

## TOWN OF PARACHUTE, COLORADO

### DEVELOPMENT IMPROVEMENTS AGREEMENT

Parties; Purpose. This Development Agreement is entered into as of the \_\_\_ day of \_\_\_\_\_, 20\_\_ by and between the Town of Parachute, Colorado (“Town”) and \_\_\_\_\_ (“Developer”), as developer of the \_\_\_\_\_ project (the “Project”), located generally at \_\_\_\_\_ [location or address] \_\_\_\_\_, within the Town of Parachute, Garfield County, Colorado. The legal description of the Project property is attached hereto as **Exhibit A** and fully incorporated by this reference. The purpose of this Agreement is to establish the obligations of the Developer to construct and warrant the quality of certain public subdivision or development improvements (the “Improvements”) which are required as a condition of approval of the Project by the Town.

- A. Construction of Improvements. The Developer, at its sole expense, shall design, purchase, and install all elements of all public and other necessary Improvements, whether such Improvements are located within the subdivision or development property (on-site) or outside of the subdivision or development property (off-site). The Improvements shall be designed and built in conformance with the Town of Parachute Manual of Public Works Improvements in effect as of the date of this Agreement, unless otherwise provided in the approved plans and specifications. All Improvements shall be designed and approved by a registered professional engineer retained by the Developer. All drawings and plans for the Improvements shall be stamped by the Town Engineer. Prior to the commencement of construction of the Improvements, the Town Engineer shall review and approve the drawings and plans.
- B. Schedule of Improvements. The Improvements to be constructed by the Developer are shown on the Schedule of Improvements, attached hereto as **Exhibit B** and fully incorporated by this reference showing in detail the public and other required subdivision or development improvements, including shallow utilities, landscaping, revegetation and other subdivision or development improvements that the Developer shall be responsible for constructing, and the costs therefor. No work shall be commenced by the Developer until such time as the Schedule of Improvements has been approved by the Town and the performance guarantee provided pursuant to this Agreement. The Schedule of Improvements shall at a minimum include the following improvements and associated construction costs necessary to provide the Improvements for the development of the subdivision, establishment of a special use when a development improvements agreement is required by the Board of Trustees, or construction of a structure subject to a building permit when a development improvements agreement is required by the Board of Trustees.
1. Water Distribution System. Water distribution facilities including water mains, lateral service lines to the lot lines, valves, fire hydrants, and all other appurtenant facilities necessary to provide treated municipal water service.
  2. Wastewater Collection System. Wastewater collection system to fully service the subdivision, including collection lines, service lines to the lot lines, manholes, and all other appurtenant facilities necessary to provide municipal wastewater service.
  3. Street Improvements. Street improvements necessary to fully service the subdivision, including grading, road-base and sub-base, asphalt, curbs and gutters, handicap ramps, drainage facilities, and all other appurtenant facilities necessary to provide street access.

4. Storm drainage facilities and appurtenances.
  5. Utilities, including telephone, cable television, electrical service, and natural gas service.
  6. Street lighting.
  7. Soil stabilization and revegetation measures.
  8. Visual screening facilities.
  9. Non potable water irrigation system.
  10. Landscaping.
  11. Any other subdivision or development improvements required by the Board of Trustees as a condition of approval of the Project.
  12. Terms and stipulations relative to the transfer of water rights from the Developer to the Town pursuant to the Town of Parachute Municipal Code.
- C. Cost Estimate. The Developer shall provide an estimate of the total cost of all Improvements. The purpose of the cost estimate is solely to determine the amount of security required and may be revised from time to time to reflect the actual costs. No representations are made as to the accuracy of these estimates, and the Developer shall agree to pay the actual cost of all the Improvements. Neither the estimated costs nor the amount of the security establishes the maximum amount of the Developer's liability.
- D. Construction Schedule. The time schedule for the construction and completion of the Improvements is attached hereto as **Exhibit C** and fully incorporated by this reference. Said Schedule shall provide for a commencement date as well as a date when the Improvements will be substantially completed. Under the Schedule, all Improvements shall be completed no later than one (1) year following the start of development unless a different time period is specified by the Board of Trustees. The Schedule shall be reviewed and approved by the Town Manager prior to the commencement of construction of any Improvements. Where the Developer is prevented from commencing or completing any of the Improvements within the time periods set forth in the Construction Schedule or otherwise set forth in this Agreement due to an unforeseeable cause or delay beyond the control and without the fault or negligence of the Developer, the times for commencement and/or completion of the Improvements may be extended by the Board of Trustees in an amount equal to the time lost due to such delay if a request is made in writing to the Town by the Developer. Delays beyond the control of the Developer shall include, but not be limited to, fires, floods, epidemics, abnormal weather conditions, strikes, freight embargos or acts of God. Time extensions, however, will not be granted for rain, snow, wind or other natural phenomena at normal intensity within Garfield County. Delays attributable to and within the control of the Developer's contractors, subcontractors or suppliers shall be deemed to be delays within the control of the Developer.
- E. Warranty. The Developer shall warrant any and all public Improvements constructed by the Developer which are conveyed or dedicated to the Town pursuant to this Agreement for a period of twenty-four (24) months from the date the Town Engineer certifies that the same conform to the approved specifications. Specifically, but not by way of limitation, the Developer hereby warrants the following:

1. That the title conveyed shall be good and its transfer rightful; and
  2. Any and all facilities conveyed shall be free from any security interest or other lien or encumbrance; and
  3. Any and all facilities so conveyed shall be free of any and all defects in materials or workmanship.
- F. Town Inspections. The Town shall have the right to make engineering inspections and require testing during construction of the Improvements in such reasonable intervals as the Town Engineer may request. Inspection, acquiescence and approval of any engineering inspector of the construction of physical facilities, at any particular time, shall not constitute the approval by the Town of any phase of the construction of the Improvements. Such approvals shall be made by the Town only after completion of construction and in the manner hereinafter set forth.
- F. Approval by Town Engineer. Upon completion of construction by the Developer of the Improvements, the Town Engineer shall inspect the Improvements and certify with specificity its conformity or lack thereof to the approved plans and specifications. The Developer shall make all corrections necessary to bring the Improvements into conformity with applicable Town standards and the construction plans, as approved. The Town shall be under no obligation to provide any water service, irrigation service, or wastewater collection service until all such facilities are brought into conformance with the applicable plans and specifications and approved by the Town Engineer.
- G. “As-Built” Drawings. The Developer shall provide all necessary engineering designs, surveys, field surveys, and “as-built” drawings for all Improvements which shall be approved by the Town Engineer, and any incidental services related to the construction of the Improvements, at its sole cost and expense. The legal description of all utility service lines shall be prepared by a registered land surveyor at the Developer’s sole expense. In addition, all expenses incurred by the Town in updating the Town’s base maps shall be paid by the Developer, to the Town.
- H. Conveyance of Public Improvements. All public Improvements constructed by the Developer in accordance with this Agreement, including water mains, service lines, laterals, fire hydrants and other water distribution facilities; all irrigation lines and facilities; all wastewater collection mains, lines, laterals and related improvements; handicap ramp improvements; and required curbs, sidewalks and asphalt replacement shall be dedicated to the Town and warranted for a period of twenty-four (24) months following completion and approval, as provided in subsection (E) of this section. Upon completion of construction in conformity with the plans, and any properly approved changes, the Developer shall convey to the Town, by bill of sale, all physical facilities constructed by the Developer necessary for the extension, maintenance and repair of municipal utility services and other public facilities. Acceptance of said conveyance shall be authorized by the Town Manager. Following such dedication or conveyance, the Town shall be solely responsible for the maintenance of the Improvements, unless otherwise provided for by agreement, except for any correction work required during the warranty period. In addition, all other improvements such as shallow utility installations and other improvements as shown in approved construction drawings submitted to the Town shall be warranted for a period of twenty-four (24) months following completion and approval, as provided in subsection E.
- I. Improvements Required Prior to Issuance of Building Permits and Certificates of Occupancy.
1. Unless otherwise set forth in this Agreement, no building permit for construction of any residential structure or building within the Project shall be issued until the following

Improvements have been installed and approved by the Town Engineer. When the Board of Trustees requires that a development improvements agreement be executed as a condition of approval of a special use or a building permit, no building permit for construction of any residential structure or building shall be issued until the following improvements have been installed and approved by the Town Engineer:

- a. Lot or property corners;
  - b. Wastewater lines and laterals to each lot;
  - c. Water mains and laterals to each lot;
  - d. Irrigation lines and laterals to each lot;
  - e. Fire hydrants (if required);
  - f. Storm drainage structures (if any);
  - g. Utilities, including telephone, cable television, electrical service and gas lines;
  - h. Grading and base construction of streets and alleys;
  - i. Soil stabilizing structures.
2. No certificate of occupancy for any residential building or other structure within a subdivision or property subject to a development improvements agreement shall be issued until the following improvements have been installed by the Developer and approved by the Town Engineer:
- a. Survey monuments;
  - b. Street paving and curbs and gutters;
  - c. Sidewalks and bikeways;
  - d. Street signs;
  - e. Street lighting;
  - f. Landscaping;
  - g. Land dedication deeds;
  - h. Soil stabilization and revegetation measures;
  - i. Any other improvements required by the development improvements agreement.
- K. Revegetation Required. All areas disturbed by construction shall be promptly revegetated with native vegetation following completion of such work unless a building permit application has been requested for a particular lot. The Developer shall comply with all regulations of the Town concerning dust suppression. In addition, the Developer shall control all noxious weeds and rodents within such areas to the reasonable satisfaction of the Town until conveyed to individual lot owners.

- L. Performance Guarantee Security Required. In order to secure the construction and installation of the Improvements itemized in the Schedule of Improvements, the Developer shall furnish the Town with cash, letter of credit, cash bond, performance bond, or other security acceptable to the Town Attorney to secure the performance and completion of the Improvements in an amount equal to one hundred twenty five percent (125%) of the estimated cost of the Improvements.
- M. Partial Release of Performance Guarantee Security. Upon completion of portions of the Improvements by the Developer, evidenced by a detailed cost breakdown of the completed Improvements, the amount of any performance guarantee security may be reduced by seventy-five percent (75%) of the approved estimated cost for the installation of the Improvements, upon written request of the Developer, and approval by the Town Manager. Upon completion of all of the Improvements and upon final inspection and approval by the Town Engineer of all the Improvements, the Town Manager may further authorize the reduction of the amount of the security guaranteeing the Improvements to ten percent (10%) of the approved total estimated cost of the Improvements.
- N. Full Release of Performance Guarantee Security. Any performance guarantee issued pursuant to this Agreement shall be fully released and discharged upon expiration of the twenty-four (24) month warranty period, and the correction of any defects discovered during such warranty period.
- O. Notice of Default. Upon the Developer's failure to perform its obligations under this Agreement within the time periods set forth herein, the Town Manager shall give written notice to the Developer of the nature of the default and an opportunity to be heard before the Town Manager concerning such default. If such default has not been remedied within thirty (30) days of receipt of the notice or of the date of any such hearing, whichever is later (or such reasonable time period as is necessary to cure the default provided that the Developer has commenced to cure the default), the Town Manager may then give written notice to the Developer and to the issuer or holder of the performance guarantee security that the Town, as agent for the Developer, is proceeding with the task of installing the Improvements in whole or in part and that the said security will be expended by the Town for the installation of the Improvements.
- P. Power of Attorney Granted. The Developer hereby designates and irrevocably appoints the Town Manager of the Town of Parachute, Colorado, as its attorney-in-fact and agent for the purpose of completing all Improvements required by this Agreement in the event of a default by the Developer. The power of attorney may be enforced by the Town pursuant to all legal and equitable remedies available, including an action for specific performance in a court of competent jurisdiction.
- Q. Increase in Amount of Performance Guarantee Security. If a substantial amount of time elapses between the time of posting of the performance guarantee security and actual construction of the Improvements, the Town reserves the right to require a reasonable increase in the amount of the applicable security, if necessary, because of estimated increased costs of construction.
- R. Inspections. Prior to the approval and acceptance of the construction and installation of the necessary Improvements, the Developer shall pay to the Town the actual cost of all inspections of such Improvements made or conducted at the direction of the Town Manager, Town Engineer, or Town Public Works Director.
- S. Binding Effect; Successors and Assigns. This Agreement shall be binding upon and enforceable against the Town and the Developer and their respective successors and assigns. This Agreement shall be construed in accordance with the laws of the State of Colorado. Jurisdiction and venue for any action arising hereunder shall be proper and exclusive in the district court for Garfield County, Colorado.

T. Effective Date, Recording. This Agreement shall be effective as of the day and year first appearing above. This Agreement shall be filed for record with the Clerk and Recorder of Garfield County, Colorado, at the Developer's expense.

TOWN OF PARACHUTE, COLORADO

By \_\_\_\_\_

Attest: \_\_\_\_\_

STATE OF COLORADO )

) ss.

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

SUBSCRIBED AND SWORN to before me this \_\_\_ day of \_\_\_\_\_, 20\_\_ by  
\_\_\_\_\_ and \_\_\_\_\_, as \_\_\_\_\_ and \_\_\_\_\_,  
respectively, of the Town of Parachute, Colorado.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

DEVELOPER [add name]

By \_\_\_\_\_

Attest: \_\_\_\_\_

STATE OF COLORADO )

) ss.

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

SUBSCRIBED AND SWORN to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. by  
\_\_\_\_\_, as \_\_\_\_\_ of Developer [add name].

\_\_\_\_\_  
Notary Public.

My commission expires: \_\_\_\_\_

Exhibit A.

Project property

[legal description attached]



Exhibit B  
Schedule of Improvements  
[attached]

Exhibit C  
Construction Schedule  
[attached]