

Prepared by: **Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, LLP**
Moore & Alphin, PLLC
Return to: **Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, LLP, PO Box 2611, Raleigh, NC 27602**

STATE OF NORTH CAROLINA

SUBDIVISION IMPROVEMENTS
MAINTENANCE AGREEMENT &
ACKNOWLEDGMENT OF
OBLIGATION TO PROVIDE STREETS
DISCLOSURE STATEMENT

COUNTY OF GRANVILLE

THIS SUBDIVISION IMPROVEMENTS MAINTENANCE AGREEMENT (this “Agreement”) is made as of the date of last execution by the parties as indicated below by and between **GRANVILLE COUNTY**, a body politic and corporate of the State of North Carolina (hereinafter referred to as the “County”) and **ASKEATON REALTY LLC**, a Texas limited liability company authorized to do business in North Carolina (hereinafter referred to as the “Subdivider”) and provides as follows:

W I T N E S S E T H:

WHEREAS, this Agreement is intended to ensure that roads that are or are to be dedicated to the public are properly maintained, free from defects, between the time of their construction and the time of formal acceptance for maintenance by the North Carolina Department of Transportation (“NCDOT”);

WHEREAS, this Agreement is not executed for the benefit of persons providing services or material to the subdivision, or for the benefit of persons buying lots or homes in the subdivision, or other possible third-party beneficiaries.

NOW, THEREFORE, in consideration of the mutual promises herein set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Term: This Agreement shall remain in effect for ten (10) years or until such time as the NCDOT or a municipality assumes formal, legal responsibility for maintenance of the roads, whichever is earlier. The County may automatically renew this Agreement for subsequent terms of ten (10) years each by providing written notice to the Subdivider prior to the expiration of the then current term. Any renewal of this Agreement shall be upon all the terms and conditions set forth in this Agreement and any amendments to this Agreement.

2. Subdivision: This Agreement applies to the subdivision property shown on that certain plat entitled “_____”, prepared by _____, Professional Land Surveyors, dated _____ and recorded in Plat Book ___, Page ___, Granville County Registry (all of said property shall collectively be known in the future as “_____”, hereinafter the “Subdivision Property”).

3. Improvements and Standards: The Subdivider will maintain, at its own expense, all required public road improvements including, but not limited to, grading, ditching, culverts, stone base, asphalt, seeding, drainage improvements, and sedimentation and erosion control improvements (the “Improvements”) to the standards required by Chapter 32, Article XVII, Division 2 and Chapter 32, Article XI, Division 2 of the Granville County, North Carolina Code of Ordinances (the “Code”) until such time as the NCDOT or a municipality assumes formal, legal responsibility for maintenance of the Improvements. This obligation to maintain requires the Subdivider to correct any deterioration of, or defect in, the Improvements that arises and to remove all temporary erosion and sedimentation control measures. Further, the Subdivider shall comply with additional improvement measures, should the occasion arise, as specified by the County. The Subdivider hereby grants the County and NCDOT, and their respective successors, assigns, agents, contractors, and employees, a nonexclusive right to enter the Subdivision Property for the purposes of inspecting the Improvements.

4. Administrative Fee: The Subdivider will pay the County, at the time of execution signified below, an administrative fee in the amount of \$400 to cover the County's cost in administering the provisions of this Agreement. This administrative fee shall also be assessed on any renewal of this Agreement prior to the expiration date of the then current term.

5. Events of Default: The following conditions, occurrences, omissions or actions will constitute a default by the Subdivider:

- a. Subdivider's failure to have any road in the Subdivision accepted by NCDOT for addition to the State-maintained road system within one (1) year of the Subdivider becoming eligible based upon any build out requirements to petition for the addition of the road into the State-maintained road system;

- b. Subdivider's insolvency, the appointment of a receiver for the Subdivider, or the filing of a voluntary or involuntary petition in bankruptcy respecting the Subdivider;
- c. Foreclosure of any lien against the Subdivision Property or a portion of the property, or assignment or conveyance of the Subdivision Property in lieu of foreclosure; or
- d. Within ten (10) days after any appointment of a receiver for the Subdivider, filing of a bankruptcy petition respecting the Subdivider, foreclosure against the Subdivision Property, or conveyance of the Subdivision Property in lieu of foreclosure, the Subdivider will give the County written notice of such event.

6. Notice of Default: If any of the conditions of default set out above exist, the County may give the Subdivider written notice of default unless the public road improvements have been accepted into the State-maintained road system. The County need not provide any further notice before declaring a default except as set out in this Section 6.

7. County's Remedies Upon Default: The County shall have the right to pursue all remedies set out below and all remedies available under the law specifically including, but in no way limited to, the following:

- a. The County may proceed under the terms of any performance surety in favor of the County posted by the Subdivider pursuant to the Code or other applicable law or contractual requirement;
- b. The parties agree that the County will be entitled to seek damages in the amount of the Improvements necessary to bring the road(s) up to the standards required by the Code and NCDOT. The damages shall be determined based upon an assessment of probable cost prepared by an engineer retained by the County. The County will have the right to release said damages to a Homeowners Association ("HOA") duly constituted under the laws of North Carolina for the subdivision, if such an HOA exists, upon the HOA's meeting of certain conditions specified by the County, for the HOA to use to correct, or to arrange for the correction of, any deterioration of, or defect in, the improvements and to maintain them until all public road improvements are added to the State maintained road system;
- c. The damages described above shall not be considered a penalty but as a fair and reasonable estimate of the amount of damages likely to be incurred by the County if the Improvements herein described are not completed in accordance with the terms and purpose of this Agreement. The parties recognize and

agree that the actual amount of damages would be difficult or impossible to ascertain; and

- d. In addition to the damages described above, the County shall be entitled to any or all of the Enforcement powers set out in Chapter 32, Article XVII, Division 7 of the Code and any other rights or remedies available under applicable law.

8. Indemnification: The Subdivider expressly agrees to indemnify and hold the County harmless from and against any claims, cost, and liability for injury or damage received or sustained by any person or entity in connection with work performed under this Agreement. The Subdivider further agrees to protect and defend the County if the County is named as a defendant in an action concerning work performed under this Agreement except where the action is brought by the Subdivider. The Subdivider is not an agent or employee of the County.

9. No Waiver: No waiver of any provision of this Agreement will constitute a waiver of any other provision, nor will it constitute a continuing waiver, unless expressly provided for by a written amendment to this Agreement. Nor will any waiver of any default under this Agreement constitute a waiver of any subsequent default of defaults of the same type. The County's failure to exercise any right under this Agreement will not constitute the approval of any wrongful act by the Subdivider. The County's exercise of any right under this Agreement will not relieve the Subdivider from any obligation to maintain the Improvements under the County's Unified Development Ordinance and will not constitute a waiver of the County's right to exercise any enforcement action under those ordinances.

10. Amendment or Modification: The parties to this Agreement may amend or modify this Agreement only by written instrument executed on behalf of the County by the County Manager (or his or her designee) and by the Subdivider (or the Subdivider's authorized officer). An amendment or modification must be properly notarized before it is effective.

11. Attorney's Fees: Should either party be required to resort to litigation, arbitration, or mediation to enforce the terms of this Agreement, the prevailing party, whether plaintiff or defendant, will be entitled to costs - including reasonable attorney's fees and expert witness fees - from the opposing party.

12. Third Party Rights: No person or entity not a party to this Agreement will have any right of action under this Agreement.

13. Scope: This Agreement constitutes the entire agreement between the parties, and no statement, promise, or inducement not contained in this Agreement will be binding on the parties.

14. Severability: If the courts hold any part of this Agreement to be illegal or otherwise unenforceable, such illegality or unenforceability will not affect the validity of any other part, and the rights of the parties will be construed as if the part was never a part of the Agreement.

15. Notice: Any notice required by this Agreement will be considered effective when personally delivered in writing, or three days after being deposited with the U.S. Postal Service, postage prepaid.

COUNTY: Granville County
Attn: Drew Cummings, County Manager
P.O. Box 906 (mail)
104 Belle St. (delivery)
Oxford, NC 27565

With a copy to: James C. Wrenn, Jr.
Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P
150 Fayetteville St., Suite 2300
Raleigh, NC 27601 (delivery)
P.O. Box 2611
Raleigh, NC 27602 (mail)

SUBDIVIDER: John Downes
Askeaton Realty LLC
3306 Edge VW
San Antonio, TX 78259

16. Immunity: Nothing contained in this Agreement constitutes a waiver of the County's sovereign, governmental or public official immunities under state law.

THE SUBDIVIDER UNDERSTANDS AND ACKNOWLEDGES THAT IT IS JOINTLY AND SEVERALLY RESPONSIBLE FOR THE MAINTENANCE, AT ITS OWN EXPENSE, OF ALL REQUIRED IMPROVEMENTS TO THE STANDARDS REQUIRED BY THE CODE UNTIL SUCH TIME AS THE NCDOT OR A MUNICIPALITY ASSUMES FORMAL, LEGAL RESPONSIBILITY FOR MAINTENANCE OF THE IMPROVEMENTS. THE UNDERSIGNED SUBDIVIDER FURTHER ACKNOWLEDGES THAT IT WILL PROVIDE EACH PROSPECTIVE BUYER OF ANY LOT SHOWN ON THE RECORD PLAT WITH (1) WRITTEN DISCLOSURE OF THE SUBDIVIDER'S RESPONSIBILITY FOR MAINTAINING THE REQUIRED IMPROVEMENTS AS SET OUT IN THE CODE AND (2) THE PROVISIONS OF THE CODE PROHIBITING THE ISSUANCE OF BUILDING PERMITS UNTIL SUCH TIME AS (I) THE SUBDIVIDER HAS ENTERED INTO A MAINTENANCE AGREEMENT WITH THE COUNTY OR (II) THE NCDOT OR A

MUNICIPALITY HAS ACCEPTED ANY PUBLIC ROAD IMPROVEMENTS FOR MAINTENANCE.

17. SUBDIVISION STREET DISCLOSURE STATEMENT. SUBDIVIDER EXPRESSLY ACKNOWLEDGES ITS RESPONSIBILITY AND OBLIGATION TO PROVIDE A SUBDIVISION STREETS DISCLOSURE STATEMENT IN ACCORDANCE WITH AND AS REQUIRED BY NORTH CAROLINA GENERAL STATUTE 136-102.6(f). THE SUBDIVISION STREETS DISCLOSURE STATEMENT SHALL BE PREPARED, EXECUTED, AND PROVIDED STRICTLY IN ACCORDANCE WITH G.S. 136-102.6(f) AND MAY BE SUBSTANTIALLY IN THE FORM ATTACHED HERETO AND INCORPORATED HEREIN AS EXHIBIT A OR AS MAY OTHERWISE BE REQUIRED UNDER APPLICABLE LAW.

[SIGNATURE PAGE FOLLOWS]

Attest:

GRANVILLE COUNTY

Karen Evans, Clerk

By: _____
Drew Cummings, County Manager

Date: _____

ASKEATON REALTY LLC

By: _____
Name: Shawn Murphy

Title: Authorized **Representative**

Date: _____

STATE OF NORTH CAROLINA, COUNTY OF GRANVILLE

I, the undersigned Notary Public in and for the County of Granville and State of North Carolina, do hereby certify that Debra A. Weary, either [] personally known by me or [] proven by satisfactory evidence (said evidence being _____), personally came before me this day and acknowledged that she is the Clerk to the Granville County Board of Commissioners, and that by authority duly given and as the act of said body politic and corporate, the foregoing instrument was signed in its name by its Chairman and attested by her as Clerk to the Board of Commissioners.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial Seal, this the _____ day of _____, 202____.

Notary Public

Printed or Typed Name

My commission expires: _____

STATE OF NORTH CAROLINA, COUNTY OF _____

I, the undersigned Notary Public of the County and State aforesaid, certify that _____, either [] being personally known to me or [] proven by satisfactory evidence (said evidence being _____), personally appeared before me this day and acknowledged that he is Manager of _____, and that as Manager, being duly authorized to do so, voluntarily executed the foregoing instrument on behalf of the company for the purposes stated therein.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial Seal, this the ____ day of _____, 202__.

Notary Public

Printed or Typed Name

My commission expires: _____

EXHIBIT "A"

[FORM STREET DISCLOSURE STATEMENT]

[NAME OF SUBDIVISION]
SUBDIVISION STREETS DISCLOSURE STATEMENT
AND ALLOCATION OF RESPONSIBILITY

Brief Description for the Index: Disclosure Statement for [NAME OF SUBDIVISION], Plat Book _____, Page _____, Granville County Registry.____

This Subdivision Streets Disclosure Statement is made this _____ day of _____, 20____, by _____, a North Carolina _____ ("_____") and by _____, a North Carolina _____ ("_____"), pursuant to N.C. Gen. Stat. § 136-102.6(f).

WHEREAS, _____ has or intends to develop certain real property located within an existing subdivision known as _____, in Granville County, North Carolina (the "Subdivision"); and

WHEREAS, a plat of Phase _____ of the Subdivision is recorded in the Office of the Register of Deeds of Granville County, North Carolina as set forth above in the BRIEF DESCRIPTION FOR THE INDEX, and such plat designates all streets within the Subdivision as public streets; and

WHEREAS, _____ has constructed or will construct or has contracted or will contract for the design and construction of all streets within the Subdivision; and

WHEREAS, _____ has or will purchase lots within the Subdivision, on which _____ will construct homes for sale to the public; and

WHEREAS, the obligation to design and construct and the responsibility for designing and constructing streets within the Subdivision are _____'s obligation and responsibility, and are **not** _____' obligation or responsibility;

NOW, THEREFORE, pursuant to N.C. Gen. Stat. § 136-102.6, _____, as seller to _____, and _____, as seller of lots and _____ houses within the Subdivision to others, hereby make the following disclosures to prospective buyers of lots and houses within the Subdivision:

I. STATUS OF SUBDIVISION STREETS

A. Status of Streets and Responsibility for Maintenance Rests with

As of the recording of this Subdivision Streets Disclosure Statement the streets and rightofway within the Subdivision, including the streets upon which all lots or

houses within the Subdivision front or abut, have not been approved by the Division of Highways, nor have those streets and rightofway been accepted by the Division of Highways and placed on the State highway system for maintenance by the State of North Carolina (the "State"). As such, the streets are public streets which have not yet been accepted for maintenance by the Division of Highways at the present time, the consequences of which are set forth below.

_____ has represented, agreed, and promised and hereby certifies that the design of the streets and rightofway within the Subdivision, including the streets upon which all lots or houses within the Subdivision front or abut, have been approved by the Division of Highways, as being designed in accordance with the standards for subdivision streets adopted by the Board of Transportation for acceptance on the State highway system.

_____ has further represented, agreed, and promised that the streets and rightofway within the Subdivision, including the streets upon which all lots or houses within the Subdivision front or abut, have been or will be constructed by _____ in accordance with the standards for subdivision streets adopted by the Board of Transportation for acceptance on the State highway system, and have been or will be constructed so as to become public streets and approved, accepted, and placed on the State highway system for maintenance by the State.

_____ has further represented, agreed, and promised that it will exercise its best efforts to cooperate and assist with obtaining approval and acceptance of the streets and rightofway within the Subdivision, including the streets upon which all lots or houses within the Subdivision front or abut, on the State highway system, and with obtaining approval, acceptance, and placement of the same as public streets on the State highway system for maintenance by the State.

Until such time, if ever, when the streets and rightofway within the Subdivision, including the streets upon which all lots or houses within the Subdivision front or abut, have been approved and accepted by the Division of Highways as public streets and placed on the State highway system for maintenance by the State, those streets are, at the present time, public streets subject to the maintenance obligations set forth below. Among the consequences of the streets and rightofway within the Subdivision, including the streets upon which all lots or houses within the Subdivision front or abut, being public streets which have not been accepted by the Division of Highways are the following:

- (a) as of the date of this Subdivision Streets Disclosure Statement, the streets and rightofway within the Subdivision have not been determined to be constructed to minimum standards, sufficient to

allow their inclusion on the State highway system for maintenance by the State;

(b) the responsibility for maintenance of the streets and rightofway within the Subdivision rests with _____, its successors and/or assigns, until the streets and rightsofway within the Subdivision, including the streets upon which all lots or houses within the Subdivision front or abut, are placed on the State highway system for maintenance by the State or another municipality;

(c) if _____ does not fulfill its responsibility for maintenance of the streets and rightofway within the Subdivision during the time specified in the preceding subparagraph (b), costs for maintenance of those streets and rightofway may be incurred by the homeowner's association of the Subdivision, and/or the owners of the lots and houses within the Subdivision;

(d) unless the streets and rightofway within the Subdivision, including the streets upon which all lots or houses within the Subdivision front or abut, are placed on the State highway system for maintenance by the State, for so long as any buyer of any lot or house within the Subdivision owns that lot or house, the buyer may or will be subject or obligated to payment of dues, assessments, costs, expenses, or other charges imposed from time to time by the homeowner's association, or otherwise incurred or charged, for maintenance of the streets and rightofway within the Subdivision, including the streets upon which all lots or houses within the Subdivision front or abut; and

(e) at no time and under no circumstances will _____ be responsible for maintenance of the streets and rightofway within the Subdivision or any costs relating to such maintenance, and no buyer of any lot or house within the Subdivision shall have any recourse to or remedy from _____ with respect to any such costs.

II. NO REPRESENTATIONS BY _____ AND NO RESPONSIBILITY OF _____

As set forth above, until such time, if ever, as the streets and rightofway within the Subdivision, including the streets upon which all lots or houses within the Subdivision front or abut, are approved and accepted as described above, those streets are public streets which have not yet been accepted for maintenance the Division of Highways, with the consequences described above.

_____ makes no representations to any person or entity, including any prospective buyer of any lot or house within the Subdivision, as to the future status of the streets and rightofway within the Subdivision, including the streets upon which all lots or houses within the Subdivision front or abut. In particular, _____ makes no representation that those streets and rightofway will ever receive acceptance by the Division of Highways and be placed on the State highway system for maintenance by the State.

Without limiting the generality of the foregoing, _____ makes no representation or warranty whatsoever as to, and has no responsibility, obligation, or liability for, the design, construction, quality, condition, drainage, maintenance, or any other aspect of the streets and rightofway within the Subdivision, including the streets upon which all lots or houses within the Subdivision front or abut; and _____ neither has nor assumes any responsibility, obligation, or liability for maintenance of any of the streets or rightofway within the Subdivision, including the streets upon which all lots or houses within the Subdivision front or abut.

III. **ACKNOWLEDGEMENT**

This Subdivision Streets Disclosure Statement is prepared, signed, and recorded in the Office of the Register of Deeds of Granville County, North Carolina prior to _____ entering into any agreement or any conveyance with any prospective buyer of any lot or house within the Subdivision. Further, prior to _____ entering into any agreement or any conveyance with any prospective buyer of any lot or house within the Subdivision, such prospective buyer and _____ shall have signed an acknowledgment of receipt of a copy of this Subdivision Streets Disclosure Statement, as the same has been recorded, which shall be deemed by _____, _____, and the prospective buyer to be a duplicate original of this Subdivision Streets Disclosure Statement and to be in all respects in compliance with the provisions of N.C. Gen. Stat. § 136-102.6, including N.C. Gen. Stat. § 136-102.6(f).

IN WITNESS WHEREOF, _____ and _____ have duly executed this Subdivision Streets Disclosure Statement as of the day and year first above written._

_____, a North Carolina _____

North Carolina _____

By: _____ (SEAL) By: _____ (SEAL)
_____, _____, _____

State of North Carolina County of _____

I, the undersigned Notary Public of the County and State aforesaid, certify that _____, personally appeared before me this day and acknowledged that he is _____ of _____, a North Carolina _____, and that he, as _____, further acknowledged the due execution of the foregoing instrument on behalf of the said corporation for the purposes stated therein. Witness my hand and official stamp or seal this _____ day of _____, 20____.

Notary Public

(Official Stamp or Seal)

My Commission expires: _____

State of North Carolina County of _____

I, the undersigned Notary Public of the County and State aforesaid, certify that _____ personally came before me this day and acknowledged that he is _____ of _____, a North Carolina _____, and that by authority duly given and as the act of such entity, he signed the foregoing instrument in its name on its behalf as its act and deed. Witness my hand and official stamp or seal this _____ day of _____, 20____.

Notary Public

(Official Stamp or Seal)

My Commission expires: _____