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Cheri Brunvand-Summit County Recorder 9/25/2000 14:18 DF:

**SUBDIVISION IMPROVEMENTS AGREEMENT  
FOR TIMBER CREEK ESTATES, PHASE I, FILING 2 AND PHASE II, FILING 3**

THIS AGREEMENT is made as of this 20th day of September 2000, between TIMBER CREEK ACQUISITION CORP. LLC, or its successors, grantees or assigns ("TCAC" or "Developer"), whose address is P.O. Box 1553 Breckenridge, Colorado, 80424 and the TOWN OF BLUE RIVER, whose address is P.O. Box 4077, Breckenridge, Colorado 80424, Attention: Town Clerk;

**WITNESSETH:**

**1. GENERAL.**

1. Purpose. The purpose of this Agreement is to provide for the completion of the Subdivision Improvements for TCAC's Property known as Timber Creek Estates, Phase I, Filing 2 and Phase II, Filing 3, which property is more specifically described on Exhibit A, attached hereto and incorporated herein by this reference ("Subdivision" or "Property").

**2. Recitals.**

- 1. Developer is the owner and subdivider of the Subdivision and has presented a final plat of the Subdivision to the Town for approval.
- 2. The subdivision statutes of the State of Colorado, C.R.S., §30-28-137, and the Town's Subdivision Regulations authorize the execution of a subdivision improvements agreement between the Town and Developer whereby Developer agrees to construct any required public improvements for the Subdivision and to provide security for completion of the Subdivision Improvements.
- 3. This Agreement will provide for the completion of the Subdivision Improvements within the Subdivision, and will protect the Town from the bearing the costs of completing the Subdivision Improvements, except as provided in Paragraph 5(D) of Ordinance No. 4, Series of 2000.

3. Subdivision. The final plats for Phase I, Filing 2 and Phase II, Filing 3 of the Subdivision have been approved by the Town subject to the execution of this Agreement.

4. Submittal or Submittal Plans. The "Submittal" or "Submittal Plans" are those facilities described and indexed on Exhibit B and referred to in Ordinance No. 4, Series of 2000.

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5. Subdivision Improvements. The “Subdivision Improvements” for the Filings means the street, drainage and other improvements listed on Exhibit B, and improvements described in the Submittal Plans. Exhibits C and D includes the estimated costs and completion dates for the Phase I, Filing 2 and II Subdivision Improvements, respectively.

2. CONSTRUCTION OF SUBDIVISION IMPROVEMENTS.

1. Agreement to Construct. Subject to and in accordance with the terms and provisions of this Agreement, Developer agrees to cause the Subdivision Improvements to be constructed and completed at its expense, according to the Submittal Plans.
2. Final Plat Approval as Condition of Construction. Developer shall not commence construction and installation of the Subdivision Improvements for each Filing until the Town has given its approval to the final plat for such Filing of the Subdivision.
3. Recordation of Final Plat. This Agreement must be entered into prior to recordation of the final plat for Phase I and Phase II, Filing 3 in the Office of the Clerk and Recorder of Summit County, Colorado. The final plat for Phase I, Filing 2 and Phase II, Filing 3 shall only be recorded when either the Subdivision Improvements for the particular Phase (I or II) have been satisfactorily completed, or when the Town receives security in the form of an irrevocable clean letter of credit for the respective plat or that the developer desires the Town to record for the estimated construction costs of said Subdivision Improvements for either Phase I, Filing 2 or Phase II, Filing 3, which public improvements and cost estimates are described on Exhibit B (Submittal Index), and are further identified on Exhibits C and D of this Agreement.
4. Completion Date. The Subdivision Improvements for Phase I, Filing 2 shall be completed within twenty-two (22) months of the recordation of the Phase I, Filing 2 final plat; and the Subdivision Improvements for Phase II, Filing 3 shall be completed within twenty-two (22) months of the recordation of the Phase II, Filing 3 final plat (“Completion Dates”). The Completion Dates may only be extended for good cause, as determined by and approved by the Town Planning Department in writing.
5. Construction Standards. The Subdivision Improvements, including but not limited to water and sanitary sewer, shall be constructed in accordance with the Submittal Plans, this SIA, and Ordinance No. 4, Series of 2000.

6. Warranties of Developer. Developer warrants that the Subdivision Improvements will be installed in a good and workmanlike manner and in substantial compliance with the Submittal Plans and requirements of this Agreement and shall be substantially free of defects in materials and workmanship. These warranties of Developer shall remain in force and effect as to any completed Subdivision Improvements until the lapse of two years after Preliminary Acceptance of the Subdivision Improvements as hereinafter provided in this Agreement.
  
7. Title of Subdivision Improvements. All Subdivision Improvements shall be constructed within streets or easements or as otherwise shown on Submittal Plans as dedicated to the Town on the final plats of the Subdivision, or as conveyed by other recorded instruments at the time the final plat is recorded. Title to the property shown on the final plats shall be vested, at the time the respective final plats for Phase I, Filing 2 and Phase II, Filing 3 are presented to the Town for approval, in and to the Developer and any other parties executing the final plat, and shall be certified by a title company or attorney's certificate shown on the final plat as a plat note.

3. SECURITY FOR COMPLETION.

1. Deposit of Security for Developer Obligations. To secure the performance of the obligations of Developer under this Agreement to complete the Subdivision Improvements for the Subdivision, Developer shall deposit with the Town an irrevocable clean letter of credit with provisions as hereinafter set forth ("Security"). The Security for each Filing shall be deposited after subdivision approval, but prior to recordation of the Final plat for each Filing of the Subdivision. Further:
  1. For Phase I, Filing 2, the amount of the Security shall be \$370,000.00, based upon the Phase I, Filing 2 Subdivision Improvements and cost estimates attached hereto as Exhibit C.
  2. For Phase II, Filing 3, the amount of the Security shall be \$700,392.00, based upon the Phase II, Filing 3 Subdivision Improvements and cost estimates attached hereto as Exhibit D, subject to Paragraph VII(D), below.
  3. Except for the sale of the Property as a whole, no conveyance or transfer of title to any lot(s), tract(s) of land, within the Subdivision with uncompleted Subdivision Improvements shall be made, nor any building permit issued, unless the approved Security has been deposited with the Town or unless all public improvements have been completed and Security in the amount of 15% of the estimated cost of said improvements has been

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deposited with the Town as provided in Section IV(B)(2), below. The Security shall be retained by the Town until satisfaction of Developer's obligations under this Agreement, or earlier release by the Town.

2. Provisions for Letter of Credit.
  1. The irrevocable clean letters of credit for each Filing provided as Security shall:
    1. be issued from Bank of America or such other bank as shall be approved by the Town;
    2. shall have an expiration date no earlier than two years after its date of issue; and
    3. shall provide that they may be drawn upon from time to time by the Town in such amount or amounts as the Town may designate as justified, such amounts not to exceed, in the aggregate, the amount of the letter of credit.
  2. Draws under any such letter of credit shall be by a certificate signed by the Mayor or the Mayor Pro Tem of the Town, stating that the Town is entitled to draw upon the specified amount under the terms of this Agreement.
  3. The right of the Town to draw on any letter of credit shall be as provided in, and subject to, the provisions of Section V, below.
3. Recording of Agreement. After the Effective Date of Ordinance No. 4, Series of 2000, this Agreement may, at the option and expense of the Town, be recorded in the office of the Clerk and Recorder of the Summit County. Upon Final Acceptance of all of the Subdivision Improvements by the Town for the respective Filing, the Town shall deliver to Developer a recordable executed document which shall release all property within the subject Filing from any further effect of this Agreement.

4. ACCEPTANCE OF IMPROVEMENTS.

1. Preliminary/Partial Acceptance. Upon the satisfactory completion of any of the specific Subdivision Improvements for Phase I, Filing 2 and Phase II, Filing 3 listed on Exhibits B, C and D for the respective Phase I, Filing 2 and Phase II, Filing 3, the Developer shall be entitled to obtain preliminary acceptance thereof by the Town ("Preliminary Acceptance") in accordance with the following provisions:
  1. Partial Completion. Upon such partial completion, the Developer's licensed engineer shall inspect the completed Subdivision Improvements for the subject Filing and, if the Developer's engineer finds that the specified improvements have been completed substantially in accordance with the Submittal Plans, then the Developer's engineer shall provide a written, stamped certification to the Town to this effect. The Town shall acknowledge receipt of such certification within five (5) business days, which acknowledgment shall constitute Preliminary Acceptance.
  2. Length of Guarantee Period. In order to insure that successful, stable plant establishment is achieved, all landscape planted for both Phase I, Filing 2 and Phase II, Filing 3 shall be subject to a guarantee period of two years from the date installation is completed except, where planting, seeding, or revegetation is done on 3.33:1 or greater slopes, the initial guarantee period shall be three years.
2. Partial Release of Security.
  1. At the time of Preliminary Acceptance of any specific completed work items listed on Exhibits B, C and D for such respective Filing, the Town shall issue a written release of the specific Security, subject to Paragraph IV(B)(2). The amount to be released for the completed Subdivision Improvements shall be the total amount of the Security for each completed work item, provided sufficient amounts exist on deposit for completion of the remaining incomplete Subdivision Improvements.
  2. A Warranty Security in the amount of 15% of the total cost of such work items shall remain on deposit with the Town until final acceptance of the completed subdivision improvements for the subject Filing.
3. Maintenance Prior to Final Acceptance. Until Final Acceptance by the Town of the Subdivision Improvements, for the subject Filing, the Developer shall, at the Developer's expense, shall make all needed repairs or replacements to the Subdivision Improvements for such Filing as required on account of defects in

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materials or workmanship, and will be responsible for ordinary repairs and maintenance thereof including street sanding, snow removal, cleaning and sewer drainage; provided, however, the Town agrees to perform snow removal prior to Final Acceptance for the subject Filing as consistent with its historic practices.

4. Final Acceptance. Upon final completion of the Subdivision Improvements for the respective Filing, Developer shall be entitled to obtain final acceptance thereof by the Town (“Final Acceptance”) in accordance with the following provisions:
  1. The Developer’s licensed engineer shall provide a written, stamped certification to the Town confirming that the Subdivision Improvements for the subject Filing are substantially free of defects in materials and workmanship and have been repaired and maintained as and to the extent required in this Agreement. The Town shall acknowledge receipt of such certification in writing within five (5) business days, which acknowledgment shall constitute Final Acceptance.
  2. If, upon final inspection of a Filing of the Subdivision Improvements, the Town Engineer finds that the subject subdivision improvements for the subject Filing are not substantially free of defects in materials and workmanship or have not been repaired and maintained as required under this Agreement, the Town Engineer shall issue a written notice of noncompliance within fourteen days after the final inspection specifying the respects in which the Subdivision Improvements are not substantially free of defects in materials and workmanship or have not been repaired and maintained as required under this Agreement. Developer shall thereupon take such action as is necessary to cure any noncompliance and, upon curing the same, shall give a new Final Inspection Notice to the Town Engineer. Upon giving such new Final Inspection Notice, the provisions herein shall apply.
  3. At the time of Final Acceptance of the Subdivision Improvements for the subject Filing, the Developer shall be entitled to a release of the Warranty Security for that Filing. The release shall be in writing, signed by the Town Engineer.
  4. Prior to Final Acceptance of the Subdivision Improvements for the subject Filing, “as constructed” engineering drawings shall be submitted to the Town.

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of the question of whether a default has occurred and by whom, with a noted preference for William Neighbors as arbiter. In the event the arbiter determines that Developer is in default, the Town shall be entitled to: make a draw on the Security for the amount reasonably determined by the Town to be necessary to cure the default in a manner consistent with the approved Submittal Plans up to the amount of the Security; and sue the Developer for recovery of any amount necessary to cure the default over and above the amount available under the Security, including court costs, witness fees and reasonable attorney's fees; and any other remedy at law or equity.

4. Town's Right to Complete Subdivision Improvements. The right of the Town to complete or cause completion of the Subdivision Improvements for the subject Filing as herein above provided shall include the following rights:
  1. The Town shall have the right to complete the Subdivision Improvements, in substantial accordance with the Submittal Plans, the estimated construction costs, and other requirements of this Agreement, either itself or by contract with a third party or by assignment of its rights to a successor developer who has acquired the Subdivision by purchase, foreclosure, or otherwise; and
  2. The Town, any contractor under the Town, or any such successor developer, their agents, subcontractors and employees shall have the non-exclusive right to enter upon the streets and easements shown on the final plat of the Subdivision and upon any part of the Subdivision owned by the Developer for the purpose of completing the Subdivision Improvements.
5. Use of Funds by Town. Any funds obtained by the Town as Security, or recovered by the Town from Developer by suit or otherwise, shall be used by the Town to pay for the costs of completion of the Subdivision Improvements substantially in accordance with the Submittal Plans and the other requirements of this Agreement, and to pay the reasonable costs and expenses of the Town in connection with the default by Developer, including costs, witness fees and reasonable attorneys' fees, with the surplus, if any, to be returned to Developer; provided, however, that any funds or rights to such funds obtained may at the Town's option be assigned or otherwise directed to the account of any third party for the purpose of completing the Subdivision Improvements.

6. MISCELLANEOUS.

1. Indemnification.

1. Developer shall indemnify and save harmless the Town from:
  1. any and all suits, actions, claims, judgments, obligations, or liabilities of every nature and description which arise from an event or occurrence prior to the date of Final Acceptance of the Subject Subdivision Improvements and which are caused by, arise from, or on account of Developer's construction obligations under this Agreement. Further, Developer shall pay any and all judgments rendered against the Town on account of any such suit, action, or claim, together with all reasonable expenses and attorneys' fees incurred by the Town in defending such suit, action, or claim; and
  2. any and all suits, actions, claims, or judgments which arise from an event or occurrence prior to the date of the Final Acceptance and which are asserted by or on behalf of contractors or subcontractors working in the Subdivision, lot owners in the Subdivision, or third parties claiming injuries resulting from defective improvements constructed by Developer.
2. This indemnification shall not apply to claims arising from the negligent acts or omissions of Town.
3. The Town shall, within fifteen days after being served with any such claim, suit, or action, provide Developer with a copy of the complaint. The Developer may provide proper legal representation for the Town in said action, in which case the Developer shall not be responsible for any additional legal fees incurred by the Town. The Town agrees that the Developer may also, on its own behalf, become a party to any such action and the Town agrees to execute any documents as may be necessary to allow the Developer to be a party.

2. Insurance.

1. Developer shall require that all contractors engaged in the construction of the Subdivision Improvements for the subject Filing maintain Worker's Compensation insurance.
2. Before proceeding with the construction of improvements for any such Filing, Developer shall provide the Town Engineer or Town Attorney with



written evidence of property damage insurance and bodily injury insurance in an amount of not less than Six Hundred Thousand Dollars (\$600,000) each, or such other maximum amount of liability as may be specified in the Governmental Immunity Act, listing the Town as an additional insured, and protecting the Town against any and all claims for damages to persons or property resulting from construction and/or installation of any Subdivision Improvements under this Agreement. The policy shall provide that the Town shall be notified at least thirty days in advance of any reduction in coverage, termination, or cancellation of the policy. Such notice shall be sent by certified mail to the Town Clerk, return receipt requested.

3. Developer agrees that any contractors engaged by or for Developer to construct the Improvements shall maintain public liability coverage in limits not less than those described above.
3. No Third-Party Beneficiaries. No person or entity, other than a party to this Agreement, shall have any right of action under this Agreement including, but not limited to, lenders, lot or home buyers and materialmen, laborers or others providing work, services, or materials for any of the Subdivision Improvements.
4. Assignability. Developer may assign its rights and obligations under this Agreement to a party who is the successor or assignee of Developer in its capacity as developer of the Subdivision without the consent of the Town; provided, that (1) Developer notifies the Town of the assignment and of the name and address of the successor developer; and (2) the successor developer assumes the obligations of Developer under this Agreement in writing in a form approved by the Town. The Town shall then release Security furnished by Developer if the Town accepts new security from any successor developer of the Subdivision.
5. No Automatic Further Approvals. Execution of this Agreement by the Town shall not be construed as a representation or warranty that Developer is entitled to any other approvals required from the Town, if any, before Developer is entitled to commence development of the Subdivision or to transfer ownership of property in the Subdivision.
6. Notices. All notices, consents or other instruments or communications provided for under this Agreement shall be in writing, signed by the party giving the same, and shall be deemed properly given and received (1) when actually delivered and received personally, by messenger service, or by fax or telecopy delivery; (2) on the next business day after deposit for delivery in an overnight courier service such as Federal Express; or (3) three business days after deposit in the United States mail, by registered or certified mail with return receipt requested. All such notices or other instruments shall be transmitted with delivery or postage charges prepaid,

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addressed to the party at the address below for that party or to such other address as such party may designate by written notice to the other party:

If to Developer: Timber Creek Acquisition Corp., LLC  
P.O. Box 1552.  
Breckenridge, Colorado 80424

If to Town: Town Of Blue River  
Attn: Town Clerk  
P. O. Box 4077  
Breckenridge, Colorado 80424

7. Further Assurances. At any time, and from time to time, upon request of either party, the other party agrees to make, execute and deliver or cause to be made, executed and delivered to the requesting party any and all further instruments, certificates and documents consistent with the provisions of this Agreement as may, in the reasonable opinion of the requesting party, be necessary or desirable in order to effectuate, complete or perfect the right of the parties under this Agreement.
8. Binding Effect. This Agreement shall run with the land and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
9. Headings for Convenience. All headings and captions are for convenience only and are of no meaning in the interpretation or effect of this Agreement.
10. No Implied Waivers. The failure by a party to enforce any provision of this Agreement or the waiver of any specific requirement of this Agreement shall not be construed as a general waiver of this Agreement or any provision herein nor shall such action act to stop the party from subsequently enforcing this Agreement according to its terms.
11. Severability. If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid, it shall not affect the validity of this Agreement as a whole or any part thereof other than the part declared to be invalid and there shall be substituted for the affected provision, a valid and enforceable provision as similar as possible to the affected provision.
12. No Waiver of Sovereign Immunity. Nothing contained in this Agreement shall constitute a waiver of the sovereign immunity of the Town under applicable state law.
13. Agent/Employee. The Developer is not an agent or employee of the Town.

14. Consent to Jurisdiction and Venue. Personal jurisdiction and venue of any civil action commenced by either party to this Agreement with respect to this Agreement of a letter of credit shall be proper only in such action is commenced in the District Court for Summit County, Colorado. Developer expressly waives the right to bring such action in or to remove such action to any other court, whether state or federal.
15. Entire Agreement. This Agreement, and any agreement or document referred to herein, constitutes the entire understanding between the parties with respect to the subject matter hereof and all other prior understandings or agreements shall be deemed merged in this Agreement.

## VII. ADDITIONAL PROVISIONS

1. Sewer. Sewer for Phase I, Filing 2 and Phase II, Filing 3 shall be designed and built pursuant to the rules and regulations of the Breckenridge Sanitation District.
2. Water.
  1. Water Rights.
    - a. TCAC owns all of the Lusher Ditch water rights described on that certain special warranty deed dated April 22, 1994, as recorded with the Summit County Clerk and Recorder's Office at Reception No. 466531. Prior to recordation of the Final plat for Phase I, Filing 2, TCAC shall irrevocably convey these water rights free and clear from any liens and encumbrances to the Timber Creek Water Company ("TCWC"), reserving one SFE for each of Lots 6, 9, 25, 26, and 27 and Town Hall, and shall provide the Town with proof thereof.
    - b. TCAC has a Vidler Tunnel water rights lease (reflected in the Vidler lease issued to TCAC on December 30, 1997). Prior to the recordation of the Final plat for Phase II, Filing 3, TCAC shall irrevocably assign this Vidler lease to the TCWC, and shall provide the Town with proof thereof.
    - c. Prior to recordation of the Final Plat for Phase II, Filing 3, TCAC shall obtain a final water rights decree from the District Court, Water Division No. 5, State of Colorado, Case No. 98CW069, shall irrevocably convey the water rights evidenced in this decree to the TCWC by quit claim deed, shall adjudicate the water rights referenced herein to the TCWC well, and shall provide the Town with proof thereof.

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- d. The water rights dedications referenced herein are sufficient to serve the existing uses, such as the single family residential lots (6, 9, 25, 26, and 27), the fire station, the Town Hall, and an additional 50 units in Phase I, Filing 2 and Phase II, Filing 3. A unit means a single family residence or one-half of a duplex. The Town shall not issue any building permits beyond 50 units, the Town Hall, and the five (5) single family residential lots (6, 9, 25, 26, and 27), until and unless the additional and necessary legal water rights have been obtained, adjudicated and dedicated to the TCWC by the building permit applicant.
  2. The TCWC has executed a promissory note in the amount of \$45,000 in the form as shown on Exhibit E, with TCAC as the Registered Owner. TCAC shall assign all of its right, title and interest in and to said promissory note to the Town simultaneous with the parties' filing of the stipulations to dismiss the Litigation with prejudice (as the term "Litigation" is defined in Ordinance No. 4, Series of 2000).
  3. Water Service. The water system operation and construction for the subdivision shall be governed by the Colorado Department of Public Health's rules and regulations.
- C. Snow Storage Easements. TCAC shall show snow storage easements on the Phase I, Filing 2 and Phase II, Filing 3 final plats at each cul-de-sac.
- D. Traffic and Highway 9 Access.
1. TCAC shall construct the Highway 9 left turn lane access improvements in the timing and manner as per Paragraph I(D) and (E), above. TCAC shall pay for one-half (1/2) of the estimated construction costs and the construction associated with the left turn lane providing access to the TCAC property off of Highway 9 (which costs are estimated to be \$90,000.00 as are reflected in the Submittal), subject to Paragraph VII(D)(2), below. Also, the Highway 9 access/left turn lane engineering includes an acceleration and deceleration lane as is more fully detailed in the Submittal. TCAC shall post security to cover the estimated completion costs for this left turn as part of the Phase II, Filing 3 public improvements, and shall construct these improvements at the time and in the manner CDOT determines is necessary based upon the uses within the Property.
  2. The Town will be responsible for one-half (1/2) of the costs of the access/left turn lane construction referenced herein, not to exceed \$45,000, which

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costs shall come from the funds the Town receives from TCWC promissory note as assigned to the Town by TCAC as described in Paragraph VII(B)(2), above.

5. Detention and Drainage. Detention and drainage shall be in accordance with the Summit County Land Use and Development Code.
  
- F. Wetlands. TCAC shall specifically address and resolve any wetlands impacts resulting from development of the Property, as well as the 404 permitting requirements for the Clean Water Act, as regulated by the U.S. Army Corps of Engineers.
  
- G. Easements.
  1. Easements Generally. TCAC must show all required easements on the final plats for Phase I, Filing 2 and Phase II, Filing 3, specifically including, but not limited to the ten foot (10') private easement between Lots 3 and 4A (which should be designated as a drainage easement), and all snow storage easements.
  
  2. Drainage Easement Between Lots 31A and 32. The creek and associated wetlands located between Lots 31A and 32 shall be protected by a ten foot (10') drainage easement, which shall be shown on the respective final plats.
  
- H. Retaining Walls. The Town hereby grants to TCAC a license for the continued establishment and use of the retaining walls in any present location that encroaches upon Town dedicated land. TCAC agrees and acknowledges that it shall operate, maintain, repair, and replace any and all retaining walls as allowed to exist following TCAC obtaining the necessary easements and/or licenses from affected parties; provided, however, TCAC may also satisfy this requirement by assigning this obligation to the Timber Creek Estates at Blue River Homeowners Association ("HOA"), provided the HOA must, in writing, agree to undertake this obligation. If TCAC cannot secure the necessary easements or licenses, the retaining wall will be removed promptly after this determination is made.
  
- I. Title Commitments. TCAC must provide the Town with any updated title commitments reflecting that any and all tracts dedicated to other entities are dedicated free and clear of any liens and encumbrances (other than necessary easements).
  
- J. Property Taxes. Prior to any sale, closing, transfer or conveyance of the property (Phase I, Filing 2 and Phase II, Filing 3 ) to any other, TCAC shall deliver a tax certificate to the Town that reflects that any property taxes due on the Property (for both Phase I, Filing 2 and Phase II, Filing 3) have been paid to date; provided

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however, in the event that TCAC desires to record the Phase II, Filing 3 plat *after* the Phase I, Filing 2 plat, TCAC must provide the Town with proof that all property taxes due on the Phase II, Filing 3 property have been paid before the Phase II, Filing 3 plat can be recorded.

- K. Tract A. TCAC shall dedicate Tract A, as it appears on the Phase I, Filing 2 Final Plat, to the Town simultaneous with the recordation of the Phase I, Filing 2 Final Plat. Further, TCAC shall include a plat note on the final plat for Phase I, Filing 2 reflecting that Tract A shall be dedicated to the Town in this fashion, subject to TCAC's reserving approved utility easements.
- L. Recordation Fees. TCAC shall be responsible and obligated for all costs and expenses associated with recording any and all documents related to the Phase I, Filing 2 and Phase II, Filing 3 final plat.
- M. Town Hall. TCAC, its successors or assigns, shall pay to the Town the sum of \$145,000 for the construction of a Town Hall, which amount shall be due and payable in increments of \$5,000 upon the sale of each lot within the Property after the effective date of this Agreement until \$145,000 has been paid. In order to provide notice of this fee to potential lot purchasers, the Town shall record a Notice of the Town of Blue River right to proceeds in the form attached as Exhibit F in the Office of the Summit County Clerk and Recorder. Upon satisfaction of the terms of this subparagraph, the Town shall record an affidavit stating that the Notice no longer applies to the Property.
- N. Lender's Consent. TCAC will ensure that any and all lenders which may claim an interest in the Phase I, Filing 2 and Phase II, Filing 3 plats/property shall execute their consent to the Phase I, Filing 2 and Phase II, Filing 3 plats.
- O. Plat Notes and Certifications. The wording to be used in standard plat notes and required certification for plat maps are those as are referenced in §8703 of the Summit County Land Use and Development Code, and TCAC shall incorporate the same on both the Phase I, Filing 2 and Phase II, Filing 3 final plats.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

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DEVELOPER:  
 TIMBER CREEK ACQUISITION CORP. LLC

By: [Signature]  
 Peter Davis, Member

TOWN OF BLUE RIVER, COLORADO  
 BOARD OF TRUSTEES

ATTEST:

By: Cynthia C. Tester By: [Signature]  
 Town Clerk attorney Mayor

STATE OF COLORADO )  
 ) ss.  
 COUNTY OF Summit )

DEBBIE L. NEELY  
 NOTARY PUBLIC  
 STATE OF COLORADO

My Commission Expires Dec. 6, 2002

The foregoing instrument was acknowledged before me on this 20<sup>th</sup> day of Sept, 2000, by Peter Davis, Member, Timber Creek Acquisition Corp., LLC.

Witness my hand and official seal. My commission Expires: 12/6/02

[Signature]  
 Notary Public

STATE OF COLORADO )  
 ) ss.  
 COUNTY OF Summit )

The foregoing instrument was acknowledged before me on this 20<sup>th</sup> day of Sept, 2000, by Larry Nelso, Mayor, and Cynthia C. Tester, Town Clerk, Town of Blue River, Colorado. attorney

Witness my hand and official seal. My commission Expires: 12/6/02

[Signature]  
 Notary Public

DEBBIE L. NEELY  
 NOTARY PUBLIC  
 STATE OF COLORADO  
 My Commission Expires Dec. 6, 2002

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**SUBDIVISION IMPROVEMENTS AGREEMENT  
FOR Phase I, Filing 2 and Phase II, Filing 3**

**EXHIBIT LIST**

- EXHIBIT A - Legal Description for Phase I, Filing 2 and Phase II, Filing 3
- EXHIBIT B - Submittal” or “Submittal Plans” Index
- EXHIBIT C - Phase I, Filing 2 Public Improvements and Costs Estimates
- EXHIBIT D - Phase II, Filing 3 Public Improvements and Costs Estimates
- EXHIBIT E - Promissory Note in the amount of \$45,000.00
- EXHIBIT F - Notice of the Town of River’s Right to Proceeds