

Recorded at 2 48 o'clock P M JAN 31 1994

BOOK 0930 PAGE 289

Reception No. 473964 MILDRED ALDOORF, RECORDER
GARFIELD COUNTY, COLORADO

SUBDIVISION IMPROVEMENTS AGREEMENT

THIS AGREEMENT is made and entered into this 23rd day of January, 1994, between Edward A McCune and Dirk Larsen, hereinafter "Declarant", and the BOARD OF COUNTY COMMISSIONERS of GARFIELD COUNTY, COLORADO (hereinafter "County"); WITNESSETH:

WHEREAS, Declarant is the owner developer of certain real property located in Garfield County, Colorado, described as the E1/2 of the NE1/4 of Section 25, Township 5 South, Range 91 West of the 6th Principal Meridian and more particularly described on the Final Plat for the Three Elk Run Subdivision, which real property is hereinafter referred to as "Three Elk Run"; and

WHEREAS, as a condition of approval of the aforesaid Final Plat (hereinafter "Plat") for Three Elk Run, Declarant agrees to enter into this Subdivision Improvements Agreement (hereinafter "Agreement") with the County; and

WHEREAS, the County has required, and Declarant has agreed to complete, certain public improvements as set forth on Exhibit A attached hereto and made a part hereof.

NOW, THEREFORE, for and in consideration of the promises and the following mutual covenants and agreements, the parties hereby agree as follows:

1. Declarant's Performance, Declarant has constructed and installed, or will cause to be constructed and installed, at its sole expense, those improvements set forth on Exhibit A attached hereto and made a part hereof. The improvements identified on Exhibit A will be completed on or before December 1, 1994, in compliance with the following:

1.1. All Plat documents submitted prior to or at the time of the final plat approval.

1.2. All laws of the United States, the State of Colorado, the County of Garfield, and its various agencies and affected special districts.

1.3. Such other designs, drawings, maps, specifications, sketches, and other materials submitted to and approved by any of the above-stated governmental entities.

The County agrees that if improvements are installed in accordance with this Agreement, final plat documents, and the requirements of the preliminary plan, and further that if all of the other requirements of this Agreement and preliminary plan are met, then Declarant shall be deemed to have satisfied all terms and conditions of the zoning and subdivision laws, resolutions, and

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regulations of Garfield County, Colorado, including but not limited to Resolution 93-049 adopted by the County on June 14, 1993.

2. Security for Improvements.

2.1. On or before the date of the recording of the Plat with the Clerk and Recorder, Declarant shall deliver letters of credit or other security which is acceptable to the County in the amount of the improvements for the subdivision for improvements that are to be constructed by Declarant. Letters of credit shall be issued by a state or national banking institution which is licensed to do business in the State of Colorado in a form acceptable to the County, which acceptance shall not be unreasonably withheld. The amount of said letter of credit or other security acceptable to the County shall be equal to the "Total Construction Costs". As Improvements are completed, they shall be certified and, if acceptable, accepted by the County. The County will release the security for such completed improvements whether completed partially or wholly, upon acceptance of the certification of completion by the County. All improvements shall be completed within one (1) year, unless an extension of time is authorized by the County. Certification of completion must be submitted by a registered engineer and/or utility company. Such certification shall certify that the improvements or any portion thereof have been constructed in accordance with the requirements of this Agreement and any exhibits attached hereto and incorporated herein and shall be stamped by a professional engineer.

2.2. The letters of credit or other security acceptable to the County must be valid for a minimum of six (6) weeks beyond the completion date set for improvements. Any extensions granted shall cause the line of credit to be extended by an equal amount of time. If the County determines that the improvements are not constructed in compliance with the specifications therefor, it shall furnish a letter of potential deficiencies to Declarant within fifteen (15) days from the date the County receives certification from Declarant that all public improvements set forth on Exhibit A have been completed. If said letter is not furnished within fifteen (15) days, all improvements shall be deemed accepted, and the County shall release all security as provided in paragraph 2.1. hereof. If a letter of potential deficiencies is furnished by the County, the County shall have thirty (30) days to complete its investigation and provide a written confirmation of the deficiencies to Declarant. If, upon further investigation, the County finds that all improvements are acceptable, then all security shall be

released to Declarant within ten (10) days after completion of such investigation. In the event that such improvements are not accepted by the County, the Board of County Commissioners shall make findings and issue a resolution setting forth the deficiencies before being authorized to request payment on the letter of credit.

2.3. Security for revegetation in the amount as set forth in Exhibit A shall remain in place for a period of one (1) year from the date of certification of completion for those improvements listed on Exhibit A as General Improvements and entitles Revegetation for the sole purpose of guarantying the survival of all plantings required to revegetate and landscape all disturbed areas created during construction. Letters of credit for completion of water system improvements shall be directed to the Town of New Castle, Colorado.

3. School Impact Fees.

On or before final plat approval, there shall be paid to Garfield County, for the benefit of Garfield School District No. Re-2, the sum of \$200.00 for each lot within the subdivision.

4. Water. Declarant shall disclose at closing, in the form set forth as Exhibit B, that the subdivisions water supply system is not yet completed to all purchasers of those lots for which title is transferred by Declarant prior to certification of completion of the water supply. Lot owners applying for building permits prior to completion and certification of the water supply system shall provide a signed copy of their Exhibit B to the County with the application. Declarant has contracted with the Town of New Castle, Colorado for the construction of all improvements necessary to provide a legally and physically adequate water supply for those residences within the subdivision and in accordance with the Water Tap Agreement and Elk Creek Area Water System Construction Agreement, Exhibit C between the Declarant and the Town of New Castle, prior to the final building inspection and occupancy of such residential structures. The water system improvements required to service the subdivision shall be built in conformity with Town of New Castle requirements, and completed no later than December 1, 1995.

5. Indemnity. To the extent allowed by law, Declarant agrees to indemnify and hold harmless the County for claims which may arise as a result of Declarant's installation of improvements pursuant to this Agreement. However, Declarant does not indemnify the County for claim made asserting that standards imposed by the County

on Declarant are improper or the cause of the injury asserted. The County shall be required to notify Declarant of receipt of a notice of claim or notice of intent to sue and shall afford Declarant the option of defending any such claim or action. Failure to notify and provide such option to Declarant shall extinguish the County's rights under this paragraph. Nothing herein stated shall be interpreted to require Declarant to indemnify the County for claims which may arise from the negligent acts or omissions of the County.

6. Road Rights-of-way. Roads within Three Elk Run shall be dedicated as public right-of-way roadways and accepted by the County. Approval and acceptance of the roads within Three Elk Run shall not obligate the County to maintain such roads. The Homeowners Association shall be responsible for maintenance of such roadways.
7. Enforcement. In addition to any rights which may be provided by Colorado statute, it is mutually agreed that the County or any purchaser of a lot within the Subdivision shall have the authority to bring an action in the District Court of Garfield County, Colorado, to compel the enforcement of this agreement. Such authority shall include the right to compel rescission of any sale, conveyance, or transfer of any lot contrary to the provisions of this Agreement or as set forth on the Plat of the subdivision or any separate recorded instrument.
8. Consent to Vacate Final Plat. In the event Declarant fails to comply with the terms of this Agreement, the County shall have the ability to vacate the Plat as it pertains to undeveloped lots only. Any existing developed lots, or lots which subdivision improvements have been properly constructed, shall not be vacated, and the Plat as to those lots shall remain valid. Declarant shall provide a survey and complete legal description with a map showing the location of any portion of the Plat so vacated.
9. Offsite Improvements and Dedications. Apache Drive will be renamed, relocated, enlarged and improved according to the construction plans submitted and approved by the County. An estimate of such improvement costs is included on Exhibit A.
10. Approval of Plat. The County agrees to approval of the Plat subject to the terms and conditions of this Agreement.

11. Amendment. This Agreement may be amended from time to time, provided that the amendment be in writing and signed by the parties.
12. Binding Effect. This Agreement shall be a covenant running with the title to each lot within Three Elk Run, and the rights and obligations as contained herein shall be binding upon and inure to the benefit of Declarant, their successors, and assigns.
15. Recording. Upon execution, Declarant shall record this Agreement in the office of the Clerk and Recorder of Garfield County.

IN WITNESS WHEREOF, the parties have hereafter affixed their signatures the day and year first written above.

BOARD OF COUNTY COMMISSIONERS
GARFIELD COUNTY, COLORADO

by Marion J. Smith
Chairman

ATTEST:

Mildred Alsdorf
Clerk to the Board

STATE OF COLORADO)
) ss
COUNTY OF GARFIELD)

SUBSCRIBED AND SWORN to before me this 20th day of January, 1995, by Edward A. McCune as owner of THREE ELK RUN SUBDIVISION.

Witness my hand and official seal.

My commission expires: 11/28/98

Janet L. Wolf
Notary Public

Edward A. McCune 1/20/95
Edward A. McCune, Owner/Declarant, Date

STATE OF COLORADO)
) ss
COUNTY OF GARFIELD)

SUBSCRIBED AND SWORN to before me this 30th day of January, 1995, by Dirk Larsen as owner of THREE ELK RUN SUBDIVISION.

Witness my hand and official seal.

My commission expires: 2-7-96

Jean M. Alberio
Notary Public

Dirk Larsen 1/30/95
Dirk Larsen, Owner/Declarant Date

THREE ELK RUN SUBDIVISION
GARFIELD COUNTY, COLORADO

DEVELOPMENT IMPROVEMENTS AND ESTIMATED CONSTRUCTION COSTS
EXHIBIT A TO THE SUBDIVISION IMPROVEMENTS AGREEMENT

ITEM/DESCRIPTION	TOTAL COST
<u>SUBDIVISION STREET IMPROVEMENTS</u>	
EARTHWORK, GRADING	\$ 12,500 *
GRAVEL ROAD	20,000
ASPHALT CHIP & SEAL	8,000
CULVERT PIPE	6,200 *
REVEGETATION	1,500

SUB-TOTAL:\$	48,200
 <u>WATER SUPPLY & DISTRIBUTION SYSTEM</u>	
CONTRIBUTION TO TOWN OF NEW CASTLE (\$168,166.00)	----- -0-
 <u>FEEES TO BE PAID TO UTILITIES</u>	
ELECTRIC	48,000
NATURAL GAS	9,000
TELEPHONE W/PEDESTALS	13,404

SUB-TOTAL:\$	70,404
 =====	
TOTAL COSTS:	<u>\$ 118,604</u>

* items have been completed prior to final plat approval.

The Three Elk Run Subdivision Improvements Construction Plans, Prepared by Enartech, Inc., dated _____ (including revegetation plan), provide the basis for the estimated quantities and construction costs, and improvements into this Exhibit A

EXHIBIT B

NOTICE FROM DEVELOPER

The water supply system for the development has not yet been installed. The developer is required to arrange for installation of the water supply tank, well, pipelines, and all appurtenant facilities on or before _____, 19____. The Town of New Castle, Colorado will commence construction on such improvements _____, 19____ and will complete them as the weather and construction demands allow. The County will not issue certificates of occupancy nor perform final inspections until the water supply system is completed. Any construction you start may be completed before the water supply system is completely installed and certification of such is accepted by the County.

I/We, _____, Purchaser(s) of Lot _____, Three Elk Run Subdivision, have read this disclosure notice and understand that the County will not perform final building inspections, nor allow occupancy of residences, until the domestic water supply system is installed and certification is accepted by the County. Should I/we apply to the County for a building permit prior to completion and certification of the water supply system, I/we will be required to file a copy of this signed document with the application.

Owner

Owner