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Prospect at Mt. Crested Butte  
02/28/2006 10:46 AM  
10:00

## SUBDIVISION IMPROVEMENT AGREEMENT

### PROSPECT AT MT. CRESTED BUTTE, PHASE 4

#### TOWN OF MT. CRESTED BUTTE AND PROSPECT DEVELOPMENT COMPANY, INC.

This Agreement is entered into this 28 day of February 2006 between the TOWN OF MT. CRESTED BUTTE, COLORADO (the "Town"), and PROSPECT DEVELOPMENT COMPANY, INC., a Colorado corporation (the "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 improvement agreement, shall accompany the final plat submission to ensure completion of the Improvements according to design and time specifications, which collateral has been agreed to be in the form of a irrevocable letter of credit adequate to guarantee the completion of the improvements; and

WHEREAS, the Developer is contemporaneously filing the final plat of Prospect at Mt. Crested Butte, Phase 4 recorded Feb 28, 2006 at Reception No. 563222 of the records of Gunnison County, Colorado, which will require the completion of construction of a road system, a water system, a sanitary sewer collection system, and an electrical system; and

WHEREAS, the parties hereto mutually agree that the Developer shall furnish an irrevocable letter of credit in the amount of at least \$2,658,047.00 ("Security") to guarantee the completion of the required Improvements.

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

1. Required Improvements. That the Developer, as a condition of the approval by the Town of the final plat of Prospect at Mt. Crested Butte, Phase 4 hereby agrees to construct the following improvements ("Improvements") not later than the dates set forth hereafter, with completion of all Improvements to be not later than the 30<sup>th</sup> day of November 2007, emergencies and acts of God excepted:

1.1 Road System. The roads and streets as set forth in the final plat of Prospect at Mt. Crested Butte, Phase 4, to be built in accordance with the plans and specifications of Schmueser Gordon Meyer, Inc. as previously approved by the Town, at a total estimated cost of \$900,132.30 and with a date of completion of November 30, 2007.





Developer, the Town may apply to the District Court of 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 the Improvements, including use of the Security for the above purposes. Alternatively, the Town may elect either to complete the construction of the 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 full execution of this Agreement, deliver the Security to the Town as security to guarantee the completion of the construction of the aforesaid Improvements, 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. Release of Security. Upon partial completion of the construction of the Improvements, the Developer, upon submitting a statement of partial completion certified by Developer's registered professional engineer, shall be entitled to written release by the Town of so much of the security as shall be equal to the value of the completed work based on the estimated costs as set forth in Exhibit A, less twenty-five (25) percent thereof. Such release may be accomplished by the Developer's furnishing substitute collateral in the resulting small amount. Upon full completion of the construction of all the aforesaid improvements, all obligations on the part of the Developer to furnish the collateral shall terminate and it shall be returned to the Developer.

4.1. The Developer's registered professional engineer shall submit bi-weekly reports to the Town as to the construction of the drainage facilities, which shall include any changes in design or construction of the drainage facilities. Any change in the design or construction of the drainage facilities shall be approved by the Town before such changes are commenced. Upon completion of the drainage facilities and as a condition of 100% release of the security therefore, the Developer's registered professional engineer shall certify to the Town that the drainage facilities have been constructed in accordance with the final plans, including any changes in design or construction as approved by the Town.

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

5.1 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

5.2 That the Town determines that it would not be detrimental to the interests of the Town or the owners of the lots in Prospect at Mt. Crested Butte,



Phase 2 to allow such extension.

6. Standards of Performance for Sewer and Water System. The parties agree that the Developer shall construct the sewage collection system and water system referred to in subparagraphs 1.2 and 1.4 above in accordance with the requirements of the Mt. Crested Butte Water and Sanitation District. When such work has been done by the Developer or its authorized contractor, inspected and certified to by the Mt. Crested Butte Water and Sanitation District and the Town, Developer's obligation to the Town with respect to the Water and Sanitation District facilities shall be at an end and Developer's guarantee shall be surrendered for cancellation. Developer agrees that it will not complete the Improvements in such manner that the Improvements may be covered up or otherwise unavailable for inspection without first having the same inspected by the Mt. Crested Butte Water and Sanitation District.

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 written notice 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 have the right to assign its duties and obligations, rights and privileges under this Agreement to any third party only with the prior written consent of the Town, which consent shall not be withheld by the Town provided only that the prospective assignee can demonstrate suitable financial ability to fully perform all of the Developer's duties and obligations under this section. Such written consent by the Town shall contain a provision constituting a release of the Developer named herein from further liability under this Agreement.



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

TOWN OF MT. CRESTED BUTTE, COLORADO

Attest:

Donna Arwood By: Chris Morgan  
Donna Arwood Name: \_\_\_\_\_  
Town Clerk Chris Morgan, Mayor

PROSPECT DEVELOPMENT COMPANY, INC., a Colorado corporation

By: [Signature]  
Name: Michael Krantz  
Title: Vice President of Real Estate & Development

STATE OF COLORADO )  
 ) ss.  
County of Gunnison )



The above and foregoing Subdivision Improvement Agreement was acknowledged before me this 23<sup>rd</sup> day of February, 2006 by Chris Morgan as the Mayor of Mt. Crested Butte, Colorado.

Witness my hand and official seal.

My commission expires: 7-7-08

[Signature]  
Notary Public

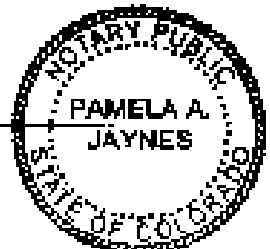
STATE OF COLORADO )  
 ) ss.  
County of Gunnison )

The above and foregoing Subdivision Improvement Agreement was acknowledged before me this 14<sup>th</sup> day of February, 2006 by Michael Krantz as Vice President of Prospect Development Company, Inc., a Colorado corporation.

Witness my hand and official seal.

My commission expires: 23 April 2009

[Signature]  
Notary Public







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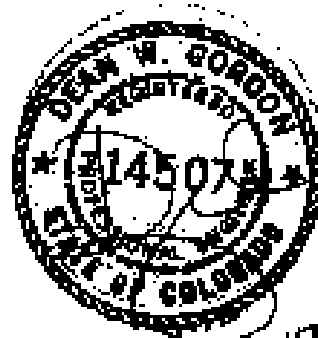
**PROJECT, PHASE 4  
ENGINEER'S OPINION OF COST  
SUBDIVISION IMPROVEMENTS AGREEMENT**

<b>Bid Item</b>	<b>Description</b>	<b>Unit</b>	<b>Quantity</b>	<b>Unit Price</b>	<b>Total Cost</b>
B.	Open Space Seed Mix	Pounds	157	\$50.00	\$7,850.00
10	Hydraulic Mulch	Acres	8.2	\$2,000.00	<u>\$16,400.00</u>
				<b>Subtotal</b>	<b>\$117,582.00</b>
<b>D.</b>	<b>Sewer Utility</b>				
1.	Connect to Existing System	Each	1	\$2,500.00	\$2,500.00
2.	8" Sewerline	Linear Foot	5,045	\$33.00	\$166,485.00
3.	Manholes	Each	31	\$2,000.00	\$62,000.00
4.	Services	Each	23	\$750.00	\$17,250.00
5.	Forced Main Services	Each	3	\$850.00	\$2,550.00
6.	Lift Station	Each	1	\$50,000.00	\$50,000.00
7.	Force Main	Linear Foot	2,561	\$20.00	\$51,220.00
				<b>Subtotal</b>	<b>\$382,405.00</b>
<b>E.</b>	<b>Water Utility</b>				
1.	Connect to Existing System	Each	1	\$5,000.00	\$5,000.00
2.	6" Water	Linear Foot	3,215	\$35.00	\$112,525.00
3.	12" Water	Linear Foot	2,530	\$45.00	\$113,850.00
4.	8" Valve	Each	8	\$1,500.00	\$12,000.00
5.	12" Valve	Each	4	\$2,000.00	\$8,000.00
6.	Fire Hydrant	Each	10	\$3,200.00	\$32,000.00
7.	Services	Each	22	\$1,000.00	\$22,000.00
				<b>Subtotal</b>	<b>\$308,375.00</b>
<b>F.</b>	<b>Miscellaneous Utilities</b>				
1.	Electric Utility	Linear Foot	4,750	\$8.00	\$42,750.00
2.	Gas Utility	Linear Foot	4,750	\$8.00	\$38,000.00
3.	Telephone, Cable Utilities	Linear Foot	4,750	\$8.00	\$28,500.00
				<b>Subtotal</b>	<b>\$109,250.00</b>
<b>G.</b>	<b>Bridge</b>				

**EXHIBIT A**

PROSPECT, PHASE 4  
 ENGINEER'S OPINION OF COST  
 SUBDIVISION IMPROVEMENTS AGREEMENT

Item	Description	Unit	Quantity	Unit Price	Total Cost
1.	Structure	Lump Sum	1	\$800,000.00	<u>\$800,000.00</u>
				Subtotal	\$800,000.00
				Construction Total	\$2,328,525.30
				10% Contingency	<u>\$232,852.53</u>
				Construction Total & Contingency	Subtotal \$2,561,377.83
				Construction Engineering and Construction Staking @3% Contingency	<u>\$76,841.33</u>
				Subtotal	
				<b>TOTAL</b>	<b>\$2,538,219.16</b>



*FEB 17, 2008*



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**EXHIBIT A**