

STL97SST

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: DEVELOPMENT IMPROVEMENTS AGREEMENT

NAME OF AGENCY OR CONTRACTOR: SPRINGSIDE TOWNHOMES LLC

STREET ADDRESS/PARCEL NAME/SUBDIVISION: SPRINGSIDE  
TOWNHOMES, 28 ROAD AND SPRINGSIDE COURT

CITY DEPARTMENT: COMMUNITY DEVELOPMENT

YEAR: 1997

EXPIRATION DATE: 8/98

DESTRUCTION DATE: NONE

**DEVELOPMENT IMPROVEMENTS AGREEMENT**

1809557 1208PM 08/15/97  
MONIKA TODD CLK&REC MESA COUNTY CO

1. **Parties:** The parties to this Development Improvements Agreement ("the Agreement") are Springside Townhomes LLC ("the Developer") and **THE CITY OF GRAND JUNCTION, Colorado** ("the City").

THEREFORE, for valuable consideration, the receipt and adequacy of which is acknowledged, the Parties agree as follows:

2. **Effective Date:** The Effective Date of the Agreement will be the date that this agreement is recorded which is not sooner than recordation of the final plat.

**RECITALS**

The Developer seeks permission to develop property within the City to be known as Springside Townhomes, which property is more particularly described on Exhibit "A" attached and incorporated by this reference (the "Property"). The City seeks to protect the health, safety and general welfare of the community by requiring the completion of various improvements in the development and limiting the harmful effects of substandard developments. The purpose of this Agreement is to protect the City from the cost of completing necessary improvements itself and is not executed for the benefit of materialmen, laborers, or others providing work, services or material to the development or for the benefit of the purchasers or users of the development. The mutual promises, covenants, and obligations contained in this Agreement are authorized by state law, the Colorado Constitution and the City's land development ordinances.

**DEVELOPER'S OBLIGATION**

3. **Improvements:** The Developer will design, construct and install, at its own expense, those on-site and off-site improvements listed on Exhibit "B" attached and incorporated by this reference. The Developer agrees to pay the City for inspection services performed by the City, in addition to amounts shown on Exhibit B. The Developer's obligation to complete the improvements is and will be independent of any obligations of the City contained herein.

4. **Security:** To secure the performance of its obligations under this Agreement (except its obligations for warranty under paragraph 6), the Developer will enter into an agreement which complies with either option identified in paragraph 28, or other written agreement between the City and the Developer.

5. **Standards:** The Developer shall construct the Improvements according to the standards and specifications required by the City Engineer or as adopted by the City.

6. **Warranty:** The Developer warrants that the Improvements, each and every one of them, will be free from defects for a period of twelve (12) months from the date that the City Engineer accepts or approves the improvements completed by the Developer.

7. **Commencement and Completion Periods:** The improvements, each and every one of them, will be completed within 12 months from the Effective Date of this Agreement (the "Completion Period").

8. **Compliance with Law:** The developer shall comply with all relevant federal, state and local laws, ordinances, and regulations in effect at the time of final approval when fulfilling its obligations under this Agreement.

9. **Notice of Defect:** The Developer's Engineer shall provide timely notice to the Developer, contractor, issuer of security and the City Engineer whenever inspection reveals, or the Developer's Engineer otherwise has knowledge, that an improvement does not conform to City standards and any specifications approved in the development application or is otherwise defective. The developer will have thirty (30) days from the issuance of such notice to correct the defect.

10. **Acceptance of Improvements:** The City's final acceptance and/or approval of improvements will not be given or obtained until the Developer presents a document or documents, for the benefit of the City, showing that the Developer owns the improvements in fee simple and that there are no liens, encumbrances, or other restrictions on the improvements. Approval and/or acceptance of any improvements does not constitute a waiver by the City of any rights it may have on account of any defect in or failure of the improvement that is detected or which occurs after approval and/or acceptance.

11. **Use of Proceeds:** The City will use funds deposited with it or drawn pursuant to any written disbursement agreement entered into between the parties only for the purpose of completing the Improvements or correcting defects in or failure of the Improvements.

12. **Events of Default:** The following conditions, occurrences or actions will constitute a default by the Developer during the Completion Period:

- a. Developer's failure to complete each portion of the Improvements in conformance with the agreed upon time schedule; the City may not declare a default until a fourteen (14) calendar day notice has been given to the Developer;
- b. Developer's failure to demonstrate reasonable intent to correct defective construction of any improvement within the applicable correction period; the City may not declare a default until a fourteen (14) calendar day notice has been given to the Developer;
- c. Developer's insolvency, the appointment of a receiver for the Developer or the

filing of a voluntary or involuntary petition in bankruptcy respecting the Developer; in such event the City may immediately declare a default without prior notification to the Developer;

- d. Notification to the City, by any lender with a lien on the property, of a default on an obligation; the City may immediately declare a default without prior notification to the Developer;
- e. Initiation of any foreclosure action of any lien or initiation of mechanics lien(s) procedure(s) against the Property or a portion of the Property or assignment or conveyance of the Property in lieu of foreclosure; the City may immediately declare a default without prior notification to the Developer.

13. **Measure of Damages:** The measure of damages for breach of this Agreement by the Developer will be the reasonable cost of satisfactorily completing the Improvements plus reasonable City administrative expenses. For improvements upon which construction has not begun, the estimated costs of the Improvements as shown on Exhibit "B" will be prima facie evidence of the minimum cost of completion; however, neither that amount or the amount of a letter of credit, the subdivision improvements disbursement agreement or cash escrow establish the maximum amount of the Developer's liability.

14. **City's Rights Upon Default:** When any event of default occurs, the City may draw on the letter of credit, escrowed collateral, or proceed to collect any other security to the extent of the face amount of the credit or full amount of escrowed collateral, cash, or security less ninety percent (90%) of the estimated cost (as shown on Exhibit "B") of all improvements previously accepted by the City or may exercise its rights to disbursement of loan proceeds or other funds under the improvements disbursement agreement. The City will have the right to complete improvements itself or it may contract with a third party for completion, and the Developer grants to the City, its successors, assigns, agents, contractors, and employees, a nonexclusive right and easement to enter the Property for the purposes of constructing, reconstructing, maintaining, and repairing such improvements. Alternatively, the City may assign the proceeds of the letter of credit, the improvements disbursement agreement, the escrowed collateral, cash, or other funds or assets to a subsequent developer (or a lender) who has acquired the development by purchase, foreclosure or otherwise who will then have the same rights of completion as the City if and only if the subsequent developer (or lender) agrees in writing to complete the unfinished improvements and provides reasonable security for the obligation. In addition, the City may also enjoin the sale, transfer, or conveyance of lots within the development, until the improvements are completed or accepted. These remedies are cumulative in nature and are in addition to any other remedies the City has at law or in equity.

15. **Indemnification:** The Developer expressly agrees to indemnify and hold the City, its officers, employees and assigns harmless from and against all claims, costs and liabilities of every kind and nature, for injury or damage received or sustained by any person or entity in connection with, or on account of the performance of work at the development or the Property

pursuant to this Agreement. The Developer further agrees to aid and defend the City in the event that the City is named as a defendant in an action concerning the performance of work pursuant to this Agreement. The Developer further agrees to aid and defend the City in the event that the City is named as a defendant in an action concerning the performance of work pursuant to this Agreement except where such suit is brought by the Developer against the City. The Developer is not an agent or employee of the City.

16. **No Waiver:** No waiver of any provision of this Agreement by the City will be deemed or constitute a waiver of any other provision, nor will it be deemed or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both City and Developer; nor will the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The City's failure to exercise any right under this Agreement will not constitute the approval of any wrongful act by the Developer or the acceptance of any improvement.

17. **Amendment or Modification:** The parties to this Agreement may amend or modify this Agreement only by written instrument executed on behalf of the City by the City Manager or his designee and by the Developer or his authorized officer. Such amendment or modification shall be properly notarized before it may be deemed effective.

18. **Attorney's Fees:** Should either party be required to resort to litigation to enforce the terms of this Agreement, the prevailing party, plaintiff or defendant, will be entitled to costs, including reasonable attorney's fees and expert witness fees, from the opposing party. If the court awards relief to both parties, the attorney's fees may be equitably divided between the parties by the decision maker.

19. **Vested Rights:** The City does not warrant by this Agreement that the Developer is entitled to any other approval(s) required by the City, if any, before the Developer is entitled to commence development or to transfer ownership of property in the development.

20. **Third Party Rights:** No person or entity who or which is not a party to this Agreement will have any right of action under this Agreement.

21. **Time:** For the purpose of computing the Abandonment and Completion Periods, and time periods for City action, such times in which war, civil disasters, or acts of God occur or exist will not be included if such times prevent the Developer or City from performing its obligations under the Agreement.

22. **Severability:** If any part, term, or provision of this Agreement is held by a court or courts of competent jurisdiction to be illegal or otherwise unenforceable, such illegality or unenforceability will not affect the validity of any other part, term, or provision and the rights of the parties will be construed as if the part, term, or provision was never part of the Agreement.



City, or

- \_\_\_\_\_ (II) a good and sufficient letter of credit acceptable to the City, or
- \_\_\_\_\_ (III) depositing with the City cash equivalent to the estimated cost of construction of the improvements.
- xx (IV) other; see attached.

The Finance Department of the City may act as disbursing agent for disbursements to Developer's contractor(s) as required improvements are completed and accepted if agreed to in writing pursuant to a disbursement agreement.

The Finance Department of the City will disburse any deposit or any portion thereof, with no more than three checks, at no charge. If disbursements are made in excess of three checks, the developer will be charged \$100 per transaction for every transaction in excess of three.

Exhibit C, attached hereto and incorporated herein by this reference as if fully set forth, is the City approved and accepted guarantee for this project.

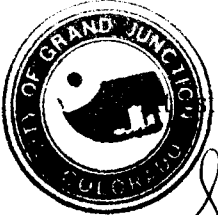
- 29. a. Conditions of Acceptance: The City shall have no responsibility or liability with respect to any street, or other improvement(s), notwithstanding the use of the same by the public, unless the street or other improvements shall have been accepted by the City.

Prior to requesting final acceptance of streets, storm drainage facilities, or other required improvements, the Developer shall furnish to the City Engineer as-built drawings in reproducible form, blue-line stamped and sealed by a professional engineer and in computer disk form and copies of results of all construction control tests required by City specifications.

- b. Phased Development: If the City allows a street to be constructed in stages, the Developer of the first one-half street opened for traffic shall construct the adjacent curb, gutter and sidewalk in the standard location and shall construct the required width of pavement from the edge of gutter on his side of the street to enable an initial two-way traffic operation without on-street parking. That Developer is also responsible for end-transitions, intersection paving, drainage facilities, and adjustments to existing utilities necessary to open the street to traffic.

City of Grand Junction  
250 North 5th Street  
Grand Junction, CO 81501

*Kathleen M. Postum*  
Director of Community Development *KKA* 8/13/97  
Date



*Stephanie Nye*  
Stephanie Nye  
City Clerk 8-13-97  
Date

*Ronald W. Vincent*  
Developer 2-3-97  
Date  
(If Corporation, to be signed by the President and attested to by the Secretary together with the Corporate seals)



TYPE LEGAL DESCRIPTION BELOW, USING ADDITIONAL SHEETS AS NECESSARY.  
USE SINGLE SPACING WITH A ONE (1) INCH MARGIN ON EACH SIDE.

\*\*\*\*\*

That portion of Lot,  
Pheasant Run Condos, more particularly described as follow:  
Beginning at the Southwest Corner of Section 1, Township 1  
South, Range 1 West of the Ute Meridian;  
thence North 89°46' West 603 feet;  
thence North 480 feet;  
thence 89°46' East 603 feet;  
thence South 480 feet to the Point of Beginning;  
Except Spring Valley Townhome Condominiums

Mesa County, Colorado

re: Section 28. The improvements guarantee required by the City Code to ensure that the improvements described in the improvements agreement are constructed to City standards will be exercised by the City not recording the final plat until all the required improvements are completed to City standards or the cash equivalent of the lack of such improvements not completed at the time of the recording of the final plat.


Ronald W. Vincent 2-3-97   
Springside Townhomes                      date

EXHIBIT "B"

**Springside Townhomes**  
Engineers Opinion of Cost

Date: 1-26-97  
Location of Development  
Printed Name of Person Preparing:

28 Road & Springside Ct.  
Kent W. Marsh

**Water System:**

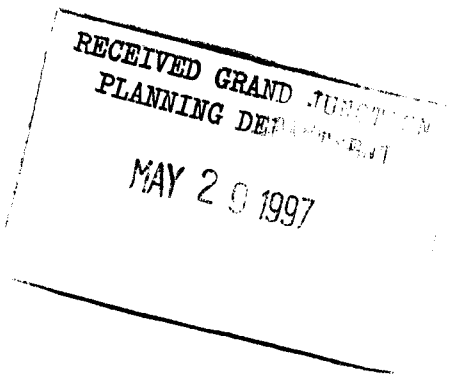
	Units	Quantity	Unit Price	Total Price
1 8" Line Connection	LS	1	160.00	160.00
2 8" PVC Waterline	LF	186	11.50	2139.00
3 Fire Hydrant Assy.	EA	1	1200.00	1200.00
4 Relocate Hydrant	EA	2	650.00	1300.00
5 8" Gate Valve & Box's	EA	3	490.00	1470.00
6 8" Fittings W/ TB's	EA	3	165.00	495.00
7 3/4" Cu Service Tap	EA	23	78.00	1794.00
8 3/4" Cu Service Line	LF	874	9.10	7953.40
<b>Sub-Total Water System:</b>				<b>8558</b>

**Sewer System:**

	Units	Quantity	Unit Price	Total Price
1 8" PVC Sewer Main	LF	159	14.90	2369.10
2 San. Sew. Manholes	EA	3	1150.00	3450.00
3 4" Service Tap	EA	10	26.95	269.50
4 4" Service Tap to Exist. Main	EA	13	30.00	390.00
4 4" Service Line	LF	905	8.60	7783.00
5 Sewer Clean-Out	EA	1	300.00	300.00
<b>Sub-Total Sewer System:</b>				<b>14561.60</b>

**Site Paving and Grading:**

	Units	Quantity	Unit Price	Total Price
1 Mobilization	LS	1	1575.00	1575.00
2 Clearing & Grubing	LS	1	860.00	860.00
3 Roadway Excavation	CY	1258	1.30	1635.40
4 Roadway Embankment	CY	161	2.50	402.50
5 Overlot Grading (cut)	CY	926	1.30	1203.80
6 Overlot Grading (fill)	CY	3362	1.85	6219.70
7 Imported Fill	CY	1339	8.00	10712.00
8 Asphalt Removal/Disposal	SY	793	2.50	1982.50
9 10" Class 6	TON	2108	10.00	21080.00
10 3" Asphalt	TON	422	28.40	11984.80
11 6.5' Mountable C., G., & W.	LF	556	11.00	6116.00
12 4' Sidewalk	LF	214	19.50	4173.00
13 Inter. Radii, Aprons, X-pan	SY	249	25.00	6225.00
<b>Sub-Total Paving &amp; Grading:</b>				<b>74169.70</b>



**Drainage:**

	Units	Quantity	Unit Price	Total Price
1 6' Drainage Pan	SY	82	25.00	2050.00
2 4' Drainage Pan	SY	135	25.00	3375.00
3 Outlet Structure	EA	1	1500.00	1500.00
4 12" Pvc Storm Sewer	LF	17	20.50	348.50
5 Connect To exist. MH	LS	1	2000.00	2000.00
6 Remove Dmg. Pan	SY	42	5.00	210.00
7 Sidewalk Drain Trough	LS	1	200.00	200.00
8 Detention Basin Revegitation	SF	7576	0.75	5682.00
<b>Sub-Total Drainage</b>				<b>9683.50</b>

**Miscellaneous**

	Units	Quantity	Unit Price	Total Price
1 Common Area Landscape	SF	12382	1.75	21668.50
2 Construction Engineering (1.50%)	LS	1	1658.22	1658.22
3 Construction Surveying (2.00%)	LS	1	2210.96	2210.96
4 Developers Construction Cost(1.25%)	LS	1	1381.85	1381.85
5 Quality Control Testing (1.00%)	LS	1	1105.48	1105.48
6 City Inspection Fees (0.50%)	LS	1	552.74	552.74
7 Street Lamps	EA	3	1500.00	4500.00
8 Relocate Street Lamp	EA	1	500.00	500.00
9 Street Signs	EA	1	75.00	75.00
10 Relocate Electrical	LS	1	1500.00	1500.00
<b>Sub-Total Miscellaneous</b>				<b>35152.74</b>

**Total Estimated Cost of Improvements**

**142125.54**

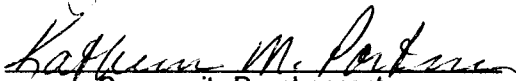
  
 \_\_\_\_\_  
 Signature of Developer

8/13/97  
 Date

I have reviewed the estimated costs and time schedule shown above and, based on the plan layouts submitted to date, and the current costs of construction, take no exception to the above.

  
 \_\_\_\_\_  
 City of Engineer

8-13-97  
 Date

  
 \_\_\_\_\_  
 Community Development  
 KKA

8/13/97  
 Date

EXHIBIT "C"

**Springside Townhomes (CUL-DE-SAC)**  
 Engineers Opinion of Cost

Date: 4/4/97

Location of Development

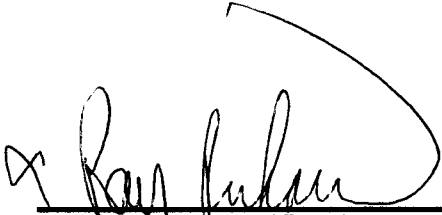
28 Road & Springside Ct.

Printed Name of Person Preparing:

*Kent W. Marsh*

Cul-De-Sac (R=40')	Units	Quantity	Unit Price	Total Price
1 9" Class 6 ABC	TONS	258	10.00	\$2,583.10
2 3" Asphalt	TONS	91	28.40	\$2,578.72
3 6.5' Mountable C., G., & W.	LF	220	11.00	\$2,423.08
<i>Sub-Total Cul-De-Sac:</i>				<u>\$7,584.90</u>

**Total Estimated Cost of Construction: \$7,584.90**

  
 \_\_\_\_\_  
 Signature of Developer

8/13/97  
 \_\_\_\_\_  
 Date

I have reviewed the estimated costs and time schedule shown above and, based on the plan layouts submitted to date, and the current costs of construction, take no exception to the above.

  
 \_\_\_\_\_  
 Engineering Department Representative

8-13-97  
 \_\_\_\_\_  
 Date

  
 \_\_\_\_\_  
 Community Development  
*KWA*

8/13/97  
 \_\_\_\_\_  
 Date



City of Grand Junction, Colorado  
250 North Fifth Street  
81501-2668  
FAX: (970)244-1599

Mr. Richard Arnold  
443 N. 6th Street  
Grand Junction, CO 81501

April 16, 1998

RE: FPP-1997-032 Springside Townhomes

Dear Mr. Arnold,

The present developer/owner of the project referenced above has completed all of the improvements required by the document recorded in Book 2350 Pages 668-679 of the Mesa County records. According to the City Engineering Division, the City is in a position to formally release that agreement with the developer upon receipt and City acceptance of the following items: 1) Two blue-line sets of as-built drawings stamped by the developer's engineer; 2) a mylar set of the same; and 3) a computer diskette containing the same.

At the same time, in order to record the plat for Springside Townhomes, the developer is still required to complete and record another Development Improvements Agreement and Guarantee for any remaining work. The remaining work consists of the landscaping required per plan in the common areas. The developer is in the process of completing that paperwork.

Hopefully, this is the information you were requesting. Please do not hesitate to contact me if you have further questions about this project.

Sincerely,

A handwritten signature in cursive script that reads "Kristen".

Kristen Ashbeck  
Planner