



**SUBDIVISION IMPROVEMENTS AGREEMENT revised 5/2010**

**BETWEEN**

**THE TOWN OF FRASER**

**AND**

*(NAME OF SUBDIVIDER)*

**PERTAINING TO:**

*(NAME OF SUBDIVISION)*

**TOWN OF FRASER**

**GRAND COUNTY, COLORADO**

**SUBDIVISION IMPROVEMENTS AGREEMENT**

This Subdivision Improvements Agreement (“Agreement”) is made and entered into by and between the TOWN OF FRASER, a Colorado municipal corporation (“Town”) and \_\_\_\_\_ (“Subdivider”). This Agreement shall be effective following execution by the subdivider and immediately upon approval by the Fraser Town Board as evidenced by the signature of the Town’s Mayor or Mayor Pro Tem on the date indicated below.

1. **Recitals.** The parties agree that each of the following statements is true and is a material part of this Agreement:
  - A. Subdivider represents that it is the sole owner of the real property described in the attached Exhibit A (“Property”), and has obtained approval from the Town to subdivide said property for a new subdivision to be known as \_\_\_\_\_ Subdivision, (“Subdivision”).
  - B. Pursuant to the Town’s subdivision regulations, the final plat of the Subdivision cannot be recorded until Subdivider has entered into an Agreement with the Town concerning the construction of the public improvements within the Subdivision. A copy of the final plat and the accompanying documents and plans are available for inspection at the Fraser Town Hall Offices during regular business hours. The final plat and the accompanying documents and plans, including construction drawings and specifications, as approved by the Town (the “Final Plat Documents”), are incorporated into this Agreement for all purposes including illustration and interpretation of the terms and conditions of this Agreement.

- C. The Town seeks to protect the health, safety and general welfare of the community by requiring the completion of various improvements within the Subdivision and thereby limiting the harmful effects of substandard subdivisions.
  - D. The purpose of this Agreement is to protect the Town from the cost of completing subdivision improvements itself.
  - E. As consideration for the approval by the Town of the final plat for the Subdivision, Subdivider agrees to construct certain hereinafter described public improvements within the Subdivision in accordance with, and subject to, the terms, conditions and requirements of this Agreement. The parties hereby acknowledge the sufficiency and adequacy of said consideration.
2. Construction Of Public Improvements. Subdivider agrees to construct, at its sole cost, those public improvements (including required utility services) for the Subdivision as described on the attached **Exhibit B** and as identified on the Final Plat Documents (“Improvements”). **The Town of Fraser has adopted water and sanitary sewer utility and roadway design and construction standards, and storm drainage design criteria by separate documents. All Improvements shall be constructed in accordance with the current Town of Fraser design and construction standards.**
3. Timetable For Construction Of Public Improvements.
- 3.1 Construction Schedule. Subdivider shall construct the Improvements in strict accordance with the schedule described on the attached **Exhibit C**. Any failure by Subdivider to commence or complete the construction of the Improvements in strict compliance with the schedule established in **Exhibit C** shall constitute a default by Subdivider and shall entitle the Town to proceed in accordance with the provisions of Paragraph 14 of this Agreement. Subdivider shall not cease construction activities for any period of more than thirty (30) consecutive days, without the Town’s prior written approval, subject to the provisions of section 3.3 regarding force majeure and seasonal constraints.
  - 3.2 Subdivider’s Obligation Not Contingent. Subdivider’s obligation to complete the Improvements shall arise upon the recording of the final plat of the Subdivision, shall be independent of any obligations of the Town contained herein, and shall not be conditioned on the commencement of construction or sale of any lots or improvements within the Subdivision.
  - 3.3 Force Majeure and Seasonal Constraints. If Subdivider is rendered unable to perform, in whole or part, because of acts of God, strikes, acts of public enemies, wars, insurrections, civil disturbances, riots, landslides, earthquakes, fires, storms, floods, or other such events beyond Subdivider’s control, Subdivider’s obligations under this Agreement shall be suspended during the continuance of any inability so caused, but for no longer. No cessation of activity for seasonal construction constraints shall cause a violation of this Section 3.

4. Construction Standards; Progress Inspections. The Improvements shall be constructed in a good and workmanlike manner, strictly in accordance with the Final Plat Documents, and, to the extent not otherwise provided in such Final Plat Documents, in accordance with all applicable laws, ordinances, codes, regulations and standards applicable in the Town. There shall be no changes made in the approved Final Plat Documents, including construction drawings and specifications, without the written approval of the Town. Periodic inspections may be made by the Town's staff or designated consultants during the progress of the work to confirm that the Improvements are being constructed in compliance with such requirements. Such inspections may be conducted in a manner and in such areas and at such times, whether scheduled or unannounced, as deemed appropriate by the Town's staff or consultants. Subdivider hereby grants permission for such persons to enter upon the Property for purposes of making such inspections. Nothing herein shall relieve Subdivider of the responsibility for insuring that the Improvements are constructed in accordance with the standards set forth herein, nor shall it relieve Subdivider of its warranty obligations as provided in Paragraph 6.
  
5. Acceptance Of Improvements.
  - 5.1 Phased Inspections and Acceptance. Inspection and preliminary acceptance of a portion of the Improvements in one or more phases of construction shall occur only if specifically provided for in **Exhibit D** or as determined by Town staff, in their discretion. Otherwise, all Improvements shall be completed before preliminary acceptance will be granted. Any proposed phasing must be logically related to the project as a whole and allow for the efficient integration of the phased Improvements into the Town's infrastructure. The Town staff may require adjustments in previously approved phasing schedules when deemed necessary to accommodate changed conditions or unforeseen circumstances.
  
  - 5.2 Preliminary Acceptance. Upon **satisfactory** completion of all Improvements or an approved phase of Improvements, Subdivider shall **give written notice to notify** Town staff **requesting an inspection of the completed Subdivision Improvements ("Preliminary Inspection Notice").** ~~The Subdivider that the Improvements are ready for preliminary acceptance and~~ shall provide to the Town three (3) complete sets of the following documentation: (a) adequate assurance by a registered engineer that the Improvements have been constructed and completed in accordance with the approved plans and specifications; (b) "as-built" **constructed" engineering** drawings for the Improvements; (c) all test reports and logs required by the plans and construction drawings and applicable regulations; and (d) an affidavit or affidavits identifying all contractors, subcontractors and materialmen who supplied labor or materials for the Improvements and verifying that all have been fully paid, together with a **conditional** lien waiver from each such contractor, subcontractor and material supplier acknowledging payment and waiver of any lien rights. ~~The Town of Fraser has adopted water utility and roadway design and construction standards, and storm drainage design criteria by separate documents. Those standards include additional requirements relating to preliminary and final acceptance of required Improvements.~~ Any conveyance documents required pursuant to the provisions of Section 8.2 hereof shall also be submitted to the Town for review and approval.

Upon satisfaction of these requirements, and subject to the applicable terms and conditions of the Town's subdivision regulations, the Town's staff or designated consultant(s) shall inspect the **completed** Improvements within thirty (30) days after receipt by Town staff of the Preliminary Inspection Notice and, if the Town's staff or designated consultant(s) finds that the specified improvements have been completed substantially in accordance with the Plans and other requirements of this Agreement and the subdivision regulations, the Town staff shall issue a letter evidencing Preliminary Acceptance within thirty (30) days after the inspection.

If, upon inspection of the completed Subdivision Improvements, the Town staff or designated consultant(s) finds that the specified improvements have not been completed substantially in accordance with the Plans and other requirements of this Agreement and the subdivision regulations, the Town staff or designated consultant(s) shall issue a written notice of non-compliance within thirty (30) days after the inspection specifying the respects in which the completed Subdivision Improvements have not been completed substantially in accordance with the Plans and other requirements of this Agreement and the subdivision regulations. The Subdivider shall thereupon take such action as is necessary to cure any noncompliance and, upon curing the same, shall give a new Preliminary Inspection Notice to the Town staff. Upon the giving of such a new Preliminary Inspection Notice, the foregoing provisions of this Section 5.2 shall be applicable as if the new Preliminary Inspection Notice were a Preliminary Inspection Notice under the foregoing provisions of Section 5.2.

~~and shall, within thirty (30) days following the inspection, notify Subdivider in writing of non-acceptance or preliminary acceptance of the Improvements. If the Improvements are not accepted, the reasons for non-acceptance shall be stated.~~

The Town shall not be required to make inspections during any period when climatic conditions interfere with making a thorough inspection, as determined by the Town representative making the inspection.

Preliminary acceptance of all or any portion of the Improvements does not constitute a waiver by the Town of the right to draw on the Performance Guarantee to remedy any defect in or failure of the Improvements that is detected or which occurs after acceptance of the Improvements, nor shall such acceptance operate to release Subdivider from its warranty as herein provided.

Upon preliminary acceptance, the Town will assume responsibility for snow removal on accepted public streets, but the applicant shall remain responsible for all other maintenance and repairs pending final acceptance. At the Town's discretion, it may elect not to plow any accepted streets until there is development on individual lots that warrant access.

- 5.3 Final Acceptance. Final acceptance of the Improvements by the Town requires formal action by the Fraser Board of Trustees, after all Improvements have been completed, inspected and certified for final

acceptance by Town staff. The Town shall not be required to finally accept any of the Improvements until the Town determines that:

- A. All Improvements have been satisfactorily completed in accordance with the approved plans and specifications for the Improvements and have been preliminarily accepted by the Town;
- B. All warranty periods provided in Paragraph 6 have ended and any defects found upon inspection of the Improvements have been satisfactorily remedied by Subdivider; and
- C. All other applicable requirements contained in this Agreement, the Town's subdivision regulations and applicable design and construction standards have been satisfied.

6. Warranty.

- 6.1 Warranty. Subdivider warrants that all Improvements shall remain free from defects for a period of one (1) year from the date that the Town preliminarily accepts the Improvements as provided in Paragraph 5 of this Agreement. During such one (1) year period any defect determined to exist with respect to such Improvements shall be repaired or the Improvement replaced, at the Town's option, at the sole cost of Subdivider. The Town shall have no maintenance or repair obligations with respect to the Improvements, except for snow plowing and operation of water and sanitary sewer system improvements, if applicable, until all such Improvements have been finally accepted by the Town in accordance with Subparagraph 5.3. Subdivider shall maintain, in a reasonable, suitable and proper condition for travel, ingress, and egress, all streets located within the Subdivision until such time as the streets are accepted for maintenance by the Town, if ever.
- 6.2 Notice Of Default; Cure Period. Except as provided in Subparagraph 6.3 with respect to emergency repairs, the Town shall provide written notice to Subdivider if inspection reveals that any Improvement is defective for any reason. Subdivider shall have thirty (30) days from the giving of such notice to remedy the defect. Such thirty (30) day time limit may be extended by the Town if the Town determines that such defect cannot reasonably be remedied within such thirty (30) day period. In the event Subdivider fails to remedy the defect within the thirty (30) day period, or any extension thereof granted by the Town, the Town may declare a default under this Agreement without further notice. No notice shall be required with respect to emergency repairs except as provided in Subparagraph 6.3.