



Planning Division
SUBDIVISION IMPROVEMENTS AGREEMENT

This agreement (the "Agreement") is entered into this _____ day of _____, 20____, by and between the Town of Frisco, Colorado, a municipal corporation (the "Town"), and _____ (the "Owner") for property located at _____.

RECITALS

WHEREAS, the Town and the Owner desire to provide for the orderly development of the property legally described above (the "subject property"); and

WHEREAS, in connection with said development, the Owner is obligated to provide the construction of certain public improvements (the "improvements") pursuant to Town Code § 157-27; and

WHEREAS, pursuant to Town Code § 157-29, no final plat shall be approved by the Town Council or Planning Commission until a subdivider has submitted, and the Community Development Department has approved, a subdivision improvements agreement and financial guarantee for all required improvements not completed at the time of final plat submittal; and

WHEREAS, pursuant to Town Code § 157-29, the financial guarantee shall be in the amount of one hundred fifty percent (150%) of the estimated cost of the required improvements, in a form suitable and sufficient in the judgement of the Town, and such as will ensure completion of the improvements according to the design and time specifications of said improvements; and

WHEREAS, it is the intent of this Agreement to recognize that the duration of the construction season within the Town is limited, and to accommodate the development of land and the construction of improvements thereon by providing for a certain period in which such improvements may be completed.

AGREEMENTS

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual covenants and promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows:

1. The Owner shall install and construct, at the Owner's sole cost and expense, the improvements listed herein to be constructed in connection with the subject property project; said improvements shall be constructed in accordance with plans approved by the Town pursuant to all applicable state and federal laws, Town ordinances, zoning codes, subdivision regulations, specifications, rules and regulations in effect at the time of such plan approval.

2. The Owner hereby agrees and states that the following estimates of the costs of improvements include the cost of design, engineering, construction and Town inspection of the improvements. The Owner further represents that Owner's estimates of such costs represent Owner's good-faith efforts to accurately predict the actual total costs of such improvements. The Owner hereby agrees that the construction of the improvements will be completed on or prior to _____ [date] (the "Construction Completion Date"), which date shall not exceed one (1) year from the date of execution of this Agreement. The Owner

estimates, based on the formal cost estimate(s) attached hereto, that the total cost of the construction of the improvements will be as follows:

IMPROVEMENT	ESTIMATED DESIGN, ENGINEERING AND CONSTRUCTION COSTS	CONSTRUCTION COMPLETION DATE
A.	\$	
B.	\$	
C.	\$	
D.	\$	
E.	\$	
ESTIMATED SUPERVISION/GENERAL CONTRACTOR COST (for all above-listed improvements)	\$ =====	
TOTAL ESTIMATED COSTS	\$	
PLUS 50% OF TOTAL ESTIMATED COSTS	+ \$	
TOTAL AMOUNT OF SECURITY TO BE POSTED	=====	

3. In order to secure the performance and completion of the improvements to be accomplished by the Owner, the Owner shall, at Owner's own expense, furnish the Town, at the time of final plat approval for the development project, or issuance of a certificate of occupancy, whichever comes first, a good and sufficient performance bond, letter of credit or escrow agreement in the amount stated as the "TOTAL AMOUNT OF SECURITY TO BE POSTED" in paragraph 2 above. Said amount shall be equal to 150 percent of the total cost of the improvements required in connection with the development project. The performance bond, letter of credit or escrow agreement may, where required by the Town, be subject to review and approval as to form by the Town Attorney, and shall be such as to insure the satisfactory completion of the improvements to be installed and constructed by the Owner pursuant to this Agreement. The bond, letter of credit or escrow agreement shall be kept in full force and effect until the Owner completes the construction of the improvements and the Town has accepted the improvements in writing. With respect to paving improvements, the Town may, at its discretion, withhold written acceptance of the improvements for a period of six months from the construction completion date in order to assure the quality of the pavement. The Town's right to demand payment under the bond, letter of credit or escrow agreement shall not be limited by the demand fact that the improvement for which the payment is demanded cannot, at the time of the demand or payment, be practically constructed or completed due to adverse weather conditions or any other cause. The Owner agrees that, to the extent that the Town is unwilling to accept any improvement as constructed and has demanded that repair or replacement of said improvement, Owner shall be solely responsible to such repair or replacement and the Town shall not be required to make any demand of Owner's agents, employees, contractors, or subcontractors with respect to such repairs or replacements.

4. If agreed to in a writing signed by the Town and the Owner, the Construction Completion date may be extended one (1) time. In agreeing to any extension, the Town may consider, among other things, whether the extension would result in adverse impacts to adjacent properties or to such other properties as may

be affected by the improvement. Any written impacts shall include but not be limited to any alteration of historic drainage flows. Any written extension of the Construction Completion Date shall not exceed the period of nine (9) months from the original stated Construction Completion Date. It is expressly understood and agreed by the Owner that failure to satisfactorily complete an improvement by the Construction Completion Date as originally stated, or as may be extended pursuant to this paragraph, shall entitle the Town to demand immediate payment from the bond, letter of credit or escrow agreement in an amount sufficient to construct or complete the subject improvement.

5. The Town may refuse to issue certificates of occupancy and building permits for the structures to be placed upon the subject property unless (1) construction of the improvement(s) for the development, is proceeding in good faith in accordance with the Construction Completion Date(s) for the improvement(s), and (2) all terms of this Agreement have been otherwise faithfully complied with by the Owner.

6. This Agreement, when executed and when effective, shall inure to the benefit of and be binding upon the successors in interest and/or the legal representatives of the respective parties hereto, including all purchasers, lessors, assigns and subsequent owners of any of the property described herein.

7. The Owner and Town agree that the Town shall be entitled to payment by the Owner of reasonable attorneys' fees incurred in the enforcement of this Agreement whether that enforcement is in the form of a legal action or otherwise. In addition to any of the remedies the parties may have upon the failure of the other party to comply with any of the terms contained herein, the aggrieved party shall have the right to request a court of proper jurisdiction to enter a mandatory injunction against the other party requiring compliance with any or all terms contained within this Agreement. The Owner and the Town agree that this Agreement is subject to specific performance. The Owner and the Town further agree that the Town shall have as a cumulative remedy for noncompliance with any term of this Agreement the right to refuse to issue any building permit or certificate of occupancy for structures or uses of the subject property.

8. This Agreement supercedes any and all prior arrangements, whether written or oral, regarding, in any manner, the construction of improvements on the subject.

9. The Owner shall and does hereby indemnify and hold the Town harmless from any liability the Town may have on account of any change in the direction, nature, quality or quantity of historical drainage flow resulting from the development of the subject property or from the construction of the improvements. In addition, the Owner hereby agrees to reimburse the Town for any and all costs including, but not limited to, reasonable attorney's fees which the Town incurs in acquiring or condemning any property, or incurs due to a judicial holding that the Town has acquired or condemned any property, for drainage as a result of the development of the subject property or the construction of the improvements.

10. It is the intent of the parties that the terms of this Agreement are severable, and should a term or provision hereof be declared invalid or inoperable by a court of competent jurisdiction, such invalidity or inoperability shall not effect the validity of any other term or provision hereof.

APPLICANT, _____
[a corporation, limited liability company, partnership, etc.]

By: _____
[Authorized Agent, Manger, Partner, etc.]

STATE OF COLORADO)
COUNTY OF SUMMIT) ss.

Subscribed before me this _____ day of _____, 20__, by
_____ as [authorized agent, Manager, Partner, etc.].

Notary Public

My commission expires:_____.

TOWN OF FRISCO, COLORADO
a Colorado municipal corporation

By: _____
Town Manager

ATTEST:

Town Clerk

STATE OF COLORADO)
COUNTY OF SUMMIT) ss.

Subscribed before me this _____ day of _____, 20__, by
_____ as the Town Manager of the Town of Frisco, Colorado, a Colorado
municipal corporation.

Notary Public

My commission expires:_____.