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Cheri Brunvand - Summit County Recorder

**SITE IMPROVEMENT PLAN  
IMPROVEMENTS AGREEMENT FOR  
PUBLIC/PRIVATE DEVELOPMENT  
SPECIFIC TO**

FOREST PARK @ WILDCREST #94-102  
(project name and file number)

THIS AGREEMENT is made as of this 25<sup>th</sup> day of February, 1999, between FOREST PARK @ WILDCREST, INC. ("Developer"), whose address is Box 192 Edwards Co 81432, and the Board of County Commissioners of Summit County ("County"), whose address is P.O. Box 68, Breckenridge, Colorado 80424, Attention: Community Development Division and County Engineer.

**I. GENERAL**

1.1 Developer has submitted a site plan application for the property located at 9600 Ryan Gulch Rd and received the County's site plan approval dated SEPT 1, 1994 (hereafter referred to as the "Site Plan").

1.2 Certain site plan improvements and other easements are required by the Summit County Community Development Division for the benefit of owners within and adjacent to a site plan area or are required by the County to properly address access, drainage, traffic, landscaping, road improvements, grading, and erosion control. The site plan improvements and easements required for this Site Plan are listed on Exhibit A, which is attached hereto and incorporated herein, and may hereafter be referred to as the "Site Plan Improvements" or "Improvements".

1.3 This Agreement will provide for the completion of the Site Plan Improvements on Developer's project, and will serve to protect the County from the cost of completing such Site Plan Improvements.

1.4 This Agreement is not executed for the benefit of third parties including, but not limited to, materialmen, laborers or others providing work, services or material for the Site Plan Improvements.

**II. CONSTRUCTION OF IMPROVEMENTS**

2.1 Agreement to Construct Improvements and Grant Easements. Subject to and in accordance with the terms and provisions of this Agreement, Developer agrees to cause the Improvements to be constructed and completed, together with the easement(s) granted to the County at Developer's expense, in accordance with the provisions of this Agreement. Such compliance shall be determined by the Summit County Community Development Division.

2.2 Building and Grading Permits/Certificates of Occupancy. Building permits and grading permits for the site shall not be issued until this Agreement is fully executed. Certificates of Occupancy shall not be issued until easements have been granted and the Improvements have been completed, or security for completion of the Improvements is provided to the County, as provided for herein.

2.3 Construction Standards. The Improvements shall be constructed in accordance with this Agreement, the approved Site Plan, and the County's resolutions, regulations, standards and specifications. Prior to the initiation of construction of any Improvements listed in Exhibit A, construction drawings or plans for such Improvements must be submitted to the County Engineer through the County's review process, including the payment of required fees.

2.4 Completion Date. The Site Plan 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 in writing.

2.5 Warranties of Developer. Developer warrants that the Improvements will be installed in a good, workmanlike manner in compliance with the construction drawings or plans and requirements of this Agreement, and shall be substantially free of defects in materials and workmanship. Items constructed within the County right-of-way shall be warranted for a period of two years following the issuance of the first Certificate of Occupancy for any building on the site.

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2.6 Maintenance Prior to End of Warranty Period. Until the end of the warranty period, Developer shall, at Developer's expense, make all needed repairs or replacements to the Improvements. Developer may assign its obligations for ordinary repairs and maintenance of the Improvements, but the developer shall remain obligated to the County for the proper performance of such repairs and maintenance.

2.7 Title to Subdivision Improvements. Improvements constructed in the public right-of-way shall be owned by the County, except that the maintenance of curb and gutter, cross-pans and pavement (or other roadway surface) within the access to the site shall remain with the Developer.

### III. SECURITY FOR COMPLETION OF IMPROVEMENTS

3.1 Deposit of Security for Developer Obligations. To secure the performance of the obligations of Developer under this Agreement to complete the Improvements, 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 Site Plan and shall be 100% of the estimated cost to construct the Improvements which the Developer is required to construct. Such estimated cost shall be reasonably determined by the County in its sole discretion. No conveyance or transfer of title to any lot, lots, tract or tracts of land within the Site Plan shall be made, nor any Certificates of Occupancy or building permits issue, unless (a) the approved Security has been deposited with the County or (b) all improvements have been completed and a deposit in the amount of 15 percent of the estimated cost of said Improvements has been made with the County ("Guaranty"). The Guaranty 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 Improvements, as determined by the County in its sole discretion. The letter of credit shall be issued from WESTSTAR BANK, 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.

3.3 Certificate of Occupancy. Until the Improvements are completed or secured for the site in compliance with the County approved Site Plan, and all necessary easements have been granted, the County is under no obligation to issue a Certificate of Occupancy for any building on the site, nor shall the Developer make application for said Certificate of Occupancy.

3.4 Recording Agreement. After approval of this Agreement 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 issuance of a Certificate of Occupancy and satisfactory completion of Improvements for any building on this site, except with respect to warranties described herein, the County shall deliver to Developer (if requested by Developer) a recordable executed document which shall release all property (within the applicable phase, if a multi-phased Site Plan Application) within the Site Plan Application 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 Site Plan Improvement work items 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 Site Plan Improvements ("Preliminary Inspection Notice"). The County shall inspect the completed Site Plan 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 Site Plan 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.

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b) If, upon inspection of the completed Site Plan Improvements, the County Engineer finds that the specified improvements have not been completed substantially in accordance with the Site Plan 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 improvements have not been completed substantially in accordance with the Site Plan 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.

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 provided in Section 3.1. The amount to be released for the completed Site Plan 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 Site Plan Improvements. A Developer guaranty in the amount of 15% of the total cost of such work items that have been preliminarily accepted ("Guaranty") shall remain on deposit with the County until satisfaction of the Developer's obligations under this Agreement.

4.3 Final Acceptance. Upon final completion of the Site Plan 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 Site Plan Improvements, Developer shall give written notice to the County Engineer requesting a final inspection of such phase of the Site Plan Improvements ("Final Inspection Notice"). The County shall inspect such phase of the Site Plan 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 Site Plan 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 Site Plan 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 Site Plan Improvements, the County Engineer finds that the phase of the Site Plan 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 Site Plan 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 Site Plan Improvements, Developer shall be entitled to a release of the Guaranty for that phase. The release shall be in writing, signed by the County Engineer.

## V. DEFAULTS AND REMEDIES

5.1 Default by the Developer. A default by Developer shall exist after notice and an opportunity to cure as hereinafter provided if (a) Developer fails to cure any noncompliance specified in any written notice of noncompliance within a reasonable time after receipt of the notice of noncompliance; and (b) Developer otherwise breaches or fails to comply with any obligation of Developer under this Agreement. Notice of Default as to Improvements must be given prior to expiration of the warranty period for such phase of the 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 Site 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. 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 site for the purpose of completing the Site Plan Improvements.

## VI. MISCELLANEOUS

6.1 Indemnifications. 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 and which are caused by, arise from or on account of the construction and installation of the Improvements; 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 Site Plan Application Area, lot owners in the Site Plan Application area, 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 defending such suit, action or claim. The County shall, within fifteen (15) days after being served with any 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 engaged in the construction of the 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 (\$600,000) 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 Improvements pursuant to this Agreement. The policy shall provide that the County shall be notified at least thirty (30) 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 persons 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 materialmen, laborers or others providing work, services, or materials for the Improvements.

6.4 Assignability. Developer may convey or transfer title or interest in the Site without the written 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 Site Plan. 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 Site Plan Application without the consent of the County; provided, however, that (a) Developer provides prior notification to 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 in writing by County and in spite of any assignment, Developer shall remain liable for performance of the obligations of Developer under this Agreement.

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 Improvements or to transfer ownership of property in the Site Plan Application.

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 above written.

Forest Park @ Wilderwest, Inc.  
(Name of Developer)

By: [Signature]  
Title: President

STATE OF COLORADO )

) ss.

COUNTY OF SUMMIT )

The foregoing was acknowledged before me this 17 day of February, 1998 by

Andy Wallace as President of Forest Park @ Wilderwest

Witness my hand and official seal:  
My commission expires: 07/23/01  
[Signature]  
Notary Public



BOARD OF COUNTY COMMISSIONERS  
OF SUMMIT COUNTY

Approved as  
to form

By: [Signature]  
Robert Taylor, County Manager

COMMUNITY DEVELOPMENT  
DEPARTMENT APPROVAL

By: [Signature]

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 (3) business days after the 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:  
FOREST PARK @ WILDSENEST, INC  
BOX 653  
EDWARDS CO 81632

If to the County  
Community Development Department  
PO Box 68  
Breckenridge, CO 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 5.4 above, this Agreement shall run with the land and be 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 estop 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 Consent to Jurisdiction and Venue. Personal jurisdiction and venue for any civil action commenced by either party to this Agreement with respect to this Agreement or a letter of credit shall be proper only if 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.

6.14 Agent/Employer. The Developer is not an agent or employee of the County.

**SUMMIT COUNTY**  
 COMMUNITY DEVELOPMENT DEPARTMENT  
 SITE PLAN IMPROVEMENTS AGREEMENT, Exhibit A

Project name: FOREST PARK @ WILDCRINEST  
 Location: 9600 RYAN BULCH ROAD

In accordance with the site plan improvements agreement between the Summit County Board of County Commissioners ("County") and FOREST PARK @ WILDCRINEST INC ("Developer") dated 12/17/98, the Developer hereby agrees to provide the improvements noted below and depicted on the approved plans for this project.  
 February 22, 1999

IMPROVEMENT	ESTIMATED COST	COMPLETION DATE
Curbs	N/A	
Detention ponds	N/A	
Drainage improvements	N/A	
Fire hydrants	N/A	
Landscaping/revegetation	90,000	40,000 paid to DATE Add 10,000 For EXTRA TREES
On-site sewage facilities	N/A	
On-site water supply	N/A	
Parking area grading	N/A	
Parking area lighting	N/A	
Parking area paving	N/A	
Recreational facilities	N/A	
Road base	4,000	
Road grading	N/A	
Road paving	15,000	
Sidewalks	N/A	
Site clean-up	5,000	
Street lights	N/A	COMPLETED
Street monuments	N/A	
Street name signs	N/A	
Survey monument boxes	N/A	
Traffic signals	N/A	
Trail grading	N/A	
Trail surfacing/paving	2,000	
Other		
TOTAL	92,000	

*[Signature]*  
 Andy WALTER

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Name : 589456.007