

**APPENDIX TWO  
IMPROVEMENTS AGREEMENT FOR PUBLIC/PRIVATE DEVELOPMENT PROJECT**

**THIS AGREEMENT** is made as of this \_\_\_\_ day of \_\_\_\_\_ 202\_, between \_\_\_\_\_ ("Developer"), whose address is \_\_\_\_\_, and the Town of Monument, ("Town"), whose address is 645 Beacon Lite Road, Monument, CO 80132, together, the "parties."

**RECITALS**

A. Developer represents that it is the sole or controlling owner of the real property described in the attached **Exhibit A** (the "Property").

B. Developer has obtained final approval of a site plan, final subdivision plat and/or final PUD plan for development of the Property, which is referred to herein as the \_\_\_\_\_ Project (the "Project"), for which certain public and private improvements are required as conditions of those approvals, and which improvements are referred to herein as the "Site Plan Improvements" or the "Improvements."

C. This Agreement will provide for the completion of the Site Plan Improvements by the Developer and will serve to protect the Town from the cost of completing the Site Plan Improvements.

D. This Agreement 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 Improvements.

E. Pursuant to the Town's regulations, no construction permit may be approved, nor a final subdivision plat or final PUD plan be recorded until Developer has entered into an agreement with the Town concerning the construction of the required Site Plan Improvements, including on-site and off-site improvements. The approved site plan, and/or final plat and/or final PUD plan and the accompanying documents and plans, including construction drawings and specifications relating to the Project, as approved by the Town (the "Final Approval Documents"), are incorporated into this Agreement for all purposes including illustration and interpretation of the terms and conditions of this Agreement.

F. The Town seeks to protect the health, safety and general welfare of the community by requiring the completion of various on-site and off-site improvements for the Project and thereby limiting the harmful effects of substandard subdivisions.

G. Developer agrees to construct all of the hereinafter described Improvements in accordance with, and subject to, the terms, conditions, and requirements of this Agreement.

**I. GENERAL**

1.1 Purpose. The purpose of this Agreement is to provide for the completion of the Site Plan Improvements as hereinafter defined. The above Recitals are fully incorporated herein as a material part hereof.

1.2 Site Plan. Shall hereinafter mean the final site plan for the Project (if unsubdivided), or the final subdivision plat, or Final Site PUD Plan, including any amended

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version, as approved by the Town.

1.3 Site Plan Improvements. Site Plan Improvements consist of offsite improvements within the public right-of-way or on public property; landscaping improvements on privately owned property; public utilities, sidewalks, or other improvements within dedicated easements onsite; and some drainage and erosion control improvements and measures on privately owned property. These improvements, which are shown on the Site Plans for the Project, are required by the Town of Monument for the benefit of owners within and adjacent to the Site Plan area, or which are required by the Town to properly address drainage and erosion control, utilities, vehicular or pedestrian traffic related items, grading, landscaping and irrigation, and lighting. The Site Plan Improvements are listed on **Exhibits B, C, and D.**

1.4 CD's. The "CD's" shall mean the construction documents which must be approved by the Town's Planning Director in connection with the Site Plan prior to construction of any improvements.

1.5 Operation and Maintenance Agreement. A legally recorded document that acts as a property deed restriction and a guarantee for long-term maintenance of permanent stormwater control measures.

1.6 Recording of Agreement. After approval by the Town, this Agreement will, at the expense of the Developer, be recorded in the office of the Clerk and Recorder of El Paso County. Upon issuance of a Certificate of Occupancy for any building on the Property, The Town shall deliver to Developer upon request a recordable executed document which shall release all property (within the applicable phase if a multi-phased Site Plan) within the Site Plan from any further effect of this Agreement, except with respect to warranties described herein.

**II. CONSTRUCTION OF IMPROVEMENTS**

2.1 Agreement to Construct Improvements. Subject to and in accordance with the terms and provisions of this Agreement, Developer agrees to cause the Site Plan Improvements to be constructed and completed at Developer's expense, in accordance with the Site Plan and CD's.

2.2 Site Plan Approval as Condition. The obligation of the Developer to construct and complete the Site Plan Improvements is conditioned upon and shall arise only upon approval of the Site Plan, except that an Erosion and Stormwater Quality Control Plan and a surety for erosion control installation are required prior to the time an overlot grading permit is issued, if applicable. Developer's obligations 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 Property.

2.3 Construction Schedule. Developer shall construct the Improvements in strict accordance with the schedule described on the attached **Exhibit E.** Any failure by Developer to commence or complete the construction of the Improvements in strict compliance with the schedule shall constitute a default by Developer and shall entitle the Town to proceed in accordance with the provisions of Article V of this Agreement. Developer shall not cease

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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 6.16 regarding *force majeure* and seasonal constraints.

2.4 Construction Phasing. Inspection and acceptance of a portion of the Improvements in one or more phases of construction shall occur only if specifically provided for in **Exhibit E** or as determined by the Planning Director, in his or her discretion. Otherwise, all Improvements shall be completed before 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 Planning Director may require adjustments in previously approved phasing schedules when deemed necessary to accommodate changed conditions or unforeseen circumstances.

2.5 Completion Date. Unless otherwise granted by the Planning Director, Improvements shall be fully complete and operational prior to issuance by the Pikes Peak Regional Building Department of a Certificate of Occupancy for any building on the site. In the event that a Certificate of Occupancy is not required, all Improvements shall be fully complete within six months of issuance of the initial grading and erosion control permit. The Planning Director may grant two six-month extensions for good cause.

2.6 Construction Standards. The Improvements shall be constructed in substantial accordance with CD's approved by the Town's Planning Director and, to the extent not otherwise provided in the CD's, in accordance with the Town's building and construction codes, ordinances, resolutions, regulations, and the Triview Metropolitan District's Design Criteria and Construction Specifications Manual for Residential Development as applicable. Prior to the initiation of construction of any Improvement listed in **Exhibits B, C, and D**, CD's for such improvements must be submitted to the Town's Planning Department and approved through the usual review process, including payment of appropriate fees and issuance of applicable permits.

2.7 Debris. Developer shall take all steps necessary to limit and prevent the accumulation of, and to remove accumulated, mud, sediment, dirt, trash and other debris that is carried onto public property or off-site onto private property during construction of the Improvements. This obligation shall continue until all Improvements are completed. If Developer fails to remedy any conditions caused or generated by the development of the Project as contemplated by this Section within 24 hours of oral or written notice by the Town, Developer agrees to pay to the Town upon demand any costs reasonably incurred by the Town in remedying such conditions. Nothing herein shall obligate the Town to remedy any such conditions or limit the Town in its selection of the method or manner of remedy.

2.8 Landscaping Improvements. Developer shall install all landscaping as depicted on the approved landscaping plan. All landscaping that dies within two (2) full growing seasons shall be replaced by Developer at its sole cost, and shall be required to live for at least one (1) year from the time it is replanted. Developer's obligations under this Section shall be guaranteed as part of the Improvements.

2.9 Access. Developer shall maintain, in a reasonable, suitable and proper condition

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for travel, ingress, and egress, all streets located within the Project until such time as the streets are accepted for maintenance by the Town, and until any such private streets are accepted for maintenance by the homeowners' association or other responsible entity approved by the Town.

2.10 Relocation of Utility Lines and Easements; Oversizing. Developer shall bear all costs associated with relocating any water, sewer, telephone, electrical, gas or cable television lines and providing for respective easements for construction of same within and outside of the Project. If oversizing is required, the cost of such oversizing shall be paid as set forth in the agreement attached as **Exhibit H**.

**III. SECURITY FOR COMPLETION; WARRANTY**

3.1 Cost Estimate. Developer's registered civil engineer, licensed architect, or licensed contractor shall provide a detailed itemized cost estimate with costs for each individual construction item (equal to 100% of the estimated construction costs), a summary of which shall be also shown in **Exhibits B, C, and D** for the Improvements on which the Developer's Security under this Agreement is based. Subject to review and approval by the Town's Planning Director, these cost estimates shall establish the base amount of the Security requirement, to which 25% shall be added.

3.2 Improvements Security.

(a) To secure Developer's obligation to construct the Improvements, Developer shall provide the following guarantees (the "Security") in a form approved by the Town's Attorney and the Town's Planning Director. The amount of the guarantee shall equal 125% of the estimated construction cost of the PIA improvements, as listed in **Exhibit B**, sections A-D. An additional Site Cleanup security (see Section 3.5 and **Exhibit B**) shall be added to the total from **Exhibit A**. Security shall be by bond or irrevocable Letter of Credit (LOC), in form approved by the Planning Director and the Town Attorney.

(b) Prior to the commencement of construction in any subsequent phase, Developer shall establish new Security as set forth above.

(c) The Town reserves the right to require security for any incomplete items not already bonded, shown on the approved Site Plan or CD's as a condition of granting approval for the issuance of a temporary Certificate of Occupancy by the Pikes Peak Regional Building Department.

(d) Until the Improvements are completed, subject to phasing or temporary certificates of occupancy as provided herein for any site in substantial compliance with the approved Site Plan and CD's, the Town is under no obligation to give its approval for the Regional Building Department to issue a Certificate of Occupancy for any building on the Property.

3.3 Use of Security. Subject to the terms of this Agreement, the Town may draw upon and utilize the Security to pay for the construction, completion, or correction of the required Improvements or to restore and revegetate the site in the event Developer fails to timely perform the obligations provided in this Agreement and the Town's regulations or is otherwise in default

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under the terms of this Agreement. Application of the Security may include covering such costs, including reasonable engineering and attorney's fees, as are necessary for the Town to administer the construction and correct, repair or complete the required Improvements and to enforce this Agreement and any bond or other undertaking given as the performance guarantee.

3.4 Security for Site Plan Improvements/Erosion Control. No overlot grading permit will be issued for any area within the Property until the Erosion and Stormwater Quality Control Plan, if applicable, is approved by the Town's Planning Director and security in the form of a bond, letter of credit, or other instrument acceptable to the Town, is deposited with the Town for an amount equal to 125% of the estimated cost of the portion of the Site Plan Improvements relating to grading and erosion control.

3.5 Security for Site Cleanup and Safety. Developer agrees to security in the form of a bond, letter of credit, or other instrument acceptable to the Town, in the amount as listed in **Exhibit F**, which security shall be for the purpose of cleaning or securing the site in the event Developer does not do so in a timely manner or in the event the Project is not completed, and the Town is required to enter upon the site and complete the cleaning or securing. In either event, the security shall cover the cost for restoration on the Property and adjacent rights-of-way as necessary to remove any construction materials or debris, remove hazardous conditions including but not limited to open foundations or trenches, control weeds, and reasonably restore the site for safety or aesthetic considerations.

3.6 Renewal. The Security shall remain in effect and shall be renewed by Developer as necessary until released by the Town in accordance with the provisions of Section 3.7. If such Security is provided in a form of a letter of credit or deposit arrangement that includes an expiration date, Developer shall provide evidence of extension of such expiration or replacement of equivalent collateral in a form acceptable to the Town. Failure to provide proof of such extension or replacement collateral no later than thirty (30) days prior to the date of expiration shall be cause for the Planning Director or his or her designee to draw on the Security without the necessity of any notice of default or other notice to Developer. Funds withdrawn in this manner may be expended as necessary to correct, repair and/or construct the Improvements or may be released upon provision of replacement collateral in a format acceptable to the Town.

3.7 Requests for Partial Release of Security. Developer may make periodic requests for the partial release of the Security. All such requests shall be in the form attached as **Exhibit G**, shall be for a reduction of at least twenty percent (20%) of the total original Security, and shall correspond with a portion of the Improvements that have been substantially constructed or installed in accordance with this Agreement. No more than one request for a partial release of the Security may be submitted each month. No reduction of the Security shall be allowed which would reduce the amount of collateral to less than one-hundred twenty-five percent (125%) of the estimated cost of any remaining or incomplete Improvements; and the final twenty percent (20%) of the initial *Security may not be released until all of the Improvements have been accepted.* There shall be no reduction in the amount of the Security if Developer is in default under this Agreement.

3.8 Notice of Defective Work; Cure Period. Except as provided in Section 3.9 with respect to emergency repairs, the Town shall provide written notice to Developer if inspection reveals that any Improvement is defective. Developer shall have ten (10) business days from the

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giving of such notice to remedy the defect. Such ten-business-day time limit may be extended by the Town if the Town determines that such defect cannot reasonably be remedied within such ten-business-day period. In the event Developer fails to remedy the defect within the ten-business-day period, or any extension thereof granted by the Town, the Town may apply the Security to correct the defect or exercise any other remedy provided in this Agreement without further notice. No notice shall be required with respect to emergency repairs except as provided in Section 3.9.

3.9 Emergency Repairs. If at any time it appears that the Improvements may be significantly damaged or destroyed as a result of a bona fide emergency, an act of god, or due to construction failure, the Town shall have the right, but not the duty, to enter upon the Property and perform such repairs and take such other action as may be reasonably required in the Town's judgment to protect and preserve the Improvements. The Town shall have no duty to inspect the Property to identify emergency situations which may arise. Prior to or concurrent with, or immediately following taking any action pursuant to emergency repairs, the Town shall make a reasonable effort to locate Developer and advise it of the existence and nature of the emergency. Upon written demand, Developer shall reimburse the Town for the costs of such emergency repairs. Failure of Developer to pay to the Town the costs of such emergency repairs within fifteen (15) days after demand shall constitute a default as provided in Article V.

3.10 Final Inspection. Approximately sixty (60) days prior to the expiration of the applicable warranty period, the Town shall notify Developer in writing and schedule a final inspection/walk through.

3.11 Warranty. Developer shall warrant that all Improvements shall be installed in a good workmanlike manner and in accordance with the CD's. The Warranty Period consists of two years for streets, curbs, gutter, sidewalks, associated grading, drainage and erosion control systems and appurtenant structures, potable water distribution systems and appurtenances, and sanitary sewer collection systems and appurtenances. The Warranty Period for landscaping and irrigation shall be two (2) full growing seasons after installation. The Warranty Period for all other improvements shall be one year. During such Warranty Period, any construction 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 Developer. With Town's initial acceptance of the Improvements, the Security shall be released as provided herein. Commencing with written acceptance of the Improvements, a separate two-year warranty bond for 25% of all public improvements shown in **Exhibit B**, except landscaping, will be required to be submitted, along with a separate two (2) year growing season landscape warranty bond for 25% of the total shown in **Exhibit C** (landscaping). Upon expiration of the Warranty Periods, or in the event warranty matters have not been rectified within such Warranty Periods, as soon thereafter as the Town has finally accepted the Improvements, the balance of the Security, without compounded interest, for the Improvements (or phased Improvements, if applicable) shall be refunded or released to Developer.

3.12 Repairs and Replacements Prior to End of Warranty Period. Until the end of the applicable Warranty Period, Developer shall, at Developer's expense, make all needed repairs or replacements to the Site Plan Improvements required to correct defects in materials or workmanship. Developer may assign its obligations for ordinary repairs and replacements, but the Developer shall remain obligated to the Town for proper performance of such repairs and

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replacements.

**IV. INSPECTION AND ACCEPTANCE OF IMPROVEMENTS**

4.1 Construction Standards and Progress Inspections. The Improvements shall be constructed in a good and workmanlike manner, strictly in accordance with the CD's and 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 minimum design criteria and construction standards applicable in the Town. There shall be no changes made in the approved CD's and Final Plat Documents, including construction drawings and specifications, without the prior 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. Developer shall be required to pay for these periodic inspections if said inspections are conducted by consultants other than Town employees. 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. Developer hereby grants permission for such persons to enter upon the Property for purposes of making such inspections. Nothing herein shall relieve Developer of the responsibility for ensuring that the Improvements are constructed in accordance with the standards set forth herein, nor shall it relieve Developer of its warranty obligations as provided in Article III.

4.2 Acceptance. Upon substantial completion of a phase, as described in **Exhibit E**, or of all the Improvements, Developer may request an inspection. Town shall make the inspection within twenty (20) calendar days of the date Developer requests final inspection, and Town shall notify Developer of non-conforming work within ten (10) calendar days after the inspection is made. Developer shall then remedy the non-conforming work. Upon receipt by the Town of the Conveyance and Acceptance signed by the Developer and accepted and executed by an authorized representative of the Town, and receipt of the warranty bond, letter of credit, or other form of surety acceptable to the Town, Developer's Warranty periods for the offsite Improvements shall commence. Town shall provide notice of acceptance.

4.3 Conveyance to Town. Developer shall dedicate such of the Improvements as are designed or intended as public Improvements, by appropriate language on the face of the final plat of the subdivision, or if applicable, by warranty deed or bill of sale. Such dedication shall be made free and clear of all liens, encumbrances, and restrictions, except for the permitted exceptions, which are the same or fewer than those identified in the title insurance commitment or other title evidence provided, or as permitted by the Planning Director.

4.5 Payment In Lieu of Dedication. Developer agrees to make any and all payments in lieu of dedications prior to the Town's execution of its approval on the final plat. The amount of such payment shall be as calculated on the attached **Exhibit I**.

4.6 Approval. Upon the satisfactory completion of the Improvements, Developer shall be entitled to obtain Certificates of Occupancy for any building included on the Site Plan. Such issuance will indicate acceptance of improvements constructed in the public right-of-way by the Town for operation, ownership, and maintenance, except that all warranty provisions described herein shall apply.

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**V. DEFAULTS AND REMEDIES**

5.1 Default by the Developer. A default by the Developer shall exist after notice by the Town and an opportunity to cure as hereinafter provided if (a) Developer fails to cure any noncompliance specified in any written notice of noncompliance within the applicable cure period under Section 5.3, and (b) Developer otherwise breaches or fails to comply with any obligation of Developer under this Agreement. Notice of Default as to Improvements must be given by the Town prior to expiration of the warranty period for such phase of the Site Plan Improvements as hereinafter provided.

5.2 Default Enumerations. The following conditions, occurrences or actions shall constitute a default by Developer under this Agreement:

- (a) Developer's failure to commence construction of the Improvements within the time specified in **Exhibit E**;
- (b) Developer's failure to complete construction of the Improvements within the time specified in **Exhibit E**;
- (c) Developer's failure to construct the Improvements in accordance with the approved plans and specifications for the Improvements and this Agreement;
- (d) Developer's failure to cure defective construction of any Improvement within the applicable cure period as provided in Section 3.8;
- (e) Developer's failure to perform work within the Subdivision for a period of more than thirty (30) consecutive days without the prior written approval of the Town, subject to the provisions of Section 6.16 regarding force majeure and seasonal constraints;
- (f) Developer's insolvency, the appointment of a receiver for Developer or the filing of a voluntary or involuntary petition in bankruptcy respecting Developer;
- (g) Foreclosure of any lien against the Property or a portion of the Property or assignment or conveyance of all or part of the Property in lieu of foreclosure prior to final acceptance of the Improvements by the Town as provided in Article IV;
- (h) Developer's failure to pay to Town upon demand the cost of emergency repairs performed in accordance with Section 3.9 of this Agreement; or
- (i) Developer's violation of any provision of this Agreement, the Town's subdivision, zoning or land use regulations, or any other ordinances of the Town.

5.3 Notice of Default. The Town may not declare a default until fifteen (15) days' advance written notice has been given to Developer and Developer has failed to cure the default within that period; provided, however, that such notice shall not be required with respect to any defective construction for which a thirty (30) days' notice of right to cure has been given in accordance with Section 3.8 hereof. In the event a default by Developer is believed to exist, the Town shall give written notice by Registered Mail thereof to Developer, specifying the default and setting a date for Developer to comply with or cure the existence of the default.



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5.4 Use of Security upon Default and Upon Breach. The Town shall be entitled to recover all damages and costs incurred as a consequence of any breach of this Agreement by Developer and enforcement hereof, whether or not suit is brought, including without limitation, all reasonable costs of obtaining the appropriate Security funds and completing the Improvements, and including all design, engineering, inspection, and legal costs, including reasonable attorney fees. For Improvements upon which construction has not begun, the estimated cost of the Improvements as supplied by Developer and shown on **Exhibit B, C, or D**, as applicable, shall be prima facie evidence of the cost of completion; however, neither that amount nor the amount of the Security establishes the maximum amount of Developer's liability. The Town shall be entitled to, but not obligated to, complete all unfinished Improvements after the time of default regardless of the extent to which development has taken place in the Subdivision or whether development ever commenced. No extension of time to perform which is permitted by the Town shall operate to waive the Town's rights to use of the security and/or complete the Improvements.

5.5 Town's Rights upon Default. In the event of notice of default and Developer's failure to cure within the permitted time period, the Town shall have the following rights:

(a) The Planning Director may stop work on the Improvements until a schedule and agreement on compliance for construction has been reached.

(b) The Town may, but shall not be required to, have the Improvements constructed by such means and in such manner as the Town shall determine, without the necessity of public bidding.

(c) If the Town elects to have the Improvements constructed, it shall have the right to use Developer's security to pay for the construction of such Improvements. If the amount of the security exceeds the costs of obtaining the security funds and constructing the Improvements, the Town shall deliver any excess funds to Developer. If the security is insufficient to fully pay such costs, Developer shall, upon demand, pay such deficiency to the Town, together with interest thereon.

(d) The Town may exercise such rights it may have under Colorado law, including, without limitation, the right to bring suit against Developer for injunctive relief, for specific performance of this Agreement, or to recover damages for the breach by Developer of this Agreement.

(e) Developer hereby grants to the Town, its successors, assigns, agents, contractors and employees, a non-exclusive right and easement to enter the Property for the purposes of constructing, maintaining and repairing any Improvements pursuant to the provisions of Article III.

(f) In addition to any remedies provided for herein, or by law or equity, while Developer is in default under this Agreement the Town may refuse to authorize issuance of building permits for the Project and Developer shall have no right to sell, transfer or otherwise convey lots or units within the Project without the express written approval of the Town. If the Town elects not to proceed with completion of the Improvements, the Town Board of Trustees may, by resolution, vacate any portion of the Project for which Improvements have not been completed. In addition, the Town may proceed with restoring

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and revegetating the site, which may include removal of any uncompleted Improvements, using the security to pay for the costs thereof.

(g) The remedies provided for in this Section and elsewhere in this Agreement are cumulative in nature.

**VI. MISCELLANEOUS**

6.1 Indemnification. Developer shall indemnify and save harmless the Town from any and all suits, actions, claims, judgments, obligations, or liabilities of every nature and description which arise from an event or occurrence prior to the date of Final Acceptance and which are caused by, arise from or on account of the construction and installation of the Improvements; and any and all suits, actions, claims, or judgments which arise from an event of occurrence prior to the date of the Final Acceptance and which are asserted by or on behalf of contractors or subcontractors working in the Site Plan, lot owners in the Site Plan, or third parties claiming injuries resulting from defective improvements constructed by Developer. This indemnification shall not apply to claims arising from the negligent acts or omissions of the Town while its employees or agents are present on the Property. Developer shall pay any and all judgments rendered against the Town on account of any such suit, action, or claim, together with all reasonable expenses and attorneys' fees incurred by the Town defending such suit, action or claim. The Town shall, within fifteen (15) days after being served with any such claim, suit, or action, notify the Developer of its reliance upon this indemnification and provide Developer with a copy of all documents pertaining to the claim or cause of action. The Developer may provide legal representation for the Town by counsel acceptable to Town in said action, in which case the Developer shall not be responsible for any additional legal fees incurred by the Town after the date Developer- hired counsel assumes responsibility for the case. The Town agrees that the Developer may also, on its own behalf, become a party to any such action and the Town agrees to execute any documents as may be necessary to allow the Developer to be a party. The Developer is not an agent or employee of the Town.

6.2 Insurance. Developer shall require that all contractors engaged in the construction of the Public Improvements maintain worker's compensation insurance. Before proceeding with the construction of improvements, Developer shall provide the Town with written evidence of general liability insurance in an amount of not less than Two Million Dollars (\$2,000,000) and property damage insurance and bodily injury insurance in an amount of not less than One Million (\$1,000,000) each, and protecting the Town against any and all claims for damages to persons or property resulting from construction and/or installation of any Site Plan Improvements pursuant to this Agreement. The policy shall provide that the Town shall be notified at least thirty (30) days in advance of any reduction in coverage, termination, or cancellation of the policy. Such notice shall be sent by certified mail to the Town's Planning Director, return receipt requested. Developer agrees that any contractors engaged by or for Developer to construct the improvements shall maintain public liability coverage in limits not less than those described above. Developer shall also provide a copy of their liability insurance certificate. The Town does not hereby waive any of the defenses, limitations of liability and protections of the Colorado Governmental Immunity Act, CRS 24-10-101, et seq.

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6.3 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.

6.4 Assignability. Developer may assign its rights and obligations under the Agreement to a party who is the successor of assignee of Developer in its capacity as developer of the Project without the consent of the Town; provided, however, that (a) Developer notifies the Town of the assignment and the name and address of the successor developer; and (b) the successor developer assumes all of the obligations of Developer under this Agreement. Unless otherwise agreed by Town, Developer shall remain liable for performance of all of the obligations of Developer under this Agreement.

6.5 No Automatic Further Approvals. Execution of this Agreement by the Town shall not be construed as a representation or warranty that Developer is entitled to any other approvals required from the Town or any other entity, if any, before Developer is entitled to commence development of the Property or to transfer ownership of Property.

6.6 Notices. All notices, consents or other instruments or communications provided for under this Agreement shall be in writing, signed by the party giving the same, and shall be deemed properly given and received (a) when actually delivered and received personally, by messenger service, or by fax or telecopy delivery; (b) on the next business day after deposit for delivery in an overnight courier service such as Federal Express; or (c) three (3) business days after deposit in the United States mail, by registered or certified mail with return receipt requested. All such notices or other instruments shall be transmitted with delivery or postage prepaid, addressed to the parties at the address below for that party(s) or to such other address as such party(s) may designate by written notice to the other party(s).

**If to Developer:** \_\_\_\_\_, name, title  
\_\_\_\_\_ business name  
\_\_\_\_\_ address  
\_\_\_\_\_ address  
\_\_\_\_\_ e-mail

**If to Town:** Planning Director  
Town of Monument  
645 Beacon Lite Road  
Monument, CO 80132  
e-mail: \_\_\_\_\_

6.7 Further Assurances. At any time, and from time to time, upon request of either party, the other party agrees to make, execute and deliver or cause to be made, executed and delivered to requesting party any and all further instruments, certificates and documents consistent with the provisions of the Agreement as may, in the reasonable opinion of the requesting party, be necessary or desirable in order to effectuate, complete or perfect the right of the parties under this Agreement.

6.8 Binding Effect. Subject to Section 6.4 above, this Agreement shall run with the land

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and be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

6.9 Vested Property Rights. This Agreement shall not alter, enlarge, extend or modify any vested right obtained by Developer in connection with the Project. Developer hereby waives its rights to any claims against the Town under Colorado statutory or common law vested property rights if the Town suspends work or withdraws its approval because of false or inaccurate information provided by Developer.

6.10 Recordation. This Agreement shall be recorded by the Town in the Office of the El Paso County Clerk and Recorder and Developer shall pay the Town the costs thereof upon demand.

6.11 Headings for Convenience. All headings and captions used herein are for convenience only and are of no meaning in the interpretation or effect of this Agreement.

6.12 No Implied Waivers. The failure by a party to enforce any provision of this Agreement or the waiver of any specific requirement of this Agreement shall not be construed as a general waiver of this Agreement or any provision herein nor shall such action act to stop the party from subsequently enforcing this Agreement according to its terms.

6.13 Severability. If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid, it shall not affect the validity of this Agreement as a whole, or any part thereof, other than the part declared to be invalid and there shall be substituted for the affected provision, a valid and enforceable provision as similar as possible to the affected provision.

6.14 No Waiver of Sovereign Immunity. Nothing contained in this Agreement shall constitute a waiver of the sovereign immunity of the Town under applicable state law.

6.15 Consent to Jurisdiction and Venue. Personal jurisdiction and venue for any civil action commenced by either party to the Agreement with respect to this Agreement or a letter of credit shall be proper only if such action is commenced in the District Court for El Paso 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.

6.16 Force Majeure. Neither party shall be liable for failure to perform hereunder if such failure is the result of Force Majeure and any time limit expressed in this Agreement shall be extended for the period of any delay resulting from Force Majeure. "Force Majeure" shall mean causes beyond the reasonable control of a party such as, but not limited to, weather conditions, acts of God, strikes, work stoppages, unavailability of or delay in receiving labor or materials, fire or other casualty, or action of government authorities.

6.17 Exhibits. The exhibits attached to this Agreement and made a part hereof by this reference are:

- **Exhibit A:** Legal description of the Property
- **Exhibit B:** Estimated Public Site Plan Improvements
- **Exhibit C:** Landscape and Irrigation Cost Estimate

**APPENDIX TWO**  
**IMPROVEMENTS AGREEMENT FOR PUBLIC/PRIVATE DEVELOPMENT PROJECT**

- **Exhibit D:** Drainage and Utility Cost Estimate
- **Exhibit E:** Construction schedule
- **Exhibit F:** Form of Site Improvements Bond
- **Exhibit G:** Form of Partial Release
- **Exhibit H:** Form of Reimbursement Agreement
- **Exhibit I:** Payments in Lieu of Dedication

6.18 Entire Agreement. This Agreement, and any other agreement or document referred to herein, constitutes the entire understanding between the parties with respect to the subject matter hereof and all other prior understandings or agreements shall be deemed merged in this Agreement.

**APPENDIX TWO  
IMPROVEMENTS AGREEMENT FOR PUBLIC/PRIVATE DEVELOPMENT PROJECT**

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

**DEVELOPER:**

\_\_\_\_\_, Inc.

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

\_\_\_\_\_ name, title

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

State of Colorado )

)

County of \_\_\_\_\_ )

The foregoing was subscribed and sworn to before me this \_\_\_ day of \_\_\_\_\_  
2021 by \_\_\_\_\_ [ name ], as [ title ] of \_\_\_\_\_ Inc.

SEAL

\_\_\_\_\_

Notary public

**TOWN OF MONUMENT**

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

\_\_\_\_\_, Planning Director

**APPENDIX TWO  
IMPROVEMENTS AGREEMENT FOR PUBLIC/PRIVATE DEVELOPMENT PROJECT**

**EXHIBIT A**

**Legal Description of the Property**

[Attached]

**APPENDIX TWO  
IMPROVEMENTS AGREEMENT FOR PUBLIC/PRIVATE DEVELOPMENT PROJECT**

**EXHIBIT B**

**ESTIMATED COST OF PUBLIC SITE PLAN IMPROVEMENTS AND  
LANDSCAPING ON PRIVATE PROPERTY FOR PROJECT**

**A. Vehicular and Pedestrian Related**

ITEM	NUMBER	COST/UNIT	TOTAL COST
All roadway pavement	Per square yard		
Sidewalks	Per square feet		
Curb & gutter	Per linear foot		
Street lighting	Each		
Other [see schedule 1]	Lump sum		

**B. Landscaping**

ITEM	NUMBER	COST/UNIT	TOTAL COST
Landscaping	Lump sum		
Retaining walls	Per linear foot		
Fences	Per linear foot		
Other	Lump sum		

**C. Drainage**

ITEM	NUMBER	COST/UNIT	TOTAL COST
Drainage	Lump sum	From Exhibit D	
Potable water	Lump sum	From Exhibit D	
Sanitary sewer	Lump sum	From Exhibit D	

**D. Erosion and Stormwater Quality Control (required for all public and private stormwater facilities)**

ITEM	NUMBER	COST/UNIT	TOTAL CST
BMPs for erosion control	Lump sum		

**E. Subtotal**

ITEM	NUMBER	COST/UNIT	TOTAL COST
Total of Items A-D above			

**F. Site Cleanup**

**G. 25% Contingency**

**H. Total**



**APPENDIX TWO  
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**SCHEDULE 1  
TO EXHIBIT B**

**ESTIMATED COST OF PUBLIC SITE PLAN IMPROVEMENTS AND  
LANDSCAPING ON PRIVATE PROPERTY**

**A. Other Vehicular and Pedestrian related**

<b>SIGNAGE AND STRIPING</b>	<b>SIZE</b>	<b>COST</b>
Street name sign		
Barricade		
Striping		
Handicap ramps		

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**APPENDIX TWO  
IMPROVEMENTS AGREEMENT FOR PUBLIC/PRIVATE DEVELOPMENT PROJECT**

**EXHIBIT C**

ITEMIZED LANDSCAPE AND IRRIGATION COST ESTIMATE INCLUDING IRRIGATION

PHASE NUMBER: (if it applies) \_\_\_\_\_

<b>Item</b>	<b>Size</b>	<b>Quantity</b>	<b>Unit Cost</b>	<b>Total Cost</b>
Rock mulch	Per square yard			
Trees	Each			
Shrubs				
Permanent irrigation system	Per square foot			
Bluegrass seeding (irrigated)				
Native seeding (irrigated)				
Playground equipment and surface material				
			<b>Total</b>	

**APPENDIX TWO  
IMPROVEMENTS AGREEMENT FOR PUBLIC/PRIVATE DEVELOPMENT PROJECT**

**EXHIBIT D**

ITEMIZED DRAINAGE AND UTILITY COST ESTIMATE FOR PROJECT

PHASE NUMBER: (if it applies) \_\_\_\_\_

<b>Storm sewer</b>	<b>Size</b>	<b>Quantity</b>	<b>Unit cost</b>	<b>Total Cost</b>
30")(avg) storm lines	Per linear foot			
Storm inlets	Each			
Storm manholes	Each			
Stormwater detention facilities	Each			

<b>Potable water</b>	<b>Size</b>	<b>Quantity</b>	<b>Unit cost</b>	<b>Total Cost</b>
Water main connections	Each			
Water mains	Per linear foot			
DCW service stubs	Per linear foot			
Fire hydrant assemblies	Each			

<b>Sanitary sewer</b>	<b>Size</b>	<b>Quantity</b>	<b>Unit cost</b>	<b>Total Cost</b>
Sanitary sewer mains	Per linear foot			
SS manholes	Each			

**APPENDIX TWO  
IMPROVEMENTS AGREEMENT FOR PUBLIC/PRIVATE DEVELOPMENT PROJECT**

**EXHIBIT E**

**Construction Schedule**

**[attached]**

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**APPENDIX TWO  
IMPROVEMENTS AGREEMENT FOR PUBLIC/PRIVATE DEVELOPMENT PROJECT**

**EXHIBIT F**

**Form of Site Improvement Bond**

**[attached]**

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**APPENDIX TWO  
IMPROVEMENTS AGREEMENT FOR PUBLIC/PRIVATE DEVELOPMENT PROJECT**

**EXHIBIT G**  
**Form of Partial Release**

**APPENDIX TWO  
IMPROVEMENTS AGREEMENT FOR PUBLIC/PRIVATE DEVELOPMENT PROJECT**

**EXHIBIT H**

**Form of Reimbursement Agreement**

**[attached]**

**APPENDIX TWO  
IMPROVEMENTS AGREEMENT FOR PUBLIC/PRIVATE DEVELOPMENT PROJECT**

**EXHIBIT I**

**Payments in Lieu of Dedication**