

SITE IMPROVEMENT PLAN
IMPROVEMENTS AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of _____, 20____, by and between THE CITY OF LONE TREE ("City"), whose address is 9220 Kimmer Drive, Suite 100, Lone Tree, Colorado 80124, and _____, a _____ qualified to do business in Colorado ("Developer"), whose address is _____.

1. **GENERAL.**

1.1 **Purpose.** The purpose of this Agreement is to provide for the completion of the Site Improvement Plan improvements and the provision of Drainage Easements as hereinafter defined.

1.2 **Definitions.**

1.2.1 **Site Improvement Plan Improvements and Drainage Easements.** Site Improvement Plan Improvements, or Site Improvement Plan Agreements, and Drainage Easements are those improvements and drainage easements which are required by the City of Lone Tree Engineering Department and the City of Lone Tree Community Development Department for the benefit of owners within and adjacent to the Site Improvement Plan area or which are required by the City to properly address drainage, traffic, landscaping, and erosion control.

1.2.2 **SIP.** The "SIP" shall hereinafter mean the Site Improvement Plan set (SP____-____) (as defined in Chapter 16, Article 27 of the City of Lone Tree Municipal Code), which has been presented to the City and was approved by the City Council on _____, subject to execution of this Agreement.

1.2.3 **CD's.** The "CD's" shall mean the construction drawings which must be submitted to the City Engineer for approval at the time of and in connection with the SIP, prior to construction of any improvements.

1.3 **Recitals.**

1.3.1 The City Council has approved the Site Improvement Plan submitted by Developer, subject to execution of this Agreement.

1.3.2 This Agreement will provide for the completion of the Site Improvement Plan improvements and will serve to protect the City from the cost of completing the Site Improvement Plan improvements.

1.3.3 This Agreement is not executed for the benefit of third parties such as, but not limited to, materialmen, laborers or others providing work, services or material for the Site Plan Improvements.

2. CONSTRUCTION OF SIP IMPROVEMENTS.

2.1 Agreement to Construct Improvements and Grant Drainage Easements. Subject to, and in accordance with, the terms and provisions of this Agreement, Developer agrees to cause the SIP Improvements to be constructed and completed, and the Drainage Easement(s) to be granted to the City, at Developer's expense in accordance with the SIP and the CD's.

2.2 SIP Approval as Condition. The obligation of the Developer to construct and complete the SIP Improvements and to grant Drainage Easements is conditioned upon and shall arise only upon the issuance of a building permit for the site, except that approval by the City of an erosion control plan and the provision of surety acceptable to the City for erosion control installation is required prior to the time an overlot grading permit is issued.

2.3 Completion Date. SIP Improvements shall be fully complete and operational, and Drainage Easements shall be granted, prior to the issuance by the City of a certificate of occupancy for any building on the site. In the event of adverse weather, temporary certificates of occupancy may be released in the City's sole discretion in accordance with the site improvement plan section of the City of Lone Tree Zoning Ordinance. Security shall be provided to the City in an amount equal to 115% of the cost of the unfinished work, as approved by the City in accordance with Section 2705.04.03 of the City of Lone Tree Zoning Ordinance, as amended.

2.4 Construction Standards. The SIP Improvements shall be constructed in accordance with CD's approved by the City Engineer and, to the extent not otherwise provided in the CD's, in accordance with the City's ordinances, resolutions and regulations. Prior to the initiation of construction of any SIP Improvement, CD's for such improvements must be submitted to the City Engineer through the usual review process, including the appropriate fees.

2.5 Warranties of Developer. Developer warrants that the SIP Improvements which shall ultimately be owned and operated by the City will be installed in a good and workmanlike manner and in substantial compliance with the CD's and requirements of this Agreement and shall be substantially free of defects in materials and workmanship. These warranties of Developer shall remain in force and effect as to any completed phase of the SIP Improvements until the lapse of two years after the issuance of the first certificate of occupancy for any building on the site.

2.6 Title to SIP Improvements. All SIP Improvements constructed within streets or easements shall be dedicated to the City, or to other parties acceptable to the City, except that the maintenance of curb and gutter, cross-pans and pavement within the access to the site shall remain with the Developer.

2.7 Certificates of Occupancy. In addition to all other rights of the City hereunder, including the rights to the security discussed herein, the City shall have the right to not issue any Certificate of Occupancy for any structure unless the SIP Improvements have been completed.

3. SECURITY FOR COMPLETION.

3.1 Security for Erosion Control. No overlot grading permit will be issued for the area of the SIP until a Grading, Erosion and Sediment Control Plan (GESC) is approved by the City Engineer and surety in the form of a letter of credit or cashier's check, acceptable to the City, is submitted to the City for an amount equal to 115% of the estimated cost of the erosion control improvements, as shown in Exhibit A.

3.2 Security for SIP Improvements. The SIP shall not be approved by the City Engineer until surety in the form of a letter of credit or cashier's check, acceptable to the City, is submitted to the City for an amount equal to 115% of the estimated cost of all public improvements, as shown in Exhibit B. Until all SIP Improvements are completed for the site in substantial compliance with the City-approved SIP and CD's, and Drainage Easements have been granted, the City is under no obligation to issue a certificate of occupancy or temporary certificate of occupancy for any structure on the site, nor shall the Developer make application for said certificate of occupancy or temporary certificate of occupancy.

3.3 Release of Security. Upon the satisfactory completion and City approval of the SIP Improvements, the Developer may request the release of security for those improvements. The City shall release all applicable security as requested. The surety for the GESC permit shall remain in place until the City is satisfied that the Developer has met all of the requirements of the GESC Plan. The City will notify the developer when this has occurred and the Developer may then request release of the GESC surety.

3.4 Recording of Agreement. After approval by the City, this Agreement may, at the option and expense of the City, be recorded in the office of the Clerk and Recorder of Douglas County. Upon issuance of certificate of occupancy for each structure in the SIP area, except with respect to warranties described herein, the City shall deliver to Developer (if requested by Developer) a recordable executed document which shall release each structure (within applicable phase, if a multi-phased SIP) within the SIP area from any further effect of this Agreement.

4. ACCEPTANCE OF IMPROVEMENTS.

4.1 Approval. Upon the satisfactory completion of the SIP Improvements, and granting of Drainage Easements, and upon completion of each structure in accordance with the CD's, Developer shall be entitled to obtain certificate of occupancies for each structure included on the SIP. Such issuance will indicate acceptance of improvements constructed in the public right-of-way by the City, except that all warranty provisions described herein shall apply.

4.2 Maintenance Prior to End of Warranty Period. Until the end of the warranty period, Developer shall at Developer's expense, make all needed repairs or replacements to the SIP Improvements required on account of defects in materials or workmanship. Developer may assign its obligations for ordinary repairs and maintenance, but the Developer shall remain obligated to the City for the proper performance of such repairs and maintenance.

5. DEFAULTS AND REMEDIES.

5.1 Default by Developer. A default by Developer shall exist after written notice and an opportunity to cure as hereinafter provided if (a) Developer fails to construct the SIP Improvements in substantial compliance with the CD's and the other requirements of this Agreement; or (b) Developer fails to complete construction of the SIP Improvements by the completion date provided herein as the same may be extended; or (c) Developer fails to cure any noncompliance specified in any written notice of noncompliance within a reasonable time after receipt of the notice of noncompliance; or (d) Developer otherwise breaches or fails to comply with any obligation of Developer under this Agreement; or (e) Developer becomes insolvent, files a voluntary petition in bankruptcy, is adjudicated as bankrupt pursuant to an involuntary petition in bankruptcy, or a receiver is appointed for Developer; or (f) Developer fails to maintain in full force and effect a letter of credit in the amounts specified in this Agreement. Notice of default as to any phase of the SIP Improvements must be given prior to expiration of the warranty period for such phase of the SIP Improvements as hereinafter provided.

5.2 Notice. In the event a default by Developer is believed to exist, the City Public Works Director shall give written notice thereof to Developer specifying the default and setting a reasonable time within which Developer shall be required to cure the default.

5.3 Remedies of City. If, after notice as aforesaid, the Developer fails to cure such default to the reasonable satisfaction of the City Public Works Director within the time specified, the Public Works Director shall provide written notice to the Developer of the City's intent to make a draw upon the letter of credit or other Project Surety to cure the default. If, within fourteen (14) days of such notice, the

Developer does not appeal as outlined below, the City shall be entitled to (a) make a draw on the letter of credit for the amount reasonably determined by the City Engineer to be necessary to cure the default in a manner consistent with the approved Plans up to the face amount of the letter of credit; and (b) to sue the Developer for recovery of any amount necessary to cure the default over and above the amount available under the letter of credit.

5.4 Developer Appeal. In the event the Developer believes a default does not exist and/or cannot reach agreement with the City Public Works regarding the appropriate cure, the Developer may submit a written appeal to the City Manager, with a copy to the Public Works Director. Such appeal shall identify the alleged default and/or cure which the Developer does not agree with, and shall set forth the basis for such disagreement. Within 14 days, the City Manager will schedule a meeting with the Developer and Public Works to attempt to resolve the issue(s). In the event the meeting does not result in a resolution, the City Manager will schedule a date for a hearing for the Developer before the City Council. The City Manager may, at his discretion, choose to skip the Developer – Public Works meeting, and go directly to the City Council hearing step.

5.5 Notice and Hearing. In the event a hearing before the City Council is scheduled, the City shall give written notice thereof to the Developer, specifying the default and setting a date for the hearing. The hearing shall be no less than fourteen days after written notice to the Developer of the default and hearing date. Within 30 days after the hearing, the City Council shall determine whether or not a default exists, and if so, shall specify the cure and a reasonable time within which the Developer shall be required to cure the default. Subsequently, if the Developer fails to cure the default within the time frame specified, the City shall be entitled to proceed with the Remedies as identified in Section 5.3 above.

6. MISCELLANEOUS.

6.1 Indemnification. Developer shall indemnify and save harmless the City from any and all suits, actions, claims, judgments, obligations, or liabilities of every nature and description which are caused by, arise from, or on account of, the construction and installation of the SIP Improvements; or which are asserted by or on behalf of contractors or subcontractors working in the SIP, lot owners in the SIP, or third parties claiming injuries resulting from defective improvements constructed by Developer. Developer shall pay any and all judgments rendered against the City on account of any such suit, action or claim, together with all reasonable expenses and attorneys' fees incurred by the City in defending such suit, action, or claims.

6.2 Insurance. Developer shall require that all contractors engaged in the construction of the SIP Improvements maintain statutorily adequate worker's compensation insurance and provide evidence thereof to the City. Before

proceeding with the construction of SIP Improvements, Developer shall provide the City Engineer with written evidence of property damage insurance and bodily injury insurance in an amount of not less the greater of One Million Dollars (\$1,000,000) each or such other maximum amount of liability as may be specified in the Colorado Governmental Immunity Act, and protecting the City against any and all claims for damages to persons or property resulting from construction and/or installation of any SIP Improvements pursuant to this Agreement. The policy shall provide that the City shall be notified at least thirty days in advance of any reduction in coverage, termination, or cancellation of the policy. Such notice shall be sent by certified mail to the City Engineer, return receipt requested. Developer agrees that any contractors engaged by or for Developer to construct the SIP Improvements shall maintain public liability coverage in limits not less than those described above.

6.3 No Third Party Beneficiaries. Except as herein provided, no person or entity, other than a party to this Agreement, shall have any right of action under this Agreement including, but not limited to, lenders, lot or home buyers and materialmen, laborers or others providing work, services, or materials for the SIP Improvements.

6.4 Assignability. Subject to the provisions of Section 4.1 above, Developer may convey or transfer title or interests only in the entire SIP area without the consent of the City, and any attempted assignment in violation hereof shall be null and void. Developer may assign its rights and obligations under this Agreement to a party who is the successor or assignee of Developer in its capacity as developer of the SIP without the consent of the City; provided, however, that (a) Developer notifies the City, in writing, of the assignment and of the name and address of the successor developer; (b) the successor Developer assumes the obligations of Developer under this Agreement, in writing, and (c) the successor Developer provides a satisfactory substitute surety, acceptable to the City. Unless otherwise agreed by City, Developer shall remain liable for performance of the obligations of Developer under this Agreement. The City shall release a letter of credit furnished by Developer if the City accepts new security from any successor Developer of the SIP.

6.5 No Automatic Further Approvals. Execution of this Agreement by the City shall not be construed as a representation or warranty that Developer is entitled to any other approvals required from the City, if any, before Developer is entitled to commence development of the SIP or to transfer ownership of property in the Subdivision.

6.6 Notices. All notices, consents or other instruments or communications provided for under this Agreement shall be in writing, signed by the party giving the same, and shall be deemed properly given and received (a) when actually delivered and received personally, by messenger service, or by fax or telecopy delivery; (b) on the next business day after deposit for delivery in an overnight

courier service such as Federal Express; or (c) three business days after deposit in the United States mail, by registered or certified mail with return receipt requested. All such notices or other instruments shall be transmitted with delivery or postage charges prepaid, addressed to the party at the address below for that party or to such other address as such party may designate by written notice to the other party:

If to Developer: _____

If to City: Lone Tree Public Works Department
Attn: Mr. John P. Cotten
9222 Teddy Lane
Lone Tree, CO 80124

cc: White, Bear & Ankele
Professional Corporation
2154 E. Commons Avenue, Suite 2000
Centennial, CO 80122

6.7 Further Assurances. At any time, and from time to time, upon request of either party, the other party agrees to make, execute and deliver or cause to be made, executed and delivered to the requesting party any and all further instruments, certificates and documents consistent with the provisions of this Agreement as may, in the reasonable opinion of the requesting party, be necessary or desirable in order to effectuate, complete or perfect the right of the parties under this Agreement.

6.8 Binding Effect. Subject to Section 6.4 above, this Agreement shall run with the land and be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

6.9 Headings for Convenience. All headings and captions used herein are for convenience only and are of no meaning in the interpretation or effect of this Agreement.

6.10 No Implied Waivers. The failure by a party to enforce any provision of this Agreement or the waiver of any specific requirement of this Agreement shall not be construed as a general waiver of this Agreement or any provision herein nor shall such action act to estop the party from subsequently enforcing this Agreement according to its terms.

6.11 Severability. If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid, it shall not affect the validity of this

Agreement as a whole or any part thereof other than the part declared to be invalid and there shall be substituted for the affected provision, a valid and enforceable provision as similar as possible to the affected provision.

6.12 No Waiver of Sovereign Immunity. Nothing contained in this Agreement shall constitute a waiver of the sovereign immunity of the City under applicable state law.

6.13 Consent to Jurisdiction and Venue. Personal jurisdiction and venue for any civil action commenced by either party to this Agreement with respect to this Agreement or a letter of credit shall be proper only if such action is commenced in the District Court for Douglas County, Colorado. Developer expressly waives the right to bring such action in or to remove such action to any other court, whether state or federal.

6.14 Force Majeure. Neither party shall be liable for failure to perform hereunder if such failure is the unavoidable result of Force Majeure and any time limit expressed in this Agreement shall be extended for the period of any delay resulting from any Force Majeure. "Force Majeure" shall mean causes beyond the reasonable control of a party such as, but not limited to, weather conditions, acts of God, strikes, work stoppages, unavailability of or delay in receiving labor or materials, faults by contractors, subcontractors, utility companies or third parties, fire or other casualty, or action of government authorities.

6.15 Entire Agreement. This Agreement, and any agreement or document referred to herein, constitutes the entire understanding between the parties with respect to the subject matter hereof and all other prior understandings or agreements shall be deemed merged in this Agreement.

6.16 Exhibits Incorporated. All exhibits attached hereto are incorporated herein by this reference.

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EXHIBIT A

**COST ESTIMATE
for
EROSION CONTROL**

EXHIBIT B

**COST ESTIMATE
for
SIP IMPROVEMENTS**