

## DEVELOPMENT IMPROVEMENTS AGREEMENT

THIS DEVELOPMENT IMPROVEMENTS AGREEMENT ("Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the TOWN OF WINTER PARK, a Colorado municipal corporation having an address of P.O. Box 3327, 50 Vasquez Road, Winter Park, Colorado 80482 (the "Town"), and \_\_\_\_\_, a \_\_\_\_\_, having an address of \_\_\_\_\_ ("Developer") (collectively the "Parties").

**WHEREAS**, Developer is the owner of certain real property located in the Town, more particularly described in **Exhibit A** attached hereto and incorporated herein by reference (the "Property");

**WHEREAS**, the Town has approved Developer's development plan for the Property, which is attached hereto as **Exhibit B**, and incorporated herein by reference; and

**WHEREAS**, the Town's approval of the Developer's proposed development on the Property is contingent upon the express condition that all duties created by this Agreement are faithfully performed by Developer.

**NOW, THEREFORE**, for and in consideration of the mutual promises and covenants contained herein, the sufficiency of which is mutually acknowledged, the Parties hereto agree as follows:

1. Purpose. The purpose of this Agreement is to set forth the terms, conditions and fees to be paid by Developer in connection with the improvements for development of the Property. All conditions in this Agreement are in addition to any requirements of the Winter Park Town Code, state statutes and other Town ordinances, and are not intended to supersede any requirements contained therein.

2. Public Improvements. Developer agrees to complete or pay for, as described herein, the public improvements set forth in **Exhibit C**, attached hereto and incorporated herein by this reference ("Public Improvements") subject to this Agreement and in accordance with the approved development plan.

3. Construction.

a. All Public Improvements shall be installed and completed at the expense of Developer and dedicated or conveyed to the Town upon the Town's acceptance thereof or dedicated or conveyed and accepted by an agency, association, or district as required by law or as acceptable to the Town. The estimated cost of the Public Improvements is set forth in **Exhibit C**.

b. The Town may make reasonable engineering observations at Developer's expense. Observation, acquiescence in or approval by any inspector shall not constitute the approval by the Town of any portion of such Public Improvements.

c. Developer shall provide all necessary engineering designs, surveys, field surveys and incidental services related to the construction of the Public Improvements at its

sole cost and expense, including reproducible "as-built" drawings certified accurate by a professional engineer registered in the State of Colorado.

4. Completion and Preliminary Acceptance. Except as otherwise provided above, the obligations of Developer in Section 3 hereof shall be performed within \_\_\_\_\_ years. A certificate of occupancy shall not be issued until such obligations have been satisfied unless expressly agreed to otherwise. Proper application to the Town for preliminary acceptance of Public Improvements shall be made by Developer in advance. Upon completion of construction of the Public Improvements, the Town or a Town-accepted agency, association, or district shall inspect the Public Improvements and certify with specificity their conformity or lack thereof to the Town's specifications. Developer shall make all corrections necessary to bring the Public Improvements into conformity with the Town's specifications. Upon determination by the Town that the Public Improvements conform with all of the Town's specifications, the Town shall preliminarily accept the Public Improvements and the two-year warranty period set forth in Section 5, below, shall commence.

5. Warranty. Upon preliminary acceptance of the Public Improvements by the Town, Developer shall warrant any and all Public Improvements for a period of two (2) years from the date the Town grants preliminary acceptance of the Public Improvements. Developer shall be responsible for scheduling the necessary inspections for preliminary acceptance. Specifically, but not by way of limitation, Developer shall warrant that all Public Improvements are free of defects in materials or workmanship for a period of two (2) years, as stated above. Developer shall be responsible, at Developer's cost to maintain all Public Improvements until such improvements are finally accepted and conveyed by the Town. The Town or a Town-accepted agency, association, or district will accept for maintenance all Public Improvements after the warranty period has expired, provided all warranty work has been completed. The Town shall accept for snow removal purposes only all dedicated public streets after preliminary acceptance has been granted in writing by the Town.

6. Final Acceptance of Public Improvements. Upon completion of the two (2) year warranty period set forth in Section 5, above, the Town shall inspect the Public Improvements and certify with specificity their conformity or lack thereof to the Town's specifications. Developer shall make all corrections necessary to bring the Public Improvements into conformity with the Town's specifications. Upon determination by the Town that the Public Improvements conform with all of the Town's specifications, the Town shall accept the Public Improvements. Developer shall convey the Public Improvements to the Town by bill of sale or warranty deed as determined acceptable by the Town in its sole judgment. Upon conveyance of the Public Improvements Developer shall warrant that the title conveyed is marketable and its transfer rightful.

7. Ownership. All Public Improvements shall be conveyed to the Town upon final acceptance.

8. Performance Guarantee.

a. To secure the construction and installation of the Public Improvements, Developer shall furnish the Town, at Developer's expense and prior to commencement of construction, cash or an irrevocable letter (or letters) of credit in which the Town is designated as beneficiary in an amount equal to one hundred and twenty percent (120%) of the total Estimated Costs of development (the "Performance Guarantee").

b. The Performance Guarantee shall be in a form approved by the Town in its sole discretion.

c. The purpose of the Estimated Costs is solely to determine the amount of security. No representations are made as to the accuracy of these estimates, and Developer agrees to pay all costs of the Public Improvements for which it is legally obligated, regardless of the Estimated Costs.

d. The Estimated Costs may increase in the future. Accordingly, the Town reserves the right to review and adjust the Estimated Costs at the time a building permit is issued and annually if the Public Improvements have not been completed. Adjustments shall be made according to changes in the Construction Costs Index as published by the Engineering News Record. If the Town adjusts the Estimated Costs, the Town shall give written notice to Developer. Developer shall, within thirty (30) days after receipt of said written notice, provide the Town with a new or amended Performance Guarantee in the amount of the adjusted Estimated Costs. If Developer fails to provide a new or amended Performance Guarantee, the Town may exercise the remedies provided for in Section 12 hereof; provided, however, that prior to increasing the amount of the Performance Guarantee, the Town shall give credit to Developer for all Public Improvements which have actually been completed and accepted, so that the amount of the Performance Guarantee relates to the cost of required Public Improvements not yet constructed.

e. If the Public Improvements are not constructed or completed within the period of time specified by Section 4 hereof, the Town may draw on the Performance Guarantee to complete the Public Improvements. If the Performance Guarantee is to expire within fourteen (14) calendar days and Developer has not yet provided a satisfactory replacement, the Town may draw on the Performance Guarantee and either hold such funds as security for performance of this Agreement or spend such funds to finish the Public Improvements or correct problems with the Public Improvements as the Town deems appropriate.

f. Upon preliminary acceptance, the Performance Guarantee shall be reduced to the amount of twenty percent (20%) of the total actual cost of construction and installation of such phase of Public Improvements. The reduced Performance Guarantee shall be held by the Town until expiration of the two (2) year warranty period.

9. Land Dedication; Fee in Lieu. To the extent it does not conflict with this Agreement, land dedications and fees-in-lieu shall be provided as stated in Winter Park Town Code. In the case of a conflict between the Winter Park Town Code and this Agreement, the terms of this Agreement shall apply.

10. Nuisance Conditions. Developer shall prevent the existence of any nuisances by way of its construction activities, as nuisances are defined by the Winter Park Town Code. If the Town determines that a nuisance exists, Developer shall be subject to the provisions of the Winter Park Town Code regarding the abatement of nuisances and the cost assessed therefor. If the nuisance is not abated or an abatement plan is not submitted to the satisfaction of the Town, the Town may, upon thirty (30) days' notice under this Agreement, draw upon the Performance Guarantee to pay the cost of abating the nuisance, including any expenses and penalties incurred under the Winter Park

Town Code. The Town may exercise this right in addition to, or in lieu of, the withholding of permits or certificates of occupancy. The decision to draw on the Performance Guarantee shall be within the sole discretion of the Town.

11. Indemnification.

a. Developer hereby agrees to indemnify and hold harmless the Town, its officers, employees, agents or servants from any and all suits, actions and claims of every nature and description caused by, arising from or on account of any act or omission of Developer, or of any other person or entity for whose act or omission Developer is liable, with respect to construction of the Public Improvements; and Developer shall pay any and all judgments rendered against the Town as the result of any suit, action or claim within the scope of the indemnification provision contained in the prior clause, together with all reasonable expenses and attorney fees incurred by the Town in defending any such suit, action or claim.

b. Developer shall pay all property taxes on the Property dedicated to the Town accrued as of the date of dedication, and shall indemnify and hold harmless the Town for any property tax liability.

12. Breach.

a. If Developer breaches this Agreement, the Town may take such action as permitted or authorized by law, this Agreement or the ordinances of the Town, as the Town deems necessary to protect the public health, safety and welfare. The remedies include, but are not limited to:

i. The refusal to issue any building permit or certificate of occupancy;

ii. The revocation of any building permit previously issued under which construction directly related to such building permit has not commenced, except a building permit previously issued to a third party;

iii. A demand that the security given for the completion of the public improvements be paid or honored; and

iv. Any other remedy available at law or in equity.

b. Unless necessary to protect the immediate health, safety and welfare of the Town, or to protect the interest of the Town with regard to security given for the completion of the public improvements, the Town shall provide Developer thirty (30) days' written notice of its intent to take any action under this Section, during which Developer may cure the breach and prevent further action by the Town.

c. The rights and remedies of the Town under this Agreement are in addition to any other rights and remedies provided by law. The expiration of this Agreement shall in no way limit the Town's legal or equitable remedies, or the period in which such remedies may be asserted, for Public Improvement work negligently or defectively performed.

d. Should this Agreement become the subject of litigation to resolve a claim of breach by Developer and a court of competent jurisdiction determines that Developer was in breach of this Agreement, Developer shall pay the attorney fees, expenses and court costs of the Town.

13. Waiver. In executing this Agreement, Developer waives all objections it may have concerning defects, if any, in the formalities whereby it is executed, or concerning the power of the Town to impose conditions on Developer as set forth herein, and concerning the procedure, substance and form of the resolution adopting this Agreement. Developer expressly agrees that the Town cannot be legally bound by the representations of any of its officers or agents or their designees, except in accordance with the Winter Park Town Code and the laws of the State of Colorado.

14. Modification. This Agreement shall not be modified, except by subsequent written agreement of the parties hereto.

15. Integration; Annexation Agreement. This Agreement and any attached exhibits constitute the entire agreement between Developer and the Town.

16. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

17. Severability. If any provision of this Agreement is determined to be void by any court of competent jurisdiction, such determination shall not affect any other provision hereof, and all of the other provisions shall remain in full force and effect. It is the intention of the parties hereto that if any provision of this Agreement is capable of two constructions, one of which would render the provision void, and the other which would render the provision valid, then the provision shall have the meaning which renders it valid.

18. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Grand County, Colorado.

19. Assignment. There shall be no transfer or assignment of any of the rights or obligations of Developer under this Agreement without the prior written approval of the Town, which may be withheld in the Town's sole discretion; except that this Agreement and Developer's rights hereunder may be assigned by Developer in whole, but not in part, to a company wholly owned by Developer. In the event of an assignment as permitted herein, the assignee shall assume full responsibility for fulfilling the remaining obligations of Developer under this Agreement, and shall execute an acknowledgement of this responsibility in the Town's favor. Failure of the assignee to execute such an acknowledgement shall result in Developer being jointly and severally liable with the assignee for the remaining obligations under this Agreement.

20. Recordation. This Agreement shall be recorded in the real estate records of Grand County and shall be a covenant running with the Property.

21. Title and Authority. Developer expressly warrants and represents to the Town that, together with the undersigned individuals, that the undersigned individuals have full power and

authority to enter into this Agreement. Developer and the undersigned individuals understand that the Town is relying on such representations and warranties in entering into this Agreement.

22. Third Parties. There are no intended third-party beneficiaries to this Agreement.

WHEREFORE, the parties hereto have executed this Agreement on the day and year first above written.

**TOWN OF WINTER PARK**

\_\_\_\_\_  
Nick Kutrumbos, Mayor

ATTEST:

\_\_\_\_\_  
Danielle Jardee, Town Clerk

**DEVELOPER**

\_\_\_\_\_  
Print Name \_\_\_\_\_  
Title \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
  ) )  
COUNTY OF \_\_\_\_\_ )

SS.

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public; Commission No. \_\_\_\_\_

My Commission Expires:

\_\_\_\_\_  
(SEAL)

**EXHIBIT A**  
**LEGAL DESCRIPTION**

**EXHIBIT B**  
**DEVELOPMENT PLAN**



**EXHIBIT C  
PUBLIC IMPROVEMENTS**

	IMPROVEMENT	QTY	UNIT	UNIT COST	TOTAL COST	COMPLETION DATE
Roads	Subgrade Construction (clearing, cut/fill, grading)					
	Surfacing (sub-base, base) _____“ thick					
	Paving (pavement, shoulder gravel) _____“ thick					
	Curb/Gutter					
	Sidewalks					
	Street Name Signs					
	Street Lights/Signs/Traffic Control Devices					
	Snow Storage					
Parking	Subgrade Construction _____“ thick					
	Surfacing _____“ thick					
	Paving _____“ thick					
	Curb/Gutter					
	Sidewalks					
	Lighting					
	Striping					
	Snow Storage					
Pathways	Grading/Drainage					
	Surfacing _____“ thick					
	Signs					
Drainage	Culverts					
	Storm Drains					
	Detention Facilities					
	Erosion Control					
Landscape	Re-vegetation					
	<b>Landscape Material (itemize on sheet below)</b>					
Utilities	Water Mains					
	Hydrants					
	Taps					
	Manholes					
	Sewer Mains					
	Electric					
	Gas					
	Other Utilities					
Misc.	Fire Mitigation					
	Fuels Modification					
	Defensible Space					
	Wetlands Mitigation					
Clean-Up	Site Clean-Up					
	<b>SUBTOTAL OF COSTS</b>					
	<b>TOTAL (Subtotal x 1.20)</b>					

**Landscape Improvements**

IMPROVEMENT	SIZE Height & Caliper	QTY	UNIT	UNIT COST	TOTAL COST	COMPLETION DATE
<b>SUBTOTAL (Carry over to previous page.)</b>						