

**SUBDIVISION/DEVELOPMENT AGREEMENT
LAKECREST FILING NO. 5**

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THIS SUBDIVIDER'S/DEVELOPMENT AGREEMENT is entered into and made between The Sharon Ann Noriega Trust, The Stanton Henry Jacobson Trust, The Susan Teresa Jacobson Trust, The Steven Waite Jacobson Trust, Ralph Jacobson, Trustee and Paul F. Hauptman, hereinafter referred to as "Owner/Developer," whose address is 5765 Olde Wadsworth Boulevard, Arvada, Colorado, 80002, and the City of Arvada, a Colorado municipal corporation whose address is 8101 Ralston Road, Arvada, Colorado 80002, hereinafter referred to as the "City." This 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.

RECITALS:

WHEREAS, The Owner/Developer is owner of the following described property located in the City of Arvada, County of Jefferson, State of Colorado.

Beginning at a point on the west line of the Farmer's Highline Canal from whence the E 1/4 corner of Section 28, T2S, R69W, bears S 13°42'53" W, 2660.74 feet; thence along said westerly line the following eleven (11) courses: S 7°10'43" W, 33.04 feet; thence S 21°55'28" W, 185.50 feet; thence S 13°31'02" W 114.03 feet; thence S 05°04'08" W 448.70 feet; thence S 00°05'25" E 51.94 feet; thence S 20°19'55" W 37.64 feet; thence S 36°28'29" W 181.34 feet; thence S 31°11'02" W 97.05 feet; thence S 43°25'39" W 77.30 feet; thence S 56°41'11" W 222.51 feet; thence S 69°16'12" W 34.46 feet; thence departing from the said westerly line of the Farmer's Highline Canal N 00°16'17" W 21.65 feet to a point of curvature; thence north along a curve to the left a curve distance of 160.45 feet whose radius is 286.36 feet and interior angle is 32°06'13" and whose chord bears N 16°19'23" W a chord distance of 158.36 feet to a point of curvature; thence north along a curve to the right a curve distance of 34.78 feet whose radius is 25.00 feet and interior angle is 79°42'40" and whose chord bears N 07°28'50" E a chord distance of 32.04 feet to a point of curvature; thence northeasterly along a curve to the left a curve distance of 128.39 feet whose radius is 805.00 feet and interior angle is 9°08'18" and whose chord bears N 42°46'01" E a chord distance of 128.26 feet; thence N 30°56'11" E 150.00 feet to a point of curvature; thence north along a non-tangent curve to the left a curve distance of 312.90 feet whose radius is 800.00 feet and interior angle is 22°24'35" and whose chord bears N 16°16'25" E a chord distance of 310.91 feet; thence N 05°04'08" E 150.00 feet to a point of curvature; thence northeasterly along a curve to the right a curve distance of 571.07 feet whose radius is 439.33 feet and interior angle is 74°28'39" and whose chord bears N 42°18'28" E a chord distance of 531.71 feet to the true point of beginning. Said parcel contains 6.92 acres more or less.

hereinafter referred to as "Lakecrest Filing No. 5"

WHEREAS, the Owner/Developer is planning development of Lakecrest Filing No. 5 and the development will require installation of sanitary sewer facilities, water line facilities, storm drainage facilities, irrigation and streets as shown on City Job No. 2938.

WHEREAS, the Owner/Developer has submitted to the City a proposed Final Plat for Lakecrest Filing No. 5 entitled "Lakecrest Filing No. 5" and this Final Plat is subject to City review and approval. The Lakecrest Filing No. 5 Final Plat, 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 Lakecrest Filing No. 5 Final Plat, as recorded, is incorporated into this Agreement. The Owner/Developer has also submitted to the City a Final Development Landscape Plan which includes a fencing plan for the development. This Final Development Landscape Plan is a public record on file and available for review at the City of Arvada, City Hall, Planning Department, 8101 Ralston Road, Arvada, Colorado. The Final Development Landscape Plan is 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 final plat of Lakecrest Filing No. 5, 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 final plat of Lakecrest Filing No. 5, shall immediately deliver the original mylar of said Lakecrest Filing No. 5 to the City Clerk of the City of Arvada, along with \$21.00 for the first sheet and \$10.00 thereafter for the final plat mylars; further, that as a part of the platting procedure he has filed with the City Engineer nine copies of plans for the construction of streets, water lines, sanitary sewer mains, storm drains and storm drainage structures, irrigation ditch piping and irrigation ditch structures in said proposed Lakecrest Filing No. 5, as required by the City in its action accepting the final plat. 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 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 Lakecrest Filing No. 5 Final Plat, the Owner/Developer shall immediately record the Final Plat 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 public improvements in accordance with the plans and specifications approved by the City of Arvada, Colorado (City Job No. 2938).
4. **LANDSCAPING IMPROVEMENTS.** The Owner/Developer shall install at is own expense and at no cost to the City all landscaping and improvements as depicted on the approved Final Development Landscape Plan submitted to the City by the Owner/Developer. Landscaping for each building or group of buildings shall be installed prior to Planning Department approval of the first certificate of occupancy for that building. The Owner/Developer shall maintain and keep

in good operational repair the automatic sprinkler/irrigation system as depicted within the Lakecrest Filing No. 5 development. Such obligation for maintenance, upkeep, replacement, and repair of common area/open space landscaping and the onsite detention/BMP's area and sprinkler/irrigation systems may be assigned by the Owner/Developer to a homeowner'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. 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.

5. **STREET LIGHT INSTALLATION.** The Owner/Developer agrees to and shall pay all costs associated with the installation of street lights as required by the City and/or Public Service Company of Colorado. The Developer reserves the right to design and install customized street lighting which meets or exceeds the requirements of Public Service Company subject to the review and approval of the City and Public Service Company. Any additional cost of customized lighting shall be the responsibility of the Owner/Developer.

6. **TRAILS.** The Owner/Developer will also be required to provide a 6.5 foot wide hiker/biker trail adjacent to the West 86th Avenue Parkway and a 8 foot wide hiker/biker trail adjacent to the Farmer Highline Canal as shown on the final landscaping plan. These trails are included as part of the construction plans for municipal improvements and must constructed be prior to issuance of the first certificate of occupancy in the subdivision.

7. **KIPLING PARKWAY REIMBURSEMENT.** The Owner/Developer must reimburse the city for the westerly two lanes of Kipling Parkway from the Farmer's Highline Canal to West 86th Avenue Parkway per the Lakecrest Annexation Agreement prior to approval of the final development plan/plat by city council.

8. **ACCEL/DECEL LANE.** A right-of-way is being dedicated for the construction of an acceleration and deceleration lane on the south side of 86th Avenue Parkway at the Jellison Street intersection. A 2.5 foot signage easement will be required along this acceleration/

deceleration lane. This accel/decel lane must be constructed with other municipal improvements in the subdivision. Fifty-feet (50) of right-of-way must be dedicated for Jellison Street and West 85th Place. 4

10. **ELEVATIONS AND RANCH STYLE UNITS.** Elevations of the proposed dwellings submitted as part of the development plan must be those constructed, unless minor modifications are approved by the Planning Director. The Owner/Developer agrees that at least 18 of the units in the development will be one-story ranch in style.

11. **SHAKE SHINGLES REQUIRED.** Shake shingles shall be required in the development, unless alternative roofing materials are approved by the City Council.

12. **MONITORING OF SEEP BEDS AND CONSTRUCTION AND MAINTENANCE ONSITE DETENTION/BMP's FACILITY.** The Owner/Developer shall monitor and maintain the stormwater purification seep beds located north of West 86th Avenue Parkway during the construction process only. If it becomes necessary to clean and or replace the seep beds during the construction process, it will be the responsibility of the owner/developer to do so at his expense. The City will be responsible for maintenance of the seep beds after the following has been completed:

1. All construction including home building and yard landscaping.
2. All repairs and/or replacement of seep beds.
3. Completion of the private on site BMPs facility.

In addition, the Owner/Developer shall design and construct an onsite detention/BMPs (Best Management Practices) facility in accordance with Urban Drainage and Flood Control District Vol. No. 3, design procedures and subject to review and approval by the City Engineer. Maintenance of the onsite detention/BMPs facility will be the responsibility of the Lakecrest Filing No. 5 Homeowners Association.

13. **LAND DEDICATION FEE.** For Lakecrest Filing No. 5, land has previously been dedicated to the City in compliance with the Land Dedication Fee requirement.

14. **UNIT DRAINAGE FEE.** Lakecrest Filing No. 5 is located outside of a present calculated drainage area; therefore, no Unit Drainage Fee is required for this subdivision.

15. **PARK DEVELOPMENT FEES.** Pursuant to Section 25-16 of the City Code, the Owner/Developer shall pay the City's Park Development Fee for all property being developed, as required and in effect by ordinance at the time of each final plat. At the present time, the Park Development Fee is \$300.00 per dwelling unit and, based on the Owner/Developer's proposed 28 dwelling units, the fee for this development would be \$8,400.00.

Section 25-16 of the City Code also requires a park development fee of \$100.00 per unit, to be paid at the time of a building permit for any multifamily development, this fee would be \$2,800.00. The total Park Development Fee for Lakecrest Filing No. 5 would be \$11,200.00.

16. **FENCING PLAN.** Fencing for the development shall be provided as shown on the fencing plan, submitted as part of the final development plan. The Owner/Developer will be required to construct a six-foot solid fence with brick posts not more than 60 feet apart adjacent to the West 86th Avenue and Kipling Parkways. A 30" split-rail fence shall be provided adjacent to the Farmer's Highline Canal right-of-way as shown on the Final Landscaping Plan. Fencing will also be permitted around patio areas shown on the plan. Side yard fencing will not be permitted in the interior of the subdivision. 5

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

18. **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.

19. **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.

20. **BINDING EFFECT.** The parties hereto agree that this Subdivider's 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.

21. **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.

22. **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 Lakecrest Filing No. 5 development in the event of a breach of this Agreement by the Owner/Developer.

23. **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.

24. **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.

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

26. 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. 6

27. 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.

28. ATTORNEY'S FEES. If any party breaches this Agreement, the breaching party shall pay all of the prevailing party's reasonable attorney's fees and costs in enforcing this Agreement.

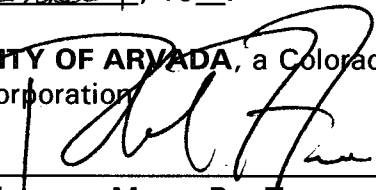
29. AMENDMENT. This Agreement shall not be amended except by written mutual agreement.

30. REVIEW OF REFERENCED DOCUMENTS. The Owner/Developer hereby understands and acknowledges that the public documents referenced in this Agreement, including but not limited to the Arvada City Code, Zoning Ordinance, Subdivision Regulations, and Engineering Specifications, were and are available for review and inspection at the offices of the Engineering Department, City of Arvada, 8101 Ralston Road, Arvada, Colorado, from 8:00 a.m. through 5:00 p.m., Monday through Friday.

31. FORM OF PAYMENT OF ALL FEES AND CHARGES. The Owner/Developer's payment of fees and charges specified by this Agreement shall be made in the form of certified funds, cashier's check, or cash delivered to the City of Arvada, 8101 Ralston Road, Arvada, Colorado 80001. The City shall not accept personal or business checks or drafts not certified by a financial institution as payable.

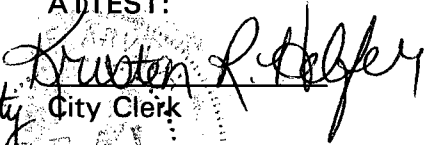
DATED THIS 18th DAY OF December, 1995

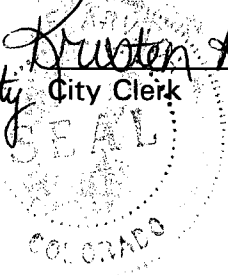
CITY OF ARVADA, a Colorado municipal corporation 17



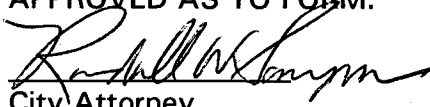
Mayor or Mayor Pro Tem
8101 Ralston Road
P.O. Box 8101
Arvada, Colorado 80001
Phone: (303) 431-3000

ATTEST:


Deputy City Clerk



APPROVED AS TO FORM:


for City Attorney

OWNER/DEVELOPER

The Sharon Ann Noriega Trust,
The Stanton Henry Jacobson Trust,
The Susan Teresa Jacobson Trust,
The Steven Waite Jacobson Trust

Ralph Jacobson, Trustee

By: *Ralph H. Jacobson*

(Print Name) Ralph H. Jacobson

Position: Owner

Mailing Address: 5675 Olde Wadsworth
Arvada, CO 80002

Telephone: () -

STATE OF COLORADO)
) ss.
COUNTY OF JEFFERSON)

Acknowledged before me this 11 day of Dec 1995, by Ralph H. Jacobson
in [his/her] capacity as the owner of LC#5.

Diana K Clore
Notary

My Commission Expires: April 9, 1995

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OWNER/DEVELOPER
Paul F. Hauptman

By: Paul F. Hauptman

(Print Name) Paul F. Hauptman

Position: Owner

Mailing Address: 5765 Olde Wadsworth
Arvada, CO 80002

Telephone: () -

STATE OF COLORADO)
) ss.
COUNTY OF JEFFERSON)

Acknowledged before me this 11 day of Dec. 1995, by Paul F. Hauptman
in [his/her] capacity as the owner of LC #5.

Diana K. Clore
Notary

My Commission Expires: April 9, 1996