

**SITE IMPROVEMENT PLAN
IMPROVEMENTS AGREEMENT FOR
PUBLIC/PRIVATE DEVELOPMENT
SPECIFIC TO**

(Project Name and File Number)

(Staff Engineer)

(Staff Planner)

THIS AGREEMENT is made as of this ____ day of _____, 20____, between _____ qualified to do business in Colorado ("Developer"), whose address is _____, 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 and Site Improvement Plan Manager.

I. GENERAL

1.1 Purpose. The purpose of this Agreement is to provide for the completion of the Site Improvement Plan improvements and the provision of Drainage Easements as hereinafter defined.

1.2 Site Improvement Plan Improvements and Drainage Easements. Site Improvement Plan improvements and Drainage Easements are those improvements and drainage easements which are required by the Douglas County Site Improvement Plan Review Board for the benefit of owners within and adjacent to the Site Improvement Plan area or are required by the County to properly address drainage, traffic, landscaping, and erosion control. The improvements and drainage easements including cost contributions and/or guarantees of payment for this Site Improvement Plan are listed on Exhibit(s) _____, attached hereto and incorporated herein.

1.3 Recitals.

(a) Developer has submitted for approval a Site Improvement Plan.

(b) This Agreement will provide for the completion of the Site Improvement Plan improvements and will serve to protect the County from the cost of completing the Site Improvement Plan improvements.

(c) 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 Site Plan Improvements.

1.4 SIP. The "SIP" shall hereinafter mean the Site Improvement Plan set (as defined in Section 27 of the Douglas County Zoning Resolution) SPO__ - _____ for _____, Douglas County, Colorado, 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.

1.5 CD's. The "CD's" shall mean the construction drawings which must be approved by the County Engineer at the time of and in connection with the SIP; prior to construction of any improvements.

II. CONSTRUCTION OF SIP IMPROVEMENTS

2.1 Agreement to Construct Improvements and Grant Drainage Easements. Subject to and in accordance with the terms and provisions of this Agreement, Developer agrees to cause the SIP improvements, to be constructed and completed, together with the drainage easement(s) granted to the County at Developer's expense, in accordance with the SIP and CD's.

2.2 SIP Approval as Condition. The obligation of the Developer to construct and complete the SIP Improvements and to grant drainage easements is conditioned upon and shall arise only upon approval of the SIP, and the issuance of a building permit for the site, except that an erosion control plan and a surety for erosion control installation is required prior to the time an overlot grading permit is issued.

2.3 Completion Date. SIP improvements shall be fully complete and operational, and drainage easements shall be granted, prior to the issuance, by the County, of a Certificate of Occupancy for any building on the site. In the event of adverse weather, Temporary Certificates of Occupancy may be released in accordance with the Site Improvement Plan section of the Douglas County Zoning Resolution.

2.4 Construction Standards. The SIP improvements shall be constructed in accordance with CD's approved by the County Engineer and, to the extent not otherwise provided in the CD's, in accordance with the County's ordinances, resolutions, and regulations. Prior to the initiation of construction of any SIP improvement listed in Exhibits _____, CD's for such improvements must be submitted to the County Engineer through the usual review process, including the appropriate fees.

2.5 Warranties of Developer. Developer warrants that the SIP improvements will be installed in a good workmanlike manner and in substantial compliance with the CD's and requirements of this Agreement, and shall be substantially free of defects in materials and workmanship. Items constructed within the County right-of-way shall be warranted for a period of two years following the issuance of the first Certificate of Occupancy for any building on the site.

2.6 Title to Subdivision Improvements. SIP improvements constructed in the public right-of-way shall be owned by Douglas County, except that the maintenance of curb and gutter, cross-pans and pavement within the access to the site shall remain with the Developer.

III. SECURITY FOR COMPLETION

3.1 Security for SIP Improvements. Until SIP improvements are completed for the site in substantial compliance with the County approved SIP and CD's, and drainage easements have been granted, the County is under no obligation to issue a Certificate of Occupancy for any building on the site, nor shall the Developer make application for said Certificate of Occupancy.

3.2 Security for Erosion Control. No overlot grading permit will be issued for the area of the SIP until an erosion control plan is approved by the County Engineer and surety in the form of a letter of credit, acceptable to the County, is deposited with the County for an amount equal to 115% of the estimated cost of the SIP improvements.

3.3 Recording Agreement. After approval of the SIP Improvements Agreement 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 issuance of a Certificate of Occupancy for any building on this site, except with respect to warranties described herein, the County shall deliver to Developer (if requested by Developer) a recordable executed document which shall release all property (within the applicable phase, if a multi-phased SIP) within the SIP from any further effect of this Agreement.

IV. ACCEPTANCE OF IMPROVEMENTS

4.1 Approval. Upon the satisfactory completion of the SIP improvements, and granting of drainage easements, Developer shall be entitled to obtain Certificate of Occupancies for any building included on the SIP. Such issuance will indicate acceptance of improvements constructed in the public right-of-way by the County, except that all warranty provisions described herein shall apply.

4.2 Maintenance Prior to End of Warranty Period. Until the end of the warranty period, Developer shall, at Developer's expense, make all needed repairs or replacements to the SIP improvements required on account of defects in materials or workmanship. Developer may assign its obligations for ordinary repairs and maintenance, but the developer shall remain obligated to the County for the proper performance of such repairs and maintenance.

V. DEFAULTS AND REMEDIES

5.1 Default by the Developer. A default by Developer shall exist after notice and hearing and an opportunity to cure as hereinafter provided if (a) Developer fails to cure any noncompliance specified in any written notice of noncompliance within a reasonable time after receipt of the notice of noncompliance; and (b) Developer otherwise breaches or fails to comply with any obligation of Developer under this Agreement. Notice of Default as to SIP improvements must be given prior to expiration of the warranty period for such phase of the SIP improvements as hereinafter provided.

5.2 Notice of 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 (14) days after the receipt by Developer of the Notice of

Default from the County. Within thirty (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 sue the Developer for recovery of any amount necessary to cure the default over and above the amount available under the letter of credit.

VI. MISCELLANEOUS

6.1 Indemnifications. 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 SIP 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 SIP, lot owners in the SIP, 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 defending such suit, action or claim. The County shall, within fifteen (15) 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 SIP 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 (\$600,000.00) 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 SIP improvements pursuant to this Agreement. The policy shall provide that the County shall be notified at least thirty (30) 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 SIP improvements.

6.4 Assignability. Subject to the provisions of Section 3.1 above, Developer may convey or transfer title or interest in the Site 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 SIP. 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 SIP 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.

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 SIP or to transfer ownership of property in the SIP.

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 (3) 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 parties at the address below for that party(s) or to such other address as such party(s) may designate by written notice to the other party(s).

If to Developer:

If to the County:

Department of Public Works **(AND)**
Attn: County Engineer
100 Third Street
Castle Rock, CO 80104
(originals)

Department of Planning & Community Dev.
Attn: Project Planner
100 Third Street
Castle Rock, CO 80104
(copies)

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.

Key Map
For
(Site Improvement 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)