arising out of or relating to this Escrow and Disbursement Agreement will be deemed to be proper only if such action is commenced in the District Court of Mesa County, Colorado. The parties expressly waive any rights to bring such action in or to remove such action to any other court, whether State or federal.

9.10 Rights of Persons Not a Party. No person or entity who or which is not a party to this Escrow and Disbursement Agreement will have any right of action under this Escrow and Disbursement Agreement.

9.11 Provisions Deemed Severable. If any part, term or provision of this Escrow and Escrow and Disbursement Agreement



STATE OF COLORADO )  
 ) ss.  
COUNTY OF MESA )

Date  
Subscribed and sworn to before me this 7 day of NOVEMBER, 2006 by:  
Tom Covert  
(Developer)

WITNESS MY HAND AND OFFICIAL SEAL

Bonnie G. Heuser  
Notary Public



My commission expires: 4-02-2008

ESCROW AGENT:

American National Bank  
(Name of Financing Institution)

By: Brad Krebill 11/7/06  
Date

STATE OF COLORADO )  
 ) ss.  
COUNTY OF MESA )

Date  
Subscribed and sworn to before me this 7<sup>th</sup> day of November, 2006  
by: Brad Krebill  
(Escrow Agent)

WITNESS MY HAND AND OFFICIAL SEAL

Bonnie G. Heuser  
Notary Public



My commission expires: 4-02-2008