

APPENDIX J

PUBLIC IMPROVEMENTS COMPLETION AGREEMENT FOR

THIS PUBLIC IMPROVEMENTS COMPLETION AGREEMENT is entered into this ____ day of _____, 20__, by and between _____ whose address is _____ (hereinafter referred to as "Developer") and the MOUNT WERNER WATER & SANITATION DISTRICT, a water and sanitation district created under the laws of the State of Colorado (hereinafter referred to as "District").

WHEREAS, Developer is the owner of the real property more particularly described on Exhibit "A" attached hereto and by this reference made a part hereof, located within the boundary of the District (the "Property"); and

WHEREAS, Developer has requested that the District serve the Property with municipal water and sewer services; and

WHEREAS, the District has conditionally agreed to provide such water and sewer service to the Property provided that the Developer (i) construct certain water and/or sewer main lines to and into the Property as described generally on Exhibit "B" hereto, and (ii) comply with the conditions listed in any separate commitment letter from the District to the Developer (such main lines construction and the conditions set forth in a separate commitment letter, if any, are together referred to as the "Services Commitment"); and

WHEREAS, Article 7 of the Rules and Regulations of the District provide that the Board of Directors of the District may require that the Developer execute and enter into a Public Improvements Completion Agreement between the District and Developer whereby Developer agrees to construct the water and/or sewer main lines to and within the Property as specified on Exhibit "B" hereto, and provide to the District security for the full and faithful performance of such Agreement; and

WHEREAS, the District and Developer have entered into this Public Improvements Completion Agreement (the "Agreement") in consideration of the promises contained herein for the benefit of the public;

NOW, THEREFORE, in consideration of the recitals set forth above and the terms and provisions of this Agreement, the Developer and District agree, and Developer declares the Property, and all portions of it, is, and shall be, held, transferred, sold, and conveyed subject to the provisions of this Agreement, 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 District, to construct the required improvements described in Exhibit "B" which is attached to and incorporated in this Agreement, to District standards and specifications ("Required Improvements"). Before any contracts are let for any of the construction, the District shall have the right to inspect and approve or disapprove such contracts. The water and sewer main line improvements shall be deemed to be trunk or main line improvements of the District after completion and final acceptance thereof by the District. Developer shall be separately responsible for construction and maintenance of any water and sewer service lines from within the Property and from the Property boundary to such main lines, except that any service line which the District Manager determines will likely become a District main line in the future may be described on and incorporated within the Exhibit "B" requirements.

2. Regulations and Specifications. The Required Improvements shall be designed and constructed in accordance with the District's design standards and specifications and District Rules and Regulations in effect as of the date of this Agreement, other applicable state or federal regulations, if any, and the Services Commitment, all of which are hereby incorporated herein by reference and made a part of this Agreement. The final plans and specifications, in conformance with the preceding sentence, for the Required Improvements shall be submitted to the

District Manager for review and approval (the "Plans and Specifications"). All Plans and Specifications shall be submitted to, reviewed, and approved by the District Manager prior to commencement of construction of the Required Improvements. The District may require the Developer to reimburse the District for the District's cost and expense for any independent engineering review of the Plans and Specifications of Developer. The Plans and Specifications will be retained in the offices of the District.

3. Infrastructure Installation/Construction: The water and sewer service main line improvements to be constructed by Developer shall be designed, surveyed and staked by a professional engineering firm and surveyor. The Developer shall provide a professional engineer registered in the State of Colorado on site to observe and document the physical installation and construction and at the same time supervise the contractor (the "Engineer of Record"). Engineering notes and documentation related to the performance of the work shall be submitted for review by the District Manager prior to preliminary acceptance by the District. To ensure that inspections will be adequate, the Developer shall submit to the District at least 7 days prior to commencement of construction a proposal setting forth the name, address, and contact information of the Engineer of Record and a scope of services for which such Engineer of Record is responsible. The District Manager may require modification of such proposal in such Manager's discretion.

4. Completion Date. The Required Improvements shall be completed and preliminarily accepted by the District no later than _____, 20____ (the "Completion Deadline"), unless the District, in its sole discretion grants in writing an extension of this completion date to Developer. A written extension agreement shall be signed by the District Manager and Developer. No less than thirty (30) days prior to the above scheduled completion date, or any extension thereof, Developer shall notify the District Manager 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 District 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 \$_____ as detailed in Exhibit B. This estimated construction cost includes the estimated present construction cost ("Initial Construction Cost"), plus a 25% contingency factor. If change orders are required during the course of construction which increases the Initial Construction Cost or any subsequently agreed adjustment thereof by more than ten percent (10%), as a result of increased costs of material or labor or mutually agreed changes to the Plans and Specifications, then Developer shall obtain at its cost and deliver to the District a replacement Commitment Guarantee in the amount of 125% of the increased amount. The Developer shall notify the District Manager in writing of any such change and supply the District with such replacement promptly after becoming aware of such change.

6. Commitment Guarantee. Developer's performance under this Agreement is guaranteed by an irrevocable Letter of Credit issued by _____ (the "Letter of Credit" or "Commitment Guarantee"). The issuer of the Letter of Credit must be a national or Colorado banking institution regulated by the OCC and doing business in Routt County, Colorado. The maturity date of the Letter of Credit is no sooner than thirty (30) days after the Completion Deadline. The Letter of Credit will be retained by the District until released or used as provided in this Agreement. The District may irrevocably waive the right to withdraw a percentage of such Letter of Credit upon satisfactory completion of the Required Improvements in the manner set forth in Paragraph 14 below. Should the Required Improvements not be completed and preliminarily accepted by the District at least 30 days prior to the expiration of the Letter of Credit, then the Developer shall be deemed to be in default of this Agreement and the District may withdraw from the Letter of Credit up to the full amount thereof in order to complete all Required Improvements, unless prior to such deadline the Developer has obtained and delivered to the District an extension of said Letter of Credit issued by the original issuer thereof or a replacement Letter of Credit issued by a qualified bank acceptable to the District Manager. Developer shall pay all costs of extending or replacing Letters of Credit. Should the District reasonably determine at any time that the Commitment Guarantee on deposit is insufficient to complete construction of the Required Improvements, the District may require Developer to replace the Letter of Credit with a higher amount Letter of Credit or deposit additional funds with the District, such increase to be in the amount which the District reasonably believes necessary to complete the Required Improvements by the Completion Deadline.

7. Easements for Main Lines. Before commencing the construction of any of the Required Improvements, Developer shall acquire, at its own expense, good and sufficient title to all lands, easements, and facilities traversed by any Required Improvements in which the District is to have any ownership interest or maintenance responsibility pursuant to the Services Commitment. All main lines constructed as part of the Required Improvements shall be located within public rights-of-way or within perpetual and unencumbered easements dedicated on plats or by separate instruments from the Developer to the District, using such form as is approved by the District's attorney or District Manager. If requested by the District Manager, Developer shall at its cost provide a title insurance commitment and policy to the District to assure the District of good title to any or all of such easements. All easements shall be conveyed or dedicated to the District on or before the date of request by the Developer to the District for preliminary acceptance by the District of such Required Improvements. As a condition to and before final acceptance by the District, the Developer shall convey by bill of sale to the District the installed main lines and appurtenances.

8. Release of Liability. Except for improvements constructed by the District, Developer shall indemnify and save harmless the District, its employees, agents and Board of Directors, from any and all suits, actions, or claims of every nature and description caused by, arising from, or on account of the construction of the Required Improvements, and pay any and all judgments rendered against the District, its employees, agents and Board of Directors on account of any such suit, action, or claim, together with all reasonable expenses and attorney's fees incurred by any of them 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 District Manager with written evidence of Public Liability Insurance with single incident and aggregate limits not less than One Million Dollars (\$1,000,000.00) for bodily injury, death, and property damage, in form acceptable to the District Manager, naming the District as an additional insured, and protecting the District against any and all claims for damages or injury to persons or property resulting from construction and installation of any Required Improvements. The policy will provide that the District shall be notified at least thirty (30) days in advance of any reduction in coverage, termination or cancellation of the policies, and if any policy is terminated or cancelled, the Developer shall immediately obtain at its cost and provide to the District a replacement policy. 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 and the design and specification standards and rules and regulations of the District now in effect.

11. Completion Procedures and Inspection. Upon completion of the Required Improvements, Developer shall notify the District Manager in writing of such fact and request preliminary inspection of the completed Required Improvements. Such request must be accompanied by (i) all necessary easements for District main lines in accordance with Paragraph 7 above, and (ii) as-built engineering and centerline survey drawings for all main lines and appurtenances, and for service lines up to the location of local water curb stops and sewer clean outs. The District or its Consulting Engineer shall inspect said completed Improvements, and the District Manager shall notify Developer in writing of non-acceptance or preliminary acceptance of the completed Required Improvements; provided, however, that the District and its Consulting Engineer are not required to make inspections during periods when climatic conditions make thorough inspection unfeasible or between November 1 and the following April 30. If the Required Improvements are not acceptable, the reasons for non-acceptance shall be stated in writing, and corrective measures shall be developed by the District with the consent of Developer within 15 days and at Developer's sole expense, including a deadline for completion of such corrective measures, and if such deadline is after 30 days before the expiration of the Commitment Guarantee, Developer shall promptly obtain either an extension of the Letter of Credit or a replacement Letter of Credit having an expiration date at least 30 days later than the deadline for completion of such corrective measures.

12. Default; Withdrawal From Commitment Guarantee. If:
- (a) Construction of the Required Improvements is not completed in accordance with the District's Rules and Regulations or the Plans and Specifications provided to and approved by the District Manager pursuant to Paragraph 2 above by (i) the Completion Deadline, and such Deadline has not been extended by mutual written agreement of the District and Developer, or (ii) at least 30 days prior to the then-existing Commitment Guarantee; or
 - (b) The Developer fails to deliver to the District the report required under Paragraph 4 above by the deadline for such report; or
 - (c) The Developer fails to obtain and deliver to the District a replacement Commitment Guarantee in accordance with Paragraph 5 above; or
 - (d) The Developer fails to agree in writing to the corrective measures required by the District after requesting preliminary acceptance of the Required Improvements, within 15 days pursuant to Paragraph 11 above; or
 - (e) The Developer fails to complete such corrective measures within the deadline established for such measures, or fails to deliver to the District an extension of the Commitment Guarantee or a replacement Letter of Credit, pursuant to Paragraph 11 above; or
 - (f) The Required Improvements have not been completed and preliminarily accepted by the District at least 30 days prior to the expiration of the Letter of Credit, unless prior to such deadline the Developer has obtained and delivered to the District an extension of said Letter of Credit issued by the original issuer thereof or a replacement Letter of Credit issued by a qualified bank acceptable to the District Manager; or
 - (g) The Developer has not delivered to the District the required Easements pursuant to Paragraph 7 above at least 30 days prior to the expiration of the Letter of Credit or any extension or approved replacement thereof; or
 - (h) The Developer otherwise fails to perform any obligation under this Agreement and does not cure such failure within 7 days of written demand for such cure from the District, or the Developer is declared by the District to be in default of this Agreement by any other provision in this Agreement;

then in any such case the District Manager or President may declare a default in this Agreement with respect to the Required Improvements upon written notification to Developer and the issuer of the Commitment Guarantee, and, without the necessity of public hearing or other notice or any other act, immediately withdraw from the Commitment Guarantee such funds (up to the full face amount of such Guarantee) as may be necessary, in the opinion of the District Manager or President, to construct or complete said Required Improvements in accordance with the agreed Plans and Specifications and obtain the easements required to be obtained under Paragraph 7 above.

13. Preliminary Acceptance. The period between preliminary acceptance and final acceptance shall be one year for all Required Improvements or until final acceptance is given by written resolution duly and properly adopted and passed by the Board of Directors of the District, whichever occurs later. All periods of preliminary acceptance shall run from the date of written notification of preliminary acceptance by the District to the Developer. During the period of preliminary acceptance, the Developer shall, at its own expense, make all needed repairs, corrections, or replacements due to defective materials or workmanship and be responsible for all maintenance of the Required Improvements. In the event of default of any of these obligations by Developer, the District, without notice to Developer, may perform such obligations at the sole expense of Developer and may withdraw from the remaining Commitment Guarantee funds to pay for such expenses.

14. Partial Waiver by District of Portion of Commitment Guarantee, and Reduction of Commitment Guarantee, Upon Preliminary Acceptance of Required Improvements. Upon preliminary acceptance by the District of all Required Improvements, the District will include in the written notification of such preliminary acceptance an irrevocable waiver by the District of the right to withdraw eighty-five percent (85%) of the then face amount of the Commitment Guarantee, and thereby the required continuing amount of such Commitment Guarantee until final acceptance of the Required Improvements shall be fifteen percent (15%) of the face amount of the Commitment Guarantee as of the date of preliminary acceptance. Such 15% retention shall be for the purpose of insuring the completion by Developer of necessary repairs, corrections, and replacements of the Required Improvements prior to final acceptance due to deficiencies in workmanship and/or material. After preliminary acceptance, the Developer may replace the Letter of Credit constituting the Commitment Guarantee with a substitute Letter of Credit in the amount of 15% of the replaced Letter of Credit.

15. Final Acceptance and Maintenance for Public Improvements. Following the period of preliminary acceptance for the Required Improvements, the District Manager or its Consulting Engineer shall inspect said Required Improvements for final acceptance upon written request by the Developer. Inspection shall only occur in the months of May through October. The District Manager shall notify Developer in writing of non-acceptance or final acceptance. If the Required Improvements or any part thereof are not acceptable, the reasons for non-acceptance shall be stated in writing and corrective measures shall be developed by the District, with the assistance of Developer, and at Developer's sole expense, including a deadline for completion of such corrective measures, and Developer shall promptly obtain either an extension of the reduced Letter of Credit or a replacement Letter of Credit having an expiration date at least 30 days later than the deadline for completion of such corrective measures.

If all of the Required Improvements are found to be acceptable, the District, following a Resolution of Acceptance of improvements by the District Board of Directors, shall release and redeliver the entire remaining Commitment Guarantee to the Developer, and shall, as of the date of such Resolution, assume full ownership and maintenance responsibility for the main lines and related appurtenances (but not service lines) in the Required Improvements as would normally accrue to the District according to the District's Rules and Regulations.

16. Recording Agreement. The District shall record this Agreement with the Clerk and Recorder of Routt County, Colorado.

17. Enforcement. If the District determines that there is a violation of Colorado law or City of Steamboat Springs ordinances, or District Rules and Regulations or design and specifications standards, and/or the terms and provisions of this Agreement, the District Manager may at any time issue a cease and desist order to the Developer. Thereafter, Developer acknowledges irreparable harm and injury to the District for purposes of an application by the District to the Routt County District Court for a restraining order or preliminary injunction to halt such violation. If at any time the District Board of Directors, after notice to Developer and opportunity to be heard, determines at a public meeting that the Commitment Guarantee is insufficient to guarantee completion of the Required Improvements in accordance with this Agreement, then the District may require Developer to obtain and deliver to the District additional collateral satisfactory to the District to guarantee completion of the Required Improvements, and may declare a default in this Agreement under Paragraph 12 above and take all actions permitted under such Paragraph 12.

If the Developer is in default under this Paragraph 17 or under Paragraph 12 above, then in addition to all remedies elsewhere provided in this Agreement, the District has the right to pursue any remedy provided by law and in equity, and, if the District obtains any such remedy, the District shall also recover judgment for its reasonable attorney's fees and costs against Developer. As an alternative to the remedies provided in the preceding sentence or in Paragraph 12 above, in the event of the default by Developer under this Agreement, the District has and reserves the right and authority, in its sole discretion, prior to preliminary acceptance, to withdraw its approval of the Plans and Specifications and any service commitment of the District, and may refuse to provide water and sewer services of the District to the Property and improvements thereon until the default is fully cured.

18. Miscellaneous. This Agreement runs with the Property, 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

EXHIBIT "A"
TO THE
PUBLIC IMPROVEMENTS COMPLETION AGREEMENT

[Description of Property Owned by Developer]

