

BOOK 800 PAGE 633

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PITKIN COUNTY RECORDER

314535

SUBDIVISION IMPROVEMENTS AGREEMENT  
THE DIVIDE

THIS AGREEMENT is made this 22 day of August, 1989, by and between the TOWN OF SNOWMASS VILLAGE, COLORADO, a municipal corporation ("Town"), and Snowmass Land Company, an Illinois general partnership ("Developer").

RECITALS:

A. Developer is the owner of certain property situated in the County of Pitkin, State of Colorado, more particularly described as "The Divide", according to the recorded plat thereof (the "Property").

B. Developer desires to develop the Property and has submitted to the Town a final subdivision plat showing a proposed subdivision layout for said lands (the "Plat").

C. Developer has further submitted to the Town a site improvements plan for those improvements and a landscaping plan, in connection with the Property being constructed by the Developer (collectively the "Site Improvements Plan").

D. The Town's Planning Commission and Town Council have approved the final subdivision plat submitted by the Developer subject to certain requirements and conditions which involve the installation and construction of utilities and the improvements shown on the Site Improvements Plan.

NOW, THEREFORE, in consideration of the premises and the terms and conditions herein stated and for other valuable consideration, the adequacy of which is acknowledged by the parties hereto, it is agreed as follows:

1. Developer's Guarantee and Warranty.

Developer hereby guarantees the installation as hereafter provided, as necessary to serve the Property, and payment for, the Divide Road, the parking lots, and all utility lines, storm drainage improvements and storm sewers, sanitary sewer lines, water lines, water storage tanks, fire hydrants, and any other improvements described in the Site Improvements Plan. Developer hereby warrants the Divide Road, the parking lots, and all publicly dedicated utility improvements constructed or installed by Developer for a period of one year after acceptance by the Town or the utility companies of such improvements. Developer agrees to promptly correct any deficiencies in installation in order to meet the requirements of the plans and specifications applicable to such installation. In the event such installation is not completed substantially within the applicable schedules attached hereto and according to the specific plans set forth in

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the Site Improvements Plan, the Town shall have the right to cause such additional work to be done as is necessary to complete the installation in such manner and Developer shall be liable for the cost of such additional work.

2. Water Lines and Sanitary Sewer Collection Lines.

(a) At the request of Developer, Snowmass Water and Sanitation District (the "District") shall engineer and install all water lines, water storage tanks and sanitary sewer collection lines, whether such lines and other improvements are actually on the Property, bordering the Property or on other lands connecting the Property to the existing water distribution system and sewage collection system, in accordance with the standard specifications of the District.

(b) Installation of said lines is anticipated to be completed in accordance with the schedule in Exhibit A.

(c) The cost of all of said lines shall be borne by Developer through tap fees or pursuant to an agreement between Developer and the District.

3. Electric, Gas, Telephone and Cable TV Facilities.

At the request of Developer, Holy Cross Electric Association shall engineer and install all electric distribution lines and facilities required for the Property, according to a schedule subject to approval by the Town Engineer, and Developer shall pay for such work in accordance with the established charges of the Association. At the request of Developer, Rocky Mountain Natural Gas Company shall engineer and install all required gas lines and facilities required, according to a schedule subject to approval by the Town Engineer and Developer shall pay for such work in accordance with the established charges of the Company. At the request of Developer, Mountain Bell shall engineer and install all required telephone lines and facilities according to a schedule subject to approval by the Town Engineer and Developer shall pay for such work in accordance with the established charges of Mountain Bell. At the request of Developer, Canyon Cable Television shall engineer and install all cable television lines and facilities required for the Property and Developer shall pay for such work in accordance with established charges of Canyon Cable Television.

4. Storm Drainage Improvements.

(a) Developer shall install all storm sewer lines and facilities described in the Site Improvements Plan.

(b) Developer anticipates completing the installation of said lines and facilities in accordance with the schedule in Exhibit A.

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(c) All of said lines shall be installed at Developer's sole expense.

(d) The installation of all such lines and facilities shall be subject to inspection and approval by the Town Engineer, the cost of such inspection to be paid by Developer.

(e) Any drainage facilities installed by Developer pursuant to this subsection, and accepted by the Town Engineer, shall be dedicated to the Town, together with an easement therefor if not shown as an easement on the recorded plat.

5. The Divide Road.

(a) Developer agrees to improve and pave the Divide Road, from its intersection with Brush Creek Road, in accordance with the plans and specifications of the Site Improvements Plan. The connection therewith the following shall apply:

(1) Developer agrees to install any traffic control signs and standard street signs as required by the Town.

(2) Developer agrees to revegetate all cuts and fills resulting from the improvement thereof in a manner which will prevent erosion.

(3) The surface of the roadway will not be finished until all utility lines to be placed in the roadway have been installed.

(4) During the period of construction, the roadway shall be kept reasonably free from accumulations of dirt and debris, through traffic shall be permitted on the roadway to the extent practicable, and all road cut areas caused by the installation of utilities shall be promptly repaired.

(b) The parties recognize that the plans and specifications for the Divide Road provide for a paved roadway 24 feet wide with 2 foot shoulders on each side, and that it will be necessary for the Town to acquire such rights of way and/or easements as shall be necessary to widen the Divide Road to the width provided for in the plans and specifications.

(c) In the event that the Town shall acquire the rights of way and/or easements required to widen the Divide Road by May 1, 1990, the Town shall forthwith give written

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notice thereof to the Developer. Upon receipt of such written notice, the Developer shall thereafter undertake the improvement and paving of the Divide Road as provided for herein and shall complete such work within 12 months after receipt of such written notice, unless delayed by causes beyond its reasonable control.

(d) In the event that the Town shall not have given the Developer the written notice provided for in subparagraph (c) above by May 1, 1990, then the Developer shall, nevertheless, thereafter undertake the improvement and paving of the Divide Road as provided for herein and shall complete said work within 12 months thereafter, unless delayed by causes beyond its reasonable control; but only to the extent that such improvements and paving can be constructed within the right of way and/or easements for the Divide Road then owned by the Town and the plans and specifications shall be deemed to be modified accordingly. Upon the completion of said work, Developer shall pay to the Town the "Estimated Amount" which shall be required to pay the costs of completing the Divide Road to its full width as provided for in the plans and specifications, and the Developer shall, thereupon, automatically be released from all further liability for the completion of the improvement and paving of the Divide Road. Such Estimated Amount shall be determined by the mutual agreement of the Town and the Developer based upon cost estimates thereof.

(e) The construction of the improvements and paving of the Divide Road by the Developer, whether pursuant to subparagraph (c) or subparagraph (d) above, shall be subject to inspection and approval by the Town Engineer and the costs of such inspection shall be paid by the Developer.

6. Parking Lots.

Developer agrees to construct, at Developer's cost, the parking lots within the Property, being Lots 42 and 43 as shown on the Plat in accordance with the plans and specifications of the Site Improvements Plan. Developer anticipates completing the construction of said parking lots in accordance with the schedule in Exhibit A.

7. Trail Easement.

With respect to that certain public trail easement shown on the Plat which is located over and across the route of the existing water line easement, Developer agrees, at Developer's cost, to improve and surface the trail in accordance with the plans and specifications of the Site Improvements Plan. Developer anticipates completing the construction of said improvements in accordance with the schedule in Exhibit A.

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8. Private Roads.

Developer agrees to construct, at Developer's cost, all private roads within the Property in accordance with the plans and specifications of the Site Improvements Plan. Developer anticipates completing said private road construction in accordance with the schedule in Exhibit A. Developer agrees to install any traffic control signs and standard street name signs as required by the Town and to revegetate all cuts and fills resulting from construction in a manner which will prevent erosion. The construction of such private roads shall be subject to inspection and approval by the Town Engineer and the cost of such inspection shall be paid by the Developer.

9. Landscaping.

Developer shall install landscaping in accordance with the Site Improvements Plan, at Developer's expense, and according to the anticipated schedule in Exhibit A. All such landscaping is subject to approval by the Town Engineer.

10. Road Cuts.

Developer acknowledges that the Town has adopted a road cut ordinance, the provisions of which shall apply to the alteration of any road necessitated by the installation of any utilities described in this Agreement.

11. Traffic Control and Public Skiing Access.

During the construction of any utilities or improvements described herein, Developer shall be responsible for controlling and expediting the movement of vehicular and pedestrian traffic through and around all construction sites and activity and shall keep all public skiing access areas open and clear for public skiing from the commencement of skiing operations in November of each year until the close of skiing operations in April of the following year.

12. Maintenance and Repair.

(a) Developer agrees that it shall repair or pay for any damage to any existing improvements damaged during the construction of new improvements. The Town shall notify Developer within a reasonable time after discovery of any claim hereunder, and Developer shall have a reasonable period of time within which to repair same.

(b) At such time as the Developer records Covenants in Office of the Clerk and Recorder of Pitkin County, Colorado, which obligate The Divide Homeowners Association to maintain the private roads within the Property, the Developer shall be released from the obligation and liability to maintain such private roads or to be responsible for the cost of such maintenance.

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13. Letter of Credit.

To insure Developer's performance under this Agreement, Developer shall, prior to the commencement of construction of any improvements, provide the Town with a satisfactory financial guarantee in the form of an irrevocable Letter of Credit (the "Letter of Credit") issued by a bank or other financial institution, and in form and substance, satisfactory to the Town in the amount of \$ 1,240,500.00, determined in accordance with the schedule in Exhibit B, conditioned on Developer's full performance of its obligations hereunder and payment by Developer of the cost of installing all improvements required to be paid for by Developer. Upon completion of each phase of improvement as shown on Exhibit B, and inspection, approval and acceptance thereof by the Town Engineer, utility company or the District, as applicable, the amount of the Letter of Credit shall be reduced by the amount allocated to that phase in Exhibit B, except ten percent thereof. The final release of the Letter of Credit shall occur at such time as all proposed improvements are completed and approved by the Town Engineer (based on notices of completion and acceptance by the District or utility companies, as and if applicable).

14. Default.

If Developer shall default in the performance of Developer's obligations hereunder and shall fail to cure such default within 30 days after receipt of written notice from the Town specifying the nature of such default (or if such default cannot be cured within the aforesaid period of time, if the Developer shall fail to promptly commence to cure the same and to thereafter diligently proceed with such cure), then the Town shall be entitled to undertake such work as may be necessary and appropriate to cure such default and the Town shall be reimbursed for the costs thereof by application against the Letter of Credit.

15. Limitation of Liability.

No recourse shall be had for any obligation of or default by Developer under this Agreement or for any claim with respect to this Agreement against any partner or joint venturer of Developer or against Burnt Mountain Corporation or any other creditor or lender of Developer under any rule of law (including, without limitation, the rule of law that general partners and joint venturers are jointly and severally liable for the indebtedness of a partnership or joint venture, as applicable), contractual provision, statute or constitution or otherwise, it being understood that all such liabilities of the partners or joint venturers of Developer are to be, by the execution of this Agreement by the Town, expressly waived and released as a condition of, and in consideration for, the execution and delivery of this Agreement. Nothing contained herein shall constitute a waiver of any obligation of Developer to the Town

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under this Agreement or shall be taken to prevent recourse to or of the enforcement of any rights of the Town as against the assets of Developer.

16. Amendment.

This Agreement, Exhibits A and B hereto, and the Site Improvements Plan referred to herein, may only be amended by written instrument signed by the Town and the Developer.

17. Binding Effect.

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their successors and assigns; provided that, except as provided in paragraph 12(b) above, purchasers of residential lots within the Property or any homeowners association that receives title to any portion of the Property shall not incur any liability hereunder and no person or entity, including any homeowners association that receives title to any portion of the Property, may claim to be a third party beneficiary of the terms, conditions, or covenants of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed the day and year first written above.

ATTEST:  
TOWN

*Amber Harmon*  
Town Clerk

TOWN OF SNOWMASS VILLAGE,  
COLORADO

By: *Alan*  
Mayor

APPROVED:

*Stephen R. Ocker*  
Town Attorney

SNOWMASS LAND COMPANY, an  
Illinois general partnership

By: *Kenneth R. Sontheim*  
Kenneth R. Sontheim, its  
Attorney in Fact pursuant to  
General Power of Attorney  
recorded April 20, 1989 in  
Book 590 at Page 443 of the  
Pitkin County, Colorado,  
Records

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STATE OF COLORADO )  
 ) ss.  
COUNTY OF PITKIN )

The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of August, 1989, by Richard H. Lutz as Mayor of the Town of Snowmass Village, Colorado and Thomas Hamore as Town Clerk of the Town of Snowmass Village, Colorado.

Witness my hand and official seal.



My commission expires: 10/22/91.

Frank W. Waring  
Notary Public

STATE OF COLORADO )  
 )  
COUNTY OF PITKIN )

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of August, 1989, by Kenneth R. Sontheim, as attorney in fact for Snowmass Land Company, an Illinois general partnership

Witness my hand and official seal.

My commission expires: 12-23-89.



Frank W. Waring  
Notary Public

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EXHIBIT A

The improvements outlined in the Subdivision Improvement Agreement are estimated to be completed based on the following schedule:

Construction of the internal private roads is anticipated to begin in August of 1989, with final completion by October 1990.

Construction of a portion of the water and sanitary sewer are estimated to begin in September of 1989 and all the water and sanitary sewer improvements to be completed and ready for final inspection by the Town Engineer by November 15, 1990.

All drainage improvements shall be installed and ready for inspection by the Town Engineer by November 1, 1990.

Divide Road from the Brush Creek Road intersection to the Krabloonik parking lot shall be paved and ready for inspection by the Town Engineer by October 10, 1990.

The Divide parking lot and the Krabloonik parking lot shall be paved and ready for inspection by the Town Engineer by October 10, 1990.

All landscaping and revegetation shall be completed and ready for inspection by the Town Engineer by July 10, 1991.

All gas, electric, telephone and cable television utility improvements are estimated to be installed and ready for final inspection by the Town Engineer by December 1, 1990.

The last day of work in 1989 for work on the improvements will be November 18, 1989. Commencement of work in 1990 shall begin after April 22, 1990.

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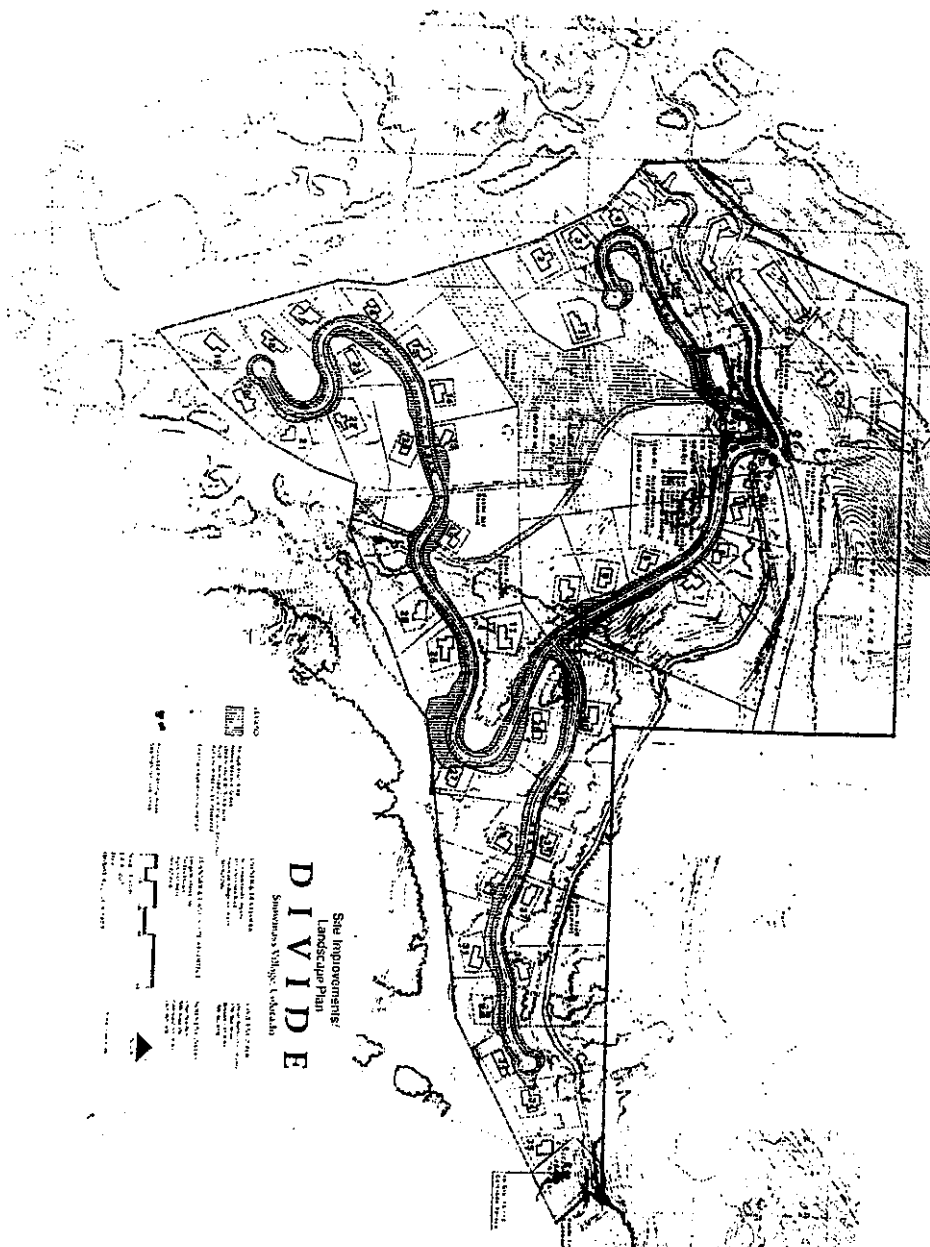
**EXHIBIT B**  
to  
**SUBMISSION IMPROVEMENTS AGREEMENT**  
for  
**THE DIVIDE**

The estimated cost of installation of improvements necessary to serve the Property, as described in this Subdivision Improvements Agreement, is as follows:

Divide Road	\$300,000
Divide Parking Lot	\$20,000
Krabloonik Parking Lot	\$20,000
Drainage	\$40,000
Electric Power	\$250,000
Natural Gas	\$40,000
Cable Television	\$30,000
Telephone	\$30,000
Landscaping	\$450,000
Signage	\$500
Public Trail	\$40,000
Dust Abatement	<u>\$20,000</u>
Sub-total	\$1,240,500
Divide Road Escrow	<u>\$50,000</u>
TOTAL	\$1,290,500

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Site Improvements:  
Landscape Plan  
**DIVIDE**  
Shawmutta Village, Lakeland

**LEGEND**

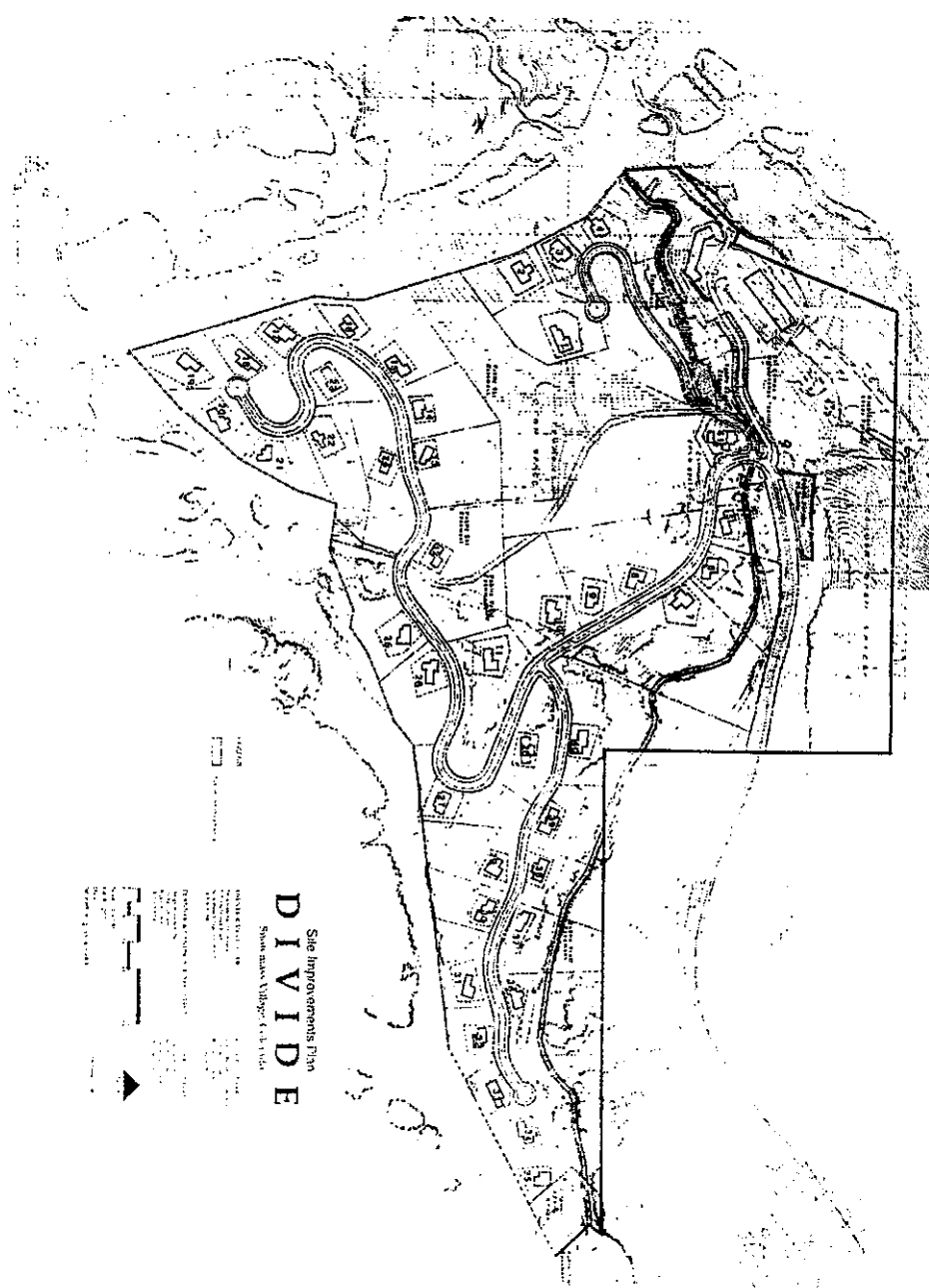
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- EXISTING LANDSCAPING
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**SCALE**

1" = 100'

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POOR COPY



Site Improvements Plan  
**DIVIDE**  
SHEET NO. 1000-1-1000

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