

SUBDIVISION IMPROVEMENTS AND MAINTENANCE AGREEMENT AND COVENANT

SUBDIVISION:

I. PARTIES

The parties to this Agreement are the below-referenced subdivider (“Subdivider”) and the Board of County Commissioners of Chaffee County (the “County”).

II. BACKGROUND

- A. Colorado Revised Statutes, §30-28-137 prohibits the recording of any final plat of any subdivision until the subdivider has submitted, and the board of county commissioners has approved, an agreement setting forth the plan, method, and parties responsible for the construction of any required public improvements shown in the final plat documents which, in the judgment of such board, will make reasonable provision for completion of the improvements in accordance with design and time specifications.
- B. Pursuant to the provisions of Colorado Revised Statutes, §30-28-101(11) the sale, conveyance, or transfer of any lot or tract of land can be restricted until the improvements required for a subdivision have been completed.
- C. Subdivider has received conditional approval from the County for the Final Plat of the below-referenced subdivision (the “Subdivision”), and this Agreement and Covenant is intended to fulfill a condition of that approval. Specifically, Subdivider has agreed to make certain improvements and has agreed to certain maintenance obligations.
- D. Pursuant to the provisions of Colorado Revised Statutes, §30-28-101(11), Subdivider is willing to provide security for the completion of certain improvements in the form of a Lot Sales Restriction and certain other security.
- E. Subdivider acknowledges a benefit from approval of the Subdivision and installation and maintenance of the improvements. Accordingly, Subdivider is willing to permanently maintain the improvements in accordance with the terms and conditions of this Covenant.
- F. This Agreement and Covenant is not executed for the benefit of third parties such as, but not limited to, materialmen, laborers or others providing work, services or material for the Subdivision improvements or buyers in the Subdivision.

III. AGREEMENT

- 1. Responsibility for Construction of Improvements.
 - a. Subdivider shall, within twelve months of execution of this Agreement and Covenant, construct and install at Subdivider’s sole expense, those public improvements agreed to by Subdivider in connection with the final plat approval for the Subdivision, including improvements detailed in construction drawings submitted to the County and cost contributions and/or guarantees of payment, if any. Such improvements include, without limitation, those improvements set forth on the attached Exhibit A (the “Improvements”).
 - b. The County, in its sole discretion, may grant an extension of the twelve month time limit. If the Improvements are not completed and the twelve month time limit is not extended in accordance with the provisions herein, the County may, at any time, give Subdivider 60 days notice of the breach and an opportunity to respond. If, after 60 days, Subdivider has not corrected its violations, the County may, in its discretion, take steps to see that the Improvements are made and Subdivider shall be obligated to the County for all associated expenses, or may revoke its approval of the Final Plat or take any other action or pursue any other remedy permitted by law. The County’s failure to take action under this Section shall not prevent it from later enforcing its rights hereunder.

2. Security. Subdivision and all Improvements are subject to a Lot Sales Restriction, prohibiting the sale, conveyance or transfer of any interest in any of the lots comprising the Subdivision (“the Restricted Lots”). Such Lot Sales Restriction may be separately recorded with the County Clerk and Recorder. The County or any purchaser of any of the Restricted Lots may bring an action in district court to compel the enforcement of this Agreement and Covenant. **Such authority shall include the right to compel rescission of any sale, conveyance, or transfer of title of any of the Restricted Lots made contrary to the provision of this Agreement and Covenant.** Pursuant to the Chaffee County Land Use Code, failure to comply with this Agreement and Covenant may result in revocation of vested rights of the Subdivision. This Lot Sales Restriction shall be valid until released by a written document duly authorized and signed by the County and recorded with the County Clerk and Recorder. Until so released, this Lot Sales Restriction shall run with the title of the Restricted Lots and shall be binding upon and inure to the benefit of any transferees, heirs, successors and assigns of the Subdivider.
3. Excess Capacity. If any of the improvements installed by Subdivider exceed the requirements and are sized in contemplation of serving additional filings, Subdivider acknowledges that such excess is installed at Subdivider’s risk and cannot be the basis for requiring the County to approve additional filings.
4. Construction Requirements. All Improvements shall be constructed in compliance with the following:
 - a. All final plat documents submitted prior to or at the time of final plat approval.
 - b. All laws, regulations and ordinances of the United States, State of Colorado, Chaffee County, and applicable agencies, affected special districts, and servicing authorities.
 - c. All designs, drawings, maps, specifications, construction plans, sketches and other matter submitted to and approved by any of the above-stated governmental entities or agencies.
5. Inspections and Approvals. Any utility system included in the Improvements must be designed and inspected, at Subdivider’s expense, by a licensed professional engineer, and, prior to release of security, certified in writing by such engineer as complying with the approved plans and specifications. Subdivider shall also provide a written statement from the contractor(s) responsible for utility installation, confirming completion of all utilities. The County may require that any other Improvements be inspected, at Subdivider’s expense, by a licensed professional engineer, and certified by such engineer as complying with the approved plans and specifications. The County may require that any or all of the Improvements be inspected and approved by any affected governmental entity or agency. At all times during construction, the County shall have the right to test and inspect, or to require testing and inspection of material and work, at Subdivider’s expense. Any material or work not conforming to the approved plans and specifications shall be removed and replaced to the satisfaction of the County at Subdivider’s expense.
6. Roads. Subdivider shall be responsible for and obtain the necessary access permits from the County, the Colorado Department of Transportation, and any affected municipality. Subdivider or his contractor is also responsible for obtaining a county road construction permit prior to the start of any road construction to include bridges, ditch crossings and embankment cuts. All road improvements must be in accordance with the County’s specifications. The contractor shall notify the county road and bridge supervisor when it intends to commence construction of any roads so that the supervisor may observe such construction. Such notice shall be given at least 24 hours before commencement of initial road construction.
7. Weed Management, Erosion Control and Revegetation. Subdivider shall deposit into the “Chaffee County Weed Mitigation Fund”, maintained by the Chaffee County Treasurer’s Office, the amount listed in Exhibit A, which Subdivider represents is sufficient to complete revegetation, erosion control and weed mitigation. The full amount deposited will be refunded to Subdivider upon completion of revegetation and weed mitigation to the satisfaction of the Chaffee County Weed Department. Subdivider shall not be entitled to interest on such deposit.

8. As-built Drawings. Subdivider shall provide as-built drawings of all subdivision improvements prior to release of security.
9. Completion Procedure. Subdivider will notify the County of the status of the work to be completed under this Agreement and Covenant at least 30 days prior to the expiration of the time period referred to in paragraph III.1. If the work is not complete at such time, and a new agreement is to be tendered, it must be tendered at least 15 days prior to the expiration of this Agreement and Covenant.
10. Release of Security. Improvements may be approved and the lot sales restriction released on a filing-by-filing basis, however improvements affecting all filings, such as access and county road improvements, ditch improvements and fire cisterns, must be fully completed prior to release of a lot sales restriction for any filing. Upon inspection and approval and compliance with this Agreement and Covenant, the County may, by a duly signed statement attested to by the County Clerk, authorize the release of the Lot Sales Restriction.
 - a. If Subdivider has requested release of all or part of the security, and the County determines that any of such improvements are not constructed in accordance with this Agreement and Covenant, it shall furnish Subdivider a list of specific deficiencies and shall be entitled to withhold release of the Lot Sales Restriction to ensure such substantial compliance.
 - b. If the County determines that Subdivider will not construct any or all of the improvements in accordance with all of the specifications or timeframes, the County may continue to impose a lot sales restriction. Alternatively, the County may vacate the plat approval. Subdivider acknowledges that any vested rights which may result from approval of the final plat are subject to compliance with this Agreement..
11. Warranty. Subdivider represents and warrants that the Improvements shall be installed in accordance with the terms of this Agreement and Covenant in a good and workmanlike manner, shall be substantially free of defects in material and workmanship and shall be in good working order for the period ending one-year following final approval of all the Improvements by the County. Subdivider shall promptly remedy any deficiencies arising during the warranty period and shall indemnify the County for any expenses incurred in enforcing this provision or correcting such deficiencies.
12. Creation of Homeowners' Association. Subdivider shall create a homeowners' association as a Colorado Non-profit Corporation (the "Association") to manage the affairs of the Subdivision and this Covenant. The Association shall have a perpetual existence and may not be terminated without the express prior written approval of the County. Upon formation, the Association shall enter into an agreement with the County expressly assuming all of Subdivider's maintenance obligations set forth below and expressly binding the Association to the terms of the below maintenance obligations. Any such assumption, however, shall not relieve Subdivider (and successor lot owners) of its maintenance obligations, subject to the Association's primary obligation to perform, as discussed below. If Subdivider fails to create a homeowner's association or the Association dissolves or otherwise fails to adequately assume the Subdivider's rights and obligations as contemplated above, the below maintenance obligations of the Association shall become the joint and several obligations of Subdivider and Subdivider's successors and assigns (including the lot owners).
13. Maintenance Obligation and Covenant.
 - a. Subdivider expressly covenants and agrees that this Covenant shall be perpetual and shall run with the title of each tract, parcel and lot comprising the Subdivision and shall be binding upon and inure to the benefit of the transferees, heirs, successors and assigns of Subdivider, including all future lot owners and the homeowners Association described above.
 - b. Subdivider covenants and agrees, for itself, the Association, and all future owners of the Subdivision, that it will, at no cost to the County maintain the Improvements set forth in the attached Exhibit B and keep them functional and in good working order. Roads shall be maintained (including snow removal) in accordance with the County's specifications. Each

owner of any parcel comprising all or a portion of the Subdivision, by acceptance of title to such parcel, agrees to be bound by the terms of this Covenant and the terms of this Covenant shall be binding upon and inure to the benefit of the transferees, heirs, successors and assigns of each party hereto, including the Association and all owners of parcels comprising the Subdivision.

- c. If Subdivider or the Association fails to fully accomplish the maintenance contemplated by this Covenant, or breaches any other provision of this Covenant, then the County shall have available to it the following remedies, which shall be cumulative and not exclusive, and may be exercised alone or in conjunction with any other remedy.
 - i. Upon an instance of default, the County shall provide the Association with oral or written notice itemizing the instances of default. The County shall not be required to provide notice to each lot owner or successor to Subdivider. The Association shall have 10 days from the notice to cure the default itemized by the County or to challenge the County's allegation of default. To fulfill its obligations hereunder, the Association shall either directly perform the obligations or ensure Subdivider's performance of an obligation. If the Association does not cure a default in a timely manner, then the County shall have the right to specifically enforce this Covenant by (1) obtaining an order, including a mandatory injunction, from the Chaffee County or District Court requiring the Association and/Subdivider perform the defaulted obligation; or (2) the County may perform the defaulted obligation without further notice and bill the Association and/or Subdivider for the costs, expenses and fees associated with such performance by the County. The Association and/or Subdivider shall promptly reimburse the County for all such costs and expenses when billed by the County.
 - ii. In the event of default, the Association and/or Subdivider shall be obligated to reimburse the County for all fees, costs and expenses, including actual attorney and engineering fees, incurred as a result of the default. All damages, fees, costs and expenses shall be assessed interest at the rate of 12%, compounding annually, from the date the charge is incurred by the County through the date of payment in full.
 - iii. The County shall have a lien upon the Subdivision or any parcel comprising the Subdivision in the amount of the County's damages, costs and expenses, resulting from the default. The lien may be foreclosed in the manner of a mechanics lien (C.R.S. 38-22-101, et. seq.,) except that the Lien shall be valid for a period of 5 years from the date of assessment.
 - iv. The County may obtain reimbursement of damages, costs, fees and expenses incurred as a result of any default in this Covenant by collection of such amounts by the County Treasurer with the annual or semi-annual property tax payments.
 - v. The Association shall be required to make such assessments against the parcels comprising the Subdivision as are necessary to fulfill its obligations hereunder.
 - vi. Should the County seek recovery of any costs, expenses or fees pursuant to this Covenant, such recovery may be made against a particular lot owner, only for such owner's proportion of parcels owned compared to the total number of parcels comprising the Subdivision at the time of breach. To illustrate, if the Subdivision is comprised of ten parcels at the time of breach (and each parcel is owned by a separate owner), each owner shall be personally liable to the County for 1/10th of the expenses, costs and fees incurred by the County as a result of the breach. Said liability of each separate owner will be in addition to and joint with the overall

liability of the Association.

- vii. Notwithstanding any provision of this Covenant to the contrary, the Association shall bear primary responsibility for the performance of any obligation required to be performed either by the Association and /or Subdivider and any or all successors including lot owner(s). Subdivider (including successor lot owners) shall be required to specifically perform any maintenance, repair and/or improvement obligations contained in this Covenant only after the expiration of the 10-day cure period specified in Paragraph 13.c.i above. This paragraph does not in any way limit, hinder or delay the County's right to lien, tax, assess and/or levy against any parcel comprising the Subdivision, as discussed above.
 - d. The parties acknowledge that the County may grant third parties easements within publicly-dedicated rights-of-way, even though the County is not obligated to maintain such rights-of-way. Notwithstanding any other provision contained in this Agreement and Covenant, the County, for itself and its successors, covenants to require all parties that intend to perform work within any of the Subdivision roads to obtain a permit that will mandate restoration or improvement of all impacted roads in accordance with applicable regulations. This Agreement and Covenant, however, does not obligate the County to pursue persons or entities doing work within any Subdivision roads without first obtaining a permit. All third party obligations provided for in this Section shall not constitute part of the Association's or the Subdivider's (or successor lot owner's) maintenance obligations pursuant to this Covenant.
14. Indemnification. Subdivider shall indemnify and defend the County and hold the County harmless for any loss relating to or resulting from: (a) Subdivider's negligent or willful act, omission or error, (b) Subdivider's breach of this Agreement and Covenant, (c) the design and construction of improvements, (d) actions, omissions or errors related to the above maintenance obligations and Covenant. All contractors and other employees engaged in construction or maintenance of the improvements shall maintain adequate worker's compensation insurance and public liability insurance coverage, and shall operate in strict accordance with the federal and state laws and regulations governing occupational safety and health. This Section shall survive termination of the Agreement and Covenant.
 15. Title Insurance. Subdivider shall provide the County with a title insurance commitment at time of final platting evidencing that fee simple title of all lands in the Subdivision is vested totally with the Subdivider free of any and all liens and encumbrances, except as noted on the final plat.
 16. Entire Agreement. This Agreement and Covenant and Subdivider's submittals to the County (including all designs, drawings, maps, specifications, construction plans, and sketches) embody the entire understanding between all of the parties with respect to its subject matter and supersede all previous communications, representations or understandings, either oral or written. No amendment or modification of this Agreement and Covenant will be valid or binding unless signed by all the parties. If there is a conflict between Subdivider's submittals and this Agreement and Covenant, this Agreement shall govern.
 17. Severability. Unless it materially affects the entire intent and purpose of this Agreement and Covenant, the invalidity or unenforceability of any provisions of this Agreement and Covenant shall not affect the other provisions of this Agreement, and the Agreement and Covenant shall be construed in all respects as if such invalid or unenforceable provision were omitted.
 18. Waiver. The County's failure to insist upon strict compliance with any of the provisions of this Agreement and Covenant shall not be construed as a waiver of any of the County's rights or privileges or of the governmental immunity set forth in the Colorado Governmental Immunity Act, C.R.S. §24-10-101, et seq.

ATTEST:

County Clerk

Approved November 20, 2007

EXHIBIT A
SUMMARY OF IMPROVEMENTS

SUBDIVIDER: _____

SUBDIVISION: _____

<input checked="" type="checkbox"/> if applies	Brief Description of Improvement*
	<i>Site Work:</i>
	Site grading
	<i>Roads and Trails:</i>
	Interior/access road grading
	Interior/access road base
	Interior/access road paving
	Interior/access road curbs & gutters
	Culverts
	County road grading
	County road base
	County road paving
	Highway access improvements
	Trails
	<i>Drainage:</i>
	Storm sewer facilities
	Retention ponds
	Ditch improvements
	Subsurface drainage
	<i>Sewer/Septic:</i>
	Sanitary sewers and laterals
	Trunk and forced lines
	On-site sewage facilities
	<i>Utilities:</i>
	Telephone
	Gas
	Electric

	<i>Water and Fire Suppression:</i>
	Water mains and laterals
	On-site water supply and storage
	Hydrants or fire cisterns
	Water transfer/augmentation
	Aquifer recharge ponds
	Fire mitigation
	<i>Monuments and Signage:</i>
	Survey and street monuments and boxes
	Street lighting
	Street name signs and traffic control signage
	Subdivision and other signage
	<i>Noxious Weeds and Erosion:</i>
	Weed Control, Re-vegetation & Erosion Control – AMT: \$
	<i>Miscellaneous:</i>
	Fencing
	Landscaping
	Park improvements
	Swales
	Proportionate share of prior public improvements - AMT: \$
	Other:

***Details and additional or related Improvements may be set forth in the Subdivider's submittals to the County, including all designs, drawings, maps, specifications, construction plans, and sketches.**

SUBDIVIDER:

By: _____

Date: _____

Name: _____

Title: _____

EXHIBIT B
SUMMARY OF IMPROVEMENTS REQUIRING PERPETUAL MAINTENANCE

SUBDIVIDER: _____

SUBDIVISION: _____

<input checked="" type="checkbox"/> if applies	Brief Description of Improvement Requiring Maintenance*
	<i>Roads and Trails:</i>
✓	All interior roads and trails created by the final plat.
✓	All culverts installed or improved in connection with the Subdivision
	The following access roads (Specify):
	<i>Drainage:</i>
	Storm sewer facilities
	Retention ponds
	Ditch improvements
	Subsurface drainage
	<i>Sewer/Septic:</i>
	Sanitary sewers and laterals
	Trunk and forced lines
	On-site sewage facilities

	<i>Water and Fire Suppression:</i>
	Water mains and laterals
	On-site water supply and storage
	Hydrants or fire cisterns
	Aquifer recharge ponds
	Fire mitigation
	<i>Monuments and Signage:</i>
	Street lighting
✓	Street name signs and traffic control signage
✓	Subdivision and other signage
	<i>Noxious Weeds and Erosion:</i>
✓	Weed Control, Re-vegetation & Erosion Control
	<i>Miscellaneous:</i>
	Fencing
	Landscaping
	Park improvements
	Swales
	Other:

***Details and additional or related maintenance obligations may be set forth in the Subdivider's submittals to the County, including all designs, drawings, maps, specifications, construction plans, and sketches.**

SUBDIVIDER:

By: _____

Date: _____

Name: _____

Title: _____