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**SUBDIVISION AGREEMENT**  
**FOR LYONS VALLEY PARK FILING NO. 1 AND SUBDIVISION**  
**AGREEMENT RELATING TO SUBDIVIDER'S OBLIGATIONS IN**  
**THE LYONS VALLEY PARK SUBDIVISION**

THIS AGREEMENT, made this 17<sup>th</sup> day of February, 1986, by and between the TOWN OF LYONS, COLORADO, a Colorado Municipal Corporation, hereinafter referred to as "Town" and LYONS VALLEY PARK, INC., a Colorado Corporation for itself, its successors and assigns, hereinafter referred to as "Subdivider", Witnesseth:

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**RECITALS:**

WHEREAS, Subdivider has obtained Master Plan Approval and Preliminary Plat Approval for FOUR HUNDRED THREE (403) dwelling units in the Lyons Valley Park Subdivision which preliminary plat is dated the      day of February, 1981, and, whereas Subdivider has submitted to Town for approval, execution and recordation a final subdivision plat for Lyons Valley Park, Filing No. 1, in Lyons, Colorado, recorded November 17, 1986 at P-20, E-2, #5.

WHEREAS, Subdivider is desirous of obtaining agreement with Town on certain issues necessary for commencement of the subdivision and all future development within the area contained within the approved preliminary plat, including, among other things, raw water dedications, municipal utility services, public improvements, development fees, etc.; and,

WHEREAS, Subdivider is desirous of obtaining Final Plat approval from Town on a portion or portions of the Subdivision; and,

WHEREAS, Town is willing to approve, execute, and accept for recordation said Final Plat upon agreement of Subdivider to the matters herein described; and,

WHEREAS, Town and Subdivider mutually acknowledge that the matters set forth herein are reasonable conditions and requirements to be imposed by the Town in connection with its approval, execution and acceptance of the Final Plat for any portion or portions of the Subdivision, and that such matters are necessary to protect the interests of both parties and to protect the public health, safety and welfare;

NOW THEREFORE, in consideration of the recitals, premises, and covenants herein set forth, the parties agree as follows:

I. RAW WATER, WATER AND SEWER UTILITIES

1. Water Rights Dedication. Subdivider, based upon requirements in effect at the time of annexation, is required to furnish 216 acre feet of raw water to Town. Pursuant to the conditions of §10-1-7(A), specifically subsection (1), (2), (3), (4) and (5) of the Lyons Municipal Code of 1980, such rights may be represented by stock in a duly organized and existing irrigation company, units of Northern Colorado Water Conservancy District water, or by ownership of such direct flow contract rights as may be attached to the land and recognized by the courts. Subdivider agrees and acknowledges that Town shall have the final decision in accepting or rejecting the water rights offered by Subdivider in compliance with this requirement and, further, that Town may elect to accept cash in lieu of water rights, according to Town Ordinance. The dedication of such water rights, or cash in lieu, shall be provided to the Town on a pro rata basis prior to the recordation of any final plat for any portion or portions of the subdivision according to the following formula:

$$\frac{216 \text{ Acre Feet} \times \# \text{ of dwelling units in final plat}}{403}$$

The formula equates to .54 acre feet of raw water per dwelling unit (0.77 units of N.C.W.C.D.) and will be rounded up to the nearest whole number. The parties agree that, in the event that units of Northern Colorado Water Conservancy District water are dedicated, one unit of N.C.W.C.D. shall equate to .7 acre feet of water. All costs of dedicating and transferring said water rights to Town shall be born by Subdivider.

2. Water and Sewer Utilities. Subdivider shall be obligated for the installation of water and sewer utility mains and all appurtenances within the development. Construction of the water and sewer lines and appurtenances shall be in substantial compliance with plans prepared by developer, reviewed and approved by the Town Engineer and with all policies, standards, and specifications approved and adopted by the Town relating thereto. The Town Engineer's review and approval of the plans shall not limit or affect Subdivider's responsibility for design and construction. Once the water and sewer lines and all appurtenances are installed and the Town Engineer has reviewed and approved them, the Town shall accept ownership of said lines and appurtenances and shall be responsible for the maintenance thereof. Subdivider shall be responsible for the construction of all water and sewer lines and all appurtenances, including fire hydrants, necessary to serve each area receiving final plat approval. All work shall be subject to inspection by the Town Engineer during construction

and shall be warranted for a period of one year from date of acceptance by the Town.

3. Water and Sewer Tap Fees. Subdivider or builder shall be obligated to pay to Town the sums required for water and sewer tap fees as established by Town Ordinance at the time of issuance of building permit by Town. Water and sewer tap fees shall be paid into the Town's water and sewer capital improvement funds, and no portion thereof shall be used for general fund operating expenses.

4. "Offsite" Water Utility Improvements. Subdivider will prepare a study, subject to approval by the Town Engineer, which study will demonstrate how many dwelling units can be constructed in the Lyons Valley Park Subdivision by connecting the dwelling units to the existing main in Second Avenue prior to the residential pressure dropping below the minimum pressure recommended by the Insurance Service Bureau. The study will assume that the Stone Canyon 8" water main will have been extended. Said study will establish the point at which minimum pressure and flows dictate extension of the master main delivering water to the subdivision. At such time as such extension is necessary, Subdivider shall be responsible for payment of the cost of said extension. The plans and specifications for the extension of the water line shall be prepared by Subdivider and be subject to the approval of the by Town Engineer. Town shall be obligated to reasonably bid the construction of the water main and shall certify the costs to Subdivider. Subdivider shall be reimbursed for the cost of the expansion by Town at the rate of \$1,000.00 per water tap purchased within the subdivision until full reimbursement has occurred. Rebate shall commence at the time of the purchase by Subdivider of the first building permit for construction of a residential unit after completion of the water line improvements; however, such construction shall not occur until after the first filing which contains 25 units. Should the expansion of the water main not be required until such time as most of the water taps for the subdivision have been purchased, based on the final densities as approved or modified by the Town, Town will reimburse Subdivider at the rate of \$1,000.00 per tap until purchase of the last water tap, at which point Town shall pay the balance due Subdivider in one lump sum.

It is agreed and acknowledged that Town will cause the 8" water line which exists along the north side of Hwy. 36/66 to be extended in a timely manner in order that Subdivider will be able to connect to provide a loop in the water system. It is further agreed and acknowledged that Subdivider shall extend, at its expense, the water lines from the subdivision across the St. Vrain River and under Hwy. 36/66 to connect to said line.

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II. SIDEWALKS, STREETS,  
CURBS, GUTTERS AND STREET LIGHTING

1. Subdivider shall construct all public improvements including streets, curbs, gutters, sidewalks and street lighting within the subdivision in substantial conformance with plans and specifications reviewed and approved by the Town Engineer and with all policies, standards and specifications adopted by the Town. All work done shall be subject to inspection by the Town Engineer during construction. Upon installation of the improvements is completed and reviewed and approved by the Town Engineer, said improvements shall be dedicated to the Town and Town shall accept responsibility for the maintenance thereof. Said improvements shall be warranted by Subdivider for one year from date of acceptance by Town.

2. Town agrees to expeditiously re-survey and dedicate a public right-of-way for 2nd Avenue from the 2nd Avenue Bridge south to the north property line of the Subdivision to align said right-of-way with the approved Master Plan and Preliminary Plat.

3. Subdivider agrees to construct, at its expense, the curb, gutter, and street along 2nd Avenue from the 2nd Avenue Bridge to the north boundary line of the Subdivision as well as a sidewalk along the west side of same. Said improvements will be made at the time of paving of streets within Filing #1.

4. Subdivider shall be obligated to complete the streets within any area receiving final plat approval no later than the first occurrence of the following:

- a. at the time when 50% of the building permits have been issued within the platted area; or
- b. one year from the date of issuance of the first building permit within the platted area.

It is agreed that Town may be flexible in this requirement based on weather and good faith performance by the Subdivider.

5. It is agreed and understood by Town and Subdivider that prior to the issuance of the 67th Certificate of Occupancy by Town in the subdivision, Subdivider shall be obligated to complete the McConnell Drive access point to the subdivision including the bridge and connection with Hwy. 36/66. It is agreed that Town may be flexible in this requirement based on weather and good faith performance by the Subdivider.

6. Subdivider agrees and acknowledges that, as a condition of approval of the Preliminary Plat, Subdivider shall furnish secondary access to the subdivision for all construction equipment

being of a weight of over 15 tons, it being expressly understood that the 2nd Avenue bridge shall not be used by construction vehicles being over the above stated weight.

7. Nothing in this Agreement is intended to, nor shall it, abrogate existing agreements between Subdivider and St. Vrain School District concerning the payment of paving costs abutting the school property.

**III. PARKS AND OPEN SPACE - PARK FEES**

1. **Park and Open Space Dedication.** Subdivider shall dedicate approximately 15.27 acres of land as shown on the Master Plan and Preliminary Plat approved by Town for Public Parks. In addition, Subdivider shall dedicate approximately 49.32 acres as shown on the Master Plan and Preliminary Plat approved by Town for Open Space. Said property shall be deeded to Town by General Warranty Deed according to the following schedule:

- "Tract E" shall be deeded to Town at such time as the lots adjacent to Tract "E" are platted in Tract "B" or "D"; Tract "F" shall be deeded to Town at such time as Block 6, Lots 1-19 are platted through the Final Plat process. Tract "G" shall be deeded to Town at such time as the lots abutting Tract "G" are platted through the Final Plat process.

In order that the tracts above described may be covered with adequate Public Liability and Property Damage insurance by Subdivider during the construction period of the entire area approved under the preliminary plat, the deeds shall be held in escrow until such time that the developer no longer uses such particular tract for any purpose associated with the construction of the development. It shall be the intent of the agreement that Subdivider shall maintain control over the park and open space land during the development process.

2. Subdivider agrees to prepare a "Park Plan" for the improvements to be made to the subdivision's park areas, at its expense, in cooperation with the Town's Parks and Recreation Commission and subject to approval by the Town Board. Subdivider shall retain control over the park lands during the development phase until such time as the tracts are released from escrow to the Town but further agrees to transfer said lands in a physical condition, graded and with topsoil so that the Plan can be easily accomplished.

3. Subdivider agrees to pay Town all Parks Fees, as required by Town Ordinance, at the time of issuance of building permit. Said Parks Fees shall be deposited to the Town's Park Funds and shall be spent, at the direction of the Town, using the "Park Plan" developed by the Subdivider and Parks & Recreation Commission and approved by the Town Board. The Town expressly reserves the right to use a portion of the Park Fees generated by the subdivision to enhance existing parks within the Town if deemed necessary by the Town.

IV. ELECTRICAL SERVICE

Town shall, at its own expense, furnish underground line extensions in a timely manner for the provision of electrical service to the Subdivision from its existing system to the boundary of the Subdivision, which service shall terminate in a surface-mounted switching cabinet for connections by Subdivider. All electrical service within the Subdivision shall be underground. Electrical service for each dwelling unit shall be single phase 125 Amp, 115V-230V, electrical three wire 60 cycle A.C.

Subdivider shall provide to Town, prior to the recordation of any Final Plat, a Master Electrical Plan for the entire subdivision. Said Master Electrical Plan shall include plans and specifications covering all filings and showing the location of all lines, transformers and circuitry to be installed. The Master Electrical Plan shall be subject to review and approval by the Town Engineer. It shall be the obligation of the Subdivider to cause to be installed the primary power from the point of the boundary line from Lyons Valley Subdivision throughout the Subdivision. The installation shall be done in each filing as that filing receives final plat approval. Subdivider shall be obligated to accept reasonable bids from bona fide electrical contractors for the work to be done within the subdivision and shall certify the costs of the installation to the Town along with the costs of the Master Electrical Plan and engineering design. Construction of the electrical lines and appurtenances shall be in substantial compliance with the Plans prepared by developer and specifications approved and adopted by the Town. Once the electrical lines and appurtenances are installed and the Town Engineer or his designee has reviewed and approved them, the Town shall accept ownership of said lines and appurtenances and shall be responsible for the maintenance thereof. All work done on the electrical lines and appurtenances shall be subject to inspection by the Town Engineer or designee during construction and shall be warranted by Subdivider for a period of one year from date of acceptance by the Town.

Town shall rebate to Subdivider the costs incurred by Subdivider for the Master Electrical Plan, installation, and engineering design on a pro rata basis, within each final platted area, beginning at the time that each permanent meter is set on a dwelling unit. Town shall provide the electrical meters. Town shall rebate all certified costs, based upon the number of units in each filing of the Subdivision approved as a Final Plat by Town. The pro rata rebate for the certified costs shall be 100% for Lyons Valley Park Filing No. 1 in accordance with an Electrical Distribution Facilities Agreement copy attached as Exhibit A. Prior to any building permits being issued, the Subdivider agrees to execute such agreement and abide by all provisions contained therein. For each final plat approval after Filing No. 1, the rebate shall be based upon the then applicable formula as filed by Poudre Valley REA with the Colorado Public Utilities Commission and shall continue to be competitive and comparable to Poudre Valley REA rebate policies. The Town shall own and operate the electrical distribution system and all approved extensions thereto, and shall be the sole electrical supplier to the entire area subject to the approved Preliminary Plat above described.

V. GENERAL

1. Cost Estimates. For each filing submitted to Town for final plat approval, Subdivider shall submit to Town a detailed estimate of the costs of completing all the public improvements relating to that filing. The cost estimates shall be prepared and attested to by a person or firm qualified to give such estimates. The cost estimate shall give sufficient detail to enable proper analysis and shall include unit costs, quantities, and total costs. All such costs estimates shall be subject to approval of the Town Engineer.

2. Guarantee of Improvements. Subdivider shall provide an Irrevocable Letter of Credit, Irrevocable Letter of Funding, or, other suitable guaranty satisfactory to the Town at its sole discretion, from a licensed state or federal financial institution in an amount equal to 115% of the cost estimate for the designated improvements. Said guaranty shall provide for payment, upon demand by Town, to the Town in the event that Subdivider fails to complete the improvements within the guidelines established herein. Once the improvements, or a portion thereof, have been completed pursuant to the plans and specifications and have been approved by the Town Engineer, Town shall release from the guaranty 100% of the dollar amount of those improvements in place. Releases shall be signed by the Town Mayor, or his designee, upon recommendation of the Town Administrator and Town Engineer, which recommendation shall not be unreasonably withheld. In order to insure timely payments to any contractor installing said public

improvements, partial release must be approved within 10 working days of their submittal to Town. Releases shall not be requested more often than bi-weekly. The guaranty must specify that 15% of the total amount of the guaranty may not be drawn by Subdivider but will remain available to Town as warranty collateral to be drawn upon by Town in the event that the improvements fail to perform as expected for a period of one year from the date of acceptance by the Town. Subdivider may, with the approval of the Town, substitute a warranty bond for the 15% retainage in the guaranty. If a warranty bond is utilized, Town shall release the remaining 15% of the guaranty. Should the Town discover a defect in any of the public improvements covered under this guarantee the Town will notify Subdivider of the defect, and Subdivider shall have thirty (30) days in which to correct such defect.

3. Building Permits. Building permits shall be issued by Town following submittal of plans and fees as specified by Town Ordinance in effect at time of issuance and by this agreement. No Certificate of Occupancy for any lot will be issued unless the water and sewer mains, and services have been installed adjacent to the lot, necessary storm detention and drainage facilities have been installed for each filing, and proposed drainage improvements located on an individual lot have been completed. If, at any time, any part of this agreement has been breached by Subdivider, Town may withhold approval of any or all building permits and certificates of occupancy applied for within the subdivision until such breach or breaches have been cured.

4. Recording of Agreement. Subdivider shall file for recording with the Boulder County Clerk and Recorder this Subdivision Agreement, General Warranty Deeds, and any other documents required as part of the approval by Town of the Subdivision. Subdivider shall note in the Final Plat, as a Plat Note, the existence of this subdivision agreement. This agreement is intended to provide for the orderly construction of dwelling units and other improvements on the property. Those owners of the property or any portion thereof who obtain title subsequent to the effective date hereof shall be entitled to construct dwelling units by complying with the terms hereof and Town may enforce this agreement against such subsequent owners and those holding under them.

5. Completion of Improvements. All improvements set forth in this agreement shall be completed in a timely fashion in accordance with the plans and specifications approved by the Town.



