

DEVELOPMENT IMPROVEMENTS AGREEMENT

THIS Development Improvements Agreement is entered into this 25th day of July, 1995 between the Board of County Commissioners of Gunnison County, Colorado (herein the "County"), and Dolores G. LaVigne (herein the "Developer") as follows:

1. Purpose. The Developer has submitted to the County the Developer's application for Land Use Change No. 1994-71 regarding the subdivision and platting of Moon Ridge Subdivision in the Southeast quarter of Section 35, Township 13 South, Range 86 West, 6th Principal Meridian, Gunnison County, Colorado (herein the "Project"). The County and the Developer agree that approval of such application by the County is expressly conditioned on completion of the improvements described herein, to the specifications described herein and by the times specified herein and further agree that such improvements are appropriate and necessary requirements to be performed by the Developer and which Developer shall perform, and further agree that an agreement guaranteeing the Developer's performance secured by suitable collateral to protect the interest of the County in the amount stipulated herein are appropriate and shall be a condition to the County's approval of such land use change. The parties have therefore entered into this agreement to memorialize such understanding and agreement.

2. Developer Bound. The Developer agrees to accept and be bound by the terms and conditions of the County's issuance of its approval of the Land Use Change Permit 1994-71 and the terms and conditions of this agreement.

3. Construction. The Developer agrees to complete construction of the improvements within the Project described in paragraph 7, below, not later than December 31, 1995, acts of God and any cause beyond the reasonable control of the Developer excepted, including without limitation labor disputes, laws, regulations, or orders of any governmental entity, orders of court, inability to obtain any required authorization, act of war or conditions arising out of or attributable to war, riot, civil strike, insurrection or rebellion, fire, explosion, earthquake, storm, flood or other adverse weather condition, delay or failure by suppliers or materialmen, contractors, or subcontractors, shortage of or inability to obtain labor, supplies or materials.

4. Estimated Cost. The total cost of the improvements to be constructed by the Developer which is the subject hereof is estimated to be \$14,160.00. The actual cost may be more or less than such estimate.

5. Security. In order to secure all obligations of the Developer herein, the Developer and the County agree that the Developer shall deposit with the County \$16,992.00 to be held as

security for completion of the improvements described in paragraph 7, below.

Pending full performance of all of the terms and conditions hereof by the Developer, the County shall retain said funds. In the event of any uncured default hereunder the County in its sole discretion, and without any other authority required, may, draw upon said funds up to the full amount of \$16,992.00, upon presentation by the County to the Developer of a written statement by the County that such uncured default exists. Upon timely performance of all terms and conditions hereof, said funds shall be tendered by the County to the Developer.

6. Certification. Not later than January 15, 1996, an independent contractor retained by the Developer at her expense shall certify to the County whether the Developer's construction obligations under this agreement have been performed according to design and time specifications. Upon receipt of such certification the County shall review the same and shall make an independent judgment whether to accept the same in the reasonable discretion of the County.

7. Scope of Work. The scope of work to be done by the Developer shall include, but not be limited to:

A. Dry hydrant installation	\$2,500.00
B. Entry sign and landscaping	\$2,500.00
C. Revegetation and reseeding	\$2,000.00
D. Telephone lines and pedestals	<u>\$7,160.00</u>
Total	\$14,160.00

The conditions of this Agreement and Land Use Change Permit No. 1994-71 are such that if the obligations hereunder of the Developer are well, truly, faithfully and timely performed by Developer, inspected and certified to by the Developer's independent contractor, and such performance is accepted by the County in the County's reasonable discretion, the Developer's obligations to the County under this Agreement shall be at an end; otherwise such conditions and obligations shall remain in full force and effect.

8. Developer's Default. In the event of any default hereunder by the Developer, the County shall give notice to the Developer specifying the nature of such default, which notice shall be given by certified mail with return receipt requested addressed to the Developer at: P.O. Box 5112, Mt. Crested Butte, CO 81225. In the event the Developer does not remedy such default or initiate steps to remedy such default to the

satisfaction of the County within 30 days following such notice, the County may elect, in its discretion:

8.1 To specifically enforce the terms and conditions of this agreement;

8.2 To draw upon the funds;

8.3 To exercise any other rights and obtain any other remedies provided by law;

8.4 To obtain from the Developer additional collateral hereunder to guarantee the completion of the improvements only on the conditions (1) that suitable collateral is provided the County to guarantee the construction of said improvements within the new time period determined by the County, and (2) that the County determines that it would not be detrimental to the interest of the County or the owners of real property within the Project to allow such extension.

9. Litigation. Nothing contained herein shall prevent either party from obtaining a judicial determination of the violation of its rights hereunder, provided however, that written notice to the other party advising the other party of the alleged violation, and advising that in the event the matter is not resolved by the parties within 30 days thereafter, shall be a condition precedent to the commencement of any litigation.

10. Time of Essence. It is mutually agreed that time of performance is an essential part of this agreement and that all terms, covenants and conditions herein shall extend to and become obligatory upon the successors and assigns of the respective parties hereto.

11. Venue and Choice of Law. This agreement is entered into in Gunnison County, Colorado and it is agreed that the exclusive jurisdiction and venue of any action pertaining to the interpretation or enforcement of this agreement shall be in the District Court of Gunnison County, Colorado. The exclusive choice of law pertaining to this transaction shall be that of the State of Colorado.

12. Severability. If any term or provision of this agreement shall be invalid or unenforceable, the remainder of this agreement and the terms and provision thereof shall not be affected thereby and all other terms and provisions of this agreement shall be valid and enforceable to the full extent permitted by law.

13. Attorneys' Fees. If any action is brought in a court of law by either party to this agreement as to the enforcement, interpretation or construction of this agreement or any document


provided for herein, the prevailing party in such action shall be entitled to reasonable attorneys' fees as well as all costs incurred in the prosecution or defense of such action.

14. Additional Costs. This agreement and the deposited funds are given as security for all actual costs, fees and expenses of any nature or description, including but not limited to reasonable attorneys' fees and court costs, incurred by the County to guarantee that the subject improvements to be constructed by the Developer will be completed, and specifically including but not limited to any amounts to build and complete such improvements paid to a reputable contractor therefor, together with interest at the rate of 15% per annum on such actual costs, fees and expenses from the date any amounts are incurred by or paid by the County according to the terms and conditions of this agreement. The sum of such actual costs, fees and expenses may be more or less than the estimate in paragraph 4 hereof, and the amount secured by this agreement shall, if necessary, be so amended to be those such actual costs, fees and expenses.

15. Entire Agreement. This agreement contains the entire and only agreement between the parties, and no oral statements or representations not contained in this agreement shall be of any force and effect between the parties. This agreement shall not be modified or amended in any manner except by written instrument executed by the parties.

16. Binding Agreement. This agreement shall be binding upon and inure to the benefit of the heirs, personal representatives, successors and assigns of the parties hereto.

IN WITNESS WHEREOF the parties have executed this agreement the date first above written.

ATTEST:

Joselyn M. Frazier
County Clerk

County
Gunnison County Board of County
Commissioners
By: Paul R. [Signature]
Chairman

Developer
Dolores G. LaVigne
Dolores G. LaVigne