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SUBDIVISION
PUBLIC IMPROVEMENTS AGREEMENT

FOR

5955 WEST VIRGINIA AVENUE
VIRGINIA SUBDIVISION

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THIS AGREEMENT is made and entered into this 1st day of December, 2003, by and between Vinnie Skarajunsky, whose address is c/o Gore Creek Properties, 3971 Big Horn Road, Unit 7CC, Vail, CO 81658 and Carlos Del Rio, whose address is 16657 East Hialeah Avenue, Aurora, CO 80015 sometimes hereinafter referred to as "Owners," and the City of Lakewood, a municipal corporation of the State of Colorado, whose address is 480 South Allison Parkway, Civic Center North, Lakewood, Colorado 80226, sometimes hereinafter referred to as "City."

WITNESSETH:

THAT, WHEREAS, Vinnie Skarajunsky and Carlos Del Rio as Owners of certain real property located within the City of Lakewood, have submitted a final plat for said property known as 5955 West Virginia Avenue aka Virginia Subdivision; and

WHEREAS, as a condition of approval of said final plat, certain public improvements must be completed as more fully set forth in Exhibits "A" and "B" attached hereto; and

WHEREAS, the City and Owners recognize the need for public improvements and exactions and agree that said public improvements and exactions are roughly proportional to the need created by the development; and

WHEREAS, the City and Owners desire to evidence their agreement regarding the construction of said improvements.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

1. Legal Description. This Agreement pertains to public improvements to be constructed for the property legally described in Exhibit "1" attached hereto.

2. Exhibits and Inclusions. This Agreement consists of 8 numbered pages plus the following Exhibits which are incorporated herein by this reference:

- "Legal Description For 5955 West Virginia Avenue aka Virginia Subdivision," attached hereto and designated Exhibit "1."

- "Public Improvements Quantities Estimates For 5955 West Virginia Avenue aka Virginia Subdivision," attached hereto and designated Exhibit "A."

- "Public Improvements Location Map For 5955 West Virginia Avenue aka Virginia Subdivision," attached hereto and designated Exhibit "B."

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3. **Public Improvements.** It is the intent of this Agreement to provide for construction of the improvements described in Exhibits "A" and "B" to serve any development within this property. It is understood by the parties that the descriptions of improvements contained herein are general in nature, and that reasonable modifications of the scope, nature, costs, and similar aspects of such improvements may be necessary to secure any building permit and/or approval of the final design of such improvements.

The quantities and locations for the public improvements shown on Exhibits "A" and "B" are based on information that was available at the time of the final plat. The Owners shall be responsible for submitting final street construction plans, final drainage report, grading and erosion control plans, and a final pavement design for approval by the City with the building permit application in accordance with Chapter 14.13 of the Lakewood Municipal Code. Collateral for all public improvements shall be required with the first building permit for any development within this property. The actual quantities and locations of the public improvements will be determined by the City based on the City approved plans.

Before beginning any construction of any improvements within the public right-of-way, the Owners shall submit the following to the City: (1) final construction plans for all such improvements; and (2) an application for a City permit to do work in the public way. Construction shall not begin prior to City approval of the final construction plans and issuance of a permit to do work in the public way. The Owners shall construct said improvements in conformance with the requirements of a permit to do work in the public way.

4. **Drainage Improvements.** The Owners shall submit a final drainage report and construction plans for drainage improvements to the City for approval. The Owners shall install and pay for all drainage improvements described in a drainage report submitted by the Owners and approved by the City. It is understood that no application to do work in the public right-of-way or public easement shall be submitted or approved until the final drainage report and construction plans have been approved by the City.

5. **Grading and Erosion Control.** Prior to issuance of any building permit for this project, the Owners shall (1) prepare and submit an overall grading and erosion control plan for City approval, (2) make application for a grading and erosion control permit, (3) provide collateral for all required erosion control measures, (4) install and construct all approved erosion control measures, (5) request and receive approval on interim erosion control measures, (6) maintain all erosion control measures as necessary throughout the project.

The City may at its discretion, give partial approval of grading and erosion control measures for purposes of issuing building permits. Approval of interim erosion control measures shall not authorize the release of collateral for said erosion control measures.

6. Rights-Of-Way and Easements. It is the intent of this Agreement that the Owners shall provide for all necessary rights-of-way and easements in conjunction with the installation of the public improvements required by the City. The Owners agree to convey said easements and rights-of-way to the City and at no cost to the City. 2

Should said rights-of-way and easements not be dedicated to the City prior to the issuance of a building permit, the Owners shall provide collateral to the City in accordance with Chapter 14.13 of the Lakewood Municipal Code.

7. Power Pole/Street Light Relocations. The Owners shall pay that amount of the relocation costs assessed to the City as the construction costs incurred by Xcel Energy.

The Owners shall notify the City, in writing, a minimum of one-hundred and sixty (160) days prior to the desired time of relocation of any Xcel Energy power poles.

The parties shall abide by any changes in the above provisions which are made necessary or convenient by altered requirements or policies of the Public Utilities Commission and/or Xcel Energy.

8. Traffic Signs. To serve 5955 West Virginia Avenue aka Virginia Subdivision the Owners shall supply and install all traffic signs, posts and mounting hardware. All signs and materials shall conform to the Manual on Uniform Traffic Control Devices and City of Lakewood standards. Signs shall be installed at the location shown on the City approved signing plans or as directed by the City Traffic Engineer or his designated representative. Prior to installation, the Owners/Contractor shall have located all adjacent utilities via the utility notification service and contacted the City's Signs and Markings Supervisor two working days in advance.

9. Survey Monuments. The Owners shall install survey monuments in accordance with the Engineering Regulations, Construction Specifications and Design Standards of the City of Lakewood, Colorado.

10. Compliance with Regulations. All public improvements to be constructed by the Owners shall be performed in accordance with the Engineering Regulations, Construction Specifications and Design Standards of the City. The Owners shall abide by any reasonable requirements imposed by the City to control any situation arising under this Agreement in the event that no provision of the Engineering Regulations, Construction Specifications and Design Standards of the City is applicable to such situation.

11. Collateral. The Owners shall provide to the City collateral in the form, amount, and at such a time as required by Chapter 14.13 of the Lakewood Municipal Code and the City of

Lakewood Grading Ordinance to guarantee construction and installation of said public improvements and grading and erosion control measures required by the development of said property.

In the event that said collateral posted with the City is due to expire prior to acceptance of the public improvements, the City may utilize the collateral to complete the improvements or will require the Owners to renew the collateral, and the amount of the collateral may be revised at this time to reflect current costs. 4

Upon issuance of a Certificate of Acceptance, collateral in the amount of ten percent (10%) of the City's estimate of the cost of the improvements shall be provided and retained in accordance with Chapter 14.13 of the Lakewood Municipal Code.

Collateral for all grading and erosion control measures shall be retained and renewed, as necessary, until such time as the City determines that adequate vegetation has been established and grading and erosion control measures are no longer necessary.

12. Completion. All public improvements shall be completed by a date to be determined by the City Engineer at the time of building permit issuance.

13. Certificate of Acceptance. Upon completion of the aforesaid public improvements, the Owners shall request in writing a Certificate of Acceptance pursuant to Chapter 14.13 of the Lakewood Municipal Code.

14. Certificate of Occupancy. Certificates of Occupancy shall be issued pursuant to Chapter 14.13 of the Lakewood Municipal Code.

15. Indemnification. The Owners hereby expressly agree to indemnify and hold the City harmless for and against all claims of every kind and nature, for injury or damage received or sustained by any person or entity in connection with, or on account of, the performance of work at the development site pursuant to this contract, which is not caused wholly through the negligence of the City, its agents, employees or representatives.

16. Effective Date. The terms of this Agreement shall become binding on all parties hereto on the recordation of this Agreement in the records of the Clerk and Recorder of Jefferson County, Colorado.

17. No Waiver. No waiver of any of the provisions of this Agreement shall be deemed or constitute a waiver of any other provisions herein, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided, nor shall the waiver of any default hereunder be deemed a waiver of any subsequent default hereunder.

18. Amendments or Modifications. The parties hereto may amend or modify this Agreement only by written instrument executed on behalf of the City by the City Manager or his

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designee and attested by the City Clerk, after approval of the form of the instrument by the City Attorney, and executed on behalf of the Owners by an authorized representative thereof.

19. Heirs, Successors and Assigns. The terms and conditions of this Public Improvements Agreement shall be binding upon and shall inure to the Owners and the City and their respective heirs, successors and assigns.

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20. Designation. The Owners are independent contractors, and nothing herein contained shall constitute or designate the Owners or any of its employees or agents as agents or employees of the City.

21. Titles. Titles of paragraphs or sections of this Agreement have been included solely for convenience of the parties and are not to be considered or deemed a part of this Agreement, nor are they intended to be a full or accurate description of the contents thereof.

22. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

23. Scope. This Agreement contains the entire agreement between the parties, and no statement, promises or inducements made by either party or agent of either party that are not contained in this written contract shall be valid or binding; and this contract may not be enlarged, modified, or altered except in writing, signed by the parties and endorsed hereon.

24. Severability. It is understood and agreed by the parties hereto that if any part, term, or provision of this contract is by the courts held to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular part, term, or provision held to be invalid.

25. Agreement. The Owners agree that the exactions and public improvements in this Agreement are roughly proportional to the need created by its development. The Owners freely and voluntarily, without coercion of any type, agree to the terms set forth in this Agreement.

26. Authority. The undersigned hereby acknowledge and warrant their power and authority to bind the parties to this Agreement.

CITY OF LAKEWOOD

ATTEST:



Sharon Blackstock
for Margy Greer, City Clerk

[Signature]
Michael J. Rock,
City Manager

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RECOMMENDED AND APPROVED:

[Signature]
Richard J. Plastino, Director
Department of Public Works

APPROVED AS TO FORM:

[Signature], for:
Roger W. Noonan,
Office of the City Attorney

[Signature]
Jay N. Hutchison, City Engineer
Department of Public Works

Vinnie Skarajunsky
BY: CAYMAN HOMES, INC.

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BY: Craig Walsh, President of Cayman
Homes, Inc. Attorney in Fact for
Vinnie Skarajunsky

The foregoing instrument was acknowledged before me this 1st day of December,
2003, by Craig Walsh, President of Cayman Homes, Inc. Attorney in Fact for Vinnie Skarajunsky
Owner of 5955 West Virginia Avenue aka Virginia Subdivision.



Janet Pinkul
Notary Public
5160 E. Morning Glory Pl.
Highlands Ranch, CO 80120
Address

My commission expires: 09-05-2005

EXHIBIT "1"

LEGAL DESCRIPTION FOR

**5955 WEST VIRGINIA AVENUE
VIRGINIA SUBDIVISION**

Commencing at the north quarter corner of Section 13, Township 4 South, Range 69 West of the 6th P.M.; Thence S00°00'32"E along the west line of the northeast quarter of said Section 13, a distance of 1325.26 feet to the southwest corner of the northwest quarter of the northeast quarter of said Section 13; Thence N89°24'03"E along the south line of the northwest quarter of the northeast quarter of said Section 13, a distance of 252.86 feet to the Point of Beginning; Thence continuing N89°24'03"E along said South line, a distance of 246.50 feet to the southwest corner of a parcel of land described in Reception No. F0882283; Thence N00°03'07"E along the west line of said parcel and the west line of Virginia Heights Subdivision recorded in Plat Book 40 at Page 55, a distance of 441.57 feet to the northwest corner of said Virginia Heights Subdivision and a point on the south line of Martischang Foundation Tract B Subdivision recorded in Plat Book 62 at Page 53; Thence S89°24'46"W along said south line, a distance of 469.82 feet to a point on the east right-of-way line of South Harlan Street; Thence S00°00'32"E along the east right-of-way line of South Harlan Street, a distance of 15.00 feet to the northwest corner of a parcel of land described in Reception No. 94120593; Thence N89°24'46" E along the north line of said parcel, a distance of 100.00 feet to the northeast corner of said parcel; Thence S00°00'32"E along the east line of said parcel and parcels recorded in reception Nos. F0803001, F0486448 and F1098642, a distance of 324.65 feet to the northwest corner of Lot 1, West Virginia Subdivision; Thence N89°24'03"E along the north line of said Lot 1, a distance of 122.82 feet to the northeast corner of said Lot 1; Thence S00°00'49"E along the east line of said Lot 1, a distance of 102.00 feet to the Point of Beginning, City of Lakewood, County of Jefferson, State of Colorado.

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EXHIBIT "A"

PUBLIC IMPROVEMENTS QUANTITIES ESTIMATE

FOR

**5955 WEST VIRGINIA
VIRGINIA SUBDIVISION**

The public improvements described herein are approximate and the extent, design, and nature of these improvements are subject to final drainage report and final engineering construction plans approved by the City of Lakewood. The public improvements quantities estimate is as follows:

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South Gray Street

Construct 28' flowline to flowline asphalt pavement with mountable curb and gutter, 5' wide detached sidewalk with curb ramps, cul-de-sac bulb and storm sewer improvements per the City approved drainage and street construction plans.

<u>DESCRIPTION</u>	<u>QUANTITY</u>	<u>UNIT</u>
1. Asphalt pavement	330	TONS
2. Mountable curb and gutter	709	LF
3. 5' wide detached sidewalk - 6" concrete	416	SY
4. Curb ramp	16	SY
5. Type "R" inlet - 5' wide	2	EA
6. 18" storm sewer	175	LF
7. 12" storm sewer	208	LF
8. Outlet structure	1	EA
9. Manhole	2	EA
10. 18" flared end section	1	EA
11. 12" flared end section	1	EA

West Virginia Avenue

Relocate power pole and construct asphalt transition at each end of the new sidewalk.

<u>DESCRIPTION</u>	<u>QUANTITY</u>	<u>UNIT</u>
1. Relocate power pole	1	EA
2. Asphalt transition	2	TON

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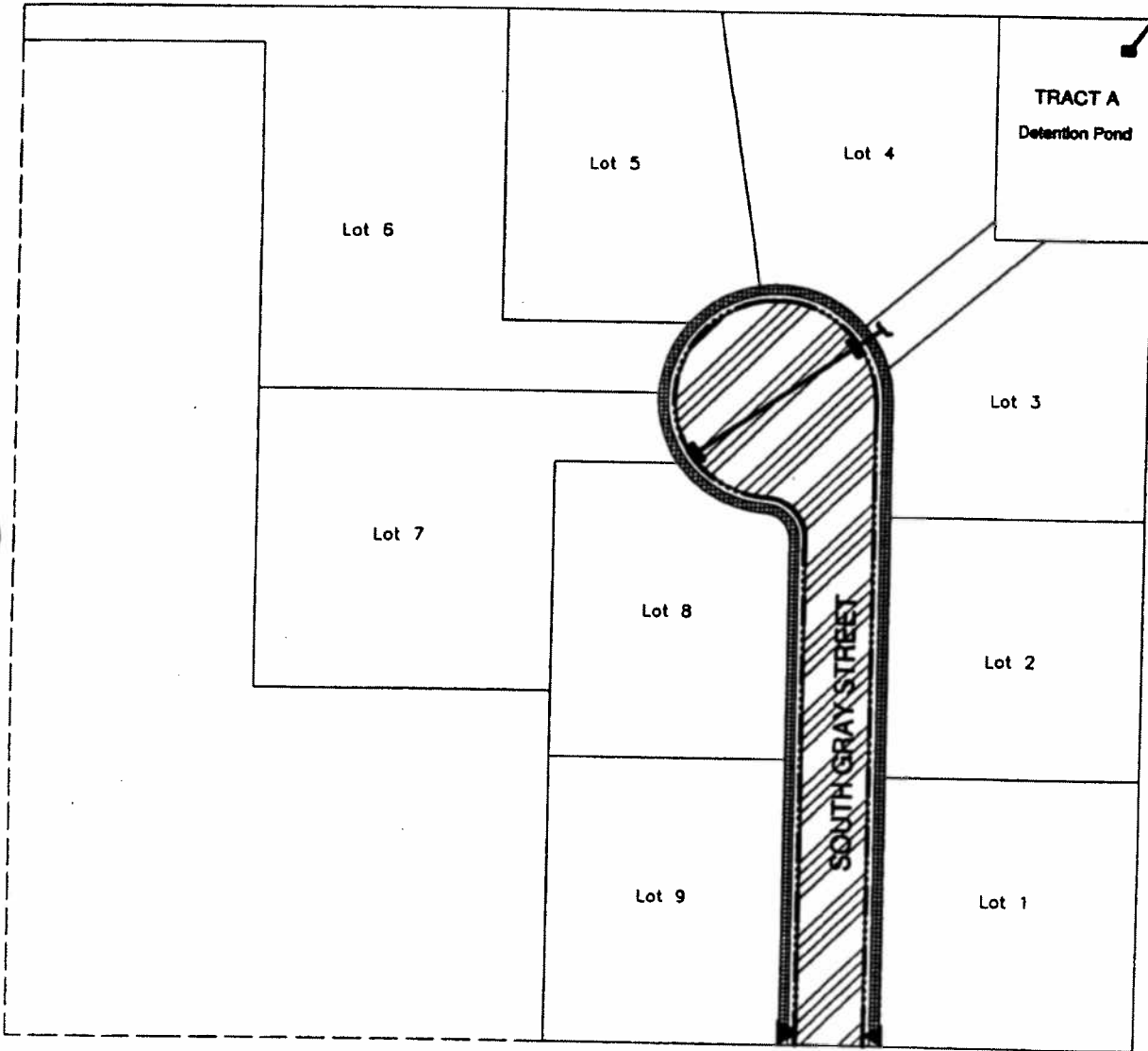
EXHIBIT "B"

PUBLIC IMPROVEMENTS LOCATION MAP FOR 5955 WEST VIRGINIA AVENUE VIRGINIA SUBDIVISION

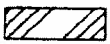


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SOUTH HAR
TREET



WEST VIRGINIA AVENUE



Asphalt Pavement



Directional Curb Ramp



5' Wide Detached Walk



Mountable Curb and Gutter



New Storm Sewer Improvements