

**CITY OF CENTENNIAL, COLORADO
PUBLIC IMPROVEMENT AGREEMENT
FOR PROJECT NAME
CASE NO. LU-XXXX-XXX**

This Public Improvement Agreement is entered into this ____ day of _____, 20____, by and between the CITY OF CENTENNIAL, a home rule municipal corporation of the State of Colorado (“Centennial” or “City”), and **Property Owner [actual legal entity name]** (Referred to herein as “Developer”). Centennial and Developer are collectively referred to as “Parties,” or occasionally in the singular as “Party.” This Public Improvement Agreement includes the attached Exhibits A-C and Addendum between the Developer and the Southeast Metro Stormwater Authority (“SEMSWA”).

WITNESSETH:

WHEREAS, Developer owns certain real property in fee simple located within the City and within the service area of the Southeast Metro Stormwater Authority (“SEMSWA”) as more particularly described in **Exhibit A** (the “Property”); and

WHEREAS, Developer desires to develop the Property and has submitted to Centennial for approval and execution a **[Type of Land Use Plan]** designated as **[Project Name]** –Case No. LU-XXXX-XXX (hereinafter referred to as the “Development Plan”), a copy of which is on file in the Community Development Department of the City of Centennial and made a part hereof by reference; and

WHEREAS, Centennial and Developer agree that the development of the Property as specified in the Development Plan will require increased municipal services from the City and will require the installation of certain public improvements, including drainage improvements approved through SEMSWA, that are primarily of benefit to the proposed development and not to the City as a whole; and

WHEREAS, Centennial is willing to approve and execute said Development Plan upon the agreement of Developer to the matters hereinafter described and subject to all the requirements, terms and conditions of the ordinances, rules, regulations and standards of Centennial including but not limited to: the Centennial Land Development Code (including zoning and subdivision regulations); the Roadway Design and Construction Standards; the Storm Drainage Design and Technical Criteria; the Grading, Erosion, and Sediment Control Manual; and all other governing regulations (collectively, the “Standards”) in effect at the time the Construction Plans (as hereinafter defined) are approved by Centennial; and

WHEREAS, Centennial and Developer mutually acknowledge and agree that the matters hereinafter set forth are reasonable conditions and requirements to be imposed by Centennial in consideration of its approval and execution of the Development Plan, and that such matters are necessary to protect, promote, and enhance the public welfare; and

NOW, THEREFORE, in consideration of these premises, the mutual obligations herein contained, and Centennial’s approval and execution of the Development Plan, it is agreed as follows:

Section I. Obligation to Provide Improvements-Construction Plans-Engineer's Cost Estimate

- A. The Developer is obligated to provide for the construction and installation of certain public improvements to serve the Property as generally identified in the schedule of Improvements attached hereto as **Exhibit B** and hereinafter referred to as the "Improvements" in compliance with all requirements contained in the Standards and the approved Development Plan. The Developer is obligated to provide for the installation and maintenance of certain landscaping improvements ("Landscape Improvements") as shown on the Development Plan, the plans for which, in terms of quantity and type, shall be provided with the Construction Plans.
- B. The Developer shall submit to the City for approval final construction and engineering plans and drawings ("Construction Plans" or "Plans") and engineer's cost estimate of Improvements ("ECE") suitable to identify the quantity and type of all Improvements and for the construction of all Improvements in a form approved by Centennial as more specifically described in the Standards. Developer shall submit and obtain Centennial's approval of the Construction Plans and ECE no later than the third anniversary of the City Council approval of the Development Plan, unless an extension of the Development Plan in accordance with the Land Development Code has been granted. Said Construction Plans, to be incorporated herein by reference, shall bear the stamp of a Colorado licensed engineer with experience in the design and engineering of such Improvements. Such ECE shall include a cost contingency of fifteen percent (15%) of the total estimated construction costs of the Improvements, provided that no cost contingency is required for Landscape Improvements. The ECE shall be attached hereto as **Exhibit B** and shall supplement the schedule of Improvements identified in **Exhibit B** as of the date of this Agreement. Construction of the Improvements or any development of the Property shall not commence until Centennial issued a Development Permit as set forth in Section II below. Developer shall secure and comply with all necessary permits issued by the City and other governmental or quasi-governmental authorities having jurisdiction over the development of the Property. Developer shall not modify the Construction Plans or any of the Improvements without the prior written approval of Centennial. Centennial will communicate its approval or disapproval of any such modification within fifteen (15) business days after its receipt of Developer's request.
- C. The Improvements may be constructed in specified phases subject to Centennial's prior approval of a phasing plan submitted by Developer ("Phasing Plan"). Centennial shall not approve a Phasing Plan unless it is assured that each phase of development shall be an integrated, self-contained project consisting of all Improvements necessary to serve the phased portion of the property. Phasing shall not be used to provide for construction of Improvements on a piecemeal basis. If approved by Centennial, a Phasing Plan shall be incorporated herein as an exhibit to this Agreement.

Section II. Development Permit Approval

- A. Prior to and as a condition of constructing the Improvements, Developer shall submit for approval a Development Permit application on a form provided by Centennial. Developer shall submit a Development Permit application within one hundred eighty (180) days of Centennial's approval of the Construction Plans. As part of the Development Permit application, Developer shall submit payment of the Development Permit fee, and any other applicable fees, as set forth in the Community Development Fee Schedule.
- B. Before approval of construction plans commencing construction of any Improvements, Developer shall acquire, at its own expense, good and sufficient rights-of-way and easements on all lands upon which the Improvements will be located and shall provide written evidence of the same to Centennial.

Section III. Construction of Improvements

- A. Developer shall provide notice to Centennial at least forty-eight (48) hours before commencing construction of the Improvements or prior to Centennial's inspection of any such Improvement during or after construction. To the extent that any decisions become necessary during construction as to the quality or acceptability of the materials furnished, the work performed or the manner of performance of the work, Developer shall give Centennial three (3) business days notice and the opportunity to make any such decisions.
- B. The Improvements and Landscape Improvements shall be constructed and installed in accordance with the Construction Plans and in accordance with applicable provisions of the Standards and all other applicable ordinances, resolutions and regulations, including but not limited to all building, fire, plumbing, and safety codes, in effect at the time of construction. If Centennial reasonably determines that construction or installation is not in compliance with the approved Construction Plans or applicable ordinances, rules and regulations, it shall notify Developer of the required corrections, which Developer shall make within ten (10) business days of receipt of such notification or, if the nature of the corrections is such that the same cannot be reasonably completed within ten (10) business days, then Developer shall undertake such corrections within ten (10) business days and shall diligently prosecute the same to completion. In the event the Developer fails to make or commence the required corrections within said ten (10) day period, Centennial may direct Developer to stop work until corrections are made to the satisfaction of Centennial.
- C. Developer shall at its sole cost and expense engage a Colorado licensed professional engineer to provide inspection, and testing if required by Centennial, during the construction process. Copies of all such tests shall be provided to Centennial promptly upon request. Developer shall contact Centennial immediately upon the failure of any performance testing, and of any problems that arise which may prevent construction or installation in accordance with the approved Construction Plans.

- D. At all times during said construction, and in accordance with this Agreement, Centennial shall have the right to require Developer to conduct testing and inspection, at Developer's expense. If Developer fails to do so within ten (10) business days of a notice from Centennial detailing the required test or inspection, or if Centennial reasonably believes that any required tests or inspections were either performed incorrectly or falsified, Centennial may conduct the same and charge the cost to Developer. No excavation, facility or Improvement, including water and sewer service connections, shall be covered until inspected by Centennial, or the applicable service provider, or until such inspection is waived in writing. Construction shall not proceed beyond required inspections or testing unless approved by Centennial. No liability shall attach to Centennial by reason of any inspections, observations, testing, or reviews, or by reason of the issuance of any approval or permit for any work subject to this Agreement. Developer shall reimburse Centennial for all costs incurred by Centennial in the performance of the above services, including associated attorney fees, within thirty (30) days after receipt of the City's invoice for said services.

Section IV. Completion of Improvements

Except where a shorter time period is prescribed, all Improvements, including Landscape Improvements, herein described, and all matters herein agreed to be performed shall be installed, constructed, or performed by Developer within two (2) years from the date of Centennial's issuance of the Development Permit. Extensions of time up to an additional one (1) year period for completion of Improvements may be granted by Centennial in writing for good cause shown. "Good Cause" shall be determined by Centennial in its sole discretion; notwithstanding the foregoing, Good Cause may include: (a) force majeure events; (b) unreasonable delay in the receipt of approval, notice, inspection, testing or other required response from Centennial; and (c) any extension agreed upon in writing by Developer and Centennial. Any extension of time to complete the Improvements beyond the two (2) year period shall require the Developer to submit updated construction cost estimates for completion of the remaining Improvements and to provide additional or replacement Collateral in an amount equal to one hundred percent (100%) of the cost to construct the Improvements remaining to be completed (which cost estimate shall include a cost contingency of fifteen percent (15%) of the total estimated costs to construct remaining Improvements).

Section V. Ownership and Maintenance of Improvements

- A. Improvements to be owned and maintained by Centennial shall be specifically identified in the ECE and shall become the sole property of Centennial, free and clear of all liens, encumbrances, and restrictions upon Final Acceptance by Centennial. Prior to and as a condition of Final Acceptance, Developer shall furnish to Centennial unconditional lien waivers that all claims and payments to be made in connection with construction of said Improvements have been satisfied.
- B. Except those Improvements to be owned and maintained by Centennial, the completed Improvements shall be owned and maintained by Developer and its successors and assigns; provided that Centennial reserves the right to enter upon and access Developer-owned Improvements for purposes of repair and

emergency maintenance as deemed necessary by Centennial in the interest of the public health, safety and welfare of Centennial residents.

- C. The completed Landscape Improvements shall be owned and maintained by Developer and its successors and assigns. Landscape Improvements shall be maintained with proper care, including proper watering and replacement, as necessary, of living plant materials.

Section VI. As-Built Drawings for Improvements

When Developer has completed the Improvements as provided herein, Developer shall provide two (2) copies of as-built drawings showing the Improvements in their as-built locations at the time of Developer's request for Probationary Acceptance of the Improvements by Centennial. As-built drawings shall be prepared under the direction of a Colorado licensed professional engineer based on information provided by the general contractor and a survey of surface features of the constructed site within the public right-of-way and easements indicating that the constructed Improvements are in substantial compliance with the Construction Plans or that any material deviations have received prior written approval from Centennial. No certificates of occupancy shall be issued by Centennial until as-built drawings are provided to and approved by Centennial following Probationary Acceptance of the Improvements.

Section VII. Collateral

- A. In order to secure the performance of the construction and installation of the Improvements and Landscape Improvements herein agreed by Developer, the Developer shall provide Centennial with security ("Collateral") in the form of a cash deposit or one or more irrevocable letters of credit ("Letter of Credit") in the same form as attached hereto as **Exhibit C**, or as may be approved by the City Attorney, in an amount equal to the total cost of the Improvements and Landscape Improvements as set forth in the approved ECE. Collateral shall be required to be submitted for acceptance by Centennial at the time of Development Permit application. A Letter of Credit form of Collateral shall be issued by a Colorado bank, or other financial institution doing business in Colorado that is acceptable to Centennial. Developer shall ensure that the Collateral remains unencumbered and free from claims of others so that any requests of Centennial for payment or enforcement may be immediately and unequivocally honored without cost to Centennial. Such security shall be maintained, in the amount required by this Agreement, and subject to partial releases as contemplated in Section VIII of this Agreement, through Final Acceptance of the Improvements by Centennial. If at any time prior to Final Acceptance, Centennial determines that the Collateral is not sufficient to cover all costs of construction of the Improvements, Developer shall be required to post additional or supplemental Collateral in an amount deemed sufficient and approved by Centennial to pay for all costs of construction, including any administrative costs and contingency amount.
- B. If Developer fails to perform or observe any obligation or condition to be performed by Developer under this Agreement in respect to the Improvements and Landscape Improvements, and such default remains uncured for more than thirty (30) days after Developer's receipt of written notice thereof from

Centennial, Centennial may cure the default at Developer's expense and draw on the Collateral from time to time to pay the costs incurred in connection therewith. In the event Developer fails to complete, install or perform any portion of work and/or Improvements or Landscape Improvements within said two (2) year period or any period of extension granted by the City, Centennial may complete such remaining work and Improvements within a reasonable time by such means and in such manner as it may deem advisable, at Developer's expense. Centennial shall be entitled to draw against such Collateral to pay for Centennial's actual costs and expenses incurred in contracting for said work and Improvements, including the cost of obtaining required permits from the City or any other applicable jurisdiction plus a five percent (5%) administrative fee, plus legal expenses incurred, to cover costs associated with completing the Improvements described herein.

- C. In the event the amount of Collateral is not sufficient for Centennial to complete the Improvements as determined by Centennial in its sole discretion, Centennial shall be entitled to reimbursement from Developer upon demand for such cost overruns, including but not limited to labor and material costs as well as engineering and legal fees. In the event the Developer fails to maintain Collateral in the amount required pursuant to the terms of this Agreement through Final Acceptance of the Improvements, Developer shall be in default of this Agreement and Centennial shall be authorized to make demand on the then-existing Collateral.
- D. If a Letter of Credit is set to expire within fourteen (14) calendar days and Developer has not yet provided a satisfactory replacement, Centennial 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 Centennial deems appropriate.

Section VIII. Partial Release of Collateral – Limited Circumstances

- A. Developer may seek and Centennial may grant partial releases of Collateral on completed Improvements only where a Phasing Plan has been approved by Centennial and Developer has completed a phase of development in accordance with the Phasing Plan; or (2) for completed Landscape Improvements as provided in Subsection B below. Developer's request for partial release must include copies of bills, invoices and schedules of values for work performed and Improvements completed. Centennial shall inspect the completed work and Improvements within thirty (30) days and shall process such partial release in a manner similar to a request for Probationary Acceptance. Within such thirty (30) day period, Centennial will either approve the request for partial release or deny the same with detail as to any aspect of the Improvements that Centennial determines are not acceptable. The procedures for completion of Improvements and work by Centennial and payment to Centennial therefore from the Collateral shall apply whether there be one or more defaults on the part of Developer in performing the terms, conditions, and covenants contained in this Agreement. Notwithstanding the foregoing, Centennial shall not be required to make any partial release of the Collateral if doing so would reduce the outstanding amount of the Collateral below an amount equal to one hundred percent (100%) of the then current estimate of the costs to be incurred to complete the construction of

the remaining Improvements (including the fifteen percent (15%) contingency amount). No partial release of any portion of the Collateral shall be deemed an acceptance of any Improvement by Centennial. Acceptance of Improvements shall be accomplished in accordance with Section IX of this Agreement.

- B. Upon Developer's completion of the Landscape Improvements or partial completion of Landscape Improvements, Developer may request Centennial's review and acceptance of such Landscape Improvements. Provided the Landscape Improvements comply with the Development Plan, Developer may request release of all or a portion of Collateral relating to the Landscape Improvements and such release shall be considered in the same manner as provided in Section VIII(A) above.

Section IX. Standards for Acceptance

- A. Probationary Acceptance and Warranty Period. As soon as all of the Improvements are installed and Centennial determines that such Improvements have been constructed in accordance with the approved Construction Plans, Centennial will issue to the Developer a certificate of Probationary Acceptance granting Probationary Acceptance of such Improvements. The probation and warranty period will terminate one (1) year from the date of Probationary Acceptance. Upon Probationary Acceptance, Centennial will allow a reduction of the Collateral to not less than ten percent (10%) of the total cost to construct the Improvements, as specified in **Exhibit B**. Until Final Acceptance, Centennial may notify Developer of any defective Improvements and Developer shall complete, repair or replace the same within thirty (30) days. In the event Developer fails to so complete, repair or replace such defective Improvements, Centennial may draw upon the retainage portion of the Collateral to complete, repair or replace the same.
- B. Final Acceptance. Improvements constructed pursuant to this Agreement are eligible for Final Acceptance in accordance with the Standards no sooner than nine (9) months following the Probationary Acceptance date. Developer shall request Final Acceptance by Centennial in writing. After inspection for Final Acceptance, Centennial will identify and provide a written list of deficiencies based on a physical inspection of the Improvements. Developer shall correct all deficiencies to Centennial's satisfaction within three (3) months from the date said deficiency list was issued. When all deficiencies have been corrected, Centennial will issue a certificate of Final Acceptance to the Developer within the time period provided in the Standards. Upon issuance of said certificate of Final Acceptance, all Improvements specified in said certificate shall be deemed approved and accepted by Centennial, whereupon such Improvements shall be owned and maintained by Centennial or Developer, as applicable. At such time, Centennial will release any remaining Collateral.

Section X. Remedies

- A. Centennial's rights and remedies provided in this Agreement shall not be exclusive and are in addition to any other rights or remedies provided by law. Upon breach of any provision of this Agreement by Developer beyond any notice

and right to correct specified herein, Centennial may initiate any one or more of the following actions:

1. Delay processing of any pending land development related application;
 2. Issue stop work orders;
 3. Refuse to issue or approve any land development permit, including but not limited to, right-of-way access, street cut, over-lot grading or building permits, certificates of occupancy, or final plats;
 4. Draw from the Collateral to cover the costs associated with correcting the Developer's breach;
 5. Issue a citation to the Developer or any contractor or subcontractor for violating requirements of the Centennial Municipal Code; or
 6. Initiate legal proceedings in any appropriate court of law.
- B. Any amounts due and owing to Centennial under this Agreement that are not paid in a timely manner may be certified to the Arapahoe County Treasurer for collection with taxes.

Section XI. Responsibility for Installing Utilities and for Permitting Installation of Utilities

- A. Developer agrees to be responsible for contracting for installation of any or all utilities where required, including, but not limited to water, sewer, natural gas and electricity. The Parties agree that electrical, fiber optic, cable, and telephone service for the Development Plan shall be underground in accordance with the Standards. Developer understands that no building permits shall be issued until all utilities as well as adequate rights-of-way and streets are available or provided for each lot for which a building permit is sought by Developer.
- B. Subject to the Standards, Centennial, as the owner of public rights-of-way and public or drainage easements depicted on the Development Plan, retains the right to issue right-of-way use permits to utility companies or to other persons, companies, corporations or organizations prior to the Final Acceptance of the Improvements.

Section XII. Construction Site Maintenance

- A. Developer shall take all reasonable steps necessary to prevent its construction activities from damaging adjacent properties, including Centennial's property. If any adjacent property is damaged or destroyed by and during the construction of the Improvements, Developer shall, at its cost, promptly repair or replace the same to a condition similar or equal to that existing before such damage or injury.
- B. During construction, Developer shall use proper air quality control and erosion and sedimentation control and maintain streets and roads in such a manner that they may be reasonably traveled upon. If Centennial determines in its sole

discretion that dust emanating from the Property related to construction activities is unacceptable, it may order measures be taken, and Developer shall comply with such order. In the event that Developer does not comply with such abatement measures within fifteen (15) days, Centennial may order construction to cease until Developer has complied with such abatement measures and Developer shall so comply. The Collateral shall be sufficient to include costs associated with re-vegetation of areas destroyed by such construction.

Section XIII. Maintenance and Workmanship of Improvements

- A. Developer shall keep and maintain all the Improvements in good order and condition until Centennial issues a certificate of Final Acceptance pursuant to Section IX of this Agreement. Developer shall, at its cost, repair or replace any damage or destruction of the Improvements that occurs prior to such Final Acceptance by Centennial, except to the extent that such damage or destruction is caused by agents or employees of Centennial.
- B. Unless otherwise specified, all materials for Improvements shall be new and both workmanship and materials shall be of good quality.

Section XIV. Contractual Obligation

Developer agrees that the provisions and requirements of this Agreement are entered into with full knowledge, free will and without duress. Developer agrees and desires that the agreements contained herein regarding the payment of fees, installation and dedication of the Improvements, and conditions for subdivision and building approvals, including the incorporation of any provision of applicable Standards, are imposed by contract, independent of the continued validity or invalidity of any of the provisions of state law or Standards. The agreements to pay fees, and construct and dedicate public improvements or provide security are reasonable and binding commitments on the part of Developer and reasonably relate to Developer's estimates of the extent and timing of impacts that are expected to occur from the development of the Property, and are in rough proportion to such impacts.

Section XV. Miscellaneous

- A. Section Headings. The section headings in this Agreement are inserted herein only for convenience of reference and in no way shall they define, limit or describe the scope or intent of any provision of this Agreement.
- B. Assignment and Release. This Agreement may not be assigned or delegated by the Developer without the written consent of Centennial. Any such written assignment shall expressly refer to this Agreement, specify the particular rights, duties, obligations, responsibilities, or benefits so assigned, and shall not be effective unless approved by resolution of the City Council for the City of Centennial. No assignment shall release the Developer from performance of any duty, obligation, or responsibility unless such release is clearly expressed in such written document of assignment. Prior to approving any release of the Developer, Centennial may, at its sole discretion, require the party assuming any duty, obligation, or responsibility of the Developer to provide to Centennial written

evidence of financial or other ability to meet the particular duty, obligation or responsibility being assumed by the party.

- C. Binding Effect. This Agreement shall inure to the benefit of, and be binding upon, the Parties and their respective legal representatives, successors and assigns. This Agreement shall continue upon subdivision of the Property and bind the subdivision and all purchasers, lessors and subsequent owners of any property within the subdivision, except a bona-fide homebuyer, until all provisions of this Agreement are satisfied.
- D. Recording; Benefit. This Agreement shall be recorded with the Clerk and Recorder of Arapahoe County, Colorado and shall run with the land. Developer shall pay the associated recording fee imposed by Arapahoe County.
- E. Subordination. If the Property upon which the Improvements are constructed is subject to any liens, mortgage, deed of trust or similar encumbrance, the holder of such indebtedness or encumbrance shall subordinate its interest or encumbrance to this Agreement and all its terms, conditions and restrictions.
- F. Notices. Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified or registered mail, postage and fees prepaid, addressed to the Party to whom such notice is intended to be given at the address set forth on the signature page below, or at such other address as has been previously furnished in writing to the other Party. Such notice shall be deemed to have been given when deposited in the U.S. Mail.
- G. Additional Documents or Action. Parties agree to execute any additional documents and to take any additional action necessary to carry out this Agreement.
- H. Waiver of Breach. The waiver by any Party to this Agreement of a breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by any Party.
- I. Indemnification. Developer hereby expressly binds itself to indemnify and save harmless Centennial and its officers and employees, against all suits or actions of every kind and nature brought, or which may be brought against them or any of them, or loss, cost or expense incurred by them or any of them for, or on account of, any injury or damage received or sustained by any persons, firms or corporations during the construction of the Improvements and through Final Acceptance as a result of Developer's breach of any of its obligations hereunder, or the negligent or willful misconduct of Developer or any of its employees, agents or contractors. Developer shall also indemnify and hold Centennial harmless from any liability it may have on account of any change in direction, nature, quality, or quantity of historical drainage flow, resulting from the development of the Property, or from construction of streets and storm sewers within or serving the Property, or damages to the Property resulting from natural conditions including but not limited to expansive soils, geologic hazard, wildfire hazard or flood hazard, if Developer is established to be negligent. Centennial shall assert, to the fullest extent permitted by law, its immunity from suit under

the Colorado Governmental Immunity Act, § 24-10-101 *et seq.* C.R.S., as well as the limitations upon liability provided herein.

- J. Contractors. Developer shall give notice of the terms of this Agreement in all contracts for construction of the Improvements and provide a copy of this Agreement to the contractors and subcontractors.
- K. Entire Agreement. This Agreement represents the entire agreement between the Parties and, supersedes any prior oral or collateral agreements or understandings.
- L. Amendment. This Agreement may be amended only by an instrument in writing signed by the Parties.
- M. No Third Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to Centennial and the Developer, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third person on such Agreement. It is the express intention of Centennial and Developer that any person other than Centennial or Developer and their successors and assigns receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.
- N. Governing Law, Venue and Enforcement. This Agreement shall be governed by the laws of the State of Colorado. Venue for any action arising from this Agreement shall lie with any appropriate court within Arapahoe County, Colorado. The Parties agree and acknowledge that this Agreement may be enforced at law or in equity, including an action for damages or specific performance.
- O. Vested Rights and Subsequent Legislative Enactment. The Parties acknowledge and understand that the approval of the Development Plan was not processed or approved in accordance with or pursuant to C.R.S. Section 24-68-101 *et seq.* or any regulations implementing such statutory provisions and the approval of the Development Plan does not constitute approval of a site specific development plan as that phrase is defined in C.R.S. Section 24-68-101 *et seq.* or any regulations implementing such statutory provisions. The approval of the Development Plan shall not therefore create or grant a “vested property right” as defined by C.R.S. Section 24-68-101 *et seq.* Nothing in this Agreement shall limit, prevent or preclude the later adoption by the City Council of a legislative enactment which is general in nature and which may be applicable to the Property as well as other similarly situated property; subject, however, to rights which may accrue to the Developer by virtue of the vesting of property rights acquired in accordance with common law.
- P. Authorization of Parties’ Representative. The undersigned hereby represent that they serve as representatives of the Party for which they have executed this Agreement and are fully authorized to execute this Agreement on behalf of such party.

Q. Compliance with Law.

Developer, in developing the Property and constructing the Improvements herein described, shall fully comply with all applicable rules, regulations, standards, and ordinances of Centennial and other governmental agencies and bodies having jurisdiction over the Project in effect at the time of construction.

Section XVI. Special Terms and Conditions

Developer shall comply with the following special terms and conditions:

LIST SPECIFIC CONDITIONS OF APPROVAL AND OTHER SITE-SPECIFIC REQUIREMENTS OR INSERT "NOT APPLICABLE"

THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK

EXHIBIT A
PROPERTY LEGAL DESCRIPTION

**EXHIBIT B
PUBLIC IMPROVEMENT
ENGINEER'S COST ESTIMATE**

EXHIBIT C
FORM OF LETTER OF CREDIT
IRREVOCABLE LETTER OF CREDIT

City of Centennial
Number: _____

Date:

Expiration:

Dear Sir or Madam:

[Name of Bank] ("Bank") hereby establishes in favor of City of Centennial ("Beneficiary"), for the account of [Property Owner/Developer Name], a Colorado _____ ("Customer"), an Irrevocable Letter of Credit in the amount of _____ Dollars (\$xxx,xxx) available by immediate payment upon presentation at Bank's office at [Bank's address – provide Colorado branch or affiliate] of Beneficiary's sight draft(s) in an amount not exceeding \$xxx,xxx, and each sight draft must bear the reference: "Drawn on [Bank] Irrevocable Letter of Credit No. _____, dated _____."

In addition, Beneficiary's sight draft(s) must be accompanied by this Irrevocable Letter of Credit and an Affidavit of Certification in the form attached hereto as Exhibit A (the "Affidavit"). The Affidavit shall certify that Customer has failed to meet its obligations under the terms of a Public Improvement Agreement relating to LU-XXXX-XXX, [Project Name] Final Development Plan. Upon presentation of such Affidavit in compliance with the terms contained herein, Bank shall honor the accompanying sight draft(s) and shall not be required to determine questions of fact or law between Beneficiary and Customer.

This Irrevocable Letter of Credit sets forth the full understanding of the parties hereto and Bank hereby promises to Beneficiary that any drafts drawn under or in substantial compliance with the terms of this Irrevocable Letter of Credit will be duly honored if presented to [Bank] on or before _____.

This Irrevocable Letter of Credit is nontransferable.

This Irrevocable Letter of Credit is subject to the most recent edition of the Uniform Customs and Practice for Documentary Credits published by the International Chamber of Commerce. The forum for all disputes regarding this letter of credit shall be the District Court for the County of Arapahoe, State of Colorado.

Very truly yours,

[Name of Bank]

Title

EXHIBIT 1 TO EXHIBIT C

IRREVOCABLE LETTER OF CREDIT NO. _____

Dated: _____

AFFIDAVIT OF CERTIFICATION

STATE OF COLORADO)
) ss.
COUNTY OF ARAPAHOE)

I, _____, being duly sworn, state as follows:

Title and Authority of Affiant. I am _____ for City of Centennial, Colorado and am authorized to act on behalf of the City of Centennial, Colorado in this matter.

Certification. Under penalty of law, I hereby certify that the Customer has failed to meet its obligations under the terms of a Public Improvement Agreement relating to the _____ Final Development Plan, and the City of Centennial is entitled to draft this Letter of Credit.

CITY OF CENTENNIAL

By: _____

Subscribed and sworn to before me this ____ day of _____, 20____,
by _____.

Witness my hand and official seal.

My commission expires: _____.

Notary Public

(S E A L)