

Cheri Brunvand

SUMMIT COUNTY RECORDER

SUBDIVISION IMPROVEMENTS AGREEMENT

42nd
This Agreement is made as of this 9th day of April, 2001, between FARMERS GROVE, LLC, (Developer) whose address is P.O. Box 23217, Silverthorne, CO 80498, and the BOARD OF COUNTY COMMISSIONERS OF SUMMIT COUNTY (County), whose address is P.O. Box 68, Breckenridge, Colorado 80424, Attention: County Engineer

I. GENERAL

1.1 Purpose. The purpose of this Agreement is to provide for the completion of the Subdivision Improvements as hereinafter defined, for the Subdivision, as hereinafter defined.

1.2 Recitals.

(a) Developer is the owner and subdivider of the Subdivision and has presented a final plat of the Subdivision to the County for approval.

(b) The subdivision statutes of the State of Colorado, Section 30-28-137, C.R.S., and the Subdivision Resolution of the County authorize the execution of a subdivision improvements agreement between the County and Developer whereby Developer agrees to construct any required public improvements for the Subdivision and to provide security for completion of the Subdivision Improvements.

(c) This Agreement will provide for the completion of the Subdivision Improvements within the Subdivision and will protect the County from the cost of completing the Subdivision Improvements.

(d) This Agreement is not executed for the benefit of third parties such as, but not limited to, materialmen, laborers or others providing work, services or material for the Subdivision Improvements or lot or home buyers in the Subdivision.

1.3 Subdivision. The "Subdivision" shall mean Farmer's Grove, Summit County, Colorado, the final plat for which has been presented to the County and is expected to be approved by the County at the time of, and in connection with, approval of this Agreement by the County.

1.4 Subdivision Improvements. The "Subdivision Improvements" shall mean the street, drainage and other improvements listed on attached Exhibit A, and improvements described in the Plans, as hereinafter defined. Exhibit A shall include estimated costs and completion dates for the Subdivision Improvements.

1.5 Plans. The "Plans" shall mean the Subdivision Improvement Plans approved by the County Engineer and the Board of County Commissioners, which Plans shall include grading, drainage, erosion control, revegetation, landscaping, irrigation system, road improvement and composite utility plans.

II. CONSTRUCTION OF SUBDIVISION IMPROVEMENTS.

2.1 Agreement to Construct. Subject to and in accordance with the terms and provisions of this Agreement, Developer agrees to cause the Subdivision Improvements to be constructed and completed at its expense, in accordance with the Plans.

2.2 Final Plat Approval as Condition of Construction. Developer shall not commence construction and installation of the Subdivision Improvements until the county has given its approval to the final plat of the Subdivision.

2.3 Recordation of Final Plat. This Agreement must be entered into prior to recordation of the final plat in Summit County. The final plat shall not be recorded until either the Subdivision Improvements have been satisfactorily completed or until the receipt by the County of security in a form acceptable to the County for 115% of the estimated construction costs of said Subdivision Improvements as identified on Exhibit A of this Agreement.

2.4 Completion Date. Subdivision Improvements shall be completed within the time limits set forth on the attached Exhibit A ("Completion Date"). The Completion Date may only be extended for good cause, as determined by and approved by the County Planning Department in writing.

2.5 Construction Standards. The Subdivision Improvements, including water and sanitary sewer, shall be constructed in accordance with the Plans approved by the County Engineer and/or applicable District and, to the extent not otherwise provided in the Plans, in accordance with the County's ordinances, resolutions, and regulations.

2.6 Warranties of Developer. Developer warrants that the Subdivision Improvements will be installed in a good and workmanlike manner and in substantial compliance with the Plans and requirements of this Agreement and shall be substantially free of defects in materials and workmanship. These warranties of Developer shall remain in force and effect as to any completed Subdivision Improvements until the lapse of two years after Preliminary Acceptance of the Subdivision Improvements as hereinafter provided in this Agreement.

2.7 Title of Subdivision Improvements. All Subdivision Improvements shall be constructed within streets or easements or as otherwise shown on Plans dedicated to the County in the final plat of the Subdivision or conveyed by other recorded instruments at the time the final plat is recorded. Subdivision Improvements for roads shall be in accordance with the Summit County Road and Bridge Design and Construction Standards. Title to the property shown on the final plat shall be vested, at the time the final plat is presented to the County for approval, in Developer and any other parties executing the final plat and shall be certified by a title company's or attorney's certificate shown on the final plat.

III. SECURITY FOR COMPLETION.

3.1 Deposit of Security for Developer Obligations. To secure the performance of the obligations of Developer under this Agreement to complete the Subdivision Improvements for the Subdivision, Developer shall deposit with the County an irrevocable letter of credit with provisions as hereinafter set forth, or a cash deposit or other financial guarantee deemed adequate by the County ("Security"). The Security shall be deposited after approval of the final plat for the Subdivision and shall be 115% of the estimated cost to construct the Subdivision Improvements which the Developer desires to construct. No conveyance or transfer of title to any lot(s), tract(s) of land within the Subdivision with uncompleted Subdivision Improvements shall be made, nor any building permit issued, unless the approved Security has been deposited with the County or unless all public improvements have been completed and Security in the amount of 15% of the estimated cost of said improvements has been deposited with the County as provided in Section 4.2 below. The Security shall be retained by the County until satisfaction of Developer's obligations under this Agreement or earlier release by the County.

3.2 Provisions for Letter of Credit. If an irrevocable letter of credit is provided as Security, such letter for credit shall be in an amount equal to 115% of the estimated cost to construct the Subdivision Improvements. The letter of credit shall be issued from Community First Bank of Frisco, or such other bank as shall be approved by the County; shall have an expiration date no earlier than two years after its date of issue; and shall provide that it may be drawn upon from time to time by the County in such amount or amounts as the County may designate as justified, such amounts not to exceed, in the aggregate, the amount of the letter of credit. Draws under any such letter of credit shall be by a certificate signed by the Chairman or Acting Chairman of the Board of County Commissioners of Summit County stating that the County is entitled to draw the specified amount under the terms of this Agreement. The right of the County to draw on any letter of credit shall be as provided in, and subject to, the provisions of Sections 5.1 through 5.6 of this Agreement.

3.3 Recording of Agreement. After approval of the final plat of the Subdivision by the County, this Agreement may, at the option and expense of the County, be recorded in the office of the Clerk and Recorder of Summit County. Upon Final Acceptance of all of the Subdivision Improvements by the County, the County shall deliver to Developer a recordable executed document which shall release all property within the Subdivision from any further effect of this Agreement.

IV. ACCEPTANCE OF IMPROVEMENTS.

4.1 Preliminary/Partial Acceptance. Upon the satisfactory completion of any of the specific Subdivision Improvements listed in Exhibit A, Developer shall be entitled to obtain preliminary acceptance thereof by the County ("Preliminary Acceptance") in accordance with the following provisions.

a) Upon such partial completion, Developer shall give written notice to the County Engineer requesting an inspection of the completed Subdivision Improvements ("Preliminary Inspection Notice"). The County shall inspect the completed Subdivision Improvements within fourteen days after receipt by the County Engineer of the Preliminary Inspection Notice and, if the County Engineer finds that the specified improvements have been completed

substantially in accordance with the Plans and the other requirements of this Agreement, the County Engineer shall issue a letter evidencing Preliminary Acceptance within fourteen days after the inspection. The County's duty to inspect within fourteen days shall be extended, if necessary, due to weather or winter conditions causing inspection to be impractical or impossible.

b) If, upon inspection of the completed Subdivision Improvements, the County Engineer finds that the specified improvements have not been completed substantially in accordance with the Plans and the other requirements of this Agreement, the County Engineer shall issue a written notice of noncompliance within fourteen days after the inspection specifying the respects in which the completed Subdivision Improvements have not been completed substantially in accordance with the Plans and the other requirements of this Agreement. Developer shall thereupon take such action as is necessary to cure any noncompliance and, upon curing the same, shall give a new Preliminary Inspection Notice to the County Engineer. Upon the giving of such a new Preliminary Inspection Notice, the foregoing provisions of this Section 4.1 shall apply.

c) Length of Guarantee Period: In order to insure that successful, stable plant establishment is achieved, all landscape planting shall be subject to a guarantee period of two years from the date installation is completed except, where planting, seeding, or revegetation is done on 3.33:1 or greater slopes, the initial guarantee period shall be three years.

4.2 Partial Release of Security. At the time of Preliminary Acceptance of any specific completed work items listed in Exhibit A, the County shall issue a written release of the Security and the plat restriction provided in Section 3.1. The amount to be released for the completed Subdivision Improvements shall be the total amount of the Security for each completed work item, provided sufficient amounts exist on deposit for completion of the remaining incomplete Subdivision Improvements. A Warranty Security in the amount of 15% of the total cost of such work items shall remain on deposit with the County until final acceptance of the completed subdivision improvements.

a) Prior to the release of any financial guarantee for landscape improvements, the County must determine that revegetation of the site is essentially free from weeds as identified by the County as invasive, noxious or otherwise nuisance weed species."

4.3 Maintenance Prior to Final Acceptance. Until Final Acceptance by the County of the Subdivision Improvements, Developer shall, at Developer's expense, make all needed repairs or replacements to the Subdivision Improvements required on account of defects in materials or workmanship and shall be responsible for ordinary repairs and maintenance thereof including street sanding, snow removal, cleaning and sewer drainage.

4.4 Final Acceptance. Upon final completion of the Subdivision Improvements, Developer shall be entitled to obtain final acceptance thereof by the County ("Final Acceptance") in accordance with the following provisions.

a) No later than 60 days prior to the expiration of the warranty period for any phase of the Subdivision Improvements, Developer shall give written notice to the County Engineer requesting a final inspection of such phase of the Subdivision Improvements ("Final Inspection Notice"). The County shall inspect such phase of the Subdivision Improvements within fourteen days after receipt by the County Engineer of the Final Inspection Notice and, if the County Engineer finds that the phase of the Subdivision Improvements is substantially free of defects in materials and workmanship and has been repaired and maintained as and to the extent required in this Agreement, the County Engineer shall issue a letter evidencing Final Acceptance of the phase of the Subdivision Improvements. Again, the County may extend the inspection period due to weather and seasonal snow conditions.

b) If, upon final inspection of a phase of the Subdivision Improvements, the County Engineer finds that the phase of the Subdivision Improvements is not substantially free of defects in materials and workmanship or has not been repaired and maintained as required under this Agreement, the County Engineer shall issue a written notice of noncompliance within fourteen days after the final inspection specifying the respects in which the Subdivision Improvements are not substantially free of defects in materials and workmanship or have not been repaired and maintained as required under this Agreement. Developer shall thereupon take such action as is necessary to cure any noncompliance and, upon curing the same, shall give a new Final Inspection Notice to the County Engineer. Upon the giving of such new Final Inspection Notice, the foregoing provisions of this Section 4.4 shall apply.

c) At the time of Final Acceptance of the Subdivision Improvements, Developer shall be entitled to a release of the Warranty Security for that phase. The release shall be in writing, signed by the County Engineer.

d) Upon Final Acceptance of the Subdivision Improvements, the County may, at its sole discretion, assume full responsibility for repairs and maintenance of the Subdivision Improvements as would normally be the responsibility of the County by law.

e) Prior to Final Acceptance of all of the Subdivision Improvements, "as constructed" engineering drawings shall be submitted to the County in accordance with County policy.

V. DEFAULTS AND REMEDIES

5.1 Default by Developer. A default by Developer shall exist after notice and an opportunity to cure as hereinafter provided if (a) Developer fails to construct the Subdivision Improvements in substantial compliance with the Plans and the other requirements of this Agreement; (b) Developer fails to complete construction of the Subdivision Improvements by the Completion Date provided herein; (c) Developer fails to cure any noncompliance specified in any written notice of noncompliance within a reasonable time after receipt of the notice of noncompliance; (d) Developer otherwise breaches or fails to comply with any obligation of Developer under this Agreement; (e) Developer becomes insolvent, files a voluntary petition in bankruptcy, is adjudicated a bankrupt pursuant to an involuntary petition in bankruptcy, or a receiver is appointed for Developer; (f) Developer fails to maintain in full force and effect the Security in the amounts specified in this Agreement. Notice of default as to the Subdivision Improvements must be given prior to expiration of the warranty period for such Subdivision Improvements as hereinafter provided.

5.2 Notice of Default. In the event a default by Developer is believed to exist, the County shall give written notice thereof to Developer, specifying the default and specifying a reasonable time within which Developer shall be required to cure the default.

5.3 Remedies of County. If Developer fails to cure such default within the time specified by the County, the County shall be entitled to (a) make a draw on the Security for the amount reasonably determined by the County to be necessary to cure the default in a manner consistent with the approved Plans up to the amount of the Security; and (b) sue the Developer for recovery of any amount necessary to cure the default over and above the amount available under the Security, including court costs, witness fees and reasonable attorneys' fees; and (c) any other remedy at law or equity.

5.4 County Right to Complete Subdivision Improvements. The right of the County to complete or cause completion of the Subdivision Improvements as herein above provided shall include the following rights. The County shall have the right to complete the Subdivision Improvements, in substantial accordance with the Plans, the estimated construction costs, and other requirements of this Agreement, either itself or by contract with a third party or by assignment of its rights to a successor developer who has acquired the Subdivision by purchase, foreclosure, or otherwise. The County, any contractor under the County, or any such successor developer, their agents, subcontractors and employees shall have the non-exclusive right to enter upon the streets and easements shown on the final plat of the Subdivision and upon any part of the Subdivision owned by Developer for the purpose of completing the Subdivision Improvements.

5.5 Use of Funds by County. Any funds obtained by County as Security, or recovered by the County from Developer by suit or otherwise, shall be used by the County to pay the costs of completion of the Subdivision Improvements substantially in accordance with the Plans and the other requirements of this Agreement and to pay the reasonable costs and expenses of the County in connection with the default by Developer, including costs, witness fees and reasonable attorneys' fees, with the surplus, if any, to be returned to Developer. Provided, however, that any funds or rights to such funds obtained may at the County's option be assigned or otherwise directed to the account of any third party for the purpose of completing the Subdivision Improvements.

VI. MISCELLANEOUS.

6.1 Indemnification. Developer shall indemnify and save harmless the County from (a) any and all suits, actions, claims, judgments, obligations, or liabilities of every nature and description which arise from an event or occurrence prior to the date of Final Acceptance of the Subdivision Improvements and which are caused by, arise from, or on account of Developer's obligations under this Agreement; and (b) any and all suits, actions, claims, or judgments which arise from an event or occurrence prior to the date of the Final Acceptance and which are asserted by or on behalf

of contractors or subcontractors working in the Subdivision, lot owners in the Subdivision, or third parties claiming injuries resulting from defective improvements constructed by Developer. This indemnification shall not apply to claims arising from the negligent acts or omissions of County. Developer shall pay any and all judgments rendered against the County on account of any such suit, action, or claim, together with all reasonable expenses and attorneys' fees incurred by the County in defending such suit, action, or claim. The County shall, within fifteen days after being served with any such claim, suit, or action, provide Developer with a copy of the complaint. The Developer may provide proper legal representation for the County in said action, in which case the Developer shall not be responsible for any additional legal fees incurred by the County. The County agrees that the Developer may also, on its own behalf, become a party to any such action and the County agrees to execute any documents as may be necessary to allow the Developer to be a party.

6.2 Insurance. Developer shall require that all contractors engage in the construction of the Subdivision Improvements maintain Worker's Compensation insurance. Before proceeding with the construction of improvements, Developer shall provide the County Engineer with written evidence of property damage insurance and bodily injury insurance in an amount of not less than Six Hundred Thousand Dollars each, or such other maximum amount of liability as may be specified in the Colorado Governmental Immunity Act, and protecting the County against any and all claims for damages to persons or property resulting from construction and/or installation of any Subdivision Improvements pursuant to this Agreement. The policy shall provide that the County shall be notified at least thirty days in advance of any reduction in coverage, termination, or cancellation of the policy. Such notice shall be sent by certified mail to the County Engineer, return receipt requested. Developer agrees that any contractors engaged by or for Developer to construct the Improvements shall maintain public liability coverage in limits not less than those described above.

6.3 No Third Party Beneficiaries. No person or entity, other than a party to this Agreement, shall have any right of action under this Agreement including, but not limited to, lenders, lot or home buyers and materialman, laborers or others providing work, services, or materials for the Subdivision Improvements.

6.4 Assignability. Subject to the provisions of Section 3.1 above, Developer may convey or transfer title or interests in the Subdivision without the consent of the County and a grantee or transferee of Developer shall not be obligated to fulfill any of the obligations of Developer under this Agreement unless such grantee or transferee is the successor or assignee of Developer in its capacity as developer of the Subdivision. Developer may assign its rights and obligations under this Agreement to a party who is the successor or assignee of Developer in its capacity as developer of the Subdivision without the consent of the County; provided, however, that (a) Developer notifies the County of the assignment and of the name and address of the successor developer; and (b) the successor developer assumes the obligations of Developer under this Agreement. Unless otherwise agreed to in writing by County, Developer shall remain liable for performance of the obligations of Developer under this Agreement. The County shall release Security furnished by Developer if the County accepts new security from any successor developer of the Subdivision.

6.5 No Automatic Further Approvals. Execution of this Agreement by the County shall not be construed as a representation or warranty that Developer is entitled to any other approvals required from the County, if any, before Developer is entitled to commence development of the Subdivision or to transfer ownership of property in the Subdivision.

6.6 Notices. All notices, consents or other instruments or communications provided for under this Agreement shall be in writing, signed by the party giving the same, and shall be deemed properly given and received (a) when actually delivered and received personally, by messenger service, or by fax or telecopy delivery; (b) on the next business day after deposit for delivery in an overnight courier service such as Federal Express; or (c) three business days after deposit in the United States mail, by registered or certified mail with return receipt requested. All such notices or other instruments shall be transmitted with delivery or postage charges prepaid, addressed to the party at the address below for that party or to such other address as such party may designate by written notice to the other party:

If to Developer: Farmers Grove, LLC
Attn: Anne Marie Ohly
P.O. Box 23217
Silverthorne, CO 80498

If to County: Summit County Government
Attn: County Engineer
Post Office Box 68
Breckenridge, Colorado 80424

6.7 Further Assurances. At any time, and from time to time, upon request of either party, the other party agrees to make, execute and deliver or cause to be made, executed and delivered to the requesting party any and all further instruments, certificates and documents consistent with the provisions of this Agreement as may, in the reasonable opinion of the requesting party, be necessary or desirable in order to effectuate, complete or perfect the right of the parties under this Agreement.

6.8 Binding Effect. Subject to Section 6.4 above, this Agreement shall run with the land and binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

6.9 Headings for Convenience. All headings and captions used herein are for convenience only and are of no meaning in the interpretation or effect of this Agreement.

6.10 No Implied Waivers. The failure by a party to enforce any provision of this Agreement or the waiver of any specific requirement of this Agreement shall not be construed as a general waiver of this Agreement or any provision herein nor shall such action act to stop the party from subsequently enforcing this Agreement according to its terms.

6.11 Severability. If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid, it shall not affect the validity of this Agreement as a whole or any part thereof other than the part declared to be invalid and there shall be substituted for the affected provision, a valid and enforceable provision as similar as possible to the affected provision.

6.12 No Waiver of Sovereign Immunity. Nothing contained in this Agreement shall constitute a waiver of the sovereign immunity of the County under applicable state law.

6.13 Agent/Employee. The Developer is not an agent or employee of the County.

6.14 Consent to Jurisdiction and Venue. Personal jurisdiction and venue of any civil action commenced by either party to this Agreement with respect to this Agreement of a letter of credit shall be proper only in such action is commenced in the District Court for Summit County, Colorado. Developer expressly waives the right to bring such action in or to remove such action to any other court, whether state or federal.

6.15 Entire Agreement. This Agreement, and any agreement or document referred to herein, constitutes the entire understanding between the parties with respect to the subject matter hereof and all other prior understandings or agreements shall be deemed merged in this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

DEVELOPER: Farmer's Grove, LLC

BY: 

Anne Marie Ohly, Manager

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF SUMMIT COUNTY

BY: _____

Cheri Brunvand, Clerk and Recorder

BY: 

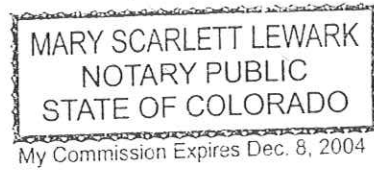
William C. Wallace, Chairman

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me on this 17th day of April, 2001, by Anne Marie Ohly,
as Manager of Farmers Grove, LLC.

Witness my hand and official seal:

Mary Scarlett Lewark
Notary Public 12/8/04
My commission expires



SUBDIVISION IMPROVEMENT AGREEMENT, Exhibit A

Project name: Farmer's Grove

Required Completion Date: October 1, 2001

Location : Section 2, Township 6, South , Range 78 West, 6th P.M.

In Accordance with the Subdivision Improvements Agreement between the Summit County Board of County Commissioners ("County") and Farmers Grove LLC ("Developer") dated _____ the Developer hereby agrees to provide the improvements noted below and depicted on the approved plans for this project.

	IMPROVEMENT	ESTIMATED COST	REQUIRED COMPLETION DATE
	Road Grading	41,393.00	
	Road Base	53,200.00	September 2002
	Road Paving	57,929.00	September 2002
	Defensible Space		
	Fire Mitigation		
	Parking Area Grading	2,200.00	September, 2001
	Parking Area Paving	3,800.00	September, 2001
	Curbs		
	Sidewalks		
	Trail Grading	3,900.00	September, 2001
	Trail Surfacing/Paving	4,200.00	September, 2001
	Storm Sewer/Facilities	11,765.00	September, 2001
	Sanitary Sewers		September, 2001
	Trunk Lines		
	Mains	119,835.00	
	Laterals	37,828.00	
#1	Water Mains	25,000.00	
	Onsite Sewage Facilities		
	Onsite Water Supply		
	Fire Mitigation		
	Fuels Modification		
#2	Fire Hydrants		
	Street Monuments		
#3	Street Lights	10,000.00	September, 2001
	Street Name Signs	600.00	September, 2001
	Traffic Signals		
	Survey Monument Boxes	500.00	
	Landscaping / revegetation	147,420.00	September 2002
	Detention Ponds		
	Site Cleanup	(included)	September, 2001
	Other		
	Total	519,570.00	
	Total x 1.15	597,505.50	

#1- Have letter from Breckenridge Sanitation for work completed.

#2 - Have letter from Red, White and Blue for completed work.

#3 - Have purchased used street lights from Town of Breckenridge.