



AIA[®] Document A201[™] – 1997

General Conditions of the Contract for Construction

for the following PROJECT:
(Name and location or address)

THE OWNER:
(Name and address)

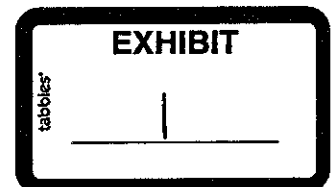
THE ARCHITECT:
(Name and address)

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This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document has been approved and endorsed by The Associated General Contractors of America



§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent:

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall:

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

1 Q. What was the purpose, as you understood
2 it, of the temporary certificate of occupancy
3 agreement?

4 A. It was a county thing that they could
5 not give you a complete certificate of occupancy
6 because in their rules and regulations they call
7 out for landscaping and all things like that to be
8 done before you get it complete, complete.

9 And with our project being phased, we
10 had to operate with a temporary certificate of
11 occupancy, which in all practical purposes was the
12 same as a certificate of occupancy, but until the
13 whole project was pretty much done -- in different
14 buildings and different inspectors or time frame
15 with different inspectors, they had different
16 rules and regulations, but that is what we would
17 get.

18 In some buildings before we could even
19 start doing tenant improvements and in other
20 buildings we could do tenant improvements before,
21 but before you could get anybody occupying it you
22 had to have this.

23 Q. Okay. And for example on this one it
24 says, "Complete north 1/2 of core and shell." Do
25 you see that?

EXHIBITA handwritten number '2' is written in the center of the exhibit box.

tabbles

1 that?

2 A. Yes.

3 Q. And you told me that it would be
4 constructed in a good and workmanlike way, and so
5 forth, right?

6 A. Correct.

7 Q. And in order to complete the common
8 elements, one of the things that you understood
9 was necessary was to provide the homeowners
10 association with a certificate of occupancy for
11 each of the buildings, right?

12 MR. SARKISSIAN: Object to form.

13 A. Correct. Or a TCO.

14 Q. (BY MR. SULLAN) Well, but the -- after
15 the TCO expires --

16 A. People moved in years before we got a
17 CO.

18 Q. Fine, but --

19 A. Buildings were complete years before
20 they got a CO.

21 Q. Okay. But at the end of the day, you
22 understood that you weren't going to leave the
23 homeowners association with an incomplete building
24 without a CO, right?

25 MR. SARKISSIAN: Object to form.

1 Q. (BY MR. SARKISSIAN) The process of
2 having the certificate of occupancy issued was up
3 to the building department, correct?

4 MR. CURT SULLAN: Object to form.

5 A. Correct.

6 Q. (BY MR. SARKISSIAN) Does the
7 certificate of occupancy tell us when the
8 construction work on a building is substantially
9 complete?

10 MR. CURT SULLAN: Object to form.

11 A. Yes.

12 Q. (BY MR. SARKISSIAN) Okay. Does a
13 certificate of occupancy tell you, for example,
14 when -- in this case when the exterior of the
15 building had been finished?

16 MR. CURT SULLAN: Object to form.

17 A. A temporary certificate of occupancy
18 would tell you that the building could start being
19 occupied because the basic things were done and
20 there were other certificate of occupancies
21 because of tenant improvements by individual
22 units.

23 Q. (BY MR. SARKISSIAN) All right. That's
24 what I was going to ask you about. Eagle II was
25 responsible for constructing the building and the

1 for the tenant finishes?

2 A. It looks like that could be the fact
3 because there are some dated as late as --

4 Q. April of 1999?

5 A. Yes.

6 Q. Okay. Do you see any final plumbing
7 inspections that took place in October -- as late
8 as October of 2001?

9 MR. CURT SULLAN: Object to form.

10 A. No.

11 Q. (BY MR. SARKISSIAN) Does that confirm
12 in your mind that the building -- the Diamond
13 building was substantially complete sometime in
14 1998?

15 MR. CURT SULLAN: Object to form.

16 A. Yes.

17 Q. (BY MR. SARKISSIAN) Okay. Let's look
18 at Emerald. What is your recollection of when
19 Emerald was substantially complete?

20 MR. CURT SULLAN: Object to form.

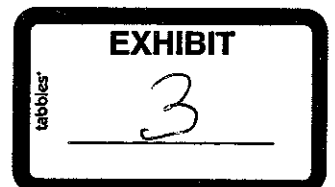
21 A. Oh, that was Christmastime of '99.

22 Q. (BY MR. SARKISSIAN) What's your
23 recollection of the stage of construction of the
24 Emerald building at Christmastime of '99?

25 A. I think the core and the exterior was

**EAGLE COUNTY
BUILDING RESOLUTION**

Adopted October 8, 1985
Amended December 30, 1985
Amended March 11, 1986
Amended February 14, 1989
Amended June 23, 1992
Amended January 4, 1994
Amended December 10, 1996
Effective January 1, 1997



EAGLE COUNTY BUILDING RESOLUTION

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13.01 TITLE

This Resolution may be cited for all purposes as the Building Resolution of the County of Eagle, Colorado, 1996, as amended and adopted December 10, 1996, effective January 1, 1997. The Board determines and finds that this Resolution is necessary for the health, safety and welfare of the persons of Eagle County. Eagle County encompasses mountain terrain located at moderate to high altitudes and subject to extreme weather conditions. The application and interpretation of the Uniform Building Code requirements are subject to, but not limited to, the consideration of such factors.

3.02 APPLICATION

3.02.01 The Uniform Building Code, Uniform Building Code Standards, Uniform Fire Code, Uniform Fire Code Standards, Uniform Code for Abatement of Dangerous Buildings of the International Conference of Building Officials, 1991 Edition, with Appendices; the Uniform Mechanical Code of the International Conference of Building Officials, 1991 Edition, with Appendices; the National Electrical Code of the National Fire Protection Association, 1996 Edition, with Appendices, with the Uniform Administrative Code Provision for the National Electrical Code of the International Conference of Building Officials, 1991 Edition; the Uniform Plumbing Code, the Uniform Swimming Pool, Spa, and Hot Tub Code, and the Uniform Solar Energy Code of the International Association of Plumbing and Mechanical Officials, 1994 Edition, National Fire Protection Association, 1994 Edition, Section 13 Installation of Sprinkler Systems, Section 13-D Sprinkler Systems in One and Two Family Dwellings and Manufactured Homes, Section 13-R Sprinkler Systems in Residential Occupancies up to and including Four Stories in Height, and any and all amendments to said codes and/or standards as of the date of execution of this Resolution, are hereby adopted by this reference and incorporated herein as if set forth in full (hereinafter collectively referred to as "code"); and shall apply to all dwellings, buildings and structures located in the area of the County of Eagle outside of incorporated towns, hereinafter referred to as the "regulated area," unless otherwise provided. Said codes and/or standards set forth in this subsection shall be available from the Building Official, Department of Community Development, County of Eagle, 500 Broadway, Eagle, Colorado 81631.

- 3.04.13 **SIGN** shall mean any letters, figures, design, symbol, trademark, illuminating device, or other device intended to attract attention to any place, subject, person, firm, corporation, public performance, article, machine or merchandise whatsoever, and painted, printed, constructed or displayed in any manner whatsoever.
- 3.04.14 **SITE** shall mean any parcel or area of land having an area sufficient to satisfy the provisions of the Eagle County Land Use Regulations.
- 3.04.15 **TEMPORARY CERTIFICATE OF OCCUPANCY** for one- and two-family dwelling units (R-3 occupancies) shall mean a Temporary Certificate of Occupancy that may be issued when, but not limited to, the following components of a project are complete and approved by the Eagle County Building Official.
1. Kitchen operative.
 2. One bathroom operative as per the approved plans.
 3. All smoke detectors installed per U.B.C. 1210 and operative.
 4. The following life safety items are fully installed:
 - a. Address Numbers.
 - b. Handrails.
 - c. Guardrails.
 - d. Decks.
 - e. Stairs.
 - f. Separation between the garage and house complete, with a self-closing, tight fitting, 20 minute fire protection rated door (must latch).
 5. Furnace/Boiler is operable.
 6. Final Electrical approval.
 7. Final Mechanical and Plumbing approval.
 8. Culvert under the driveway installed per County specifications (located on the approved drawing), and the on-site drainage improvements are cleaned to allow water to flow freely.
 9. Positive drainage away from the structure at all locations.
 10. The permit holder and owner/buyer/occupant shall enter into a Temporary Certificate of Occupancy request agreement wherein they agree that all required corrections as stated by the Building Official are

completed within the required 30 day timeline. The agreement shall be presented to the Building Official prior to the issuance of any Temporary Certificate of Occupancy.

11. Sufficient roadway access for emergency vehicles.

The Temporary Certificate of Occupancy agreement shall be submitted and approved by the Building Official.

The Temporary Certificate of Occupancy for one- and two-family dwellings shall have a time period of up to, but not more than, 30 days from date of issuance.

The Temporary Certificate shall be posted in a conspicuous place on the premises until final approval for occupancy is complete.

3.04.16

TEMPORARY CERTIFICATE OF OCCUPANCY for Commercial or Multi-Family, 3 or more units (A, B, E, H, I & R-1 occupancies) shall mean a Temporary Certificate of Occupancy that may be issued when, but not limited to, the following components of a project are complete and approved by the Eagle County Building Official.

1. Kitchen operative.
2. One bathroom operative.
3. All smoke detectors installed per U.B.C. 1210 and operative.
4. The following life safety items are fully installed:
 - a. Address Numbers.
 - b. Handrails.
 - c. Guardrails.
 - d. Decks.
 - e. Stairs.
 - f. Separation between the garage and house complete, with a self-closing, tight fitting, 20 minute fire protection rated door (must latch).
5. Furnace/Boiler is operable.
6. Final Electrical approval.
7. Final Mechanical and Plumbing approval.
8. Fire department review and approval of Commercial and Multi-Family projects where required.
9. Culvert under the driveway installed per County specifications (located on the approved drawing), and the on-site drainage improvements are cleaned to allow water to flow freely.

10. Positive drainage away from the structure at all locations.
11. Commercial or Multi-family Residential (3 or more dwelling units) projects shall be required to have a completed core and shell inspection. The exterior of said buildings shall be required to be completed, including roof assembly. The interior of said buildings shall have all exit corridors, ramps, stairways, smoke proof enclosures, horizontal exits, exit passageways, courts, yard and entry ways completed in all occupied areas. Separate adequate parking shall be required for the public in said buildings.
12. Where the landscaping, revegetation, drainage or culvert installation, required under Section 2.07.01 (4) of these Land Use Regulations for the purposes of preventing land erosion, improper drainage, damage to properties and unsightliness in residential zones containing multi family dwellings and in all portions of lots in CL, CG, I, and PUD Zone Districts, is not complete, or where Public Improvements are required under Section 2.20 of the Eagle County Land Use Regulations, a Temporary Certificate of Occupancy may be awarded upon submittal and approval of a property executed **Construction Improvement Agreement**.
If the improvements required for issuance of a final Certificate of Occupancy have not been completed within one year of the date of issuance of the Temporary Certificate of Occupancy, the County may arrange such completion using the collateral. Should compliance be attained any time prior to the expiration of one year, the collateral will be returned to the permittee upon issuance of the Final Certificate of Occupancy.
13. Sufficient roadway access for emergency vehicles. Required improvements collateralized under a subdivision improvements agreement to which the County is a party may not be required to be further collateralized under this sub-section.

The Temporary Certificate of Occupancy agreement shall be submitted and approved by the Building Official.

The Temporary Certificate of Occupancy for Commercial or Multi-Family dwellings shall have a time period of up to,

but not more than, one year from date of issuance, where a project does not have a Construction Improvement Agreement.

The Temporary Certificate shall be posted in a conspicuous place on the premises until final approval for occupancy complete.

3.04.17 **WORK** shall mean the construction, demolition, alteration, repair, moving or change in the class of occupancy of any building, equipment or structure, and shall include the installation, construction, alteration or repair of any private or subsurface sewage-disposal system, and the placement and use of a mobile home as a living unit elsewhere than in an approved mobile-home park as defined in the Eagle County Land Use Regulations, Section 2.08.

3.05 AMENDMENTS TO THE 1991 CODE

3.05.01 WHERE the requirements or conditions imposed by a provision of this Resolution differ from the requirements or conditions imposed by the 1991 Code, the most restrictive shall govern.

3.05.02 THE UNIFORM BUILDING CODE, 1991 EDITION IS SPECIFICALLY AMENDED AS FOLLOWS:

- A. Amendment of Section 202(a) the first sentence of the first paragraph is changed to read: The Building Official is hereby authorized and directed to enforce all of the provisions of this Code; however, a guarantee that all buildings and structures have been constructed in accordance with all provisions of this Code is neither intended nor implied.
- B. Amendment of Section 301(b) item 1 "**Permits**": One story detached buildings used as tool and storage sheds, playhouses and similar uses, provided the projected roof area does not exceed 120 square feet and the height of said buildings does not exceed 10 feet at peak of roof.

These buildings must specifically not be intended or used for human habitation. Amendment of Section 301(b)7: Decks not more than 30 inches above grade and not more than 20 square feet, will not require a Building Permit.

Community Development Department
(970) 328-8730
FAX (970) 328-7185
TDD (970) 328-8797
Email: eccmdeva@vail.net
http://www.eagle-county.com



Eagle County Building
P.O. Box 179
500 Broadway
Eagle, Colorado 81631-0179

EAGLE COUNTY, COLORADO

**TEMPORARY CERTIFICATE OF OCCUPANCY
COUNTY OF EAGLE**

**Community Development Department
Building Division**

This certificate issued pursuant to the requirements of Section 307(d) of the Uniform Building Code certifying that at the time of issuance this structure was in compliance with the various resolution of the county regulating building construction or use for the following:

NAME: Eagle II Developers

BUILDING PERMIT NUMBER: #11062 USE ZONE: PUD

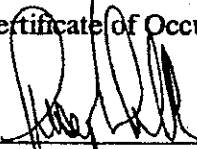
TYPE OF CONSTRUCTION: I/V-1hr GROUP: B-1/B-2/R-1

OWNER OF BUILDING: Eagle II Developers

BUILDING ADDRESS: 0137 Main Street

MAILING ADDRESS: Box 1768, Edwards, CO 81632

This Temporary Certificate of Occupancy is good for only 6 Months



Joseph M. McGrath, Building Official

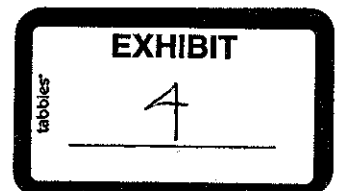
September 15, 1998
Date

Expiration Date: March 14, 1999

OCCUPANCY AFTER THE ABOVE EXPIRATION DATE WITHOUT AN APPROVED FINAL INSPECTION IS IN VIOLATION OF THE UNIFORM BUILDING CODE SECTION 305(d). PLEASE CALL FOR A FINAL INSPECTION ON OR BEFORE THE ABOVE EXPIRATION DATE.

Upon the completion of the following items:

1. Provide final fire alarm letter.
2. Install self closure front entry.
3. Complete dryer hook up.
4. Complete kitchen sink drain, mop sink.
5. Protect all plumb penetrations.



Community Development Department
(970) 328-8730
FAX (970) 328-7185
TDD (970) 328-8797
Email: eccmdeva@vail.net
http: //www.eagle-county.com



EAGLE COUNTY, COLORADO

Eagle County Building
P.O. Box 179
500 Broadway
Eagle, Colorado 81631-0179

December 14, 1999

Mr. Todd Williams
Eagle II Developers
Box 1768
Edwards, CO 81632

Re: Expiration of Temporary Certificate of Occupancy
Building Permit #11062

A Temporary Certificate of Occupancy, valid for six (6) months, was issued for 0137 Main Street, pending completion of the following corrections:

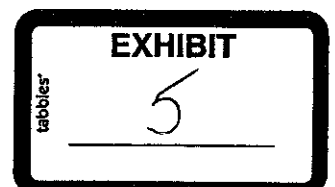
1. SEE ATTACHED SHEETS.

NOTICE: The six (6) month period for your Temporary Certificate of Occupancy expired on June 17, 1999. Since occupancy of this unit is in violation of Section 109 of the Uniform Building Code, Eagle County must require a response to this request within **10 days** of the above date for compliance to the Uniform Codes. If you do not respond, this file will be turned over to our Code Enforcement Officer. Delay could result in several actions including denial of occupancy and a fine of **\$100.00 per day** until corrections are complete.

If you have any questions, please call Customer Service in the Building Division Office at (970) 328-8735.

Sincerely,

Dan Stanek
Acting Building Official
DS/lg
cc: file



BLDG DEPT-DIAMOND 0041