



1336340

Taryn Power - Summit County Recorder

IMPROVEMENT PAYBACK AGREEMENT

Improvement Payback Agreement ("Agreement"), made this 13th day of August, 2024, between Christopher D. Lange, Robert L. St. John, Kim D. Hebron and Cary Treff.

A. RECITALS

- (1.) The Hamilton Creek Metropolitan District, ("District") is generally responsible for the installation and maintenance of public utilities within the District, including the installation and maintenance of the public water system and public roadways. The Owners agree to comply with all rules and regulations of the District.
- (2.) Pursuant to the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Hamilton Creek ("Covenants"), the Hamilton Creek Association ("Association") is authorized to grant easements across the Commons for purposes of providing access and utilities to Sites in the Hamilton Creek Subdivision.
- (3.) Christopher D. Lange of 15 Branin Road, Medford, NJ 08055, is the owner of the real property known as Lot 2, Filing No. 1 of Hamilton Creek Subdivision, Summit County, State of Colorado.
- (4.) Cary Treff of 262 White Cap Lane, Newport Coast, CA 92657, is the owner of the real property known as Lot 4, Filing No.1 of Hamilton Creek Subdivision, Summit County, State of Colorado.
- (5.) Robert L. St. John and Kim D. Hebron are the owners of the real property known as Lot 3, Filing No. 1 of Hamilton Creek Subdivision, Summit County, State of Colorado.
- (6.) Kim D. Hebron of 970 Lakeview Cir, Silverthorne, CO. 80498 is the owner of the real property known as Lot 1, Filing No. 1 of Hamilton Creek Subdivision, Summit County, State of Colorado.
- (7.) The Owners of Lots 2, 3 and 4 ("Owners") desire to construct and install common utilities and a common driveway across the Commons and to connect such utilities and driveway with the existing driveway on Lot 1 and connect to the District's utilities and roadway, to the extent permitted by each utility ("Common Improvements").
- (8.) It is the desire of the parties to this Agreement that the expenses incurred by the Owners in the construction and installation of the Common Improvements shall be borne pro rata by those Owners actually using the Common Improvements. Additionally, subsequent expenses involved in the repair and maintenance of such Common Improvements shall be shared by the Owners and the owner of Lot 1, as more fully detailed herein.

NOW, THEREFORE, in consideration of the above recitals and the following mutual covenants and stipulations, agree as follows:

- 1. Prior Approval: Article II, Section 2.1 of the Hamilton Creek Covenants provides that owners desiring to construct improvements in the Subdivision shall submit their plans to the Architectural Control Committee ("Committee"), which the Committee shall then approve or reject subject to the provisions of the Hamilton Creek Covenants and the Committee's rules, regulations and guidelines.

2. Installation and Ownership of Improvements: The costs of the installation and construction of the Common Improvements to Lots 2, 3 and 4 shall be the responsibility of the Owners.
3. Construction of Common Improvements:
 - (a.) Each of the Owners hereby agrees with each other owner, their successors and assigns, to contribute a pro-rata share of the costs, as hereinafter described, of construction and maintaining the Common Improvements serving Lots 2, 3 and 4, Filing No. 1 of Hamilton Creek Subdivision.
 - (b.) For the purposes hereof, Common Improvements shall consist of the costs of constructing a common driveway across the Commons, laying the waterlines underground and plumbing an access point to the surface for the future continuation by each Site owner, including payment of water tap fees at the time of individual Site building permit to Hamilton Creek Metro District. The Common Improvements will stop short of the boundary line of each Site, to the extent permitted by each utility. The Engineered Design ("Design"), attached and incorporated as Exhibit "A", will specify the exact point where the common driveway section ends and the driveway serving only an individual Site begins. The costs of constructing and maintaining utilities and driveway which will specifically serve only one Site and the interior of each Site shall extend from the Common Improvements location and be borne solely by the Site owner. Additionally, the Owners shall be responsible for any damage to the existing driveway serving Lot 1. Said damage shall be repaired at the sole cost and expense of the Owners and shall be done in such a manner as to restore said driveway in substantially the same condition as it existed prior to such damage. The Owners shall contact the Owner of Lot 1 in advance of any work being done on the driveway serving Lot 1 in order to limit the disruption of the use of said driveway.
4. Approvals – Maintenance:
 - (a.) Prior to the commencement of construction of any Common Improvements, the Owners shall submit plans and specifications, including the Design, to the District and the Association for their approval. All Common Improvements shall conform with applicable rules and regulations of the District and the Association, as well as all other applicable governmental regulations. Additionally, prior to the commencement of construction of any Common Improvements, all contractors shall be required to obtain and maintain adequate insurance coverage as determined by the Owners and the owner of Lot 1.
 - (b.) Prior to submitting any plans or specifications, including the Design, the Owners shall submit said plans and specifications to the owner of Lot 1 for their approval, which shall not be unreasonably withheld.

5. Reimbursement of Costs:

- (a.) Each of the Owners, their successors and assigns, agrees to reimburse the other Owner or Owners for their share of all Reimbursement Costs incurred (as hereafter defined) to construct the Common Improvements. For the purposes hereof, "Reimbursement Costs" shall mean all construction costs, including labor, materials, engineering, legal, permits, fees and other direct out of pocket expenses incurred by an Owner or Owners to construct and install Common Improvements. Any Reimbursement Costs that remain unpaid thirty (30) days after being invoiced shall accrue interest at the rate of ten percent (10%) per annum.
- (b.) The Owner who initiates the construction of the Common Improvements ("Constructing Owner") shall provide all other Owners with the invoices for Reimbursement Costs upon receipt. If any Owner disputes the validity of any such Reimbursement Costs, he shall have a period of ten (10) days to serve written notice of such objection. If the Owners cannot agree on the total amount of the Reimbursement Costs, the dispute shall be submitted to binding arbitration before an arbitrator from the Judicial Arbitrator Group (JAG) in Denver, Colorado. The arbitrator shall determine the same, whose decision shall be final and binding on all Owners, their successors, and assigns. If the parties cannot agree upon a single arbitrator, then each party shall select an arbitrator from JAG, Denver and the two so chosen shall select a third who shall hear the dispute. If a party fails or refuses to participate in arbitration, a default may be entered against such party.

6. Allocation of Costs: The Reimbursement Costs and the costs of ongoing maintenance and snow removal shall be allocated based upon the following:

Lot	Construction of Common Driveway	Construction of Waterlines	Ongoing Maintenance and Snow Removal
2	33.33%	33.33%	29%
3	33.33%	33.33%	29%
4	33.33%	33.33%	29%
1	0%	0%	13%

7. Common Repair and Maintenance Costs: The Owners and the owner of Lot 1 agree to be responsible for any costs and expenses incurred in the maintenance and repair of the Common Improvements, which are not paid by the District and are not directly attributable to an Owner, his guests and invitees. The responsibility for such costs shall be borne in the same proportions as are set forth in Paragraph 6 hereof.

8. Remedies:

- (a.) In the event that an Owner shall fail to pay his/her share of the Reimbursement Costs or repair of maintenance costs for his/her Site, the

first Constructing Owner or Owners shall be entitled to secure payment of such amount by placing a lien against the defaulting owner's Site and to foreclose the same. In addition, or in the alternative, a personal action may be maintained against the defaulting Owner. In any such action or proceeding, the prevailing party shall be entitled to recover interest on amounts due for Reimbursement Costs or repair of maintenance costs at the rate of eighteen percent (18%) per annum, together with costs and reasonable attorney's fees.

- (b.) In the event a party damages the Common Improvements or any portion thereof during construction or at any other time, or if any utilities are located thereunder or are ever repaired or maintained in any way which disturbs the driveway, said party shall be solely responsible for the cost of returning said driveway to its original condition. In the event the defaulting party fails to do so after demand, the non-defaulting parties shall be entitled to repair the damage and the defaulting party shall be responsible for all costs and expenses of said repair. Failure to pay said costs and expenses shall entitle the non-defaulting to the remedies described in Section 8(a) above.
- (c.) In the event of any default or dispute arising under this Agreement, the prevailing party shall be entitled to recover all costs, including reasonable attorney's fees incurred by reason thereof.

9. Successors and Assigns: All of the provisions of this instrument including the benefits and burdens, are appurtenant to the above-described lands of the parties and the benefits and burdens shall run with the lands and are binding upon the heirs, successors, assigns, tenants and personal representatives of the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.

[THE REMAINDER OF THIS PAGE INENTIONALLY LEFT BLANK]

Christopher D. Lange
Christopher D. Lange

STATE OF NEW JERSEY)

COUNTY OF BURLINGTON)

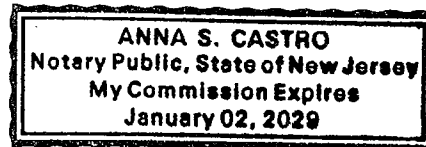
The foregoing instrument was acknowledged before me this 14TH day of August, 2024, by **Christopher D. Lange.**

Witness my hand and official seal.

My commission expires: JANUARY 2ND, 2029

Anna S. Castro

Notary Public





Robert L. St. John

STATE OF Colorado)

COUNTY OF Summit)

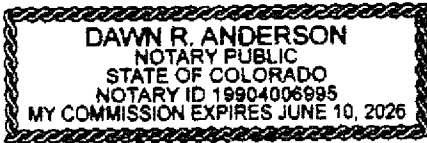
The foregoing instrument was acknowledged before me this 15th day of August, 2024, by **Robert L. St. John.**

Witness my hand and official seal.

My commission expires: June 10 2026



Notary Public





Kim D. Hebron

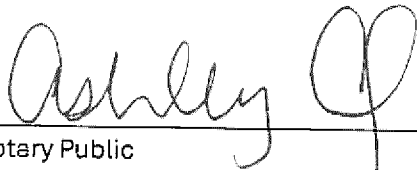
STATE OF COLORADO)

COUNTY OF SUMMIT)

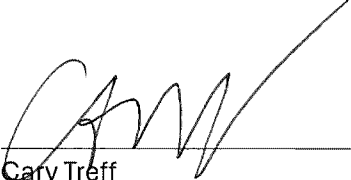
The foregoing instrument was acknowledged before me this 14th day of August, 2024, by **Kim D. Hebron.**

Witness my hand and official seal.
My commission expires: 11/6/27

ASHLEY CONNALLY
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20074039147
MY COMMISSION EXPIRES NOVEMBER 06, 2027



Notary Public


Cary Treff

STATE OF California)


COUNTY OF Orange)

The foregoing instrument was acknowledged before me this 13 day of August, 2024, by **Cary Treff.**

Witness my hand and official seal.

My commission expires: Sep 23, 2026




Notary Public

CALIFORNIA ACKNOWLEDGMENT

CIVIL CODE § 1189

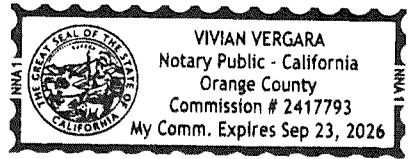
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }
County of Orange

On August 13, 2024 before me, Vivian Vergara, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Cary Treff
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Handwritten Signature]
Signature of Notary Public

Place Notary Seal and/or Stamp Above

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Improvement Payback Agreement

Document Date: August 13, 2024 Number of Pages: 1

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____ Signer's Name: _____

Corporate Officer – Title(s): _____ Corporate Officer – Title(s): _____

Partner – Limited General Partner – Limited General

Individual Attorney in Fact Individual Attorney in Fact

Trustee Guardian or Conservator Trustee Guardian or Conservator

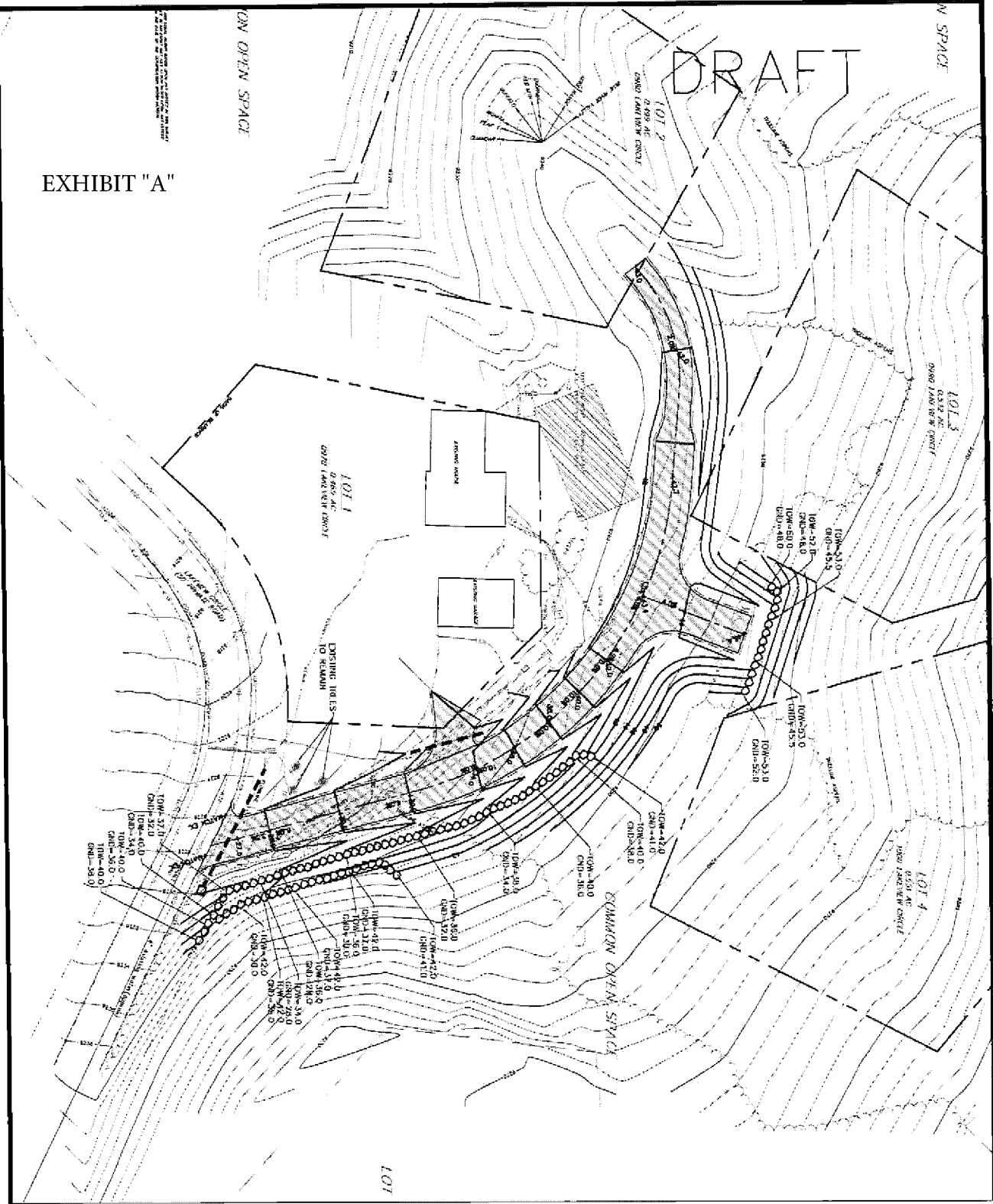
Other: _____ Other: _____

Signer is Representing: _____ Signer is Representing: _____

N SPACE

DRAFT

EXHIBIT "A"



DRAFT

TEN MILE ENGINEERING, INC.



Project	LOTS 2, 3 & 4 Hamilton Creek
Date	5/26/22
Sheet	2

LOTS 2, 3 & 4
HAMILTON CREEK FILING 1
 SUMMIT COUNTY, CO
GRADING AND DRAINAGE PLAN

TEN MILE ENGINEERING, INC.
 Professional Civil Engineers
 P.O. Box 11465
 Frisco, CO 80443
 970-485-5773
 tenmileeng.com

No.	Revision/Issue	Date	Description

