

SUBDIVISION AGREEMENT
[Standard Format]

THIS AGREEMENT is made and entered into this _____ day of _____, 200____, by and between the **TOWN OF FIRESTONE**, a Colorado municipal corporation, whose address is 151 Grant Avenue, Firestone, CO 80520 (“Town”), and _____, a Colorado limited liability company, whose address is _____ (“Subdivider”).

WHEREAS, Subdivider has submitted a Final Subdivision Plat for the _____ Subdivision (“Subdivision” or “Plat”), including utility plans for the Subdivision, the legal description of which is attached hereto as Exhibit A and a copy of which Plat is attached hereto as Exhibit B and incorporated herein by reference, and which Plat has been reviewed and approved by the Planning Commission and Town Board of Trustees; and

WHEREAS, the Subdivision is to be developed as a planned unit development and a large scale development within the Town, under applicable provisions of the Firestone Municipal Code and Development Regulations; and

WHEREAS, additional filings are anticipated, and this Agreement applies only to _____ Subdivision Filing _____; and

WHEREAS, the subdivision regulations of the Town require that the Subdivider enter into a Subdivision Agreement (“Agreement”) with the Town relative to improvements related to the Subdivision;

NOW, THEREFORE, in consideration of the foregoing, the parties hereto promise, covenant and agree as follows:

1.0 GENERAL CONDITIONS

1.1 Subdivision Obligation. Subdivider shall be responsible for performance of the covenants set forth herein.

1.2 Engineering Services. Subdivider agrees to furnish, at its expense, all necessary engineering services relating to the design and construction of the Subdivision and the Schedule of Improvements described in Exhibit C, attached hereto and incorporated herein by this reference. Said engineering services shall be performed by or under the supervision of a Registered Professional Engineer or Registered Land Surveyor, or other professionals as appropriate, licensed by the State of Colorado, and in accordance with applicable Colorado law; and, except as otherwise provided in this Agreement, shall conform to the standards and criteria for public improvements as established and approved by the Town as of the date of submittal to the Town.

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1.3 Improvements; Construction Standards. (a) Subdivider shall construct all improvements required by this Agreement, including but not limited to all water lines, sanitary sewer collection lines, storm sewer lines, streets, curbs, gutter, sidewalks, landscaping, bikepaths, and any other improvements constructed in relation to the Subdivision, in accordance with plans and specifications approved in writing by the Town, and with the approved plat, and in full conformity with the Town's construction specifications applicable at the time of construction plan approval. Such approval shall continue in effect for three (3) years from the date of such approval. In the event that the Subdivider commences or performs any construction after such three (3) year period, the Subdivider shall resubmit the project utility plans to the Town for reexamination. The Town may require the Subdivider to comply with the approved Town standards and specifications that are in effect at the time of resubmittal.

(b) Construction of public improvements shall be complete, and conditional acceptance of the Public Improvements shall be requested, by no later than _____ [deadline for completion cannot be during the winter season (November 1 - March 1)].

1.4 Development Coordination. Unless specifically provided in this Agreement to the contrary, all submittals to the Town shall be made to the Town Clerk, and all approvals required of the Town in connection with this Agreement shall be rendered by the Town's Mayor, or the Mayor's designee. The Town Engineer shall have general responsibility for coordinating development with Subdivider.

1.5 Plan Submission and Approval. Subdivider shall furnish to the Town complete plans for public improvements for the Subdivision, and obtain approval of such plans prior to the commencement of any construction work thereon. The Town shall issue its written approval or disapproval of said plans as expeditiously as reasonably possible. Said approval or disapproval shall be based upon the standards and criteria for public improvements as established and approved by the Town, and the Town shall notify Subdivider of all deficiencies which must be corrected prior to approval. All deficiencies shall be corrected and said plans shall be resubmitted to and approved by the Town prior to the construction of any improvements. In addition to the foregoing, all sanitary sewer and storm drainage plans shall be submitted to and shall require the approval of the sanitation district serving the property prior to the commencement of any construction work on such improvements.

1.6 Conditional Acceptance. No later than fourteen (14) days after improvements are completed for the Subdivision, Subdivider shall request inspection by the Town. If Subdivider does not request this inspection within fourteen (14) days of completion of improvements, the Town may conduct the inspection without the approval of Subdivider. Subdivider shall provide "as-built" drawings and a certified statement of construction costs no later than forty-five (45) days after improvements are completed. If Subdivider has not completed the improvements on or before the completion dates set forth in Section 1.3(b), the Town may exercise its rights to secure performance as provided in Section 8.1 of this Agreement. If improvements completed by Subdivider are satisfactory, the Town shall grant "conditional acceptance," which shall be subject to "final

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acceptance” as set forth herein. If improvements completed by Subdivider are unsatisfactory, the Town shall provide written notice to Subdivider of the repairs, replacements, construction or other work required to receive “conditional acceptance.” Subdivider shall complete all needed repairs, replacements, construction or other work within thirty (30) days of said notice, weather permitting. After Subdivider completes the repairs, replacements, construction, or other work required, Subdivider shall request of the Town a re-inspection of such work to determine if conditional acceptance can be granted, and the Town shall provide written notice to Subdivider of the acceptability or unacceptability of such work prior to proceeding to complete any such work at Subdivider’s expense. If Subdivider does not complete the repairs, replacements, construction or other work required within thirty (30) days of said notice, the Town may exercise its rights to secure performance as provided in Section 8.1 of this Agreement. The Town reserves the right to schedule reinspections, depending upon scope of deficiencies. No building permit for the construction of any structure shall be issued by the Town until all the water lines, fire hydrants, sanitary sewer lines and streets (including curb, gutter, and sidewalk pavement with at least the base course completed) serving such structure have been completed and granted conditional acceptance. No building permits shall be issued for any structure located in excess of nine hundred feet from a single point of access.

1.7 Maintenance and Warranty of Improvements. For a one (1) year period from the date of “conditional acceptance” of any improvements related to the Subdivision, Subdivider shall warrant all said improvements and, at its own expense, take all actions necessary to maintain said improvements and make all needed repairs or replacements which, in the reasonable opinion of the Town, shall become necessary. If within thirty (30) days after Subdivider’s receipt of written notice from the Town requesting such repairs or replacements, the Subdivider has not completed such repairs, the Town may exercise its rights to secure performance as provided in Section 8.1 of this Agreement.

1.8 Final Acceptance. At least thirty (30) days before one (1) year has elapsed from the issuance of conditional acceptance, or as soon thereafter as weather permits, Subdivider shall request a “final acceptance” inspection. The Town shall inspect the improvements and shall notify the Subdivider in writing of all deficiencies and necessary repairs, if any. If there are no deficiencies, or after Subdivider has corrected all deficiencies and made all necessary repairs identified in said written notice, the Town shall issue to Subdivider a letter of “final acceptance.” If Subdivider does not correct all deficiencies and make repairs identified in said inspection to the Town’s satisfaction within thirty (30) days after receipt of said notice, weather permitting, the Town may exercise its rights to secure performance as is provided in Section 8.1 of this Agreement. If any mechanic’s liens have been filed with respect to the public improvements, the Town may retain all or a portion of the Improvement Guarantee up to the amount of such liens. If Subdivider fails to have improvements finally accepted within one (1) year of the date of the issuance of conditional acceptance or any improvements are found not to conform to this Agreement, or to applicable Town standards and specifications, then Subdivider shall be in default of the Agreement and the Town may exercise its rights under Section 8.1 of this Agreement.

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1.9 Reimbursement to Town. The Town may complete construction, repairs, replacements, or other work for Subdivider pursuant to Sections 1.6, 1.7, 1.8, or 8.1 of this Agreement with funds other than the Improvement Guarantee, in which event Subdivider shall reimburse the Town within thirty (30) days after receipt of written demand and supporting documentation from the Town. If Subdivider fails to so reimburse Town, then Subdivider shall be in default of the Agreement and the Town may exercise its rights under Section 8.1 of this Agreement.

1.10 Testing and Inspection. (a) Subdivider shall employ, at its own expense, a licensed and registered testing company, previously approved by the Town in writing, to perform all testing of materials or construction that may be reasonably required by the Town, including but not limited to compaction testing for embankment fills, structural backfills, pipe bedding, trench backfills, subgrades, road base course and asphalt, and concrete strength testing, and shall furnish copies of test results to the Town on a timely basis for Town review and approval prior to commencement or continuation of construction to which the testing is applicable. In addition, at all times during said construction the Town shall have access to inspect the materials and workmanship of said construction, determine the progress of the work, and determine compliance of the work with the approved plans and the Town's construction regulations, and all materials and work not conforming to such regulations, plans and specifications shall be repaired or removed and replaced at Subdivider's expense so as to conform to such regulations, plans and specifications. The Town Engineer shall be present to inspect the pressure leakage testing of potable water lines conducted by the Subdivider, and the Subdivider shall employ, at the Subdivider's expense, a testing laboratory acceptable to the Town to conduct bacteriological tests of the potable water lines after the Subdivider has disinfected said lines according to the Town's construction regulations. The Subdivider shall be responsible for, and shall promptly pay upon receipt of invoice therefor, all actual costs incurred by the Town for engineering, planning, inspection, testing, and legal services related to the Subdivision improvements to be constructed under this Agreement or to the administration of this Agreement.

(b) All work shown on the approved public improvement plans shall be subject to inspection by the Town Engineer. Inspection by the Town Engineer shall not relieve the Subdivider from compliance with the approved plans and specifications or the Town's construction regulations. Inspection services requiring the presence of the Town Engineer are provided Monday through Friday, except legal holidays, from 9:00 a.m. to 4:00 p.m. During the hours listed above, inspections shall be scheduled a minimum of forty-eight (48) hours in advance with the Town Engineer. Requests for inspection services beyond the hours listed above, shall be submitted a minimum of forty-eight (48) hours in advance to the Town Engineer for approval. All requests for after-hours inspection services shall be made in writing to the Town Engineer. If the request is denied, the work shall not proceed after the time requested until an inspection has been performed during the hours listed above. The Subdivider shall comply with all notification and inspection requirements of the sanitation district serving the property with regard to sanitary sewer and storm drainage improvements.

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1.11 Financing and Improvement Guarantees. (a) Except as otherwise specially agreed herein, the Subdivider agrees to install and pay for all improvements described in Exhibit C or otherwise required by this Subdivision as shown on the approved plat, utility plans, and other approved documents on file with the Town.

(b) At or prior to recording of the final Plat, Subdivider shall submit to the Town an Improvement Guarantee for all public improvements related to the Subdivision. The term of the guarantee shall be for a period of time sufficient to cover the completion of construction of the public improvements. Said guarantee may be in cash, certified check, or a letter of credit in form and substance as shown on Exhibit D attached hereto and incorporated herein by reference. Said guarantee, if a letter of credit, shall not expire during the winter season (November 1 - March 1). Said Improvement Guarantee shall include, but not be limited to, street construction, landscaping, fencing, street lights, water, sewer, storm sewer and drainage improvements. Building permits shall be issued only after improvements have been completed and have been granted conditional acceptance. The total amount of the guarantee shall be calculated as one hundred percent (100%) of the total estimated cost including labor and materials of all public improvements to be constructed as described on Exhibit C. The improvement guarantee shall not be released until conditional acceptance of the improvements has been granted by the Town, except that the Town shall retain fifteen percent (15%) of the total amount of the improvement guarantee until final acceptance of the improvements is granted.

(c) In addition to any other remedies it may have, the Town may, at any time prior to Final Acceptance, draw on any Improvement Guarantee issued or provided pursuant to this Agreement if Subdivider fails to extend or replace any such Improvement Guarantee at least thirty (30) days prior to expiration of such Improvement Guarantee. If the Town draws on the guarantee to correct deficiencies and complete improvements, any portion of said guarantee not utilized in correcting the deficiencies and/or completing improvements shall be returned to Subdivider within thirty (30) days after said final acceptance. In the event that the Improvement Guarantee expires or the entity issuing the Improvement Guarantee becomes non-qualifying, or the cost of improvements and construction is reasonably determined by the Town to be greater than the amount of the security provided, then the Town shall furnish written notice to the Subdivider of the condition, along with supporting documentation, and within thirty (30) days of receipt of such notice the Subdivider shall provide the Town with a substituted qualifying Improvement Guarantee, or augment the deficient security as necessary to bring the security into compliance with the requirements of this Section 1.11. If such an Improvement Guarantee is not submitted or maintained, then Subdivider is in default of this Agreement and is subject to the provisions of Section 8.1 of this Agreement, as well as the suspension of development activities by the Town including, but not limited to, the issuance of building permits and certificates of occupancy.

1.12 Indemnification and Release of Liability. Subdivider agrees to indemnify and hold harmless the Town, its officers, employees, agents, and servants, and to pay any and all judgments rendered against said persons on account of any suit, action, or claim caused by, arising from, or on account of acts or omissions by the Subdivider, its officers, employees, agents, consultants,

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contractors, and subcontractors, and to pay to the Town and said persons their reasonable expenses, including, but not limited to, reasonable attorney fees and reasonable expert witness fees, incurred in defending any such suit, action or claim; provided, however, that Subdivider's obligation herein shall not apply to the extent said suit, action or claim results from any acts or omissions of officers, employees, agents or servants of the Town or conformance with requirements imposed by the Town. Said obligation of Subdivider shall be limited to suits, actions or claims based upon conduct prior to "final acceptance" by the Town of the construction work. Subdivider acknowledges that the Town's review and approval of plans for development of the property is done in furtherance of the general public's health, safety and welfare and that no immunity is waived and no specific relationship with, or duty of care to, the Subdivider or third parties is assumed by such review or approval.

1.13 Insurance; OSHA. Subdivider shall, through contract requirements and other normal means, guarantee and furnish to the Town proof thereof that all employees and contractors engaged in the construction of improvements are covered by adequate Workers' Compensation Insurance and Public Liability Insurance, and shall require the faithful compliance with all provisions of the Federal Occupational Safety and Health Act (OSHA).

2.0 CONSTRUCTION OF IMPROVEMENTS

2.1 Rights-of-way, Easements and Permits. Before Town may approve construction plans for any improvements herein agreed upon, Subdivider shall acquire at its own expense and convey to the Town, all necessary land, rights-of-way and easements required by the Town for the construction of the proposed improvements related to the Subdivision. All such conveyances shall be free and clear of liens, taxes and encumbrances and shall be by Special Warranty Deed in form and substance acceptable to the Town Attorney. All title documents shall be recorded by the Town at the Subdivider's expense. The Subdivider shall also furnish, at its own expense, an ALTA title policy for all interest(s) so conveyed, subject to approval by the Town Attorney.

2.2 Construction. Subdivider shall furnish and install, at its own expense, the improvements listed on the "Schedule of Improvements" attached as Exhibit C, in conformance with the subdivision plat and final development plan, drawings, plans and specifications approved by the Town prior to construction. If Subdivider does not meet the above obligations then Subdivider shall be in default of the Agreement and the Town may exercise its rights under Section 8.1 of this Agreement. The Subdivider shall provide the Town Engineer with certified Record Plan Transparencies on Black Image Diazo Reverse Mylars upon completion of the construction of public improvements and other documents as required by the Town. These documents shall show "as-built" locations of such improvements.

2.3 Utility Coordination and Installation. In addition to the Improvements described on Exhibit C, Subdivider shall also be responsible for coordination of and payment for installation of

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on-site and off-site electric, street lights, natural gas, telephone and utilities. All utilities shall be placed underground to the extent required by the Town Code.

3.0 STREET IMPROVEMENTS

3.1 Street Improvements. For the purposes of this Agreement, “street improvements” shall be defined to include, where applicable, but not limited to, all improvements within the right-of-way such as bridges, sub-base preparation, road base, asphalt, concrete, seal coat, curb and gutter, medians, entryways, underground utilities, sidewalks, bicycle paths, traffic signs, street lighting, street name signs, landscaping and drainage improvements. Street improvements other than curbs, gutters, walks and signs, shall not be installed until all utility lines to be placed within the right-of-way have been completely installed, including individual lot service lines leading in from the main to the property line. All street improvements shall be constructed and installed, at the minimum, pursuant to Town-approved plans, specifications, and the Schedule of Improvements attached as Exhibit C.

3.2 Street Signs, Traffic Signs and Striping. Subdivider will install, at Subdivider’s expense, striping, street name signs, stop signs, speed limit signs and other signs on local, collector and arterial streets. Signs and striping shall be installed in a manner reasonably approved by the Town and in accordance with the Model Traffic Code, as from time to time amended, and other applicable legal requirements.

4.0 PUBLIC USE DEDICATION AND LANDSCAPING

4.1 Public Use Dedication. (a) Subdivider shall convey, prior to the issuance of any building permits, to the Town certain lands as described on and at such times as set forth on Exhibit E attached hereto and incorporated herein by reference. Said conveyance shall be by Special Warranty Deed in form and substance satisfactory to the Town Attorney. The Subdivider shall, at Subdivider’s expense, furnish a commitment for title insurance on the property. The property shall be free and clear of liens, taxes and encumbrances, except for ad valorem real property taxes for the calendar year of conveyance and thereafter, but subject to all easements, right-of-way, reservations, restrictions, or other title burdens of record, or those easements and right-of-ways which would be readily apparent from a physical inspection. The Subdivider shall, at its expense, cause a title policy in conformance herewith to be delivered to the Town at the time of conveyance.

(b) The Subdivider specifically represents that to the best of its knowledge, all portions of the Subdivision dedicated to the Town associated with this development are in compliance with all environmental protection and anti-pollution laws, rules, regulations, orders, and requirements, including solid waste requirements, as defined by the US Environmental Protection Agency Regulations at 40 C.F.R., Part 261, and that such portions of the property as are dedicated to the Town pursuant to this development, are in compliance with all such requirements pertaining to the disposal or existence in or on such dedicated property of any hazardous substances, pollutants, or contaminants, as defined by the Comprehensive Environmental Response Compensation and

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Liability Act of 1980, as amended, and regulations promulgated thereunder. The Subdivider does hereby indemnify and hold harmless the Town from any liability whatsoever that may be imposed upon the Town by any governmental authority, pertaining to the disposal of hazardous substances, pollutants or contaminants, and cleanup necessitated by leaking underground storage tanks, excavation and/or backfill of hazardous substances, pollutants or contaminants, or environmental cleanup responsibilities of any nature whatsoever on, of or related to any property dedicated to the Town pursuant to this development. The Subdivider further agrees to indemnify and hold harmless the Town from any claims or actions based directly, indirectly or in any manner on any of the aforementioned environmental risks brought against the Town by third parties arising as a result of the dedication of portions of the Property to the Town pursuant to this development. Said indemnification shall not extend to claims, actions or other liability arising as a result of any hazardous substance, pollutants or contaminants generated or deposited by the Town, its agents or representatives, upon portions of the property dedicated to the Town pursuant to this development.

4.2 Landscape Improvements. For public lands and rights-of-way within the Subdivision, Subdivider shall construct landscape improvements as required in any landscape and irrigation plans approved by the Town. For private landscape improvements, excluding single family detached residential lots, Subdivider shall furnish a final landscape plan to the Town for approval prior to installation of landscape improvements.

4.3 Water Rights. Subdivider shall furnish to the Town, free and clear of all liens and encumbrances, title to the water rights required by the ordinances, resolutions, rules, and regulations of the Town before the final Subdivision Plat is recorded by the Town.

5.0 WATER LINES

5.1 Specifications. (a) All water mains, lines and appurtenances thereto shall be constructed and installed by the Subdivider, at the minimum, pursuant to Town-approved plans, specifications, and the Schedule of Improvements attached as Exhibit C, including both on-site and off-site improvements.

(b) All of the water lines, fire hydrants, valves, fittings, and appurtenances as shown on the approved utility plans shall be installed by the Subdivider prior to issuance of any building permits on the property. This shall include all water services for all of the lots shown on the approved final plat.

6.0 SEWER LINES

6.1 Specifications. All sewer lines and appurtenances thereto shall be constructed and installed by the Subdivider, at the minimum, pursuant to Town-approved plans, specifications, and the Schedule of Improvements attached as Exhibit C, and shall meet the requirements and have the approval of the sanitation district serving the property, including both on-site and off-site improvements.

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7.0 OTHER IMPROVEMENTS

7.1 Street Lights. The total cost of street light installation shall be the Subdivider's obligation. Subdivider shall cause, at its own expense, the provider of electric and power service to install all required street lighting pursuant to Town-approved plans and specifications. Said street lights shall be installed concurrently with the streets on which they are located.

7.2 Drainage Improvements. (a) Drainage improvements for the Subdivision shall be constructed by Subdivider and, at the minimum, in accordance with plans and specifications approved by the Town and in accordance with the minimum requirements for storm drainage facilities as have been established by the sanitation district serving the property. All storm drainage facilities shall be so designed and constructed by the Subdivider as to protect downstream and adjacent properties against injury and adequately serve the Subdivision. No overlot grading shall be initiated by Subdivider until the Town issues written approval of utility plans.

(b) Drainage improvements shall be completed and granted conditional acceptance by the Town prior to the issuance of more than five (5) building permits. Completion of the improvements shall include the certification by a licensed professional engineer that the drainage facilities which serve the development have been constructed in conformance with said approved plans. Any deviation from the approved plans shall be the responsibility of the Subdivider to correct. Said certification shall be submitted to the Town at least two (2) weeks prior to the date of issuance for any subsequent building permit.

(c) Drainage improvements for each lot shall be constructed by the Subdivider, at the minimum, in accordance with plans approved at the time of Plat approval. Said plans shall conform to the Town's then existing flood plain regulations. Subdivider shall furnish copies of approved plans to subsequent purchasers (other than homeowners) of lots. Any changes from the approved plans with respect to grade elevation or storm drainage facility configuration that occur as a result of the construction of houses and or other development of lots, whether by the Subdivider or other parties, shall require the approval of the Town. The Town may withhold the issuance of building permits and certificates of occupancy until the Town has approved such changes as being acceptable for the safe and efficient delivery of storm drainage water.

(d) The Subdivider shall pay any storm drainage basin fees as applicable.

7.3 Trash, Debris, Mud. Subdivider agrees that during construction of the Subdivision and improvements described herein, Subdivider shall take any and all steps necessary to control trash, debris and wind or water erosion in the Subdivision. If the Town determines that said trash, debris or wind or water erosion causes damage or injury or creates a nuisance, Subdivider agrees to abate said nuisance and/or to correct any damage or injury within five (5) working days after notification by Town. If Subdivider does not abate said nuisance or if an emergency situation exists, to be determined by the Town in its sole discretion, the Town may abate the nuisance and/or correct any

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damage or injury without notice to Subdivider at Subdivider's expense. Subdivider also agrees to take any and all steps necessary to prevent the transfer of mud or debris from the construction site onto public rights-of-way and to immediately remove such mud and debris from public rights-of-way after notification by the Town. If Subdivider does not abate such mud or debris, or if an emergency exists, Town may abate the same at Subdivider's expense.

7.4 Limitation of Construction Hours. The operation of construction equipment shall be prohibited between the hours of 7:00 p.m. and 7:00 a.m. The Town Administrator may, upon written application and for good cause, alter the hours of operation for a defined period of time.

8.0 MISCELLANEOUS TERMS

8.1 Breach of Agreement. In the event that the Subdivider should fail to timely comply with any of the terms, conditions, covenants and undertakings of the Agreement, and if such noncompliance is not cured and brought into compliance within thirty (30) days of written notice of breach of the Subdivider by the Town, unless the Town in writing and in its sole discretion designates a longer cure period, then the Town may draw upon the Improvement Guarantee and complete the Improvements at Subdivider's expense. Subdivider's expense shall be limited to the costs incurred by the Town, as defined herein. Notice by the Town to the Subdivider will specify the conditions of default. In the event that no Improvement Guarantee has been posted or the Improvement Guarantee has been exhausted or is insufficient, then the Town has the right enforce the restrictions on the issuance of building permits and other approval or permits, and, if it chooses, to begin work on the Improvements at the expense of the Subdivider. If the Town determines in its sole discretion that an emergency exists, such that the improvement must be completed in less than seven (7) days, the Town may immediately draw upon the Improvement Guarantee if available and may complete the Improvements at Subdivider's expense even if the improvement guaranty is not available; in such event, the Town shall use its best efforts to notify Subdivider at the earliest practical date and time. The Town may also, during the cure period and until completion of the improvements in compliance with this Agreement, withhold any additional building permits, certificates of occupancy, or provision of new utilities fixtures or services. Nothing herein shall be construed to limit the Town from pursuing any other remedy at law or in equity which may be appropriate under municipal, state or federal law. Failure to timely complete construction of improvements which is solely due to inclement weather, acts of God, material shortages, labor strikes, and other matters not within the Subdivider's control shall not be considered a breach of the Agreement. Any costs incurred by the Town, including, but not limited to, administrative costs and reasonable attorney fees, in pursuit of any remedies due to the breach by the Subdivider shall be the responsibility of the Subdivider. The Town may deduct these costs from the Improvement Guarantee.

8.2 Final Utility Plan. (a) It is understood and agreed by the parties that a Final Utility Plan for _____, and supporting reports deemed necessary by the Town, shall be prepared and submitted by the Subdivider for approval as set forth in this Section. The Final Utility Plan shall be prepared in accordance with all applicable criteria of the Town in effect as of the date of this Agreement. The Subdivider shall submit said Plan to the Town for approval no later than thirty

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(30) days after the Town has granted final plat approval for the Subdivision.

(b) Subdivider agrees that the Town shall not grant approval of the Final Utility Plan until and unless all of the Town's comments and requirements concerning said Plan have been addressed to the satisfaction of the Town, and until and unless the sanitation district serving the property has given its approval to said Plan. The Final Utility Plan shall be approved by the Town before the final Subdivision Plat is recorded by the Town.

8.3 Recording of Agreement. The Town shall record this Agreement at Subdivider's expense in the office of the Clerk and Recorder, County of Weld, State of Colorado, and the Town shall retain the recorded Agreement.

8.4 Binding Effect of Agreement. This Agreement shall run with the land included within the Subdivision and shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

8.5 Assignment, Delegation and Notice. Subdivider shall provide to the Town for approval written notice of any proposed transfer of title to any portion of the Subdivision and of the Subdivision Agreement obligations to any successor, as well as arrangements, if any, for delegation of the improvement obligations hereunder. Subdivider and successor shall, until written Town approval of the proposed transfer of title and delegation of obligations, be jointly and severally liable for the obligations of Subdivider under this Agreement.

8.6 Modification and Waiver. No modification of the terms of this Agreement shall be valid unless in writing and executed with the same formality as this Agreement, and no waiver of the breach of the provisions of any section of this Agreement shall be construed as a waiver of any subsequent breach of the same section or any other sections which are contained herein.

8.7 Addresses for Notice. Any notice or communication required or permitted hereunder shall be given in writing and shall be personally delivered, or sent by United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed as follows:

Town:

Town of Firestone
Town Clerk
151 Grant Avenue
P.O. Box 100
Firestone, CO 80520

SUBDIVIDER:

With a copy to:

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Light, Harrington & Dawes, P.C.
Town Attorney
1512 Larimer Street, Suite 300
Denver, CO 80202

or to such other address or the attention of such other person(s) as hereafter designated in writing by the applicable parties in conformance with this procedure. Notices shall be effective upon mailing or personal delivery in compliance with this paragraph.

8.8 Force Majeure. Whenever Subdivider is required to complete construction, maintenance, repair, or replacement of improvements by an agreed upon deadline, said deadline shall be extended for a reasonable time if the performance cannot as a practical matter, be completed in a timely manner due to Acts of God or other circumstances constituting force majeure or beyond the reasonable control of Subdivider.

8.9 Approvals. Whenever approval or acceptance of a matter is required or requested of the Town pursuant to any provisions of this Agreement, the Town shall act reasonably in responding to such matter.

8.10 Previous Agreements. All previous written and recorded agreements between the parties, their successors, and assigns, including, but not limited to, any Annexation Agreement, shall remain in full force and effect and shall control this Subdivision. If any prior agreements conflict with this Agreement, then this Agreement controls.

8.11 Title and Authority. Subdivider warrants to the Town that it is the record owner for the property within the Subdivision or is acting in accordance with the currently valid and unrevoked power of attorney of the record owner hereto attached. The undersigned further warrant to have full power and authority to enter into this Agreement.

8.12 Severability. This Agreement is to be governed and construed according to the laws of the State of Colorado. In the event that upon request of Subdivider or any agent thereof, any provision of the Agreement is held to be violative of the municipal, state, or federal laws and hereby rendered unenforceable, the Town, in its sole discretion, may determine whether the remaining provisions will or will not remain in force.

8.13 Agreement Status After Final Acceptance. Upon Final Acceptance by Town of all improvements and compliance by Subdivider with all terms and conditions of this Agreement, and provided that no litigation or claim is pending relating to this Agreement, this Agreement shall no longer be in effect.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

EXHIBIT V

EXHIBIT A

(Legal description of property)

EXHIBIT B

(Reduced copy of subdivision plat)

EXHIBIT C

SCHEDULE OF IMPROVEMENTS

Item	Quantity	Unit Price	Total
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Water

Sewer

Storm Sewer

Street

Street Lights
Street Signs
Striping
Landscaping

Public Use Land

Special Improvements

EXHIBIT D

IRREVOCABLE LETTER OF CREDIT
STANDARD FORM

[date of Letter of Credit - the date the credit is opened]

Town of Firestone, CO
151 Grant Avenue
P.O. Box 100
Firestone, CO 80520

Attn: Town Clerk:

We hereby issue our Irrevocable Letter of Credit Number in your favor for the account of _____, in an amount not to exceed _____ effective immediately and expiring at our counters on (except November 1 - March 1) or any extended expiration date as indicated below.

Funds under this Letter of Credit are available for payment by sight, by presentation of your sight draft(s) substantially in the form of Exhibit "A" accompanied by your written certificate substantially in the form of Exhibit "B".

Partial and multiple drawings are permitted.

This Letter of Credit will automatically be extended for a period of sixty (60) days from the present or any future expiration date unless we notify you in writing by certified mail thirty (30) days prior to any expiration date that we elect not to renew this Letter of Credit for any additional period.

We hereby engage with you that all drawings in conformity with terms and conditions of the Letter of Credit will be duly honored upon presentation to our counters on or before any expiration date as indicated above.

All bank charges, including any advising bank charges, are to be charged to (account party's name).

If a demand for payment by you hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, the bank shall give the Town written notice, and send copy of this notice by FAX to the Town of Firestone (Attn: Town Clerk), within three business days of presentment of any nonconforming draft that the purported negotiation was not effective in accordance with the terms and conditions of the Letter of Credit, stating with particularity the reasons therefore. The bank will hold all documents at the bank for the Town, or send them to the

Town, at the Town's option. Any such nonconforming demand may be corrected and resubmitted within three (3) business days of receipt of the bank's mailed notice of nonconformity. A resubmittal will be deemed to have been presented to the bank on the date of the original demand for payment.

We are a current member of (FDIC) (FSLIC).

This credit is subject to the Uniform Customs and Practice for Documentary Credits, 1993 revision, ICC publication number 500.

This Irrevocable Letter of Credit sets forth in full the terms of our undertaking and such undertaking shall not in any way be modified, amended or amplified by reference to any document or instrument referred to herein or in which the Irrevocable Letter of Credit relates and any such reference shall not be deemed to incorporate herein by reference any document or instrument.

Sincerely,

(Bank)

EXHIBIT 1 TO LETTER OF CREDIT
DRAFT FOR PAYMENT DRAWN UNDER

IRREVOCABLE LETTER OF CREDIT NO. _____

DATE: _____, 200__.

PAY TO: The account of the Town of Firestone, Colorado, Account

No. _____, at _____,

Colorado, THE SUM OF _____ DOLLARS

(\$ _____).

TOWN OF FIRESTONE, COLORADO

By: _____
Town Clerk

EXHIBIT 2 TO LETTER OF CREDIT

To: _____

CERTIFICATE FOR PAYMENT

The undersigned, a duly appointed officer of the Town of Firestone, Colorado (the "Town"), hereby certifies to _____ (the "Bank"), with reference to the Bank's Irrevocable Letter of Credit No. _____ (the "Letter of Credit"), issued by the Bank in favor of the Town, that:

- (1) The undersigned is the Town Clerk for the Town.
- (2) The Town is authorized to make a drawing under the Letter of Credit.
- (3) The amount which is due and payable from the Letter of Credit is \$_____, and the amount of the sight draft accompanying this certificate does not exceed such amount.

IN WITNESS WHEREOF, the undersigned has executed and delivered this certificate as of the _____ day of _____, 200__.

TOWN OF FIRESTONE, COLORADO

By: _____
Town Clerk

EXHIBIT E

Legal Description of Public Use Land Dedication (with location survey, if off-site).