



## CONSTRUCTION GUARANTEE AGREEMENT

THIS AGREEMENT is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_, whose address is \_\_\_\_\_, hereinafter referred to as "Developer", and the Town of Fraser, a municipal corporation of the State of Colorado, whose address is 153 Fraser Avenue, P.O. Box 120, Fraser, Colorado 80442, hereinafter referred to as "Fraser" or "Town", together referred to as "the Parties".

WHEREAS, Developer is the owner of certain real property located within Fraser, legally described as \_\_\_\_\_, on which Developer intends to construct certain improvements (hereinafter, the "Development Project"); and

WHEREAS, Developer has applied for the issuance of a development permit for the Development Project pursuant to the Business District provisions of the Fraser zoning regulations; and

WHEREAS, Fraser's regulations allow conditions to be placed upon the issuance of a development permit, including a requirement for appropriate construction guarantees to ensure that necessary construction features and public improvements are constructed in accordance with the approved development plans and to ensure restoration and revegetation of the site if the Development Project is abandoned; and

WHEREAS, Fraser and Developer have entered into this Agreement to satisfy such requirement with respect to the development permit for the Development Project.

NOW, THEREFORE, the Parties agree as follows:

- (1) **Development Plans.** The "Development Plans" shall mean the site plan, landscape plan, grading, drainage, and erosion control plan, utility plan and any other related plans and specifications and construction documents for the Development Project, as submitted to and approved by Fraser as part of the development permit for the Development Project.
- (2) **Secured Improvements.** The "Secured Improvements" shall mean the utility installations, lighting, landscaping, parking, snow storage areas, and other improvements for which security is to be provided in accordance with this Agreement. The Secured Improvements are listed, together with the estimated costs thereof, on Exhibit A attached hereto.
- (3) **Construction, Inspections, Acceptance, and other Matters.** The Developer shall cause all public and private improvements depicted on the Development Plans, including but not limited to the Secured Improvements, to be constructed and completed, at its expense, in accordance with the Development Plans and any applicable regulations of Fraser.

- (a) All such public and private improvements shall be completed before all or any portion of any lot or unit in the Development Project may be sold or leased and before any approval for occupancy is issued for any building or structure within the Development Project. Further, all such improvements shall be substantially completed not later than **two (2) years** after the date of this Agreement, unless an extension of time is granted by Fraser in writing for good cause, as determined by Fraser. Requests for extension must be submitted by Developer, in writing, to Fraser at the address set forth above.
- (b) The provisions of the Fraser subdivision regulations, as contained in Chapter 17 of the Fraser Municipal Code, and particularly Article 6 of that Chapter, as such regulations may be amended from time to time by Fraser, shall govern with respect to the inspection and acceptance of the Secured Improvements, the deposit, use and release of collateral securing completion of the Secured Improvements, and all other matters relating to Developer's obligation with respect to the Secured Improvements that are not specifically addressed in this Agreement. The Fraser building regulations, as contained in Chapter 18 of the Fraser Municipal Code, as such regulations may be amended from time to time by Fraser, shall govern with respect to the inspection and acceptance of those improvements depicted on the Development Plans other than the Secured Improvements.

(4) **Financial Security for Performance and Payment.** Prior to the issuance of the development permit for the Development Project, Developer shall furnish to Fraser adequate security in the form acceptable to Fraser, in an amount equal to one-hundred-twenty-five percent (125%) of the total estimated costs of all the Secured Improvements to be installed plus the estimated costs of restoring and revegetating the site if Developer abandons or fails to complete the Development Project within the time provided in this Agreement. If security is provided in the form of a cash deposit, the security shall be held by the Town in trust. If any interest is earned on such deposit, it shall be retained by the Town to defray the cost of administering the deposit. Developer shall maintain such security in full force and effect during the entire period of construction of the improvements provided in the Development Plans and the duration of the warranty period provided in Paragraph 5 hereof.

(5) **Warranties of Developer.** Developer warrants that the Secured Improvements will be installed in a good and workmanlike manner and in substantial compliance with the Development Plans and requirements of this Agreement and shall be substantially free of defects in materials and workmanship. These warranties of Developer, and the security provided for the Secured Improvements shall remain in force and effect as to any completed Secured Improvements until the lapse of one (1) year after preliminary acceptance of the Secured Improvements, and until final acceptance of such Improvements as provided in the Fraser subdivision regulations. To the extent the Secured Improvements include required landscaping, the Developer shall maintain such landscaping during the 1-year warranty period, and the provisions of this Section 5 and the subdivision regulations shall apply with respect to maintaining security for such landscaping improvements during the warranty period.

(6) **Default and Remedies.** Time is of the essence hereof with respect to the performance of Developer's obligations provided in this Agreement. If Developer defaults in the performance of any such obligations in the time and manner provided herein, and if such such default is not cured within thirty (30) days after written notice of the default is given by Fraser to Developer, then Fraser shall have the following remedies:

- (a) If the default relates to construction of Secured Improvements, the Fraser Town Manager may stop work on any improvements until a schedule and agreement on compliance for construction has been reached; Fraser may, but shall not be required to, have the Secured Improvements constructed, completed or corrected by such means and in such manner as Fraser shall determine, with or without public bidding; and Fraser shall have the right to use the financial security provided pursuant to this Agreement to pay for the construction, completion or correction of such Secured Improvements.
- (b) If the default consists of Developer's failure to complete all public and private improvements within the time provided in this Agreement and any extensions granted by Fraser, then Fraser may revoke the development permit for the Development Project; and Fraser may proceed with restoring and revegetating the site, which may include removal of any uncompleted improvements, using the financial security provided pursuant to this Agreement to pay for the costs thereof.
- (c) All costs and expenses incurred by Fraser as a result of such default and the exercise of the remedies provided herein, including reasonable attorney fees, shall be chargeable to Developer and shall be paid from the financial security provided pursuant to this Agreement. If the amount of such security exceeds the costs and expenses incurred, Fraser shall release any excess upon final accounting for such costs. If the security is insufficient to fully pay such costs, the Developer shall, upon demand, pay such deficiency to Fraser.

The remedies provided above are cumulative in nature and nonexclusive. Fraser may pursue any other remedies it may have under Colorado law, including, without limitation, the right to bring suit against the Developer for injunctive relief, for specific performance of this Agreement, or to recover damages for the breach of this Agreement.

(7) **Additional Provisions.**

- (a) **Applicable Law.** This Agreement, and the terms, conditions and covenants herein contained, shall be deemed to complement and shall be in addition to the conditions and requirements of the Fraser Municipal Code and other applicable laws, rules and regulations.
- (b) **Severability.** If any part, term, or provision of this Agreement is held by any court of competent jurisdiction to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be

affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular part, term or provision held to be invalid.

- (c) **Complete Agreement.** This instrument embodies the whole agreement of the Parties. There are no promises, terms, conditions, or obligations other than those contained herein except that Developer shall be bound by, and comply with, all conditions and obligations, provided in applicable Fraser ordinances and regulations, as amended from time to time by Fraser. This Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between the Parties. There shall be no modification of the Agreement except in writing, executed with the same formalities as this instrument.
- (d) **No Waiver.** No waiver of any of the provisions of this Agreement shall be valid or binding unless in writing, signed by the party whose rights are waived, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided, nor shall the waiver of any default hereunder be deemed a waiver of any subsequent default hereunder.
- (e) **Consent to Jurisdiction and Venue.** Jurisdiction and venue for any civil action commenced by either party to this Agreement with respect to this Agreement or any security provided pursuant to this Agreement shall be proper only if such action is commenced in the District Court for Grand County, Colorado. Developer expressly waives the right to bring such action in or to remove such action to any other court, whether state or federal.
- (f) **No Third Party Beneficiaries.** Except as herein provided, no person or entity, other than a party to this Agreement, shall have any right of action under this Agreement including, but not limited to, lenders, lot or home buyers and materialmen, laborers or others providing work, services, or materials for the improvements.
- (g) **Recording.** This Agreement shall be recorded in the Grand County Clerk and Recorder's Office and shall be deemed to run with the land (being the described Development Project), and the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, effective as of the day and year first above written.

FRASER

DEVELOPER

TOWN OF FRASER, a municipal corporation of the State of Colorado

BY: \_\_\_\_\_  
Mayor

BY: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Town Clerk

(SEAL)

STATE OF COLORADO )  
                         ) SS  
COUNTY OF GRAND  )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of  
\_\_\_\_\_, 2008, by \_\_\_\_\_, as Mayor, and \_\_\_\_\_, as  
Town Clerk, of the Town of Fraser, Colorado, a municipal corporation of the State of Colorado,  
Tenant.

Witness my hand and official seal.

My Commission expires:

( S E A L )

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

STATE OF \_\_\_\_\_ )  
                         ) SS  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of  
\_\_\_\_\_, 2008, by \_\_\_\_\_, as \_\_\_\_\_, of  
\_\_\_\_\_, Developer.

Witness my hand and official seal.

My commission expires:

( S E A L )

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