

## APPENDIX J

### FORM OF SUBDIVISION IMPROVEMENT AGREEMENT

#### SUBDIVISION IMPROVEMENT AGREEMENT FOR [NAME OF SUBDIVISION], PARK COUNTY, COLORADO

THIS SUBDIVISION IMPROVEMENT AGREEMENT ("Agreement") is entered into and made between PARK COUNTY, COLORADO, a political subdivision of the State of Colorado by and through its BOARD OF COUNTY COMMISSIONERS, hereinafter referred to interchangeably as "County," "Park County," or the "BOCC," and, as the owner and developer of [NAME OF SUBDIVISION] hereinafter [collectively, jointly, and severally] referred to as the "Owner." The Owner and the County shall collectively be referred to as the "Parties."

This Agreement shall be effective immediately upon the date of approval of an Owner-executed original of this Agreement by Resolution of the Board of County Commissioners (the "Effective Date").

#### RECITALS AND REPRESENTATIONS:

WHEREAS, the Owner represents that [he/she/it] is the sole owner of the following described property located in Park County, State of Colorado: [insert legal description] hereinafter referred to as [NAME OF SUBDIVISION]; and

WHEREAS, the Owner desires to plat the property known as [NAME OF SUBDIVISION] in order to facilitate the planned and coordinated development, by the Owner or others, of [NAME OF SUBDIVISION], such development to include the design, construction, and installation of [sanitary sewer facilities, water line facilities, drainage facilities, public and private thoroughfares and streets, *[insert other]*, and other public facilities and improvements either proposed by the Owner or required by the County as necessary to serve the proposed development of [NAME OF SUBDIVISION]; and

WHEREAS, the Owner has submitted to the County a Final Plat for [NAME OF SUBDIVISION] (hereinafter "Final Plat"). The Final Plat, as approved by the County, is incorporated into this Agreement for all purposes including illustration and interpretation of the terms and conditions of this Agreement; and

WHEREAS, the Owner has submitted to the County certain construction plans and other supporting documentation including reports and studies (collectively the "Development Plans" as defined in this Agreement). The Development Plans, as approved by the County with the approval of the Final Plat, are incorporated into this Agreement for all purposes including illustration and interpretation of the terms and conditions of this Agreement; and

WHEREAS, the Final Plat and the Development Plans have been reviewed in accordance with the Park County Land Use Regulations and found by the Board of County Commissioners to generally or substantially conform to the applicable requirements for approval of a Final Plat; and

WHEREAS, it is the intent of this Agreement that the Owner shall be responsible for and shall pay all costs and expenses associated with the proposed construction and development of [NAME OF SUBDIVISION] and that the County shall only be obligated for payment of those costs and expenses that are specifically set forth as obligations of the County in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and agreements of the Parties, the approval by the County of [NAME OF SUBDIVISION], the dedication of certain land to the County for public purposes, and other good and valuable considerations, the sufficiency and adequacy of which are hereby acknowledged by the Parties. The Parties hereto agree as follows:

**1.0 DELIVERY OF FINAL PLAT.** Following approval of the Final Plat by Resolution of the BOCC, the Owner shall:

- 1.1 Cause to be made all revisions and amendments of the Final Plat that have been required by the Board of County Commissioners as a condition of Final Plat approval; and
- 1.2 Obtain all necessary signatures required upon the Final Plat, including signatures of financial institutions and others holding mortgage interests in [NAME OF SUBDIVISION] Subdivision, but excluding signatures of County officials and employees; and
- 1.3 Deliver the fully executed original of the Final Plat to the Chief Administrative Assistant to the Board of County Commissioners for verification of the proper revision and execution of the Final Plat as required by Section 1.1 above and to permit the County officials and employees to execute the Final Plat; and
- 1.4 Deliver to the Chief Administrative Assistant to the Board of County Commissioners an amount equal to the monetary charges imposed by the County Clerk and Recorder for recordation of the Final Plat, this Agreement, and any other documentation to be recorded that may be associated with the Final Plat and its approval.

**2.0 FINAL PLAT RECORDATION.** The Owner shall prepare and submit the Final Plat to the County in a form and upon material acceptable for recordation by the Park County Clerk and Recorder's Office. The failure of the Owner to submit an acceptable Final Plat to the County in accordance with Section 1.0 within [NUMBER OF DAYS] days of the date of this Agreement, shall, upon the enactment of a resolution by the Board of County Commissioners finding that the Owner failed to satisfy the requirements of Section 1.0, void the BOCC's Final Plat approval for [NAME OF SUBDIVISION] and void this Agreement. Upon

satisfaction of all requirements of Section 1.0 and any other requirements imposed by this Agreement and the Resolution approving [NAME OF SUBDIVISION] as preconditions of recordation of the Final Plat, the Chief Administrative Assistant to the BOCC shall promptly and without undue delay deliver the Final Plat to the Clerk and Recorder's Office for recordation. In addition to any other requirement or precondition to the sale of a lot as provided by this Agreement, the Owner shall not sell, convey, grant, donate, dispose of, or otherwise transfer any lot, parcel, or other real property within [NAME OF SUBDIVISION] prior to the earlier of: (A) recordation of the Final Plat with the Park County Clerk and Recorder; or (B) the date of adoption of a resolution by the Park County Board of County Commissioners finding that the Owner failed to satisfy the requirements of Section 1.0. In the event that the Board of County Commissioners adopts a resolution finding that the Owner failed to satisfy the requirements of Section 1.0, this Agreement shall be automatically deemed void and terminated without further action by the Parties.

- 3.0 DEVELOPMENT PLANS.** The Development Plans listed in this Section shall be incorporated into this Agreement for all purposes including illustration and interpretation of the terms and conditions of this Agreement and shall be made available for public inspection at the offices of Park County Development Services Department during normal business hours. Any conflict between a requirement of the Final Plat, this Agreement, and/or the Development Plans shall be resolved by the application of the most stringent or more restrictive requirement.

*[Insert list of all subdivision plans, agreements and/or declarations]*

- 4.0 SUBDIVISION DEVELOPMENT REQUIREMENTS.** The following requirements and criteria shall govern the development of all property within [NAME OF SUBDIVISION]:

*[Insert Provisions to address standards, requirements, and understandings not apparent from the Final Plat, the following provisions are samples or examples:]*

- 4.1 Setbacks. Minimum building setbacks shall be as follows:

*[Insert setback requirements]*

For purposes of this subsection, "setback" is defined as the horizontally measured distance between the property line and the nearest point on the outer wall, at grade, of any structure or building on the same lot.

- 4.2 Building Envelopes. Building envelopes (the area within which buildings or structures may be located upon a lot) are illustrated upon the Final Plat for every lot in which a slope of thirty percent (30%) or greater is located. A building envelope shall not encroach into any required setback, including building setbacks imposed as a requirement of zoning classification and required setbacks from natural areas such as wetlands. Buildings and structures shall be prohibited within areas located outside of a building envelope unless: (i) approval of a plat amendment, variance, or other form of land use approval deemed applicable by the County as the

appropriate means to obtain approval of the modification of the building envelope is obtained from the County; and (ii) the Fire Protection District with jurisdiction for the property within the subdivision verifies that any wildfire risk has been adequately mitigated by the proposed development on the steep slope. Any approval of an encroachment must be expressly stated as granted upon the County approved plat; no authorization for an encroachment shall be implied.

- 4.3 Roads and Road Standards. All roads within [NAME OF SUBDIVISION] shall comply with the standards for public or private roads, as may be applicable at the time of approval of the Final Plat. All roads within and serving [NAME OF SUBDIVISION] shall be constructed at the cost and expense of the Owner and at no cost or expense of the County. Roads shall be subject to the financial guarantee for completion required by Park County Land Use Regulations Article VI, Section 6-301 or 6-405 as applicable. In the event that all or any portion of the roads serving [NAME OF SUBDIVISION] are proposed for private or exclusive use of residents within [NAME OF SUBDIVISION], the Owner shall take such steps necessary to ensure that such roads shall be made subject to County traffic management and enforcement of laws. Such management and enforcement may be implemented by one or more measures approved by the County prior to issuance of the first building permit within [NAME OF SUBDIVISION] including, but not limited to, the Owner's dedication of the road system to the County together with contractual arrangements approved by the County for the exclusive use, permanent and perpetual maintenance, and acceptance of liability for the roads by a homeowners' association or special district. If private or exclusive-use roads are proposed within [NAME OF SUBDIVISION], the County shall bear no cost or expense in the ongoing and perpetual maintenance or service of such roads following construction. For any *public* streets within [NAME OF SUBDIVISION], until such time that the County accepts by written resolution of the Board of County Commissioners the dedication of the constructed and properly completed public streets within [NAME OF SUBDIVISION], the Owner shall be obligated and responsible for the ongoing maintenance of proposed public streets within [NAME OF SUBDIVISION]. The Owner therefore shall maintain, in a reasonable, suitable and proper condition for travel, ingress, and egress, all proposed public streets located within [NAME OF SUBDIVISION] until such time as the streets are completed and the Owner's written offer of dedication of the streets is accepted by resolution of the County.

- 4.4 Wetland Protection. Setbacks from delineated wetlands shall be [depending on the circumstances] horizontal feet from the average annual high water mark of streams and rivers and [depending on the circumstances] horizontal feet from the outer boundary of any associated wetlands, unless the work is expressly permitted by a site specific permit

issued by the appropriate federal regulatory agency with jurisdiction over such wetlands, or the work is for the purpose of restoring "wetlands or wildlife habitat and is performed under the supervision of the Colorado Division of Wildlife. Wetland. Setbacks are identified on the Final Plat together with a plat notation to expressly prohibit any structures, development, or earth disturbance within such wetland setback area. For purposes of this subsection, "setback" is defined as the horizontally measured distance between the boundary of the delineated wetland and the nearest point of any structures, development, or earth disturbance.

**5.0 PUBLIC IMPROVEMENTS.**

- 5.1 The Owner shall design, furnish, construct, and install the public improvements as illustrated on the Final Plat and the approved Development Plans ("Public Improvements") at the Owner's cost and expense.
- 5.2 The Public Improvements shall be designed, furnished, constructed, and installed in accordance with the Final Plat and the Development Plans approved by the BOCC and in accordance with applicable provisions of Park County Land Use Regulations and Road and Bridge Standards as amended from time to time and all uniform building, construction, fire, plumbing, and safety codes adopted by the County as they may be amended from time to time. All public improvements shall be completed prior to the issuance of a certificate of occupancy for any structure within [NAME OF SUBDIVISION] unless phasing of such construction or development is otherwise provided by this Agreement. The Owner shall construct all public improvements in conformance with any applicable federal or state accessibility requirements, such as the Federal Americans with Disabilities Act.
- 5.3 The County understands, as represented by the Owner, that the following schedule of responsibility and deadlines for completion applies to public improvements anticipated within [NAME OF SUBDIVISION]:

**Schedule of Public Improvement Responsibilities**

<b>Subdivision Improvement</b>	<b>Obligation to Design or Designate Improvement</b>	<b>Obligation to Fund Improvement Cost</b>	<b>Obligation to Construct</b>	<b>Deadline for Completion of Construction</b>	<b>Future Maintenance and Repair</b>
Water Distribution System	Owner in accordance with Standards	Owner	Owner	[Insert Date]	[Insert Date}
Sewer Distribution System	Owner in accordance with Standards	Owner	Owner	[Insert Date]	[Insert Date}

Roads & Road Traffic Signage	Owner in accordance with Standards and Traffic Sign criteria	Owner	Owner	[Insert Date]	[Insert Date}
Subdivision Drainage and Erosion Control Improvements	Owner in accordance with Standards	Owner	Owner	[Insert Date]	[Insert Date}
Improvements to Manage Wildlife	Owner in accordance with 1041 Permit	Owner	Owner	[Insert Date]	[Insert Date}
Subdivision Entry Signage (Private)	Owner in accordance with County LUR Sign Standards or PUD Sign Plan	Owner	Owner	[Insert Date]	[Insert Date}
Other Improvements Within Right-of-Way [specify improvements]	Owner in accordance with Standards	Owner	Owner	[Insert Date]	[Insert Date}

- 5.4 Prior to issuance of a building permit for any improvement, the Owner shall provide to the County the following:
- (A) Final construction and engineering plans and drawings (collectively, the "Public Improvement Plans") suitable for the commencement of construction of any uncompleted public improvements bearing the stamp of a Colorado licensed engineer with experience in the design and engineering of such improvements. Such Public Improvement Plans shall be prepared in accordance with commonly accepted engineering standards and practices employed in Colorado mountain communities. The County may, at its discretion and at the County's cost and expense, submit the Public Improvement Plans to a County-retained engineer for review and for an opinion concerning the conformance of such Public Improvement Plans with commonly accepted engineering standards and practices employed in Colorado mountain communities. Reasonable revisions and modifications to the Public Improvement Plans requested by the County or the County-retained engineer shall be implemented by the Owner prior to final acceptance of the Public Improvement Plans by the County. The County shall, as promptly as practicable, review and comment upon the Public Improvement Plans and, if appropriate, provide the Owner with the County's written

- acceptance of the Public Improvement Plans; and
- (B) Final construction cost estimates for all costs and expenses associated with the construction and completion of any uncompleted public improvements to be constructed by the Owner in accordance with this Agreement. Such cost estimate shall include a cost contingency or overrun estimate of the greater of: (i) Ten percent (10%) of total estimated construction costs; or (ii) the percentage for cost contingency recommended by and applied in commonly accepted engineering standards and practices employed in Colorado mountain communities for similar public improvements. Such cost estimate shall bear the stamp and a certification of accuracy of a Colorado-licensed engineer with experience in construction cost estimating. The County may, at its discretion and at the County's cost and expense, submit the Public Improvement Plans and Owner's cost estimate to a County-retained engineer for review and for an opinion of the construction cost estimate. Reasonable revisions and modifications to the Owner's construction cost estimate requested by the County or the County-retained engineer shall be implemented by the Owner prior to final acceptance of the estimate by the County. Where the County's cost estimate exceeds the Owner's estimate, the County's estimate shall govern and control the amount of any required letter of credit or other surety required from the Owner; and
- (C) Written confirmation, reasonably acceptable to the County, executed by the [Insert name(s) of water/wastewater/metropolitan district(s) with jurisdiction over subdivision, if applicable] (hereinafter "District"). District confirming that: *[the County will list confirmation requirements]*
- (D) For all uncompleted Public Improvements not otherwise included in the written confirmation identified in (C) above, an irrevocable letter of credit from a financial institution authorized to do business in Colorado in the amount of one hundred twenty-five percent (125%) of the amount established by the final cost estimate required by (C) above. The letter of credit shall be in a form approved by the County Attorney and shall authorize Park County to obtain the funds represented by the letter of credit in the event of the Owner's default in the Owner's obligation to timely construct the Public Improvements as required by this Agreement. Provided that the Owner delivers to the County a schedule for completion of the Public Improvements describing discrete and identifiable phases of construction, the Parties shall establish by separate agreement a mechanism or process to permit a reduction in the amount of the letter of credit as each phase of the Public Improvements are completed. Such reduction in the amount of the letter of credit shall be subject to the retention of an additional ten percent (10%) of the estimated cost of completion to protect the

County against cost increases and overruns.

- 5.5 CDOT Access Permits Required. The Owner shall obtain all access and other permits from the Colorado Department of Transportation and shall comply with all conditions of such permit(s). In the event that such permits impose future conditions or obligations, (e.g., installation of traffic signals), the Owner shall provide a financial guarantee to the County in accordance with the Park County Land Use Regulation Article VI, Section 6-301 or 6-405 as applicable to secure the Owner's performance of the condition.
- 5.6 Agreement with School District and County. [Insert agreement specifics for dedication of lands or payment in lieu of dedication of lands to school district]
- 5.7 Dedication of Public Improvements. All Public Improvements constructed or installed within [NAME OF SUBDIVISION] shall be subject to inspection and review by the County and, following acceptance by the County, shall be dedicated at no cost by the Owner to the County, other governmental, quasi-governmental, or homeowner's association that is ultimately responsible for ownership in accordance with this Agreement. Prior to the County's acceptance of any Public Improvement dedicated to the County, the Owner shall provide to the County at the Owner's cost and expense the Owner's sworn affidavit and documentary evidence that there exist no lien or encumbrance upon or against the Public Improvement resulting from unpaid amounts owing to contractors, subcontractors, material persons, or other persons involved or engaged in the construction or installation of the Public Improvement. The Owner shall promptly remedy at the Owner's cost and expense any condition or conditions that prevent the County from accepting the dedication of the Public Improvement free and clear of liens and encumbrances as provided by this paragraph. Any offer to dedicate a Public Improvement shall be made in writing delivered to the County and shall identify the particular Public Improvement being offered for dedication. Such Public Improvements shall become the property of the County immediately upon acceptance of the Public Improvements by an adopted resolution of the Board of County Commissioners.
- 5.8 Road Construction, Improvements and/or Upgrades. [Insert specific road construction, improvements and/or upgrades if applicable.]

**6.0 PRIVATE COVENANTS.** [Insert requirements if applicable]

**7.0 PAYMENT OF FEES AND CHARGES.** The Owner shall comply with all applicable resolutions, rules, and regulations of the County. The Owner shall pay any applicable fees and other charges in a timely manner as required by the County applicable ordinances, rules, and regulations of the County. In addition to any other remedy available to the County, the County may withhold and deny issuance of any building permit or other permit or approval until all due and outstanding fees are paid by the Owner.

- 7.1 **FORM OF PAYMENT OF ALL FEES AND CHARGES.** Unless otherwise agreed to by the Development Services Coordinator or the Chief Administrative Assistant to the Board of County Commissioners on a case-by-case basis, the Owner's payment of fees and charges specified by this Agreement shall be made in the form of certified funds, cashier's check, or cash delivered to Park County Government, 501 Main Street, P.O. Box 1373, Fairplay, Colorado 80440-1373.
- 8.0 **WAIVER.** A waiver by any party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either party. The County may waive obligations of the Owner imposed by this Agreement where such waiver will directly serve the health, safety, and welfare of the public provided that no waiver shall be effective unless in writing signed by the Chairperson of the Park County Board of County Commissioners. The Parties understand and agree that nothing contained in the Final Plat is intended to waive or modify any applicable provision of state or local law. The Owner specifically understands that, absent authority expressly granted by this Agreement, no County employee, including the County Administrator, County Attorney, or County Engineer, may waive any requirement of the Park County Land Use Resolution, other County Resolutions, or this Agreement.
- 9.0 **NO WAIVER OF GOVERNMENTAL IMMUNITY.** Nothing in this Agreement shall be construed to waive, limit, or otherwise modify any governmental immunity that may be available by law to the County, its officials, employees, contractors, or agents, or any other person acting on behalf of the County and, in particular, governmental immunity afforded or available pursuant to the Colorado Governmental Immunity Act, Title 24, Article 10, Part 1 of the Colorado Revised Statutes.
- 10.0 **BINDING EFFECT.** The Parties hereto agree that this Agreement, by its terms, shall be binding upon the successors, heirs, legal representatives, and assigns thereof and shall constitute covenants running with the described property. To the extent permitted by law, the Owner and all future successors, heirs, legal representatives, and assigns of the Owner shall be jointly and severally responsible for all terms, conditions, and obligations set forth in this Agreement.
- 11.0 **NO THIRD PARTY BENEFICIARIES.** It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the County and Owner, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third person on such Agreement. It is the express intention of the County and Owner that any person other than the County or Owner receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

- 12.0 GOVERNING LAW, VENUE AND ENFORCEMENT.** The laws of the State of Colorado shall govern this Agreement. Venue for any action arising from this Agreement shall lie with any appropriate court within Park County, Colorado. The Parties agree and acknowledge that this Agreement may be enforced at law or in equity, including an action for damages or specific performance. In addition to any other available remedies, it is understood and agreed that the County may, at its sole discretion, withhold or refuse to issue any permits requested by the Owner or lot owner, including but not limited to building permits for any lot within [NAME OF SUBDIVISION]. In the event of a breach of this Agreement, nothing herein shall be construed as authorization to deny the issuance of a certificate of occupancy for a residential structure after a building permit for construction has been issued for such structure and all conditions for issuance of a certificate of occupancy have been met.
- 13.0 ATTORNEYS' FEES.** If the Owner or the County breaches this Agreement, the breaching party shall pay the non-breaching party its reasonable costs and attorneys' fees incurred in the enforcement of the terms, conditions, and obligations of this Agreement.
- 14.0 ASSIGNMENT AND RELEASE.** All or part of the rights, duties, obligations, responsibilities, or benefits set forth in this Agreement shall not be assigned by the Owner without the express written consent of the Board of County Commissioners. Any such written assignment shall expressly refer to this Agreement, specify the particular rights, duties, obligations, responsibilities, or benefits so assigned, and shall not be effective unless approved by resolution of the Board of County Commissioners. No assignment shall release the Owner from performance of any duty, obligation, or responsibility unless such release is clearly expressed in such written document of assignment. Prior to approving any release of the Owner, the County may, at its sole discretion, require the party assuming any duty, obligation, or responsibility of the Owner, to provide to the County written evidence of financial or other ability or capability to meet the particular duty, obligation, or responsibility being assumed by the party.
- 15.0 VESTED RIGHTS.** The Parties acknowledge and understand that the approval of this Final Plat was not processed or approved in accordance with or pursuant to C.R.S. § 24-68-101 *et seq.* (the "Vested Property Rights Act") or Park County's Resolution implementing the Vested Property Rights Act.
- 16.0 PARAGRAPH CAPTIONS.** The captions of the paragraphs are set forth only for the convenience and reference of the Parties and are not intended in any way to define, limit or describe the scope or intent of this Agreement.
- 17.0 SEVERABILITY.** Following the issuance of the first building permit for [NAME OF SUBDIVISION], the invalidation of any of the provisions of this Agreement or any paragraph sentence, clause, phrase, or word herein or the

application thereof in any given circumstance shall not affect the validity of any other provision of this Agreement.

**18.0 INTEGRATION AND AMENDMENT.** This Agreement represents the entire agreement between the Parties and there are no oral or collateral agreements or understandings pertaining to [NAME OF SUBDIVISION]. Only an instrument in writing signed by the Parties may amend this Agreement.

**19.0 INCORPORATION OF EXHIBITS.** Unless otherwise stated in this Agreement, exhibits referenced in this Agreement shall be incorporated into this Agreement for all purposes.

**20.0 REVIEW OF REFERENCED DOCUMENTS.** The Owner hereby understands and acknowledges that the public documents referenced in this Agreement, including but not limited to the Park County Land Use Regulations and Park County Resolutions and laws were prior to the execution of this Agreement, and are presently available for review and inspection at the Office of Park County Government, 501 Main Street, Fairplay, Colorado during regular business hours. The Owner has reviewed such documentation, or elected not to review such documentation, prior to execution of this Agreement.

**21.0 NOTICES.** Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the party to whom such notice is to be given at the address' set forth below, or at such other address as has been previously furnished in writing, to the other party or Parties. Such notice shall be deemed to have been given when deposited in the United States Mail.

If to the County	<b>If to the Applicant <i>[insert mailing address]</i></b>
Park County	
Attn: Chief Administrative Assistant	
501 Main St	
PO BOX 1373	
Fairplay CO 80440	

**IN WITNESS WHEREOF**, the County and the Applicant have caused this Agreement to be duly executed and effective following execution by the Applicant and immediately upon the date of the authorized execution of this Agreement by the Chairperson of the Park County Board of County Commissioners or other authorized County official or employee.

**APPLICANT**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Owner of Property       Authorized Agent of Owner

Print Name: \_\_\_\_\_ Position/Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )

) ss.

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

Acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_,

by \_\_\_\_\_

Witness my hand and official seal.

My Commission Expires: \_\_\_\_\_ Notary Public \_\_\_\_\_