



# Staff Report

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Agenda Item:                   **RESOLUTION OF THE TOWN OF CLARKDALE  
AUTHORIZING THE FORFEITURE OF BONDS AND  
DEMAND FOR COMPLETION OF IMPROVEMENTS OR  
PAYMENT FROM BOND SAFEGUARD INSURANCE  
COMPANY PERFORMANCE BONDS ON THE  
MOUNTAIN GATE SUBDIVISION PROJECT** – Discussion  
and consideration for possible action the forfeiture of bonds for  
completion of improvements at the Mountain Gate Subdivision.

Staff Contact:               Sherry Bailey, Community Development Director

Meeting Date:               March 24, 2009

Background:

The town attorney, the town engineer and staff presented to Bond Safeguard a detailed listing of the work that remains to be completed or corrected at Mountain Gate. All of the items listed are covered under the Bond Safeguard performance bonds. The total remaining amount on the two performance bonds is \$1,849,514.00. The next step is the formal action of demanding the completion of the improvements or the forfeiture of the remaining bond funds.

The town attorney has prepared a resolution authorizing the forfeiture of the bonds or completion of the improvements. By approving the resolution the council is authorizing the town attorney to take the necessary legal steps to resolve this issue.

Recommendation:

Staff recommends that council approve the resolution authorizing the forfeiture of bonds or demanding completion of the improvements.

**RESOLUTION # \_\_\_\_\_**

**A RESOLUTION OF THE MAYOR AND COUNCIL, TOWN OF CLARKDALE, YAVAPAI COUNTY, ARIZONA AUTHORIZING THE FORFEITURE OF BONDS AND DEMAND FOR COMPLETION OF IMPROVEMENTS OR PAYMENT FROM BOND SAFEGUARD INSURANCE COMPANY PERFORMANCE BONDS ON THE MOUNTAIN GATE SUBDIVISION PROJECT**

WHEREAS, the Town of Clarkdale entered into a Development Agreement with Empire Residential Construction, L.P. for the development of a subdivision to be know as Mountain gate, and

WHEREAS, Empire Residential Construction, L.P. acquired faithful Performance Subdivision Bonds from Bond Safeguard Insurance Company (Safeguard) No. 5019742, for the project in the amount of Two Million Seven Hundred Ninety Thousand Two Hundred Eighty Six and 10/100 Dollars (\$2,790,286.10) and No. 5019743, for the project in the amount of Three Million Eight Hundred Thousand Dollars (\$3,800,000.00), and

WHEREAS, the Town of Clarkdale filed a Notice of Default of Empire Residential Construction, L.P. March 6, 2008, and

WHEREAS, Empire Residential Construction, L.P. filed for Chapter 11 Bankruptcy in the United States Bankruptcy Court, Central District of California, Riverside Division, Case No. 6:08-14592 MJ, and

WHEREAS, there is due and remaining on Performance Bond No. 5019742 the sum of One Hundred Thirty Nine Thousand Five Hundred Fourteen Dollars (\$139,514.00) and on Performance Bond No. 5019743 the sum of One Million Seven Hundred Ten Thousand Dollars (\$1,710,000.00) for incomplete work and/or defective work, said funds needed by the town to apply toward the cost of completing the bonded project improvements.

NOW, THEREFORE, BE IT RESOLVED That the Mayor and Town Council of the Town of Clarkdale demand from Bond Safeguard Insurance Company on Performance Bonds No. 5019742 & No. 5019743 completion of the improvements on the Mountain Gate subdivision development or the sums remaining due and owing of One Hundred Thirty Nine Thousand Five Hundred Fourteen Dollars (\$139,514.00) on Performance Bond No. 5019742 and the sum of One Million Seven Hundred Ten Thousand Dollars (\$1,710,000.00) on Performance Bond No. 5019743.

BE IT FURTHER RESOLVED That if Bond Safeguard Insurance Company refuses to pay the sums due on the Performance Bonds, that the Town of Clarkdale authorizes its attorneys to file suit for the collection of the sums due on the Performance Bonds.

Passed and adopted by the Mayor and Common Council of the Town of Clarkdale, Arizona, this 24<sup>th</sup> day of March, 2009.

**APPROVED:**

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Doug Von Gausig, Mayor

**ATTESTED:**

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Kathy Bainbridge, Town Clerk

**APPROVED AS TO FORM:**

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Robert S. Pecharich, Town Attorney