

## SUBDIVISION IMPROVEMENT AGREEMENT

This Subdivision Improvement Agreement made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_, (“Developer”) and the TOWN OF ESTES PARK, a Municipal Corporation, (“the Town”).

### RECITALS

**WHEREAS**, the Developer seeks to subdivide a tract of property within the Town to be known as \_\_\_\_\_ (“the Subdivision”); and

**WHEREAS**, the Town seeks to protect the health, safety and general welfare of the community by requiring the completion of various improvements in the Subdivision and thereby to limit the harmful effects of substandard subdivisions, including incomplete subdivisions which leaves property undeveloped and unproductive;

**WHEREAS**, the purpose of this Agreement is to protect the Town from the cost of completing subdivision improvements itself and is not executed for the benefit of material men, laborers, or others providing work, services or material to the Subdivision or for the benefit of lot or home buyers in the Subdivision.

**NOW THEREFORE**, the Parties agree as follows:

1. **EFFECTIVE DATE:** The effective date of this Agreement will be the date that final subdivision plat approval is granted by the Board of Trustees of the Town.

2. **IMPROVEMENTS:** The Developer will construct and install, at his own expense, those on-site and off-site subdivision improvements listed on Exhibit A attached hereto and incorporated herein by this reference (“the Improvements”). The Developer’s obligation to complete the Improvements will arise upon final plat approval by the Town, will be independent of any obligations of the Town contained herein, and will not be conditioned on the commencement of construction in the development or sale of any lots or improvements within the development.

3. **SECURITY:** To secure the performance of his obligations hereunder, the Developer will deposit with the Town on or prior to the effective date, cash, certified funds, or an irrevocable Letter of Credit in the amount of \$\_\_\_\_\_. The Letter of Credit will be issued by a financial institution approved by the Town (“Bank”), will be payable at sight to the Town, and will bear an expiration date not earlier than \_\_\_\_\_ after the effective date of this Agreement.

The Letter of Credit will be payable to the Town at any time upon presentation of (i) a sight draft drawn on the issuing bank in the amount to which the Town is entitled to draw pursuant to the terms of this Agreement; (ii) an affidavit executed by an authorized Town official stating that the Developer is in default under this Agreement; and (iii) the original of the Letter of Credit.

4. **STANDARDS:** The Developer will construct the Improvements according to the standards and specifications required by the Town's Subdivision Regulations, Water Engineering Standards, and any other Town improvement standards, as applicable.

5. **WARRANTY:** The Developer warrants that the Improvements, each and every one of them, will be free from defects in material and workmanship for a period of two years from the date that the Town accepts the dedication of the last improvement completed by the Developer. The Developer shall file with the Town, at the time of completion and acceptance of said improvements, a separate Warranty Collateral Agreement for this warranty period.

6. **COMPLETION:** The Developer is obligated to complete the Improvements in accordance with the timeframes specified in the Estes Valley Development Code.

7. **COMPLIANCE WITH LAW:** The Developer will comply with all relevant laws, ordinances, and regulations in effect at the time of final subdivision plat approval when fulfilling his obligations under this Agreement. When necessary to protect public health, the Developer will be subject to laws, ordinances and regulations that become effective after final plat approval.

8. **INSPECTIONS AND CERTIFICATION:** The Town will inspect the improvements as they are completed and, if acceptable to the Town, certify such improvements as being in compliance with the standards and specifications as set forth in Paragraph 4 herein. Certification by the Town does not constitute a waiver by the Town of the right to draw funds under the Letter of Credit on account of defects in or failure of any improvement that is detected or which occurs following such certification.

9. **NOTICE OF DEFECT:** The Town will provide notice to the Developer whenever inspection or improvement failure reveals that an improvement does not conform to the standards and specifications or is otherwise defective. The Developer will have 30 days from the issuance of such notice to cure the defect. In the event the defect or failure of the improvement requires emergency repair in order to protect the public health, safety and welfare, the Town may make said emergency repair without the necessity of notice to the Developer. The Developer shall be responsible to the Town for the reasonable cost of said emergency repairs.

10. **DEFECTS AFTER ACCEPTANCE:** The Developer will have no right to cure defects in any improvement found to exist or occurring after the Town accepts the improvement. The Developer shall be responsible to the Town for the reasonable cost of repair or correcting the defect in the accepted improvements.

11. **REDUCTION OF SECURITY:** A request for reduction of security will be accompanied by a letter from the Public Works Department verifying that the improvements have been completed satisfactorily, and the requested reduction is in order. After the acceptance of any improvement, the amount of which the Town is entitled to draw on the Letter of Credit will be reduced by an amount equal to 90 percent of the estimated cost of the improvement. At the request of the Developer, the Town will execute a certificate verifying the acceptance of the improvement and waiving its right to draw on the Letter of Credit to the extent of such amount. A Developer in default under this Agreement will have no right to such a certificate. Upon the acceptance of all of the improvements, the balance that may be drawn under the Letter of Credit will be available to the Town for 90 days after expiration of the Warranty Period.

#### **OTHER PROVISIONS**

12. **EVENTS OF DEFAULT:** The following conditions, occurrences or actions will constitute a default by the Developer.

- a. Developer's failure to complete construction of the Improvements within one year of final subdivision plat approval;
- b. Developer's failure to cure the defective construction of any improvement within the applicable cure period;
- c. Developer's insolvency, the appointment of a receiver for the Developer, the filing of a voluntary or involuntary petition in bankruptcy respecting the Developer, or Developer's abandonment of the development.

13. **MEASURE OF DAMAGES:** The measure of damages for breach of this agreement will be the reasonable cost of completing or repairing the improvements. For improvements upon which construction has not begun, the estimated cost of the improvements as shown on Exhibit "A" will be prima facie evidence of the minimum cost of completion; however, neither that amount or the amount of the Letter of Credit establishes the maximum amount of the developer's liability. However, the parties agree that any sums received by the Town from drawing on a Letter of Credit for the reasonable cost of completing or repairing the improvements, are liquidated damages for breach of this agreement. The parties further agree that in the event the reasonable cost of completing or repairing the improvements is greater than the amount of the liquidated damages, Developer shall be responsible for said deficiency as

provided in Paragraph 14 of this agreement. Said deficiency shall also be damages for breach of this agreement by Developer.

14. **TOWN'S RIGHT UPON DEFAULT:** when any event of default occurs, the Town may draw on the Letter of Credit to the extent of the face amount of the credit, less 90 percent of the estimated cost (as shown on Exhibit A) of all improvements theretofore accepted by the Town. The Town will have the right to complete improvements itself or contract with a third party for completion, and the Developer hereby grants to the Town, its successors, assigns, agents, contractors, and employees, a nonexclusive right and easement to enter the property for the purposes of constructing, maintaining, and repairing such improvements. Alternatively, the Town may assign the proceeds of the Letter of Credit to a subsequent developer (or a lender) who has acquired the Subdivision by purchase, foreclosure or otherwise who will then have the same rights of completion as the Town if, and only if, the subsequent developer (or lender) agrees in writing to complete the unfinished improvements. In addition, the Town also may suspend final plat approval during which time the Developer will have no right to sell, transfer, or otherwise convey lots or homes within the Subdivision without the express written approval of the Town, or until the improvements are completed and accepted by the town. The Developer also agrees to pay any deficiency remaining after the application of the proceeds of the Letter of Credit to the Town in the event that the amount of the Letter of Credit is insufficient to complete the improvements. Also, the undersigned agree that they shall pay to the Town all reasonable attorney's fees, expert's fees, and court costs incurred by the Town in enforcing the terms of the Letter of Credit or this improvement agreement. These remedies are cumulative in nature.

15. **NO WAIVER:** No waiver of any provision of this Agreement will be deemed or constitute a waiver of any other provision, nor will it be deemed or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both the Town and Developer; nor will the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The Town's failure to exercise any right under this Agreement will not constitute the approval of any wrongful act by the Developer or the acceptance of any improvement.

16. **AMENDMENT OR MODIFICATION:** The parties to the Agreement may amend or modify this Agreement only by written instrument executed by the Town and by the Developer.

17. **SCOPE:** This Agreement constitutes the entire agreement between the parties and no statement(s), promise(s), or inducement(s) that is/are not contained in this Agreement will be binding on the parties.

18. **SEVERABILITY:** If any part, term, or provision of this Agreement is held by the courts to be illegal or otherwise unenforceable, such illegality or unenforceability will not affect the validity of any other part, term, or provision and the rights of the parties will be construed as if the part, term, or provision was never part of the Agreement.

19. **BENEFITS:** The benefits of this Agreement to the Developer are personal and may not be assigned without the express written approval of the Town. Such approval may not be unreasonably withheld, but any unapproved assignment is void. Notwithstanding the foregoing, the burdens of this Agreement are personal obligations of the Developer and also will be binding on the heirs, personal representatives, successors, and assigns of the Developer. The Town may assign its rights under this Agreement, including the accompanying Letter of Credit, to any third party without notice.

20. **NOTICE:** Any notice required or permitted by this Agreement will be deemed effective when personally delivered in writing or three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified, and return receipt requested, and addressed as follows:

Developer:

Town:           Town of Estes Park  
                  P.O. Box 1200  
                  Estes Park, CO 80517

21. **RECORDATION:** Either Developer or Town may record a copy of this Agreement in the Clerk and Recorder's Office of Larimer County, Colorado.

22. **IMMUNITY:** Nothing contained in this Agreement constitutes a waiver of the Town's sovereign and/or governmental immunity under any applicable state law including, but not limited to, Colorado Governmental Immunity Act

23. **PERSONAL JURISDICTION AND VENUE:** Personal jurisdiction and venue for any civil action commenced by either party to this Agreement, whether arising out of or relating

to the Agreement or Letter of Credit, will be deemed to be proper only if such action is commenced in District Court for Larimer County. The Developer expressly waives his right to bring such action in or to remove such action to any other court whether state or federal.

24. **SUCCESSORS AND ASSIGNS:** the terms of this agreement shall be binding upon the parties hereto, their heirs, personal representatives, successors and assigns.

**IN WITNESS WHEREOF,** the parties hereto have executed this Agreement this day and year first above written.

TOWN OF ESTES PARK

BY: \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Town Clerk

DEVELOPER

BY: \_\_\_\_\_

ATTEST:

\_\_\_\_\_