



SUBDIVISION IMPROVEMENTS AGREEMENT

ANGLER MOUNTAIN VISTAS

THIS SUBDIVISION IMPROVEMENT AGREEMENT (the "Agreement") is made and entered into as of the 28th day of April, 2021 (the "Effective Date"), by and between Angler Mountain Vistas, LLC, a limited liability company with an address of PO Box 6539, Dillon, CO 80435 ("Developer") and the Town of Silverthorne, a Colorado home rule municipality with an address of P.O. Box 1309, Silverthorne, Colorado 80498 (the "Town") (each a "Party and collectively the "Parties").

WHEREAS, Developer holds title to certain real property located within the Town and more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference (the "Property") and Developer has submitted an application for development of the Property (the "Project"); and

WHEREAS, the Town's approval of the Project is contingent upon the express condition that all duties created by this Agreement are faithfully performed by Developer.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the sufficiency of which is mutually acknowledged, the Parties agree as follows:

1. Purpose. The purpose of this Agreement is to set forth the terms, conditions, and fees to be paid by Developer upon subdivision of the Property. All conditions in this Agreement are in addition to any requirements of the Silverthorne Town Code, state law and other Town ordinances, and are not intended to supersede any requirements contained therein.

2. Fees. The following fees shall be paid to the Town by Developer:

a. The actual cost to the Town for plan review, engineering review, hydrological and surveying review prior to and during the development process, and for construction observation, inspection and materials testing during the construction process for public improvements, and for construction observation, inspection and materials testing and electronic deliverable review during the warranty period for public improvements, and for legal services rendered in connection with the subdivision of the Property (the "Actual Costs"), plus related administrative fees not to exceed 15%.

b. The cost of making corrections or additions to the official Town GIS system and for the fee for recording the final plat and accompanying documents with the Summit County Clerk and Recorder. Prior to the start of construction, the Developer shall schedule a pre-construction meeting with the Town representatives to ensure compliance with Town standards and to review project design details.

3. Title Policy. Developer shall provide the Town with a title commitment for the Property. The title commitment shall show that all property to be dedicated to the Town is or shall be subsequent to the recording of the plat, free and clear of all liens and encumbrances (other than real estate taxes which are not yet due and payable) which would

make the dedications unacceptable, as the Town determines in its sole discretion. The title policy evidenced by the title commitment shall be provided no later than 30 days after the recording of the final plat.

4. Public Improvements. Developer agrees to complete the following public improvements (the "Public Improvements"), at Developer's sole cost, subject to this Agreement and in accordance with the plans approved by the Town (the "Approved Plans"):

a. *Trails.* Developer shall install and construct the pedestrian trails shown on the approved plans. The Town will maintain public trails that are located on property currently owned by or dedicated to the Town. A homeowners' association shall maintain trails located on private property.

b. *Roadways.* Developer shall complete construction of all roadways on the Property as required by the approved site plan. The Town will maintain Angler Mountain Ranch Road, a public road located on property dedicated by ROW on the Plat to and accepted by the Town. A homeowners' association shall maintain Red Quill Road, a private road located on private property.

c. *Water, Sewer and Storm Drainage Facilities.* Developer shall be responsible for the construction of the storm drainage facilities, water distribution system, and the sewer collection system as necessary to serve the Property (the "Utility Improvements").

5. Construction.

a. All Public Improvements shall be installed and completed at the expense of Developer and dedicated or conveyed to the Town upon the Town's Acceptance thereof. The estimated cost of the Public Improvements is set forth in **Exhibit B**, attached hereto and incorporated herein by this reference (the "Estimated Costs").

b. The Public Improvements shall be constructed in accordance with the final plat, applicable zoning, Town standards and approved associated construction documents (the "Approved Plans").

c. All materials shall be new and both workmanship and materials shall be of high quality. Developer shall furnish the Town the name of the manufacturer of all equipment and materials which it contemplates using for the construction of the Public Improvements, as well as information on capacities, efficiencies, and sizes and any additional information requested by the Town, prior to start of any construction. Samples shall be submitted for approval when requested by the Town. Equipment, materials, and articles installed or used for the Public Improvements without the Town's approval shall be at the risk of subsequent rejection.

d. Developer shall keep the Town informed, at least 5 days in advance, of the times and places at which construction will occur. Any work done without notification or without being properly located and established by base lines, offset stakes, benchmarks, or other staking may be ordered to be removed and replaced at Developer's cost and expense. The Town shall issue written notice to Developer regarding any construction or activity which

the Town deems unacceptable. All stakes, benchmarks, and other survey points shall be preserved by Developer until the Public Improvements have been accepted by the Town.

e. The Developer will provide inspections of the Public Improvements to ensure compliance with the Town Standards as well as the plans and specifications. The developer will provide inspection reports by the inspecting engineer verifying compliance with the plans and specifications. This will include any geotechnical reports and inspections on the compaction of the backfill or other earthwork associated with the Public Improvements. The Public Improvements will not be accepted until this information is received by the Town.

f. The Town may make reasonable engineering observations at Developer's expense. This includes without limitation observation of the installation of all buried utilities to be dedicated to the Town. Observation, acquiescence in, or approval by any inspector shall not constitute the approval by the Town of any portion of such Public Improvements.

g. Developer shall keep and maintain the Public Improvements until the Town formally accepts the improvements, and shall be responsible for, at its own cost, the repair or replacement of any damage to, or destruction of, the Public Improvements that occurs prior to acceptance by the Town.

h. Developer shall take all steps necessary to prevent its construction activities from damaging adjacent properties. If any adjacent property is damaged during site work or during the construction or testing of the Public Improvements, Developer shall at its cost promptly repair or replace the damaged property to a condition equal to or better than that which existed before such damage or injury.

i. Developer shall provide to the Town, to be incorporated into the Town's GIS system, all necessary engineering designs, surveys, field surveys and incidental services related to the construction of the Public Improvements at its sole cost and expense, including reproducible and digital "as-built" drawings, all certified by a professional engineer registered in the State of Colorado. The Town will not accept any Public Improvements until such documents have been provided to the Town.

6. Construction Inspection. Inspection shall be provided to assure that all work is performed in accordance with the approved Engineering Plans and with the terms of this Agreement. Developer is responsible for the cost of inspection services related to the construction of the Public Improvements. Full time inspection shall be provided by Developer's Engineer, unless an alternative method or schedule is approved by the Town in writing. The Inspector and inspection schedule shall be subject to the approval of the Town. The Inspector(s) as described above (hereinafter referred to as "Inspector") will inspect the construction materials and will observe construction of the Public Improvements to be dedicated to the Town to assure that they have been constructed in compliance the approved Engineering Plans, and with the Town Standards and regulations. The Inspector shall document their observation of construction on a daily basis and on a form acceptable to the Town, which may also include photo and video documentation. In the event that there are questions or concerns at any time about the quality of construction and/or materials or methods used during construction, the Town may issue written notice advising Developer that specific Public Improvements in question have been deemed unacceptable.

a. The Inspector shall notify Developer within twenty-four (24) hours of all construction or material defects or problems with the construction, either noted by the Inspector or presented to the Inspector by Developer's Engineer, or by the Town. Such claims may include any matter relating to the material being used, execution and progress of the work or interpretation of the Agreement, including the approved Engineering Plans. Any subsequent recommendation or proposed revisions from Developer's Engineer shall be subject to the final review and decision of the Town's Public Works Director or his or her designee.

b. The Inspector shall make weekly estimation of amounts and quantities of work performed hereunder.

c. The Inspector and the Town shall have reasonable access to the work at all times subject to site safety and construction activity limitations. Developer shall furnish both Inspector and the Town with the means for ascertaining whether the work being performed or the work completed is in accordance with the approved Engineering Plans and the Town's Standards.

d. The Inspector is in no way responsible for how the work is performed, for safety in, on or about the job site, for methods of performance, or for timeliness in the performance of the work.

e. The Town hereby designates the Public Works Director or his or her designee(s) as representative with authority to speak for the Town, and with whom the Inspector shall communicate on all matters provided for in this Agreement.

f. Inspections may extend to all or any part of the Public Improvements and to the preparation or manufacture of the material to be used. The Inspector is not authorized to alter the provisions of this Agreement or any specification or to act as foreman for the Town or Developer. Developer agrees to pay for the Inspector and all related inspection services.

g. Developer agrees to pay to the Town for the documented out of pocket cost of examination of submitted plans and the Town's inspection of the work.

7. Applicable Law. Developer shall comply with all applicable law, including without limitation all applicable current and future federal, state and local statutes, regulations, ordinances and rules relating to: the emission, discharge, release or threatened release of a Hazardous Material into the air, surface water, groundwater or land; the manufacturing, processing, use, generation, treatment, storage, disposal, transportation, handling, removal, remediation or investigation of a Hazardous Material; and the protection of human health, safety or the indoor or outdoor environmental, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, *et seq.* ("CERCLA"); the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.* ("RCRA"); the Toxic Substances Control Act, 15 U.S.C. § 2601, *et seq.*; the Clean Water Act, 33 U.S.C. § 1251, *et seq.*; the Clean Air Act; the Federal Water Pollution Control Act; the Occupational

Safety and Health Act; all applicable environmental statutes of the State of Colorado; and all other federal, state, or local statutes, laws, ordinances, resolutions, codes, rules, regulations, orders or decrees regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect.

8. Completion.

a. The Public Improvements shall be completed, inspected, approved, and accepted by the Town on or before the date of April 28, 2023. An initial construction lift of asphalt shall be installed on or before October 31, 2021. A final lift of asphalt and shoulders shall be installed prior to issuance of first Certificate of Occupancy. Because the developer of the infrastructure is also the builder of the homes in the subdivision, the issuance of building permits can occur prior to the initial construction lift of asphalt if the water and sewer improvements have been tested and passed by the Town and an all-weather surface is installed on the road platform. The Warranty Period for all Public Improvements shall not begin until all Public Improvements have been accepted by the Town. Extension of time for completion of the Public Improvements will be granted by Silverthorne in writing for good cause shown. "Good cause" shall be determined by Silverthorne in its reasonable discretion.

b. Developer shall be responsible for scheduling the necessary inspections. Developer shall make any and all corrections necessary to bring the Public Improvements into conformity with the approved plans and Town standards. Once all corrections are made, the Town will issue a Certificate of Completion and Acceptance which shall constitute final acceptance of such Public Improvements. Thereafter, the Town will own and maintain such improvements.

c. The Town will not issue a Certificate of Occupancy for any structure or property located in the property described in **Exhibit A** until the Public Improvements have been completed and accepted by the Town.

9. Warranty.

a. Developer shall warrant any and all Public Improvements which are conveyed to the Town for a period of 2 years from the date of the Certificate of Completion and Acceptance of the specified Public Improvements.

b. Specifically, but not by way of limitation, Developer shall warrant that: the Public Improvements will function for the intended purpose, will not fail, and that the Public Improvements will be constructed and installed in a workmanlike manner suitable for their intended uses and in accordance with any applicable federal, state, municipal ordinances, regulations, rules and codes; and the title conveyed is marketable and its transfer rightful.

c. The warranty period shall be extended by 2 years for any portion of the Public Improvements that required remedial or repair work within the first 2 years after the issuance of Acceptance.

10. Dedication. Developer shall provide and dedicate all necessary rights-of-way and

easements related to the site development and the construction of the Improvements at the time of final plat for the Project.

11. Performance Guarantee.

a. To secure the construction and installation of the Public Improvements, Developer shall furnish the Town, at Developer's expense and in accordance with the Silverthorne Town Code, cash or an irrevocable letter (or letters) of credit in which the Town is designated as beneficiary in an amount equal to 150% of the Estimated Costs (the "Performance Guarantee").

b. The Performance Guarantee shall be in a form approved by the Town in its sole discretion.

c. The purpose of the Estimated Costs is solely to determine the amount of security. No representations are made by the Town as to the accuracy of these estimates, and Developer agrees to pay all costs of the Public Improvements for which it is legally obligated, regardless of the Estimated Costs.

d. The Town reserves the right to review and adjust the Estimated Costs on an annual basis. Adjustments shall be made according to changes in the Construction Costs Index as published by the Engineering News Record. If the Town adjusts the Estimated Costs, the Town shall give written notice to Developer. Developer shall, within 30 days after receipt of said written notice, provide the Town with a new or amended Performance Guarantee in the amount of the adjusted Estimated Costs. If Developer fails to provide a new or amended Performance Guarantee, the Town may exercise the remedies provided for in Section 14 hereof; provided, however, that prior to increasing the amount of the Performance Guarantee, the Town shall give credit to Developer for all Public Improvements which have actually been completed, so that the amount of the Performance Guarantee relates to the cost of required Public Improvements not yet constructed.

e. If the Public Improvements are not constructed or completed within the period of time specified by Section 8 hereof, the Town may draw on the Performance Guarantee to complete the Public Improvements. If the Performance Guarantee is to expire within 14 days and Developer has not yet provided a satisfactory replacement, the Town may draw on the Performance Guarantee and either hold such funds as security for performance of this Agreement or spend such funds to finish the Public Improvements or correct problems with the Public Improvements as the Town deems appropriate.

f. Upon completion of construction and compliance with all conditions and requirements applicable thereto, as approved in writing by the Town, the Performance Guarantee shall be reduced to the amount of 20% of the total actual cost of construction and installation of the Public Improvements. The reduced Performance Guarantee shall be held by the Town during the 2-year warranty period.

12. Nuisance Conditions. Developer shall prevent the existence of any nuisances by way of its construction activities, as nuisances are defined by the Silverthorne Town Code. If the Town determines that a nuisance exists, Developer shall be subject to the provisions of the Silverthorne Town Code regarding the abatement of nuisances and the cost assessed

therefor. If the nuisance is not abated or an abatement plan is not submitted to the satisfaction of the Town, the Town may draw upon the Performance Guarantee to pay the cost of abating the nuisance. The Town may exercise this right in addition to, or in lieu of, the withholding of permits or certificates of occupancy. The decision to draw on the Performance Guarantee shall be within the sole discretion of the Town.

13. Indemnification.

a. Developer hereby agrees to indemnify, and hold harmless the Town, its officers, employees and agents from any and all suits, actions and claims of every nature and description caused by, arising from, or on account of, any act or omission of Developer, or of any other person or entity for whose act or omission Developer is liable, with respect to construction of the Public Improvements; and Developer shall pay any and all judgments rendered against the Town as the result of any suit, action or claim within the scope of the indemnification provision contained in the prior clause, together with all reasonable expenses and attorney fees incurred by the Town in defending any such suit, action or claim.

b. Developer shall pay all property taxes on the Property dedicated to the Town accrued as of the date of dedication and shall indemnify and hold harmless the Town for any property tax liability.

14. Breach.

a. If Developer breaches this Agreement, the Town may take such action as permitted or authorized by law, this Agreement or the ordinances of the Town, as the Town deems necessary to protect the public health, safety and welfare. The remedies include, but are not limited to:

- i. The refusal to issue any building permit or certificate of occupancy;
- ii. The revocation of any building permit previously issued under which construction directly related to such building permit has not commenced.
- iii. A demand that the security given for the completion of the Public Improvements be paid or honored; and
- iv. Any other remedy available at law or in equity.

b. Unless necessary to protect the immediate health, safety and welfare of the Town, or to protect the interest of the Town with regard to security given for the completion of the Public Improvements, the Town shall provide Developer 30 days' written notice of its intent to take any action under this Section, during which Developer may cure the breach and prevent further action by the Town.

c. The rights and remedies of the Town under this Agreement are in addition to any other rights and remedies provided by law. The expiration of this Agreement shall in no way limit the Town's legal or equitable remedies, or the period in which such remedies may be asserted, for work negligently or defectively performed.

d. Should this Agreement become the subject of litigation to resolve a claim of breach by Developer and a court of competent jurisdiction determines that Developer was in breach of this Agreement, Developer shall pay the attorney fees, expenses and court costs of the Town.

15. Waiver. In executing this Agreement, Developer waives all objections it may have concerning defects, if any, in the formalities whereby it is executed, or concerning the power of the Town to impose conditions on Developer as set forth herein, and concerning the procedure, substance and form of the resolution adopting this Agreement. Developer expressly agrees that the Town cannot be legally bound by the representations of any of its officers or agents or their designees, except in accordance with the Silverthorne Town Code and applicable law.

16. Modification. This Agreement shall not be modified except by subsequent written agreement of the Parties.

17. Integration. This Agreement and any attached exhibits constitute the entire agreement between Developer and the Town, superseding all prior oral or written communications.

18. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, successors and assigns.

19. Severability. If any provision of this Agreement is determined to be void by any court of competent jurisdiction, such determination shall not affect any other provision hereof, and all of the other provisions shall remain in full force and effect.

20. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning this Agreement shall be brought in Summit County, Colorado.

21. Assignment. There shall be no transfer or assignment of any of the rights or obligations of Developer under this Agreement without the prior written approval of the Town.

22. Recordation. This Agreement shall be recorded in the real estate records of Summit County and shall be a covenant running with the Property.

23. Title and Authority. Developer, expressly warrants and represents to the Town, that the undersigned individuals have full power and authority to enter into this Agreement. Developer understands that the Town is relying on such representations and warranties in entering into this Agreement.

24. Third Parties. There are no intended third-party beneficiaries to this Agreement.

25. Governmental Immunity. The Town and its officers, attorneys and employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the Town and its officers, attorneys or employees.

26. Rights and Remedies. The rights and remedies of the Town under this Agreement are in addition to any other rights and remedies provided by law. The expiration of this Agreement shall in no way limit the Town's legal or equitable remedies, or the period in which such remedies may be asserted, for work negligently or defectively performed.

27. Notice. Any notice under this Agreement shall be in writing and shall be deemed sufficient when directly presented or sent pre-paid, first class U.S. Mail to the party at the address set forth on the first page of this Agreement.

28. Real Estate Transfer Assessment. Per the Annexation Agreement, Owner agrees that the sale or other transfer of each residential unit shall be subject to a Real Estate Transfer Assessment of 1% of the purchase price, which shall be set forth in a Covenant for Real Estate Transfer Assessment. The Covenant for Real Estate Transfer Assessment shall be executed and recorded with the Summit County, Colorado, Clerk and Recorder prior to the Certificate of Occupancy of the first unit on the Property.

29. Force Majeure. If Owner's performance of the Improvements is unreasonably delayed, disrupted or interfered with by the presence of any reasonable perceived hazardous material, labor dispute, fire, unusual delay in delivery, adverse weather conditional not reasonably anticipated, any written or oral order, directive, interpretation or determination made by the Town, unavoidable casualties or any other causes reasonably beyond Owner's control, then the Owner's time shall be extended for such duration as provided elsewhere in this section upon Owner's timely submission or its request for an extension of time.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

TOWN OF SILVERTHORNE



Ann-Marie Sandquist, Mayor

ATTEST:



Michele Miller, Town Clerk

DEVELOPER

[Handwritten Signature]

STATE OF COLORADO)

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ss.

COUNTY OF SUMMIT)

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Acknowledged before me this 14 day of May, 2021, by Timothy Crane, of Angler Mountain Vistas LLC

WITNESS my hand and official seal.

MY COMMISSION EXPIRES: 7/16/2029

[Handwritten Signature]
Notary Public



**EXHIBIT A
LEGAL DESCRIPTION**

Angler Mountain Vistas Subdivision

EXHIBIT B
Infrastructure Cost Estimates

SUBDIVISION IMPROVEMENTS AGREEMENT EXHIBIT B

ANGLER MOUNTAIN VISTAS

Description of Work	Quantity	Unit of Measure	Price per Unit	Scheduled Value
<u>Sanitary Sewer Mains:</u>				
Manholes	10	Per Each	\$ 5,800.00	\$ 58,000.00
8" SDR 26 Sewer Main	1324	Linear Feet	\$ 96.00	\$ 127,104.00
			Sanitary Sewer Sub Total	\$ 185,104.00
<u>Water Main</u>				
12" DIP Class 52	2208	Linear Feet	\$ 114.00	\$ 251,712.00
Fire Hydrant Assembly (9.5' bury)	5	Per Each	\$ 13,500.00	\$ 67,500.00
12" Gate Valves	11	Per Each	\$ 3,200.00	\$ 35,200.00
			Water Main Sub Total	\$ 354,412.00
<u>Storm Sewer</u>				
Culverts	415	Linear Feet	\$ 81.00	\$ 33,615.00
Inlets	8	Each	\$ 4,000.00	\$ 32,000.00
			Earthwork Sub Total	\$ 65,615.00
<u>Road Improvements</u>				
Asphalt 4"	872	Ton	\$ 141.00	\$ 122,952.00
Road Base	2335	Ton	\$ 48.00	\$ 112,080.00
Concrete Pans and C+G	600	LF	\$ 37.00	\$ 22,200.00
			Road Sub Total	\$ 257,232.00
Landscape/Reveg	1	Lump Sum	\$ 35,000.00	\$ 35,000.00
			AM Vistas Total	\$ 897,363.00
			150%	\$ 1,346,044.50