

Development Improvements Agreement

Packet Contains

Agreement

- Contract between Mesa County and the Developer to complete the improvements as required

Development Improvements Attachments:

- Property Legal Description - Exhibit A
- Lien Holders' Ratification and Approval- Exhibit B
- Guarantee – Exhibit C
- Costs of Construction - Exhibit D

Guarantee Options:

- Option A - Letter of Credit (See Sample Format) requires approval by the Mesa County Attorney
- Option B - Subdivision Improvements Disbursement Agreement (See Sample Format with Draw Request)
- Option C - Subdivision Improvements Cash Deposit Agreement
- Option D - Performance Bond, to be provided by the applicant, requires approval by the Mesa County Attorney
- Option E – Plat Hold
- Option F – Building Permit Hold utilization limited to simple land divisions and improvements under \$10,000, the completion period is limited to six months and one extension.

Draw Request

- A sample of the draw request form required for release of security under certain guarantee options.

Do not record this page

DEVELOPMENT IMPROVEMENTS AGREEMENT

Project File No.: _____

Project Name: _____

- 1. Parties:** The parties to this Development Improvements Agreement (“the Agreement”) are _____ (“the Developer”) and The County of Mesa, Colorado (“the County”).
- 2. Effective Date:** The Effective Date of the Agreement will be the date that this agreement is recorded.

RECITALS

The Developer seeks permission to subdivide property within the County to be known as _____ (“the Subdivision”), or to develop the platted property known as _____ (“the Subdivision), the property is more particularly described on Exhibit A attached and incorporated by this reference (“the “Property”); and

The County seeks to protect the health, safety and general welfare of the community by requiring a timely completion of these improvements and to limit the effects of uncompleted subdivisions, including premature subdivision which leaves property undeveloped and unproductive; and

The purpose of this Agreement is to protect the County from assuming the cost to complete the Subdivision improvements and is not executed for the benefit of material men, laborers, or others providing work, services or material to the Subdivision or for the benefit of lot or home buyers in the Subdivision; and

The mutual promises, covenants, and obligations contained in this Agreement are authorized by the State law and the County’s land development regulations;

THEREFORE, for valuable consideration, the receipt and adequacy of which is acknowledged, the Parties agree as follows:

DEVELOPER'S OBLIGATION

- 3. Improvements:** The Developer will design, construct, and install, at his own expense, those on-site and off-site subdivision improvements listed on Cost of Construction attached and as accepted by the County on the Plat, Plans and Specifications (“Construction Documents”) and incorporated by this reference (“Improvements”). The Developer’s obligation to complete the Improvements will be in conformance with the time schedule defined by the Agreement and will be independent of any obligations of the County contained herein.
- 4. Guarantee Options:** To secure the construction of the Improvements under this Agreement (except obligations for warranty, see section 6), the Developer will deposit with the County as a Guarantee, on or prior to the Effective Date, either:
- Option A.** Irrevocable Letter of Credit in the amount of \$ _____
 - Option B.** Subdivision improvements disbursement agreement in the amount of \$ _____
 - Option C.** Cash in the amount of \$ _____, to be escrowed by the County Treasurer
 - Option D.** Performance bond in the amount of \$ _____
 - Option E.** Plat Hold
 - Option F.** Building Permit Hold

Option A: Irrevocable Letter of Credit - The letter of credit will be issued by a financial institution (“Bank”) in the total dollar amount as shown in Cost of Construction and will be reviewed for acceptance as a Guarantee by the County’s Attorney. The letter of credit will be payable at sight to the County and will bear an expiration date not earlier than one (1) year from the Effective Date of this Agreement. The letter of credit will be payable to the County at any time upon presentation of (i) a sight draft drawn on the issuing bank to which the County is entitled to draw pursuant to the terms of this Agreement and the letter of credit; and (ii) a certification executed by an authorized representative of the County or designee stating that the Developer is in default under this Agreement; and (iii) the original

letter of credit

Option B: Subdivision Improvements Disbursement Agreement - The Subdivision Improvements Disbursement Agreement, (“Disbursement Agreement”) as shown in the Exhibit C and incorporated to the Agreement by this reference will be implemented by the financial institution (“Bank”), the Developer and the County, per the terms and conditions of the Disbursement Agreement and will provide for segregation of Developer’s loan proceeds by the Bank. The County is entitled to draw pursuant to the terms of this Agreement, the funds to be disbursed to the County, in full or in part, upon presentation of: (i) request for disbursement; and (ii) a certification executed an authorized representative of the County or designee stating that the Developer is in default under this Agreement; or (iii) as otherwise provided by the Disbursement Agreement. Modifications to the Mesa County Standard Disbursement Agreement shall be reviewed by the County’s Attorney for acceptance as Guarantee.

Option C: Cash - Cash in the form of a cashier’s check or bank account in the sole ownership of the County in the total dollar amount as shown in Cost of Construction will be escrowed with the County’s Treasurer. County is entitled to draw upon these funds, pursuant to the terms of this Agreement. The funds will be disbursed to the County in full or in part, upon presentation of: (i) request for disbursement; and (ii) a certification executed by an authorized representative of the County stating that the Developer is in default under this Agreement; or (iii) as otherwise provided by the cash escrow agreement.

Option D: Performance Bond - A Performance Bond shall be issued upon which the County will be entitled to draw pursuant to the terms of this Agreement in the total dollar amount as shown in the Cost of Construction. The funds will be disbursed to the County in full or in part, upon presentation of: (i) request for disbursement; and (ii) a certification executed by an authorized representative of the County or designee stating that the Developer is in default under this Agreement; or (iii) as otherwise provided by the bond agreement. The performance bond shall be reviewed by the

County's Attorney for acceptance as Guarantee.

Option E: Plat Hold - A Plat Hold may be utilized as Guarantee for projects that do not contain Improvements in existing Mesa County Right of Way or Right of Way incidental to the subject plat. A Plat Recording Certificate or Plat Acceptance Memorandum from Mesa County Development Surveying is required to accompany the Plat. The Plat and Certificate or Memorandum will be held by the County. Release and recording of the Plat will require: (i) completion of the Improvements pursuant to the terms of this Agreement; and (ii) County Commissioners signed acknowledgement of the Plat to be obtained only after completion of the Improvements and extinguishment of this Agreement; and (iii) A letter from the lien holder, as indicated on the plat, that they remain the current lien holder. Completion period for the Improvements is limited to twelve (12) months.

Option F: Building Permit Hold - Building Permit Hold utilized as Guarantee is limited to simple land divisions with limited Improvements. The release of the Permit Hold requires completion of the improvements pursuant to the terms of this Agreement. Completion period is limited to six (6) months.

5. **Standards:** The Developer will construct the Improvements according to the accepted Construction Documents, this Agreement, and the Standards, Policies and Procedures of Mesa County. The Developer shall instruct the contractor or construction manager to provide timely notice to the Developer, contractor, issuer of Guarantee and Mesa County Development Engineering whenever an observation or related construction activities reveal an Improvement does not conform to County Standard Specifications, accepted Construction Documents or is otherwise defective.
6. **Warranty:** The Developer warrants that the Improvements, each and every one of them, will be free from defects for a period of eighteen (18) months from the date of the County's acceptance of the Road Petitions.
7. **Commencement and Completion Periods:** All improvements as outlined in Cost of Construction, Construction Documents or appurtenances required to complete the outlined improvements will be completed within one (1) year from the Effective Date of

this Agreement (“Completion Period”), with the exception of improvements Guaranteed by Option F: Building Permit Hold, which require the improvements be completed in six (6) months.

- 8. Compliance with Law:** The Developer will comply with all relevant federal, state and local laws, and regulations in effect at the time of final subdivision plat approval when fulfilling his obligations under this Agreement.

COUNTY’S OBLIGATION

- 9. Notice of Defect:** The County will subsequently issue a Notice of Deficiencies to the Developer and the issuer of Guarantee. The Developer will have thirty (30) calendar days from the issuance of such notice to correct the defect. If inclement weather or circumstances beyond the Developer’s control prevent correction within that time period, he may apply for an additional thirty (30) calendar days defect correction extension to the initial period. The defect correction extension shall be received by the Mesa County Development Engineering department in writing not later than fourteen (14) calendar days prior to the expiration of the current correction period. If subsequent extensions are requested, the County will not issue further Notices and the Developer must request extensions no later than fourteen (14) calendar days before the expiration of the current correction period. The extension will be reviewed by the Development Engineering department for compliance with the time schedule and improvements costs as represented on Cost of Construction herein and for compliance with the County Standard, specifications, accepted construction documents per the development application. If an extension is not approved a condition of default may be declared and an Affidavit of Lapse of Improvements Agreement may be issued stating that building permits will not be issued in the Subdivision and the County may request that the court enjoin the sale, transfer of conveyance of lots within the Subdivision until a new development improvements agreement and Guarantee are accepted by the County.
- 10. Notice of Non Compliance with Completion Date:** The County shall issue the Developer a Notice of Deficiencies not earlier than thirty (30) calendar days before the Completion Date. If inclement weather or circumstances beyond the Developer’s control

prevent construction within the completion period, a twelve (12)-month extension to the completion period may be requested. A written request by the Developer indicating cause and reason for an extension shall be submitted to the Development Engineering Department not later than fourteen (14) calendar days after receipt of said Notice. The extension will be reviewed by the Development Engineering Department for compliance with the Mesa County Land Development Code, County Standards and Specifications, Mesa County Project Files, and Construction Documents and provided the Guarantee is also extended in the amount of the current costs for those improvements and extended for the change in the completion date. An accepted extension will be executed by an addendum to this agreement. If an extension of time is not approved by Development Engineering, an Affidavit of Lapse Improvements Agreement may be recorded stating that building permits will not be issued in the Subdivision and the County will request that the court enjoin the sale, transfer or conveyance of lots within the Subdivision until a new development improvements agreement and Guarantee are accepted by the County.

11. Acceptance of Improvements: The County's acceptance of improvements is conditioned on the presentation by Developer of the required signatures of acceptance by all entities serving the constructed improvements, clear documentation and testing that the improvements have been completed per the accepted Construction Documents and County Standards and Specifications and on the presentation by Developer of a document or documents where appropriate, for the benefit of the County showing that the Developer owns the improvements in fee simple and that there are no liens or encumbrances on the improvements. Acceptance of any improvements does not constitute a waiver by the County of any rights it may have on account of any defect in or failure of the improvement that is detected or which occurs after the acceptance.

12. Reduction of Guarantee: After the partial completion of improvements and upon application of the Developer, the amount which the County is entitled to draw on under the letter of credit, subdivision improvements disbursement agreement or cash in escrow will be reduced by an amount equal to ninety percent (90%) of the estimated cost of the improvements as shown on Cost of Construction. At the request of the Developer, the County will execute an amendment to this agreement verifying the acceptance of the improvement and waiving and releasing its right to draw on the Guarantee per section

four (4) to the extent of such amount. A Developer in default under this Agreement will have no right to such a resolution. Upon the acceptance of all of the Improvements, the full balance that may be drawn under the letter of credit, subdivision improvements disbursement agreement, performance bond or cash escrow agreement, will be released.

13. Use of Proceeds: The County will use funds drawn under the Guarantee per section four (4) only for the purpose of completing the Improvements or correcting defects in or failure of the Improvements.

OTHER PROVISIONS

14. Events of Default: The following conditions, occurrences or actions will constitute a default by the Developer during the Completion Period:

- a. Developer's failure to complete each portion of the Improvements in conformance with the Completion Period or as extended; the County may not declare a default until a thirty (30) calendar day notice (Notice of Deficiency) has been given to the Developer or any requested extensions of time have been denied.;
- b. Developer's failure to demonstrate reasonable intent to correct defective construction of any improvement within the applicable correction period; the County may not declare a default until Notice of Deficiency has been given to the Developer and thirty (30) calendar day correction period has elapsed; the County may declare a default after subsequent approved correction periods have lapsed without such Notice unless Developer applies for an extension no later than fourteen (14) calendar days and that request is approved;
- c. Notification of Developer's insolvency, the appointment of a receiver for the Developer or the filing of a voluntary or involuntary petition in bankruptcy respecting the Developer or foreclosure of any lien against the Property or a portion of the Property; the County may immediately declare a default without prior notification to the Developer;
- d. Notification to County by lender with a lien on the property of Developer's default on this obligation; the County may immediately declare a default without prior notification to the Developer.

15. Measure of Damages: The measure of damages for breach of this Agreement by Developer will be the reasonable cost of satisfactorily completing the Improvements. For improvements upon which construction has not begun, the estimated costs of the Improvements as shown on Cost of Construction will be prima facie evidence of the minimum cost of completion; however, neither that amount nor the Guarantee amount shall establish the maximum amount of the Developer's liability.

16. County's Rights Upon Default: When any event of default occurs, the County may draw on the letter of credit, performance bond or escrowed collateral to the extent of the face amount of the credit or full amount of escrowed collateral less ninety percent (90%) of the estimated cost, as shown on the Cost of Construction, of all improvements previously accepted by the County, or may exercise its rights to disbursement of loan proceeds under the subdivision improvements disbursement agreement. The County will have the right to complete improvements itself or contract with a third party for completion, and the Developer grants to the County, its successors, assigns, agents, contractors, and employee, a nonexclusive right and easement to enter the Property for the purposes of constructing, maintaining, and repairing such improvements. Alternatively, the County may assign the proceeds of the letter of credit, the subdivision improvements disbursement agreement, performance bond or of the escrowed collateral to a subsequent party who has acquired the Subdivision by purchase, foreclosure or otherwise who will then have the same rights of completion as the County if and only if the subsequent party agrees in writing to complete the unfinished improvements and provides reasonable Guarantee for the obligation. In addition, the County may also enjoin the sale, transfer, or conveyance of lots within the subdivision, until the Improvements are completed and accepted. These remedies are cumulative in nature and are in addition to any other remedies the County has at law or in equity.

17. Indemnification: The Developer expressly agrees to indemnify and hold the County, its employees and assigns harmless from and against all claims, costs and liability of every kind and nature except those arising out of negligence on the part of the County employees and assigns, for injury or damage received or sustained by any person or entity in connection with, or on account of the performance of work at the Subdivision pursuant to this Agreement. The Developer further agrees to aid and defend the County

- 18. No Waiver:** No waiver of any provision of this Agreement will be deemed or constitute a waiver of any provision, nor will it be deemed or constitute a continuing waiver unless expressly provided for a written amendment to this Agreement signed by both county and Developer; nor will the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The County's failure to exercise any right under this Agreement will not constitute the approval of any wrongful act by the Developer or the acceptance of any improvement.
- 19. Amendment or Modification:** The parties to this Agreement may amend or modify this Agreement only by written instrument executed on behalf of the County by the Development Engineering department and in agreement with the County Attorney and by the Developer or authorized officer. Such amendment or modification will be properly notarized and recorded as an amendment to the agreement, before it may be effective.
- 20. Attorney's Fees:** Should either party be required to resort to litigation to enforce the terms of this Agreement, the prevailing party, plaintiff or defendant, will be entitled to costs, including reasonable attorney's fees and expert witness fees, from the opposing party. If the court awards relief to both parties, the attorney's fees may be equitably divided between the parties by the decision maker.
- 21. Vested Rights:** The County does not warrant by this Agreement that the Developer is entitled to any other approval(s) required by the County, if any, before the Developer is entitled to commence development of the Subdivision or to transfer ownership of property in the Subdivision.
- 22. Third Party Rights:** No person or entity, who or which is not a party to this Agreement will have any right of action under this Agreement.

- 23. Scope:** This Agreement constitutes the entire agreement between the parties and no statements, promises or inducements that are not contained in this Agreement will be binding on the parties.
- 24. Time:** For the purpose of computing the Completion Period, and time periods for County action, such times in which war, civil disasters, or acts of God occur or exist will not be included if such times prevent the Developer or County from performing its obligation under the Agreement.
- 25. Severability:** If any part, term, or provision of this Agreement is held by the courts to be illegal or otherwise unenforceable, such illegality or unenforceability will not affect the validity of any other part, term, or provision and the rights of the parties will be construed as if the part, term, or provision was never part of the Agreement.
- 26. Benefits:** The benefits of this Agreement to the Developer are personal and may not be assigned without the express written approval of the County. Such approval may not be unreasonably withheld, but any unapproved assignment is void. Notwithstanding the foregoing, the burdens of this Agreement are personal obligation of the Developer and also will be binding on the heirs, successors, and assigns of the Developer, and shall be a covenant running with the Property. There is no prohibition on the right of the County to assign its rights under this Agreement. The County will expressly release the original Developer's Guarantee or obligations under the subdivision improvements disbursement agreement if it accepts new Guarantee from any developer or lender who obtains the Property. However, no other act of the County will constitute a release of the original Developer from his liability under this Agreement.
- 27. Notice:** Any notice required or permitted by this Agreement will be deemed effective when personally delivered in writing or seven (7) calendar days after notice is deposited with the U.S. Postal Service, certified, and return receipt requested, and addressed as follows:

If to Developer:

Developer's Name

Developer's Mailing Address

If to County:

Mesa County Development Engineering
P.O. Box 20,000, Grand Junction, CO 81502-5022

28. Recordation: County will record a copy of this Agreement in the Clerk and Recorder's Office of Mesa County, Colorado.

29. Immunity: Nothing contained in this Agreement constitutes a waiver of the County's sovereign immunity under any applicable state law.

30. Personal Jurisdiction and Venue: Personal jurisdiction and venue for any civil action commenced by either party to this Agreement whether arising out of or relating to the Agreement, letter of credit, performance bond, subdivision improvements disbursement agreement, or cash escrow agreement will be deemed to be proper only if action is commenced in District Court for Mesa County. The developer expressly waives his right to bring such action in or to remove such action to any other court whether state or federal.

31. Mediation: Dispute resolution outside the court system shall be by a closed mediation with the Mesa County Board of County Commissioners as mediators. Resolutions to the dispute will be executed by a signed recorded amendment to this Agreement. The amendment will contain the disputed subject matter and clearly indicated the resolution and requirements for both parties. Additionally, use of mediation will waive the rights by both parties to access the courts. No mediation fess will be paid by either party and neither party shall be awarded attorneys fees, or damages.

32. Extinguishment: This Agreement shall be extinguished only through formal acceptance of the improvements per the provisions of this Agreement or through entering an Extinguishment Agreement between the County and the Developer.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed per the effective date as indicated.

Developer

Company Name: _____

By: _____ Signature _____

The foregoing instrument was acknowledged before me this ____ day of _____, _____, by _____

Witness my hand and official seal.

My commission expires: _____

Notary Public

Mesa County

Development Engineering

By: _____ Signature _____

The foregoing instrument was acknowledged before me this ____ day of _____, _____, by _____

Witness my hand and official seal.

My commission expires: _____

Notary Public

EXHIBIT A

PROPERTY LEGAL DESCRIPTION

Please insert after this page the Legal Description of the Property

EXHIBIT B

LIEN HOLDERS' RATIFICATION AND APPROVAL

The undersigned will ratify the final plat for _____
Subdivision to be recorded _____, 20 __, within the Mesa County Land
Records and approves the terms of this Development Improvements Agreement.

By: _____

State of Colorado - County of Mesa

Subscribed and sworn before me this _____ day of _____, 20 ____.

By: _____

Witness my hand and official seal.

My commission expires: _____

Notary Public

EXHIBIT C

GUARANTEE

Please insert the proper Guarantee Agreement after this page

EXHIBIT C

LETTER OF CREDIT

Sample to be followed in issuance of Letter of Credit to Mesa County and shall be printed on the Banking Institution Letter Head

Mesa County, Colorado
P.O. Box 20,000
Grand Junction, CO. 81502-5022

Re: Irrevocable Letter of Credit No.: _____
Project Name/Phase: _____
Project Number: _____
Subdivision: _____
Date of Expiration, 4:30 p.m.
Grand Junction, Colorado Local Time

We hereby authorize the County of Mesa, Colorado (the "County") to draw on _____ Bank Name and Address, which is located within the State of Colorado, for the Account of Development Improvements Agreement Petitioner ("Petitioner") up to an aggregate of \$ _____ Dollars), United States Currency, available by your drafts at sight drawn on us.

Each draft must be accompanied by a certification by the County Engineer that_ (Petitioner) is in default under the terms and conditions set forth in the Development Improvements Agreement; by this original letter of credit; and by a sight draft signed by the County Engineer. The original letter of credit shall be returned to the County if the sight drafts on the letter of credit have not exhausted the full amount of credit.

Each sight draft drawn under this Letter of Credit must state "Drawn under _____ (Bank Name)

Irrevocable Letter of Credit No. _____, dated _____, to satisfactorily complete such improvements as required by Mesa County Development Improvement Agreement as recorded in the records of the Mesa County Clerk and Recorder ("Development Improvements Agreement"), and any modification of that Agreement."

This Letter of Credit shall be automatically extended without amendment for one year from the present or any future expiration date unless (1) the County shall have released _____ (Bank Name) from all further

liability under this after upon the timely and satisfactory completion of the improvements; or (2) sixty (60) days

prior to such expiration date, or any extension thereof, the County Engineer and County Planning Director shall be notified by registered letter addressed to P.O. Box 20,000, Grand Junction, Colorado 81502-5022, that we elect not to extend the term of the Letter of Credit for any additional period.

The proceeds of said drafts may be retained and used by the County to meet any expenses arising out of the satisfactory completion of the improvements identified in the Development Improvements Agreement. Upon the final completion and acceptance of the performance required under that agreement by the County, there will be refunded to us by the County any balance remaining after application by the County of the sums necessary from the proceeds of the draft(s) to pay all costs, expenses and liabilities, including attorney's fees, incurred in satisfactorily completing the improvements.

This Letter of Credit is issued and subject to the Uniform Customs and Practice for Documentary Credits (1983 Revision), International Chamber of Commerce, Publication No. 400, to the extent that it does not conflict with Article 5 of the Uniform Commercial Code for the State of Colorado.

We hereby agree with drawers, endorsers and bona fide holders of drafts that all drafts drawn under and in compliance with the terms of this Letter of Credit shall be honored by us and payment made no later than three (3) days after delivery of documents as specified on or before the original or extended expiration date of this letter of credit.

In the event this financial institution is placed into receivership, becomes insolvent, or files for bankruptcy, Mesa County shall be immediately notified. Mesa County may consider this a default event and require the issuance of a new irrevocable letter of credit.

Issuing Bank: Bank Name

Bank Address

By:

Bank Officer Signature and Title

EXHIBIT C

SUBDIVISION IMPROVEMENTS DISBURSEMENT AGREEMENT

This agreement is entered into by and between Mesa County, Colorado (“County”),
_____ (“Bank”), and _____ (“Developer”).

RECITATIONS

The Developer has been required by the County to construct certain improvements (“Improvements”) to _____ (“Subdivision”) in accordance with the Mesa County Land Development Code, under a Development Improvements Agreement (“DIA”) which is attached hereto and incorporated herein.

The Bank has agreed to loan funds to the Developer for the Improvements construction in the Subdivision.

The Mesa County has received an estimate certified by a Colorado State Professional Engineer for the total costs to complete the Improvements, inclusive to any construction engineering, permit fees or other cost required to complete the Improvements, in the amount of \$_____, and that this amount from the Developer’s loan proceeds shall be referred to in this Agreement as the “Funds”.

The parties wish to insure that the Funds are disbursed only to pay for the Improvements or cost incidental to completing the Improvements.

TERMS

The parties, for valuable consideration, the receipt and adequacy of which is acknowledged, agree as follows:

- 1) **Funds for Improvements:** Bank shall lock out the Funds on behalf of Developer within three (3) days of execution of this agreement. The funds will not be paid out or disbursed to or on behalf of the Developer except as set forth in this Agreement.
- 2) **Disbursement of Funds:** Bank shall disburse a portion of the Funds only upon the receipt of the following and signed by the Mesa County Representative, except as provided by Default of Owner:
 - a) A Draw Request for work done in Mesa County ROW or future Mesa County ROW may require signature by a professional engineer licensed by the State of Colorado (“Engineer”), and signed by the Mesa County Representative. The amount of the draw upon the Funds shall not be greater than 90% of the completed improvements. The remaining 10% shall be held by the Bank as retainage.
 - b) The draw request shall state which of the Improvements has been completed; also that the engineer has inspected the Improvements for which payment is requested; also that

the work has been completed in accordance with the approved plans and specifications and that the sum requested to be disbursed is reasonable and consistent with the estimates which form the basis for the DIA; and

- c) All bills or invoice for such work which have been approved by the Developer and may be attached to the Draw Request; and
 - d) All testing reports as required by Mesa County are attached for the work to be approved; and
 - e) Copies of the final draw request shall contain signatures of acceptance by all entities serving the constructed improvements, prior to submitting the request to the Mesa County Representative for review and signature.
 - f) Upon extinguishment of the DIA through formal acceptance of the improvements per the provisions of the DIA, shall the Bank release the retainage.
- 3) **Default by Owner:** Upon default of the Developer on this obligation to Bank or default on the DIA, Bank shall cease disbursement of the Funds to the Developer except to the County under the terms of this Agreement.
- 4) **Default Notification:** Bank shall notify the Mesa County Representative in writing within seven (7) calendar days of the following:
- a) Developer's insolvency, the appointment of a receiver for the Developer or the filing of a voluntary or involuntary petition in bankruptcy respecting the Developer;
 - b) Default on this obligation to Bank;
 - c) Foreclosure of any lien against the Property or a portion of the Property or conveyance of the Property in lieu of foreclosure.
- 5) **County's Rights Upon Default:** See section 16 of the Developments Improvements Agreement
- 6) **Developer Consent:** Developer consents to disbursements and other conduct authorized by the provisions of this Agreement.
- 7) **Liability for Loss:** If the Bank fails to disburse Funds in accordance with the procedures as set forth under this Agreement and the County suffers loss by reason of such failure, Bank shall be liable to County for the amount of the County's loss.
- 8) **Successors and Assigns:** This agreement shall be binding on the heirs, successors, receivers and assigns of all parties and shall terminate when the County has accepted the Improvements and has extinguished the Development Improvement Agreement, or upon receipt by the County of the full amount of the remaining undisbursed funds as requested upon default, or 91 days after the filing of an Affidavit of Lapse of Improvements Agreements, whichever comes first.
- 9) **Notice:** Any notice required or permitted by this Agreement will be deemed effective when personally delivered in writing or seven (7) calendar days after notice is deposited with the U.S. Postal Service, certified, and return receipt requested, and addressed as follows:

If to Developer:

Developer's Name

Developer's Mailing Address

If to Bank:

Bank Name

Banks Mailing Address

If to County:

Mesa County Development Engineering
P.O. Box 20,000
Grand Junction, CO 81502-5022

- 10) **Immunity:** Nothing contained in this Agreement constitutes a waiver of the County's sovereign immunity under any applicable state law.
- 11) **Attorney's Fees:** Should either party be required to resort to litigation to enforce the terms of the Agreement, the prevailing party, plaintiff or defendant, will be entitled to costs, including reasonable attorney's fees and expert witness fees, from the opposing party. If the court awards relief to both parties, the attorney's fees may be equitably divided between the parties by the decision maker.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the _____ day of _____, 2010.

MESA COUNTY

By: _____ Date: _____
Title: _____

The foregoing instrument was acknowledged before me this (day) day of (month), (year), by (Development Engineer's Name)

Witness my hand and official seal.
My commission expires: _____

Notary Public

DEVELOPER

By: _____ Date: _____
Title: _____

The foregoing instrument was acknowledged before me this (day) day of (month), (year), by (Developer's Name)

Witness my hand and official seal.
My commission expires: _____

Notary Public

BANK

By: _____ Date: _____
Title: _____

The foregoing instrument was acknowledged before me this (day) day of (month), (year), by (Banker's Name)

Witness my hand and official seal.
My commission expires: _____

Notary Public

EXHIBIT C

SUBDIVISION IMPROVEMENTS CASH DEPOSIT AGREEMENT

This agreement is entered into by and between Mesa County, Colorado (“County”), and _____ (“Developer”).

RECITATIONS

The Developer has been required by the County to construct certain improvements (“Improvements”) to _____ (“Subdivision”) in accordance with the Mesa County Land Development Code, under a Development Improvements Agreement (“DIA”) which is attached hereto and incorporated herein.

The Mesa County has received an estimate certified by a Colorado State Professional Engineer for the total costs to complete the Improvements, inclusive to any construction engineering, permit fees or other cost required to complete the Improvements, in the amount of \$_____, and that this amount shall be referred to in this Agreement as the “Funds”.

The parties wish to insure that the Funds are disbursed only to pay for the Improvements or cost incidental to completing the Improvements.

TERMS

The parties, for valuable consideration, the receipt and adequacy of which is acknowledged, agree as follows:

- 1) **Funds for Improvements:** Developer hereby provides to the County a cashier’s check or certified check drawn on a local bank in the amount of \$_____. The Funds are to be held by the County’s Treasurer and will not be paid out or disbursed to the or on behalf of the Developer except as set forth in this Agreement. The County will retain all interest earned on the escrow deposits.
- 2) **Disbursement of Funds:** The County will disburse a portion of the Funds only upon the receipt of the following and signed by the Mesa County Representative, except as provided by Default of Owner:
 - a) A Draw Request for work done in County ROW or future County ROW which may require signature by a professional engineer licensed by the State of Colorado (“Engineer”), and signed by the County Representative. The amount of the draw upon the Funds shall not be greater than 90% of the completed improvements. The remaining 10% shall be held by the County as retainage.
 - b) The draw request shall state the Improvements that have been completed; also that the engineer has inspected the Improvements for which payment is requested; also that the work has been completed in accordance with the approved plans and specifications and that the sum requested to be disbursed is reasonable and consistent with the estimates

which form the basis for the DIA; and

- c) All bills or invoice for such work which have been approved by the Developer and may be attached to the Draw Request; and
 - d) All testing reports as required by the County are attached for the work to be approved; and
 - e) Copies of the final draw request shall contain signatures of acceptance by all entities serving the constructed improvements, prior to submitting the request to the County Representative for review and signature.
 - f) Upon extinguishment of the DIA through formal acceptance of the improvements per the provisions of the DIA, the County shall release the retainage.
- 3) **Default by Owner:** Upon default of the Developer on this obligation or default on the DIA, the County shall cease disbursement of the Funds to the Developer except to the County under the terms of this Agreement.
- 4) **Default Notification:** The Developer shall notify the Mesa County Representative in writing within seven (7) calendar days of the following:
- a) Developer's insolvency, the appointment of a receiver for the Developer or the filing of a voluntary or involuntary petition in bankruptcy respecting the Developer;
 - b) Default on this obligation;
 - c) Foreclosure of any lien against the Property or a portion of the Property or conveyance of the Property in lieu of foreclosure.
- 5) **County's Rights Upon Default:** See section 16 of the Developments Improvements Agreement
- 6) **Developer Consent:** Developer consents to disbursements and other conduct authorized by the provisions of this Agreement.
- 7) **Successors and Assigns:** This agreement shall be binding on the heirs, successors, receivers and assigns of all parties and shall terminate when the County has accepted the Improvements and has extinguished the Development Improvement Agreement, or upon receipt by the County of the full amount of the remaining undisbursed funds as requested upon default, or 91 days after the filing of an Affidavit of Lapse of Improvements Agreements, whichever comes first.
- 8) **Notice:** Any notice required or permitted by this Agreement will be deemed effective when personally delivered in writing or seven (7) calendar days after notice is deposited with the U.S. Postal Service, certified, and return receipt requested, and addressed as follows:

If to Developer:

Developer's Name

Developer's Mailing Address

If to County:

Mesa County Development Engineering
P.O. Box 20,000
Grand Junction, CO 81502-5022

- 9) **Immunity:** Nothing contained in this Agreement constitutes a waiver of the County’s sovereign immunity under any applicable state law.
- 10) **Attorney’s Fees:** Should either party be required to resort to litigation to enforce the terms of the Agreement, the prevailing party, plaintiff or defendant, will be entitled to costs, including reasonable attorney’s fees and expert witness fees, from the opposing party. If the court awards relief to both parties, the attorney’s fees may be equitably divided between the parties by the decision maker.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the _____ day of _____, 2010.

MESA COUNTY

By: _____ Date: _____
Title: _____

The foregoing instrument was acknowledged before me this (day) day of (month), (year), by (Development Engineer’s Name)
Witness my hand and official seal.
My commission expires:_____

Notary Public

DEVELOPER

By: _____ Date: _____
Title: _____

The foregoing instrument was acknowledged before me this (day) day of (month), (year), by (Developer’s Name)
Witness my hand and official seal.
My commission expires:_____

Notary Public

EXHIBIT C

BUILDING PERMIT HOLD AGREEMENT

This agreement is entered into by and between Mesa County, Colorado (“County”), and _____ (“Developer”).

RECITATIONS

The Developer has been required by the County to construct certain improvements (“Improvements”) to _____ (“Subdivision”) in accordance with the Mesa County Land Development Code, under a Development Improvements Agreement (“DIA”) which is attached hereto and incorporated herein.

The County seeks to protect the health, safety and general welfare of the community by requiring a timely completion of these Improvements and to limit the effects of uncompleted subdivisions, including premature subdivision which leaves property undeveloped and unproductive; and

The Developer seeks permission to secure the Improvements by allowing the County to withhold any Building Permits associated with the Subdivision.

TERMS

The parties, for valuable consideration, the receipt and adequacy of which is acknowledged, agree as follows:

- 11) **Guarantee for Improvements:** The Developer of the Subdivision, agrees that Building Permits will not be issued for any lots in this subdivision until all of the required Improvements are complete per the terms of the DIA.
- 12) **Release of Guarantee:** Upon extinguishment of the DIA through formal acceptance of the improvements per the provisions of the DIA, Mesa County shall release the Building Permit Hold
- 13) **Default by Owner:** Upon default of the Developer on this obligation or default on the DIA, the County shall cease disbursement of the Funds to the Developer except to the County under the terms of this Agreement.
- 14) **Default Notification:** The Developer shall notify the Mesa County Representative in writing within seven (7) calendar days of the following:
 - a) Developer’s insolvency, the appointment of a receiver for the Developer or the filing of a voluntary or involuntary petition in bankruptcy respecting the Developer;
 - b) Default on this obligation;
 - c) Foreclosure of any lien against the Property or a portion of the Property or conveyance of the Property in lieu of foreclosure.

- 15) **County's Rights Upon Default:** See section 16 of the Developments Improvements Agreement
- 16) **Successors and Assigns:** This agreement shall be binding on the heirs, successors, receivers and assigns of all parties and shall terminate when the County has accepted the Improvements and has extinguished the Development Improvement Agreement, or upon receipt by the County of the full amount of the remaining undisbursed funds as requested upon default, or 91 days after the filing of an Affidavit of Lapse of Improvements Agreements, whichever comes first.
- 17) **Notice:** Any notice required or permitted by this Agreement will be deemed effective when personally delivered in writing or seven (7) calendar days after notice is deposited with the U.S. Postal Service, certified, and return receipt requested, and addressed as follows:

If to Developer:

Developer's Name

Developer's Mailing Address

If to County:

Mesa County Development Engineering
P.O. Box 20,000
Grand Junction, CO 81502-5022

- 18) **Immunity:** Nothing contained in this Agreement constitutes a waiver of the County's sovereign immunity under any applicable state law.
- 19) **Attorney's Fees:** Should either party be required to resort to litigation to enforce the terms of the Agreement, the prevailing party, plaintiff or defendant, will be entitled to costs, including reasonable attorney's fees and expert witness fees, from the opposing party. If the court awards relief to both parties, the attorney's fees may be equitably divided between the parties by the decision maker.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the _____ day of _____, 2010.

MESA COUNTY

By: _____ Date: _____
Title: _____

The foregoing instrument was acknowledged before me this (day) day of (month), (year), by (Development Engineer's Name)

Witness my hand and official seal.
My commission expires: _____

Notary Public

DEVELOPER

By: _____ Date: _____
Title: _____

The foregoing instrument was acknowledged before me this (day) day of (month), (year), by (Developer's Name)

Witness my hand and official seal.
My commission expires: _____

Notary Public

EXHIBIT D

COSTS OF CONSTRUCTION

Please insert after this page the Cost of Construction from Mesa County Development Engineering Standard Template. Only this form will be accepted by Mesa County.

DRAW REQUEST No.: <>
Subdivision Name: <> Project No.: <>
Street Name: <>

For Work Accomplished Through:

Description of Work:

Attach, for the following work to be approved, Bills or Invoices approved by the Developer, Testing Reports and other documents as required.

A] Total Amount (See Total from Exhibit B):	
B] Previous Completed Work (See Total Previous Amount):	
C] Total Remaining Work (Line A – Line B):	
D] Remaining Total Retainage (Line C x 10%):	
E] Net Work Remaining (Line C – Line D):	
F] Total Amount of Work This Request:	
G] Retainage This Draw Request (Line F x 10%):	
Total Payment This Draw Request (Line F – Line G):	

Percent Complete $\left(\frac{\text{Line B} + \text{Line F}}{\text{Line A}}\right) =$

Draw Request No.: <> Subdivision Name: <> Project No.: <> Street Name: <>

Engineer of Record Certification:

I hereby certify that said work had been completed in accordance with the specifications and plans accepted by Mesa County for this project. I also agree that the amount of the draw is reasonable and consistent with the estimates represented on the recorded Development Improvements Agreement for this subdivision.

By: _____ Date: _____

Company: _____

Contractor's Certification:

I hereby certify that (1) all previous progress payments received from County on account of Work done under the Contract referred to above have applied to discharge in full all obligations of the Contractors incurred in connection with Work covered by prior Draw numbered 1 through _____ inclusive; and (2) title to all materials and equipment incorporated in said Work or otherwise listed in or covered by this Draw Request is free and clear of all liens, claims, security interests and encumbrances (except such as covered by Bond acceptable to County).

By: _____ Date: _____

Company: _____

Mesa County Representative Recommendation:

This Application (with accompanying documentation) meets the requirements of the Contract Documents and payment in the amount of <Fill in Amount> is recommended.

By: _____ Date: _____

Title: _____

Mesa County Development Engineering

Draw Request No.: <> Subdivision Name: <> Project No.: <> Street Name: <>

Utilities Acknowledgement:

(Signature does Not imply final acceptance by the entity)

Utility, Company or Special District Name: _____

Signature of Representative: _____

Title: _____ Date: _____

Notes or Comments:

Utility, Company or Special District Name: _____

Signature of Representative: _____

Title: _____ Date: _____

Notes or Comments:

Utility, Company or Special District Name: _____

Signature of Representative: _____

Title: _____ Date: _____

Notes or Comments:
