



Planning Division
ZONING IMPROVEMENTS AGREEMENT

This Zoning Improvements Agreement (the "Agreement") is entered into this _____ day of _____, 20__, by and between the Town of Frisco, Colorado, a municipal corporation (the "Town"), and _____, a/an _____ (the "Owner"), collectively hereinafter referred to as the "Parties."

RECITALS

WHEREAS, the Owner is the owner of that real property within the Town of Frisco described in **Exhibit A**, attached hereto and incorporated herein by this reference (the "Subject Property"); and

WHEREAS, the Town and the Owner desire to provide for the orderly development of the Subject Property ; and

WHEREAS, in connection with said development, the Owner is obligated to provide for the construction of certain public and/or private improvements (the "Improvements"); and

WHEREAS, pursuant to Town Code Section 180-20.D, no Certificate of Occupancy shall be issued by the Town until the Owner has submitted, and the Community Development Department has approved, a development improvements agreement and financial guarantee for all required Improvements not completed at the time of applying for a Certificate of Occupancy; and

WHEREAS, pursuant to Town Code Section 180-20.D., the Community Development Department has approved financial guarantees in the form of letters of credit or the deposit of certified funds in an amount equal to one hundred fifty percent (150%) of the total estimated costs of the Improvements, according to the design and time specifications of such 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 must 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 (the "Improvements") within and about the Subject Property; the 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 the 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 the Improvements. The Owner hereby agrees that the construction of the improvements will be completed on or prior to the date specified below for each type or category of Improvement (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 an engineer’s cost estimate(s) attached hereto as **Exhibit B**, that the total cost of the construction of the Improvements will be as follows:

CONSTRUCTION COMPLETION IMPROVEMENT	ESTIMATED DESIGN, ENGINEERING AND CONSTRUCTION COSTS	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, the Owner has furnished to the Town, prior to the time of final plat approval or issuance of a certificate of occupancy for the Subject Property, whichever comes first, a letter of credit or the deposit of certified funds, a copy or other verification of which is attached hereto as **Exhibit C**, in an amount equal to one hundred fifty percent (150%) of the total estimated cost of the Improvements. The letter of credit 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. The letter of credit shall be kept in full force and effect, or the deposited certified funds held, 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 sole and

absolute discretion, withhold written acceptance of the Improvements for a period of six (6) months from the construction completion date in order to assure the quality of the pavement. The Town's right to demand payment under the letter of credit or from the deposited certified funds shall not be limited by the fact that the Improvement for which payment is demanded cannot, at the time of such demand, 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 the repair or replacement of said improvement, Owner shall be solely responsible for 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 only. In considering 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. Adverse impacts may include, but shall not be limited to, any alteration of historic drainage flows. Any written extension of the Construction Completion Date shall not exceed a period of nine (9) months from the original Construction Completion Date. It is expressly understood and agreed by the Owner that failure to satisfactorily complete an improvement by its specified Construction Completion Date, or by such extended date established pursuant to this paragraph, entitles the Town to demand immediate payment from the letter of credit or certified funds 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 structures to be placed upon the Subject Property unless both of the following are true: (1) construction of the Improvement(s) is proceeding in accordance with the relevant Construction Completion Date(s) for the improvement(s), and (2) all other terms of this Agreement have been otherwise faithfully complied with by the Owner.

6. This Agreement shall be recorded with the Clerk and Recorder for Summit County, Colorado; shall run with the Subject Property; shall be binding upon and shall inure to the benefit of the Parties hereto and upon and to their respective successors, grantees and assigns; and shall serve as a covenant running with and burdening the Subject Property as an easement in gross for the benefit of the Town of Frisco. Owner shall remain jointly and severally liable to perform the obligations of this Agreement along with each of Owner's successors, grantees and assigns in and to the Subject Property, or any part thereof. Any reference herein to Owner shall be deemed to include any purchaser, successor-in-interest or assign of Owner as to all or any part of the Subject Property. Owner shall notify the Town in writing within fifteen (15) days of any such sale, transfer, or assignment, and provide the name and address of the transferee, assignee or buyer. Except as set forth in this Section 6, this Agreement does not confer any right or benefit to any third party.

7. In addition to any other remedy allowed by law, in the event of default by the Owner with respect to any provision of this Agreement, including insufficiency of security to complete the Improvements, the Town may refuse to further process any site development application for any property owned, in whole or in part, by Owner, or any other type of application for permits, certificates of occupancy or any type of approval requested from the Town in which Owner has an interest, until such default is cured by Owner.

8. Owner hereby expressly binds itself to indemnify and save harmless the Town and its officers and employees, against all suits or actions of every kind and nature brought, or which may be brought against them or any of them, or loss, cost or expense incurred by them or any of them for, or on account of, any injury or damage received or sustained by any persons, firms or corporations during the construction of the Improvements and until the Town accepts such improvements, as a result of (i) Owner's breach of any of its obligations hereunder, or (ii) the negligent or willful misconduct of Owner or any of its employees, agents or contractors. Additionally, Owner indemnifies and holds 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. The indemnity contained in this Section benefits the Town only and confers no benefit or right upon any third party.

9. 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.

10. This Agreement supersedes any and all prior agreements, whether written or oral, regarding, in any manner, the construction of the Improvements.

11. 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.

OWNER

By: _____
Print name: _____
Title: _____

Subscribed before me this _____ day of _____, 20_____, by
_____ as _____ of
_____ (title)

(corporate/company name)

Notary Public

My commission
expires:_____.

TOWN OF FRISCO

By: _____
Town Manager

ATTEST:

Town Clerk

EXHIBIT A
LEGAL DESCRIPTION

EXHIBIT B

CONTRACTOR/ENGINEER'S COST ESTIMATES

EXHIBIT C

**COPY OF LETTER OF CREDIT OR
VERIFICATION OF DEPOSITED CERTIFIED FUNDS**