

## DEVELOPMENT IMPROVEMENTS AGREEMENT

THIS Development Improvements Agreement is entered into this 25th day of November, 1996 between the Board of County Commissioners of Gunnison County, Colorado (the "County"), and N D ENTERPRISES L.L.C., a Colorado limited liability company (the "Developer") as follows:

1. PURPOSE. The Developer has submitted to the County the Developer's application for Land Use Change Permit No. 1995-36 regarding AMENDED PLAT OF PORTIONS OF SKYLAND (the "Project"). The legal description of the Project is attached hereto and incorporated herein as Exhibit A. As valuable and sufficient consideration for this Agreement, the County and the Developer agree that approval of such application by the County is expressly conditioned on completion of the improvements described in paragraph 7 below (the "Improvements") to the specifications described herein and by the times specified herein. The County and the Developer further agree that such Improvements are appropriate and necessary requirements to be required by the County, and to be performed by the Developer and which Developer shall perform. The County and Developer further agree that an agreement guaranteeing the Developer's performance secured by suitable security, to protect the interest of the County and the public, in the amount set forth herein is an appropriate condition to the County's approval of such Land Use Change Permit. The parties have entered into this Agreement to memorialize such understandings and agreements. The relationship of the parties to this Agreement is contractual; Developer is an independent contractor and not an agent of the County.

2. DEVELOPERS BOUND. The Developer agrees to accept and be bound by the terms and conditions of the County's issuance of its approval of Land Use Change Permit No. 1995-36 and the terms and conditions of this Agreement. Developer accepts the County's review and permitting authority, process and performance of same in connection with Land Use Change Permit No. 1995-36 as legal and valid and waives any defect therein.

### 3. CONSTRUCTION.

A. The Developer agrees to complete construction of the Improvements within the Project in the location set forth on the plans attached hereto as Exhibit B, and in accordance with the specifications thereof by not later than November 30, 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 strike, insurrection or rebellion, fire, explosion, earthquake, storm, flood or other adverse weather condition, delay or failure by suppliers or



01/03/1997 02:52P 559

REC 56.00 DOC 0.00 NOT 0.00 GUNNISON COUNTY

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 in its reasonable discretion upon written request of Developer if the County determines that: (1) such extension of time will not operate to the detriment of the County, the public or the owners of property within the Project; and (2) the County's security is adequate to ensure full performance by Developer by the extended completion date; and (3) that such an extension would not be in conflict with the conditions of the approved Land Use Change Permit. The County may require Developer to provide, at Developer's cost, supplemental estimates by Developer's engineer of the costs of completion and to provide additional security as a prerequisite to its extension of any completion date. Any extended completion date granted by the County hereunder may be further extended in like manner.

C. Each contract entered into by Developer for construction of the Improvements shall provide that the County is a third party beneficiary with all rights to enforce such contracts in place of Developer in the event of a default by Developer. Developer shall provide to County a copy of each such contract upon its execution.

D. The County reserves the right not to permit construction of any building on a Lot in the Project unless the necessary Improvements to serve that Lot have been completed and installed.

4. ESTIMATED COST. The total cost of the Improvements to be constructed by the Developer is estimated currently to be \$940,000.00.

5. SECURITY. In order to secure all obligations of the Developer herein, the Developer and the County agree that the Developer shall, at Developer's sole cost, and before starting work on any phase of the Project or Improvements, and before conveying any portion of the Project, obtain and provide to the County an irrevocable letter of credit issued by Sterling National Bank & Trust Company of New York dated November 25, 1996 naming the County as beneficiary thereof in the amount of \$1,130,000.00 which is 120 percent or more of the currently estimated cost of the Improvements.

If the contract(s) provided to the County pursuant to paragraph 3.C above indicate a substantially different total cost than estimated in paragraph 4 above, the amount of security may be increased or decreased. For the purposes of this paragraph 5, substantial is defined as 10 percent or more.



Pending full performance of all of the terms and conditions hereof by the Developer, the County shall retain said security and shall remain the beneficiary of such 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 \$1,130,000.00, upon presentation by the County to the Developer and the issuer of the irrevocable letter of credit of a written statement by the County that such uncured default exists and that the County is entitled to payment pursuant to this Agreement. Upon timely performance of all terms and conditions hereof, the irrevocable letter of credit shall be tendered and returned by the County to the Developer.

#### 6. CERTIFICATION.

A. Not later than November 30, 1998, a registered Colorado engineer retained by the Developer at its expense shall certify to the County whether the Developer's construction obligations regarding Improvements under this Agreement have been fully and faithfully performed according to the plans and specifications attached as Exhibit B. 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. Developer agrees not to cover or otherwise prevent inspection of the Improvements constructed hereunder until Developer's engineer and the County's representative have had reasonable opportunity to inspect such Improvements.

B. Not later than November 30, 1998, Developer shall provide to the County Attorney a sworn affidavit, signed by the Developer's authorized representative, that the Improvements completed have been paid for, in full, by or on behalf of the Developer. The Developer shall be responsible for the information so provided. Said written certification will be reviewed by the County, but the County shall have no responsibility or liability to any party regarding the veracity of the information so provided.

#### 7. SCOPE OF WORK.

A. The scope of the work to be done by the Developer shall include, but not be limited to: As set forth on attached Exhibit B.

B. The conditions of this Agreement and Land Use Change Permit No. 1595-36 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 engineer, and such performance is accepted by the County in the County's discretion, the Developer's obligations to the County under this Agreement except as set forth in paragraph 7.C below shall be at an end, otherwise such conditions and obligations shall remain in full force and effect.



C. For a period of one year from and after the acceptance of all of the work described in paragraph 7.A 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 \$141,000.00 of the security for up to one year following the acceptance of all of the work described in paragraph 7.A above, as security to ensure such repair and replacement.

#### 8. PARTIAL RELEASE OF SECURITY.

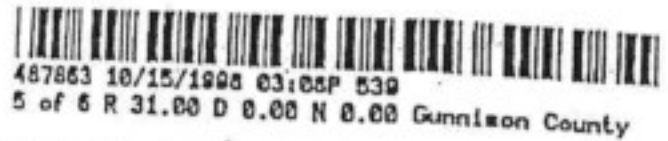
A. The County recognizes that as work proceeds upon the Improvements, the County's need for security shall be reduced. Accordingly, the County agrees to a reasonable partial release of the security to be delivered to the County pursuant to paragraph 5 hereof upon receipt of a written certification, by Developer's engineer, stating the estimated cost of remaining completion, in which event the County shall retain security equal to 125 percent of such estimated cost of remaining completion, plus 20 percent of the original estimated cost of the Improvements and shall release the balance of all security held by the County.

B. Upon Developer entering into a contract or contracts for construction of Improvements hereunder, Developer and County may negotiate an addendum to this Agreement setting forth such reasonable schedule for partial releases of the security in accordance with the anticipated construction schedule. In such circumstance, the County shall designate and authorize the County Manager to make the partial release(s) hereunder after consultation with appropriate County staff.

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 required addressed to the Developer at 385 Country Club Drive, Post Office Box 879, Crested Butte, Colorado 81224, with a copy thereof to the attorney for the Developer, Harrison F. Russell, Esq. Russell & Wilderson, P.C., 120 North Taylor Street, Post Office Box 179, Gunnison, Colorado 81230. In the event the Developer does not remedy such default to the satisfaction of the County within 14 business 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 or otherwise obtain the benefit of the security.



assignee, shall have 30 days from the date of such notice to purchase the Owner Occupied Affordable Housing under the same terms and conditions.

3.6.4 In addition, the Association, or its assignee, and the Gunnison County Housing Authority, or its assignee, shall have the right to acquire the Owner Occupied Affordable Housing from the Owner subject to such deed of trust, mortgage, lien or encumbrance.

4. Restrictions Run With Land. These deed restrictions as to the ownership, use and occupancy of the Real Property constitute a perpetual covenant running with the land as a burden thereon and for the benefit of the Association, and shall be binding upon the owner and the heirs, personal representatives, assigns, lessees, licensees, successors and any transferees of the owner.

5. Enforcement. These deed restrictions shall be administered by the Association and shall be enforceable by any appropriate legal or equitable action, including but not limited to, specific performance, injunction, abatement, or eviction of any non-complying owners or occupants of the Real Property or such other remedies and penalties as may be deemed appropriate by the Association and/or Board of County Commissioners of Gunnison County, Colorado.

6. Jurisdiction and Venue. Jurisdiction and venue of any action as to these deed restrictions and the interpretation, enforcement or the determination of the rights and duties of the parties hereto shall be the District Court of Gunnison County, Colorado. Each party submits to the personal jurisdiction of the District Court of Gunnison County, Colorado and waives any and all rights under the laws of any other State or County to object to the jurisdiction of the District Court of Gunnison County, Colorado as to any action pertaining to these deed restrictions.

7. Attorneys' Fees. If any legal action is commenced or maintained in court, whether in law or in equity, by any party to these deed restrictions as to the interpretation, enforcement, construction or the determination of the rights and duties of the parties to these deed restrictions or any document provided herein, the prevailing party in any such action shall be entitled to reasonable attorneys' fees together with all reasonable costs and expenses incurred in such action.

8. Modification of Deed Restrictions. This Amended Affordable Housing Deed Restrictions may only be amended, modified, changed or altered by a written document executed by the owners of not less than 75% of the Lots within the Real Property, the Association, the Board of County Commissioners of the Gunnison County, Colorado and 75% of the Holders of a first Deed of Trust or Mortgage on the Lots. Any

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6 of 6 R 31.00 D 0.00 N 0.00 Gunnison County

amendment, modification, change or alteration shall only be effective upon the recording of a written instrument in the records of Gunnison County, Colorado.

9. Binding Deed Restriction. These Deed Restrictions and all of the provisions hereof shall be binding upon and inure to the benefit of the parties and their respective successors, assigns, legal representatives and heirs.

Executed this 16<sup>th</sup> day of October, 1998

N D ENTERPRISES L.L.C.,  
a Colorado limited liability company

By: Louis F. Costello  
Louis F. Costello  
Assistant General Manager

STATE OF COLORADO }  
County of Gunnison } ss.

The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of October, 1998, by Louis F. Costello as Assistant General Manager of N D Enterprises L.L.C., a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: August 29, 1999

Colette A. Perusek  
Notary Public



22. NOTICES. 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 addressees:

COUNTY:

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

DEVELOPER:

N D ENTERPRISES L.L.C.  
385 Country Club Drive  
Post Office Box 879  
Crested Butte, Colorado 81224

with a copy to:

Harrison F. Russell, Esq.  
Russell & Wilderson, P.C.  
120 North Taylor Street  
Post Office Box 179  
Gunnison, Colorado 81230

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

ATTEST

*James M. R. Torgue*  
County Clerk

BOARD OF COUNTY COMMISSIONERS OF  
GUNNISON COUNTY, COLORADO

By: *Paul A. Lids*  
Chairperson

N D ENTERPRISES L.L.C., a Colorado limited liability company

By: *[Signature]*  
Title: GENERAL MANAGER

By: *Louis A. Costello*  
AST. GENERAL MANAGER



473137

Page: 8 of 11

01/03/1997 02:52P 559

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APPROVED AS TO FORM:

David Baumgarten  
Gunnison County Attorney

Harrison F. Russell, attorney for Developer

STATE OF COLORADO )  
 ) ss,  
County of Gunnison )

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of December, 1996, by Louis F. Costello as Assistant General Manager of N D ENTERPRISES L.L.C., a Colorado limited liability company.

Witness my hand and official seal

My commission expires:

My Commission expires 02-28-2000

Notary Public





EXHIBIT A

DEVELOPMENT IMPROVEMENTS AGREEMENT

Amended Plat of Portions of Skyland, according to the plat thereof filed  
January 3, 1997 and bearing Reception No. 473132 of the  
records of Gunnison County, Colorado,

County of Gunnison,  
State of Colorado.

EXHIBIT B

DEVELOPMENT IMPROVEMENTS AGREEMENT

The Plans and Specifications for the construction of roads and utilities within the Amended Plat of Portions of Skyland as prepared by Schmueser Gordon Meyer Inc. on file in the office of the Planning Department of Gunnison County, Colorado. These include but are not limited to:

<u>Sheet No.</u>	<u>Description</u>
C1	Existing Conditions, Soil Borings
C2	Grading, Drainage, Erosion Control
C3 - 10	Roadway Plan and Profile
C11	Utility Plan
C12 - 14	Utility Profile
C14A	Fairway Driver Water Utility
C15	Roadway Details
C16	Utility Details
C17	Project Notes

The engineer's cost of the construction of the Improvements is attached as Exhibit B-1.



473137

Page: 11 of 11

01/03/1997 02:52P 559

REC 56.00 DOC 0.00 NOT 0.00 GUNNISON COUNTY

SKYLAND INITIAL FILING  
ENGINEER'S OPINION OF COST

9/20/96

<u>Description</u>	<u>Opinion of Cost</u>
- Roadways and Drainage	\$ 410,000
- Sewer Utility	\$ 225,000
- Water Utility	\$ 225,000
- Miscellaneous Utilities	\$ 80,000
Subtotal	\$ 940,000
20% design and contingency	\$ 190,000
Total	\$ 1,130,000

Prepared by



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