

**IMPROVEMENTS AGREEMENT**  
**FOR**  
**MORE'S CORNER**

**THIS AGREEMENT** is entered into this 18<sup>th</sup> day of September 2002 between **MOUNTAIN MEADOW PRESERVE, LLC** (hereinafter referred to as "Developer") and the **CITY OF STEAMBOAT SPRINGS, COLORADO, A COLORADO MUNICIPAL CORPORATION** (hereinafter referred to as "City").

WHEREAS, Developer is the developer of the real property development known and described as **More's Corner**, formerly known as and approved under the name Mountain Meadow Preserve (Major Development Permit MD-99-25), located on Sky Harbor Subdivision Lots 2 and 3 in Steamboat Springs, Colorado; and

WHEREAS, the Community Development Code requires the execution of an Improvements Agreement between the City and Developer whereby Developer shall agree to construct certain improvements, the completion of which are guaranteed to the City; and

WHEREAS, the City and Developer have entered into this Agreement in consideration of the promises contained herein for the benefit of the public;

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Construction of Improvement. Developer agrees to enter into a contract with such person, firm, or corporation as is chosen by Developer, subject to approval by the City, to construct the required improvements described in Exhibit A which is attached to and incorporated in this Agreement, and to construct any and all improvements as shown or required pursuant to the development permit and the associated approved construction drawings to City or other governing agency standards. Both the plans and specifications are retained in the offices of the City Department of Public Works. Development permit plans and approved construction drawings are retained in the offices of the Department of Planning Services. Before any contracts are let for any of the construction, the City shall have the right to inspect and approve or disapprove such contracts.

2. Regulations and Specifications. The required improvements shall be designed and constructed in accordance with the City's regulations and specifications in effect as of the date of this Agreement, other applicable state or federal regulations, if any, the Final Plat of the subdivision, Development Permit Conditions of approval, and the approved Plans and Specifications retained by the Department of Public Works, all of which are hereby incorporated herein by reference and made a part of this Agreement. All Plans and Specifications shall have been submitted to and reviewed by the Director of Public Works prior to recording the final plat.



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site to observe and document the physical installation and construction and at the same time supervise the contractor. Engineering notes and documentation related to the performance of the work shall be submitted for review prior to preliminary acceptance by the City. To ensure inspection will be adequate, the developer or its designated representative shall submit to the city a proposal stipulating the name of the engineer and a scope of services which he is responsible for. This submittal shall be received by the City Director of Public Works seven (7) days prior to construction. Modifications to the level of engineering and inspection as proposed may be made at the discretion of the Director of Public Works.

4. Completion Date. The required improvements shall be completed and accepted no later than **November 1, 2003**, unless the City, in its sole discretion grants in writing an extension of this completion date to Developer. A written extension agreement shall be signed by the City Council President and Developer. No less than sixty (60) days prior to the above scheduled completion date, or any extension thereof, Developer shall notify the Director of Planning of the City in writing of the upcoming completion deadline and include a progress report which shall include a statement of whether Developer expects to complete the required improvements by the completion date. Developer's failure to provide this notice shall be grounds for the City to withdraw from the commitment guarantee in accordance with paragraph 12 below.

5. Estimated Cost. The cost of constructing the improvements is estimated to be **\$346,023.76**. This estimated construction cost includes the estimated present construction cost, plus a 25% contingency, which includes 10% for an estimated inflation factor determined by the City and calculated to the completion date, and a 15% retainage for guarantee of work for the subdivision improvements completed prior to recording the final plat. If change orders are required during the course of construction which increases the cost by more than five percent (5%) of the estimated cost or of any subsequently agreed amount which may result from increased costs of material or labor, the amount of the commitment guarantee shall be adjusted accordingly. The Developer shall notify the City in writing of any such change and supply the City with evidence of the adjusted commitment guarantee.

6. Commitment Guarantee. Developer's performance under this Agreement is guaranteed by **Insko Insurance Services, Inc. Performance Bond #681175S**. The commitment guarantee will be retained by the City until released or used as provided in this Agreement. Should the improvements not be completed and accepted by the City at least 30 days prior to the expiration of any commitment guarantee, the Developer agrees to the extension of said guarantee and designates the City his agent to request said extension. Developer shall pay all costs of guarantee extension. It is mutually understood and agreed that the City will pay no interest to Developer on the commitment guarantee.

7. Transfer of Title. Before commencing the construction of any of the required improvements, Developer shall acquire, at its own expense, good and sufficient title to all lands and facilities traversed by any required improvements in which the City is to have any ownership interest or maintenance responsibility pursuant to the Final Plat and



lands and facilities traversed by any required improvements in which the City is to have any ownership interest or maintenance responsibility pursuant to the Final Plat and approved subdivision plan. All such lands and facilities so required to be acquired shall be conveyed to the City and all necessary documents of conveyance shall be furnished to the City for recording with the Final Plat.

8. Release of Liability: Insurance. Except for improvements constructed by the City, Developer shall indemnify and save harmless the City from any and all suits, actions, or claims of every nature and description caused by, arising from, or on account of the construction process, and pay any and all judgments rendered against the City on account of any such suit, action, or claim, together with all reasonable expenses and attorney's fees incurred by the City in defending such suit, action or claim.

9. Insurance. Developer shall assure that all contractors and other employees engaged in the construction of the required improvements will maintain workmen's compensation insurance. Before proceeding with any construction of the required improvements, Developer shall provide the City Attorney with written evidence of Public Liability Insurance with limits not less than Five Hundred Thousand Dollars (\$500,000.00) bodily injury, One Hundred Thousand Dollars (\$100,000.00) property damage in coverage forms approved by the City Attorney and protecting the City against any and all claims for damages to persons or property resulting from construction and installation of any required improvements. The policy will provide that the City shall be notified at least thirty (30) days in advance of any reduction in coverage, termination or cancellation of the policies. Such notice shall be sent certified mail. Developer also warrants that any contractors engaged by or for Developer to construct the required improvements shall maintain Public Liability Insurance coverage in limits not less than those mentioned above.

10. Warranty. Developer hereby warrants that all required improvements will be installed in a good and workmanlike manner and in accordance with the provisions of Section 1 and 2 hereof.

11. Release of Commitment Guarantee. From time to time, as required improvements are completed, Developer may apply in writing to the Director of Planning Services and Director of Public Works for a partial release of the commitment guarantee. The application must show:

- (a) Dollar amount of commitment guarantee;
- (b) Work completed, including dollar value;
- (c) Work not completed, including dollar value;
- (d) Amount of previous releases; and
- (e) Amount of commitment guarantee requested released.

Upon receipt of the application, the City or its agent shall inspect the improvements both completed and those incomplete. If the City determines from the inspection that the improvements shown on the application as being completed have been completed as



provided herein, a portion of the commitment guarantee shall be released. The release shall be made in writing signed by the Director of Planning Services and approved by the Director of Public Works. The amount to be released shall be the total amount of the commitment guarantee less (i) fifteen percent (15%) of the original amount of the cost of completed improvements, and (ii) one hundred-twenty five percent (125%) of the projected costs of the improvements not completed. Notwithstanding the foregoing provisions, Developer shall not apply for a partial release of the commitment guarantee in the amount less than twenty percent (20%) of the total original amount, except for the last such release.

12. Failure to Comply with Specifications – Agreement Cancellation. If the required improvements are not constructed in accordance with the Plans and Specifications provided to and approved by the Director of Public Works pursuant to paragraph 2 above, the City shall notify the Developer of noncompliance setting forth in writing the reasons for noncompliance. Reasonable schedules for correction of noncompliance shall be established by mutual agreement of the parties. Should the City determine at any time that the guarantee on deposit is insufficient to complete construction of said improvements, the City may require developer to deposit additional funds which the City deems necessary to complete the public improvements. If the City determines the Developer will not construct any or all of the improvements in accordance with this Agreement, the City may cancel and annul this Agreement with respect to such improvements upon written notification to Developer and the commitment guarantor, and without the necessity of public hearing, withdraw from the commitment guarantee such funds as may be necessary, in the opinion of the City, to construct or complete said improvements in accordance with the agreed specifications.

13. Completion Procedures and Inspection. Upon completion of the improvements, or any logical separable portion thereof, Developer shall notify the Department of Planning Services and Department of Public Works in writing and request preliminary inspection of the completed improvements or part thereof. The City or its agent shall inspect said improvements and shall notify Developer in writing of non-acceptance or preliminary acceptance of the completed improvements. If the improvements are not acceptable, the reasons for non-acceptance shall be stated in writing and the City shall develop corrective measures with the assistance of Developer and at Developer's sole expense. Should the developer fail to take corrective measures required by the City, the City at its discretion may revoke preliminary acceptance of the public improvements.

The period of preliminary acceptance shall be two years for all improvements or until final inspection may occur. Inspection shall only occur in the months of June through October. All periods of preliminary acceptance shall run from the date of written notification of preliminary acceptance. During the period of preliminary acceptance, Developer shall, at its own expense, make all needed repairs or replacements due to defective materials or workmanship and be responsible for all maintenance of said improvements. For publicly accepted streets and infrastructure, it is specifically understood that Developer will be responsible for road maintenance or care, except for



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snow removal or street cleaning, until the same is finally accepted. In the event of default or any of these obligations by Developer, the City, without notice to Developer, may do the same at the sole expense of Developer and withdraw from the commitment guarantee to pay for such expenses.

Upon preliminary acceptance by the City of all improvements, the security may be reduced pro rata in accordance with the provisions of paragraph 11 above to fifteen percent (15%) of the amount estimated for said improvements. Said fifteen percent retention shall be for the purpose of insuring the correction of the improvements due to deficiencies in workmanship and/or material during the ensuing one-year period by Developer. As-built engineering drawings shall be submitted for all utility and roadway installments and prior to request for, or issuance of, preliminary acceptance. Nothing herein shall be construed to require the City to make inspections during periods when climatic conditions make thorough inspection unfeasible.

14. Final Acceptance and Maintenance for Public Improvements. Following the period of preliminary acceptance for the improvements, the City or its agent shall inspect said improvements for final acceptance upon written request by the owner. Inspection shall only occur in the months of June through October, except that landscaping shall be inspected only in the month of July and at least three (3) months after preliminary acceptance. The City shall notify Developer in writing of non-acceptance or final acceptance. If the improvements are not acceptable, the reasons for non-acceptance shall be stated in writing and corrective measures shall be developed by the City, with the assistance of Developer and at Developer's sole expense.

If the City infrastructure improvements are found to be acceptable, the City, following a Resolution of Acceptance of improvements by the City Council, shall release the remaining retained balance of the commitment guarantee for such accepted improvements and shall, as of the date of such Resolution, assume such maintenance responsibility for the public improvements as would normally accrue to the City according to the Steamboat Springs Municipal Code.

15. Recording Agreement. Developer shall record this Agreement with the Clerk and Recorder of Routt County, Colorado concurrently with the approved final plat. However, this Agreement shall be submitted to the Director of Planning Services for final review immediately prior to recording.

16. Enforcement. If the City determines that there is a violation of present State Laws, City ordinances, Planning Commission regulations and requirements, and/or the terms and provisions of this Agreement, the City Manager may issue a cease and desist order. Thereafter, Developer acknowledges irreparable harm and injury to the City for purposes of an application by it to the Courts for a restraining order hereunder. Should the City deem the collateral on deposit insufficient to guarantee completion of required improvements, the City may require developer or successors to post additional collateral to guarantee completion of improvements. The City has the right to pursue and remedy provided by law and, if the City obtains any such remedy, attorney's fees and costs. As



an alternative to the remedies provided by this paragraph and paragraph 12, the City has the right to withdraw its approval of the Developer's real property development in accordance with the procedures set forth in the Steamboat Springs Municipal Code; provided, however, that the City need not determine that false or inaccurate information was provided upon which the approval was based.

17. Miscellaneous. This Agreement runs with the land, and is binding on and inures to the benefit of the heirs, representatives, transferees, successors and assigns of the parties. The paragraph headings are descriptive only and neither amplifies nor limits the substantive material. The failure to enforce or the waiver of any specific requirements of this Agreement by either party shall not be construed as a general waiver of the Agreement of any provision herein, nor shall such action act to stop either party from subsequently enforcing this Agreement according to the terms hereof. This Agreement shall be subject to and deemed to incorporate all present and future ordinances of the City applicable thereto. Should any section, paragraph, clause or provision of this Agreement be declared by a court of competent jurisdiction to be invalid, said decisions shall not affect the validity of this Agreement as a whole or any part hereof other than the part declared to be invalid, and the parties hereby affirm that they would have entered into this Agreement and each of its provisions independently of each of its other provisions. Neither party shall assign its rights and obligations hereunder without the written consent of the other party.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives and made effective on the day and time first above written.

CITY OF STEAMBOAT SPRINGS

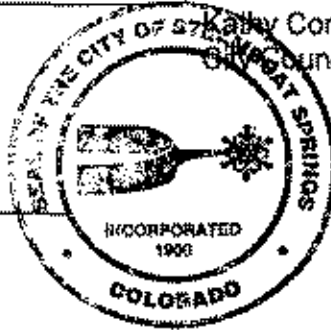
BY:

*[Handwritten Signature]*

Kathy Connell  
City Council President

ATTEST:

*[Handwritten Signature]*  
Julie Jordan, City Clerk



STATE OF COLORADO    )  
  SS  
COUNTY OF ROUTT     )

Subscribed, sworn to and acknowledged before me this 23 day of September, 2002, by Kathy Connell, as City Council President of City of Steamboat Springs City Council and Julie Jordan, as City Clerk of the City of Steamboat Springs.

WITNESS my hand and official seal.



*[Handwritten Signature]*  
Notary Public  
My Commission Expires: 2-1-03



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MOUNTAIN MEADOW PRESERVE,  
LLC

By: *Bruce Shugart*  
Bruce Shugart, Manager

STATE OF COLORADO )  
  ) SS  
COUNTY OF ROUTT     )

Subscribed, sworn to and acknowledged before me this 18<sup>th</sup> day of September  
2002 by Bruce Shugart as Manager of Mountain Meadow Preserve, LLC.

WITNESS my hand and official seal.



*Paula Hays*  
Notary Public  
My Commission Expires: 5/16/03

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**EXHIBIT A  
TO THE  
IMPROVEMENTS AGREEMENT FOR  
MORE'S CORNER**


This Exhibit A constitutes a summary of the required improvements for the real property development known and described as Mountain Meadow Preserve located in the City of Steamboat Springs, Colorado, which are to be constructed in accordance with the Subdivision Improvements Agreement to which this Exhibit is attached. This Exhibit A also constitutes a certification that true and correct copies of the Plans and Specifications for the required improvements have been submitted to the Department of Public Works of the City of Steamboat Springs for retention in accordance with the Subdivision Improvements Agreement. The submitted Plans and Specifications have been signed and dated by the developer or an authorized representative of the developer. The required improvements for this development are summarized as follows:

<b>ITEM: (The following are City Required surety items)</b>	<b>COSTS:</b>
Road and Site Construction.	\$177,144.80
Sewer Collection System.	\$1,500.00
Water Distribution System	\$2,915.00
Dry Utilities	\$33,368.10
Drainage and Erosion Control	\$9,324.00
Landscaping	\$2,500.00
Wetland Mitigation (per permit)	\$3,500.00
Surveyed Water and Sewer As-built drawings (draft approval pending)	\$4,500.00
Subtotal:	\$234,751.90
25% of Outstanding Tasks	\$58,687.98
Subtotal:	\$293,439.88
Total Water and Sewer Construction Contract (\$162,102.50 Sewer \$188,456.70)	\$350,559.20
15% of Total Water and Sewer Retainage	\$52,583.88
<b>TOTAL COMMITMENT GUARANTEE</b>	<b>\$346,023.76</b>

25% Contingency may be used for correction of a defect of any improvement described in Paragraph 1 of this agreement, which is not specifically listed in Exhibit A.

We the undersigned certify that this Exhibit constitutes a complete and accurate list of improvements yet to be completed, along with accurate cost estimates based upon industry standards and adjusted for local conditions.

Signed

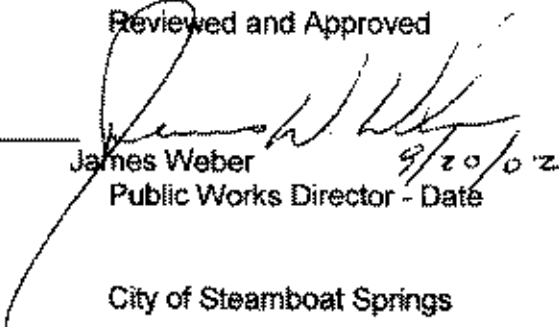
  
Developer / Manager  
Name: Bruce Shugart

Reviewed and Approved

  
Wendie Schulenburg  
Director of Planning Services - Date

City of Steamboat Springs

Reviewed and Approved

  
James Weber  
Public Works Director - Date

City of Steamboat Springs



EXHIBIT B

LEGAL DESCRIPTION

*MORE'S CORNER*

~~Mountain Meadow Preserve~~

A replat of Blocks 2 and 3, Sky Harbor Subdivision  
Located in the SE1/4 of Section 21, T6N, R84W,  
of the 6<sup>th</sup> P.M.,  
City of Steamboat Springs, Routt County, Colorado



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EXHIBIT <sup>W 4</sup>



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Civil Engineering  
 Surveying Services  
 Land Development  
 Construction Management

**ENGINEER'S ESTIMATE**

PROJECT: Mountain Meadow Preserve

JOB NO: 1002-001

SCOPE: Construction of Roads and Utilities

DATE: September 14, 2002

ITEM NO.	DESCRIPTION	EST. QTY	UNIT	UNIT PRICE	TOTALS
<b>GENERAL</b>					
1	Contribution to Traffic Signalization at Mt. Werner and Steamboat Boulevard	1	LS	\$12,500.00	Paid
2	Contribution to Two (2) Bus Stops per Req'mnt.	1	LS	\$10,000.00	Paid
3	Installation of Bus Stops	1	LS	\$3,000.00	Paid
<b>Total General</b>					<b>\$0.00</b>
<b>ROAD AND SITE CONSTRUCTION</b>					
4	Shouldering	223	TN	\$20.00	\$4,460.00
5	Asphalt Pavement - 2" Top Mat	883.5	TN	\$62.00	\$54,777.00
6	Revegetation	2.34	AC	\$3,500.00	\$8,190.00
7	6' Wide Concrete Path	4473	LF	\$18.60	\$83,187.00
8	Base, Class 6 - 4" for Concrete Path	906	TN	\$20.00	\$18,120.00
9	Mailbox Cluster Installation	1	LS	\$8,400.00	\$8,400.00
<b>Total Roadway Construction</b>					<b>\$177,144.00</b>
<b>WETLAND MITIGATION</b>					
10	Wetland Mitigation per Permit (per others)	1	LS	\$3,500.00	\$3,500.00
<b>Total Wetland Mitigation</b>					<b>\$3,500.00</b>
<b>LANDSCAPING</b>					
11	Landscaping per Approved Plan (per others)	1	LS	\$2,500.00	\$2,500.00
<b>Total Wetland Mitigation</b>					<b>\$2,500.00</b>
<b>DRAINAGE AND EROSION CONTROL SYSTEM</b>					
12	Culvert Pipe, CMP - 42" dia	13	LF	\$16.00	\$208.00
13	Culvert Pipe, CMP - 30" dia	21.5	LF	\$16.00	\$344.00
14	Culvert Pipe, CMP - 18" dia	41	LF	\$12.00	\$492.00
15	Culvert Pipe, HDPE - 12" dia	220	LF	\$9.00	\$1,980.00
16	End Section, CMP - 42" dia	1	EA	\$300.00	\$300.00
17	End Section, CMP - 30" dia	1	EA	\$300.00	\$300.00
18	End Section, CMP - 18" dia	3	EA	\$150.00	\$450.00
19	End Section, CMP - 12" dia	20	EA	\$125.00	\$2,500.00
20	Rip Rap	25	CY	\$50.00	\$1,250.00
21	Concrete Headwalls	2	EA	\$750.00	\$1,500.00
<b>Total - Drainage Construction</b>					<b>\$9,324.00</b>
<b>SEWER COLLECTION SYSTEM</b>					
22	Replace elbow, test and backfill w/ pave patch	1	EA	\$1,500.00	\$1,500.00
<b>TOTAL - Sewer Construction</b>					<b>\$1,500.00</b>

ITEM NO.	DESCRIPTION	EST. QTY	UNIT	UNIT PRICE	TOTALS
<b>WATER DISTRIBUTION SYSTEM</b>					
23	Upgrade Existing Fire Hydrant at SW Corner	1	EA	\$2,915.00	\$2,915.00
<b>Total - Water Construction</b>					<b>\$2,915.00</b>
<b>DRY UTILITIES</b>					
24	Electric - Yampa Valley Electric Association	1	LS	\$33,368.10	\$33,368.10
25	Cable TV - AT&T Broadband	1	LS	\$0.00	\$0.00
26	Telephone - Qwest	1	LS	\$0.00	\$0.00
27	Natural Gas - Greeley Gas	1	LS	\$12,619.00	<i>Paid</i>
<b>Total - Dry Utilities</b>					<b>\$33,368.10</b>
<b>Surveyed Utility As-Builts</b>					
28	Draft Sewer and Water As-built Plans (approval pending)	1	LS	\$4,500.00	\$4,500.00
<b>Total - Surveyed Utility As-Builts</b>					<b>\$4,500.00</b>
29	<b>Sub-Totals of Outstanding Tasks/Items</b>				<b>\$234,751.90</b>
30	<b>Contingency (25%)</b>				<b>\$58,687.98</b>
31	<b>Total Sanitary Sewer Contract</b>				<b>\$162,102.50</b>
32	<b>Total Potable Water Contract</b>				<b>\$168,456.70</b>
33	<b>15% of Water and Sewer Contract Retainage</b>				<b>\$82,583.88</b>
<b>Total Commitment Guarantee</b>					<b>\$346,023.76</b>

Please be advised that our observations were based upon the approved civil construction drawings and our experience with the project. By stating that other items appeared complete does not provide a guarantee or warranty, expressed or implied, that the work was completed according to specifications.

If you have any questions or comments, please do not hesitate to contact us.

Sincerely,

Erik Green



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