

Town of Milliken Development Agreement

This agreement relates to the development of:
NAME OF DEVELOPMENT

Town of Milliken, County of Weld, State of Colorado.

THIS AGREEMENT dated this _____ day of _____, _____ is made and entered into by and between the TOWN OF MILLIKEN, a Colorado Municipal Corporation, herein referred to as “the Town” and **DEVELOPER/OWNER**, being the undersigned owner(s) of the Property (see Addendum A attached hereto for legal description), herein referred to as the “Developer”.

WITNESSETH:

WHEREAS, the Developer has submitted plans (the “Plans”) for the NAME OF DEVELOPMENT which are specifically as follows

WHEREAS, the Developer has submitted construction plans for the development improvements in accordance with the Town of Milliken Land Use Code; and

All such Plans have been reviewed by the Town Administrator, Planning and Public Works Department of the Town of Milliken; and

WHEREAS, the Town has considered the representations made by the Developer as to its intentions to commence construction of the development improvements and the Town has received and approved construction plans for the development improvements; and

WHEREAS, this Agreement is executed for the purposes of protecting the Town from the cost of completing development 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 lot or home buyers in the development,

WHEREAS, the Town and Developer mutually agree that said development improvements are

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reasonable requirements and are necessary and appropriate requirements necessitated by the Development.

NOW, THEREFORE, in consideration of the promises, the mutual covenants herein contained, and the approval, execution and acceptance of the Final Plat Plans by the Town of Milliken's Board of Trustees entitled:

NAME OF DEVELOPMENT

THE PARTIES HEREBY AGREE AS FOLLOWS:

1.) All development improvements designated on Addendum "B" and contained in Addendum "C" to this Agreement attached hereto and incorporated herein by this reference and all development improvements designated on the Plans shall be constructed and completed by the Developer in accordance with this Agreement and the Plans prepared for the Developer:

The Town and Developer mutually agree that said development improvements are reasonable conditions and requirements and are necessary and appropriate to requirements necessitated by the Development to be imposed by the Town upon the Developer in connection with the Town's approval, execution and acceptance of the plans or schedule, and the installation of such improvements are necessary to protect, promote and enhance the public welfare.

2.) Binding Effect - All development improvements and conditions of this Agreement required to be constructed, installed, completed and paid for by the Developer, as well as all other matters herein agreed to be performed are binding on the parties to this Agreement, their assignees, heirs, devisees and successors. It is the intention of the parties that this Agreement shall be recorded with County Clerk and Recorder and shall run with the land being developed.

3.) Additional Agreements - Additional site specific agreements for this development are contained in "Addendum "C" and may be set forth in other documents which are to be incorporated herein. All development improvements required to be constructed, installed, completed and paid for by the Developer, as well as all other matters agreed to be performed, shall be constructed, installed and completed by the Developer in accordance with the phasing set forth in Addendum "C".

4.) The Developer agrees to reimburse the Town for all administrative and professional fees and other costs incurred by the Town that are primarily related to the development project, in accordance with Town's Ordinances as amended. Professional fees subject to reimbursement to the Town generally include those expenses and fees incurred by the Town during the planning review, processing and approval of plans associated with the Town of Milliken Development Application for this Property such as, without limitation, engineering, inspection, administrative and legal fees and subsequent inspection and acceptance of development improvements.

5.) All construction shall be performed in a good and workmanlike manner and in accordance with the plans and the Town of Milliken Land Use Code and all applicable Town

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standards, rules, regulations and ordinances governing construction of development improvements.

- 6.) No deviations to the plans will be allowed or accepted by the Town without prior written consent of the Town.
- 7.) The Developer agrees that prior to commencement of construction of any development improvements including alterations to existing grading contours, removal of vegetation and/or excavating, the Town-approved erosion control plan will be implemented. The Town-approved erosion control plan shall be installed and maintained throughout the construction of development improvements and shall not be removed or abandoned by the Developer until authorized by the Town. Regular inspections of erosion control measures will be conducted by the Developer and copies of the same delivered to the Public Works Department not less than quarterly..
- 8.) The Developer agrees that prior to commencement of construction of any development improvements a written construction schedule will be provided to the Town. The construction schedule will include time frames and completion dates and indicate the anticipated scheduling of the construction of the development improvements, including, but not limited to, excavating, grading, sewer, water, storm sewer, streets, sidewalks, trails, curb and gutter, landscaping, electric, cable television, gas, and telephone.
- 9.) The Developer agrees to notify the Town at least two full working days prior to the commencement of installation of development improvements. No below ground improvements will be covered or concealed prior to inspection by the Town. In the event that any development improvements are covered and/or concealed from inspection prior to approval by the Town, the Developer shall expose any and all improvements at the request of the Town and at the Developer's expense.
- 10.) Building permits for any type of structure regulated by the Town's adopted building codes will not be issued by the Town until all development improvements appropriate and necessary for that particular phase of the development, as determined by the Town, have been completed by the Developer and accepted by the Town. Each successive phase of the Development shall be capable of providing all the benefits of the infrastructure and all other improvements specified herein without being dependent on a future phase of the development.
- 11.) All development lot grading, generally referred to as "over-lot grading" on the Town-approved development construction plans, necessary to establish ground elevations at lot corners, the building envelope, storm water drainage patterns, grading contours, and for controlling and directing the flow of storm water away from structures on individual lots and across common drainage easements to approved storm water collection points, in accordance with Town approved development grading and drainage plan, must be completed by the developer prior to the issuance of any building permits within the appropriate phase of the development. Upon completion, the Developer shall provide written certification from the engineer of record that all over-lot grading has been completed in accordance with the Town approved development

construction plans and Town approved development final grading and drainage plan. See Addendum “C”.

12.) Gas, telephone, cable television and some situations electric utilities are specifically exempted from dedication and acceptance by the Town as they will not be under Town ownership or control. However, the Town has deemed these utilities as essential development improvements necessary for the preservation of the health, safety and welfare of the eventual property owners within this development and recognizes that the installation of such utilities may be in conflict with the construction of development improvements. The Town understands that the completion of these utilities involves agreements and contracts executed between the Developer and individual utility companies to which the Town is not a party. Further, these utilities may operate within the Town of Milliken pursuant to agreements with the Town. Prior to commencement of installation and construction of gas, electric, telephone and cable television utilities, the Developer shall submit to the Town copies of utility company approved construction plans. The Town will review these utility plans to determine that the placement of underground utilities, equipment and appurtenances are in accordance with and not in conflict with any Town owned utilities, easements, public rights-of-way or any other Town interests. Upon completion of gas, electric, telephone and cable television utilities, the Developer shall provide a written notice of completion from each utility company certifying that the utilities are completed, accompanied by “As Built” construction plans. The Town shall require that those utilities serving any building for which a building permit is requested be completed and fully functioning prior to the issuance of a building permit.

Building permits for any type of structure regulated by the Town’s adopted building codes will not be issued by the Town until all gas, electric, telephone and cable television utility main lines have been completed by the Developer and certified in writing as completed by the serving utility, unless the structure will not require one or more of these utilities. In most cases, then the completion of said utilities will not be required. See also Addendum “C”.

13.) Acceptance of development improvements shall be initiated by the Developer. Upon completion of all development improvements and all other conditions of this Agreement, the Developer shall notify the Town, in writing, that all development improvements have been completed in accordance with the plans and that said improvements are ready for a construction acceptance inspection. Within ten (10) business days of receipt of the Developer’s written notice, the Town will proceed to provide said construction inspection of all development improvements. At the time of said inspection, if any deficiencies are discovered by the Town, it should create a written notice of deficiency and make recommendations for correction in the notice and forwarded it to the Developer. The deficiency correction notice shall accurately describe each deficiency and make recommendations for corrective action(s) necessary to be performed by the Developer to repair or rehabilitate the development improvement sufficient for the Town to accept said improvement. All corrective actions shall be completed by the Developer within one month of receipt of the Town’s written deficiency correction notice, unless additional time is requested by the Developer in writing and provided for by the Town in writing. Upon completion of any corrective action by the Developer, the Developer shall again, notify the Town in writing that all development improvement deficiencies have been corrected and are ready for

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re-inspection. The Town shall proceed with inspections in the same manner previously described.

14.) Acceptance of development improvements shall be performed in accordance with provisions of the Town of Milliken Land Use Code, specifically Section 30-10-102. All development improvements shall remain in the ownership and the responsibility of the Developer until finally accepted, in writing by the Town. The Town will not consider partial acceptance or acceptance of any development improvements not fully completed and fully functioning.

15.) The warranty for all development improvements to be dedicated to and accepted by the Town will commence upon the final inspection and the construction acceptance by the Town. Upon acceptance, the Developer will be issued a written notice of acceptance by the Town at which point the warranty period start date and date of expiration will be determined. The warranty period for all development improvements will be set forth in Exhibit "A" and shall not be less than two (2) years. The Developer shall remain responsible for maintenance and repair of all development improvements during the warranty period. Any deficiency that occurs or is discovered by the Town during the warranty period will be identified to the Developer in a written deficiency and make recommendations for correction notice prepared by the Town and forwarded to the Developer. All corrective actions shall be completed by the Developer within one month of receipt of the Town's written deficiency and make recommendations for correction notice unless additional time is requested by the Developer and provided for by the Town in writing or more quickly if immediate repairs are needed in exigent situations.

16.) Upon completion of all of the development improvements and conditions agreed to herein, and prior to any acceptance of any development improvements by the Town, the Developer shall provide the Town with a written certification from the development engineer of record indicating that the development improvements were constructed in compliance with the plans. The Developer shall also provide the Town with a complete full-size and one complete one-half-size set of "as-built" plans approved paper sets stamped and signed _____ autocad file and PDF file. As built plans shall be certified as to their accuracy by the development engineer of record and shall clearly designate all changes made by the Developer and/or the sub-contractors.

17.) The estimated costs of constructing the development improvements are set forth on Addendum "B" attached hereto and incorporated herein by this reference. The Developer shall provide the estimated construction costs for each and evidence that the estimates have been established by an executed contract or estimates certified by the development engineer of record. Estimates shall include a contingency equal to fifteen percent (15%) of the total project completion estimate.

18.) The Developer shall provide the Town with collateral in the amount established in item No. 17 above, for the completion of development improvements in one or more of the following forms and in accordance with provisions of the Town of Milliken Land Use Code:

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Bond, cash, or irrevocable letter of credit in a form and from an entity acceptable to the Town or other collateral as deemed acceptable to the Town, provided it is equally secure and capable of being immediately liquidated.

The purpose of said collateral is to guarantee that funds in the amount as set forth in Addendum “B” are available to the Town for the completion of the development improvements in the event that the Developer fails to comply with the terms of this Agreement. Upon the expiration of the time between the date of this Agreement and the date in Addendum “C”, and provided all the work and development improvements have been performed by the Developer have been completed, and accepted in accordance with Town’s ordinances, rules and regulations, this Agreement shall become null and void and of no force and effect. Collateral shall be returned or the letter of credit released pursuant to the ordinances of the Town and the terms of this Agreement.

In the event that any portion of the work or development improvements has not been made, installed, completed or performed by the Developer in full and timely compliance with this Agreement and the Town’s ordinances and regulations, the Town may have such remaining work and improvements completed by such means and in such manner, by contract, with or without public letting, or otherwise, as it may deem advisable. The parties agree that the Town shall be entitled to use the collateral for this purpose. In the event that the collateral is insufficient to complete the development improvements required to be constructed or installed, completed or performed, the Town shall be entitled to payment of such excesses by the Developer in any way permitted by law including foreclosing on the Property in the Development to which the Developer hereby grants the Town a second lien against the real property included in the Development.

The Town’s consent to release collateral shall not be considered as an acceptance of such improvements by the Town. The procedures for completion of the improvements and work by the Town and reimbursement to the Town from the collateral shall apply whether there be one or more defaults, or a succession of defaults on the part of the Developer in performing the terms, conditions, and covenants in this Agreement. The Developer hereby waives any and all claims and defenses it may have against the issuer of the collateral instrument and the Town in the event the Town deems it necessary to demand payment on all or a portion of the collateral.

19.) Upon default of the provisions of this Agreement the parties agree that this Agreement may be specifically enforced. In addition, the Town may:

- a.) Demand payment of, negotiate or liquidate any collateral provided by the Developer;
- b.) Foreclose its the second position lien on the Development and use the proceeds of such foreclosure to complete the improvements described herein. Nothing herein shall be construed as requiring the Town to complete all or a portion of the improvements specified herein in the event the proceeds of such foreclosure are not sufficient to finance all of the improvements.

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- c.) Issue a written notice to the Developer to appear and show cause as to why the development plat should not be vacated, which vacation the Developer specially consents to in consideration of the Town's approval of the plat and this Agreement. Giving the notice shall be deemed complete upon mailing the same certified mail to the address stated herein:

Said notice shall designate the date, time and place the Town of Milliken Board's of Trustees will conduct a hearing to consider revoking plat and construction approvals granted by this Agreement. Said hearing shall be not less than one (1) month nor more than two (2) months from the date of the notice.

- d.) Proceed in the manner described in the Town of Milliken's Land Use Code or State Statutes for a violation of a local subdivision regulation, including withholding building permits or certificates of occupancy.

- e.) Proceed in any other manner authorized by law for breach of contract.

The remedies set forth above are cumulative and the election to use one shall not preclude the use of another.

20.) In the event of default by the Developer, the Developer agrees to pay all expenses incurred by the Town occasioned by said default, including, but not limited to, a reasonable expenses for administrative and legal fees in enforcing this Agreement.

21.) This Agreement, and the terms, conditions and covenants herein contained, shall be deemed to complement and shall be in addition to the conditions and requirements of the Town of Milliken's Land Use Code including but not limited to provisions of Article 6 "Enforcement" and other applicable ordinances, rules and regulations, notwithstanding anything herein contained or referred to the contrary. The Developer has reviewed these terms and agrees to fully comply with them.

22.) Upon execution of this agreement by the parties hereto, and provided all other conditions not herein contained have been met by the Developer, the Town agrees to execute the final plat described above and accept the same upon payment of recording fees, professional fees and other costs to the Town..

23.) References to the development or development plat contained herein shall apply in the same manner to a Subdivision or Subdivision Plat or a Planned Unit Development or a Site Plan plat when this agreement is used in connection with approval of a Subdivision Plat or Planned Unit Development plat or Site Plan.

24.) If any part, term, or provision of this Agreement is held by the courts to be illegal or otherwise unenforceable, such illegality or un-enforceability shall not affect the validity of any other part, term, or provision, and the rights of the parties shall be construed as if the part, term, or provision was never part of this Agreement.

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25.) The parties to this Agreement may amend or modify this Agreement only by written instrument executed on behalf of the Town Board of Trustees and by the Developer. Such amendment or modification shall be properly notarized before it may be effective.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals this day and year first above written.

DEVELOPER:

DEVELOPER/OWNER NAME

Address for Notification

Phone: _____

Fax: _____

NAME OF PERSON SIGNING

Title

STATE OF COLORADO }

COUNTY OF _____ }

Acknowledged before me by The Developer, on behalf of and with authority from the Developer, this _____ day of _____, _____.

Notary

Date my commission expires _____

TOWN OF MILLIKEN:

Linda Measner, Mayor

Kari Gutierrez, Town Clerk

STATE OF COLORADO }
COUNTY OF }

Acknowledged before me by Linda Measner, Mayor, and Kari Gutierrez, Town Clerk, of the
Town of Milliken this _____ day of _____, _____.

Notary

Date my commission expires _____

Town of Milliken
Development Agreement
Addendum “A”

LEGAL DESCRIPTION

Town of Milliken Development Agreement Addendum “B”

DEVELOPMENT IMPROVEMENTS

Development Improvements for the purposes of this Development Agreement are defined as Public Improvements Dedicated to the Town.

Town of Milliken Development Agreement Addendum “C”

SITE SPECIFIC AGREEMENTS

In addition to the general overall terms and conditions relating to the development improvements set forth elsewhere in this Agreement, the parties agree that the site-specific agreements set forth in this Addendum “C” shall apply. In the event any provision contained in this Addendum “C” conflicts with any other provision contained in the Agreement, the provisions of this Addendum “C” shall control.