

SUBDIVISION AGREEMENT
Compark Village South Filing No. 2, Amendment No. 1

THIS AGREEMENT is made this 25th day of November, 2020, by and between the Town of Parker, Colorado, a home rule municipality (the "Town"), and 470 Compark LLC, a Colorado limited liability company (the "Developer").

RECITALS:

A. The Developer is the owner of certain real property located in the Town of Parker known as Compark Village South Filing No. 2, Amendment No. 1, which is more particularly described in **Exhibit A**, attached hereto and incorporated herein (the "Property").

B. The Town Council and the Planning Commission of the Town of Parker held all necessary public hearings concerning the 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 Parker Municipal Code, and are not intended to supersede any requirements contained therein.

2. **Agreements and Other Requirements.** The Developer hereby agrees to perform any and all requirements of the Annexation Agreement entered into between the Town and the Developer on January 5, 2015, which was recorded on January 8, 2015, at Reception No. 2015001337 of the Douglas County real estate records (the "Annexation Agreement"), and the First Amendment Compark Village South Annexation Agreement entered into between the Town and the Developer on July 24, 2017, which was recorded on August 15, 2017, at Reception No. 2017055568. The requirements of the Annexation Agreement are in addition to the requirements of this Agreement and are not intended to supersede any requirements contained herein.

3. **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

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3. 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.

4. Specific Conditions. The Developer hereby agrees that:

a. Any approval obtained from the Town of Parker does not obviate the Developer's need to comply with the requirements of Sections 7 and 9 of the Endangered Species Act of 1973, 16 U.S.C. 1531, *et seq.*, as amended, or with any other applicable federal, state or local laws and regulations.

b. Prior to probationary acceptance of all drainage structures, paved streets, including sidewalk, curb, gutter and slope easements, and necessary appurtenances, as shown on the final plat, landscape plans and the associated construction documents for the Property (the "Public Improvements"), the Developer shall install all plant material and related irrigation facilities as described in the landscape plans approved by the Town (the "Streetscape Improvements"). If installation of Streetscape Improvements cannot be reasonably accomplished prior to probationary acceptance of the Public Improvements for the Property, the Developer shall post a letter of credit amounting to one hundred ten percent (110%) (the "Streetscape Security") of the materials cost as described in **Exhibit E**, attached hereto and incorporated herein, and will complete the Streetscape Improvements according to the landscape plans as provided by Section 13.07.150(c)(2) of the Town's Land Development Ordinance. The Town may reduce the Streetscape Security, in the exercise of its sole discretion, as the Streetscape Improvements are completed and accepted by the Town for final acceptance, subject to Section 13.07.150(c) of the Town's Land Development Ordinance for the Streetscape Improvements.

c. Prior to probationary acceptance of the Public Improvements for the Property, the Developer shall install all plant material and related irrigation facilities within all tracts as described in the landscape plans approved by the Town for the Property (the "Landscape Improvements"), subject to the warranty provisions of this Agreement. If installation of the Landscape Improvements cannot be reasonably accomplished prior to probationary acceptance of the Public Improvements for the Property, the Developer shall post a letter of credit amounting to one hundred ten percent (110%) (the "Landscape Security") of the materials cost as

described in **Exhibit F**, attached and incorporated herein, and will complete the Landscape Improvements according to the landscape plans prior to final acceptance of the Public Improvements by the Town. The Town may reduce the Landscape Security, in the exercise of its sole discretion, as the Landscape Improvements are completed on a tract-by-tract basis and accepted by the Town for probationary acceptance, subject to the warranty provisions of this Agreement and Section 13.07.150(c) of the Town's Land Development Ordinance for the Landscape Improvements.

d. Prior to the recordation of the Final Plat for the Property, the Developer shall pay One Hundred Twenty-Seven Thousand Six Hundred Twenty-Eight and 16/100 Dollars (\$127,628.16) to the Douglas County School District No. RE-1, which payment is for a fee in lieu of a land dedication for the school sites benefitting the School District and its students.

e. Prior to the recordation of the Final Plat for the Property, the Developer shall pay Eighty-Four Thousand One Hundred Fifty Dollars (\$84,150.00) to the Douglas County School District No. RE-1, which payment is for a School Mitigation Fee for the ninety-nine (99) residential lots within the filing.

f. Prior to probationary acceptance of the Public Improvements for the Property, the Developer shall install fire hydrants at the north dead end of 2nd and 3rd Streets, as shown in the approved construction plans.

g. Prior to the issuance of any building permits for the Property, probationary acceptance must be granted by the Town for the Public Improvements described in the Compark Village South Filing No. 1 and Compark Village South Filing No. 2 Subdivision Agreements and associated construction plans.

5. Title Commitment. 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 final 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.

6. 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.

7. Public Improvements and Warranty. All Public Improvements, as approved by the Director of Engineering/Public Works of the Town, shall be installed and completed at the expense of the Developer and dedicated and/or conveyed to the Town. The Public Improvements required by this Agreement and shown on the final plat, as well as associated construction documents approved by the Director of Engineering/Public Works of the Town and the costs of these Public Improvements, are set forth on **Exhibit C**, attached hereto and incorporated herein. All Public Improvements covered by this Agreement shall be made in accordance with the final plat and associated construction documents drawn according to regulations and construction standards for such improvements and approved by the Director of Engineering/Public Works of the Town.

The Developer shall warrant any and all Public Improvements, which are conveyed to the Town, pursuant to this Agreement, for a period of two (2) years from the date the Town's Director of Engineering/Public Works grants probationary acceptance of the Public Improvements, as approved by the Town. The warranty period shall extend to the date final acceptance is granted in writing by the Town's Director of Engineering/Public Works. The Developer shall be responsible for scheduling the necessary inspections for probationary and final acceptance. Specifically, but not by way of limitation, the Developer shall warrant the following:

- a. That the title conveyed shall be marketable and its transfer rightful;
- b. Any and all facilities conveyed shall be free from any security interest or other lien or encumbrance; and
- c. Any and all facilities so conveyed shall be in conformity with the Town's specifications and shall be free of defects in materials or workmanship for a period of two (2) years, as stated above, including, but not limited to, cracks, breakage, settling, or other deterioration of the Public Improvements, no matter the cause, for a period of two (2) years, as stated above.

The Town will accept for maintenance all Public Improvements after the warranty period has expired, provided all warranty work has been completed. The Town shall accept for snow removal purposes only all dedicated public streets after probationary acceptance has been granted in writing by the Director of Engineering/Public Works. The Developer shall make all corrections necessary to bring the Public Improvements into conformity with the Town's specifications, prior to final acceptance.

Notwithstanding anything to the contrary contained in this Agreement, the Town will not accept for ownership, maintenance or operation any private improvements that are described as

Public Improvements in this Agreement, that include, but are not limited to, private streets, private parks, private open space, drainage facilities, landscaping and medians that will be privately maintained, as described on the final plat and/or subject to a license agreement as provided by Paragraph 14 of this Agreement.

8. Observation. The Town shall have the right to make reasonable engineering observations at the Developer's expense, as the Town may request. Observation, acquiescence in, or approval by any engineering inspector of the construction of physical facilities at any particular time shall not constitute the approval by the Town of any portion of the construction of such Public Improvements. Such approval shall be made by the Town only after completion of construction and in the manner hereinafter set forth.

9. Completion of Public Improvements. The obligations of the Developer provided for in paragraph 7 of this Agreement, including the inspections hereof, shall be performed on or before December 31, 2022, and proper application for acceptance of the Public Improvements shall be made on or before such date. Upon completion of construction by the Developer of such Public Improvements, the Town's Director of Engineering/Public Works or his designee shall inspect the improvements and certify with specificity their conformity or lack thereof to the Town's specifications. The Developer shall make all corrections necessary to bring the improvements into conformity with the Town's specifications. Once approved by the Town's Director of Engineering/Public Works, the Town shall accept said improvements upon conveyance, pursuant to paragraph 11; provided, however, the Town shall not be obligated to accept the Public Improvements until the actual costs described in paragraphs 3.a. and b. of this Agreement are paid in full by the Developer.

10. Related Costs – Public Improvements. The Developer shall provide all necessary engineering designs, surveys, field surveys and incidental services related to the construction of the Public Improvements, at its sole cost and expense, including reproducible "as built" drawings certified accurate by a professional engineer registered in the State of Colorado.

11. Improvements to be the Property of the Town. All Public Improvements for roads, concrete curbs and gutters, storm sewers, and drainage improvements accepted by the Town shall be dedicated to the Town and warranted for a period of two (2) years following probationary acceptance by the Town, as provided above.

12. Performance Guarantee. In order to secure the construction and installation of the Public Improvements, the Developer shall, prior to recording the final plat in the real estate records of Douglas County, which recording shall occur no later than ninety (90) days after the execution of this Agreement, furnish the Town, at the Developer's expense, with the performance guarantee described herein. The performance guarantee provided by the Developer shall be cash security in an amount equal to one hundred ten percent (110%) of the estimated costs of the Public Improvements to be constructed and installed, as set forth in Exhibit C, to secure the performance and completion of the Public Improvements. The Developer agrees that approval of the final plat by the Town is contingent upon the Developer's provision of cash to the Town within ninety (90) days of the execution of this Agreement, in the amount and form provided herein. Failure of the Developer to provide cash to the Town, in the manner provided herein, shall negate the Town's approval of the final plat. The cash shall be paid to the Town according

to the terms and conditions of the "Financial Guarantee," which shall be substantially in the form and content set forth in **Exhibit D**, attached hereto and incorporated herein, and shall be subject to the review and approval of the Town Attorney. The Developer shall not start the construction of any public or private improvement on the Property, including, but not limited to, staking, earth work, overlot grading or the erection of any structure, temporary or otherwise, until the Town has received cash and approved the Financial Guarantee.

The estimated costs of the Public Improvements shall be a figure mutually agreed upon by the Developer and the Town's Director of Engineering/Public Works, as set forth in Exhibit C. If, however, they are unable to agree, the Director of Engineering/Public Works' estimate shall govern after giving consideration to information provided by the Developer, including, but not limited to, construction contracts and engineering estimates. The purpose of the cost estimate is solely to determine the amount of security. No representations are made as to the accuracy of these estimates and the Developer agrees to pay the actual costs of all such Public Improvements.

The estimated costs of the Public Improvements may increase in the future. Accordingly, the Town reserves the right to review and adjust the cost estimates on an annual basis. Adjusted cost estimates will be made according to changes in the Construction Costs Index, as published by the Engineering News Record. If the Town adjusts the cost estimate for the Public Improvements, the Town shall give written notice to the Developer. The Developer shall, within thirty (30) days after receipt of said written notice, provide the Town with a new or amended Financial Guarantee in the amount of the adjusted cost estimates. If the Developer refuses or fails to so provide the Town with a new or amended Financial Guarantee, the Town may exercise the remedies provided for in paragraph 6 of this Agreement; provided, however, that prior to increasing the amount of additional security required, the Town shall give credit to the Developer for all required Public Improvements which have actually been completed so that the amount of security required at any time shall relate to the cost of required Public Improvements not yet constructed.

In the event the Public Improvements are not constructed or completed within the period of time specified by paragraph 9 of this Agreement or a written extension of time mutually agreed upon by the parties to this Agreement, the Town may draw on the Financial Guarantee to complete the Public Improvements called for in this Agreement.

Upon completion of performance of such improvements, conditions and requirements within the required time and the approval of the Town's Director of Engineering/Public Works, the Developer shall provide to the Town an irrevocable letter of credit or Financial Guarantee in the amount of twenty percent (20%) of the total cost of construction and installation of the Public Improvements, to be held by the Town during the two-year warranty period. If the Public Improvements are not completed within the required time, the monies may be used to complete the improvements.

13. 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 Parker Municipal Code, and as referenced in Title 11 of the Parker Municipal Code. In the event the authorized inspector/designated Town authority determines that a nuisance exists, the Developer

shall be subject to the provisions set forth in 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 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 the Department of Engineering/Public Works 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.

14. Association. An association shall be created by the Developer under the laws of the State of Colorado or the Property shall be included in an existing association, if possible. The association must be lawfully established in accordance with the requirements of the Parker Municipal Code, concerning associations, before any properties within the development are sold to third parties. The articles of incorporation shall be reviewed by the Town Attorney to ensure that they have met the Town's requirements and the articles provide that the association will maintain the private improvements, including, but not limited to, private streets, private parks, private open space, drainage facilities, landscaping and medians, common areas and facilities, recreation areas and facilities, stormwater management areas and facilities, walkways and other facilities, as identified on the final plat and/or subject to a license agreement(s) entered into between the Developer and the Town, contemporaneously with this Agreement or prior to final acceptance of the Public Improvements, and to assume all responsibilities therefor as shown on the final plat and/or described in the license agreement(s), including sufficient funding to meet these responsibilities.

15. 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.

16. 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.

17. Modifications. This Agreement shall not be amended, except by subsequent written agreement of the parties.

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

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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: Town of Parker
Attn: Director of Engineering/Public Works
20120 E. Mainstreet
Parker, Colorado 80138

With copy to: Town of Parker
Attn: Town Attorney
20120 E. Mainstreet
Parker, Colorado 80138

Notice to Developer: 470 Compark LLC,
C/O MPV Compark Management,
1001 Bannock St., Suite 240
Denver, Colorado 80204
Attn: Michael Vickers
Email: michaelvickers@mpvcompark.com

And: Thomas Triplett, Manager
C/O Vickers Trusts
1223 North Rock Road, Building H, Suite 100
Wichita, Kansas 67206-1271
Facsimile No.: (316) 636-2440
Email: tctruple@twgfirm.com

With a copy to: Moye White LLP
Attn.: Jennifer L. Stenman
16 Market Square, 6th Floor
1400 16th Street
Denver, Colorado 80202
Facsimile: (303) 292-4510
Jennifer.stenman@moyewhite.com

25. 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.

26. 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.

27. 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. Notwithstanding the foregoing, the Town consents to the

assignment of this Agreement to Compark South, LLC (the "Assignee"), on the conditions that (a) the Assignee is the owner of all of the Property contained within the Compark Village South Filing No. 2, Amendment No. 1, Plat, on or before November 30, 2020; and (b) on or before November 30, 2020, the Developer and Assignee execute and deliver to the Town the "Assignment and Assumption Agreement for Compark Village South Filing No. 2, Amendment No. 1, Subdivision Agreement," which is attached hereto as **Exhibit G-1** and incorporated by this reference. The Town further consents to the assignment of this Agreement from Compark South, LLC, to Century at Compark Village South, LLC (the "Century Assignee"), on the conditions that (a) the Century Assignee is the owner of all of the Property contained within the Compark Village South Filing No. 2, Amendment No. 1, Plat, on or before November 30, 2020; and (b) on or before November 30, 2020, Compark South, LLC, and Century Assignee execute and deliver to the Town the "Assignment and Assumption Agreement for Compark Village South Filing No. 2, Amendment No. 1, Subdivision Agreement," which is attached hereto as **Exhibit G-2** and incorporated by this reference.

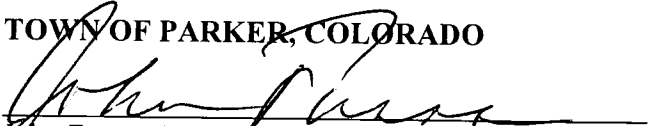
28. Recording of Agreement. This Agreement shall be recorded in the real estate records of Douglas County and shall be a covenant running with the Property, in order to put prospective purchasers or other interested parties on notice as to the terms and provisions hereof.

29. 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.

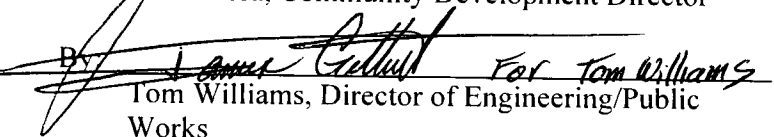
WHEREFORE, the parties hereto have executed this Agreement on the day and year first above written.

TOWN OF PARKER, COLORADO


By:


John Fussa, Community Development Director

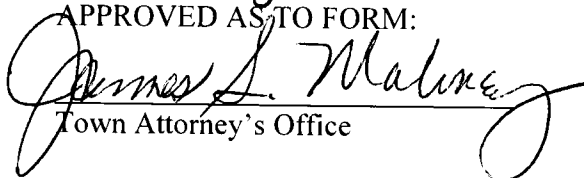
By:


Tom Williams, Director of Engineering/Public Works

ATTEST:


Carol Baumgartner, Town Clerk
Deputy Town Clerk

APPROVED AS TO FORM:


Town Attorney's Office

DEVELOPER:

470 COMPARK LLC, a Colorado limited liability company

Thomas Triplett

Thomas Triplett, Manager

STATE OF KANSAS)
)ss.
COUNTY OF SEDGWICK)

The foregoing instrument was acknowledged before me this 5th day of November, 2020, by Thomas Triplett, as Manager of 470 Compark LLC, a Colorado limited liability company.

My commission expires: March 10, 2021.

SEAL

Kathryn R Newsom
Notary Public

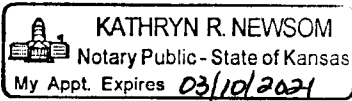


EXHIBIT LIST

- Exhibit A Legal Description of the Property
- Exhibit B Copy of the Final Plat
- Exhibit C Estimated Cost of Public Improvements
- Exhibit D Form of Financial Guarantee Agreement
- Exhibit E Estimated Cost of Streetscape Improvements
- Exhibit F Estimated Cost of Landscape Improvements
- Exhibit G-1 Assignment and Assumption Agreement for Compark Village South Filing No. 2, Amendment No. 1, Subdivision Agreement (Compark South, LLC)
- Exhibit G-2 Assignment and Assumption Agreement for Compark Village South Filing No. 2, Amendment No. 1, Subdivision Agreement (Century at Compark Village South, LLC)

EXHIBIT A

Legal Description

TRACT D, COMPARK VILLAGE SOUTH FILING NO. 2, AMENDMENT NO. 1, LOCATED IN THE SOUTH HALF OF SECTION 6, TOWNSHIP 6 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, TOWN OF PARKER, COUNTY OF DOUGLAS, STATE OF COLORADO

CONTAINING A CALCULATED AREA OF 858,651 SQUARE FEET OR 19.712 ACRES, MORE OR LESS.

EXHIBIT B

FINAL PLAT

EXHIBIT C

PUBLIC IMPROVEMENT COST ESTIMATE

EXHIBIT C

10/30/2020

Compark Village South, Filing No. 2 - Amendment 1
Roadway and Drainage Quantity Estimates

October 30, 2020

Item Number	Item Description	Estimated Quantity	Unit	Estimated Unit Cost	Subtotal
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I. STORM SEWER SYSTEM IMPROVEMENTS*

A. Street Improvements - Phase 2

1	Subgrade Preparation (2' Behind Back of Curb)	15,575	S.Y.	\$1.20	\$18,690
2	Over Excavation	-	C.Y.	\$0.00	\$0
3	Asphalt Pavement (5" HMA/8" ABC)	12,850	S.Y.	\$43.05	\$553,193
4	4" Mountable Curb & Gutter	6,490	L.F.	\$21.05	\$136,615
5	Concrete Alley (6" Depth)	1,700	S.Y.	\$50.10	\$85,170
6	Signage	1	L.S.	\$20,000.00	\$20,000
7	Diagonal Pedestrian Ramp Including Curb Return	10	Each	\$2,450.80	\$24,508
8	Mid-Block Curb Ramp	3	Each	\$855.00	\$2,565
9	Street Lights	4	Each	\$8,720.00	\$34,880
10	5' Detached Concrete Sidewalk	31,917	S.F.	\$5.45	\$173,948
11	Subgrade Preparation for Sidewalk	3,546	S.Y.	\$3.50	\$12,412
12	Street Landscape and Irrigation Improvements (Plan West)	-	L.S.	\$0.00	\$0

STREET IMPROVEMENTS SUBTOTAL \$1,061,980

PUBLIC IMPROVEMENTS SUBTOTAL \$1,061,980

MOBILIZATION:

1	Mobilization @ 5%				\$53,099
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SURVEYING:

1	Surveying @ 3%				\$31,859
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CONSTRUCTION MANAGEMENT / TESTING:

1	Construction Management / Testing @ 12%				\$127,438
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CONTINGENCY:

1	Contingency @ 10%				\$106,198
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SUBTOTAL \$318,594

PUBLIC IMPROVEMENTS TOTAL \$1,380,574

LETTER OF CREDIT AT 110% \$1,518,631

The opinion of probable construction costs for Compark Village South, Filing No. 2 (Phase 2) was based on approximate quantity estimates for general Earthwork, utility work, concrete structural work, revegetation, and miscellaneous work based on the Final Road & Storm Drainage Construction Plans Prepared by Manhard Consulting, latest revision dated August 2020

Quantities were multiplied by current construction industry prices.

The opinion of probable costs shown, and any resulting conclusions on project financial or economic feasibility or funding requirements, have been prepared for guidance in project evaluation and implementation from the information available at the time the opinion was prepared. The final costs of the project and resulting feasibility will depend on actual labor and material costs, competitive market conditions, actual site conditions, final project scope, implementation schedule, continuity of personnel and engineering, and other variable factors. As a result, the project costs will vary from the opinion of the probable costs presented herein. This Engineer's Opinion of Cost assumes that all phase 1 improvements are completed prior to phase 2.

EXHIBIT D

FINANCIAL GUARANTEE AGREEMENT

THIS FINANCIAL GUARANTEE AGREEMENT (the "Agreement") is entered into this _____ day of _____, 20__, by and between the Town of Parker, a Colorado home rule municipality (the "Town"), and _____ (the "Developer").

RECITALS

WHEREAS, the Town and the Developer have entered into that certain Subdivision Agreement (the "Subdivision Agreement") dated _____, 20__, concerning that certain real property known as _____, which is more particularly described in **Exhibit A**, which is attached to the Subdivision Agreement (the "Property"); and

WHEREAS, pursuant to the Subdivision Agreement, the Developer has agreed to install and complete at its expense certain Public Improvements (as that term is defined in the Subdivision Agreement) on the Property and to provide the Town with a financial guarantee, in an amount equal to one hundred ten percent (110%) of the costs of the Public Improvements naming the Town as the designated beneficiary, to secure the performance and completion of the Public Improvements.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the sufficiency of which is hereby acknowledged and confessed, the parties hereto covenant and agree as follows:

1. **Purpose.** The purpose of this Agreement is to provide for a financial guarantee to the Town for the performance and completion of the Public Improvements described in the Subdivision Agreement and, accordingly, to supplement the terms and conditions of the Subdivision Agreement. Defined terms within the Subdivision Agreement shall have the same meaning when used herein.

2. **Financial Guarantee.** In order to secure the performance and completion of the Public Improvements, the Developer agrees to deposit with the Town the sum of _____ Dollars (\$ _____), which represents one hundred ten percent (110%) of the estimated cost of the Public Improvements (the "Financial Guarantee Funds"). All Financial Guarantee Funds shall be deposited in the Town's General Fund. The Town shall not be required to pay the Developer any interest on the Financial Guarantee Funds.

The estimated costs of the Public Improvements shall be a figure mutually agreed upon by the Developer and the Town's Director of Engineering/Public Works. If, however, they are unable to agree, the Director of Engineering/Public Works' estimate shall govern after giving consideration to information provided by the Developer including, but not limited to, construction contracts and engineering estimates. The purpose of the cost estimate is solely to determine the amount of the financial guarantee. No representations are made as to the accuracy of these estimates, and the Developer agrees to pay the actual costs of all such Public Improvements.

The estimated costs of the Public Improvements may increase in the future. Accordingly, the Town reserves the right to review and adjust the cost estimate prior to the issuance of any grading permit for the Property and on an annual basis thereafter. Adjusted cost estimates will be made according to changes in the Construction Costs Index as published by the *Engineering News Record* or based upon actual construction bids, as determined by the Town in the exercise of its sole discretion. If the Town adjusts the cost estimate for the Public Improvements, the Town shall give written notice to the Developer. The Developer shall, within thirty (30) days after receipt of said written notice, provide the Town with new funds in the amount of the adjusted cost estimates. If the Developer refuses or fails to so provide the Town with additional Financial Guarantee Funds, the Town may exercise the remedies provided for in paragraph 6 of the Subdivision Agreement; provided, however, that prior to increasing the amount of additional Financial Guarantee Funds required, the Town shall give credit to the Developer for all required Public Improvements which have actually been completed so that the amount of Financial Guarantee Funds required at any time shall relate to the cost of required Public Improvements not yet constructed.

3. Release of Financial Guarantee Funds.

a. The Developer intends to enter into several different contracts with different contractors to install the Public Improvements. It is the intent of the parties hereto that Financial Guarantee Funds will be released as work is completed on each individual contract. In the event the Public Improvements are not constructed or completed within the period of time specified by paragraph 9 of the Subdivision Agreement or a written extension of time mutually agreed upon by the parties to this Agreement, the Town may draw on the Financial Guarantee Funds to complete the Public Improvements called for in this Agreement.

b. The Financial Guarantee Funds are to be used solely and exclusively for the completion of the Public Improvements. The Town will disburse up to ninety percent (90%) of the estimated cost of the Public Improvements as progress payments according to the schedule of values attached as **Exhibit 1** and incorporated by this reference (the "Schedule of Values"), upon the Developer's satisfaction of the following draw requirements:

1. The Developer delivers an application to the Town (which includes a certification signed by the Developer of the percentage of the total Public Improvements completed according to the Schedule of Values), which application will be made no more than once per month and shall be tied to progress toward the completion of the Public Improvements, as identified in the application (the "Application").

2. Upon receipt of the Application, the Town shall have thirty (30) calendar days within which to provide written acknowledgement from the Director of Engineering/Public Works or designee of the Town that the Application may be paid, partially paid or denied. The Town's affirmation and payment will not constitute approval by the Town of the completion and/or acceptance of Public Improvements, or any portion thereof. Such acknowledgement shall not be unreasonably denied or withheld by the Town and shall be given if the Public Improvements described in the Application are completed in accordance with the construction plans approved by the Town.

3. The Town shall have no obligation to provide probationary acceptance of the Public Improvements, until all of the Public Improvements are completed and all deficiencies, of any type, including, but not limited to, maintenance, materials or workmanship, that are identified by the Director of Engineering/Public Works at the final inspection are corrected (regardless of the cause of the deficiency).

4. Upon the Town's probationary acceptance of the Public Improvements, the Developer has the option of substituting a letter of credit for twenty percent (20%) of the cost of the Public Improvements that the Town is holding for the two-year warranty period, as described in the Subdivision Agreement, in a form and from a financial institution acceptable to the Town.

c. That portion of the Financial Guarantee Funds which represents twenty percent (20%) of the estimated costs of the Public Improvements shall be retained by the Town during the two-year warranty period described in the Subdivision Agreement. At the end of the warranty period and upon final acceptance by the Town, the remaining Financial Guarantee Funds shall be released to the Developer. The Town may draw on the Financial Guarantee Funds during the warranty period to correct any problems with the Public Improvements which have not been corrected by the Developer, as provided by the Subdivision Agreement.

4. Modifications. This Agreement shall not be amended, except by subsequent written agreement of the parties.

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

6. 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.

7. 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.

8. 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, 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 (2) constructions, one of which would render the provision void, and the other which would render the provision valid, then the provisions shall have the meaning which renders it valid.

9. 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.

10. 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: Town of Parker
Attn: Director of Engineering/Public Works
20120 E. Mainstreet
Parker, Colorado 80138

With a copy to: Town of Parker
Attn: Town Attorney
20120 E. Mainstreet
Parker, Colorado 80138

Notice to Developer: _____

With a copy to: _____

11. Assignment or Assignments. There shall be no partial transfer or assignment of any of the rights or obligations of the Developer under this Agreement. There shall be no assignment of this Agreement without the prior written approval of the Town, which the Town may grant or withhold in its sole discretion. The Developer agrees to provide the Town with at least fourteen (14) days' advance written notice of the proposed transfer or assignment of this Agreement.

12. 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 individual(s) that the undersigned individuals(s) has or have full power and authority to enter into this Financial Guarantee Agreement. The Developer and the undersigned individual(s) understand that the Town is relying on such representations and warranties in entering into this Agreement.

13. Conflict with Subdivision Agreements. In the event there is a conflict between the language contained within the Financial Guarantee Agreement and the language contained within the Subdivision Agreement, the language contained in the Subdivision Agreement shall control.

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

TOWN OF PARKER, COLORADO

By: _____
John Fussa, Community Development Director

By: _____
Tom Williams, Director of Engineering/Public Works

ATTEST:

Carol Baumgartner, Town Clerk

APPROVED AS TO FORM:

James S. Maloney, Town Attorney

DEVELOPER: [COMPANY NAME HERE]

By: _____
[Sign on line↑]

[Please print name, title on line↑]

STATE OF COLORADO)
)ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by _____, as _____ of _____.

My commission expires: _____.

SEAL

Notary Public

EXHIBIT LIST

Exhibit A Legal Description of the Property

Exhibit 1 Schedule of Values

COMPARK VILLAGE SOUTH

Filing No. 2 - Amendment No. 1

Plan West, Inc.

Friday, July 07, 2017

STREETSCAPE COST ESTIMATE**LANDSCAPE / IRRIGATION SUBTOTAL:**

Item	Quantity	Unit	Unit Cost	Estimate	Notes
STREETSCAPE					
Shade Trees	88	EA	\$560.00	\$49,280.00	2.5" Caliper
RTF Turf w/ Prep	10,200	SF	\$0.85	\$8,670.00	RTF Low-Water Turf
Irrigation	1	EA	\$260.00	\$260.00	Drip emitter & lateral to emitter
Irrigation - Sod	10,200	SF	\$0.90	\$9,180.00	Spray
Streetscape Subtotal				\$67,390.00	
Final Filing 2 - Amendment 1 Streetscape Subtotal				\$67,390.00	
Contractor Contingency		15% of subtotal		\$10,108.50	
Final Filing 2 - Amendment 1 Streetscape Estimated Total				\$77,498.50	
FINAL L.O.C. TOTAL (110%)				\$85,248.35	

Disclaimer

This opinion of probable landscape construction cost is made on the basis of the Planner / Landscape Architect's experience and qualifications and represents the best judgment as an experienced and qualified professional generally familiar with the industry. However, since the Planner / Landscape Architect does not have control over the cost of labor, materials, equipment, services furnished by others, the Contractors' methods of determining prices, competitive bidding or market conditions; the Planner / Landscape Architect cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from this estimate of probably landscape construction costs. If the OWNER wishes greater assurance as to probable construction costs, the OWNER shall employ an independent cost estimator or contractor.

Prior to probationary acceptance of the Public Improvements for the Property, the Developer shall install all plant material and related irrigation facilities within all tracts as described in the landscape plans approved by the Town for the Property (the "Landscape Improvements"), subject to the warranty provisions of this Agreement. If installation of the Landscape Improvements cannot be reasonably accomplished prior to probationary acceptance of the Public Improvements for the Property, the Developer shall post a letter of credit amounting to one hundred ten percent (110%) (the "Landscape Security") of the materials cost as described and will complete the Landscape Improvements according to the landscape plans prior to final acceptance of the Public Improvements by the Town. The Town may reduce the Landscape Security, in the exercise of its sole discretion, as the Landscape Improvements are completed on a tract-by-tract basis and accepted by the Town for probationary acceptance, subject to the warranty provisions of this Agreement and Section 13.07.150(c) of the Town's Land Development Ordinance for the Landscape Improvements.

COMPARK VILLAGE SOUTH

Filing No. 2 - Amendment No. 1

Plan West, Inc.

Friday, July 07, 2017

PARKS / OPEN SPACE COST ESTIMATE

LANDSCAPE / IRRIGATION SUBTOTAL

PARKS AND OPEN SPACE

Item	Quantity	Unit	Unit Cost	Estimate	Notes
Shade Trees	48	EA	\$560.00	\$26,880.00	2.5" Caliper
Deciduous Shrubs	5	EA	\$27.00	\$135.00	5 Gal. container
Evergreen Shrubs	5	EA	\$39.00	\$195.00	5 Gal. container
Ornamental Grasses	6	EA	\$17.00	\$102.00	5 Gal. container
RTF Turf w/ Prep	66,600	SF	\$0.85	\$56,610.00	RTF Low-Water Turf
Native Seed w/ Prep	104,500	SF	\$0.35	\$36,575.00	Town of Parker Native Mix #2
Irrigation - Turf	66,600	SF	\$0.90	\$59,940.00	Spray
Temporary Irrigation - Native Seed	104,500	SF	\$0.50	\$52,250.00	Spray
Cedar Mulch	4,300	SF	\$0.85	\$3,655.00	Cedar Mulch
Crusher Fines	2,900	SF	\$1.60	\$4,640.00	3" Min. Depth
Fibar 312	2,500	SF	\$3.75	\$9,375.00	
2-Rail Fence	2,650	LF	\$10.00	\$26,500.00	2-Rail Fence
5' Privacy Fence	900	LF	\$15.00	\$13,500.00	5' Privacy Fence
Parks and Open Space Subtotal				\$290,357.00	

SITE FURNISHINGS

Item	Quantity	Unit	Unit Cost	Estimate	Notes
Little Tikes Play Structure	1	EA	\$20,200.00	\$20,200.00	
Back Extension Exercise Structure	1	EA	\$1,795.00	\$1,795.00	
Rowing Machine Exercise Structure	1	EA	\$1,995.00	\$1,995.00	
Full Bar Exercise Structure	1	EA	\$2,395.00	\$2,395.00	
8' Picnic Table	4	EA	\$1,930.00	\$7,720.00	
24' Picnic Shelter	1	EA	\$13,008.00	\$13,008.00	
Outdoor Grill	4	EA	\$550.00	\$2,200.00	
Trash Receptacle	3	EA	\$730.00	\$2,190.00	
16-Unit Mailbox Cluster	6	EA	\$1,200.00	\$7,200.00	Black Finish
Site Furnishings Subtotal				\$58,703.00	

Final Filing 2 - Amendment 1 Parks / Open Space Subtot: **\$349,060.00**

Contractor Contingency 15% of subtotal \$52,359.00

Final Filing 2 - Amendment 1 Parks / Open Space Estimated Total \$401,419.00

FINAL L.O.C TOTAL(110%) **\$441,560.90**

Disclaimer

This opinion of probable landscape construction cost is made on the basis of the Planner / Landscape Architect's experience and qualifications and represents the best judgment as an experienced and qualified professional generally familiar with the industry. However, since the Planner / Landscape Architect does not have control over the cost of labor, materials, equipment, services furnished by others, the Contractors' methods of determining prices, competitive bidding or market conditions; the Planner / Landscape Architect cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from this estimate of probably landscape construction costs. If the OWNER wishes greater assurance as to probable construction costs, the OWNER shall employ an independent cost estimator or contractor.

Prior to probationary acceptance of the Public Improvements for the Property, the Developer shall install all plant material and related irrigation facilities within all tracts as described in the landscape plans approved by the Town for the Property (the "Landscape Improvements"), subject to the warranty provisions of this Agreement. If installation of the Landscape Improvements cannot be reasonably accomplished prior to probationary acceptance of the Public Improvements for the Property, the Developer shall post a letter of credit amounting to one hundred ten percent (110%) (the "Landscape Security") of the materials cost as described and will complete the Landscape Improvements according to the landscape plans prior to final acceptance of the Public Improvements by the Town. The Town may reduce the Landscape Security, in the exercise of its sole discretion, as the Landscape Improvements are completed on a tract-by-tract basis and accepted by the Town for probationary acceptance, subject to the warranty provisions of this Agreement and Section 13.07.150(c) of the Town's Land Development Ordinance for the Landscape Improvements.

EXHIBIT G-1

ASSIGNMENT AND ASSUMPTION AGREEMENT FOR COMPARK VILLAGE SOUTH FILING NO. 2, AMENDMENT NO. 1, SUBDIVISION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT FOR COMPARK VILLAGE SOUTH FILING NO. 2, AMENDMENT NO. 1, SUBDIVISION AGREEMENT (the "Agreement") is dated as of _____, 2020 (the "Effective Date"), and is made by and between 470 Compark LLC (the "Developer"), and Compark South, LLC ("Assignee").

RECITALS

A. The Developer entered into a subdivision agreement with the Town of Parker concerning Compark Village South Filing No. 2, Amendment No. 1, located in the Town of Parker, County of Douglas, State of Colorado, and described in **Exhibit A**, which is attached hereto and incorporated by this reference (the "Subdivision Agreement").

B. The Developer desires to assign the Subdivision Agreement to Assignee and Assignee desires to assume all of the Developer's obligations under the Subdivision Agreement, subject to the prior written approval of the Town of Parker.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The Developer hereby assigns all of its obligations, rights, title and interest under the Subdivision Agreement to Assignee.

2. Assignee hereby assumes all of the Developer's obligations, rights, title and interest under the Subdivision Agreement.

3. The Developer represents and warrants that it has satisfied all conditions precedent, as required by the Subdivision Agreement for this assignment by the Developer and assumption by Assignee.

4. This Agreement shall not be modified, amended or terminated without the express written consent of the Developer, Assignee and the Town of Parker. Notwithstanding anything to the contrary in this Agreement or the Subdivision Agreement, Assignee agrees and covenants to the Town of Parker that it will not further assign its rights or obligations under the Subdivision Agreement without first complying with Paragraph 27 of the Subdivision Agreement entitled "Assignment or Assignments."

5. The parties hereto warrant and represent that they have the express authority to so execute and bind themselves and the parties for whom they are acting to the terms and provisions of this Agreement.

6. The parties hereto warrant and represent that they have executed this Agreement, based upon their own knowledge and free will.

7. The Developer, on the one hand, and Assignee, on the other hand, agree that if any party hereto brings an action to enforce this Agreement or any of its terms and conditions, the prevailing party in such action shall be entitled to an award of reasonable attorneys' fees and actual costs from the losing party. The parties acknowledge and agree that the Town of Parker shall not be liable for any party's attorneys' fees under this Paragraph 7.

8. Should any provision of this Agreement be declared or determined to be null and void, inoperative, illegal or invalid for any reason, the validity of the remaining parts, terms or provisions shall not be affected thereby and they shall retain their full force and effect and said null, void, inoperative, illegal or invalid part, term or provision, shall be deemed not to be part of this Agreement.

9. This Agreement shall, in all respects, be interpreted, enforced and governed under the laws of the State of Colorado.

10. The Recitals of this Agreement are incorporated herein by this reference.

11. This Agreement merges and supercedes all prior negotiations, representations and agreements of the parties hereto, as of the date first above written.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

**DEVELOPER: 470 COMPARK LLC, a
Colorado limited liability company**

Thomas Triplett, Manager

STATE OF KANSAS)
)ss.
COUNTY OF SEDGWICK)

The foregoing instrument was acknowledged before me this _____ day of _____, 2020, by Thomas Triplett, as Manager of 470 Compark LLC, a Colorado limited liability company.

My commission expires: _____.

SEAL

Notary Public

ASSIGNEE: COMPARK SOUTH, LLC

Andrew R. Klein, Manager

STATE OF COLORADO)
)ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2020, by Andrew R. Klein, as Manager, of Compark South, LLC.

My commission expires: _____.

SEAL

Notary Public

CONSENT OF TOWN OF PARKER

The Town of Parker hereby consents to the Assignment and Assumption Agreement for Compark Village South Filing No. 2, 1st Amendment, Subdivision Agreement, as described herein.

TOWN OF PARKER, COLORADO

John Fussa, Community Development Director

Tom Williams, Director of Engineering/Public Works

ATTEST:

Carol Baumgartner, Town Clerk

EXHIBIT A

Subdivision Agreement Compark Village Filing No. 2, Amendment No. 1, dated _____, 2020, by and between the Town of Parker, Colorado, and 470 Compark LLC, recorded in the Douglas County Clerk and Recorder's Office on _____, 2020, at Reception No. 2020 _____.

EXHIBIT G-2

**ASSIGNMENT AND ASSUMPTION AGREEMENT FOR
COMPARK VILLAGE SOUTH FILING NO. 2, AMENDMENT NO. 1, SUBDIVISION
AGREEMENT**

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT FOR COMPARK VILLAGE SOUTH FILING NO. 2, AMENDMENT NO. 1, SUBDIVISION AGREEMENT (the "Agreement") is dated as of _____, 2020 (the "Effective Date"), and is made by and between Compark South LLC (the "Developer"), and Century at Compark Village South, LLC ("Assignee").

RECITALS

A. The Developer entered into a subdivision agreement with the Town of Parker concerning Compark Village South Filing No. 2, Amendment No. 1, located in the Town of Parker, County of Douglas, State of Colorado, and described in **Exhibit A**, which is attached hereto and incorporated by this reference (the "Subdivision Agreement").

B. The Developer desires to assign the Subdivision Agreement to Assignee and Assignee desires to assume all of the Developer's obligations under the Subdivision Agreement, subject to the prior written approval of the Town of Parker.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The Developer hereby assigns all of its obligations, rights, title and interest under the Subdivision Agreement to Assignee.

2. Assignee hereby assumes all of the Developer's obligations, rights, title and interest under the Subdivision Agreement.

3. The Developer represents and warrants that it has satisfied all conditions precedent, as required by the Subdivision Agreement for this assignment by the Developer and assumption by Assignee.

4. This Agreement shall not be modified, amended or terminated without the express written consent of the Developer, Assignee and the Town of Parker. Notwithstanding anything to the contrary in this Agreement or the Subdivision Agreement, Assignee agrees and covenants to the Town of Parker that it will not further assign its rights or obligations under the Subdivision Agreement without first complying with Paragraph 27 of the Subdivision Agreement entitled "Assignment or Assignments."

5. The parties hereto warrant and represent that they have the express authority to so execute and bind themselves and the parties for whom they are acting to the terms and provisions of this Agreement.

6. The parties hereto warrant and represent that they have executed this Agreement, based upon their own knowledge and free will.

7. The Developer, on the one hand, and Assignee, on the other hand, agree that if any party hereto brings an action to enforce this Agreement or any of its terms and conditions, the prevailing party in such action shall be entitled to an award of reasonable attorneys' fees and actual costs from the losing party. The parties acknowledge and agree that the Town of Parker shall not be liable for any party's attorneys' fees under this Paragraph 7.

8. Should any provision of this Agreement be declared or determined to be null and void, inoperative, illegal or invalid for any reason, the validity of the remaining parts, terms or provisions shall not be affected thereby and they shall retain their full force and effect and said null, void, inoperative, illegal or invalid part, term or provision, shall be deemed not to be part of this Agreement.

9. This Agreement shall, in all respects, be interpreted, enforced and governed under the laws of the State of Colorado.

10. The Recitals of this Agreement are incorporated herein by this reference.

11. This Agreement merges and supercedes all prior negotiations, representations and agreements of the parties hereto, as of the date first above written.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

**DEVELOPER: COMPARK SOUTH LLC, a
Colorado limited liability company**

Andrew R. Klein, Manager

STATE OF COLORADO)
)ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2020, by Andrew R. Klein, as Manager of Compark South LLC, a Colorado limited liability company.

My commission expires: _____.

SEAL

Notary Public

**ASSIGNEE: CENTURY AT COMPARK
VILLAGE SOUTH, LLC**

Liesel Cooper, Vice President

STATE OF COLORADO)
)ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2020, by Liesel Cooper, as Vice President, of Century at Compark Village South, LLC.

My commission expires: _____.

SEAL

Notary Public

CONSENT OF TOWN OF PARKER

The Town of Parker hereby consents to the Assignment and Assumption Agreement for Compark Village South Filing No. 2, Amendment No. 1, Subdivision Agreement, as described herein.

TOWN OF PARKER, COLORADO

John Fussa, Community Development Director

Tom Williams, Director of Engineering/Public Works

ATTEST:

Carol Baumgartner, Town Clerk

EXHIBIT A

Subdivision Agreement Compark Village Filing No. 2, Amendment No. 1, dated _____, 2020, by and between the Town of Parker, Colorado, and 470 Compark LLC, recorded in the Douglas County Clerk and Recorder's Office on _____, 2020, at Reception No. 2020_____.