CITY AND COUNTY OF BROOMFIELD SUBDIVISION IMPROVEMENT AGREEMENT
FOR
(PROPERTY NAME - ALL CAPS)

THIS AGREEMENT, made and entered into this ____ day of _____, 20__, by and between The CITY AND COUNTY OF BROOMFIELD, a Colorado municipal corporation and county, (the City), and _____, (the Owner) and _____ (the Developer).

W I T N E S S E T H:

WHEREAS, Developer is the owner of a parcel of property (the Property) situated in The City and County of Broomfield, the description of which is set forth in **Exhibit A**, and is incorporated herein by this reference; and

WHEREAS, Developer has designated the Property as _____ and wishes to obtain the City's approval of a final plat, a copy of which is attached hereto as **Exhibit B** and is incorporated herein by this reference;

NOW, THEREFORE, in consideration of the premises cited hereinabove and the mutual covenants and promises contained herein, the sufficiency of which is acknowledged, the parties hereto agree as follows:

1.0 Improvements. Developer shall furnish and install at its own expense, the improvements described on the Schedule of Improvements in **Exhibit C** (the Improvements), which is attached hereto and incorporated herein by this reference and hereinafter referred to as the "Improvements".

1.1 Design and Construction. Construction of the Improvements shall be in strict conformance with the plans to be prepared by Developer and reviewed and accepted by the city engineer and with all policies, standards, and standards and specifications adopted by the City relating thereto. The city engineer's review and acceptance of the plans shall not limit or affect Developer's responsibility for design and construction.

1.2 Testing. Developer shall employ, at its own expense, a qualified testing company, previously approved by the City, to perform all testing of materials or construction that may be required by the City and shall furnish copies of test results to the city engineer.

1.3 Inspection. At all times during construction of the Improvements, the City shall have the right, but not the duty, to inspect materials and workmanship, and all materials and work shall conform to the accepted plans and specifications. Any material or work not conforming to the accepted plans and the City and County of Broomfield

Standards and Specifications ("Standards and Specifications") shall promptly be removed or replaced to the satisfaction of the city engineer at the Developer's expense.

1.4 Utilities. Developer shall furnish proof that proper arrangements have been made for the installation of water, sanitary sewer, gas, electric, cable television, and telephone services.

1.5 Completion of Improvements. The obligations of the Developer provided for in this paragraph l.0, including all subparagraphs hereof, shall be performed on or before _____, 20__, and proper application for acceptance of the Improvements shall be made by such date.

1.5.1 No Improvements shall be deemed to be completed until the city engineer has certified, in writing, that the Improvement has been completed in general conformance with the plans therefor as accepted by the City.

1.5.2 Developer shall provide the city engineer with a sworn affidavit, signed by the Developer's authorized representative, that the Improvements completed have been paid for, in full, by the Developer. The Developer shall be responsible for the information so provided. Said written certification will be reviewed by the City, but the City shall assume no responsibility or liability to any party regarding the veracity of the information so provided.

1.5.3 Before the City accepts the Improvements, Developer shall furnish to the City reproducible "as constructed" drawings, certified accurate by the engineer referred to in paragraph 3.l.

1.5.4 The Improvements within the Property may be constructed by the Developer in two or more phases as approved by the City and as more particularly described in **Exhibit C**.

1.6 Fees. Developer is responsible for all permit fees associated with the construction or installation of the improvements. These fees include but are not limited to Public/Private Improvement Permit fees, Grading Permit fees, Water License Fees, Water Tap and Meter fees, Building Permit fees and Contractor License fees.

2.0 Rights-of-way and Easements. Before commencing the construction of any Improvements herein agreed upon, the Developer shall acquire at its own expense good and sufficient title to streets and easements, free and clear of any liens or encumbrances, on all lands and facilities, if any, traversed by the proposed Improvements. All such streets and easements shall be dedicated or conveyed to the City and the documents of dedication

or conveyance shall be furnished to the City for recording. A policy of title insurance insuring title in the City may be required by the City, and the Developer shall pay the premium for such title insurance policy.

3.0 Engineering Services. Developer shall furnish, at its own expense, all engineering services required for the Property and the Improvements.

3.1 Engineering services shall be performed by a professional engineer registered in the State of Colorado. Such engineering services shall conform in all respects to the Standards and Specifications.

3.2 Engineering services shall consist of, but not be limited to, survey, designs, plans and profiles, estimates, construction supervision, and the furnishing of necessary documents in connection therewith. All engineering plans shall be submitted for review by, and be subject to the stamped acceptance by the city engineer. The city engineer's review and acceptance does not relieve Developer or Developer's engineer of the responsibility for design and construction.

4.0 Liability.

4.1 Release of Liability. Developer shall indemnify and hold harmless the City from any and all suits, actions, and claims of every nature and description caused by, arising from or on account of any act or omission of the Developer, or of any other person or entity for whose act or omission Developer is liable, with respect to such construction of the Improvements; and Developer shall pay any and all judgments rendered against the City as a result of any suit, action, or claim together with all reasonable expenses and attorney's fees incurred by the City in defending any such suit, action or claim. The Developer shall require that all contractors and other employees engaged in construction of Improvements shall maintain adequate workmen's compensation insurance and public liability coverage and shall comply with the provisions of the Federal Occupational Safety and Health Act.

4.2 Drainage Liability. The Developer shall indemnify and hold harmless the City for any liability the latter may have on account of any change in the nature, direction, quantity, or quality of historical drainage flow resulting from the development of this Property or from the construction of streets or storm sewers therein. In addition, the Developer promises to reimburse the City for any and all costs including, but not limited to, reasonable attorney's fees, which the City incurs in acquiring or condemning any rights-of-way or easements which the City is required to acquire or condemn or which the City is held to have acquired or condemned, for drainage as a result of the development of this Property.

4.3 Tax Liability. The Developer shall pay all property taxes on property dedicated to the City to the extent such taxes are due as of the date of dedication or conveyance, and the Developer shall indemnify and hold harmless the City for any such property tax liability.

5.0 Acceptance. If the Improvements are satisfactorily completed, then upon written request of Developer, accompanied by documents required by the Standards and Specifications, the City shall accept the Improvements in accordance with then-applicable procedures. Upon acceptance, said Improvements shall become public facilities and property of the City, subject to repair and replacement as set forth in the Standards and Specifications. Until acceptance by the City Council, the Developer shall bear all risk of loss, damage, or failure to any of the Improvements.

5.1 If desired by the City, portions of the Improvements may be placed in service when completed, but such use shall not constitute an acceptance. Until the Improvements are accepted by the City, Developer shall be solely liable for any repairs or replacements which, in the opinion of the city engineer, shall become necessary. If, within thirty days after Developer's receipt of written notice from the City requesting such repairs or replacements, the Developer shall not have undertaken with due diligence to make same, the City may make such repairs or replacements at the Developer's expense and shall be entitled to draw upon the performance guarantee described in paragraph 7.0 either before undertaking to make such repairs or at any time thereafter. In case of emergency, such written notice shall be waived, and the City shall proceed as it deems necessary, at Developer's expense.

5.2 The City may, at its option, issue building permits for construction on lots for which the Improvements detailed herein have been started, but not completed. The City shall not issue certificates of occupancy or install water meters for lots unless (1) the Improvements serving those lots are completed and placed in service; (2) the progress of work on the Improvements throughout the Property is satisfactory to the City; and (3) all terms of this Agreement have been faithfully kept by the Developer. Any waiver of the terms of this Agreement by the City in any particular instance shall not be deemed a waiver of such terms in any subsequent instance. No delay in enforcement of the terms of this Agreement by the City shall be deemed a waiver of the City's rights hereunder.

6.0 Warranty. The Developer shall, at its own expense, make all needed repairs or replacements which, in the opinion of the city engineer, shall become necessary during the two-year warranty period or longer if required by the warranty provisions of the Standards and Specifications. If, within thirty days after Developer's receipt of written notice from the City requesting such repairs or replacements, the Developer shall not have

undertaken with due diligence to make same, the City may make such repairs or replacements at the Developer's expense and shall be entitled to draw upon the performance guarantee described in paragraph 7.0 either before undertaking to make such repairs or at any time thereafter. In case of emergency, such written notice shall be waived, and the City shall proceed as it deems necessary, at the Developer's expense.

7.0 Performance Guarantee. Before starting work on the Improvements and before any building permit is issued for any structure to be erected in the Property, the Developer shall furnish to the City, at Developer's expense, an irrevocable letter of credit, in a form and content satisfactory to the city attorney, in which the City is designated as the beneficiary of an amount equal to the total cost, for the items shown on the "Schedule of Improvements" (**Exhibit C**), of the Improvements described in **Exhibit C**. The city engineer may permit the Developer to furnish the City with a performance guarantee for each phase or any combination of phases within the Property for the Improvements described in **Exhibit C**. As provided in section 16-32-010 of the Broomfield Municipal Code, the Developer may provide the City with fifteen percent of the cost of the Improvements on the condition that the City will not issue building permits until all improvements are installed, completed and accepted within the Property or within a phase of the Property. Letters of credit shall be substantially in the form and content set forth in **Exhibit D**, attached hereto and incorporated herein, and shall be subject to the review and approval of the city attorney.

7.1 The estimated cost of completion of the Improvements may increase in the future. Accordingly, the City reserves the right to review and adjust the cost estimates at any time in the future, before or after Developer provides a letter of credit. Adjusted cost estimates will be made according to changes in the Construction Cost Index as published by the *Engineering News Record*. If the City adjusts cost estimates for the Improvements, the City shall give written notice to Developer. The Developer shall, within thirty days after receipt of said written notice, provide the City with a new or amended letter of credit in the amount of the adjusted cost estimates. If the Developer refuses or fails to so provide the City with a new or amended performance guarantee, the City may withhold building permits, water licenses, and certificates of occupancy within the Property.

7.2 Releases of the letter of credit shall be in accordance with the Standards and Specifications.

7.3 The letter of credit shall be maintained at an amount sufficient to fund all remaining improvements, said amount to be determined by the city engineer, until all improvements have been accepted by the City. Thereafter, the letter of credit shall be maintained at the amount required by the Standards and Specifications during the two-year

repair and replacement period referred to in paragraph 6.0 or longer if required by the warranty provisions of the Standards and Specifications.

7.4 If a letter of credit is to expire within fourteen calendar days and the Developer has not yet provided a satisfactory replacement, the City may draw on the letter of credit and either hold such funds as security for performance of this agreement, or spend such funds to finish improvements or correct problems within the Property, as the City deems appropriate.

8.0 Availability of Utilities. The City will use every reasonable means to plan for and provide water and sewer services for the Property. However, it is expressly understood by the Developer that the City cannot guarantee its ability to provide water or sewer services. The Developer, for itself, its heirs, successors, and assigns hereby acknowledges the municipal utility limitations of the City and agrees to accept and comply with all policies, ordinances, development criteria, and platting restrictions currently in effect or enacted in the future to allocate or regulate the use of the City's utility resources.

9.0 Breach of Agreement. If at any time this Agreement or any part hereof has been breached by the Developer or if satisfactory progress has not been made on the Improvements, the City may draw on the performance guarantee described in paragraph 7.0, may withhold approval of any or all building permits, certificates of occupancy, and water licenses applied for in the Property, and, until the breach has been corrected by the Developer, shall be under no obligation to approve or to issue any additional building permits, certificates of occupancy or water licenses for any area within the Property. If the City draws on the performance guarantee, it shall not be under obligation to complete the Property Improvements. The City may use the proceeds for engineering expenses, consultants' fees and charges, legal fees and costs, the Improvements, reimbursements, or other expenses connected with the Property. Notwithstanding the rights guaranteed by this paragraph, the City may pursue whatever additional remedies it may have at law or in equity. If the City brings legal action against the Developer or the issuer of the letter of credit or of the bond, and if the City is substantially successful in such litigation, the Developer shall pay the City's costs and attorneys' fees. The waiver of any one or more breaches of the Agreement shall not constitute a waiver of the remaining terms thereof.

10.0 Recording of Agreement. This Agreement shall be recorded and shall be a covenant running with the land herein described in **Exhibit A** so that prospective purchasers and other interested parties are on notice as to the terms and provisions hereof.

11.0 Binding Effect. This Agreement shall be binding upon the heirs, successors, and assigns of the parties hereto.

12.0 Transfer or Assignments. In the event of a sale or transfer from Owner to Developer, said sale or transfer shall be allowed, provided that an agreement satisfactory

to the City, delineating and allocating between Owner and Developer the various rights and obligations under this agreement has been approved by the City Manager.

In the event of any other sale or transfer of any part of the Property, except to a bona-fide home buyer, the seller or transferor and the buyer or transferee shall be jointly and severally liable for the performance of each of the obligations contained in this Improvement Agreement unless, prior to the transfer or sale, an agreement satisfactory to the City, delineating and allocating between Developer and buyer or transferee the various rights and obligations of Developer under this Agreement, has been approved by the City Council.

13.0 Title, Authority, and Recognition of Existing Obligations: The Owner, _____ expressly warrants and represents to the City that it is the record owner in fee simple of the property constituting the Property. Owner and Developer represent that they intend to eventually transfer ownership of the Property to Developer. However, until such time as ownership is transferred to Developer and a statement of rights and responsibilities is issued by the City Manager as set forth in 12.0, Owner remains obligated to fulfill all of its obligations under this Improvement Agreement. Owner and Developer further represent and warrant that the undersigned individuals have full power and authority to enter into this Improvement Agreement. The Owner and Developer and the undersigned individuals understand that the City is relying on such representations and warranties in entering into this Agreement.

14.0 Special Provisions.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above-written.

(OWNER - ALL CAPS)
a _____ corporation

By _____
President

ATTEST:

_____
Secretary

STATE OF COLORADO)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by _____, as President, and _____, as Secretary of _____.

My commission expires: _____

_____
Notary Public

WITNESS my hand and official seal.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above-written.

(DEVELOPER - ALL CAPS)
a _____ corporation

By _____
President

ATTEST:

_____
Secretary

STATE OF COLORADO)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by _____, as President, and _____, as Secretary of _____.

My commission expires: _____

_____
Notary Public

WITNESS my hand and official seal.

Subdivision Improvement Agreement for
_____

THE CITY AND COUNTY OF BROOMFIELD,
a Colorado municipal corporation and county

_____
Mayor

ATTEST:

_____
City & County Clerk

(SEAL)

APPROVED AS TO FORM:

_____
City & County Attorney

STATE OF COLORADO)
) ss.
COUNTY OF BROOMFIELD)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by Pat Quinn, as Mayor of The City and County of Broomfield, a Colorado municipal corporation and county.

My commission expires: _____

_____
Notary Public

WITNESS my hand and official seal.

Subdivision Improvement Agreement for
_____

WORKSHEET FOR PREPARING SUBDIVISION IMPROVEMENT AGREEMENTS

OWNER _____
Title, Sec. 13.

SIGNED BY: _____

DEVELOPER _____
Title, Sec. 13.

SIGNED BY: _____

PROPERTY NAME _____
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COMPLETION OF IMPROVEMENTS DATE _____
Sec. 1.5

SECTION 14. SPECIAL PROVISIONS_____YES_____NO
Delete section if no specials.

CORPORATION? _____
Type under DEVELOPER signature block or delete

Submitted by _____Date_____

Subdivision Improvement Agreement for
_____

Date Needed_____