

**MARSHALL OFFICE PARK  
DEVELOPMENT/SUBDIVIDER'S AGREEMENT**

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**THIS DEVELOPMENT/SUBDIVIDER'S AGREEMENT** is entered into and made between Roxy F. Vendena, Doing Business As Roxy F. Vendena Investments, hereinafter referred to as "Owner/Developer," whose address is 5520 Harlan Street, Arvada, Colorado, 80002, and the City of Arvada, a Colorado municipal corporation whose address is 8101 Ralston Road, Arvada, Colorado, 80001-8101, hereinafter referred to as the "City." This Development/Subdivider's Agreement ("Agreement") shall be effective following execution by the Owner/Developer and immediately upon approval by the City Council of the City of Arvada as evidenced by the signature of the City's Mayor or Mayor Pro Tem. *1-8*

**RECITALS:**

**WHEREAS**, The Owner/Developer is owner of the following described property located in a part of the northwest 1/4 of Section 13, Township 3 South, Range 69 West of the 6<sup>th</sup> P.M., City of Arvada, County of Jefferson, State of Colorado, more particularly described as follows:

That portion of the Northwest ¼ of Section 13, Township 3 South, Range 69 West of the 6<sup>th</sup> P.M., in the County of Jefferson, State of Colorado, described as follows:

Commencing at the North ¼ corner of said section; thence S 00°04'43"E, along the east line of said Northwest ¼, a distance of 1438.86 feet to the centerline of West 54<sup>th</sup> Avenue (48.5 feet wide); thence S 89°58'17"W, along said centerline 856.52 feet to the True Point of Beginning; thence S 00°01'43"E, 346.38 feet to the intersection of the west line of Lot 6, Graves Second Subdivision Amended, records of said county, and the south line of the North part of Lot 9, said subdivision; thence N 89°33'48"W, along said south line, 517.34 feet to the east line of the land described in deed recorded in Book 995 Page 382, records of said county; thence N 01°30'43"E, along last said line, 80.00 feet to the north line of said land; thence N 89°33'48"W, along said north line and its prolongation, 302.25 feet to the centerline of Marshall Street (60 feet wide); thence N 01°30'43"E, along last said centerline, 259.85 feet to said centerline of West 54<sup>th</sup> Avenue; thence N 89°58'17"E, along last mentioned centerline, 810.43 feet to said True Point of Beginning. Containing 5.86 acres.

hereinafter referred to as "Marshall Office Park Minor Subdivision."

**WHEREAS**, the Owner/Developer is planning development of the Marshall Office Park minor subdivision and the development will require installation of water line facilities as shown on City Job No. 3055.

**WHEREAS**, the Owner/Developer has submitted to the City a proposed minor

subdivision for the Marshall Office Park entitled "Marshall Office Park Minor Subdivision" and this minor subdivision is subject to City review and approval. The Marshall Office Park Minor Subdivision, as approved by the City, shall be recorded at the Owner/Developer's expense with the Clerk and Recorder for Jefferson County, Colorado, following City review and approval. The Marshall Office Park minor subdivision, as recorded, is incorporated into this Agreement. The Owner/Developer has also submitted to the City an Article 12 Development Plan and a Final Development Landscape Plan which includes a fencing plan for the development. This Article 12 Development Plan and Final Development Landscape Plan are public records on file and available for review at the City of Arvada, City Hall, Planning Department, 8101 Ralston Road, Arvada, Colorado. The Article 12 Development Plan and Final Development Landscape Plan are incorporated into this Agreement for purposes of illustration and interpretation of the terms and conditions of the Agreement.

**NOW, THEREFORE,** in consideration of the mutual promises, covenants, and agreements of the parties, the approval by the City of Arvada of the minor subdivision of the Marshall Office Park, the dedication of certain land to the City for street purposes, and other good and valuable considerations, the sufficiency and adequacy of which are hereby acknowledged by the parties, the parties hereto agree as follows:

1. PLAT AND IMPROVEMENT PLANS. The Owner/Developer upon final approval of the minor subdivision of the Marshall Office Park, shall immediately deliver the original mylar of said Marshall Office Park minor subdivision to the City Clerk of the City of Arvada, along with \$11.00 for the first sheet and \$10.00 per additional final plat sheet; further, that as a part of the platting procedure he has filed with the City Engineer eleven copies of plans for the construction of water line facilities in said proposed Marshall Office Park minor subdivision, as required by the City in its action accepting the minor subdivision. Said plans, following approval by the City Engineer, shall be constructed as approved; provided however, that no approval of said plans is conferred by this Agreement. Further, the Owner/Developer agrees to file with the City an original or sepia reproducible copy of the as-built construction plans of said water line public improvements upon their completion and the as-built plans shall be delivered to the City prior to commencement of the one-year warranty for said public improvements.

2. RECORDATION OF PLAT. Following approval of the Marshall Office Park Minor subdivision, the Owner/Developer shall immediately record the minor subdivision at the Owner/Developer's cost and expense with the Clerk and Recorder of Jefferson County, Colorado.

3. PUBLIC IMPROVEMENTS. The Owner/Developer shall, at his own expense, furnish and install the water line public improvements in accordance with the plans and specifications approved by the City of Arvada, Colorado (City Job No. 3055).

4. UNIT DRAINAGE FEE. The Property is located within the Columbine Unit Drainage Fee Basin which has a drainage fee of \$4,181.00 per acre. The area is calculated to the center line of any adjacent streets. The area for this Property is 5.90 acres for a fee of \$24,667.90. This fee is due at the time of approval of the first building permit.

5. FENCING IMPROVEMENTS. The Owner/Developer shall construct all fencing as shown on the Article 12 Development Plan and Final Development Landscape Plan to be administratively approved by the City. All fencing must be installed prior to the issuance of the first certificate of occupancy in the development. The location of fencing and landscaping must not interfere with visibility at any intersection and shall meet, at a minimum, the requirements of chapter 30, article VI of the Arvada City Code, as amended, pertaining to securing adequate sight-line visibility at intersections.

6. LANDSCAPING IMPROVEMENTS. The Owner/Developer shall install at his own expense and at no cost to the City all landscaping and improvements as depicted on the Final Development Landscape Plan to be administratively approved by the City. The Owner/Developer shall maintain and keep in good operational repair the automatic sprinkler/irrigation system as depicted within the Marshall Office Park minor subdivision development. Such obligation for maintenance, upkeep, replacement, and repair of common area/open space landscaping and sprinkler/irrigation system may be assigned by the Owner/Developer to a property owner's association created by the Owner/Developer under private covenants approved by the City. All landscaping and improvements as depicted on the Final Development Landscape Plan shall be maintained in perpetuity. Landscaping and improvements depicted on the Final Development Landscape Plan for each lot shall be fully installed prior to the issuance of the first certificate of occupancy for each lot in the development. The City may, at its sole discretion and as a temporary measure prior to the Owner/Developer's completion of the required landscaping for any lot, accept the deposit of funds in escrow (or an irrevocable letter of credit) in an amount of 150% of the estimated cost of providing landscaping in accordance with the Final Development Landscape Plan. Such estimate shall be made by a landscape contractor acceptable to the City; the City may, at its sole discretion and upon the City's rejection of an estimate provided by the Owner/Developer, obtain an estimate of the costs of landscaping and such estimate shall be binding upon the Owner/Developer in determining the amount of funds to be escrowed or the amount of the letter of credit for purposes of this paragraph. The terms and conditions of any agreement for the escrow of funds or letter of credit shall be subject to the approval of the City Attorney. The City shall release its interests in the escrowed funds or letter of credit only upon completion of all landscaping obligations by the Owner/Developer. In the event that the Owner/Developer defaults upon its obligations specified in this paragraph following the escrow of funds, the City may retain all escrowed funds and apply all funds toward the completion of the Owner/Developer's landscaping obligations. The City may, in its sole discretion, refund all or part of the escrowed funds not applied to completion of landscaping required by the Final Development Landscape Plan. The method and manner in which the City elects to undertake and complete the landscaping obligations of a defaulting Owner/Developer shall be within the sole discretion of the City; provided, however, that nothing herein shall obligate the City to install or complete the landscaping improvements and nothing herein shall prevent, prohibit, or limit the remedies available to the City to enforce the Owner/Developer's obligations under this paragraph.

7. SIGNAGE. Signage shall meet the requirements of Section 12.6 of the Zoning Ordinance for size, setbacks, and all other applicable requirements.

8. ELEVATIONS. The elevations of the proposed buildings submitted to the City

as part of the Article 12 Development Plan shall be constructed, subject to minor modifications approved by the City's Director of Planning, unless an amendment to the plan is approved pursuant to all applicable procedures for amendment as set forth in for the codes, ordinances, or regulations for the City of Arvada.

9. SCREENING OF MECHANICAL EQUIPMENT. All roof-mounted, wall-mounted, and ground-mounted mechanical equipment must be screened as approved on the Article 12 Development Plan prior to the issuance of a certificate of occupancy.

10. TRASH ENCLOSURES. The trash enclosures shall be constructed as approved on the Article 12 Development Plan. The trash enclosures shall be of non-combustible construction.

11. PARKING AND ACCESS DRIVES. All parking and access drives shall meet the hard surface requirements of Section 5.4.3 of the Zoning Ordinance. The striping and signing of all parking spaces must be completed prior to the issuance of a certificate of occupancy in conformance with the standard requirements of the Zoning Ordinance.

12. LIGHTING. Lighting must be installed as shown of the Article 12 Development Plan to be approved by the City and the lighting must not glare onto adjacent properties.

13. CROSS ACCESS. The Owner/Developer must provide cross access between the lots prior to the approval of the minor subdivision.

14. FORMATION OF MUNICIPAL SPECIAL IMPROVEMENT DISTRICT. The Owner/Developer acknowledges that City Council has authorized the formation of a municipal special improvement district (MSID) to finance the construction of certain public improvements including streets, water and sewer lines, and storm drainage improvements. The Owner/Developer agrees not to oppose the formation of any such district or inclusion of the Property within the limits of any such district, and agrees to pay all financial obligations of the Property which result of the formation from an MSID.

15. TEMPORARY MAINTENANCE OF BAYOU DITCH. The Owner/Developer acknowledges that the Bayou Ditch will be abandoned as it crosses this site upon the completion of storm drainage improvements at West 54<sup>th</sup> Avenue and Marshall Street. The Owner/Developer agrees to maintain the ditch as it crosses the site until the ditch is abandoned. The Owner/Developer may install temporary culverts across the drive lanes into the site if access is required prior to the abandonment of the ditch, however, the Owner/Developer shall not regrade or landscape the site immediately surrounding the ditch until authorized to do so by the City and Bayou Ditch Company. The Owner/Developer may temporarily relocate the ditch upon receiving written consent to do so from the Bayou Ditch Company and submitting said consent to the City.

16. FIRE PROTECTION. The Owner/Developer shall meet the requirements of the Arvada Fire Department.

17. PUBLIC UTILITY FEES. The Owner/Developer shall pay all installation charges

for lighting, electric and gas required by Public Service Company in this development.

18. SUBDIVISION MONUMENTATION. In accordance with the applicable Colorado Revised Statutes, as amended, and in accordance with Section 5.3 of the Arvada Subdivision Regulations, the Owner/Developer shall establish all subdivision monumentation and have the monumentation approved by the Engineering Department prior to issuance of any certificate of occupancy.

19. CONTRACTOR LICENSING. Before proceeding with any of the work contemplated herein, the Owner/Developer shall ensure that all contractors and/or subcontractors employed by the Owner/Developer shall be licensed by the City before the contractor and/or subcontractor may commence work on any improvements within the Marshall Office Park minor subdivision.

20. DELAYS. The parties have executed this contract such that completion of the improvements shall be subject to strikes, accidents, acts of God, weather conditions which justify a delay construction in light of standard practices in the building profession, inability to secure labor, fire regulations or restrictions imposed by any government or governmental agency, or other delay resulting from events which are beyond the control of the delaying party and which are agreed to by the parties as justifying delay.

21. STREET MAINTENANCE. The Owner/Developer agrees to maintain, in a reasonable, suitable and proper condition for travel, ingress, and egress, all streets located within the development until such time as the streets are completed and accepted for maintenance by the City. The Owner/Developer shall take all steps necessary to limit and prevent the accumulation of, and to remove accumulated mud, sediment, dirt, trash, and other debris that is "tracked," blown, or otherwise carried onto public property or off-site onto private property during development. Such obligation shall continue until all units and improvements within the Marshall Office Park minor subdivision are completed. If the Owner/Developer fails to remedy any conditions caused or generated by the development as contemplated by this paragraph within twenty-four hours of oral or written notice by the City, the Owner/Developer agrees to pay to the City any costs incurred by the City in remedying such conditions. Payment of such costs shall be made prior to the City's issuance of additional building permits or certificates of occupancy for all or any part of the development and the Owner/Developer understands and agrees that the City may revoke existing building permits until such time as costs incurred pursuant to this paragraph are paid in full. Nothing herein shall obligate the City to remedy such conditions or shall limit the City in its selection of the method or manner of remedy, including but not limited to contracting with an individual or company to remedy such conditions.

22. PUBLIC IMPROVEMENT DEDICATION. All improvements constructed by the Owner/Developer in public rights-of-way, easements, streets or alleys shall become the property of the City immediately upon acceptance of said improvements by the City and the Owner/Developer warrants said improvements for one year from the date of acceptance by the City. The City may request, and the Owner/Developer shall provide at the Owner/Developer's cost, documentary evidence satisfactory to the City that any public rights-of-way, easements, or other property dedicated, conveyed, acquired, devised, or granted to the City is free and

clear of encumbrances which, in the sole opinion of the City, defeat, limit, or impede to City's ability use of the public property as intended.

23. PAYMENT OF FEES AND CHARGES. The Owner/Developer agrees to comply with all the ordinances, rules and regulations of the City and shall pay all fees and other charges in a timely manner as required by the City, including but not limited to building permits, inspection fees, tap fees, drainage fees, imposed by the City by ordinance, rule, resolution, motion, or by the terms and conditions of this Agreement. The Owner/Developer must pay a \$497.70 Engineering Review Fee prior to the approval of the minor subdivision. 6

24. HARD SURFACES. The Owner/Developer shall comply with "Interpretation of Hard Surface Areas," Arvada City Code, Sections 30-46 through 30-83.

25. EROSION CONTROL. The Owner/Developer shall comply with applicable provisions of the Arvada City Code entitled "Soil Erosion and Sediment Control," Chapter 15, Article IV, sections 15-50 through and including 15-58.

26. WAIVER. A waiver by any party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either party.

27. BINDING EFFECT. The parties hereto agree that this Agreement, by its terms, shall be binding upon the successors, heirs, legal representatives, and assigns thereof and shall constitute covenants running with the described property.

28. 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 the City and Owner/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 the City and Owner/Developer that any person other than the City or Owner/Developer receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

29. GOVERNING LAW AND ENFORCEMENT. This Agreement shall be governed by the laws of the State of Colorado. The parties agree and acknowledge that this Agreement may be enforced at law or in equity. In addition to any other available remedies, it is understood and agreed that the City may withhold any requested permits or certificates, including but not limited to building permits and certificates of occupancy, for any lot within the Marshall Office Park minor subdivision development in the event of a breach of this Agreement by the Owner/Developer.

30. PARAGRAPH CAPTIONS. The captions of the paragraphs are set forth only for the convenience and reference of the parties and are not intended in any way to define, limit or describe the scope or intent of this Agreement.

31. SEVERABILITY. Invalidation of any of the provisions of this Agreement or any paragraph sentence, clause, phrase, or word herein or the application thereof in any given

circumstance shall not affect the validity of any other provision of this Agreement.

32. RECORDATION OF AGREEMENT. This Agreement shall be recorded by the City with the Clerk and Recorder's Office of the appropriate county.

33. INCORPORATION OF EXHIBITS. Unless otherwise stated in this Agreement, exhibits referenced in this Agreement shall be incorporated into this Agreement for all purposes. Reference to "City Job Numbers" in this Agreement is a reference to construction documentation which is a public record on file and available for review at the City of Arvada, City Hall, Engineering Department, 8101 Ralston Road, Arvada, Colorado.

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34. 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 mail or registered mail, postage and fees prepaid, addressed to the party to whom such notice is 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 or parties. Such notice shall be deemed to have been given when deposited in the United States Mail.

DATED THIS 20<sup>th</sup> DAY OF March, 2000.

CITY OF ARVADA, a Colorado municipal corporation

Don Allard

Mayor or Mayor Pro Tem  
8101 Ralston Road  
P.O. Box 8101  
Arvada, Colorado 80001-8101  
Telephone: (303) 431-3000

APPROVED AS TO FORM

Randall W. [Signature]

for City Attorney



ATTEST:

Kristen L. Ruch

Deputy City Clerk

OWNER/DEVELOPER

*[Handwritten Signature]*

Roxy F. Vendena, Doing Business As Roxy F. Vendena Investments

Mailing Address: 5520 Harlan Street  
Arvada, CO, 80002

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STATE OF COLORADO

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) ss.

COUNTY OF JEFFERSON

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Acknowledged before me this 23<sup>rd</sup> day of March 2000, by Roxy F. Vendena as Owner/Developer Roxy F. Vendena Investments.

*[Handwritten Signature]*  
Notary

My Commission Expires: 7-11-2001

