

PITCHFORK

SUBDIVISION IMPROVEMENTS AGREEMENT

This Agreement is entered into this 20th day of February, 2003, between the Town of Mt. Crested Butte, Colorado (hereinafter "Town"), and Pitchfork LLC, a Colorado limited liability company (hereinafter "Developer").

WHEREAS, the subdivision regulations of the Town provide that no final plat showing improvements not yet completed shall be approved until the Developer has submitted a subdivision improvement agreement guaranteeing the construction of the uncompleted required improvements; and

WHEREAS, the subdivision regulations provide that suitable collateral, in an amount stipulated in the subdivision improvements agreement, shall accompany the final plat submission to ensure completion of the improvements according to design and time specifications, which collateral may be in the form of an irrevocable letter of credit adequate to guarantee the completion of the improvements or other suitable form; and

WHEREAS, the Developer herein has filed the final plat of Pitchfork (hereinafter "Subdivision") which will require the completion of certain improvements; and

WHEREAS, the parties hereto mutually agree that the Developer shall furnish an irrevocable letter of credit adequate to guarantee the completion of the required improvements or other suitable collateral.

NOW, THEREFORE, in consideration of the mutual terms, covenants and conditions herein contained, the parties agrees as follows:

1. **REQUIRED IMPROVEMENTS**. That the Developer, as a condition of approval by the Town of the final plat of the Subdivision, hereby agrees to construct the following improvements not later than December 1, 2003:

A. **Gazebo**. A gazebo adjacent to Lot 12 to be built in accordance with plans and specifications previously approved by the Town, at a total estimated cost of \$4,850.

B. **Lot Corner Surveying**. Surveying and setting corners for all lots at a total estimated cost of \$4,950.



The total estimated cost of construction for all of the above services, including a 10% contingency, is estimated to be \$10,780.

2. **Default in Performance**. The applicable procedures required under the ordinances of the Town pertaining to the inspection and acceptance of the above improvements shall pertain under this Agreement. In the event of any default by Developer, the Town may apply to the District Court for Gunnison County for the appointment of a receiver to operate the Developer's business for the sole purpose of completing the construction of the required improvements, and such receiver shall have authority to perform all acts reasonably necessary to construct such improvements, including use of the irrevocable letter of credit for the above purposes. Alternatively, the Town may elect either to complete the construction of such improvements in the manner provided, or it may hire a third party to complete such work in such manner.

3. **Security**. To guarantee the performance of this Agreement, the developer shall, upon recording of the Plat for the Subdivision in the Gunnison County records, deliver an irrevocable letter of credit to the Town as security to guarantee the completion of the construction of the aforesaid improvements or other suitable collateral, and which shall be available to such receiver or the Town, as the case may be, to pay for any and all expenses, including court costs, legal fees, court-determined receiver's allowances, and other costs of the receivership, if any, which may be incurred in completing the construction of the improvements, whether such funds are advanced directly to the Developer, or to a receiver, or to the Town, as the case may be.

4. **Date of Completion**. The improvements shall be completed as set forth in paragraph 1, subject to:

A. Any extension of time granted in accordance with the provisions of paragraph 6 hereof; and

B. Acts of God and any cause beyond the reasonable control of Developer including, without limitation, labor disputes, laws, regulations or orders of any governmental entity, orders of court, inability to obtain any required authorization, acts of war or conditions arising out of or attributable to war, riot, civil strife, insurrection or rebellion, strike, fire, explosion, earthquake, storm, flood, or other adverse weather condition, delay or failure by suppliers or materialmen, contractors, or sub-contractors or shortage of or inability to obtain labor, supplies or materials.



5. **Release of Security.** Upon full completion of the construction of all required improvements as set forth in paragraph 1, above, all security shall be released and returned to the Developer, within five (5) days following the engineer's certification.

6. **Extension of Time.** If the Developer is unable to complete the construction of the required improvements within the allotted time, he may obtain a reasonable extension of time within which to do so upon the following conditions:

A. That an unconditional guarantee or other security satisfactory to the Town is given to guarantee the construction of the improvements within the new time period requested; and

B. That the Town determines that it would not be detrimental to the interests of the Town or the owners of the units in the Subdivision to allow such extension.

7. **Notice of Litigation.** Nothing contained in this section shall prevent either party from obtaining a judicial determination of the violation of its rights under this section; provided, however, that thirty (30) days notice in writing must be given to the other party, advising the other party of the alleged violation, and if the matter is not resolved by the parties within such thirty-day period, then the other party shall be free to resort to legal action as to the matters stated in the notice.

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

9. **Assignment.** The Developer shall not have the right to assign his duties and obligations, rights and privileges under this Agreement to any third party without the prior written consent of the Town, which consent may be withheld by the Town unless the prospective assignee can demonstrate to the Town's satisfaction financial ability to fully perform all of the Developer's duties and obligations under this section.

10. **Attorneys' Fees.** It is agreed that if any action is brought in a court of law by any party to this Agreement as to the enforcement, interpretation, construction or arbitration 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.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the date first above written.

DEVELOPER

**TOWN OF MT. CRESTED BUTTE,
COLORADO**

Pitchfork LLC, a Colorado limited liability company

By: William E. Coburn II
William E. Coburn, II, Managing Member
Managing member

By: [Signature]
Mayor

Attest: Donna Arwood
Clerk

