

APPENDIX F

SAN MIGUEL COUNTY LAND USE CODE

SUBDIVISION IMPROVEMENTS AGREEMENT FORM

THE SUBDIVISION IMPROVEMENTS AGREEMENT
FOR
(Name of the Development)
(Date)

THIS AGREEMENT is entered into this _____ day of _____, 20__, between SAN MIGUEL COUNTY ("County"), a governmental entity, and _____ ("Developer").

WHEREAS, C.R.S. 30-28-137(1) requires that prior to the recording of a Final Plat, the Board of County Commissioners of San Miguel County ("Board") must enter into a subdivision improvements agreement wherein the Developer agrees to construct those public improvements required by the County and which agreement requires the pledging of collateral that is sufficient, in the judgment of the Board, to make reasonable provision for the completion of the required improvements in accordance with design and time specifications set forth in the agreement; and

WHEREAS, C.R.S. 30-28-101, et seq., especially 30-28-133, requires that a condition of Board approval of any preliminary or final plat is the Developer's compliance with County subdivision regulations, including making all payments, dedications and exactions provided therein; and

WHEREAS, the Developer is the subdivider of the real property development ("Development") known and described as (legal description) located in San Miguel County Colorado, and has presented to the County a Final Plat for this Development; and

WHEREAS, the **San Miguel County Land Use Code** and State statutes require the execution of an Subdivision Improvements Agreement ("Agreement") between the Developer and the County whereby the Developer shall agree to construct certain improvements, the completion of which are guaranteed to the County, prior to filing the Final Plat; and

WHEREAS, the County seeks to protect the health, safety and general welfare of the community by requiring the completion of various improvements in the Development and thereby limit the harmful effects of substandard development and subdivision; and

WHEREAS, the purpose of this Subdivision Improvements Agreement ("Agreement") is to protect the County from incurring the cost of completing the improvements under this Subdivision Improvements Agreement and not to benefit those providing work, services or material or the lot or home buyers in the Development; and the purpose of this Agreement is further to guarantee performance of Developer's other obligation.

NOW, THEREFORE, in consideration of the mutual promises contained herein, IT IS AGREED AS FOLLOWS:

1. Construction of Improvements. The Developer agrees to construct or to enter into a contract with such person, firm or corporation as is chosen by the Developer to construct the required improvements, including water distribution system (for commercial, municipal and domestic uses, and for landscaping and fire protection), sanitary sewers, storm drainage, roads,

bridges and associated improvements, fire protection system, street monuments, electrical system, public trails and landscaping (hereinafter referred to as "Improvements"); more specifically described in Exhibit A that is attached hereto and incorporated herein by this reference. The required Improvements shall be constructed in accordance with the Plans and Specifications submitted by the Developer and in accordance with all applicable legal standards. The Developer's obligation to complete the Improvements will arise upon final plat approval by the County and will be independent of any obligations of the County contained herein and will not be conditioned upon the commencement of construction in the Development or sale of any lots or Improvements within the Development. Developer shall obtain all applicable federal, state, county, and municipal approvals and permits required for construction of the Improvements, including, but not limited to, domestic water system(s), sewer and/or septic system(s), and road(s).

In addition, the Developer will ensure that telephone service will be available within the immediately adjacent easements and/or rights-of-way of each platted lot in the Development prior to or at the time the certificate of occupancy or satisfactory final building inspection is issued by the County for the respective lot. No security will be required to ensure the availability of telephone service.

2. Regulations and Specifications. The required Improvements shall be designed and constructed in accordance with the County's regulations and specifications in effect as to the date of this Agreement, other applicable state or federal regulations, if any, the Final Plat of the Development, and the Plans and Specifications retained by the County Engineer and the County Planning Department, all of which are hereby incorporated herein by reference and made a part of this Agreement. All Plans and Specifications shall have been submitted to and reviewed for exceptions by the County Engineer and the County Planning Director prior to submission of the Final Plat for approval or execution. No changes, additions, and/or deletions to the Improvements, from the approved Plans and Specifications, shall become effective until and unless approved by the County Engineer and the County Planning Director.

3. Completion Date. The required Improvements shall be completed no later than (insert mutually agreed upon completion date), unless the County, in its sole discretion, grants in writing an extension of this completion date to the Developer. A written extension agreement shall be signed by the Chairman of the Board and the Developer. No less than sixty (60) days prior to the above scheduled completion date, or any extension thereof, the Developer shall notify the County Planning Director in writing of the upcoming completion deadline and include a progress report which shall include a statement of whether the Developer expects to complete the required Improvements by the completion date. The Developer's failure to provide this notice shall be grounds for the County to withdraw from the commitment guarantee in accordance with this Agreement (See *e.g.* par. 11, 16, 23, etc.).

4. Estimated Cost. The Developer's engineer of record for the Development shall be responsible for the preparation of the construction estimate for the required Improvements. Prior to execution of this Agreement and the Developer's submittal of the Commitment Guarantee, the County Engineer shall review the estimate, which review shall include, but not be limited to, determining that the estimate includes all required Improvements, and that the amount of the financial guarantee is consistent with the Engineer's estimate. Should the County Engineer find

and determine that the engineer's estimate is inaccurate, or otherwise require revision, the Developer's engineer shall revise his estimate in accordance with the County Engineer's findings. The Developer's Commitment Guarantee shall be consistent with such revised construction estimate. The cost of constructing the Improvements is estimated to be \$_____. This cost estimate is based upon the assumption that the work will be performed by an independent contractor, was prepared by and bears the seal of an engineer licensed to practice in the State of Colorado, which shall be attached hereto as Exhibit "B."

This estimated construction cost includes the estimated present construction cost, and an additional amount equal to twenty percent of the estimated construction costs, which shall be retained for the duration of the warranty period following substantial completion of the improvements, plus an estimated inflation factor determined by the County and calculated to the completion date. If change orders are required during the course of construction that increase the cost by more than five percent (5%) of the estimated cost of any subsequently agreed amount that may result from increased costs of material or labor, the amount of the commitment guarantee shall be adjusted accordingly. The Developer shall notify the County in writing of any such change and supply the County with the adjusted commitment guarantee.

5. Commitment Guarantee. Developer's performance under this Agreement is guaranteed by (insert description of financial guarantee provided: escrow deposits, irrevocable letters of credit. Deeds of trust, or other conveyances of real property are unacceptable as security). The commitment guarantee will be retained by the County until released or used as provided in this Agreement. Should the Improvements not be completed at least thirty (30) days prior to the expiration of any commitment guarantee, the Developer agrees to the extension of said guarantee and designates the County his agent to request said extension. The Developer shall pay all costs of guarantee extension; and it is mutually understood and agreed that the County will pay no interest to the Developer on the commitment guarantee. If the County determines guarantee is insufficient to warrant construction of Improvements, the County shall notify the Developer who shall produce such additional security as the County determines necessary.

6. Transfer of Title. If the County is to have any ownership interest or maintenance responsibility in the Improvements, before commencing the construction of any of the required Improvements, the Developer shall acquire, at its own expense, good and sufficient title to all lands and facilities traversed by any required Improvements. In addition, if County is to have ownership in dedications of parks, trails, right-of-ways, covenants, etc., for this Development, Developer shall acquire at its own expense good and sufficient title to all such property. All such property, lands and facilities so required shall be conveyed to the County and all necessary documents of conveyance shall be furnished to the County prior to and for recording with the Final Plat.

7. Release of Liability - Insurance. The Developer shall indemnify and save harmless the County from any and all suits, actions or claims of every nature and description occurring during the period of construction of the required Improvements and for one year thereafter, and caused by, arising from, or on account of the construction process or any other Developer obligations hereunder, and pay any and all judgments rendered against the County on account of any such suit, action or claim, together with all reasonable expenses and attorney's fees incurred by the County in prosecuting or defending such suit, action or claim.

8. Insurance. The Developer shall ensure that all contractors and other employees engaged in the construction of the required Improvements will maintain workmen's compensation insurance. Before proceeding with any construction of the required Improvements, the Developer shall provide the County with written evidence of Public Liability Insurance with limits not less than Five Hundred Thousand Dollars (\$500,000.00) for bodily injury, One Hundred Thousand Dollars (\$100,000.00) for property damage in coverage forms approved by the County Attorney and protecting the County against any and all claims for damages to persons or property resulting from or installation of any required Improvements on public property. The policy will provide that the County shall be notified at least thirty (30) days in advance of any reduction in coverage, termination or cancellation of the policies. Such notice shall be sent certified mail. The Developer also warrants that any contractors engaged by or for the Developer to construct the required Improvements shall maintain Public Liability Insurance coverage in limits not less than those mentioned above.

9. Warranty. The Developer hereby warrants that all required Improvements will be installed in a good and workmanlike manner and in accordance with the provisions of Sections 1 and 2 hereof.

10. Release of Commitment Guarantee. From time to time, as required Improvements are substantially completed, the Developer may apply in writing to the County Planning Director and to the County Engineer for a partial release of the commitment guarantee. The application must show:

- a. Dollar amount of commitment guarantee;
- b. Work completed, including dollar value;
- c. Work not completed, including dollar value;
- d. Amount of previous releases; and
- e. Amount of commitment guarantee requested released.
- f. Release or waivers of mechanics liens of all persons who have furnished work, services or materials.
- g. Certification by the Developer's engineer that all of the work included in the application is substantially complete, and complies with all applicable plans and specifications.

Upon receipt of the application, the County or its agent shall inspect the Improvements both completed and those uncompleted. If the County determines from the inspection that the Improvements shown on the application as being substantially completed have been completed as provided herein, a portion of the commitment guarantee shall be released. The release shall be made in writing signed by the County Engineer and approved by the County Planning Director. The amount to be released shall be the total amount of the commitment guarantee less (i) twenty percent (20%) of the original amount of the commitment guarantee and (ii) one hundred percent (100%) of the projected costs of the Improvements not completed. Notwithstanding the foregoing provisions, the Developer shall not apply for a partial release of the commitment guarantee in the amount less than twenty percent (20%) of the total original amount, except for the last such release. The Improvements shall be considered to be "substantially complete" when all of the required

Improvements, or a designated portion thereof, are sufficiently complete, in accordance with the approved plans and specifications, that they can be used for their intended purpose.

11. Failure to Comply with Specifications -- Agreement Cancellation. If the County determines that the required Improvements have not been constructed in accordance with the Plans and Specifications provided to and reviewed by the County Engineer pursuant to paragraph 2 above, the County shall notify the Developer of noncompliance setting forth in writing the reasons for noncompliance. Such written notification shall set forth a reasonable schedule for correction of the improvements in noncompliance. Should the County determine at any time that the guarantee on deposit is insufficient to complete construction of said Improvements, the County may require the Developer to deposit additional funds which the County deems necessary to complete the Improvements. Should the Developer fail or refuse to comply with the County's directive to increase the Commitment Guarantee within the time period specified, the County may declare the Developer to be in default of its obligations. If the County determines that the Developer can not and/or will not construct any or all of the Improvements in accordance with this Agreement, the County may, upon written notification to the Developer and the commitment guarantor, and without the necessity of public hearing, withdraw from the commitment guarantee such funds as may be necessary, in the opinion of the County, to construct or complete said Improvements in accordance with the agreed specifications.

12. Completion Procedures and Inspections. Upon substantial completion of all of the Improvements, the Developer's designated project engineer shall prepare and deliver to the County Planning Director and the County Engineer in writing a proposed Certificate of Substantial Completion for all of the required Improvements constructed and in place, certifying that such Improvements have been constructed in substantial compliance with the approved plans and specifications, and requesting the County Engineer's inspection of all of the substantially completed Improvements. The Engineer's Certificate of Substantial Completion for all of the required Improvements, upon review and approval by the County Engineer of the required Improvements, shall establish the date of Substantial Completion for warranty purposes. The County Engineer or his agent, within thirty days of receipt of the engineer's Certificate of Substantial Completion for all of the required Improvements, shall inspect said Improvements and shall notify the Developer in writing of nonacceptance or approval of the substantially completed Improvements. However, no County Engineer substantial completion inspection shall occur during the months of November through May. If the Improvements are not accepted, the reasons for non-acceptance shall be stated in writing and corrective measures shall be developed by the County with the assistance of the Developer and at the Developer's sole expense. Should the developer fail or refuse to implement the corrective measures required by the County within the specified cure period, the County at its discretion, may declare the Developer to be in default of its obligations, and following written notice to the Developer, the County may, but shall not be obligated to, draw upon the Commitment Guarantee.

Upon issuance by the Developer's designated project engineer of a Certificate of Substantial Completion of all of the required Improvements, and the approval of the Certificate by the County Engineer, the amount of security in the Commitment Guarantee may be reduced in accordance with the provisions of paragraph 10 above to twenty percent (20%) of the project engineer's estimated cost for said Improvements. Said twenty percent (20%) retention shall be for

the purpose of insuring the correction of the Improvements due to deficiencies in workmanship and/or material during the warranty period by the Developer. As-built engineering drawings shall be submitted for all utility installments and roads upon completion of all required utility and road improvements and prior to request for, or issuance of, certificates of occupancy. Nothing herein shall be construed to require the County to make inspections during periods when climatic conditions make thorough inspections unfeasible.

13. Final Inspection, Warranty Period, and Maintenance for Improvements. The warranty period for required Improvements shall run for one year from certification of substantial completion for all of the required Improvements, as approved by the County Engineer. Final Inspection of the required improvements by the County Engineer shall be performed within thirty days after expiration of the warranty period and shall only occur in the months of June through October. However, the Developer's warranty obligations shall not expire until the County Engineer's approval of all required improvements following Final Inspection. During the warranty period, the Developer shall, at its own expense, make all needed repairs or replacements due to defective materials or workmanship, including Improvements not constructed in substantial compliance with the approved plans and specifications for the Development, and shall be responsible for all maintenance of said Improvements. Developer's warranty obligations shall remain in full force and effect until the defects and deficiencies in the required Improvements specified in the County Engineer's Final Inspection report have been corrected to the County's satisfaction. It is specifically understood that the Developer will be responsible for road maintenance or care, including snow removal or street cleaning, unless and until the road maintenance or care is finally accepted and that the Developer is responsible for maintenance of all Improvements as provided herein. In the event of default of any of these obligations by the Developer, the County, with prior written notice to the Developer, may do the same at the sole expense of the Developer and withdraw from the commitment guarantee to pay for such expenses.

Landscaping shall be inspected only during the month of July and at least three (3) months after preliminary approval. The County shall notify the Developer in writing of non-approval or of final approval. If the Improvements are not approved, the reasons for the County Engineer's non-approval shall be stated in writing and corrective measures shall be developed and implemented by the Developer within the cure period specified in the Notice of Non-approval, with the assistance of the Developer and at Developer's sole expense. Should the Developer fail or refuse to implement the specified corrective measures within the cure period specified in the County's notice of non-approval the County may declare the Developer to be in default of its obligations and upon prior written notice to the Developer proceed to draw upon the Commitment Guarantee to the extent required to complete the Improvements.

If the Improvements, following the County Engineer's final inspection, are found to be in compliance with plans and specifications, the County, following a Resolution of Approval of Improvements by the County Commissioners, shall release the remaining retained balance of the commitment guarantee for such approved Improvements.

All improvements intended or designated for common use within the development and not dedicated to and accepted by the County, shall be maintained in perpetuity by the Developer or an association of homeowners in the development. Until a homeowners association has been formed,

and is legally bound to provide perpetual maintenance of the Improvements, as determined by the County, the Developer is obligated to maintain the Improvements in the Development.

14. Recording Agreement. After receiving Final Plat approval, the Developer shall record this Agreement with the Clerk and Recorder of San Miguel County, Colorado, and with the Final Plat of the above-referenced development. However, both this Agreement and the Final Plat shall be submitted to the County Planning Director for final review immediately prior to recording.

15. 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 construction of the improvements within the time period specified.
- b. Developer's failure to complete construction of the Improvements within two years of final plat approval.
- c. Developer's failure to cure the defective construction of any improvement within the applicable cure period.
- d. 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.
- e. Foreclosure of any lien against the development or a portion of the development or assignment or conveyance of the development in lieu of foreclosure.
- f. Developer's failure to comply with any other material provision of this Agreement or with any federal, state or county law or regulation effecting the property, including the County Land Use Code.

16. County's Rights Upon Default. In the event of default by the Developer occurs, the County may draw on the commitment guarantee. The County will have the right, but no obligation, to complete Improvements itself or contract with a third party for completion, and the Developer hereby grants to the County, its successors, assigns, agents, contractors, and employees, a nonexclusive right and easement to enter the Development for the purposes of constructing, maintaining, and repairing such Improvements. Alternatively, the County may assign all, or any part of, the proceeds of the commitment guarantee to the Developer's successor(s) in interest, such as the Homeowner's Association, if any, individual lot purchasers, or a subsequent developer, including a lender, who has acquired the Development, or a portion, by purchase, foreclosure or otherwise who will then have the same rights of completion as the County, If and only if, the Homeowner's Association, individual lot purchasers, or a subsequent developer (including a lender) agrees in writing to complete the unfinished Improvements. In addition, the County may also suspend Final Plat approval during which time the Developer will have no right to sell, transfer, or otherwise convey lots or homes within the Development without the express written approval of the County or until the Improvements are completed and accepted by the County.

17. Enforcement. If the County determines that there is or has been a violation of any applicable federal or state laws or regulations, County regulations, Planning Commission requirements, and/or the terms and provisions of this Agreement by the Developer or his agents, including any independent contractor(s) hired by the Developer, the County Planning Director may issue a cease and desist order. Thereafter, the Developer acknowledges irreparable harm and injury

to the County for purposes of an application by it to the Courts for a restraining order hereunder. Should the County deem the collateral on deposit insufficient to guarantee completion of the required Improvements, the County may require the Developer or successors to post additional collateral to guarantee completion of Improvements. The County has the right to pursue any remedy provided by this Agreement or by law and, if the County obtains any such remedy, attorney's fees and costs. As an alternative to the remedies provided by this paragraph and paragraph 11, the County has the right to withdraw its approval of the Development.

18. Miscellaneous. This Agreement runs with the land and is binding on and inures to the benefit of the heirs, representatives, transferee, successors and assignees of the parties. The paragraph headings are descriptive only and neither amplify nor limit the substantive material. The failure to enforce or the waiver of any specific requirements of this Agreement by either party shall not be construed as a general waiver of this Agreement of any provision herein, nor shall such action act to stop either party from subsequently enforcing this Agreement according to the terms hereof. This Agreement shall be subject to and deemed to incorporate all present and future ordinances and regulations of the County applicable thereto. Should any section, paragraph, clause or provision of this Agreement be declared by a court of competent jurisdiction to be invalid, said decisions shall not affect the validity of this Agreement as a whole or any part hereof other than the part declared to be invalid, and the parties hereby affirm that they would have entered into this Agreement and each of its provisions independently of each of its other provisions. The Developer is not an agent or employee of the County. This Agreement constitutes the entire integrated understanding of the parties regarding the subject matter set forth herein and no prior or contemporaneous promise, representation, term, condition, or understanding shall be of any legal force or effect, unless embodied herein in writing, or in a written amendment mutually agreed to by the parties.

19. Disclosure to and Consent of Mortgagee and Lender. The Developer hereby represents that he has disclosed the terms of this Agreement to any mortgagees of the Development involved and to all lenders who have provided financing to the Developer for the construction of this project and that said mortgagees and lenders consent to this Agreement as evidenced by their authorized signatures below.

Name & Address	Mortgagee/Lender	Signature of Authorized Officer
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Execution of this Agreement by a lender or holder(s) of Deed(s) of Trust signifies their consent to this Agreement but does not obligate them to perform any of the terms of this Agreement unless they or one of them takes title to all or a portion of the subject Development.

20. Notice. All notices, demands or writings in this Agreement provided to be given or made or sent that may be given or made or sent by either party hereto to the other, shall be deemed to have been fully given or made or sent when made in writing and deposited in the United States mail, certified and postage pre-paid, and addressed to the party at the following address:

San Miguel County
Board of County Commissioners
P. O. Box 1170
Telluride, CO 81435

(Developer)

(address)

with copies to:

San Miguel County Attorney
P.O. Box 791
Telluride, CO 81435

with copies to:

The address to which any notice, demand or writing may be given or made or sent to any party as above provided may be changed by written notice given by such party as above provided.

21. Subsequent Plats. Approval of subsequent Final Plats by the Board will be based, in part, upon the extent to which the terms and conditions of this Agreement have been met by the Developer. Approval may be withheld if substantial compliance is not had with the terms hereof and the submissions required herein.

22. Cumulative Remedies. The Developer acknowledges that the Board reserves the right to sue for specific performance and to seek other remedies allowed at law or in equity if Developer does not strictly comply with all the provisions of this Agreement and any plans, specifications or other approvals granted as a result of this Agreement or in any subsequent agreement entered into by the parties.

23. County - No Duty. If the Improvements are not installed or are not properly installed pursuant to this Agreement, then the County shall have the right, but not the duty or obligation to either the Developer or any third-party, to complete the construction of the Improvements. The parties acknowledge and agree that if the County, in its sole discretion, chooses to attempt to complete the Improvements, then:

23.1 Use of Collateral Proceeds. The Board of County Commissioners shall use all liquid collateral and all net proceeds from the sale of any collateral pledged pursuant to this Agreement for the purpose of completing the Improvements and for no other purpose; and

23.2 No Obligation. The Board shall have no obligation to utilize any other funds or assets of the County to pay for the completion of any Improvements; the parties acknowledge that the County has no duty or obligation of any nature, to either the Developer or any third-party, to complete or repair any or all of the Improvements.

24. Financial Disclosure. Subject to the provisions of paragraphs 24.1, 24.2 and 24.3, from time to time upon the written request of the Board, the Developer shall allow the County to review its then most recent audited financial statements.

24.1 Confidentiality. All financial information provided by the Developer to the County shall be done in absolute and strict confidence. Under no circumstance shall any of the financial information provided by Developer be disclosed in any manner to any person other than a member of the Board, the San Miguel County Attorney, San Miguel County Planner, and one certified public accountant employed by the County to assist it in its review of the financial statements.

24.2 Return of Material. After the completion of the review of the financial information, all statements, reports, copies, notes and paperwork of any kind that were prepared for or in conjunction with the financial review shall be returned to Developer. Neither the County nor any officer, agent or employee of the County shall retain any personal notes, information or paperwork of any nature in regard to the financial disclosure.

24.3 Annual Limit. The County may only request to review an audited financial statement once during each calendar year. The parties acknowledge that often times delays occur in the preparation of audited financial statements and; therefore, subject to the limitation set forth in the following sentence, if the audited financial statements have been completed, then the Developer shall provide them to the County within five (5) days of the County's request. Nothing to the contrary withstanding, the Developer shall have no obligation to have the audited financial statements completed before the November 1st following the end of the applicable fiscal year.

24.4 Executive Sessions. The financial information disclosed to the County pursuant to this paragraph shall only be discussed in executive sessions properly called in conjunction with the regular meetings of the Board.

24.5 Solvency Representation. The Developer represents to the County that at the time of execution of the Agreement that it is solvent.

25. Vested Rights. The County does not warrant by this Agreement that the Developer is entitled to any other approvals required by the County, if any, before the Developer is entitled to commence development or to transfer ownership of property in the Development. Developer's vested rights for this Development, if any, are determined by the vested rights sections of the County Land Use Code (Section 3-14) and by CRS 24-68-101, et seq.

26. Third Party Rights. No person or entity that is not a party to this Agreement will have any right of action under this Agreement. Provided, however, that any purchaser of land subject to a plat restriction which is the security portion of this Agreement or the purchaser of land within the Development may bring an action to enforce this Agreement and the conditions of the Development permit as provided in the Land Use Code and State statutes. It is the intent of the parties that no third party beneficiary rights shall be created by this Agreement, except pursuant to section 30-28-137(3),C.R.S.

SAN MIGUEL COUNTY COMMISSIONERS

ATTEST:

By: _____
Chair

By: _____
Deputy Clerk

STATE OF COLORADO)
) ss.
COUNTY OF SAN MIGUEL)

Acknowledged, subscribed and sworn to before me this ____ day of _____, _____, by
as Chair of the Board of Commissioners for San Miguel County and by _____ the
Deputy Clerk of San Miguel County.

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

Notary Public