SUBDIVISION
IMPROVEMENT
AGREEMENT
AND RESTRICTION ON ISSUANCE OF CERTIFICATES OF OCCUPANCY
RELATING TO THE SUBDIVISION AND DEVELOPMENT OF

DB Speed Minor Development

THIS AGREEMENT dated this _____(day) of _____(month), 20____, between the BOARD OF COUNTY COMMISSIONERS OF ELBERT COUNTY, COLORADO, (hereinafter sometimes called "County"), David Laurence Brill and Lorene Carol Brill (hereinafter sometimes called “DB Speed").

WITNESSETH:

WHEREAS, DB Speed has this date submitted to County for approval, execution and recordation a subdivision plat designated DB Speed Minor Development, MD-16-0029, (hereinafter referred to as the "DB Speed Plat"); and

WHEREAS, Wind Spirit, LLC (“Wind Spirit”) is the owner of land to the east of said DB Speed Plat. Said property has previously been subdivided into four lots known as the subdivision of Wind Spirit Ranch Final Plat, recorded March 7, 2008 at reception number 492845, Book 13, Page 46 (hereinafter referred to as the “Wind Spirit Plat” attached hereto as Exhibit C); and

WHEREAS, the Wind Spirit Plat dedicated to Elbert County a 60-foot wide roadway easement for public use known as Wind Spirit Lane; and

WHEREAS, County has fully considered said DB Speed Plat, the proposed development and improvement of the land therein and the requirements to be imposed upon other adjoining or neighboring properties by reason of the proposed development and improvement of the land included in the plat; and

WHEREAS, the County has approved the DB Speed Minor Development plat attached hereto as Exhibit B recorded at reception number 578992 and is following up on condition of approval number 5. of Resolution 17-15 to the matters hereinafter described, and subject to all requirements, terms and conditions of the Elbert County Subdivision Regulations now in effect and other laws, rules, and regulations; and

WHEREAS, the County and DB Speed mutually acknowledge and agree that the matters hereinafter set forth are reasonable conditions and requirements to be imposed by County in connection with its approval, execution, and acceptance for the plat, and that such matters are necessary to protect, promote and enhance the public welfare; and

WHEREAS, it is further mutually acknowledged that County is entitled to other assurance that the matters hereinafter agreed to will be performed as agreed by DB Speed, and in that regard the statutes of the State of Colorado pertaining to County Planning provide that the collateral used as security for the

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construction and improvement of public improvements as are required by County Subdivision Regulations may include "Restriction on the conveyance, sale, or transfer of any lot, lots, tract or tracts of land within the subdivision as set forth on the plat or as recorded by separate instrument";

NOW, THEREFORE, in consideration of the premises, the mutual covenants herein contained, and the approval, execution, and acceptance of the plat for recordation by County, it is agreed as follows:

RECITALS.

1. Pursuant to Colorado Statute, C.R.S. §30-28-137, in coordination with a final plat approval, the Developer must either install all required public and private improvements in accordance with approved improvements construction plans, or enter into an agreement with the County to install such improvements. The developer's obligations to install such improvements must be secured by a financial guarantee

2. The purpose of this Agreement is to protect the County from assuming the cost to complete the public and private improvements required for the Development. There are no third party beneficiaries to the Agreement, including, without limitation, materialmen, laborers, or others providing work, services or material to the Development, or lot or home buyers in the Development; and

DEVELOPER'S OBLIGATIONS AND IMPROVEMENTS TO BE COMPLETED

3. All streets, curb, gutter, sidewalk, pans, roads, drainage, water and sewer and other improvements within the plat and other conditions and stipulations for impacts or dedications as reflected in the Board of County Commissioner's approved Resolution 17-15, dated June 14th, 2017, a copy of which is attached hereto as Exhibit "A," and made a part hereof, shall be constructed and improved by DB Speed according to the applicable standards, rules, and regulations of County, and according to the approved road or street plans and profiles submitted by DB Speed.

4. DB Speed shall design, furnish and install any and all required road signage as part of the Wind Spirit Lane design and construction process. The northern portion of Wind Spirit Lane will only be used by DB Speed in the interim and will be built to Elbert County Commercial Driveway requirements (Elbert County Roadway Construction Standards Section 770), and will be built at the sole cost of DB Speed. Elbert County will not issue certificates of occupancy for any buildings or site improvements to the DB Speed property until the driveway has been built, inspected, and approved by Elbert County. Once any other properties require use of Wind Spirit Lane, this road and other required storm water drainage improvements will be designed and constructed in accordance with applicable Elbert County Roadway Standards. DB Speed shall be responsible for the cost of this improvement(s) or otherwise will enter into a road and drainage improvement agreement with other users of Wind Spirit Lane to manage for the proper construction of the road and appurtenant infrastructure. Any discharge of Sediment or runoff from DB Speed's property shall be mitigated by DB Speed or its heirs and assigns within 30 days of notice by the County or from discovery of such conditions, or from notification by a third party, whichever is first. Such

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mitigation shall occur within 30 days of notice by the County, or shall be required to reimburse the County for such costs within 30 days should the County elect to make such repairs or complete such mitigation. Failure to reimburse the County for such mitigation improvements or repairs shall result in the amount owed being subject to the statutory interest rate pursuant to C.R.S. 5-12-101.

TIME OF COMPLETION

5. The improvements described in this subdivision improvement agreement shall be installed, constructed, or performed by DB Speed **before a certificate of occupancy will be issued.** All construction shall be performed in a good and professional manner and in accordance with applicable County standards, rules, and regulations governing such construction.

6. The improvements described in this subdivision improvement agreement shall be installed, constructed, or performed by DB Speed and other users of Wind Spirit Lane before land use approvals and associated building permits will be issued for any additional proposed use on the Wind Spirit Lane property, provided however, that labor disputes, fire, unusual delay in transportation, unavoidable casualties, causes beyond DB Speed's control or other user's control by any cause which County may determine justifies the delay shall extend the said time period for performance of this agreement. All construction shall be performed in a good and professional manner and in accordance with applicable County standards, rules, and regulations governing such construction. Until improvements are made to CR 166 (AKA Singing Hills Road) by DB Speed, other users of Wind Spirit Lane, Elbert County, others developers and/or any combination of these, and until these improvements are accepted by Elbert County for a full-movement intersection at Wind Spirit Lane, Wind Spirit Lane shall be a limited-movement intersection restricted to a "right in/right out" for ingress and egress.

OWNERSHIP OF IMPROVEMENTS

7. All such streets and roads shall remain the sole property of the property owners. DB Speed agrees that Wind Spirit Lane is an easement dedicated to Elbert County and is for public use, as shown on the Wind Spirit Ranch final plat.

ADDITIONAL PROVISIONS

8. County Road 166 (Singing Hills Road)

A. Prior to certificates of occupancy being granted for the business at this location, Restriping of CR 166, in accordance with the striping plan prepared by Colorado Geoscience and Design, dated April 30, 2018.

B. Right of Way. At the time of recordation of the Final Plat, DB Speed shall dedicate, by special warranty deed, right-of-way up to sixty (60) feet in width for the south one-half of a road on the northern boundary of the DB Speed property.

C. Future Improvements to Singing Hills Road. Within one (1) month of the DB Speed vehicle repair facility being issued a certificate of occupancy, Elbert County DPW will conduct

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traffic counts at the intersection of CR 166 and Wind Spirit Lane. Traffic counts will occur during the repair facility hours of operation and/or business hours over a 1 week period. Subsequent traffic counts will be completed by Elbert County DPW as necessary, at a minimum interval of six (6) months.

D. Upon review of these regular/periodic traffic count analysis (which shall occur at a minimum of two times annually), if at any time such traffic count review yields 10 trips per hour/vehicles per hour (vph) or more turn left from CR 166 onto Wind Spirit Lane, or if at any time 25 vph turn right from CR 166 onto Wind Spirit Lane, the applicant must complete all necessary design and construction requirements to install and implement a left-turn lane and right-turn deceleration lane. This work must be completed within 90 calendar days (designed to County Standards, approved by the County, and installed). In the event such is not completed within this timeframe, the "Security" provided within paragraph 10 of this agreement shall be forfeited to the County, with access to the full amount of such security so that either the County may complete such improvements, or a contractor chosen by Elbert County may be hired and paid from such monies to complete such infrastructure construction and associated updates.

Prior to installation of the Left Hand turn lane and right-turn deceleration lane, described within this paragraph, Elbert County shall have the option of installing plastic, rubber, or other such barriers preventing left hand turns into the ingress point(s) of the applicant's business, ensuring Wind Spirit Lane will be a limited-movement intersection restricted to a "right in/right out" for ingress and egress until such time as a left hand turn lane utilizing County standards is designed, installed, and accepted by Elbert County.

FINANCIAL SECURITY

9. To secure and guaranty the construction of the Improvements as required by this Agreement, the Developer shall deposit with the County as a construction guarantee (the "Construction Guarantee") in the amount of $250,000.00, or such lessor amount, the total of which is determined by a certified Engineer's estimate of probable cost Such certified report of probable cost and completed engineering and design plans (which comport to County standards) by a professional engineer certified by the State of Colorado prior to issuance of a Certificate of Occupancy in one of the two following manners, Option A or Option B:

Option A: Irrevocable Letter of Credit - An irrevocable letter of credit (the "Letter of Credit"), which Letter of Credit shall be issued by a financial institution acceptable to the County ("LOC Issuing Bank") in the total dollar amount as shown in the Estimate of Costs for Completion of the Left Hand Turn Lane, and Acceleration/Deceleration Lane(s) as detailed in this document, along with the included construction, labor, and overhead costs. The Letter of Credit shall be payable at sight to the County and shall bear an expiration date not earlier than twenty-four (24) months from the Effective Date of this Agreement. The Letter of Credit shall be payable to the County at any time upon presentation to the LOC Issuing Bank of (i) a sight draft drawn on the LOC Issuing Bank to which the County is entitled to draw pursuant to the terms of this Agreement and the Letter of Credit; and (ii) a certification executed by an authorized representative of the County or designee stating that the Developer is in default under this Agreement

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and has failed to cure the default as provided herein; and (iii) the original Letter of Credit.

Option B: Performance Bond - A performance bond acceptable to the County (the "Bond") shall be issued by a licensed surety bonding agency (the "Surety"), upon which the County shall be entitled to draw pursuant to the terms of this Agreement in the total dollar amount as shown in the Construction Cost Schedule. The Performance Bond shall bear an expiration date not earlier than twenty-four (24) months from the Effective Date of this Agreement. The funds shall be disbursed to the County in full or in part, upon presentation to the Surety of: (i) a request for disbursement; and (ii) a certification executed by an authorized representative of the County or designee stating that the Developer is in default under this Agreement; or (iii) as otherwise provided by the Bond.

10. **Standards:** The Developer shall construct the Improvements in conformance with the Construction Documents, this Agreement, the Code, and all applicable Elbert County standards, policies and procedures. The Developer shall ensure that any contractor, subcontractor, or construction manager, working in the Development provides timely notice to the Developer, the applicable contractor, and the Elbert County Development Engineering Department whenever such individual becomes aware that an Improvement does not conform to the requirements of the Construction Documents, this Agreement, the Code, and all applicable Elbert County standards, policies and procedures, or is otherwise suspected as being defective or sub-standard.

11. **Release of Liability, Indemnification and Warranty**:

a. **Release of Liability:** Neither the County nor any officer or employee of the County shall be liable or responsible for any accident, loss or damage happening or occurring on or to the Improvements prior to the completion and acceptance of the same by the County. It is further agreed and understood that at all times prior to the completion and acceptance of the Improvements by the County, each of the Improvements not accepted shall be under the sole responsibility and charge of the Developer.

b. **Indemnification:** Except with respect to the negligence or willful misconduct of the County or any of its officials, agents or employees, the Developer hereby agrees to indemnify and save harmless the County and its officials, agents and employees from any and all suits, actions, claims, damages or liability of every nature and description arising from or as a result of the performance and/or default of the Developer under this Agreement. The Developer agrees to pay any and all costs, damages and judgments rendered against or assessed to the County on account of any such suit, action or claim, together with all reasonable expenses and attorney's fees incurred by the County in prosecuting or defending such suit, action or claim. This paragraph shall survive through the warranty period specified herein. The Developer is not an agent of the County.

c. **Warranty:** The Developer warrants that the Improvements, each and every one of them, are installed in a good and workmanlike manner in accordance with the Construction Documents, and will be free from defects for a period of eighteen (24)

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months from the date of the County's acceptance of each particular Improvement, ("Warranty Period"). During the Warranty Period, the Developer shall make all needed repairs or replacements to any of the Improvements constructed pursuant to this Agreement that are deemed defective by the County in its sole discretion. The Developer shall warrant the repair work as being installed in a good workmanlike manner for a period of eighteen (24) months from the date of the County acceptance of the repair work. .

12. **Commencement and Completion Periods:** All Improvements shall be completed as identified within this agreement or within one (1) year from the Effective Date of this Agreement ("Completion Period"). All repairs and replacements needed as part of the Developer's warranty shall be completed within ninety (90) days of notification by the County that repairs or replacements are required, subject to any time extensions required for weather delays or other delays approved in writing by the County. All turn lanes and additional improvements based on traffic counts for Wind Spirit Lane and CR 166 must be completed within 6 months of notification to DB Speed or their Assigns that such benchmarks have been reached.

13. **Compliance with Law**: The Developer shall comply with all applicable federal, state and local laws and regulations when fulfilling obligations under this Agreement.

RESTRICTION ON CERTIFICATE OF OCCUPANCY

14. DB Speed understands and agree that no Certificate of Occupancy will be issued by the Elbert County Building Department for any lot, lots, tract or tracts of the DB Speed Plat until the improvements required by this Subdivision Improvement Agreement have been approved, released or completed in accordance with this agreement.

UTILITY RESPONSIBLE FOR INSTALLATION

15. DB Speed agrees to be responsible for contracting for installation of any or all utilities where required, including, but not limited to water, sewer, natural gas, and electricity where applicable. It is agreed that electrical and telephone service for this subdivision shall be either installed or brought to the subdivision property line in accordance with the Elbert County Regulations. DB Speed understands that no building permits shall be issued prior to assurances to the Elbert County Community and Development Services Department that adequate roadways and water availability are available or provided for each lot seeking a building permit and that water and utility service is available before a certificate of occupancy is granted. Should water and sewer services become available at any time in the future within adjacent public right-of-way to the DB Speed property, DB Speed agrees to utilize said services and abandon water well use and the use of on-site waste water treatment.

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LEGAL ENCUMBRANCE

16. The restrictions, covenants and conditions as set forth above constitute both a formal restriction and a legal encumbrance on DB Speed Minor Development and that the same shall run with such land and shall extend to and be binding upon the successors, legal representatives, heirs and assigns of DB Speed

17. **EXECUTION - NO GUARANTEE** The execution of this agreement by the Board of County Commissioners of Elbert County in no way represents that the County will accept the public improvements set forth in Exhibits { }. Agreement for title or maintenance purposes until said improvements have been completed in strict compliance with Elbert County standards, rules and regulations and this agreement.

ENFORCEMENT

18. This agreement between the parties shall be enforceable pursuant to the provisions of Section 30-28- 137(3), C.R.S. 1973, as amended. The restrictions on conveyance, sale or transfer of any lot, lots, tract or tracts and on the issuance of building permits or certificates of occupancy shall apply to all successors, legal representatives, heirs and assigns of DB Speed.

STANDARDS FOR ACCEPTANCE

19. County shall accept the streets and roads constructed under this agreement for full maintenance under the following terms and conditions:

a. As soon as all the streets which are covered by the agreement are built in accordance with the terms of this agreement, DB Speed shall send a letter to County requesting inspection to be made of said streets and roads for county approval. The County will send a letter to DB Sped showing the results of the inspection of said streets for street and road approval, setting forth therein all matters required to be completed before County approval.

b. DB Speed agrees and accepts that the County will not take over maintenance of Wind Spirit Lane while it remains on an easement.

PERFORMANCE SECURITY

20. Prior to the release of the entire plat restriction or prior to the final release of a certificate of occupancy, the County, shall require from DB Speed, security and a Colorado Certified Engineer's Estimate of Probable Costs. This security shall be held until the improvements have been accepted by the County and certified by the County Engineer as being in conformance with County standards and code(s).

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PRESERVATION OF OTHER REMEDIES

21. The rights and remedies of the County provided in this agreement shall not be exclusive and are in addition to any other rights or remedies provided by law. DB Speed in developing the property contained within the plat, and the other improvements herein described, shall fully comply with all applicable rules, regulations, standards, and laws of the County and other governmental agencies, and bodies having jurisdiction.

STIPULATIONS

22. This agreement in addition to the consideration of the premises, the mutual covenants herein contained, and the approval, execution, and acceptance of the plat for recordation by Elbert County shall be and is subject to the stipulation(s) contained in Exhibit "A" and DB Speed agrees to perform all of said stipulations.

SECTION HEADINGS

23. The section headings are inserted herein only for convenience of reference and in no way shall they define, limit or describe the scope or intent of any provisions of this agreement.

ATTEST: THE BOARD OF COUNTY COMMISSIONERS OF ELBERT COUNTY, COLORADO

_____ _____

COUNTY CLERK CHAIRMAN OF THE BOARD

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BY David Laurence Brill

TITLE _____

DEVELOPER _____

STATE OF COLORADO }
} ss
COUNTY OF ELBERT }

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS _____ (DAY) OF _____(MONTH), 20____, BY _____ , AS_____ _____ OF_____.

Witness my hand and official seal.

_____
Notary Public

My Commission expires: _____

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BY Lorene Carol Brill

TITLE _____

DEVELOPER _____

STATE OF COLORADO }
} ss
COUNTY OF ELBERT }

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS _____ (DAY) OF _____(MONTH), 20____, BY _____ , AS_____ _____ OF_____.

Witness my hand and official seal.

_____
Notary Public

My Commission expires: _____

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LIST OF EXHIBITS

EXHIBIT A: RESOLUTION 17-15

EXHIBIT B: DB SPEED MINOR DEVELOPMENT PLAT

EXHIBIT C: WIND SPIRIT FINAL PLAT