CITY OF FRUITA SUBDIVISION IMPROVEMENTS AGREEMENT

Aspen Village
(Name of Subdivision)

THIS AGREEMENT is made and entered into this _____ day of _____, 20___, by and between the CITY OF FRUITA, COLORADO, a municipal corporation, whose address is 325 E. Aspen Ave., Fruita, Colorado (hereinafter referred to as the "City"), and McCurter Land Company LLC whose address is P.O. Box 2007, Grand Junction, Co 81502 (hereinafter referred to as the "Developer").

RECITALS

WHEREAS, Developer is the fee simple owner of real property described in Exhibit A attached hereto and incorporated herein by this reference (the "Property") and

WHEREAS, Developer has filed an application with the City for the subdivision of certain property to be known as Aspen Village, a tract of land located in the City of Fruita, County of Mesa, State of Colorado, containing approximately 6.73 acres, as more fully described in Exhibit A, attached hereto, herein referred to as the "Subdivision" or the "Property", which Developer intends to improve as a single family residential development; and

WHEREAS, the Developer, as a condition of approval of the Final Plat of Aspen Village desire to enter into a Subdivision Improvements Agreement, as provided for by Chapter 17.21, of the Fruita Municipal Code; and

WHEREAS, the City seeks to protect the health, safety and general welfare of the community by requiring the completion of various improvements in the Subdivision and limit the harmful effects of substandard subdivisions, including premature subdivision, which leaves property undeveloped and unproductive; and

WHEREAS, pursuant to Section 17.21.010, of the Fruita Municipal Code, the Developer is required to provide security or collateral sufficient to insure completion of the public improvements and other necessary subdivision improvements described in the Final Plat for the Property, and all accompanying documents, drawings, and plans; and

WHEREAS, the purpose of this Agreement is to protect the City from the cost of completing subdivision improvements itself and is not executed for the benefit of material supplies, laborers, or others providing work, services or material to the Subdivision or for the benefit of lot owners or occupants in the Subdivision; and

WHEREAS, the mutual promises, covenants and obligations contained in this Agreement are authorized by State law and Title 17 of the Fruita Municipal Code.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and the Developer agree as follows:

SECTION 1
DEFINITIONS

1.1 Agreement. This Subdivision Improvements Agreement for the Aspen Village Subdivision, between the Developer and the City.

1.2 City. The City of Fruita, Colorado, a municipal corporation.

1.3 City Council. The governing body of the City of Fruita, Colorado.

1.4 Developer. McCurter Land Company LLC, and its successors and assigns.

1.5 Property or Subdivision. The real property known as the Aspen Village Subdivision, as more fully described in Exhibit "A", attached hereto and incorporated herein by this reference.

1.6 Subdivision Final Plat. The Final Plat for the Aspen Village Subdivision, as approved by the City.

SECTION 2
TERM

The term of this Agreement and the vested property rights expressly established under this Agreement shall commence on the effective date of the City ordinances or resolutions approving this Agreement and shall continue until the third (3rd) anniversary of the effective date, if Developer has not commenced the public and other required Subdivision improvements, and if said improvements have commenced, this Agreement shall continue until the completion of all improvements. After the expiration of the term, this Agreement may be terminated and will then be of no further force or effect except as to any maintenance requirements for the public and common areas contained herein, and the warranty of public and other Subdivision improvements; provided, however, that any such termination shall not affect (a) the annexation of the Property to the City; (b) any common law vested rights obtained prior to such termination; (c) the prior conveyance of any lots or parcels within the Subdivision; (d) any right arising from other City permits, approvals or other entitlements for the Property which were granted or approved prior to, concurrently with, or subsequent to the approval of this Agreement and the Subdivision Final Plat; or (e) the parties' rights pursuant to subsection 22.5 below.

SECTION 3
SCOPE OF THIS AGREEMENT

3.1 Purpose. This Agreement is intended to set forth the parties' understanding and agreement as to the subdivision of the Property pursuant to Article 23 of Title 31 of the Colorado Revised Statutes and Title 17 of the Fruita Municipal Code; as to the nature of the development proposed for Subdivision; as to the procedures, limitations and standards applicable to the construction of public and private improvements to be installed to serve the Subdivision; as to the responsibilities of the parties for various costs, fees and charges; and as to such other matters the parties believe can be adequately addressed at this time. This Agreement is not intended to address those matters which are more appropriately considered at the time of actual development of lots contained within the Subdivision. The City reserves all rights to review, approve, or deny any future permit applications submitted in accordance with the ordinances and policies of the City then in effect.

3.2 City's Rights Reserved. It is not the intention of the parties in any way to diminish or limit the City's legislative, quasi-judicial, or other non-delegable discretionary powers or to impose on the City any duty, beyond its ordinances and regulations as they may from time to time exist, nor to impose any special obligation on the City to approve or accept any future filings, applications, plans, drawings, security documents, improvements, and conveyances. It is furthermore the express intention of the parties that nothing in this Agreement shall be construed to void the rights and obligations of the parties as set forth herein, to the extent such rights and obligations are consistent with law. The parties expressly agree they will fully perform this Agreement to the extent it is consistent with the law.

3.3 Limited Applicability. This Agreement applies only to Aspen Village as shown on the Final Plat and/or the Approved For Construction Drawings.

SECTION 4
NATURE OF THE SUBDIVISION

This Subdivision is zoned Community Residential and consists of 22 detached Single family residential lots, and 4 other Tracts/Outlots on 6.73 acres, with .25 acres of dedicated open space, parks, trails and 1.46 acres of dedicated public streets.

SECTION 5
IMPROVEMENTS AND WARRANTY - GENERAL PROVISIONS

5.1 Construction of Improvements. In accordance with Chapter 17.15 of the Fruita Municipal Code: all water services lines and laterals, water mains, fire hydrants and other water distribution facilities necessary to provide treated water service for this Subdivision; all irrigation lines and related appurtenances, laterals and mains necessary to provide non-potable irrigation service for this Subdivision; all wastewater collection lines and related improvements necessary to

provide wastewater collection service for this Subdivision; other required utilities for this Subdivision, any drainage structures required for this Subdivision; street improvements within the Subdivision including pavement, curbs, gutters and sidewalks, survey monuments, and other on-site or off-site public or required Subdivision improvements, as shown in the accompanying plans applicable to this Subdivision including any field changes required by the City due to unknown site conditions; this Agreement, and; any other improvements required by Title 17 of the Fruita Municipal Code and the City's Design Criteria and Construction Specifications Manual shall be installed and completed at the expense of the Developer. The public and other necessary Subdivision improvements shall be designed and built in conformance with all City engineering design standards and all requirements contained in Title 17 of the Fruita Municipal Code. All such public or other required Subdivision improvements shall be designed and approved by a registered professional engineer retained by the Developer unless required otherwise by the Fruita Municipal Code. All drawings and plans for such improvements shall be stamped by the engineer unless required otherwise by the Fruita Municipal Code.

5.2 Compaction Standards. Trench compaction and road sub-grade and base course compaction standards and criteria shall be reviewed and approved by the City prior to the commencement of construction.

5.3 Schedule of Improvements to be Constructed by Developer. The schedule of on-site and off-site improvements to be constructed by the Developer, showing in detail the public and other required Subdivision improvements, including shallow utilities, that the Developer is responsible for constructing, and the costs therefor, as required by Section 17.21.030 of the Fruita Municipal Code, is attached hereto as Exhibit "B" and incorporated herein by this reference.

Not Applicable unless INITIALED by City ( )

5.3.1 Separate Exhibits, ("B-1", "B-2", etc., incorporated as a part of Exhibit "B"), are provided for the construction of improvements for which the Developer will receive a credit against impact fees otherwise payable, or for which a subsequent recapture agreement will be executed, as delineated in other Sections of this Agreement.

5.3.2 Unless otherwise authorized by the City, no work shall be commenced on such improvements by the Developer until such time as the performance guarantee pursuant to Section 9 of this Agreement and Section 17.21.100 of the Fruita Municipal Code has been furnished to the City.

5.4 Warranty by Developer. In accordance with Section 17.21.080 of the Fruita Municipal Code, the Developer shall warrant any and all required improvements constructed by Developer pursuant to this Agreement and the Subdivision Final Plat and all accompanying documents, drawings, and plans for a period of twenty-four (24) months from the date the City certifies that the same conform with the approved specifications. The warranty period begins on the day City Council approves the Partial Release of Security per subsection 9.5 below. In addition, but not by way of limitation, the Developer shall warrant the following:

5.4.1 The Developer shall warrant that the title conveyed shall be good and its transfer rightful; and

5.4.2 The Developer shall warrant any and all facilities conveyed shall be free from any security interest or other lien or encumbrance.

5.4.3 The Developer shall warrant that any and all facilities so conveyed shall be free of any and all defects in materials or workmanship.

5.5 City Inspections. In accordance with Section 17.21.050 of the Fruita Municipal Code, the City shall have the right to make inspections and require testing during construction of the public and other required Subdivision improvements in such reasonable intervals as the City may request in accordance with the City's street construction regulations and sewer construction regulations or as otherwise determined by the City. Inspection, acquiescence and approval of any inspector of the construction of physical facilities, at any particular time, shall not constitute the approval by the City of any phase of the construction of such public and other required improvements. Such approvals shall be made by the City only after completion of construction and the establishment of property pins for each lot or parcel, and in the manner hereinafter set forth.

5.6 Final Approval by City. In accordance with Section 17.21.060 of the Fruita Municipal Code, upon completion of construction of such public and other required Subdivision improvements, the City shall perform a final inspection of the improvements and certify with specificity its conformity or lack thereof to the approved specifications. The Developer shall make all corrections necessary to bring the improvements into conformity with City standards and the utility, drainage and street improvement plans and others, as approved. The City shall be under no obligation to release the performance guarantee, or provide any wastewater collection service, street maintenance, to issue planning clearances, or certificates of occupancy until all such facilities are brought into conformance with the specifications and finally approved by the City.

5.7 Provision of As-Built Drawings. In accordance with Section 17.15.180 of the Fruita Municipal Code, the Developer shall provide all necessary engineering designs, surveys, field surveys, and "as built" drawings for all public improvements and other utilities improvements approved by the City. All "as built" drawings shall be prepared in the manner required by the City. The Developer shall pay for any incidental services related to the construction of the public improvements and other required improvements, at its sole cost and expense.

5.8 Conveyance of Public Improvements. In accordance with Section 17.21.070 of the Fruita Municipal Code, all public improvements constructed in accordance with this Agreement, including but not limited to all wastewater collection mains, laterals and related improvements; public street improvements including required pavement, curbs, gutters and sidewalks shall be dedicated or conveyed to the City. Upon completion of construction in conformity with the plans, and any properly approved changes, the Developer shall convey to the City, by bill of sale, all physical facilities necessary for the extension, maintenance and repair of municipal utility services and other public facilities. Acceptance of said conveyance shall be made by the City by majority

vote of the City Council. Following such dedication or conveyance, the City shall be solely responsible for the maintenance of such improvements, unless otherwise provided in this Agreement, except for any correction work required during the warranty period set forth in subsection 5.4 above.

5.9 Construction Schedule. Construction of such public and other required Subdivision improvements shall be completed by the Developer no later than the dates set forth in Exhibit "B". Where Developer is prevented from commencing or completing any of the public and other required Subdivision improvements within the time frame identified in Exhibit "B" due to an unforeseeable cause or delay beyond the control and without the fault or negligence of the Developer, the times for commencement and/or completion of such improvements shall be extended in an amount equal to the time lost due to such delay if a request is made in writing to the City by the Developer. Delays beyond the control of Developer shall include, but not be limited to, acts of neglect by the City, fires, floods, epidemics, abnormal weather conditions, strikes, freight embargos or acts of God. Time extensions, however, will not be granted for rain, snow, wind or other natural phenomena at normal intensity within Mesa County. Delays attributable to and within the control of the Developer's contractors, subcontractors or suppliers shall be deemed to be delays within the control of the Developer.

5.10 Improvements Required Prior to Issuance of Planning Clearances for Building Permits and Certificates of Occupancy. No planning clearance necessary to obtain a building permit for construction of any building within the Subdivision shall be issued until all of the required improvements, as specified in Section 17.15.180 of the Fruita Municipal Code, and this Agreement, have been installed and approved by the City.

5.11 Dogs Prohibited During Construction. The Developer shall prohibit its contractors and subcontractors from bringing dogs onto the Property, even if such dogs are to be kept inside motor vehicles. Violation of this policy shall result in the immediate eviction of the dog and the dog's owner or harborer by the Developer from the Property. In the event of a second violation by the same dog and/or the same dog's owner or harborer, the dog and the dog's owner or harborer shall be immediately evicted from the Property by the Developer and the offending person shall be prohibited from entering or working within the Property for the following seven (7) consecutive calendar days. In the event of a third violation, the offending person shall be prohibited by the Developer from entering or working within the Property for the following six (6) calendar months.

SECTION 6
OFF-SITE STREET IMPROVEMENTS

Pursuant to subsection 17.15.140(B) of the Fruita Municipal Code and conditions imposed by the City Council, the Developer shall: replace existing curb cuts with vertical curb, gutter and sidewalk; replace missing section of curb, gutter + sidewalk on Pine Street in accordance with the Approved For Construction Drawings signed by the City Engineer.

Developer acknowledges that such requirement(s) are roughly proportional to the impacts generated from development of the Property.

SECTION 7
DRAINAGE IMPROVEMENTS

Pursuant to subsection 17.15.140(E) of the Fruita Municipal Code and conditions imposed by the City Council, the Developer shall: install stormwater and drainage improvements per the Final Drainage Report and _____, in accordance with the Approved For Construction Drawings signed by the City Engineer.

Developer acknowledges that such requirement(s) are roughly proportional to the impacts generated from development of the Property.

SECTION 8
WATER AND WASTEWATER SERVICES AND IMPROVEMENTS

8.1 Domestic Water Service. The City understands that the Ute Water Conservancy District intends to provide domestic water service to the Property consistent with an agreement between the Developer and the District. The terms and conditions of any such agreement are incorporated herein by this reference.

8.2 Construction of Treated Water Distribution System. Pursuant to subsection 17.15.140(F) of the Fruita Municipal Code, the Developer, at its sole expense, shall design, purchase, and install all elements of a municipal treated water distribution system to fully service the Subdivision including but not limited to water mains, fire hydrants, pipe lines, and service line laterals to lot lines as required by the Ute Water Conservancy District's regulations, off-site water main extensions, and all other appurtenant facilities necessary to provide treated municipal water service to the Subdivision. All required improvements and the construction and installation of such improvements shall be in accordance with the Approved for Construction Drawings, plans and specifications and as approved by the Ute Water Conservancy District. Upon completion of the municipal distribution system, said system shall be inspected and approved by the Ute Water Conservancy District.

8.3 Construction and Conveyance of Irrigation System. Pursuant to subsection 17.15.140(K) of the Fruita Municipal Code, the Developer, at its sole expense, shall design, purchase and install all elements of a non-potable irrigation system to fully service the Subdivision including all lines, valves, service lines to the lot lines and service risers as required by the City's regulations, and all off-site improvements as necessary to maintain the delivery system. All required improvements and the construction and installation of such improvements shall be in accordance with the Approved for Construction Drawings, plans and specifications approved by the City, and in accordance with applicable provisions of the City of Fruita's Design Criteria and Construction Specifications Manual and Title 17 of the Fruita Municipal Code.

The Developer shall convey to the Homeowners Association by separate legal instrument(s) the irrigation system, all real property and associated easements necessary for operation and maintenance of the irrigation system, and shall also transfer to the Association sufficient irrigation water rights as approved by the City prior to partial release of security as provided in section 9.5 of this Agreement.

8.4 Construction of Wastewater Collection System.

8.4.1 On-Site Improvements. Pursuant to subsection 17.15.140(D) of the Fruita Municipal Code, the Developer, at its sole expense, shall design, purchase, and install all elements of the wastewater collection system to fully service the Subdivision, including service lines to the lot lines, pursuant to the provisions of this Agreement and applicable provisions of the City's engineering design standards. Such wastewater collection system shall be constructed in accordance with the Approved for Construction Drawings, plans and specifications, and City wastewater system regulations.

8.4.2 Off-Site Improvements. Developer shall install the following off-site wastewater collection system components in accordance with the Approved for Construction Drawings:

N/A

Developer acknowledges that such requirement(s) are roughly proportional to the impacts generated from development of the Property.

8.5 Provision of Wastewater Service by the City. Upon completion of the wastewater collection system and upon approval and acceptance by the City, the City agrees to provide wastewater treatment and collection service to the Subdivision upon Developer or other property owner making a written request for such service and the payment of any required plant investment (tap) fees and connection charges. Provision of wastewater service by the City within the Subdivision shall be made pursuant to agreement by the City and on a first come/first served basis with other wastewater service customers, subject to system capacity and any prior commitments, and at the then applicable rate. Except as may otherwise be provided in this Agreement, a lot owner shall not receive any preferences for or assurance of the availability of wastewater service from the City until the plant investment (tap) fee is paid.

SECTION 9
PERFORMANCE GUARANTEE

9.1 Security Required. In order to secure the construction and installation of the public and other required Subdivision improvements, whether on-site or off-site, above described and as

shown in the Subdivision Final Plat for the Property and all accompanying documents, drawings and plans submitted for the Approved for Construction drawings, for which the Developer is responsible, and in accordance with Section 17.21.100 of the Fruita Municipal Code, the Developer shall furnish the City with: (a) cash to be deposited in an escrow account that is acceptable to the City pursuant to the Escrow and Disbursement Agreement attached hereto as Exhibit "__" and incorporated herein by this reference; or (b) an irrevocable standby letter of credit that is acceptable to the City; or (c) a performance bond issued by a surety approved by the City, in an amount equal to one hundred ten percent (110%) of the estimated cost of said facilities.

9.2 Delivery of Security. Developer shall furnish to the City the security required by this Section and subsection 17.21.100(B) of the Fruita Municipal Code prior to the recording of the Subdivision Final Plat. Unless expressly authorized by the City, the Developer shall not commence any work within the Subdivision until such approved security is furnished to the City. Developer shall not convey any lot within the Subdivision to any third party until such approved security is delivered to the City.

9.3 Special Letter of Credit Standards. In the event the Developer elects to deliver to the City an irrevocable letter of credit as a performance guarantee, the letter of credit shall be payable at sight to the City, or its designee, and will bear an expiration date of not earlier than two (2) years from the date of issuance. The Developer shall renew such letter of credit as necessary in order to secure the performance and completion of the public and other required Subdivision improvements for which the Developer is responsible in accordance with this Agreement, without further notice from the City. If the Developer fails to provide the City a satisfactory substitute letter of credit at least thirty (30) days prior to the expiration date of the letter of credit previously delivered, the City may, at its sole option, draw the full amount of the letter of credit and hold the proceeds thereof as a performance guarantee deposit. The proceeds of such draw shall be deposited in a federally insured interest bearing account, and all interest earned thereon shall be added to and become part of the performance guarantee deposit.

9.4 Security Standards; Payment Upon Default. The initial performance bond or letter of credit, if applicable, issued pursuant to this Agreement shall bear an expiration date of not earlier than two (2) years from the date of issuance. The Developer shall renew such security as necessary in order to secure the performance and completion of the public and other required on-site and off-site Subdivision improvements in accordance with this Agreement and Section 17.21.100 of the Fruita Municipal Code, without further notice from the City. The performance bond, letter of credit, or escrow funds shall be payable at any time upon presentation of an affidavit by the City stating the Developer is in default under this Agreement, has received notice of such default as required by subsection 9.7 of this Agreement and subsection 17.21.100(E) of the Fruita Municipal Code, and has failed to cure such default within the time set forth in subsection 9.7 of this Agreement and subsection 17.21.100(E) of the Fruita Municipal Code, or in the case of a letter of credit, the Developer has failed to renew the letter of credit as required herein. The performance bond, or letter of credit, or Escrow and Disbursement Agreement shall be in good and sufficient form as approved by the City. In the event of a default by the Developer and compliance with the terms of subsection 9.7 of this Agreement and subsection 17.21.100(E) of the Fruita Municipal Code, the surety or

financial institution shall disperse funds, upon written request by the City, or the escrow fund may be drawn upon, showing the proposed payee and the amount to be paid. Copies of any such request shall be sent to the Developer at its last known address.

9.5 Partial Release of Security. In accordance with subsection 17.21.100(C) of the Fruita Municipal Code, upon completion of a certain class of the improvements by the Developer, such as wastewater facilities by way of example, evidenced by a detailed cost breakdown of the completed improvements, the amount of any security issued pursuant to this Agreement may be reduced by up to one hundred percent (100%) of the approved estimated cost for the installation of such class of improvements, upon application of the Developer, and approval by the City. Upon completion of all of the public and other required Subdivision improvements by the Developer, and upon final inspection and approval by the City of all such improvements, the City Council shall further authorize the reduction of the amount of the security guaranteeing the public and other required Subdivision improvements to ten percent (10%) of the total actual cost of such improvements pursuant to subsection 17.21.100(C) of the Fruita Municipal Code.

9.6 Full Release of Security. In accordance with subsection 17.21.100(D), any performance guarantee issued pursuant to this Agreement shall be fully released and discharged by action of City Council upon expiration of the twenty-four (24) month warranty period, and the correction of any defects discovered during such warranty period. In the event that the correction of defects are not satisfactorily completed upon the expiration of the twenty-four (24) months, the City may require a new performance guarantee and withhold the issuance of planning clearances until a new improvements guarantee is recorded. The warranty period begins on the day City Council approves the Partial Release of Security per subsection 9.5 above.

9.7 Notice of Default. In accordance with subsection 17.21.100(E), upon the Developer's failure to perform its obligations under this Agreement, as applicable to this Subdivision, all other applicable plans, drawings, specifications and other documents as approved, within the time periods set forth in this Agreement, the City may give written notice to the Developer of the nature of the default and an opportunity to be heard before the City Council concerning such default. If such default has not been remedied within thirty (30) days of receipt of the notice or of the date of any hearing before the City Council, whichever is later, (or such reasonable time period as is necessary to cure the default provided that the Developer has commenced in good faith to cure the default), the City may then give written notice to the Developer and any surety on the performance bond, issuer of a letter of credit, or escrow agent that the City, as agent for the Developer, is proceeding with the task of installing the public and other required Subdivision improvements in whole or in part.

9.8 Power of Attorney Granted. In accordance with subsection 17.21.100(F) of the Fruita Municipal Code, the Developer hereby designates and irrevocably appoints the Fruita City Manager, as its Attorney-In-Fact and agent for the purpose of completing all public and other necessary improvements required by this Agreement in the event of a default by the Developer. This Agreement shall be filed in the office of the Clerk and Recorder of Mesa County, Colorado, and shall constitute constructive notice of this Agreement and the power of attorney provided herein. This Agreement and power of attorney contained herein may be enforced by the City pursuant to all legal

and equitable remedies available, including an action for specific performance in a court of competent jurisdiction.

9.9 Increase in Amount of Security. In accordance with subsection 17.21.100(G) of the Fruita Municipal Code, if a substantial amount of time elapses between the time of posting of the security and actual construction of the improvements, the City reserves the right to require a reasonable increase in the amount of the applicable security, if necessary because of estimated increased costs of construction.

9.10 Cost Estimate Not Binding. The purpose of the cost estimate described in subsection 9.1 above is solely to determine the amount of security required and may be revised from time to time to reflect the actual costs. No representations are made as to the accuracy of these estimates, and the Developer agrees to pay the actual cost of all such public and other required on-site and off-site Subdivision improvements. Neither the estimated costs nor the amount of the security establishes the maximum amount of the Developer's liability.

9.11 Attorney's Fees. If any legal proceedings are commenced concerning the City's election to complete the public and/or other required Subdivision improvements, as agent for the Developer, against the Developer, its surety, or issuer of the letter of credit, the substantially prevailing party shall be entitled to its costs and reasonable attorney's fees (including legal assistant' s fees) or the reasonable value of salaried attorney's time (including legal assistant's time).

SECTION 10
INDEMNIFICATION AND INSURANCE

10.1 Indemnification By Contractors. In accordance with Section 17.21.110 of the Fruita Municipal Code, any contractor employed by the Developer who performs work within rights-of-way or easements dedicated to the City or within other property owned by the City shall indemnify and hold harmless the City of Fruita, its officers, employees, insurers, and self-insurance pool, from and against all liability, claims, and demands, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with work performed by such contractor for the Developer within City rights-of-way, easements or other property, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of such contractor, any subcontractor of the contractor, or any officer, employee, representative, or agent of such contractor or of any subcontractor of the contractor, or which arise out of any workers compensation claim of any employee of the contractor or of any employee of any subcontractor of the contractor. The contractor shall agree to investigate, handle, respond to, and provide a defense for and defend against, any such liability, claims or demands at the sole expense of such contractor. The contractor shall also agree to bear all other costs and expenses related thereto, including court costs and attorney fees, including legal assistant's fees, whether or not any such liability, claims, or demands alleged are groundless, false, or fraudulent.

10.2 Insurance Required. Any contractor employed by the Developer to perform work within rights-of-way or easements dedicated to the City or within any other property owned by the City, shall agree to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands and other obligations assumed by such contractor pursuant to subsection 10.1 of this Agreement and Section 17.21.110 of the Fruita Municipal Code. Such insurance shall be in addition to any other insurance requirements imposed by the Developer or by law. Any such contractor shall not be relieved of any liability, claims, demands or other obligations to be assumed pursuant to subsection 10.1 above or Section 17.21.110 of the Fruita Municipal Code by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.

10.3 Nature and Amounts of Insurance. Any contractor employed by the Developer to perform work within rights-of-way and easements dedicated to the City or other property owned by the City shall procure and maintain, and shall cause any subcontractor of such contractor to procure and maintain, the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to the City. All coverages shall be continuously maintained to cover all liability, claims, demands and other obligations to be assumed by such contractor pursuant to subsection 10.1 above and Section 17.21.110 of the Fruita Municipal Code. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

10.3.1 Workers Compensation Insurance to cover obligations imposed by applicable Colorado law for any employee engaged in the performance of work, and Employers' Liability insurance with minimum limits of $500,000.00 each accident, $500,000.00 disease-policy limit, and $500,000.00 disease-each employee. Evidence of qualified self-insured status may be substituted for the Workers' Compensation requirements of this paragraph.

10.3.2 General Liability Insurance with minimum combined single limits of $1,000,000.00 each occurrence and $1,000,000.00 aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual, and employee acts), blanket contractual independent contractors, products, and completed operations. The policy shall include coverage for explosion, collapse, and underground hazards. The policy shall contain a severability of interests provision.

10.3.3 Comprehensive Automobile Liability Insurance with minimum combined single limits for bodily injury and property damage of not less than $1,000,000.00 each occurrence and $1,000,000.00 aggregate with respect to each of a contractor's owned, hired or non-owned vehicles assigned to or used in performance of services within the City's rights-of-way, easements and other property. The policy shall contain a severability of interests provision.

The policies required by subsections 10.3.2 and 10.3.3 above shall be endorsed to include the City of Fruita and the City's officers and employees as additional insureds. Every policy required

above shall be primary insurance, and any insurance carried by the City, its officers, or its employees, or carried by or provided through any insurance pool of the City, shall be excess and not contributory insurance to that provided by the Developer's contractors. No additional insured endorsement to the policy required by subsection 10.3.2 above shall contain any exclusion for bodily injury or property damage arising from completed operations. A contractor shall be solely responsible for deductible losses under any policy required above.

Upon request by the City, the Developer shall provide the City with a certificate of insurance to be completed by the contractor's insurance agent as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect. The certificate shall identify the contract and shall provide that the coverages afforded under the policy shall not be canceled, terminated or materially changed until at least thirty (30) days prior written notice has been given to the City.

10.4 Indemnification by Developer. In addition to the indemnification required in subsection 10.1 above and Section 17.21.110 of the Fruita Municipal Code, the Developer hereby expressly agrees to indemnify and hold the City harmless from and against all claims, costs and liability of every kind and nature, for injury or damage received or sustained by any person or entity, excluding City officers, agents or employees, in connection with, or on account of the performance of work within the Subdivision and elsewhere by such parties, or their agents, contractors or employees pursuant to this Agreement. The Developer further agrees to aid and defend the City in the event that the City is named as a defendant in any action concerning the performance of work by the Developer, or its agents, contractors or employees pursuant to this Agreement except where such suit is brought by the Developer. The Developer shall not be considered an agent or employee of the City for any purpose.

10.5 Governmental Immunity. The parties hereto understand and agree that the City is relying on, and does not waive or intend to waive by any provision contained in this Section, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, Sections 24-10-101, *et. seq.,* C.R.S., as from time to time amended, or otherwise available to the City, its officers, or its employees.

SECTION 11
PUBLIC PARKS, OPEN SPACE AND TRAILS

Pursuant to Section 17.19.090 of the Fruita Municipal Code, a Public Parks, Open Space and Trails Impact Fee in the amount of $ 1,860.00 per dwelling unit multiplied by 22 (number of dwelling units in this Subdivision), which totals $40,920.00 as a Public Parks, Open Space and Trails Impact Fee shall be paid.

The Parks, Open Space, and Trails Impact Fee identified above will be deferred until the time of Planning Clearance for a Building Permit for each individual dwelling unit in this subdivision. The impact fee required to be paid for each dwelling unit in this subdivision shall be based on the fees in effect at the time of approval of a Planning Clearance for a Building Permit for each

individual dwelling unit, less the credit amount identified below, if any. Such fee shall be paid before approval of a Planning Clearance for a Building Permit for each individual dwelling unit in this subdivision.

The provisions of subsection 9.10 notwithstanding, the parties agree that a credit of $_____ against the Public Parks, Open Space and Trails Impact Fee owed for the cost of actual dedication of land and/or the construction and/or improvements for public park, open space and/or trails, as shown in the Approved for Construction Drawings and/or the Final Plat and as shown in Exhibit "B-___" shall be applied. Such credit shall be shared proportionately over the ____ (number of dwelling units in this subdivision) which equates to a credit of $_____ per dwelling unit.

All land required to be dedicated to the City for public park, open space or trails purposes shall be dedicated or conveyed free and clear of all liens and encumbrances prior to or concurrently with the recording the Subdivision Final Plat.

The Developer acknowledges that such requirements are roughly proportional to the impacts resulting from development of the Property.

SECTION 12
SCHOOL LAND DEDICATION

Pursuant to Section 17.19.110 of the Fruita Municipal Code, a School Land Dedication Fee of $ 920.00 per dwelling unit shall be paid.

The School Land Dedication Fee identified above will be deferred until the time of Planning Clearance for a Building Permit for each individual dwelling unit in this subdivision. The impact fee required to be paid for each dwelling unit in this subdivision shall be based on the fees in effect at the time of approval of a Planning Clearance for a Building Permit for each individual dwelling unit. Such fee shall be paid before approval of a Planning Clearance for a Building Permit for each individual dwelling unit in this subdivision.

The Developer acknowledges that such requirement(s) are roughly proportional to the impacts resulting from development of the Property.

SECTION 13
TRANSPORTATION IMPACT FEE

Pursuant to Section 17.19.130 of the Fruita Municipal Code, a Transportation Impact Fee in the amount of $ 3,200.00 per lot multiplied by 22, the number of lots in this Subdivision, which totals $ 70,400.00 as a Transportation Impact Fee shall be paid.

The Transportation Impact Fee identified above will be deferred until the time of Planning Clearance for a Building Permit for each individual dwelling unit in this subdivision. The impact fee

required to be paid for each dwelling unit in this subdivision shall be based on the fees in effect at the time of approval of a Planning Clearance for a Building Permit for each individual dwelling unit, less the credit amount identified below, if any. Such fee shall be paid before approval of a Planning Clearance for a Building Permit for each individual dwelling unit in this subdivision.

The provisions of subsection 9.10 notwithstanding, the parties agree that a credit of $___0___ against the Transportation Impact Fee owed for the cost of actual construction of off-site road improvements, as delineated in Section 6, and as shown in Exhibit "B-__" shall be applied. Such credit shall be shared proportionately over the ____ (number of dwelling units in this subdivision) which equates to a credit of $_____ per dwelling unit.

Additional Provisions: (Recapture or Reimbursement Agreements, Credit carry forward, etc.): N/A

The Developer acknowledges that the requirement(s) set forth above are roughly proportional to the impacts generated from development of the Property.

SECTION 14
CHIP AND SEAL IMPACT FEE

Pursuant to Section 17.19.140 of the Fruita Municipal Code, $ 17,016.65 as the Chip and Seal Impact Fee (Calculation: 4,419.91 (number of square yards) multiplied by $ 3.85 per square yard = $ 17,016.65) required for this Filing/Phase of the Subdivision shall be paid.

The Chip & Seal Impact Fee identified above will be deferred until the time of Planning Clearance for a Building Permit for each individual dwelling unit in this subdivision. The impact fee required to be paid for each dwelling unit in this subdivision shall be based on the fees in effect at the time of approval of a Planning Clearance for a Building Permit for each individual dwelling unit. Such fee shall be paid before approval of a Planning Clearance for a Building Permit for each individual dwelling unit in this subdivision. Such fee shall be shared proportionately over the 22 dwelling units in this Subdivision.

The Developer acknowledges that such requirement(s) are roughly proportional to the impacts generated from development of the Property.

SECTION 15
DRAINAGE IMPACT FEE

Pursuant to Section 17.19.150 of the Fruita Municipal Code, $ 16,913.56, as the Drainage Impact Fee shall be paid.

The Drainage Impact Fee identified above will be deferred until the time of Planning Clearance for a Building Permit for each individual dwelling unit in this subdivision. The impact fee required to be paid for each dwelling unit in this subdivision shall be based on the fees in effect at the time of approval of a Planning Clearance for a Building Permit for each individual dwelling unit, less the credit amount identified below, if any. Such fee shall be paid before approval of a Planning Clearance for a Building Permit for each individual dwelling unit in this subdivision. Such fee shall be shared proportionately over the 22 dwelling units in this Subdivision.

The provisions of subsection 9.10 notwithstanding, the parties agree that a credit of $ 0 against the Drainage Impact Fee set forth above for the cost of actual construction of off-site drainage improvements, as delineated in Section 7, and as shown in Exhibit "B-___" shall be applied. The net Drainage Impact Fee due and payable for this Subdivision Filing/Phase is $_____.

Additional Provisions: (Recapture or Reimbursement Agreements, Credit carry forward, etc.): N/A

The Developer acknowledges that such requirement(s) are roughly proportional to the impacts generated from development of the Property.

SECTION 16
WASTEWATER RECOVERY FEES AND REIMBURSEMENT/RECAPTURE AGREEMENTS

16.1 A Wastewater Recovery Fee of $ 0 applies to each unit within the Subdivision. Developer shall pay $_____, (calculation: _____ units multiplied by $_____ per unit = $_____), as a Wastewater Recovery Fee to the City of Fruita prior to Subdivision Final Plat recording.

16.2 A Wastewater Recapture Fee of $_____, applies to each unit within the Subdivision, per an Agreement with _____ dated _____. The recapture provisions are as follows:

CHECK ONE or N/A

a) ___ Developer shall pay $_____, (calculation: _____ units multiplied by $_____ per unit = $_____), as a Wastewater Recapture Fee to the City of Fruita prior to Subdivision Final Plat recording.

b) ___ Lot Owner/Builder is responsible for payment of the Wastewater Recapture Fee at the time of Planning Clearance for construction of a new residence. Developer shall inform all lot buyers and real estate personnel of this requirement.

16.3 NEW RECAPTURE AGREEMENT: Not Applicable unless INITIALED by City (_____)

In consideration of the actual construction of off-site Wastewater Collection System components as delineated in subsection 8.4.2, the City agrees to execute a Recapture Agreement with the Developer whereby the Developer may recapture a portion of the cost of the sewer extension from future developments tying into the extension. Said Recapture Agreement shall be prepared by the City, carry a term of no more than ten (10) years from the effective date of the Agreement, and shall be approved by the City Council prior to it becoming effective.

16.4 REIMBURSEMENT AGREEMENT: Not Applicable unless INITIALED by City (_____)

In consideration of the actual construction of off-site Wastewater Collection System components as delineated in subsection 8.4.2, the Developer requests, and the City Council has agreed to reimburse the Developer a portion of the cost of the improvements delineated in subsection 8.4.2. The provisions of Section 9.10 notwithstanding, the reimbursement amount shall be $_____, as shown in Exhibit "B-___". Said reimbursement shall be payable only after initial acceptance of the installation of the wastewater collection system improvements by the City, and subject to the following additional provisions: _____

_____

_____

_____.

The Developer acknowledges that such requirement(s) are roughly proportional to the impacts generated from development of the Property.

SECTION 17
REIMBURSEMENT OF COSTS

17.1 Review Costs and Fees. In accordance with Section 17.01.110 of the Fruita Municipal Code, the Developer shall pay to the City all required review fees. In addition, pursuant to subsection 17.01.110(D) of the Fruita Municipal Code, the Developer shall be responsible for all extraordinary review costs. Provided, however, upon request, the Developer shall receive detailed invoices reflecting the nature and description of each such charge so incurred by the City.

17.2 Inspection Costs. Pursuant to subsection 17.01.110(C) of the Fruita Municipal Code, prior to the approval and acceptance of the construction and installation of the required public and other Subdivision improvements, the Developer shall pay to the City the inspection review fee for all inspections of such improvements made by or conducted at the direction of the City. In addition, the Developer shall be responsible for any extraordinary inspection costs.

SECTION 18
FINAL PLAT APPROVAL

In accordance with Section 17.15.080 of the Fruita Municipal Code, the City agrees to

approve the Subdivision Final Plat provided that said Subdivision Final Plat is in conformance with the Preliminary Plan approval, drainage improvements, street improvements, and utility plans have been submitted to and approved by the City, and all of the requirements of applicable law, subject to the terms and conditions of this Agreement, have been complied with.

SECTION 19
ENFORCEMENT

19.1 Default; Notice; Termination. In accordance with Section 17.21.120 of the Fruita Municipal Code, in the event of any default or breach by the Developer of an applicable covenant, term, condition, or obligation under this Agreement, and if such default or breach continues after notice thereof and opportunity of a hearing as set forth in subsection 9.6 of this Agreement and subsection 17.21.100(E) of the Fruita Municipal Code, this Agreement may be forthwith terminated, at the option of the City. Any declaration of termination of the Agreement shall be effective only after and upon a resolution to that effect duly adopted by the City Council. All rights concerning remedies or attorney's fees shall survive any termination of this Agreement.

19.2 Legal Action. The parties to this Agreement shall have all rights available at law or in equity to enforce the terms of this Agreement, including the right of specific performance. In the event that any action is filed or maintained by any party in relation to this Agreement, the substantially prevailing party shall be entitled to its costs and reasonable attorney's fees (including legal assistant's fees) or the reasonable value of salaried attorney's time (including legal assistant's time).

19.3 Other Remedies Available to City. In the event the Developer fails to construct any public or other required on-site and off-site Subdivision improvements in accordance with the terms and conditions of this Agreement, following the issuance of the performance guarantee as set forth in Section 9 of this Agreement, the City may exercise any of the remedies set forth in Section 9 of this Agreement or Section 17.21.100 of the Fruita Municipal Code. Alternatively, the City may assign the proceeds of the letter of credit, performance bond, or escrow funds to a subsequent developer or a lender who has acquired the Subdivision by purchase, foreclosure or otherwise who will then have the same rights of completion as the City if and only if the subsequent developer or lender agrees in writing to complete the unfinished improvements. In addition, the City also may suspend Subdivision Final Plat approval during which time the Developer will have no right to sell, transfer, or otherwise convey tracts or lots within the Subdivision without the express written approval of the City or until the improvements are completed and accepted by the City provided, however, such suspension shall not affect (a) the annexation of the Subdivision to the City; (b) the prior conveyance of any lots or parcels within the Subdivision; (c) any right arising from City permits, approvals or other entitlements for the Property which were granted or approved prior to, concurrently with, or subsequent to the approval of this Agreement and the Subdivision Final Plat; or (d) the parties' rights pursuant to subsection 22.5 below. These remedies are cumulative in nature.

SECTION 20
CONVEYANCES PROHIBITED

20.1 Recording of Subdivision Final Plat Required. The Owner shall not grant, sell or convey any lot, lots, or other properties subject to this Agreement prior to the recording of the approved Subdivision Final Plat.

20.2 Improvements Agreement Required. If this Agreement is only for a portion or Phase of a Subdivision for which a valid Subdivision Final Plat already exists, the Developer shall not grant, sell or convey any lot or lots not covered by this or a previous Improvements Agreement without the express written consent of the City. The intent of this subsection is to prevent the sale of legally platted lots within the Subdivision for which public infrastructure does not exist or for which an Improvements Agreement has not yet been executed.

SECTION 21
VESTED RIGHTS - VACATION OF FINAL PLAT

21.1 Vested Property Rights. The Developer shall have vested property rights to develop the Subdivision for a period of three (3) years from the effective date of this Agreement. The Developer shall be entitled to all rights, privileges, and remedies arising from such vesting for said period in accordance with Chapter 17.47 of the Fruita Municipal Code and Sections 24-68-101 *et. seq.*, C.R.S.

21.2 Vacation of Final Plat. Failure of the Developer to complete construction of the public and other on-site and off-site Subdivision improvements required by this Agreement within the times provided herein and following the delivery of the notice described in subsection 19.1 hereof and the expiration of the thirty (30) day time period described in subsection 19.1 without cure by the Developer, the vested property rights associated with the Subdivision Final Plat and this Agreement shall be forfeited. Upon such an event, the City Council of the City of Fruita may enact an ordinance vacating the Subdivision Final Plat and upon the effective date of such ordinance, the Subdivision and any permits issued in connection therewith shall be null, void, and of no effect. The Developer shall then be prohibited from granting, selling or conveying any additional lots within the Property. All property rights dedicated to the City of Fruita for public purposes shall remain the property of the City and shall be considered liquidated damages. Provided, however, vacation of the Subdivision Final Plat shall not affect (a) the annexation of the Subdivision to the City; (b) the prior conveyance of any lots or parcels within the Subdivision; (c) any right arising from other City permits, approvals or other entitlements for the Subdivision which were granted or approved prior to, concurrently with, or subsequent to the approval of the Subdivision Final Plat; or (d) the parties' rights pursuant to subsection 22.5 below.

APPROVAL OF THE SUBDIVISION FINAL PLAT AND THIS AGREEMENT CREATES A VESTED PROPERTY RIGHT PURSUANT TO SECTION 24-68-103, C.R.S., AS AMENDED.

21.3 Certificate of Compliance. It is agreed that upon completion of all improvements by the Developer which are the subject of this Agreement, expiration of the warranty period as provided

herein, and compliance with all of the terms of this Agreement, in accordance with Section 17.21.130 of the Fruita Municipal Code, the City shall execute a resolution or certificate stating that all improvements have been constructed in compliance with this Agreement.

SECTION 22
MISCELLANEOUS PROVISIONS

22.1 Waiver of Defects. In executing this Agreement, the Developer waives all rights they may have concerning defects, if any, of the form or substance of this Agreement, and the formalities whereby it is executed; concerning the power of the City 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.

22.2 Failure to Exercise Rights. No waiver of any provision of this Agreement will be deemed or constitute a waiver of any other provision, nor will it be deemed or constitute a continuing waiver unless expressly provided for by written amendment to this Agreement signed by the City, and the Developer; nor will the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The City's failure to exercise any right under this Agreement will not constitute the approval of any wrongful act by the Developer or the acceptance of any improvement.

22.3 Complete Agreement. This Agreement together with the Subdivision Final Plat contain all of the understandings, conditions and agreements between the City and the Developer relating to the Subdivision at this time, and no other prior or current representation, oral or written, shall be effective or binding upon the City or the Developer, except for representations made by the Developer, or its agents, or the City Council, or City staff members at public hearings concerning approval of the Subdivision Final Plat, not in conflict with the express provisions of this Agreement.

22.4 Enabling Ordinances Required. To the extent required by law and by the terms of this Agreement, the obligations and covenants of the City are conditional upon the adoption by the City of appropriate enabling ordinances.

22.5 Attorneys Fees. In the event that any action is filed or maintained by any party in relation to this Agreement, the substantially prevailing party shall be entitled to its costs and reasonable attorney fees (including legal assistant's fees) or the reasonable value of a salaried attorney's time (including legal assistant's time). All rights concerning remedies or attorney's fees shall survive termination of this Agreement.

22.6 Authorization. The signatories to this Agreement affirm and warrant that they are fully authorized to enter into and execute this Agreement, and all necessary actions, notices, meetings, and/or hearings pursuant to any law required to authorize their execution of this Agreement have been made.

22.7 Amendments. This Agreement may be amended from time to time by written

Agreement duly authorized by the parties to this Agreement.

22.8 Representations of City Officials. It is expressly understood that the City cannot be legally bound by the representations of any of its officers or agents or their designees except in accordance with the Fruita Municipal Code and ordinances, and that the Developer, when dealing with the City, acts at its own risk as to any representation or undertaking by the City or its officers or agents or their designees which is subsequently held unlawful by a court of law, which is in accordance with the laws of the State of Colorado. Provided, however, that this subsection shall not be construed to limit the rights and remedies of the parties otherwise provided by law.

22.9 Covenants. The provisions of this Agreement shall be binding on all subsequent owners of the Property as covenants running with the Property, to be released only by the City of Fruita, and the benefits and burdens of this Agreement shall bind and inure to the benefit of all estates and interests in the Property and all successors in interest to the parties to this Agreement, except as otherwise provided herein.

22.10 Notices. Any notice required or permitted by this Agreement will be deemed effective when personally delivered in writing, or three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified, return receipt requested, addressed as follows:

If to City: 325 E. Aspen Ave.
Fruita, Colorado 81521
Attn: Community Development Department Director

If to Developer: McCurter Land Company LLC
P.O. Box 2007, Grand Junction, CO 81502

Attn: Jim McCurter

These addresses shall remain valid until notice of a change of address is given to the other party in accordance herewith.

22.11 Time of the Essence. Time is of the essence of this Agreement.

22.12 Jurisdiction of Courts. This Agreement is made and delivered within the State of Colorado, and the laws of the State of Colorado shall govern its interpretation, validity, and enforceability. Personal jurisdiction and venue for any civil action commenced by any of the parties to this Agreement whether arising out of or relating to the Agreement, a letter of credit, Escrow and Disbursement Agreement, or performance bond will be deemed to be proper only if such action is commenced in the District Court for Mesa County, Colorado. The Developer and issuer of any letter of credit or performance bond pursuant to this Agreement expressly waive their right to bring such action in or to remove such action to any other court, whether State or federal.

22.13 Rights of Persons Not a Party. No person or entity who or which is not a party to this

Agreement will have any right of action under this Agreement.

22.14 Provisions Deemed Severable. If any part, term or provision of this Agreement is held by the courts to be illegal or otherwise unenforceable, such illegality or unenforceability will not affect the validity of any other part, term, or provision, and the rights of the parties will be construed as if the part, term, or provision was never part of the Agreement.

22.15 Assignment of Rights; Release of Obligations. The benefits of this Agreement to the Developer are personal and may not be assigned without the express written approval of the City. Such approval may not be unreasonably withheld, but any unapproved assignment is void. Notwithstanding the foregoing, the burdens of this Agreement are personal obligations of the Developer and also will be binding on the heirs, successors, and assigns of the Developer. There is no prohibition on the right of the City to assign its rights under this Agreement. The City will release the original Developer's performance guarantee if it accepts new security from any developer or lender who obtains the Property. However, no act of the City will constitute a release of the original Developer from its liability under this Agreement.

22.16 No Waiver of Immunity. Nothing contained in this Agreement constitutes a waiver of the City's sovereign immunity or governmental immunity under any applicable State law.

22.17 Recordation of Agreement. The City shall record a copy of this Agreement in the office of the Clerk and Recorder of Mesa County, Colorado.

22.18 Execution of Other Documents. The parties agree to execute any additional documents and to take any additional actions necessary to carry out the terms of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the day and year first above written.

CITY OF FRUITA, COLORADO, a home rule municipality acting by and through its City Council,

By:_____
Mayor

ATTEST:

_____
City Clerk

By:_____
Developer

Title:_____

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

Subscribed and sworn to before me this _____ day of _____, 20____, by _____, Mayor of the City of Fruita, Colorado.

WITNESS MY HAND AND OFFICIAL SEAL.

My commission expires:

_____
Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

Subscribed and sworn to before me this _____ day of _____, 20_____, by _____ , City Clerk of the City of Fruita, Colorado.

WITNESS MY HAND AND OFFICIAL SEAL.

My commission expires:

_____
Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

Subscribed and sworn to before me this _____ day of _____, 20_____, by _____ and _____.

WITNESS MY HAND AND OFFICIAL SEAL.

My commission expires:

_____
Notary Public