

DEVELOPMENT IMPROVEMENTS AGREEMENT

27<sup>th</sup> THIS DEVELOPMENT IMPROVEMENTS AGREEMENT is entered into this day of May, 1996 between the Board of County Commissioners of Gunnison County, Colorado (herein the "County"), and Bingo Investment Company, a Colorado limited liability company (herein the "Developer") as follows:

1. Purpose. The Developer has submitted to the County the Developer's application for Land Use Change No. 1992-33 regarding the subdivision and platting of Riverland - An Industrial Park, Filing 2 in the Northwest quarter of Section 12, Township 14 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 1992-33 and the terms and conditions of this agreement. Developer accepts the County's review and permitting authority in connection with Land Use Change Permit 1992-33 as legal and valid and waives any defect therein.

3. Construction.

A. The Developer agrees to complete construction of the improvements within the Project described in paragraph 7, below, not later than December 31, 1996 (except for the accel/decel lanes which shall be completed not later than December 31, 1998), 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 strife, 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.

B. The completion deadline set forth in this paragraph 3 may be extended by the County upon written request of Developer if the County determines that such extension of time will not operate to the detriment of the County, and upon determination that the County's security hereunder is adequate to ensure full performance by Developer by the extended completion date. The County may, but need not, require supplemental estimates of the costs of completion by Developer's engineer as a prerequisite to its extension of any completion date. Any extended completion date agreed to by the County hereunder may be further extended in like manner.

C. The County reserves the right not to permit construction of any building in the Project prior to completion of the improvements described in paragraph 7, below.

4. Estimated Cost. The total cost of the improvements to be constructed by the Developer which is the subject hereof is estimated to be \$334,116.

5. Security. Prior to or simultaneously with Developer's conveyance of title to the first lot in the Project, Developer shall execute and tender to the County the following security for Developer's performance hereunder:

A. A UCC financing statement by which a first lien is perfected in the County in a certificate of deposit or money market account in the amount of \$384,234.00 issued by a nationally-chartered bank headquartered in Colorado or a Colorado-chartered bank. This Agreement shall constitute a security agreement as defined in Section 4-9-105(1)(h) Colorado Revised Statutes, and shall be subject to all of the provisions of Title 4, Article 9, Colorado Revised Statutes.

B. In the alternative to the security provided in paragraph 5(A), above, Developer may provide to the County an irrevocable letter of credit in the amount of \$384,234 in form acceptable to the County issued by a nationally-chartered bank headquartered in Colorado or a Colorado-chartered bank.

C. Developer shall have the right to substitute security so long as the substituted security is of equal amount and quality, in the sole discretion of the County.

Pending full performance of all of the terms and conditions hereof by the Developer, the County shall retain said security. In the event of any uncured default hereunder the County in its sole discretion, and without any other authority required, may draw upon said security up to the full amount of \$384,234 upon

*Handwritten notes:*  
10/17/98  
11/20/07  
11/20/07  
11/20/07

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 security shall be tendered by the County to the Developer.

6. Certification. Not later than fifteen days following completion of all improvements, a licensed professional engineer retained by the Developer at its 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, within fifteen days, review the same and shall make an independent judgment whether to accept the same in the reasonable discretion of the County. Developer agrees not to cover or otherwise prevent inspection of the improvements constructed hereunder until Developer's engineer and the County's representatives have had reasonable opportunity to inspect such improvements.

7. Scope of Work. The scope of work to be done by the Developer shall include, but shall not be limited to the following, as more specifically described on the plans identified on attached Exhibit A:

A.	Roads	\$55,775
B.	Accel/Jacal lanes	\$58,750
C.	Water lines, water system	\$63,090
D.	Water storage tank and plumbing	\$66,252
E.	Electrical power lines	\$19,814
E.	Telephone lines	0
F.	Gazebo, playground and school bus stop	\$14,375
G.	Monitoring wells	\$2,000
H.	Gas Lines	\$34,500
I.	Landscaping	<u>\$19,560</u>
	<b>Total</b>	<b>\$334,116</b>

The conditions of this Agreement and Land Use Change Permit No. 1992-33 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 licensed professional engineer, 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. Partial Release of Security.

A. The County recognizes that as work proceeds upon the improvements, the County's need for security shall be reduced. Accordingly, the County agrees to partially release the security to be delivered to the County pursuant to paragraph 5 hereof upon receipt of a certification, by Developer's engineer stating the estimated cost of completion, in which event the County shall retain security equal to 115 percent of such estimated cost of completion and shall release the balance of all security held by the County. In order to facilitate Developer's timely payment to Developer's contractors, the County shall designate and authorize the County Manager or the Road and Bridge Supervisor to inspect the completed improvements and to partially and/or fully release the security hereunder within fourteen days after the County receives such engineer's certification.

B. Upon Developer's entering into a contract or contracts for construction of improvements hereunder, Developer and County shall negotiate an addendum to this Agreement setting forth a schedule for partial releases of the security in accordance with the anticipated construction schedule. All such contracts shall provide that the County shall be a third party beneficiary with all rights to enforce such contracts in place of Developer in the event of a default by Developer.

C. For a period of one year from and after the acceptance of the work described in paragraph 7, above, Developer shall, at its own expense, make all needed repairs and replacements to such work as shall, in the County's reasonable opinion, become necessary. The County shall have the right to retain up to \$50,118 of the security for up to one year following completion of the work described in paragraph 7, above, as security to ensure such repair and replacement.

9. 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 2244, Crested Butte, CO 81224. In the event the Developer does not remedy such default or initiate steps to remedy such default to the reasonable satisfaction of the County within 30 days following such notice, the County may elect, in its discretion:

9.1 To specifically enforce the terms and conditions of this agreement:

9.2 To draw upon the security;

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

9.4 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.

11. 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 of the intent to file litigation 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. Additional Costs. This agreement and the security described in paragraph 5, above, 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 12% 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.

17. Entire Agreement. This agreement contains the entire and only agreement between the parties regarding the subject matter hereof, 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.

18. 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.

19. Notice. All notices and other communications required or permitted under this Agreement shall be in writing and shall be, as determined by the person giving such notice, either hand delivered, mailed by registered or certified mail, return receipt requested or by telecopier or telegraphic communication to the required party at the following addresses:

COUNTY: Board of County Commissioners  
200 East Virginia Avenue  
Gunnison, CO 81230  
Telecopier: (970) 641-3061

DEVELOPER: Bingo Investment Company  
Post Office Box 2244  
Crested Butte, CO 81224  
Telecopier: (303) 349-0626

Notice shall be deemed delivered at the time of personal delivery, telecopier or telegraphic communication or when mailed to the required party. Any party may change its address by giving written notice of a change of address to the other party in the manner above provided.

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

County

Gunnison County Board of County  
Commissioners

ATTEST:

By:

Paul R. Smith Chairman

James M. Rutigen  
County Clerk

Developer

Singo Investment Company, a  
Colorado limited liability company

By:

Robert V. Hunt  
Robert V. Hunt, Manager

EXHIBIT "A" TO DEVELOPMENT IMPROVEMENTS AGREEMENT

DEVELOPMENT COSTS - RIVERLAND INDUSTRIAL PARK FILING 2

ROADS, WATER SYSTEM, AND MONITORING WELL, PER JCI BID		
Roads	55,250	
Water Lines, Water System	63,090	
Monitoring Wells (2)	2,000	
Install Traffic Signs	525	
<b>TOTAL ROADS, WATER SYSTEM, AND MONITORING WELL</b>		<b>120,865</b>
30,000 GALLON WATER STORAGE TANKS AND PUMPING SYSTEM		
30,000 Gallon Storage Tanks and Installation	50,842	
Pump Equip, Press Tanks, and Installation as bid by Munro Plumbing	15,410	
<b>TOTAL 30,000 GALLON WATER STORAGE TANKS AND PUMPING SYSTEM</b>		<b>66,252</b>
INSTALLATION OF ELECTRIC AND PHONE, AS PLOWED IN BY GUNNISON COUNTY ELECTRIC		
		19,814
PHONES CABLE AND EQUIP IS SUPPLIED BY US WEST FREE OF CHARGE		0
INSTALLATION OF GAS LINES BY GREELEY GAS		34,500
LANDSCAPING:		
Installation of Landscaping and Drip Emmitter System	14,560	
Landscaping Architecture Initial Budget <i>REVIEW</i>	5,000	
<b>TOTAL LANDSCAPING</b>		<b>19,560</b>
ACCEL/DECEL LANES AS BID BY UNITED COMPANIES		58,750
PURCHASE AND INSTALLATION OF SCHOOL BUS STOP BUILDING, GAZEBO, AND PLAYGROUND EQUIPMENT		
School Bus Stop Building	5,000	
Gazebo Cost of Materials (kit from Vixen Hill Co.)	5,175	
Gazebo Labor Cost of Construction	1,200	
Playground Equipment Payment to Homeowners Association	3,000	
<b>TOTAL PURCHASE AND INSTALLATION OF SCHOOL BUS STOP BUILDING AND GAZEBO</b>		<b>14,375</b>
<b>SUBTOTAL</b>		<b>334,110</b>
<b>GENERAL CONTINGENCY</b>		<b>50,110</b>
<b>TOTAL</b>		<b>384,234</b>