

SUBDIVISION IMPROVEMENTS AGREEMENT

(Project Name & File Number)

(Staff Engineer)

(Staff Planner)

This Agreement is made as of this ____ day of _____, 20____, between _____, a _____ corporation qualified to do business in Colorado ("Developer"), whose address is _____, Colorado _____ and the BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF DOUGLAS ("County"), whose address is 100 Third Street, Castle Rock, Colorado 80104, Attention: County Engineer.

I. GENERAL

1.1 Purpose. The purpose of this Agreement is to provide for the completion of the Subdivision Improvements as hereinafter defined, for the Subdivision, as hereinafter defined.

1.2 Recitals.

(a) Developer is the owner and subdivider of the Subdivision and has presented a final plat of the Subdivision to the County for approval.

(b) The subdivision statutes of the State of Colorado, Section 30-28-127, C.R.S., and the Subdivision Resolution of the County authorize the execution of a subdivision improvements agreement between the County and Developer whereby Developer agrees to construct any required public improvements for the Subdivision and to provide security for completion of the Subdivision Improvements.

(c) This Agreement will provide for the completion of the Subdivision Improvements within the Subdivision and will protect the County from the cost of completing the Subdivision Improvements.

(d) This Agreement is not executed for the benefit of third parties such as, but not limited to, materialmen, laborers or others providing work, services or material for the Subdivision Improvements or lot or home buyers in the Subdivision.

1.3 Subdivision. The "Subdivision" shall mean _____ Filing No. _____, Douglas County, Colorado, the final plat for which has been presented to the County and is expected to be approved by the County at the time of, and in connection with, approval of this Agreement by the County.

1.4 Subdivision Improvements. The "Subdivision Improvements" shall mean the street, drainage and other improvements, including cost contributions and/or guarantees of payment, if any, set forth and described on the Plans, as hereinafter defined and/or in Exhibits _____, attached hereto and are incorporated herein by this reference. The Subdivision Improvements and phasing are listed, together with the estimated costs thereof and/or with the agreed upon financial contribution amounts, on Exhibits _____.

1.5 Plans. The "Plans" shall mean the construction drawings dated _____, entitled _____ on file with the County Engineer of the County.

II. CONSTRUCTION OF SUBDIVISION IMPROVEMENTS.

2.1 Agreement to Construct. Subject to and in accordance with the terms and provisions of this Agreement, Developer agrees to cause the Subdivision Improvements to be constructed and completed at its expense, in accordance with the Plans.

2.2 Final Plat Approval as Condition. The obligation of the Developer to construct and complete the Subdivision Improvements is conditioned upon and shall arise only upon approval and recordation of the final plat of the Subdivision by the County.

2.3 Commencement of Construction. Developer shall commence construction and installation of one or more Phases of the Subdivision Improvements within 60 days from the date of receipt by the County of security for the full amount of the construction cost of said Phase(s) as identified in Exhibits _____ of this Agreement.

2.4 Completion Date. Said Phase(s) shall be completed within nine months after the date of receipt of security for said Phase(s) ("Completion Date"). The Completion Date may be extended with the approval of the Board of County Commissioners, which approval shall not be unreasonably withheld.

2.5 Construction Standards. The Subdivision Improvements, including water and sanitary sewer, shall be constructed in accordance with the Plans approved by the County Engineer and, to the extent not otherwise provided in the Plans, in accordance with the County's ordinances, resolutions, and regulations.

2.6 Warranties of Developer. Developer warrants that the Subdivision Improvements will be installed in a good and workmanlike manner and in substantial compliance with the Plans and requirements of this Agreement and shall be substantially free of defects in materials and workmanship. These warranties of Developer shall remain in force and effect as to any completed Phase of the Subdivision Improvements until the lapse of two years after Preliminary Acceptance of such Phase of the Subdivision Improvements as hereinafter provided in this Agreement.

2.7 Title to Subdivision Improvements. All Subdivision Improvements shall be constructed within streets or easements dedicated to the County in the final plat of the Subdivision or conveyed by other recorded instruments at the time the final plat is recorded. Subdivision Improvements for private roads shall be in accordance with the Douglas County Roadway Design and Construction Standards. Title to the property shown on the final plat shall be vested, at the time the final plat is presented to the County for approval, in Developer and any other parties executing the final plat and shall be certified by a title company's or attorney's certificate shown on the final plat.

III. SECURITY FOR COMPLETION.

3.1 Deposit of Security for Developer Obligations. To secure the performance of the obligations of Developer under this Agreement to complete the Subdivision Improvements for the Subdivision, Developer shall deposit with the County an irrevocable letter of credit with provisions as hereinafter set forth. The letter of credit shall be deposited after approval of the final plat for the Subdivision and shall be 115% of the estimated cost to construct each Phase, which the Developer desires to construct. No conveyance or transfer of title to any lot, lots, tract or tracts of land within a Phase with uncompleted Subdivision Improvements shall be made, nor any building permit issued, unless an approved letter of credit has been deposited with the County or unless all public improvements have been completed and an irrevocable letter of credit in the amount of 15 percent of the estimated cost of said improvements has been deposited with the County as provided in Section 4.2 below. The irrevocable letter of credit shall be retained by the County until satisfaction of Developer's obligations under this Agreement or earlier release by the County.

3.2 Provisions for Letter of Credit. A letter of credit for a Phase shall be in an amount equal to 115% of the estimated cost to construct that Phase. The letter of credit shall be issued by _____, or such other bank as shall be approved by the County; shall have an expiration date no earlier than two years after its date of issue; and shall provide that it may be drawn upon from time to time by the County in such amount or amounts as the County may designate as justified, such amounts not to exceed, in the aggregate, the amount of the letter of credit. Draws under any such letter of credit shall be by a certificate signed by the Chairman or Acting Chairman of the Board of County Commissioners of Douglas County stating that the County is entitled to draw the specified amount under the terms of this Agreement. The right of the County to draw on any letter of credit shall be as provided in, and subject to, the provisions of Sections 5.1 through 5.6 of this Agreement.

3.3 Recording of Agreement. After approval of the final plat of the Subdivision by the County, this Agreement may, at the option and expense of the County, be recorded in the office of the Clerk and Recorder of Douglas County. Upon Final Acceptance of all of the Subdivision Improvements by the County, the County shall deliver to Developer a recordable executed document, which shall release all property within the Subdivision from any further effect of this Agreement.

IV. ACCEPTANCE OF IMPROVEMENTS.

4.1 Preliminary Acceptance. Upon the satisfactory completion of the Subdivision Improvements in a Phase of the Subdivision, Developer shall be entitled to obtain preliminary acceptance thereof by the County ("Preliminary Acceptance") in accordance with the following provisions.

Upon such completion, Developer shall give written notice to the County Engineer requesting an inspection of the completed Subdivision Improvements ("Preliminary Inspection Notice"). The County shall inspect the completed Subdivision Improvements within fourteen days after receipt by the County Engineer of the Preliminary Inspection Notice and, if the County Engineer finds that the specified improvements have been completed substantially in accordance with the Plans and the other requirements of this Agreement, the County Engineer shall issue a letter evidencing Preliminary Acceptance within fourteen days after the inspection.

If, upon inspection of the completed Subdivision Improvements, the County Engineer finds that the specified improvements have not been completed substantially in accordance with the Plans and the other requirements of this Agreement, the County Engineer shall issue a written notice of noncompliance within fourteen days after the inspection specifying the respects in which the completed Subdivision Improvements have not been completed substantially in accordance with the Plans and the other requirements of this Agreement. Developer shall thereupon take such action as is necessary to cure any noncompliance and, upon curing the same, shall give a new Preliminary Inspection Notice to the County Engineer. Upon the giving of such a new Preliminary Inspection Notice, the foregoing provisions of this Section 4.1 shall be applicable as if the new Preliminary Inspection Notice were a Preliminary Inspection Notice under the foregoing provisions of this Section 4.1.

4.2 Partial Release of Security. At the time of Preliminary Acceptance of completed Subdivision Improvements, the County shall issue a written release of the letter of credit and the plat restriction provided in Section 3.1. The amount to be released for the completed Subdivision Improvements shall be the total amount of the letter of credit for each completed Phase. Prior to release of the letter of credit, an irrevocable letter of credit in the amount of 15% ("Warranty Security") of the total costs of the Subdivision Improvements for the Phase shall be delivered to the County by the Developer. The Warranty Security shall remain in effect during the two-year warranty period following Preliminary Acceptance of the completed Subdivision Improvements for the completed Phase.

4.3 Maintenance Prior to Final Acceptance. Until Final Acceptance by the County of the Subdivision Improvements, Developer shall, at Developer's expense, make all needed repairs or replacements to the Subdivision Improvements required on account of defects in materials or workmanship and shall be responsible for ordinary repairs and maintenance thereof including street sanding, snow removal, and cleaning. Subsequent to preliminary acceptance and subject to accessibility, Douglas County Public Works may elect to relieve the Developer of traffic signage and snow removal responsibility. Specific reductions or releases of responsibility must be in writing signed by the Director of Public Works.

4.4 Final Acceptance. At the end of the two-year warranty period for any Phase of the Subdivision Improvements, Developer shall be entitled to obtain final acceptance thereof by the County ("Final Acceptance") in accordance with the following provisions.

No later than 60 days prior to the expiration of the warranty period for any Phase of the Subdivision Improvements, Developer shall give written notice to the County Engineer requesting a final inspection of such Phase of the Subdivision Improvements ("Final Inspection Notice"). The County shall inspect such Phase of the Subdivision Improvements within fourteen days after receipt by the County Engineer of the Final Inspection Notice and, if the County Engineer finds that the Phase of the Subdivision Improvements is substantially free of defects in materials and workmanship and has been repaired and maintained as and to the extent required in this Agreement, the County Engineer shall issue a letter evidencing Final Acceptance of the Phase of the Subdivision Improvements.

If, upon final inspection of a Phase of the Subdivision Improvements, the County Engineer finds that the Phase of the Subdivision Improvements is not substantially free of defects in materials and workmanship or has not been repaired and maintained as required under this Agreement, the County Engineer shall issue a written notice of noncompliance within fourteen days after the final inspection specifying the respects in which the Subdivision Improvements are not substantially free of defects in materials and workmanship or have not been repaired and maintained as required under this Agreement. Developer shall thereupon take such action as is necessary to cure any noncompliance and, upon curing the same, shall give a new Final Inspection Notice to the County Engineer. Upon the giving of such new Final Inspection Notice, the foregoing provisions of this Section 4.4 shall be applicable as if the new Final Inspection Notice were a Final Inspection Notice under the foregoing provisions of this Section 4.4.

At the time of Final Acceptance of the Subdivision Improvements for a Phase in the Subdivision, Developer shall be entitled to a release of the Warranty Security for that Phase. The release shall be in writing, signed by the Director of Public Works.

Upon Final Acceptance of a Phase of the Subdivision Improvements, the County shall assume full responsibility for repairs and maintenance of the Subdivision Improvements as would normally be the responsibility of the County by law.

Prior to Final Acceptance of all of the Subdivision Improvements, "as constructed" engineering drawings shall be submitted to the County in accordance with County policy.

V. DEFAULTS AND REMEDIES

5.1 Default by Developer. A default by Developer shall exist after notice and hearing and an opportunity to cure as hereinafter provided if (a) Developer fails to construct the Subdivision Improvements in substantial compliance with the Plans and the other requirements of this Agreement; (b) Developer fails to complete construction of the Subdivision Improvements by the Completion Date provided herein as the same may be extended; (c) Developer fails to cure any noncompliance specified in any written notice of noncompliance within a reasonable time after receipt of the notice of noncompliance; (d) Developer otherwise breaches or fails to comply with any obligation of Developer under this Agreement; (e) Developer becomes insolvent, files a voluntary petition in bankruptcy, is adjudicated a bankrupt pursuant to an involuntary petition in bankruptcy, or a receiver is appointed for Developer; (f) Developer fails to maintain in full force and effect a letter of credit in the amounts specified in this Agreement. Notice of default as to any Phase of the Subdivision Improvements must be given prior to expiration of the warranty period for such Phase of the Subdivision Improvements as hereinafter provided.

5.2 Notice and Hearing. In the event a default by Developer is believed to exist, the County shall give written notice thereof to Developer, specifying the default and setting a date for hearing before the Board of County Commissioners to determine the existence of the default. The hearing shall be no less than fourteen days after the receipt by Developer of the notice of default from County. Within 30 days after such hearing, the Board of County Commissioners shall determine whether or not a default exists and, if so, shall specify a reasonable time within which Developer shall be required to cure the default.

5.3 Remedies of County. If the Board of County Commissioners, after notice and hearing as aforesaid, determines that a default by Developer exists, and if Developer fails to cure such default within the time specified by the Board of County Commissioners, the County shall be entitled to (a) make a draw on the letter of credit for the amount reasonably determined by the County to be necessary to cure the default in a manner consistent with the approved Plans up to the face amount of the letter of credit; and (b) sue the Developer for recovery of any amount necessary to cure the default over and above the amount available under the letter of credit.

5.4 County Right to Complete Subdivision Improvements. The right of the County to complete or cause completion of the Subdivision Improvements as hereinabove provided shall include the following rights. The County shall have the right to complete the Subdivision Improvements, in substantial accordance with the Plans, the estimated construction costs, and other requirements of this Agreement, either itself or by contract with a third party or by assignment of its rights to a successor developer who has acquired the Subdivision by purchase, foreclosure, or otherwise. The County, any contractor under the County, or any such successor developer, their agents, subcontractors and employees shall have the non-exclusive right to enter upon the streets and easements shown on the final plat of the Subdivision and upon any part of the Subdivision owned by Developer for the purpose of completing the Subdivision Improvements.

5.5 Use of Funds by County. Any funds obtained by County under a letter of credit, or recovered by the County from Developer by suit or otherwise, shall be used by the County to pay the costs of completion of the Subdivision Improvements substantially in accordance with the Plans and the other requirements of this Agreement and to pay the reasonable costs and expenses of the County in connection with the default by Developer, including reasonable attorneys' fees, with the surplus, if any, to be returned to Developer.

5.6 Protection of Innocent Purchasers. The letter of credit furnished to the County under this Agreement is designed to assure completion of the Subdivision Improvements and to protect the County from bearing the cost of completing the Subdivision Improvements. Accordingly, the County shall have recourse only under the letter of credit and against the Developer and the successors and assigns of Developer in its capacity as developer of the Subdivision and shall not have recourse against third parties who purchase lots or acquire interests in the Subdivision other than those who acquire lots or interests as a successor or assignee of Developer in its capacity as developer of the Subdivision.

VI. MISCELLANEOUS.

6.1 Indemnification. Developer shall indemnify and save harmless the County from any and all suits, actions, claims, judgments, obligations, or liabilities of every nature and description which arise from an event or occurrence prior to the date of Final Acceptance and which are caused by, arise from, or on account of the construction and installation of the Subdivision Improvements; and any and all suits, actions, claims, or judgments which arise from an event or occurrence prior to the date of the Final Acceptance and which are asserted by or on behalf of contractors or subcontractors working in the Subdivision, lot owners in the Subdivision, or third parties claiming injuries resulting from defective improvements constructed by Developer. This indemnification shall not apply to claims arising from the negligent acts or omissions of County. Developer shall pay any and all judgments rendered against the County on account of any such suit, action, or claim, together with all reasonable expenses and attorneys' fees incurred by the County in defending such suit, action, or claim. The County shall, within fifteen days after being served with any such claim, suit, or action, notify the Developer of its reliance upon this indemnification and provide Developer with a copy of all documents pertaining to the claim or cause of action. The Developer may provide proper legal representation for the County in said action, in which case the Developer shall not be responsible for any additional legal fees incurred by the County. The County agrees that the Developer may also, on its own behalf, become a party to any such action and the County agrees to execute any documents as may be necessary to allow the Developer to be a party. The Developer is not an agent or employee of the County.

6.2 Insurance. Developer shall require that all contractors engaged in the construction of the Subdivision Improvements maintain worker's compensation insurance. Before proceeding with the construction of improvements, Developer shall provide the County Engineer with written evidence of property damage insurance and bodily injury insurance in an amount of not less than Six Hundred Thousand Dollars each, or such other maximum amount of liability as may be specified in the Colorado Governmental Immunity Act, and protecting the County against any and all claims for damages to persons or property resulting from construction and/or installation of any Subdivision

Improvements pursuant to this Agreement. The policy shall provide that the County shall be notified at least thirty days in advance of any reduction in coverage, termination, or cancellation of the policy. Such notice shall be sent by certified mail to the County Engineer, return receipt requested. Developer agrees that any contractors engaged by or for Developer to construct the Improvements shall maintain public liability coverage in limits not less than those described above.

6.3 No Third Party Beneficiaries. Except as herein provided, no person or entity, other than a party to this Agreement, shall have any right of action under this Agreement including, but not limited to, lenders, lot or home buyers and materialmen, laborers or others providing work, services, or materials for the Subdivision Improvements.

6.4 Assignability. Subject to the provisions of Section 3.1 above, Developer may convey or transfer title or interests in the Subdivision without the consent of the County and a grantee or transferee of Developer shall not be obligated to fulfill any of the obligations of Developer under this Agreement unless such grantee or transferee is the successor or assignee of Developer in its capacity as developer of the Subdivision. Developer may assign its rights and obligations under this Agreement to a party who is the successor or assignee of Developer in its capacity as developer of the Subdivision without the consent of the County; provided, however, that (a) Developer notifies the County of the assignment and of the name and address of the successor developer; and (b) the successor Developer assumes the obligations of Developer under this Agreement. Unless otherwise agreed by County, Developer shall remain liable for performance of the obligations of Developer under this Agreement. The County shall release a letter of credit furnished by Developer if the County accepts new security from any successor Developer of the Subdivision.

6.5 No Automatic Further Approvals. Execution of this Agreement by the County shall not be construed as a representation or warranty that Developer is entitled to any other approvals required from the County, if any, before Developer is entitled to commence development of the Subdivision or to transfer ownership of property in the Subdivision.

6.6 Notices. All notices, consents or other instruments or communications provided for under this Agreement shall be in writing, signed by the party giving the same, and shall be deemed properly given and received (a) when actually delivered and received personally, by messenger service, or by fax or telecopy delivery; (b) on the next business day after deposit for delivery in an overnight courier service such as Federal Express; or (c) three business days after deposit in the United States mail, by registered or certified mail with return receipt requested. All such notices or other instruments shall be transmitted with delivery or postage charges prepaid, addressed to the party at the address below for that party or to such other address as such party may designate by written notice to the other party:

If to Developer:

(Name)

(Address)

If to County:

Department of Public Works
Attn: County Engineer
100 Third Street
Castle Rock, CO 80104

6.7 Further Assurances. At any time, and from time to time, upon request of either party, the other party agrees to make, execute and deliver or cause to be made, executed and delivered to the requesting party any and all further instruments, certificates and documents consistent with the provisions of this Agreement as may, in the reasonable opinion of the requesting party, be necessary or desirable in order to effectuate, complete or perfect the right of the parties under this Agreement.

6.8 Binding Effect. Subject to Section 6.4 above, this Agreement shall run with the land and be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

6.9 Headings for Convenience. All headings and captions used herein are for convenience only and are of no meaning in the interpretation or effect of this Agreement.

6.10 No Implied Waivers. The failure by a party to enforce any provision of this Agreement or the waiver of any specific requirement of this Agreement shall not be construed as a general waiver of this Agreement or any provision herein nor shall such action act to estop the party from subsequently enforcing this Agreement according to its terms.

6.11 Severability. If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid, it shall not affect the validity of this Agreement as a whole or any part thereof other than the part declared to be invalid and there shall be substituted for the affected provision, a valid and enforceable provision as similar as possible to the affected provision.

6.12 No Waiver of Sovereign Immunity. Nothing contained in this Agreement shall constitute a waiver of the sovereign immunity of the County under applicable state law.

6.13 Consent to Jurisdiction and Venue. Personal jurisdiction and venue for any civil action commenced by either party to this Agreement with respect to this Agreement or a letter of credit shall be proper only if such action is commenced in the District Court for Douglas County, Colorado. Developer expressly waives the right to bring such action in or to remove such action to any other court, whether state or federal.

6.14 Force Majeure. Neither party shall be liable for failure to perform hereunder if such failure is the result of Force Majeure and any time limit expressed in this Agreement shall be extended for the period of any delay resulting from any Force Majeure. "Force Majeure" shall mean causes beyond the reasonable control of a party such as, but not limited to, weather conditions, acts of God, strikes, work stoppages, unavailability of or delay in receiving labor or materials, faults by contractors, subcontractors, utility companies or third parties, fire or other casualty, or action of government authorities.

6.15 Entire Agreement. This Agreement, and any agreement or document referred to herein, constitutes the entire understanding between the parties with respect to the subject matter hereof and all other prior understandings or agreements shall be deemed merged in this Agreement.

BOARD OF COUNTY COMMISSIONERS:
COUNTY OF DOUGLAS

BY: _____
DOUGLAS J. DEBORD
County Administrator

DATE: _____

APPROVED AS TO FISCAL CONTENT:

APPROVED AS TO LEGAL FORM:

ANDREW COPLAND
Director of Finance

Assistant County Attorney

DATE: _____

DATE: _____

EXHIBIT A

Engineer Cost Estimate
For
(Subdivision Plan Name and Number)

PHASE NUMBER: (if it applies) _____

DESCRIPTION	UNIT	QUANTITY	UNIT COST	TOTAL COST
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<p>Cost estimate approved by:</p> <hr/> <p>(Developer)</p> <hr/> <p>(Date)</p>

\$	\$
SUBTOTAL	\$
15% WARRANTY	\$
TOTAL	\$

EXHIBIT B

Landscape Cost Estimate
For
(Subdivision Plan Name and Number)

PHASE NUMBER: *(if it applies)* _____

<u>ITEM DESCRIPTION</u>	<u>SIZE</u>	<u>QUANTITY</u>	<u>UNIT COST</u>	<u>TOTAL COST</u>
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(including installation)

	\$	\$
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Cost estimate approved by:

		\$
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(Developer)

		\$
--	--	----

		\$
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(Date)

Key Map
For
(Subdivision Plan Name and Number)
ATTACH TO EXHIBITS A AND B

Be certain that each Exhibit has been signed and dated by the developer

(SHOW PHASE LINES IF IT APPLIES)