

SUBDIVISION DEVELOPMENT AGREEMENT

AGREEMENT SETTING FORTH SPECIFIC REQUIREMENTS, RESTRICTIONS, AND CONDITIONS REGARDING ALL BLOCKS, LOTS, TRACTS AND OUTLOTS LOCATED IN THE INSERT SUBDIVISION NAME SUBDIVISION, CITY OF LOVELAND, LARIMER COUNTY, COLORADO, AND THE DEVELOPMENT OR RE- DEVELOPMENT THEREOF

THIS AGREEMENT (“Agreement”) is made and entered into by and among, **Insert Owner's Name** (“Owner”), and the **CITY OF LOVELAND, COLORADO**, a home rule municipality (“City”). This Agreement shall be effective on the date of mutual execution by the parties hereto.

WITNESSETH:

WHEREAS, the Owner owns certain real property situated in the County of Larimer, State of Colorado, (hereafter referred to as the "Property") and legally described as follows, to wit:

Insert Legal Description
and;

WHEREAS, the Property is located within the boundaries of the Insert Subdivision Name Subdivision (the “Development”) and is subject to the applicable General Conditions and Special Conditions set forth in this Agreement; and,

WHEREAS, the Owner desires to develop the Property and has submitted to the City a final subdivision plat and public improvement construction plans, copies of which are on file with the City and made a part hereof by reference; and

WHEREAS, the parties hereto have agreed that the development of the Property will require increased municipal services from the City in order to serve such area and will further require the installation of certain improvements primarily of benefit to the lands to be developed and not to the City of Loveland as a whole; and

WHEREAS, the City has approved the final subdivision plat for the Development submitted by the Owner, subject to certain requirements and conditions, which involve the installation and construction of utilities and other municipal improvements in connection with the Property.

NOW, THEREFORE, in consideration of the promises of the parties hereto and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, it is agreed as follows:

I. General Conditions:

A. Development Activities. The terms of this Agreement shall govern all development activities of the Owner and all subsequent development, re-development and use of land by subsequent owners pertaining to the Property. For the purposes of this Agreement, "development activities" shall include, but not be limited to, the following: (1) the actual construction of improvements, (2) obtaining building permits for said improvements, or (3) any change in grade, contour or appearance of the Property caused by, or on behalf of, the Owner with the intent to construct said improvements thereon.

B. Installation of Public Improvements.

1. The Owner shall install all water lines and facilities, wastewater collection lines and facilities, power distribution lines and facilities, all other dry utility lines and facilities, storm sewer lines and facilities, landscaping (including water taps and irrigation), streets, curbs, gutters, sidewalks, and bike paths and all other public improvements as shown on the approved public improvements construction plans ("PICP") and in full compliance with the standards and specifications of the City in effect at the time of approval of the PICP relating to the specific utility or other public improvement, subject to a three (3) year time limitation from the date of approval of the PICP by the City Engineer or designee. In the event that the Owner commences or performs any construction pursuant hereto after three (3) years from the date of approval by the City, the City may require the Owner to resubmit the PICP for the Property to the Director of Development Services for review and approval. The City will require the Owner to comply with the Loveland Municipal Code and the City's approved standards and specifications in effect at the time of resubmittal.

2. Except as otherwise herein specifically agreed in the Special Conditions in Exhibit A attached hereto and incorporated herein, the Owner shall pay all costs associated with all water lines and facilities, wastewater collection lines and facilities, power distribution lines and facilities, all other utility lines and facilities, storm sewer lines and facilities, streets, curbs, gutters, sidewalks, and bike paths and other public improvements required for this development as shown on the approved plat and PICP, and other approved documents pertaining to the Property on file with the City.

3. The Owner shall complete the construction and installation of all public improvements required for the Development in compliance with the Loveland Municipal Code, all necessary permits and approvals issued by the City, and all other standards and specifications of the City, as may be amended from time to time.

4. The City shall provide the Owner with the design and materials for all power distribution lines, facilities and equipment required for the Development upon the City's receipt of a deposit as required by the City's Water and Power Department. The Owner shall install such power distribution lines, facilities and equipment in compliance with the City's design, the Loveland Municipal Code, and the City's approved standards and specifications. The Owner is responsible for all costs associated with such power distribution lines, facilities and equipment, including but not limited to the materials and installation costs.

5. The Owner shall install all transportation improvements in compliance with City standards, including the Larimer County Urban Area Street Standards.

6. The Owner shall acquire and dedicate, at no cost to the City, any rights-of-way and easements necessary for the required public improvements as shown on the approved PICP.

7. The Owner's installation of all public improvements shown on the approved PICP shall be inspected by the designated City inspectors and shall be subject to each City department's approval. The Owner agrees to correct any deficiencies in such installations in order to meet the requirements of the plans and/or specifications applicable to such installation, including any requirements of the Loveland Municipal Code.

C. Storm Drainage.

1. The Owner shall obtain the City's prior approval of any changes from the approved PICP in grade elevations and/or storm drainage facility configuration that occur as a result of the construction of buildings and/or development of lots, whether by the Owner or other parties. The City reserves the right to withhold the issuance of building permits and certificates of occupancies for the Development until the City has approved such changes as being acceptable for the safe and efficient delivery of storm drainage water.

2. The Owner does hereby indemnify and hold harmless the City from any and all claims that might arise, directly or indirectly, as a result of the discharge of injurious storm drainage or seepage waters from the Property in a manner different from that which was historically discharged and caused by the design or construction of the storm water drainage facilities, except for (1) such claims and damages as are caused by the acts or omissions of the City in maintenance of such facilities as have been accepted by the City for maintenance; and (2) specific directives that may be given to the Owner by the City in writing. The City agrees to give notice to the Owner of any claim made against it to which this indemnity and hold harmless agreement by the Owner could apply, and the Owner shall have the right to defend any lawsuit based on such claim and to settle any such claim provided Owner must obtain a complete discharge of all City liability through such settlement. Failure of the City to give notice of any such claim to the Owner within ninety (90) days after the City first receives notice of such claim under the Colorado Governmental Immunity Act for the same, shall cause this indemnity and hold harmless agreement by the Owner to not apply to such claim and such failure shall constitute a release of this indemnity and hold harmless agreement as to such claim. Review and/or acceptance by the City of any storm drainage facility design or construction shall in no manner be determined to constitute a waiver or relinquishment by the City of the aforesaid indemnification.

D. Right-of-Way Work Permit Required. The Owner shall obtain a Right-of-Way work permit from the Public Works Department prior to performing any work in any public street right of way. The Owner agrees to comply with all terms and conditions of such Right-of-Way work permit.

E. Guarantee. All public improvements constructed by the Owner and accepted by the City shall be guaranteed by the Owner to be free from defects for a period of two years.

F. Sediment and Erosion Control. All improvements required to control water erosion and sedimentation, as outlined by the current City of Loveland Storm Drainage Standards, shall be installed and functional prior to the start of construction. The Owner hereby agrees that it will require its subcontractors to comply with the City's construction inspectors by ceasing operations when winds are of sufficient velocity to create blowing dust, which, in the inspector's opinion, is hazardous to the public health and welfare.

G. Water Rights. Water rights required for development shall be calculated and owed as specified in Title 19 of the Loveland Municipal Code. At the time water rights are applied to satisfy water rights requirements, the Loveland Municipal Code then in effect shall apply. The Loveland Utilities Commission has the sole discretion to accept or reject the particular water rights proposed to transfer to the City.

H. Completion of Public Improvements Required for Building Permits. Except as otherwise set forth in this Agreement, all public improvements as shown on the approved PICP shall be installed by the Owner and accepted by the City prior to the issuance of building permits pursuant to the provisions of the Loveland Municipal Code.

I. Early Building Permit Requests.

1. **Early Building Permits.** Upon request of the Owner, the Director of Development Services (the "Director"), in his or her sole discretion, may authorize the issuance of building permits for lots shown in the approved PICP for each phase of the Development prior to the installation of all required public improvements if the following requirements are met:

- a. The Director finds in writing that issuance of any such building permit will not create a threat to public health, safety or welfare; and
- b. Temporary erosion control measures have been installed on the site in compliance with City standards; and
- c. The Subdivision Lot Grading Certificate form has been submitted and accepted by the City; and
- d. Curb and gutter have been installed; and
- e. All power and other utilities lines and facilities have been installed and energized; and

f. The Owner has completed and the City has accepted all other public improvements as set forth in the approved PICP except for the following which may be financially secured as described in Section 3 below:

- Final asphalt lift for street pavement
- Final pavement markings
- Landscaping in the right-of-way
- Private alleyways and private drive aisles

2. Temporary Certificate of Occupancy. Before a temporary certificate of occupancy can be issued for any lot in the Development, the Owner must install and have accepted by the City all remaining public improvements, except for adjacent public sidewalks and building site landscaping, which may be financially secured as described in Section 3 below and completed prior to issuance of a full certificate of occupancy.

3. Requirements for Financially Securing Incomplete Improvements

a. *Agreement.* The Owner, the Owner's contractor, or other applicant requesting the building permit or certificate of occupancy must execute an Incomplete Improvements Agreement in a form approved by the Loveland City Attorney.

b. *Security.* The Owner shall post financial security as required in Sections 1 and 2 above in the amount of 110 percent in the form of a surety bond or letter of credit in forms approved by the City Attorney, or a deposit of cash or other certified funds. Such financial security shall be provided to the City prior to the issuance of the building permit or certificate of occupancy as applicable, and shall be conditioned upon the Owner's complete installation of such incomplete improvements and compliance with such conditions and requirements within the time and in the manner required by the Loveland Municipal Code or any ordinance or resolution approved by the Loveland City Council.

c. *Release of Security.* Upon Owner's completion of and the City's acceptance of all required improvements, conditions, and requirements within the time set forth in the Incomplete Improvements Agreement and the Owner's request for release of such security, the City shall cause such security to be released within fifteen (15) days.

J. Obligations of Mortgagee or Lienholders. Any mortgagees or lien holders shall subordinate their interests in the Property to the rights and remedies of the City for purposes of this Agreement. No mortgagee or lienholder is obligated to complete any of the improvements described in this Agreement unless the mortgagee or lienholder becomes the owner of the Property and continues development of the Property by requesting permits or other approvals from the City. In such event, all of the improvements described in this Agreement shall be completed pursuant to the terms and conditions of this Agreement.

K. Contractors, Subcontractors and Suppliers; Payment, Removal of Liens.

1. Owner shall ensure that all contractors and/or subcontractors employed by Owner to install the public improvements are licensed as required by the City before any work on the public improvements is commenced.

2. Owner shall at all times promptly make payments of all amounts due to persons supplying labor, materials or services in connection with the public improvements and to any persons who may otherwise be entitled to assert a lien upon the Property by virtue of C.R.S. § 38-22-102 *et seq.*, as may be amended. Owner shall indemnify and defend the City with respect to any such lien and, regardless of the merits of the lien, shall immediately take any and all steps necessary to remove the lien from the Property.

L. Non-Liability. Owner acknowledges that the City's review and approval of plans for the development of the Property is done in furtherance of the general public health, safety and welfare and that no specific relationship with, or duty of care to, Owner or third parties is assumed by such review approval or immunity waived as is more specifically set forth in the Colorado Governmental Immunity Act, C.R.S. § 24-10-106.5.

M. Indemnification. Owner agrees to indemnify and hold harmless the city and its officers and employees from and against all liability, claims, demands and expenses, including any court costs and reasonable attorneys' fees, on account of any injury, loss or damage, which arise out of or are in any manner connected with the work to be performed under this Agreement if such injury, loss or damage is caused in whole or in part by the negligent act or omission, error, professional error, mistake, accident or other fault of the Owner, any subcontractor of Owner or any officer, employee or agent of Owner. The obligations of this Section shall not apply to the extent that the City becomes liable by final judgment to pay a third party as the result of the negligent act or omission, error, professional error, mistake, accident or other fault of the City.

II. Special Conditions.

All special conditions applicable to the Property and the Development are set forth in Exhibit A attached hereto and incorporated herein.

III. Miscellaneous.

A. The Owner shall, pursuant to the terms of this Agreement, complete all improvements and perform all other obligations required herein, as such improvements or obligations may be shown on the original plat and related documents, or any replat as subsequently filed by the Owner, and the City, pursuant to the Loveland Municipal Code, may withhold such building permits and certificates of occupancy as it deems necessary to ensure performance hereof.

B. Nothing herein contained shall be construed as a waiver of any requirements of the City of Loveland Municipal Code, and the Owner agrees to comply with all requirements of the same to the extent such requirements are not inconsistent with the applicable General Conditions and Special Conditions of this Agreement.

C. In the event the City waives any breach of this Agreement, no such waiver shall be held or construed to be a waiver of any subsequent breach hereof.

D. To the extent this Agreement constitutes a multiple fiscal year debt or financial obligation of the City, it shall be subject to annual appropriation pursuant to the City of Loveland Municipal Charter Section 11-6 and Article X, Section 20 of the Colorado Constitution.

E. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the notices, requirements, immunities, rights, benefits, protections, limitations of liability, and other provisions of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 *et seq.* and under any other applicable law.

F. This Agreement shall run with the Property and shall be binding upon and inure to the benefit of the parties hereto, their respective personal representatives, heirs, successors, grantees and assigns. It is agreed that all improvements required pursuant to this Agreement touch and concern the Property regardless of whether such improvements are located on the Property. Assignment of interest within the meaning of this paragraph shall specifically include, but not be limited to, a conveyance or assignment of any portion of the Owner's legal or equitable interest in the Property, as well as any assignment of the Owner's rights to develop the Property under the terms and conditions of this Agreement.

G. In the event the Owner transfers title to the Property and is thereby divested of all equitable and legal interest in the Property, the City hereby agrees to release said Owner from liability under this Agreement with respect to any breach of the terms and conditions of this Agreement occurring after the date of any such transfer of interest. In such event, the succeeding property owner shall be bound by the terms of this Agreement.

H. Each and every term of this Agreement shall be deemed to be a material element hereof. In the event that either party shall fail to perform according to the terms of this Agreement, such party may be declared in default. In the event that a party has been declared in default hereof, such defaulting party shall be given written notice specifying such default and shall be allowed a period of ten (10) days within which to cure said default. In the event the default remains uncorrected, the party declaring default may elect to pursue any and all remedies available at law or in equity including, without limitation, to treat the Agreement as continuing and require specific performance.

I. Written notices shall be directed as follows and shall be deemed received when hand-delivered or emailed, or three days after being sent by certified mail, return receipt requested:

If to the Owner:

Insert address

If to the City:

City of Loveland
City Manager
500 E. Third St., Suite 300
Loveland, CO 80537

With a copy to:

City of Loveland
City Attorney
500 E. Third St., Suite 330
Loveland, CO 80537

J. This Agreement shall not be construed as or deemed to be an agreement for the benefit of any third party or parties, and no third party or parties shall have any right of action hereunder for any cause whatsoever.

K. It is expressly understood and agreed by and between the parties hereto that this Agreement shall be governed by and its terms construed under the laws of the State of Colorado and the City of Loveland, Colorado. Venue shall be in the district court for Larimer County, Colorado.

L. When used in this Agreement, words of the masculine gender shall include the feminine and neuter gender, and when the sentence so indicates, words of the neuter gender shall refer to any gender; and words in the singular shall include the plural and vice versa. This Agreement shall be construed according to its fair meaning, and as if prepared by all parties hereto, and shall be deemed to be and contain the entire understanding and agreement between the parties hereto pertaining to the matters addressed in this Agreement. There shall be deemed to be no other terms, conditions, promises, understandings, statements, representations, expressed or implied, concerning this Agreement, unless set forth in writing signed by all of the parties hereto. Further, paragraph headings used herein are for convenience of reference and shall in no way define, limit, or prescribe the scope or intent of any provision under this Agreement.

M. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and together shall constitute one and the same instrument. Facsimile or electronic signatures, for purposes of this Agreement, shall be deemed as original signatures.

(Remainder of page left intentionally blank)

OWNER:

By: _____
Insert Name, Title

Date: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20___,
by _____.

Witness my hand and official seal.

My commission expires _____

NOTARY PUBLIC

TEMPLATE - DO NOT MODIFY

THE CITY OF LOVELAND, COLORADO,
a home rule municipality

City Manager

Date: _____

ATTEST:

City Clerk

APPROVED AS TO SUBSTANCE:

Development Services Director

APPROVED AS TO FORM:

Assistant City Attorney

TEMPLATE - DO NOT MODIFY

EXHIBIT A

Special Conditions for Insert Subdivision Name Subdivision (the “Development”)

The following special conditions, in addition to any conditions set forth in the associated Site Development Plan or other planning documents on file with the City for the Development, as may be amended, apply to the Development. All improvements must be constructed in compliance with the Loveland Municipal Code and the City’s standards and specifications unless expressly stated otherwise:

Insert Conditions

TEMPLATE - DO NOT MODIFY