

**DEVELOPMENT AGREEMENT PURSUANT TO:
COTTONWOOD GREEN, FINAL PLAT**

PROJECT: COTTONWOOD GREEN, (the "Project")

PROPERTY: Generally described as: COTTONWOOD GREEN, City of Salida, County of Chaffee, State of Colorado, and more particularly described on Exhibit A.

PARTIES: The City of Salida, Colorado, a municipal corporation in the County of Chaffee, State of Colorado, (the "City") and Woodland, Inc (hereinafter referred to as "Applicant").

DATED: This Agreement is made this 3rd day of December, 2004, by and between the City and the Applicant.

RECITALS:

WHEREAS, pursuant to Title 9 of the Salida Municipal Code, Applicant has submitted a Preliminary Plat for the Project; and

WHEREAS, Applicant, pursuant to Section 9-16-7 of the Salida Municipal Code, has submitted a Final Plat; and

WHEREAS, the Salida Municipal Code provides that the City may approve a final subdivision plat with conditions; and

WHEREAS, the City Council of the City of Salida, Colorado, approves Applicant's Final Plat subject to Applicant entering into an agreement with the City as required in Section 9-16-10 of the Salida Municipal Code to insure that the Project is constructed and operated in compliance with the approved Final Plat, including supporting documentation and to insure that responsibility for construction of and payment for appropriate improvements is specified; and

WHEREAS, the above-referenced agreement is intended to be binding upon Applicant, it's heirs, successors and assigns and to run with the property described on attached Exhibit A.

NOW, THEREFORE, in consideration of the foregoing, the parties hereto promise, covenant, and agree as follows:

1.0 GENERAL CONDITIONS

1.1 Obligation. Applicant shall be responsible for performance of the covenants set forth herein, including any and all covenants contained in the Exhibits enumerated in Section

7.13. All of said Exhibits shall be considered to be incorporated herein by reference only, as if said Exhibits were set forth verbatim.

1.2 Development Coordination. Unless specifically provided in this Agreement to the contrary, all submittals to the City, or approvals required of the City in connection with this Agreement, shall be submitted to and approved by the City Administrator or the City Administrator's designee ("Designee"), who shall have general responsibility for coordinating development with Applicant.

1.3 Public Improvement Guarantees. Applicant shall submit to the City a Public Improvement Guarantee, hereinafter "Guarantee" for all public improvements related to the Project. Said Guarantee may be in cash or a letter of credit, in form and substance as shown in Exhibit H. Said Guarantee, if a letter of credit, performance and payment bond, line of credit, or other acceptable means approved by the City shall not expire prior to final acceptance pursuant to Section 1.7. The total amount of the Guarantee for each phase shall be calculated as a percentage of the total estimated cost, including labor and materials of all public improvements to be constructed in said phase of the Project described on Exhibit C. Financial guarantee for site restoration shall be released upon written application by Applicant following completion of the development for which said Guarantee is provided as outlined in the Salida Municipal Code.

In addition to any other remedies it may have, the City may, at any time prior to final acceptance, draw on any Guarantee issued pursuant to this Agreement if Applicant fails to extend or replace any such Guarantee at least thirty (30) days prior to its expiration. If the City draws on the Guarantee to correct deficiencies, complete improvements or perform site restoration, any portion of said Guarantee not utilized in correcting the deficiencies, completing improvements or performing site restoration shall be returned to Applicant within thirty (30) days after said final acceptance. In the event the Guarantee expires, or the entity issuing the Guarantee becomes non-qualifying, or the cost of improvements and construction is reasonably determined by the City to be greater than the amount of the security provided, subject to the maximum defined in Exhibit C, then the City shall furnish written notice to the Applicant of the condition and, within thirty (30) days of receipt of such notice, the Applicant shall provide the City with a substituted qualifying Guarantee, or augment the deficient security as necessary to bring the security into compliance with the requirements of this Section. If such a Guarantee is not submitted or maintained, Applicant is in default of this Agreement and is subject to the provisions of Section 10.1 of this Agreement, as well as the suspension of development activities by the City including, but not limited to, the issuance of building permits and any Certificate(s) of Occupancy.

1.4 Indemnification and Release of Liability. Applicant agrees to indemnify and hold harmless the City, its officers, employees, agents, or servants, and to pay any and all judgments rendered against said persons on account of any suit, action, or claim (Action) caused by, arising from, or on account of acts or omissions by the Applicant, its officers, employees, agents, consultants, contractors, and subcontractors, and to pay to the City and said person their reasonable expenses including, but not limited to reasonable attorney's fees and reasonable

expert witness fees, incurred in defending any such Action; provided, however, that Applicant's obligation herein shall not apply to the extent said Action results from any actions or omissions of officers, employees, agents, or servants of the City or conformance with requirements imposed by the City. Said obligation of Applicant shall be limited to Actions based upon conduct prior to "final acceptance" by the City of the construction work. Applicant acknowledges that the City's review and approval of plans for development of the property is done in furtherance of the general public's health, safety, and welfare and that no immunity is waived and no specific relations with, or duty of care to, the Applicant or third parties is assumed by such review approval.

1.5 Recovery. Applicant shall be responsible for payment of costs of site restoration performed by others as identified on Exhibit C.

1.6 Maintenance of Improvements. For a one (1) year period from the date of "construction acceptance" of any public improvements constructed by Applicant pursuant to this Agreement, Applicant shall, at its own expense, maintain, excluding snow removal, such improvements and make all needed repairs or replacements which, in the reasonable opinion of the City, shall become necessary. If within thirty (30) days after Applicant's receipt of written notice from the City requesting such repairs or replacements, the Applicant has not completed such repairs, the City may exercise its rights to secure performance as provided in Section 7.1. Final acceptance shall occur at the end of the one (1) year period, so long as all needed repairs and replacements have been made.

1.7 City Costs. Applicant shall reimburse the City for all costs included by the City regarding this development including, but not limited to, engineering costs and legal fees.

2.0 UTILITY COORDINATION AND INSTALLATION

2.1 Utility Coordination and Installation. In addition to the improvements described on Exhibit C, Applicant shall also be responsible for coordination of and payment for installation of on-site and off-site electric, street lights, natural gas, telephone and cable television utilities. All utilities shall be placed underground to the extent required by City ordinance.

3.0 STREET IMPROVEMENTS

3.1 Definitions. For the purpose of this Agreement, "Street improvements" shall be defined to include, where applicable, but are not limited to, all public improvements within the right-of-way such as sub-base preparation, road base, asphalt, concrete, seal coat, curb and gutter, medians, entryways, bridges, underground utilities, sidewalks, bicycle paths, traffic signs, street lighting, street name signs, landscaping, and drainage improvements, as each may be enumerated on Exhibit C.

4.0 PUBLIC USE, DEDICATION AND LANDSCAPING

4.1 Public Use Dedication. Applicant shall convey to the City certain lands as described in Exhibit A. All such conveyances shall be free and clear of liens, taxes and encumbrances and shall be by Special Warranty Deed, in form and substance acceptable to the City Administrator and the City Attorney. All title documents shall be recorded by the City at the Applicant's expense. The Applicant shall furnish a title commitment and also furnish, at its own expense, an ALTA title policy for all interest(s) so conveyed, subject to approval by the City Administrator and the City Attorney.

4.2 Landscape Improvements. For public lands and rights-of-way, Applicant shall furnish to the City complete final landscape and irrigation plans for each phase and obtain approval of the City Administrator or Designee prior to commencement of construction. Applicant shall construct landscape improvements as required in the landscape plan. For private landscape improvements, excluding single family detached residential lots, Applicant shall furnish final landscape plan to the City Administrator or Designee for approval prior to installation of landscape improvements.

5.0 OTHER IMPROVEMENTS

5.1 Streetscape. Subject to the limits set forth in Exhibit C, the total cost of streetscape improvements shown on Exhibit C, shall be the Applicant's obligation. All sidewalk improvements shall similarly be installed by Applicant at Applicant's expense, to City specifications.

5.2 Drainage Improvements. Drainage improvements for the Project shall be constructed by Applicant in accordance with plans and specifications approved by the City. No overlot grading shall be initiated by Applicant until the City approves drainage improvement plans in writing. Said plans shall conform to the City's flood plain regulations. Applicant shall provide temporary erosion control during overlot grading until drainage improvements are installed and operational.

5.3 Slope Stabilization. Any slope stabilization measures shall be conducted in strict compliance with all applicable City, state, and federal regulations and ordinances. Any additional requirements relating to the conduct of these activities shall be determined by the City's Building Official on a case-by-case basis.

5.4 Blasting. Any removal of rock or other materials from the site by excavation, blasting, or other means shall be conducted in strict compliance with all applicable City, state, and federal regulations and ordinances. Any additional requirements relating to the conduct of these activities shall be determined by the City's Building Official on a case-by-case basis.

5.5 Trash, Debris, and Mud. Applicant agrees that during construction of the improvements described herein, Applicant shall take any and all steps necessary to control trash debris, and wind or water erosion on the project. If the City determines that said trash, debris, or wind or water erosion causes damage or injury, or creates a nuisance, Applicant agrees to abate said nuisance and/or to correct any damage or injury within five (5) working days after written notification by the City. If Applicant does not abate said nuisance, or if an emergency situation exists, to be determined by the City in its sole discretion, the City may abate the nuisance and/or correct any damage or injury without notice to Applicant at Applicant's expense. Applicant also agrees to take any and all steps necessary to prevent the transfer of mud or debris from the construction site onto public rights-of-way after notification by the City.

6.0 SPECIAL PROVISIONS

6.1 Site Restoration Improvements. In the event construction is not started or completed in accordance with the development schedule identified on Exhibit C, Applicant shall install, at a minimum, as site restoration improvements, the excavation reclamation, slope stabilization, landscape and other improvements necessary to protect the health, safety and aesthetic integrity of the Project, in accordance with plans approved by the City. The cost of these improvements shall be included on Exhibit C and shall be subject to the Guarantee provisions of Section 1.3.

6.2 Signage and Lighting. All signage and exterior lighting shall conform to applicable City ordinances at the time of permitting.

6.3 Drainage. All site drainage, including roof drains if applicable, shall be properly detained and diverted to an adequate storm drain or otherwise properly discharged according to the City's specification, at the Applicant's expense and prior to issuance of any Certificate(s) of Occupancy.

6.4 Impacts. Impacts on streets and properties in the vicinity of the Project, during construction and continuing operation of the project, shall comply with all applicable ordinances, resolutions, and policies of the City. By way of example, but not limitation, are the potentially adverse impacts of construction disruption of traffic flow, especially on weekends, hours of construction activity, time of trash pick up, hours of delivery, spillage of noise and light associated with outdoor activities, on to adjacent properties and other such impacts.

6.5 Governmental Requirements. All City, state, and federal governmental requirements, including but not limited to rights-of-way, state highway access, flood plain, flood way, wetlands, and mine waste regulations, must be met. Proof of such compliance shall be provided in a manner satisfactory to those agencies with jurisdiction and the City Administrator or Designee.

6.6 Improvements Within the Salida Golf Course. The extension of the water main within the Salida Golf Course, in addition to being bound by the terms of the Agreement, shall meet the following terms and conditions.

- A. All accessing and exiting onto and out of the golf course affected by construction shall be repaired.
- B. All cart paths and roadways must be repaired and resurfaced with aggregate (size?).
- C. The top ten (10) inches of the excavation trench shall be filled with rock free top soil and shall be compacted so as not to settle.
- D. All spoils from excavation must be removed from site. Any leftover bedding material or construction materials must be removed.
- E. Any ditches or culverts affected by construction must be restored or replaced.
- F. All affected areas must be graded and left rock-free at the surface, so that the area may be reseeded and maintained by low mowing (one inch mowers).
- G. Seed (native dry land mix) will be purchased by developer and seeded by the Golf Course.
- H. Work may not start before November 7, 2004.
- I. All work must be completed by March 1, 2005.
- J. Fencing must be installed on the east side of the cart paths bordering construction area to prohibit impacts on the greens.
- K. No access or traffic will be permitted east of the boundary cart paths or any other part of the golf course.
- L. All scheduling of construction must be approved by the golf course.
- M. The location of the pipeline trench must be approved by the golf course.
- N. Any damage to fences, gates or any other structures or equipment on the golf course must be mitigated by the developer.
- O. Any trees damage or destroyed must be replaced. Replacement species and caliper of the tree shall be approved by the Golf Course
- P. The Golf Course cannot be held responsible for any injury or damage to persons or equipment. The Applicant agrees to indemnify and hold harmless the Golf Course, its officers, employees, agents, servants, or guests, and to pay any and all judgments rendered against said persons on account of any suit, action, or claim (Action) caused by, arising from, or on account of acts or omissions by the Applicant, its officers, employees, agents, consultants, contractors, and subcontractors, and to pay to the City and said person their reasonable expenses including, but not limited to reasonable attorney's fees and reasonable expert witness fees, incurred in defending any such Action.
- Q. Applicant agrees that during construction of the improvements within the Golf Course, Applicant shall take any and all steps necessary to control trash debris, and wind or water erosion on the project. If the Golf Course determines that said trash, debris, or wind or water erosion causes damage or injury, or creates a nuisance, Applicant agrees to abate said nuisance and/or to correct any damage or injury within seven business days after written notification by the Golf Course. If Applicant does not abate said nuisance, or if an emergency situation exists, to be determined by the

Golf Course in its sole discretion, the Golf Course may abate the nuisance and/or correct any damage or injury without notice to Applicant at Applicant's expense.

7.0 APPLICANT REIMBURSEMENT

7.1 Upgrade of Water Main. The City of Salida agrees to reimburse the applicant for the cost differential to increase portions of the water main from an eight inch diameter pipe to a twelve inch diameter pipe. Those portions of the water main to be enlarged are shown on the City approved construction documents. The City agrees, once the main is properly installed, to reimburse the applicant for the actual incremental cost incurred for the twelve inch water main up to \$52,272.00, the preconstruction estimate.

7.2 Utility Installation Cost Reimbursement Agreement. The applicant has constructed at her sole expense, minus the city's reimbursement towards the water main, an expansion of a City water and sewer main. The Applicant desires reimbursement for a portion of its cost should properties adjacent to the main extension be allowed to tap into such water and sewer main extension. The City hereby agrees to collect from the owners of properties identified On Exhibit I, an agreed upon sum as identified in Exhibit I as a condition of granting permission to those property owners to connect to the water and sewer main extension. The City further agrees to pay over the sum collected to Applicant. This provision shall remain in full force and effect for a period of ten (10) years from the date of the Utility Installation Cost Reimbursement Agreement.

8.0 MISCELLANEOUS TERMS

8.1 Breach of Agreement. In the event Applicant should fail to timely comply with any of the terms, conditions, covenants, and undertakings of the Agreement, and if such noncompliance is not cured and brought into compliance within thirty (30) days of written notice of breach to the Applicant by the City, unless the City, in writing and in its sole discretion, designates a longer cure period, then the City may draw upon the Guarantee to the extent necessary to cure and correct the noncompliance, at Applicant's expense. Applicant's expense shall be limited to the costs incurred by the City, as defined herein. Notice by the City to the Applicant will specify the conditions of default. In the event that no Guarantee has been posted or the Guarantee has been exhausted or is insufficient, then the City shall have the right to begin work on the improvements at the expense of the Applicant. If the City determines, in its sole discretion, that an emergency exists, such that the improvement must be completed in less than seven (7) days, the City may immediately draw upon the improvement guarantee, if available, and may complete the improvements at Applicant's expense, even if the improvement guarantee is not available. In such event, the City shall use its best efforts to notify Applicant at the earliest practical date and time. The City may also, during the cure period and until cure of any default under this Agreement, withhold any additional building permits, Certificate(s) of Occupancy, or provisions of new utilities, fixtures, or services. Nothing herein shall be construed to limit the City's authority to ensure compliance with the approved development plan and/or this Agreement pursuant to the City of Salida Zoning Ordinance or from pursuing any other remedy

at law or in equity which may be appropriate under City, state, or federal law. Failure to timely complete construction of improvements, which is due solely to inclement weather, shall not be considered a breach of the Agreement. Any costs incurred by the City, including, but not limited to, administrative costs and reasonable attorney's fees, in pursuit of any remedies due to the breach by the Applicant, shall be the responsibility of the Applicant. The City may deduct these costs from the Guarantee, except as aforesaid.

8.2 Recording of Agreement. The City shall record this Agreement at Applicant's expense in the office of the Clerk and Recorder, County of Chaffee, State of Colorado, and the City shall retain the original of the recorded Agreement.

8.3 Binding Effect of Agreement. This Agreement shall run with the land included herein and shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. No certificate of occupancy will be issued to applicant, to any successor or assign of the applicant, to the current owner or any future owner of the property which is the subject of this Agreement until the improvements are completed as required in this Agreement and any costs and expenses incurred by the City pursuant to paragraph 1.7 have been reimbursed to the City. The provisions, requirements and impacts of this Agreement upon the land included herein may only be relieved, modified or amended by subsequent written agreement between the parties or their successors or assigns, specifically addressing this paragraph 7.3, and meeting all of the requirements of this Agreement as to form and substance, specifically, but not limited to, the provisions of paragraph 7.9 of this Agreement.

8.4 Modification and Waiver. No modification of the terms of this Agreement shall be valid unless in writing and executed with the same formality as this Agreement, and no waiver of the breach of the provision of any Section of this Agreement shall be construed as a waiver of any subsequent breach of the same Section or any other Section(s) hereof.

8.5 Addressees for Notice. Any notice or communication required or permitted hereunder shall be given in writing and shall be personally delivered, or sent by United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed as follows:

CITY:

City of Salida
City Administrator
P.O. Box 417
Salida, Colorado 81201

APPLICANT:

Woodland, Inc.
Attention: Julianne Miller
P.O. Box 786
Salida, CO 81201

or to such other address or the attention of such other person(s) as hereafter designed in writing by the applicable parties in conformance with this procedure. Notices shall be effective upon mailing or personal delivery in compliance with this Section.

8.6 Force Majeure. Whenever Applicant is required to complete construction, maintenance, repair, or replacement of improvements by an agreed upon deadline, the City may, in its sole discretion, grant a reasonable extension of time if the performance cannot, as a practical matter, be completed in a timely manner due to Acts of God or other circumstances constituting force majeure or beyond the reasonable control of Applicant.

8.7 Approvals. Whenever approval or acceptance of a matter is required or requested of the City pursuant to any provisions of this Agreement, the City shall act reasonably in responding to such matter.

8.8 Previous Agreements. All previous written and recorded agreements between the parties, their successors, and assigns, shall remain in full force and effect. If any prior agreements conflict with this Agreement then this Agreement controls.

8.9 Title and Authority. Applicant warrants to the City that it is the record owner for the property within the Project or is acting in accordance with the currently valid and unrevoked power of attorney of the record owner hereto attached. The undersigned further warrant to have full power and authority to enter into this Agreement.

8.10 Severability. This Agreement is to be governed and construed according to the laws of the State of Colorado. In the event that upon request of Applicant, or any agent thereof, any provision of the Agreement is held to be violative of the City, state or federal laws and hereby rendered unenforceable, the City, in its sole discretion, may determine whether the remaining provisions will or will not remain in force.

8.11 Incorporation of Recitals and Written Submittals. The City and Applicant hereby stipulate and agree that the "recitals" preceding this Agreement, and all of the written submittals (as amended and presently effective) made by Applicant to the City throughout the course of the project approval process, shall be deemed to be part of this Agreement and to be incorporated herein by this reference.

8.12 List of Exhibits. In accordance with Section 1.1, the following Exhibits are attached or referenced here:

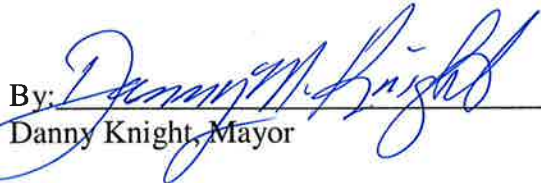
- Exhibit A - Final Plat (including legal description of the property). Reception Number _____
- Exhibit B - City Council Resolution
- Exhibit C - Schedule of Public and Site Restoration Improvements
- Exhibit D - Guarantee

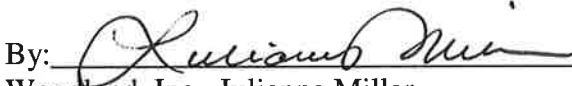
- Exhibit E - Dedicated Property (Initial if this exhibit is not attached and is not applicable _____)
- Exhibit F - Previous Agreements (Initial if this exhibit is not attached and is not applicable _____)
- Exhibit G - Corporate Resolution (Initial if this exhibit is not attached and is not applicable _____)
- Exhibit H - Irrevocable Letter of Credit Standard Form, Performance and Payment Bond, Line of Credit, Cash and or Other Acceptable means approved by the City
- Exhibit I - Schedule of Utility Installation Cost Reimbursement Agreement (Reception No. _____)

IN WITNESS WHEREOF, the parties hereto hereby execute this Agreement on the day and year first above written.

CITY OF SALIDA:

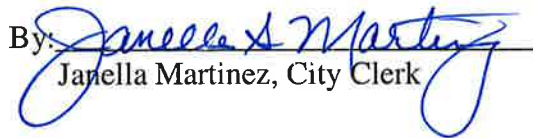
APPLICANT:

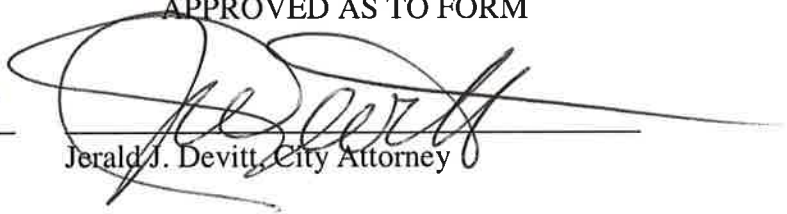
By: 
 Danny Knight, Mayor

By: 
 Woodland, Inc., Julianne Miller

ATTEST:

APPROVED AS TO FORM

By: 
 Janella Martinez, City Clerk


 Jerald J. Devitt, City Attorney

STATE OF COLORADO :
 : ss.
 COUNTY OF CHAFFEE :

The foregoing instrument was acknowledged before me this 3rd day of December, 2004, by Julianne Miller.

My Commission expires: 01-27-2008 Susan L. Mick
Notary Public

Cottonwood Green
Utility Cost Comparison

Water Line (12" vs. 8" Water Main)

Water Main	12"	8"	Total Length
Water Line A	200	925	1,125
Water Line B	2680	0	2,680
Water Line C	585	0	585
Total Footage	3465	925	4,390

COST DIFFERENCE FOR 12" LINE

	Unit	12" Cost Unit Cost	8" Cost Unit Cost	Qty	Est. 8" Total Cost	Cost Difference
12" Water Main	L.F.	\$43	\$29	3465	\$100,485	\$48,510
12" Water Tee	Each	\$805	\$530	5	\$2,650	\$1,375
12" X 45 Elbow	Each	\$565	\$375	10	\$3,750	\$1,900
12" X 11.25 Elbow	Each	\$565	\$375	1	\$375	\$190
12" Deflection Coupling	Each	\$720	\$485	2	\$970	\$470
12" Butterfly Valve	Each	\$1,725	\$1,200	19	\$22,800	\$9,975
12" to 8" Reducer	Each	\$795	\$0	2	\$0	\$1,590
Total					\$ 131,030.00	\$64,010

8" Sewer Line Off Site Construction Costs

OFF SITE CONSTRUCTION COSTS

	Unit	Unit Cost	Qty	Cost
8" sewer Main	L.F.	\$25.00	1505	\$ 37,625
Sewer Manholes	Each	\$2,500.00	5	\$ 12,500
Total				\$ 50,125

Summary of Reimbursement:

- 1) Salida Public Works Reimbursement For Upsizing of Water Main From 8" to 12" \$ 64,010.00
- 2) Reimbursement from future developers for water taps \$131,030 / 51 = \$ 2,569.22 per tap
- 3) Reimbursement from future developers for sewer taps \$50,125 / 51 = \$ 982.84 per tap

*Received
 9/2/04
 J.P.*