

SUBDIVISION IMPROVEMENT AGREEMENT

THIS AGREEMENT is made and entered into this 11th day of May, 1994, between WESTBANK MESA LIMITED PARTNERSHIP, a Colorado limited partnership, (Owner), and the BOARD OF COUNTY COMMISSIONERS OF GARFIELD COUNTY, COLORADO, (County).

W I T N E S S E T H :

WHEREAS, Owner is the owner of certain real property located in Garfield County, Colorado, more particularly described in the final plat for Westbank Ranch Planned Unit Development, Filing No. 4 Resubdivision, which is filed on even date hereof and the description of which is set forth in Exhibit A attached hereto and made a part hereof by reference (Subdivision); and

WHEREAS, as a condition of approval of the Final Plat and as required by the laws of the State of Colorado, the Owner wishes to enter into this Subdivision Improvements Agreement with the County; and

WHEREAS, the County has required and the Owner has agreed to provide security or collateral sufficient in the judgment of the County to make reasonable provision for completion of certain public improvements required to be installed in the Subdivision as set forth in Resolution No. 93-085, recorded in the office of the Clerk and Recorder of Garfield County, Colorado, as Reception No. 453631 in Book 878 at Page 467; and

WHEREAS, Owner has agreed to execute and deliver a letter of credit to the County to secure and guarantee its performance of this Agreement and has agreed to certain restrictions regarding the issuance of building permits and certificates of occupancy within the Subdivision, all as more fully set forth hereinafter.

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE PREMISES AND THE FOLLOWING MUTUAL COVENANTS AND AGREEMENTS, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. OWNER'S PERFORMANCE. Owner has constructed and installed, or will cause to be constructed and installed at its sole expense those improvements required through approval of the Preliminary Plan in Resolution No. 93-085. The improvements required therein will be completed on or before October 31, 1994 in compliance with the following:

A. All plat documents submitted prior to or at the time of the Final Plat approval including approved as-built drawings of all improvements completed prior to execution of this Agreement, which are incorporated herein by reference and made a part of this Agreement, which are incorporated herein and made a part of this Agreement.

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B. All requirements of Resolution Nos. 93-084 and 93-085, including all requirements of the Garfield County Zoning Code and the Garfield County Subdivision Regulations.

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

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

The County agrees that if all improvements are installed in accordance with this Agreement, Final Plat documents, the requirements of the Preliminary Plan, and the requirements of the P.U.D. zone approval, and all other requirements of this Agreement, the Preliminary Plan and the P.U.D. zone approval, then the owner shall be deemed to have satisfied all terms and conditions of zoning, subdivision, resolutions and regulations of Garfield County.

2. SECURITY FOR IMPROVEMENTS. On or before the date of the recording of the Final Plat with the Clerk and Recorder, the Owner shall deliver a letter of credit which is acceptable to the County in the amount of the improvements for the subdivision or improvements that have not yet been completed. Those improvements, together with the cost as certified by a licensed engineer are attached hereto as Exhibit B. The letter of credit shall be issued by state or national banking institution in a form acceptable to the County, and from an institution that is licensed to do business in the State of Colorado. Certification of completion of improvements must be submitted by a licensed or registered engineer. Such certification shall certify that the improvements have been constructed in accordance with the requirements of this Agreement, including all Final Plats, and plans, and shall be stamped by said professional engineer.

The security set forth herein shall be in an amount sufficient to provide for full revegetation of the landscaping required by the Preliminary Plan, as required by Paragraph 6 of Resolution No. 93-085. Full costs of revegetation shall be as set forth in Exhibit C attached hereto. The full amount of such revegetation shall be retained as security for a period not to exceed two (2) years. At the conclusion of the two-year period, the security shall be released by the County upon receipt and acceptance of a certified letter from the landscape professional executing the document attached hereto as Exhibit C, that such landscaping is complete and is no longer in need of revegetation.

The letter of credit set forth herein must be valid for a minimum of six (6) weeks beyond the completion date for the improvements and revegetation set forth herein. Any extension of the time periods within which improvements must be completed shall cause the line of credit required herein to be extended for

an equal amount of time. If the County determines that the improvements are not constructed in compliance with the relevant specifications, it shall furnish a letter of potential deficiencies to the Owner within fifteen (15) days from the date the County receives certification from the Owner that all improvements as set forth in Exhibit B have been completed. If that letter is not furnished within fifteen (15) days, all improvements shall be deemed accepted and the County shall release the appropriate amount of security as such relates to the completed improvements. If a letter of potential deficiencies is furnished by the County, the County shall have thirty (30) days to complete its investigation and provide written confirmation of the deficiencies to the Owner. If, upon further investigation, the County finds that all improvements are acceptable, then appropriate security shall be released to the Owner 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 written findings before requesting payment on the letter of credit.

The security for revegetation in the amount set forth in Exhibit C shall remain in place for two (2) years from the date of certification of completion of the revegetation improvements. The sole purpose for this element of security shall be to guarantee the survival of all plantings required to revegetate and landscape disturbed areas created during construction.

The County may, at its option, permit the Owner to substitute other collateral acceptable to the County for the collateral originally given by the Owner to secure the completion of the improvements as hereinabove provided.

No Final Plat shall be recorded pursuant to this Agreement until a letter of credit in a form acceptable to the County is received by the County.

3. **WATER.** At the time of execution of this Agreement, all water system improvements, including all easements necessary for the installation of that system, together with the necessary water rights and assignment of permits and water allotment contracts and other water rights associated with the issuance of the well permit shall be transferred by deed, dedication or contract to the Homeowners Association in the form set forth in Exhibit "D" attached hereto. That deed shall be recorded coincident with the filing of the final plat.

4. **INDEMNITY.** To the extent allowed by law, Owner agrees to indemnify and hold the County harmless and defend the County from all claims which may arise as a result of Owner's installation of the improvements pursuant to this Agreement, provided, however, Owner does not indemnify the County for claims made asserting that the standards imposed by the County on Owner are improper or the cause of the injury asserted.

The County shall be required to notify the Owner of receipt of a notice of claim or a notice of intent to sue and shall afford Owner the option of defending any such claim or action. Failure to notify and provide such option to Owner shall extinguish the County's right under this paragraph. Nothing herein stated shall be interpreted to require Owner to indemnify the County from claims which may arise from the negligent acts or omissions of the County or its employees.

5. **SCHOOL IMPACT FEES.** Owner shall be obligated to pay Two Hundred Dollars (\$200.00) per lot for school impact fees. Owner shall tender Two Hundred Dollars (\$200.00) to the County for all lots within the subdivision at the time of recording of the Final Plat.

6. **SALE OF LOTS.** No lots within the proposed subdivision that is the subject of this Agreement shall be conveyed prior to the recording of the Final Plat.

7. **APPROVAL OF FINAL PLAT.** The County agrees to approval of the Final Plat subject to the terms and conditions of this Agreement, as well as the terms and conditions of the Preliminary Plan and P.U.D. Zone approval.

8. **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 enforcement of this Agreement. In the event no action is commenced before issuance of the final certificate of completion of improvements and acceptance thereof by the County, any purchaser's rights to commence an action shall thereafter be extinguished.

9. **CONSENT TO VACATE PLAT.** In the event the Owner fails to comply with the terms of this Agreement, including the terms of the Preliminary Plan and P.U.D. Zone approval, the County shall have the ability to vacate the plat as it pertains to lot for which no building permits have been issued. Any existing lots for which building permits have been issued shall not be vacated and the plat as to those lots shall remain valid. The Owner shall provide a survey and complete legal description with a map showing the location of portion of the plat so vacated.

10. **BINDING EFFECT.** This Agreement shall be a covenant running with the title to each lot within the Subdivision and the rights and obligations as contained herein shall be binding upon and inure to the benefit of the Owner, its successors and assigns.

11. **RECORDING.** Upon execution, Owner shall record this Agreement with the office of the Clerk and Recorder for Garfield County, Colorado.

12. **VENUE AND JURISDICTION.** Venue and jurisdiction for any

cause arising out of or related to this Agreement shall lie in the District Court for Garfield County and be construed pursuant to the laws of the State of Colorado.

13. ROADS. Roads within the subdivision shall be dedicated as public right-of-ways and accepted on behalf of the public by the County. The approval and acceptance of the roads within the subdivision by the County shall not obligate the County to maintain such roads. The Homeowners Association shall bear the sole responsibility for the maintenance, upkeep, repair, restoration, snow removal and reconstruction of all roads within the subdivision.

WESTBANK MESA LIMITED PARTNERSHIP

By: D.V. DEVELOPMENT CO., INC.
a Colorado corporation,
General Partner

By *John Huebinger*
John Huebinger, President



ATTEST:

BOARD OF COUNTY COMMISSIONERS OF
GARFIELD COUNTY, COLORADO

Mildred Alsdorf
Clerk to the Board

By *Bucky Arboney*
Elmer "Buckey" Arboney, Chairman

EXHIBIT A

Attached to and Forming a Part of Subdivision Improvement Agreement Dated May 11/16, 1994, Between Westbank Mesa Limited Partnership as Owner and Board of County Commissioners of Garfield County, Colorado

SCHEDULE A

PROPERTY DESCRIPTION

ORDER NO: 93022190 C-2

A Parcel of land situated in Lot 15 of Section 35, Township 6 South, Range 89 West of the Sixth Principal Meridian, Lots 13, 14, 15, 24 and 25 of Section 1, and Lots 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21 and 22 of Section 2, Township 7 South, Range 89 West of the Sixth Principal Meridian, all in Garfield County, Colorado, lying Southerly of Westbank Ranch Planned Development Subdivision Filing No. 1 and Westbank Ranch Subdivision Filing No. 2 and No. 3, as amended all as filed in the Garfield County, Colorado records, and Westerly of a line in said Section 1 partly described by Book 416 at Page 336 as filed in the Garfield County, Colorado records, said parcel of land is more fully described as follows:

Beginning at the Northwest Corner of Lot 5 in said Section 2, whence the Northwest Corner of said Section 2 bears: N. 89 degrees 44'39" W. 602.75 feet;
 thence N. 01 degrees 57'00" E. 81.45 feet along the Westerly boundary line of Lot 15 in said Section 35 to the Southwest Corner of said Westbank Ranch Filing No. 1; (also being the Southwest Corner of Lot 23, Westbank Ranch Planned Development Subdivision Filing No. 1)
 thence, along the Southerly boundary lines of said Westbank Ranch Filings No. 1, No. 2, and No. 3, N. 77 degrees 39'00" E. 112.73 feet;
 thence N. 63 degrees 09'52" E. 159.87 feet;
 thence S. 35 degrees 32'48" E. 210.99 feet;
 thence S. 31 degrees 43'00" W. 75.00 feet;
 thence S. 69 degrees 27'00" E. 130.00 feet;
 thence S. 28 degrees 57'00" W. 160.00 feet;
 thence N. 86 degrees 03'00" E. 190.00 feet;
 thence S. 45 degrees 23'00" E. 130.00 feet;
 thence S. 05 degrees 23'20" W. 300.15 feet;
 thence S. 61 degrees 18'14" E. 231.81 feet;
 thence S. 28 degrees 07'00" E. 160.00 feet;
 thence N. 60 degrees 30'00" E. 78.00 feet;
 thence S. 37 degrees 06'00" E. 55.45 feet;
 thence S. 79 degrees 17'00" E. 492.88 feet;
 thence N. 26 degrees 07'29" E. 82.61 feet;
 thence S. 64 degrees 37'00" E. 336.67 feet;
 thence S. 69 degrees 29'00" E. 390.82 feet;
 thence S. 81 degrees 03'00" E. 358.60 feet;
 thence N. 89 degrees 22'00" E. 342.78 feet;
 thence S. 78 degrees 00'00" E. 349.80 feet;
 thence N. 87 degrees 02'00" E. 374.60 feet;
 thence S. 88 degrees 23'00" E. 626.00 feet;
 thence S. 76 degrees 37'00" E. 39.95 feet;
 thence S. 50 degrees 31'33" E. 298.72 feet;
 thence N. 61 degrees 40'41" E. 339.92 feet;

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PROPERTY DESCRIPTION CONTINUED

thence S. 50 degrees 00'00" E. 25.74 feet;
thence along the arc of a curve to the left having a radius of 329.13 feet, and a central angle of 52 degrees 46'29" for a distance along the curve of 303.16 feet; the chord of said curve bears S. 76 degrees 23' 15" E. a distance of 292.56 feet;
thence along the arc of a curve to the right having a radius of 45.00 feet, and a central angle of 83 degrees 05'30" for a distance along the curve of 65.26 feet; the chord of said curve bears S. 61 degrees 13'45" E. a distance of 59.69 feet to a point on the said described line in Section 1, whence the Northwest Corner of said Section 1 bears: N. 20 degrees 00'40" W. 1523.72 feet;
thence, leaving said Westbank Ranch filings, along the said described line, S. 19 degrees 41'00" E. 196.35 feet;
thence S. 34 degrees 08'00" E. 1.14 feet to a point on a non-tangent curve of the County Road Dedication described in Document No. 334810 as filed in the Garfield County, Colorado records, and continuing along the County Road Dedication as follows: along the arc of the non-tangent curve to the left having a radius of 710.00 feet, and a central angle of 34 degrees 59'38" for a distance along the curve of 433.64 feet; the chord of said curve bears S. 38 degrees 48'11" E. a distance of 426.93 feet;
thence S. 56 degrees 18' 00" E. 174.02 feet;
thence S. 52 degrees 22'00" E. 349.83 feet;
thence along the arc of a non-tangent curve to the right having a radius of 430.57 feet, and a central angle of 10 degrees 04'52" for a distance along the curve of 75.76 feet; the chord of said curve bears S. 32 degrees 02'21" E. a distance of 75.66 feet;
thence along the arc of a curve to the left having a radius of 2293.26 feet, and a central angle of 10 degrees 06'00" for a distance along the curve of 404.25 feet; the chord of said curve bears S. 32 degrees 03'00" E. a distance of 403.73 feet;
thence S. 37 degrees 06'00" E. 193.54 feet;
thence along the arc of a curve to the left having a radius of 1384.75 feet, and a central angle of 11 degrees 48'00" for a distance along the curve of 285.19 feet; the chord of said curve bears S. 43 degrees 00'00" E. a distance of 284.68 feet;
thence S. 48 degrees 54'00" E. 218.65 feet to a point on the East line of Lot 24 in said Section 1, being the end of the said described County Road Dedication;
thence, leaving said described line, S. 01 degree 18'00" E. 242.48 feet, more or less, to the Southeast Corner of Lot 24 in said Section 1;
thence S. 89 degrees 37'46" W. 1965.07 feet to the Southwest Corner of Lot 25 in said Section 1;

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SCHEDULE A
PROPERTY DESCRIPTION CONTINUED

ORDER NO. 93022190 C-2

thence S. 00 degrees 48'12" E. 843.20 feet to the Southeast Corner of said Section 2;
thence N. 89 degrees 21'20" W. 2606.36 feet to the South Quarter Corner of said Section 2;
thence N. 01 degrees 04'18" W. 2139.78 feet to the Southeast Corner of Lot 16 in said Section 2; (whence the Center of said Section 2 bears: N. 01 degrees 04'18" W. 465.01 feet);
thence S. 89 degrees 57'32" W. 745.65 feet to the Southwest Corner of Lot 16 in said Section 2;
thence N. 00 degrees 03'32" E. 468.68 feet to the Northwest Corner of Lot 16 in said Section 2;
thence N. 89 degrees 45'00" W. 606.04 feet to the Southwest corner of Lot 8 in said Section 2;
thence N. 00 degrees 02'31" W. 858.00 feet to the Northwest Corner of Lot 8 in said Section 2;
thence S. 89 degrees 47'29" W. 722.54 feet to the Southwest Corner of Lot 5 in said Section 2;
thence N. 00 degrees 43'57" E. 797.26 feet to the Northwest Corner of Lot 5 in said Section 2, the POINT OF BEGINNING.

COUNTY OF GARFIELD
STATE OF COLORADO