

**SANITARY SEWER VARIANCE AGREEMENT AND POWER OF ATTORNEY FOR THE FORMATION OF A  
SEWER IMPROVEMENT DISTRICT.**

This agreement and power of attorney ("Agreement") is made and entered into this 19<sup>th</sup> day of March 2024, by and between the City of Grand Junction, a Colorado home rule municipality ("City"), and Brian R. and Stephanie Bray hereinafter referred to as "Developer" and "Owners".

RECITALS:

The Owners have applied to the City pursuant to sections 21.01.060(e), 21.01.130(a)(xi) and 13.16.060(c)(4)(i) of the Grand Junction Municipal Code ("GJMC" or "Code") for an exemption from the Code requirement that with and upon the creation of any new lot(s) that the Developers and/or Owners must provide sanitary sewer to the lot(s) (" Sewer Requirement".)

The City has conditionally approved the application to subdivide ("Develop" or "Development") the property at 880 26 ½ Road, Grand Junction, Colorado (Mesa County tax parcel 2945-211-01-019) "Property". Final approval of the Development was conditioned on a) the Planning Commission hearing and recommending an exemption/approving a waiver of the Sewer Requirement, and b) the City Council and Board of County Commissioners acting as the Persigo Board approving an exemption/a waiver of the Sewer Requirement, and c) the Developer and Owners approving this Agreement. Collectively a), b) and c) above are referred to as the "Conditions Precedent."

BECAUSE THE CONDITIONS PRECEDENT AS SHOWN IN CITY DEVELOPMENT FILE # SSU-2023-89 HAVE BEEN SATISFIED THE DEVELOPER AND THE OWNERS AGREE AND ACKNOWLEDGE, WITH THE RECEIPT AND SUFFICIENCY OF CONSIDERATION FOR THE MAKING AND ENFORCEMENT OF THIS AGREEMENT BEING EXCHANGED AND ADEQUATE, THE FOLLOWING TERMS:

1. The Developer is: Brian R. Bray
2. The Owners are: Brian R. and Stephanie Bray
3. The address of Property is: 880 26 ½ Road, Grand Junction, CO 81506
4. The legal description of the Property to which this Agreement is applicable, as each(all) lot(s) is(are) described with recordation of the Mustang Ridge subdivision plat:
5. The Recitals are intended to state the intent of the City and the Developers and shall constitute substantive terms of this Agreement. In addition, the Recitals shall form a basis to construe the several provisions hereof in the event that there is an ambiguity, or the intent is otherwise unclear. Any rule such that any ambiguities shall be construed against the drafter shall not apply to this Agreement; the City and the Developer agree that each is fully capable of engaging its own attorney(s) and other expert(s) to negotiate and enforce the terms hereof to accomplish the desired outcome(s).
6. Based upon and by virtue of the Conditions Precedent being satisfied, as evidenced by the minutes of the meetings of the City Planning Commission and City Council and the Board of County Commissioners, together with the files, records, documents, reports, and analyses provided to the Commission, the Council and the Board, together with the signature of the Developer and the Owners hereon, with this Agreement the application for exemption/waiver of the Sewer Requirement is granted, acknowledged and approved for the Property as described and on the conditions stated herein.

7. The exemption/waiver of the Sewer Requirement is specific to the Development contemplated by this Agreement and does not, and shall not be claimed by the Developers and/or Owners or any successor(s) or assign(s) to the Agreement to exempt/waive any lot(s) created by re-subdivision, partition or other division of any lot or portion of the Property.
8. The Owners shall deliver an executed power of attorney for formation of a future sewer improvement district; and
9. The Owners shall pay that amount of money which the Manager calculates to be the proportionate share of the sewer line construction costs, as defined by the Manager, attributable to the development or property, plus an administrative charge of six percent of the principal amount of such proportionate share ("Payment"); and
10. The Manager may authorize the Payment over a term of years, not to exceed 10, upon the execution and delivery by the Owners of a promissory note and deed of trust sufficient, in the judgment of the Manager, to reasonably ensure that the Payment will be timely made; and
11. Interest shall accrue on the Payment at a rate established by the City Council, by resolution, or in the absence of such a resolution, at a rate which is equal to the rate of return on City investments obtained by the Finance Director of the City on the City's long-term investments; and
12. The obligation to pay the Payment, in addition to the deed of trust, shall constitute a lien upon the Property and shall be equivalent to the lien provided for in the City Code establishing a water lien. All remedies available pursuant to the GJMC and/or this Agreement shall equally apply to the lien described and created herein; and
13. If an improvement district is formed and some or all the Payment has been paid, the assessment which would otherwise be payable shall be reduced by the amount of principal of the construction cost which has been paid; and
14. The Owners shall dedicate, at no cost to the City, such right-of-way or easements as the Manager shall deem necessary to construct, operate, and maintain the system, in accordance with City specifications and standards. If insufficient information is available to determine the legal description of the required rights-of-way or easements at the time of approval or permit issuance, the Developer and the Owners shall promise and covenant to make such a conveyance or grant at such time in the future as the Manager shall require.
15. Notwithstanding the exemption/waiver of the Sewer Requirement for the Property, neither the Developers nor the Owners, or any person(s) claiming an interest in the Property by and through the Developer and/or the Owners is exempt from the Code, as may be applicable if/when any Individual Sewage Disposal System ("ISDS" aka "septic tank(s)") constructed and used by the Developer, the Owners or any successor thereto fails at some time after the installation. In the event of such failure the then existing Code shall apply.
16. The Developer, Owners and any successor(s) or assign(s) to this Agreement shall forever:
  - (a) hold harmless and indemnify the City, its officers, agents and employees from and with respect to any and all claims arising out of this Agreement and/or the construction of any ISDS, excepting only causes of action or claims resulting from the intentional

misconduct of the City; (b) hold harmless from and indemnify the City for all reasonable attorneys' fees incurred by the City, or the value thereof, including experts, fees and costs in the defense of any claim(s) against the City; and, (c) with respect to the matters provided for in, or reasonably arising out of, this Agreement, indemnify and hold harmless the City, from claims any claim(s) by any third party, whether or not any such claim or cause of action is frivolous.

17. As the Developer and Owner(s) of the Property described above, located in the City of Grand Junction Colorado, I/WE agree that, as a condition of City approval of the Development of the Property that if/when a sewer improvement district, or equivalent legal mechanism ("District") is formed that I/WE agree to join the District, or by virtue of recordation of this Agreement in the chain of title of the Property that our heirs, successors and assigns shall join/be obligated to join the District.
18. I (We) as Developer and Owner(s) of the Property described above, located in the City of Grand Junction Colorado, do hereby agree to participate in the District, if one is formed, for the construction of sewer improvements, as the same may be designed by the City, the County or a consultant(s) on their behalf, either as a part of a larger District or a specific District to serve the Property, to the then existing standards and do hereby designate and appoint the City Clerk of the City of Grand Junction as my (our) Attorney-in-Fact, to execute any and all petitions, documents and instruments to effectuate my (our) intention to participate in said District for such purpose, or to otherwise act in conformity with said general direction. The City Clerk is empowered by me (us) to do and perform any and all acts which the City Clerk shall deem necessary, convenient, or expedient to accomplish such improvements or reconstruction as fully as I (we) might do if personally present.
19. This Agreement is irrevocable and shall be recorded. This Agreement shall be deemed to be a covenant which runs with the land. This authority and the covenant created thereby shall be binding upon any and all successors in interest to the above-described Property and shall not cease upon the death of the Developer or Owners or both, or the dissolution of marriage, partnership, corporation, or other form of association which may hold title or claim an interest to the Property described herein.
20. As a further covenant to run with the land, I (we) agree that in the event a counterpetition to any proposed improvements or improvement District is prepared, any signature on such petition purporting to affect the Property herein described may be ignored as of no force and effect by the City.
21. This power of attorney is not terminable; it shall terminate only upon the formation of a District(s) as herein described.
22. If/when a District is formed and final acceptance of the construction, the Developer will be responsible for tap and plant investment fees, connection charges, and recurring monthly service fees and charges together with the payment, if any of assessments for purposes of the District(s).

DEVELOPER

BY:   
Brian R. Bray

Date: 3/19/24

Address: 875 26 Road, Grand Junction, CO 81506

IN WITNESS WHEREOF, I have signed, executed, and acknowledged this Agreement on this 19<sup>th</sup> day of March 2024.

STATE OF COLORADO

COUNTY OF MESA

The foregoing instrument was subscribed and sworn to before me this 19 day of March, 2024.

My commission expires 2/4/27.

**TAMARA DAWN ZOLLINGER**  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20154004959  
MY COMMISSION EXPIRES FEBRUARY 4, 2027

Notary Public

OWNERS

BY: [Signature]  
Brian R. Bray

Date: 3/19/24

Address: 875 26 Road, Grand Junction, CO 81506

BY: [Signature]

Date: 3-19-24

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STATE OF COLORADO  
NOTARY ID 20154004959  
MY COMMISSION EXPIRES FEBRUARY 4, 2027

Notary Public

Stephanie Bray

Address: 875 26 Road, Grand Junction, CO 81506

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[Signature]

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COUNTY OF MESA

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**TAMARA DAWN ZOLLINGER**  
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STATE OF COLORADO  
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Notary Public for  
Colorado

CITY OF GRAND JUNCTION

BY:   
Greg Caton  
City Manager

Date: 3/26/2024

Attest:   
Amy Phillips  
City Clerk

Date: 3/28/2024