

**IMPROVEMENTS AGREEMENT**

**FOR**

**Bear Claw Estates**

**Replat of Lot 11, Block 2, Ski Trail Subdivision, Filing 3, AKA Bear Claw II Common Area**

This agreement is entered into this 21 day of April, 2020 between Bear Claw II Condominium Association (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 **Bear Claw Estates**, REPLAT OF LOT 11, BLOCK 2, SKI TRAIL SUBDIVISION, FILING 3 AKA BEAR CLAW II COMMON AREA, 2420 SKI TRAIL LANE, located in Steamboat Springs, Colorado;

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 WATER SERVICE, SANITARY SEWER SERVICE, STORM SEWER AND OTHER GENERAL IMPROVEMENTS as described in Exhibit A, attached to and incorporated in this Agreement. Developer agrees to construct any and all improvements shown or required in the development permit to City or other applicable governing agency standards. Before any contracts are let for any of the construction, the City shall have the right to inspect and approve or disapprove such contracts. The City's approvals pursuant to this Section 1 shall not be unreasonably withheld.

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, the original Final Plat of the subdivision, the most current Final Plat of the subdivision, any development permit conditions of approval, and any Civil Construction Plans approved by the City, all of which are hereby incorporated herein by reference and made a part of this Agreement. Any phasing of improvements shall occur as identified on the approved civil construction plans.

3. Improvement Design and Construction Observation Civil Construction Plans and specifications shall be designed by or under the supervision of a professional engineer appropriately licensed in the State of Colorado. Work shall be surveyed and staked by or under the supervision of a professional surveyor licensed in the State of Colorado. The Developer or its designated representative agrees to contract with the engineer to observe and document materials installation and construction in the field, and at the same time supervise the contractor. The engineer will conduct testing, inspections, and make observations as necessary to provide the City documentation stamped by a professional engineer certifying that the site work and any public improvements and any private improvements have been completed in substantial conformance

with the approved plans and specifications. If required by the Public Works Director, the Developer shall submit to the City a proposal identifying the name of the engineer and a scope of services for which the engineer is responsible, including, at a minimum, inspection services required to support the certification. This scope shall be provided a minimum of 14 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 April 21, 2022 - TWO YEARS FROM EXECUTION, unless the City, in its sole discretion grants in writing an extension of this completion date to Developer. No less than 60 days prior to the above scheduled completion date, or any extension thereof, Developer shall notify the Director of Planning 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 13. Any improvements identified in the development approval as critical improvements must be completed prior to approval of the first Certificate of Occupancy.

5. Estimated Cost The cost of constructing the improvements is estimated to be \$58,845.50 as listed on Exhibit A. The original and any revised cost estimates shall include the following additional contingencies for guarantee of work: 115% of incomplete public and private improvements and 15% of public improvements completed with preliminary acceptance. If change orders are required during the course of construction which increases the cost by more than 10% 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 Check. 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/her 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 original Final Plat and approved subdivision plan and proposed final plat. 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 for this project.

8. Release of Liability Insurance Except for improvements constructed by the City, Developer shall indemnify and hold 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 \$500,000.00 bodily injury, \$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 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. Completion Procedures, Inspection, and Acceptance The procedures and requirements for preliminary and final acceptance of public improvements shall be as outlined in Section 740 of the Community Development Code with the additions listed below. The procedures and requirements for approval of secured private improvements shall be as outlined in Section 741 of the Community Development Code with the additions listed below.

Upon completion of public and secured private improvements, or any logical separable portion thereof, Developer shall notify the Department of Planning and Community Development and Department of Public Works in writing to request preliminary inspection of the completed improvements. The request shall include a certification by the professional engineer indicating that completed public and secured private improvements have been constructed in substantial conformance with the approved plans. As-built engineering drawings stamped by a professional engineer shall be submitted with a request for preliminary acceptance for all utility construction. As-builts are also required for roadway construction unless waived by the Public Works Director. The City or its agent shall inspect the improvements and notify the Developer if the completed improvements are accepted or approved. City acceptance inspections for public improvements shall only occur June through October. City approval inspections for secured private improvements may be conducted throughout the year as long as weather conditions permit full observation of construction.

For secured private improvements, approval shall be considered granted if the City releases the commitment guarantee per Paragraph 12.

For public improvements, the City will notify the Developer in writing of non-acceptance or preliminary acceptance. If the improvements are not accepted, the additional work required to achieve preliminary acceptance shall be listed. The Developer shall complete the additional work at his expense and reapply for preliminary acceptance. Should the Developer fail to complete the work required by the City, the City at its discretion, may utilize the commitment guarantee to complete the work. If the Developer fails to maintain or repair the improvements per the CDC requirements once preliminary acceptance is granted, the City, without notice to Developer, may

do the work at the sole expense of Developer and withdraw from the commitment guarantee to pay for such expenses.

12. Release of Commitment Guarantee As required improvements are completed, the Developer may request that collateral be released in increments of not less than 20% of the original amount held, except for the last such release. Requests for release shall be made in writing to the Director of Planning and Community Development and Director of Public Works, and shall include:

- a. Work description and cost estimate of original commitment guarantee;
- b. Updated work description and cost estimate of completed items;
- c. Updated work description and cost estimate of incomplete items;
- d. Summary of previous releases;
- e. Amount of commitment guarantee requested released; and
- f. Letter of certification by a professional engineer that work identified as complete has been constructed in substantial conformance with the approved plans.

The cost estimate updates shall include any contingencies per Paragraph 5. The 15% contingency guarantee for public improvements with preliminary acceptance shall not be released until the warranty period expires or final acceptance is granted.

Upon receipt of the release request, the City or its agent shall inspect the improvements. After inspection, if the City accepts the engineer's certification and the release request, the corresponding portion of the commitment guarantee shall be released. The release shall be made in writing signed by the Director of Planning and Community Development and approved by the Director of Public Works. The amount to be released shall be the total amount of the commitment guarantee less (i) 15% of the original amount of the cost of completed improvements with preliminary acceptance, (ii) 115% of public improvements not yet completed, and (iii) 115% of secured private improvements not yet approved.

13. Failure to Comply with Specifications -- Agreement Cancellation If the required improvements are not constructed in accordance with the Civil Construction Plans approved by the City pursuant to Paragraph 2, 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 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.

14. Recording Agreement This Agreement shall be signed by the Developer and submitted to the Director of Planning and Community Development for City signatures prior to the recording of the Final Plat. The Developer will record the approved agreement with the Clerk and Recorder of Routt County, Colorado concurrently with the Final Plat.

15. Enforcement If the City determines that there is a violation of State Laws, City ordinances, Community Development Code regulations and requirements, development permit conditions of approval, original or proposed Subdivision approval, 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 13, 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.

16. 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 amplify nor limit 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.


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.

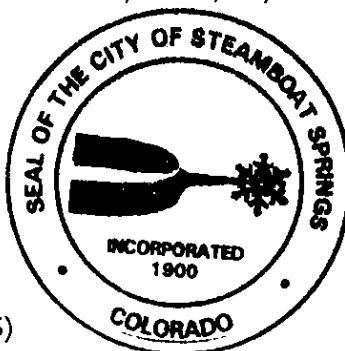
CITY OF STEAMBOAT SPRINGS

BY:

  
Gary Suiter, City Manager

ATTEST:

  
Julie Franklin, City Clerk



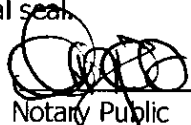
STATE OF COLORADO )

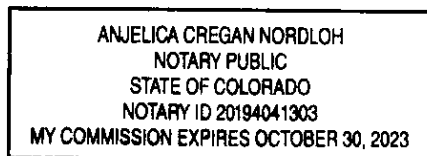
SS)

COUNTY OF ROUTT )

Subscribed, sworn to and acknowledged before me this 21 day of April, 2020, by Gary Suiter, as City Manager of the City of Steamboat Springs and Julie Franklin, as City Clerk of the City of Steamboat Springs.

WITNESS my hand and official seal.

  
Notary Public



My Commission Expires: 10.30.2023

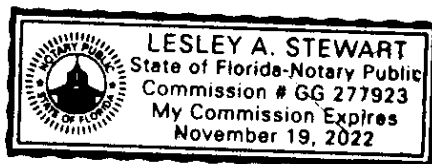
Bear Claw II Condominium Association  
Roger Hansen, President


  
Roger Hansen, President

STATE OF ~~COLORADO~~ )  
          Florida            ) ss  
COUNTY OF ~~ROUTT~~ )  
          Marion

Subscribed, sworn to and acknowledged before me this 13 day of April, 2020,  
by Roger Hansen as President of and on behalf of Bear Claw II Condominium Association, a  
Colorado Non- Profit Corporation.

WITNESS my hand and official seal.



  
Notary Public

My Commission Expires: 11/19/22

EXHIBIT A  
TO THE  
IMPROVEMENTS AGREEMENT FOR  
Bear Claw Estates, Replat of Lot 11, Block 2, Ski Trail Subdivision, Filing 3,  
AKA Bear Claw II Common Area

This Exhibit A constitutes a summary of the costs for improvements requiring surety at the real property development known and described as Bear Claw Estates, Replat of Lot 11, Block 2, Ski Trail Subdivision, Filing 3, AKA BEAR CLAW II COMMON AREA, 2420 SKI TRAIL LANE, located in the City of Steamboat Springs, Colorado, that 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 Civil Construction Plans for the required improvements have been approved by the Department of Public Works of the City of Steamboat Springs. The improvements to be guaranteed with surety for this development are listed in detail on the engineer's estimate approved by the Public Works department and summarized in the attached estimate provided by Landmark Consultants Inc. dated February 4, 2020.

<b>Site Work</b>	<b>Cost</b>
General	\$9,775.00
Water Service	\$12,937.50
Sanitary Sewer Service	\$10,925.00
Storm Sewer	\$25,208.00
<b>Total Commitment Guarantee</b>	<b>\$58,845.50</b>


15% Contingency may be used for correction of a defect of any improvement described in Paragraphs 1 and 2 of this agreement that 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.

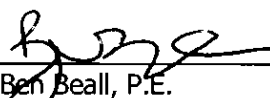
By:   
Roger Hansen, Bear Claw II Condominium Association.

4/13/20  
Date

Reviewed and Approved

 4.18.2020  
Rebecca D. Bessey, AICP Date  
Director of Planning & Community Development  
City of Steamboat Springs

Reviewed and Approved

 4/16/20  
Ben Beall, P.E. Date  
City Engineer  
City of Steamboat Springs



## Bear Claw Estates



February 4, 2020

Landmark Job No. 2199-002

Ms. Toby Stauffer  
City of Steamboat Springs Planning Department  
PO Box 775088  
Steamboat Springs, CO 80477

**RE: Bear Claw Estates  
Steamboat Springs, Colorado  
Surety Calculation/Status of Improvements**

Dear Toby,

The purpose of this letter is to provide the City of Steamboat Springs (City) Planning with information regarding the status of the improvements associated with the development of the Bear Claw Estates, formerly known as "Bear Claw II Duplexes" (the Project) for the administration of the related "Improvements Agreement". The statements in this letter are based on our familiarity of the site, the approved construction drawings prepared by Landmark Consultants, Inc. (Landmark) and our understanding of current, local construction cost data.

No work has commenced on improvements related to this phase of the project. The included Engineer's Cost Opinion reflects the anticipated work necessary to construct the subdivision improvements.

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

Sincerely,  
Landmark Consultants, Inc.

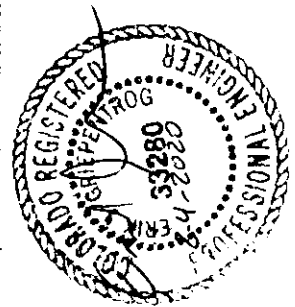


Erik Griepentrog, P.E.

Attachments: Engineer's Opinion of Probable Cost

Engineer's Opinion of Probable Construction Cost									
Project: Bear Claw Estates		Prepared By:		Landmark Consultants, Inc		Revision No.		Date	
Project No: 2199-002		Tim Brodman				1		2/4/2020	
Date: February 4, 2020		Erik Griepentrog						Prepared By:	
								TB	
Item No	Improvement Description	Unit	Original Estimate <sup>(a)</sup>			Status		Factor <sup>(b)</sup>	Total
			Estimated Quantity	Estimated Unit Price	Subtotal Cost	Quantity Remaining This period	Pro-Rated Cost	Insert 1.15 or .15 based on approval status	
<b>General</b>									
1	Construction Sedimentation and Erosion Control	LS	1	\$3,000.00	\$ 3,000.00	1	\$3,000.00	1.15	\$ 3,450.00
2	Surveying, Materials Testing, and Construction Observation	LS	1	\$5,500.00	\$ 5,500.00	1	\$5,500.00	1.15	\$ 6,325.00
<b>Water Service</b>									
3	1 1/2" Service Tap	LS	1	\$1,500.00	\$ 1,500.00	1	\$1,500.00	1.15	\$ 1,725.00
4	1 1/2" Type K Copper	LF	110	\$75.00	\$ 8,250.00	110	\$75.00	1.15	\$ 9,487.50
5	1 1/2" Curb Stop	EA	1	\$500.00	\$ 500.00	1	\$500.00	1.15	\$ 575.00
6	Reveg Disturbed Trench Area	SF	500	\$2.00	\$ 1,000.00	500	\$2.00	1.15	\$ 1,150.00
<b>Sanitary Sewer Service</b>									
7	Sewer Cleanout & Cover	EA	3	\$500.00	\$ 1,500.00	3	\$500.00	1.15	\$ 1,725.00
8	4" SDR35 PVC Sewer Pipe	LF	99	\$50.00	\$ 4,950.00	99	\$50.00	1.15	\$ 5,692.50
9	4"x8" Saddle Tap	EA	1	\$1,100.00	\$ 1,100.00	1	\$1,100.00	1.15	\$ 1,265.00
11	4" SDR35 Sanitary Sewer Fittings	EA	3	\$350.00	\$ 1,050.00	3	\$350.00	1.15	\$ 1,207.50
12	Reveg Disturbed Trench Area	SF	450	\$2.00	\$ 900.00	450	\$2.00	1.15	\$ 1,035.00
<b>Storm Sewer</b>									
13	24" Nyloplast Drain Basin	EA	4	\$2,000.00	\$ 8,000.00	4	\$2,000.00	1.15	\$ 9,200.00
14	24" HDPE Drain Pipe	LF	92	\$110.00	\$ 10,120.00	92	\$110.00	1.15	\$ 11,638.00
15	4" PVC Drain Pipe	LF	10	\$50.00	\$ 500.00	10	\$50.00	1.15	\$ 575.00
16	Core and Fit Pipe to Ex RCP	EA	2	\$1,000.00	\$ 2,000.00	2	\$1,000.00	1.15	\$ 2,300.00
17	Reveg Disturbed Trench Area	SF	650	\$2.00	\$ 1,300.00	650	\$2.00	1.15	\$ 1,495.00

Notes  
a) Cost Estimate Based on recent costs for similar projects. Actual costs may vary.  
b) Contingency Factor for improvements = 1.15 if incomplete or 0.15 if preliminary acceptance for public improvements has been granted.



This Opinion of Probable Construction Cost represents Landmark Consultants' best judgment as the engineer familiar with the construction industry. However, Landmark Consultants has no control over the cost or availability of labor, equipment or materials, or over market conditions or the Contractor's method of pricing. Therefore, Landmark Consultants cannot and does not guarantee that proposals, bids, or the construction cost will not vary significantly from the Opinion of Probable Cost. All costs in current-day dollars.