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Reception No. .... Charlotte Houston, Boulder County Recorder

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SUBDIVISION AGREEMENT

CONTINENTAL VIEW ESTATES

THIS AGREEMENT, made this 8<sup>th</sup> day of April, 1980, by and between the City of Louisville, a municipal corporation, of and in Boulder County, Colorado, hereinafter referred to as "CITY", and WJS Corporation, hereinafter referred to as "SUBDIVIDER".

WITNESSETH: That,

WHEREAS, Subdivider has submitted a Final Subdivision Plat of Continental View Subdivision and said plat has been approved by the Planning Commission and City Council of Louisville, Colorado; and

WHEREAS, the Subdivision Regulations of the City of Louisville require that the Subdivider enter into a construction agreement with the City prior to the recording of the Final Plat of said Subdivision.

NOW, THEREFORE, in consideration of the foregoing, the parties hereto promise, covenant and agree as follows:

1.0 GENERAL CONDITIONS

1.1 Engineering Services. Subdivider agrees to furnish, at his own expense, all necessary engineering services relating to the design and construction of the subdivision and the Schedule of Improvements referred to in this Agreement and in Exhibit "A", attached hereto and incorporated herein by reference. Said engineering services shall be performed by or under the supervision of a Registered Professional Engineer or Registered Land Surveyor licensed by the State of Colorado, as appropriate, and in accordance with applicable Colorado law; and shall conform to the standards and criteria for public improvements as established and approved by the City.

1.2 Plan Submission and Approval. Subdivider shall furnish to the City complete plans of each public improvement phase or segment, and obtain approval of each phase or segment prior to commencing any construction work thereon; provided, however, that the City shall issue its written approval or disapproval as expeditiously as possible, but not later than thirty (30) working days after the submission of any final drawings, designs, plans, profiles, or estimates. Said approval or disapproval shall be based upon the standards and criteria

for public improvements as established and approved by the City. Prior to construction, all deficiencies shall be corrected and re-submitted to the City for approval.

1.3 Construction Acceptance and Warranty. Upon written request by the Subdivider following completion of construction, furnishing of "as-built" drawings, and furnishing of final statement of construction cost, the improvements shall be inspected and, if satisfactory, granted "construction acceptance" by the City subject to "final acceptance". During a period of one year from and after "construction acceptance" of the improvements, the Subdivider shall, at his own expense, make all needed repairs or replacements due to defective materials or workmanship which, in the opinion of the City, shall become necessary. If within ten (10) days after Subdivider's receipt of written notice from the City requesting such repairs or replacements, the Subdivider shall not have undertaken with due diligence to make the same, the City may make such repairs or replacements, at the Subdivider's expense. In the case of emergency, such written notice may be waived and the City may make such repairs at the Subdivider's expense. Acceptance shall not be unreasonably withheld by the City.

1.4 Final Acceptance. After one year has elapsed from the issuance of "construction acceptance", the City shall, upon written request by the Subdivider make a "final acceptance" inspection. After the Subdivider has corrected all deficiencies identified in said inspection, the City shall issue a letter of "final acceptance". Upon issuance of said letter, the City will accept all responsibility for all repair and maintenance to those improvements so accepted. At the time of "final acceptance" said improvements shall become public facilities and the property of the City.

1.5 Testing and Inspection. Subdivider shall employ, at his own expense, a qualified testing company, previously approved by the City in writing, to perform all testing of materials or construction that may be reasonably required by the City, and shall furnish copies of test results to the City on a timely basis for City review and approval prior to commencement or continuation of that particular phase of construction and at all other times as required by the City during said construction. In addition, at all times during said

construction, and specifically prior to the commencement of the next stage of construction: the City shall have the right to inspect the materials and workmanship of said construction; and all materials and work not conforming to the approved plans and specifications shall be removed and replaced so as to conform to the approved plans and specifications. Approvals shall not be unreasonably withheld by the City.

1.6 Improvement Guarantees. The Subdivider shall submit to the City, in a form acceptable to the City Attorney, a public improvement guarantee equal to one hundred twenty-five percent (125%) of the total cost of public improvements for the phase to be constructed at that time as described and detailed on attached Exhibit "A". Building permits shall be issued for only that phase of the subdivision for which said guarantees have been furnished. Said guarantees shall not be required prior to issuance of an excavation permit for overlot grading. Guarantees for construction of public improvements shall be released upon issuance of a letter of "construction acceptance", except that fifteen percent (15%) of the amount of such guarantees requested for release shall be retained by the City until the letter of "final acceptance" is issued. Partial releases of said guarantees shall be granted by the City upon completion and "construction acceptance" of phases of segments of construction as reasonably determined by the City. In the event the Subdivider does not correct deficiencies and complete improvements in accordance with this Agreement and the standards of the City, said retained amount shall be applied by the City to correct said deficiencies and/or complete said improvements. Any portion of said retainage not utilized in correcting the deficiencies and/or completing improvements shall be refunded to the Subdivider.

1.7 Release of Liability. Subdivider hereby agrees to indemnify and save harmless the City and to pay any and all judgments rendered against the City on account of any suit, actions, or claims, caused by, arising from, or on account of construction by the Subdivider, and pay the City reasonable expenses and attorney's fees incurred by the City in defending such suit, action, or claim, provided

however, that Subdivider's obligation herein shall not apply in any instance where said suit, action or claim results from any acts of agents or servants of the City ("City Employees"), and said obligation of Subdivider shall in any event cease upon final acceptance of the construction work by the City.

1.8 Insurance - OSHA. Subdivider shall, through contract requirements and other normal means, guarantee that all employees and contractors engaged in the construction of improvements are covered by adequate Workman's Compensation Insurance and Public Liability Insurance, and by the above means require the faithful compliance with all provisions of the Federal Occupational Safety and Health Act.

## 2.0 CONSTRUCTION OF IMPROVEMENTS

2.1 Rights-of-Way, Easements and Permits. Before commencing the construction of any improvements herein agreed upon, the Subdivider shall acquire, at his own expense, all necessary land, rights-of-way and easements required by the City for the construction of the proposed improvements. At the sole discretion of the City, the Subdivider may commence construction on improvements for that portion of the subdivision for which all required rights-of-way, easements and permits have been conveyed to the City, even if all rights-of-way, easements and permits for other portions of the subdivision have not yet been acquired. For those rights-of-way, easements and permits which have not been acquired, Subdivider shall provide the City with a schedule of when said acquisition will occur and said interest conveyed to the City. All such rights shall be conveyed to the City and all documents of conveyance shall be subject to approval by the City Attorney. All title documents shall be recorded by the City. The Subdivider shall furnish, at his own expense, title policies for all parcels, subject to the City Attorney's approval. In the event the Subdivider, after good faith efforts, in the opinion of the City, and after submittal of evidence thereof to the City, cannot reasonably comply with this requirement, the City agrees to exercise its condemnation powers to acquire such land, rights-of-way and easements. The Subdivider shall pay all expenses incurred in such condemnation, including, but not limited to, appraisal fees, land acquisition costs, attorney's fees and court costs.

2.2 Construction. Subdivider shall furnish and install, at his own expense, the "Schedule of Improvements" referred to on Exhibit "A". Said construction shall be in strict conformance to the drawings approved by the City and the specifications utilized by the City for public works projects.

2.3 Utility Coordination and Installation. Subdivider shall be responsible for coordination and payment for installation of all utilities, including but not limited to, electric, gas, telephone, water and sewer utilities. All plans relating to said utility installations shall be subject to approval by the City prior to construction and installation.

2.4 Completion. Said construction shall be completed according to the terms of this Agreement within the "Time of Completion" appearing on Exhibit "A", which time shall commence upon the date of this Agreement and shall allow for phased construction.

### 3.0 MAINTENANCE OF IMPROVEMENTS

3.1 Maintenance. In addition to all warranties and guarantees required herein, during a period of one year from and after "construction acceptance" of the improvements as defined in Section 1.3, including landscaping, the Subdivider shall, at his own expense, take all actions necessary to maintain the improvements and keep said improvements in good repair. If within ten (10) days after Subdivider's receipt of written notice from the City requesting such maintenance, the Subdivider shall not have undertaken with due diligence to make the same, the City may undertake such maintenance at the Subdivider's expense. In the case of an emergency, such written notice may be waived and the City may undertake to have the maintenance performed at the Subdivider's expense.

### 4.0 STREET IMPROVEMENTS

4.1 Definitions. For the purposes of this Agreement, street improvements shall be defined to include, but not be limited to, all right-of-way improvements, bridges, subbase preparation, road base, asphaltic concrete, ~~seal coat~~, curb and gutter, medians, underground utilities, sidewalks, bicycle paths, traffic control signals and signs, street name signs, landscaping and drainage improvements.

4.2 Street Signs, Traffic Signs and Striping. The cost of the street name signs, signal lights, stop signs, speed limit and

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other signs and sign posts and necessary striping shall be borne by the Subdivider. Said improvements shall be installed by the City.

4.3 Construction Standards. Subdivider shall construct at his expense all streets in accordance with approved specifications, plans, and "Schedule of Improvements" described and detailed on Exhibit "A". For the purpose of this Agreement the following are hereby agreed to as minimum specification for internal streets:

(a) aggregate base course layer shall be a minimum of six (6) inches.

(b) the initial Asphaltic Concrete Mixture shall be laid at a thickness of two inches (2) after compaction.

(c) the second course shall be laid at a thickness of one inch (1) after compaction only after construction and finished grading is completed for the various subdivision construction stages.

South Boulder Road shall be constructed by the Subdivider in accordance with the final South Boulder Road improvement plans as approved by the City. Subdivider agrees to improve the North half of South Boulder Road contiguous to the Continental View Estates Subdivision plus all transition areas necessary to properly match existing street improvements or necessary to provide safe travel upon said roadway as specifically approved by the City. Subdivider further agrees that said South Boulder Road improvements shall be constructed and completed by September 1st, 1980. Continental View Drive shall be improved from South Boulder Road to Paragon Heights Subdivision by the Subdivider and completed according to the phasing schedule but no later than August 1, 1981, with all costs of said improvements to be borne by Subdivider.

4.4 Street Improvement Inspection. The Subdivider shall request an inspection of street improvements upon completion of the first lift. If the construction work meets all City of Louisville specifications, the City shall issue a letter stating such fact. Following issuance of said letter, the City shall be responsible only for snow removal and normal street sweeping, but no other maintenance. The Subdivider shall be responsible for damage to street and utility

appurtenances in the street until final acceptance of the street improvements under section 1.4.

4.5 Recovery - Transition Areas. The cost for the construction of the transition areas described in 4.3 above shall be recovered by the Subdivider as per City of Louisville requirements and policies. Said recovery shall occur upon development of property adjacent to the transition areas or from the major thoroughfare fund of the City when said funds are available but if recovery is from said major thoroughfare fund, payment shall be no sooner than three years after final acceptance of the improvements.

5.0 PUBLIC USE DEDICATION AND LANDSCAPING

5.1 Dedication. Subdivider agrees to dedicate and transfer to the City, by general Warranty Deed, those tracts of land described as: Tract A, Continental View Estates, Amended Plat and Tract B, Revised Plat of Tract B and Revised Replat of Tract C and D, Continental View Estates, Amended Plat. Said tracts shall be transferred free and clear of all liens and encumbrances and a title insurance policy shall be issued in the name of the City at the Subdivider's expense to ensure said tracts are free and clear of all liens and encumbrances. The title policy shall be approved by the City Attorney prior to acceptance by the City. Said dedication and transfer shall be completed prior to the issuance of any building permits within the subdivision.

5.2 Grading and Seeding. Subdivider shall grade and seed tracts "A, B, C, and D", median at Hays Drive and shall grade and seed South Boulder Road right-of-way in conjunction with the construction of said street. Seeding shall consist of Foothill Mix or equivalent applied at the rate of four (4) pounds per one thousand (1,000) square feet. Grading and soil preparation include disking and harrowing shall be approved by the City prior to seeding. Seed shall be drilled or hydromulched. Seeding shall be accomplished only during the spring or fall planting season. The Subdivider shall re-seed any areas eroded during the initial seeding or as directed by the City during the year after the seed is planted.

Subdivider shall also landscape and install automatic irrigation systems in Continental View Estates in the right-of-way and median along South Boulder Road, in accordance with landscaping

plans approved by the City. Grading shall ensure practical maintenance of said areas and allow for a maximum slope of 4 to 1.

#### 6.0 PEDESTRIAN EASEMENTS

6.1 Construction. The Subdivider shall construct an eight foot wide concrete pedestrian walkway through the pedestrian easements. Said easements shall be fenced as follows:

(a) Split rail fence shall be installed from the street sidewalk to the front building set back lines of adjacent lots.

(b) A solid wood fence five feet in height shall be installed from the split rail fence to the rear property line. The fence posts shall be installed in the concrete of the pedestrian walkway.

#### 7.0 WATER MAINS

7.1 Specifications. All water mains, line and appurtenances shall be in accordance with approved specifications, plans and "Schedule of Improvements" described and detailed on Exhibit "A".

7.2 Recovery. One-half of the cost of the materials and labor applicable to providing water services on the west side of Continental View Drive shall be recovered when water taps for those residents are issued and there has been construction acceptance of water mains constructed by Subdivider. Said recovery shall be one-half of the cost of an eight inch water line. Said cost shall be established as the cost per lineal foot of the water line (figured by the division of the total cost of the line by the total lineal footage of the line and appurtenances to the line) multiplied by the lineal front footage of the property of the resident being services.

7.3 Installation. Subdivider shall at his expense, connect to the existing services for the residents presently on the raw water line at the residents property line. These installations shall coincide with the installation of the water line on Continental View Drive. Service lines shall be installed to the curb stop for all lots that are not presently on the raw water system. Curb stops are required for all water services. Subdivider shall install a 12"



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water line on South Boulder Road in accordance with plans and specifications approved by the City. Subdivider shall recover one-half of the cost of construction of said 12" water line upon development of the property south of South Boulder Road which is adjacent to said water line.

8.0 SEWER LINES

8.1 Specifications. Sewer lines shall be constructed in accordance with approved plans, specifications and the "Schedule of Improvements" described and detailed in Exhibit "A". The Subdivider will construct sewer lines on Continental View Drive to serve houses to the west as requested by the adjacent county residents.

8.2 Recovery. One-half of the cost of the materials and labor applicable to providing sewer services on the west side of Continental View Drive shall be recovered when sewer taps for those residents are issued and there has been construction acceptance of sewer lines constructed by Subdivider. Said recovery shall be as set forth by the policies and procedures of the City of Louisville and shall be in the same manner as set forth in Section 7.2 of this Agreement.

9.0 OTHER UTILITIES AND IMPROVEMENTS

9.1 Street Lights. All cost of street lights installation, including South Boulder Road, shall be borne by the Subdivider. The type of light standards and the street light locations shall be approved by the City.

9.2 Other Utilities. Installation and compaction, if required, of electric, telephone, gas (if available) utilities shall be coordinated by the Subdivider at no cost to the City. All utilities contained within or on the boundaries of Continental View Estates which are to service Continental View Estates shall be placed underground.

9.3 Drainage Improvements. Drainage improvements shall be constructed by the Subdivider in accordance with the Final Drainage Plan as approved by the City. All publicly owned drainage channels shall include a trickle channel or pipe to accommodate nuisance water flows.

9.4 Street Trees. Street trees shall be provided through the issuance of certificates in accordance with Section 16.20.020 of

the Louisville Municipal Code, as amended.

10.0 MISCELLANEOUS TERMS

10.1 Breach of Agreement. If at any time the Subdivider shall breach this Agreement, the City may withhold approval of all building permits within the Subdivision until such breach or breaches have been cured, and the City may seek any other available legal remedy for such breach or breaches.

10.2 Recording of Agreement. This Agreement shall be recorded in the office of the Clerk and Recorder, County of Boulder, State of Colorado.

10.3 Binding Effect of Agreement. This Agreement is solely and exclusively between the parties hereto, and may be enforceable only by the parties hereto or their heirs, successors or assigns.

10.4 Modification and Waiver. No modification of the terms of this Agreement shall be valid unless in writing and executed with the same formality as this Agreement, and no waiver of the provisions of any section of this Agreement shall be construed as a Waiver of any other sections which are contained herein.

THE CITY OF LOUISVILLE

By *John P. Anselmi*  
Mayor

 *Thomas M. Stahl*  
City Clerk

W.J.S. CORPORATION, Subdivider

By *William J. Smith, Jr.*  
*William J. Smith, Jr.*