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SP-03072
SUB-03-038

SUBDIVISION AGREEMENT
Heath Court Minor Development Plat



THIS AGREEMENT is made this 29th day of January, 2004, by and between the TOWN OF PARKER, COLORADO, a home rule municipal corporation (the "Town") and Heath Court, LLC (the "Developer").

RECITALS:

A. The Developer is the owner of certain real property located in the Town of Parker, known as Heath Court, which is more particularly described in Exhibit A attached hereto and made a part hereof (the "Property").

B. On February 17, 2004, the Town Council of the Town of Parker, after holding all necessary public hearings and having received a recommendation of approval from the Parker Planning Commission, approved the final plat for the Property. A copy of the final plat is attached hereto as Exhibit B and incorporated herein.

C. The approvals cited above are contingent upon the express condition that all duties created by this agreement are faithfully performed by the Developer.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the sufficiency of which are mutually acknowledged, the parties hereto agree as follows:

1. Purpose. The purpose of this agreement is to set forth the terms, conditions, and fees to be paid by the Developer upon subdivision of the Property. All conditions contained herein are in addition to any and all requirements of the Town of Parker Subdivision Ordinance and Zoning Ordinance, the Town of Parker Charter, any and all state statutes, and any other sections of the Town of Parker Municipal Code, and are not intended to supersede any requirements contained therein.

2. Fees. The following fees shall be paid to the Town by the Developer.

a) The Developer hereby agrees to pay the Town the actual cost to the Town for plan review, engineering review, hydrological and surveying review prior to, and during the development process, and for construction observation, inspection and materials testing during the construction process for public improvements, and for construction observation, inspection and materials testing and electronic deliverable review during the warranty period for public improvements, and for legal services (the "actual costs") rendered in connection with the review of the subdivision of the Property including related administrative fees not to exceed one hundred fifteen percent (115%) of the actual costs. In addition, the Developer shall reimburse the Town for the costs of making corrections or additions to the master copy of the official Town map and for the fee for recording the final plat and accompanying documents with the Douglas County Clerk and Recorder.

b) The Developer shall pay the impact fees as established by Town ordinances in effect at the time this agreement is executed. The Developer shall pay the foregoing impact fees in effect at the time specified by such ordinances.

c) The Developer acknowledges and agrees that the Town, pursuant to this agreement, shall be granted construction easement(s) that are reasonably sufficient to complete the public improvements.

3. Specific Conditions. The Developer hereby agrees that:

a) The Developer shall pay to the Town Eighteen Thousand Nine Hundred Six Dollars and Twenty Cents (\$18,906.20) prior to the issuance of the first building permit for the Property (the "Financial Contribution"). Payment shall be in the form of cash or certified funds in a form acceptable to the Town. The Town shall only use the Financial Contribution for the design and reconstruction of Pike's Peak Court and the adjacent drainage outfall to the west of the Property (the "Pike's Peak Court Improvements"). This payment shall constitute the sole financial obligation of Developer to the Town for the Pike's Peak Court Improvement.

b) The Developer agrees to grant to the Town all temporary construction easements necessary to complete the Pike's Peak Court Improvements.

4. Title Policy. A title commitment for the Property shall be provided to the Town. The title commitment shall show that all property to be dedicated to the Town is or shall be, subsequent to the execution and recording of the plat, free and clear of all liens and encumbrances (other than real estate taxes which are not yet due and payable) which would make the dedications unacceptable as the Town in its sole discretion determines. The title policy evidenced by the title commitment shall be provided thirty (30) days after the recording of the final plat.

5. Breach by the Developer; the Town's Remedies. In the event of a breach of any of the terms and conditions of this agreement by the Developer, the Town Council shall be notified immediately and the Town may take such action as permitted and/or authorized by law, this agreement or the ordinances and Charter of the Town as the Town deems necessary to protect the public health, safety and welfare; to protect lot buyers and builders; and to protect the citizens of the Town from hardship and undue risk. The remedies include, but are not limited to:

a) The refusal to issue any building permit or certificate of occupancy;

b) The revocation of any building permit previously issued under which construction directly related to such building permit has not commenced, except a building permit previously issued to a third party;

c) A demand that the security given for the completion of the public improvements be paid or honored; or

d) Any other remedy available at law.

Unless necessary to protect the immediate health, safety and welfare of the Town, or to protect the interest of the Town with regard to security given for the completion of the public improvements, the Town shall provide the Developer thirty (30) days written notice of its intent to take any action under this paragraph, during which thirty day period the Developer may cure the breach described in the notice and prevent further action by the Town.

6. Nuisance Conditions. The Developer agrees to prevent the existence of any nuisances by way of its construction activities, as nuisances are defined by Title 6 of the Town of Parker Municipal Code, and as referenced in Title 11 of the Town of Parker Municipal Code. In the event the authorized inspector/designated Town authority for the Town determines that a nuisance exists, the Developer shall be subject to the provisions set forth in Town of Parker Municipal Code Sections 11.12.040 and 11.12.050, regarding the abatement of nuisances and the cost assessed for the abatement thereof.

In addition to the provisions above, if the nuisance is not abated or an abatement plan is not submitted to the satisfaction of the Town, the Town may, upon thirty (30) days notice under this agreement, exercise the right to draw upon the performance guarantee specified in paragraph 12 of this agreement. The Town may draw on the performance guarantee in order to pay the cost of abating the nuisance, including any expenses and penalties incurred under the Town of Parker Municipal Code. The Town may exercise this right in addition to, or in lieu of, the withholding of permits and/or the withholding of certificates of occupancy. The right to draw on the performance guarantee shall be subject to the sole discretion of the Town, provided the Developer has received thirty (30) days notice as provided herein.

The Town Planning Department and Public Works Department shall be authorized to cease processing any land use or permit applications submitted by the same developer for the property that is contained within the same Planned Unit Development until the nuisance is abated. This shall include, but not be limited to, acceptance of applications, sending referrals, scheduling meetings or hearings, or conducting reviews of projects.

7. Heath Court Owners' Association. An owners' association shall be created by the Developer under the laws of the State of Colorado. The owners' association must be lawfully established before any properties within the development are sold to third parties. The articles of incorporation shall be reviewed by the Town Attorney to insure that they have met the Town's requirements that the owners' association maintain and operate that common parking tract identified on the plat and to assume all responsibilities therefor as shown on the final plat, including sufficient funding to meet these responsibilities.

8. Indemnification. The Developer shall indemnify and hold harmless the Town, its officers, employees, agents or servants from any and all suits, actions, and claims of every nature and description caused by, arising from or on account of any act or omission of the Developer, or of any other person or entity for whose act or omission the Developer is liable, with respect to construction of the Public Improvements; and the Developer shall pay any and all judgments rendered against the Town as the result of any suit, action, or claim together with all reasonable expenses and attorney fees incurred by the Town in defending any such suit, action or claim.

The Developer shall pay all property taxes on the Property dedicated to the Town, and shall indemnify and hold harmless the Town for any property tax liability.

The Developer shall require that all contractors and other employees engaged in construction of Public Improvements shall maintain adequate workers' compensation insurance and public liability coverage and shall faithfully comply with the provisions of the Federal Occupational Safety and Health Act.

9. Waiver of Defects. In executing this agreement the Developer waives all objections it may have concerning defects, if any, in the formalities whereby it is executed, or concerning the power of the Town to impose conditions on the Developer as set forth herein, and concerning the procedure, substance, and form of the ordinances or resolutions adopting this agreement.

10. Modifications. This agreement shall not be amended except by subsequent written agreement of the parties.

11. Release of Liability. It is expressly understood that the Town cannot be legally bound by there presentations of any of its officers or agents or their designees except in accordance with the Town of Parker Code of Ordinances and the laws of the State of Colorado.

12. Captions. The captions to this agreement are inserted only for the purpose of convenient reference and in no way define, limit, or prescribe the scope or intent of this agreement or any part thereof.

13. Binding Effect. This agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors, and assigns as the case may be.

14. Invalid Provision. If any provision of this agreement shall be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision hereof, and all of the other provisions shall remain in full force and effect. It is the intention of the parties hereto that if any provision of this agreement is capable of two constructions, one of which would render the provision void, and the other which would render the provision valid, then the provision shall have the meaning which renders it valid.

15. Governing Law. The laws of the State of Colorado shall govern the validity, performance and enforcement of this agreement. Should either party institute legal suit or action for enforcement of any obligation contained herein, it is agreed that venue of such suit or action shall be in Douglas County, Colorado.

16. Attorney Fees. Should this agreement become the subject of litigation to resolve a claim of default of performance by the Developer and a court of competent jurisdiction determines that the Developer was in default in the performance of the agreement, the Developer shall pay the attorney fees, expenses and court costs of the Town.

17. Notice. All notice required under this agreement shall be in writing and shall be hand delivered or sent by registered or certified mail, return receipt requested, postage prepaid, to the addresses of the

parties herein set forth. All notices so given shall be considered effective seventy two (72) hours after deposit in the United States mail with the proper address as set forth below. Either party by notice so given may change the address to which future notices shall be sent.

Notice to the Town: Richard Brandt
Director of Public Works
9200 Motsenbocker
Parker, Colorado 80134

With copy to: James S. Maloney, Esq.
Hayes, Phillips & Maloney, P.C.
1350 17th Street, Suite 450
Denver, Colorado 80202

Notice to Developer: Gerald J. Dandurand
Heath Court, LLC
11031 S. Pikes Peak Drive, #G-106
Parker, CO 80138

18. Force Majeure. Whenever the Developer is required to complete the construction, repair or replacement of Public Improvements by an agreed deadline, the Developer shall be entitled to an extension of time equal to a delay in completing the foregoing due to unforeseeable causes beyond the control and without the fault or negligence of the Developer including, but not limited to, acts of God, weather, fires and strikes.

19. Approvals. Whenever approval or acceptance of the Town is necessary pursuant to any provision of this agreement, the Town shall act reasonably and in a timely manner in responding to such request for approval or acceptance.

20. Assignment or Assignments. There shall be no transfer or assignment of any of the rights or obligations of the Developer under this agreement without the prior written approval of the Town. The Developer agrees to provide the Town with at least fourteen (14) days advance written notice of the transfer or assignment of any of the rights and obligations of the Developer under this agreement.

21. Recording of Agreement. This agreement shall be recorded in the real estate records of Douglas County and shall be a covenant running with the Property in order to put prospective purchasers or other interested parties on notice as to the terms and provisions hereof.

22. Title and Authority. The Developer expressly warrants and represents to the Town that it is the record owner of the property constituting the Property and further represents and warrants, together with the undersigned individuals, that the undersigned individuals have full power and authority to enter into this subdivision agreement. The Developer and the undersigned individuals understand that the Town is relying on such representations and warranties in entering into this agreement.

WHEREFORE, the parties hereto have executed this agreement on the day and year first above-written.

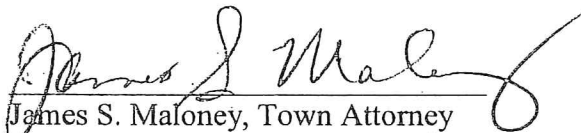
TOWN OF PARKER, COLORADO

By: 
Gary Lasater, Mayor

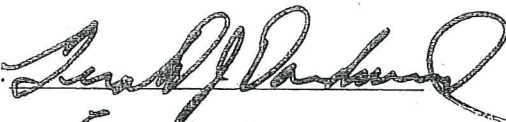
ATTEST:


Carol Baumgartner, Town Clerk

APPROVED AS TO FORM:


James S. Maloney, Town Attorney

DEVELOPER

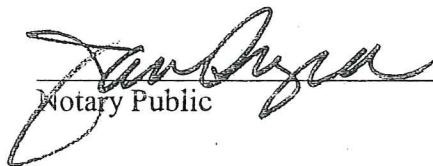
By: 
Name: GERALD J. DANDANO
Title: OWNER/DEV.

STATE OF COLORADO)
)ss.
COUNTY OF Denver)

The foregoing instrument was subscribed, sworn to, and acknowledged before me this 29
day of January, 2004, by Gerald J. Dandurand as the owner - Dev. of _____

My commission expires: 10 - 22 - 05

(S E A L)



Notary Public

Exhibit A

PROPERTY DESCRIPTION

PREVIOUSLY RECORDED AS LOTS 4, 5 & 6 IN TRACT 2, HEATH'S ADDITION TO THE TOWN OF PARKER AS PER PLAT RECORDED AT RECEPTION NUMBER 90329 IN THE OFFICE OF THE CLERK AND RECORDER OF DOUGLAS COUNTY MORE PARTICULARLY DESCRIBED AS FOLLOWS: A TRACT OF LAND SITUATED IN THE NORTHEAST 1/4 OF SECTION 22, TOWNSHIP 6 SOUTH, RANGE 66 WEST OF THE 6TH PRINCIPAL MERIDIAN, IN THE TOWN OF PARKER, DOUGLAS COUNTY, COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS;
COMMENCING AT THE SOUTHEAST CORNER OF THE NORTHEAST 1/4 OF SECTION 22 AND CONSIDERING THE EAST LINE OF THE NORTHEAST 1/4 OF SECTION 22 TO BEAR N 00°00'28"E WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO;
THENCE N 55°32'40"W A DISTANCE OF 1452.52 FEET TO THE NORTHEAST CORNER OF LOT 6, TRACT 2, HEATHS ADDITION TO THE TOWN OF PARKER AND TO THE TRUE POINT OF BEGINNING;
THENCE S 15°23'07"W A DISTANCE OF 152.72 FEET TO THE SOUTHEAST CORNER OF SAID LOT 6;
THENCE N 77°58'35"W A DISTANCE OF 152.16 FEET TO THE SOUTHWEST CORNER OF LOT 4, TRACT 2, HEATHS ADDITION TO THE TOWN OF PARKER;
THENCE N 15°38'59"E A DISTANCE OF 151.36 FEET TO THE NORTHWEST CORNER OF LOT 4;
THENCE S 78°30'14"E A DISTANCE OF 151.55 FEET TO THE POINT OF BEGINNING;
CONTAINING 0.529 ACRES, MORE OR LESS.
THIS PROPERTY DESCRIPTION WAS PREPARED UNDER THE DIRECT SUPERVISION OF DAVID E. ARCHER (P.L.S. 6935), 105 WILCOX STREET, CASTLE ROCK, CO 80104.

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JP

