

APPENDIX D – SOUTHGATE STANDARD IMPROVEMENTS AGREEMENTS**IMPROVEMENTS AGREEMENT
(WATER)**

1. **PARTIES.** The PARTIES to this AGREEMENT are the **SOUTHGATE WATER DISTRICT**, Arapahoe and Douglas Counties, Colorado, a quasi-municipal corporation and political subdivision of the State of Colorado (the “DISTRICT”) whose legal address is 3722 East Orchard Road, Centennial, Colorado 80121, and, **[APPLICANT’S LEGAL NAME]** a **[TYPE OF COMPANY]** (the “APPLICANT”) whose legal address is **[APPLICANT’S ADDRESS]**.
2. **RECITALS AND PURPOSE.** The APPLICANT is the owner of certain real property as further described herein. The APPLICANT has determined to undertake water system improvements associated with the development of the property. The DISTRICT is a Title 32 special district organized under Colorado law which provides service to its customers for which monthly service charges are imposed. DISTRICT’s service is contingent upon APPLICANT’s extension of the applicable main lines to or within the property to be serviced and then upon APPLICANT’s purchase of taps pursuant to DISTRICT Rules and Regulations. The purpose of this AGREEMENT is to set forth the terms and conditions concerning APPLICANT’s extension of the necessary main lines. Accordingly, the PARTIES agree to the following provision in consideration of the mutual covenants set forth herein. No express or implied reservation or limitation of capacity is made herein.
3. **LEGAL DESCRIPTION OF PROJECT.** The APPLICANT desires to develop that certain parcel of real property located in the **[SECTION, TOWNSHIP, RANGE, COUNTY, STATE THAT PROJECT IS LOCATED IN]**, commonly known as **[COMMONLY KNOWN NAME]**. For purposes of this AGREEMENT, the term “PROJECT” or “PROPERTY” shall mean the property so described. The map provided in this AGREEMENT is for reference only and is not a binding legal description of the PROPERTY. The APPLICANT agrees to furnish a reproducible copy of the approved plat or improvements plan to the DISTRICT and the conditions and restriction of said plat or plan are expressly incorporated in this AGREEMENT. Any subsequent change or alteration in the area, size, shape, usages, requirements, or timing of development of the PROJECT which may affect the size or configuration of main or service lines needed to service the PROJECT shall be subject to further engineering review and plan revisions by the DISTRICT.
4. **DESIGN SPECIFICATIONS AND CONSTRUCTION.**
 - 4.1 The main line extension(s) which are required to service the PROJECT are: as set forth on plans entitled “**[TITLE OF CONSTRUCTION DRAWINGS]**”, as prepared by **[A/E COMPANY’S NAME ON DWGS]** for DISTRICT Project Number **[Project #]**, stamped and dated by **[RESPONSIBLE ENGINEER’S NAME ON DWGS]** on **[DATE DWGS WERE STAMPED BY ENGINEER]**.
 - 4.2 It is agreed, as a condition precedent to service to the PROJECT, that all necessary main and service lines and appurtenant facilities which are to be constructed both within and without the PROJECT and which are necessary to connect with the main lines of the DISTRICT as presently engineered and installed, or as proposed for construction pursuant to this AGREEMENT, shall be in accordance with design and engineering standards and specifications as established by the DISTRICT and which may be modified or amended from time to time.
 - 4.3 Within thirty calendar days of execution of this AGREEMENT, APPLICANT shall submit detailed construction plans and engineering designs to the DISTRICT for its review and approval prior to the commencement of any construction of said extension or extensions. The APPLICANT and DISTRICT’s Engineer shall schedule and conduct a preconstruction meeting prior to any construction.

- 4.4 The PARTIES understand and agree that the APPLICANT and APPLICANT's successors in interest or in title shall be solely and exclusively responsible for service lines (those lines which run from the individual tap to the individual structure or facility serviced) pursuant to DISTRICT's Rules and Regulations.
- 4.5 APPLICANT agrees that the actual installation and construction shall be subject to the supervision and inspection by the DISTRICT and all costs of engineering study, review and approval and inspection shall be at the cost of, and paid by, APPLICANT. APPLICANT further agrees to give the DISTRICT, through the DISTRICT's Engineer, adequate notice but in no event less than two working days, prior to commencement of construction, of the date when such construction shall begin.
- 4.6 Conditions precedent to the DISTRICT'S providing service to the PROJECT shall include but not be limited to completion of construction, testing, inspection and approval by the DISTRICT's Engineer, payment of all construction costs and fees and charges of the DISTRICT, and delivery to the DISTRICT of a complete and accurate set of "as built" drawings showing the exact location of all constructed lines and facilities, including service lines.
- 4.7 Upon execution of this AGREEMENT, or at such time or times as may be requested by DISTRICT, APPLICANT agrees to furnish DISTRICT a topographical survey of the PROPERTY described in this AGREEMENT; or a recorded subdivision plat (or individual plats if the PROJECT is phased) approved by appropriate regulatory agencies, together with requirements and conditions fixed by such agencies for development and evidence of the APPLICANT's compliance or plan for compliance.

5. EASEMENTS NECESSARY TO SERVE PROJECT.

- 5.1 APPLICANT shall furnish, at APPLICANT's expense, a title insurance commitment or other evidence of title pursuant to DISTRICT's Rules and Regulations. APPLICANT shall thereafter furnish, at APPLICANT's sole expense, all easements, rights-of-way, or consents within the PROJECT (other than dedicated utility easements or rights of way designated in any recorded plat) which may be required before the construction of any portion of the main lines and appurtenant facilities which may be needed to service the PROJECT. Such easements, rights-of-way or consents shall be provided prior to commencement of construction.
- 5.2 APPLICANT shall coordinate with the DISTRICT to obtain all easements and rights-of-way which are necessary to extend the main lines from the DISTRICT's existing facilities to the boundary of the PROPERTY. APPLICANT shall be solely responsible for and pay, directly or indirectly, all costs and expenses of whatever kind which may be required or associated with the acquisition of such easements and rights-of-way. In the event that such easements and rights-of-way are required to be obtained from any private party or entity, such costs and expenses shall include the consideration paid to such property owner for such easement or easements, together with all costs and expenses which the DISTRICT may incur in obtaining such easements through eminent domain or other process, including without limitation, real estate appraisals, expert witness fees, attorneys fees, court costs, mediation/arbitration expenses, and all other costs and expenses incurred in conjunction therewith. Nothing herein shall be construed as imposing any requirement upon, or consent by, the DISTRICT to utilize its powers of eminent domain.
- 5.3 All such easements, rights of way or consents, including any dedications, shall be free of any prior lien or encumbrance. DISTRICT, at its discretion, may require a properly executed and acknowledged release to exempt such easements and rights-of-way from the prior lien of any mortgage or deed of trust.
- 5.4 All easements and rights-of-way granted to the DISTRICT shall consist of a legal description certified by a land surveyor licensed by the State of Colorado, and an accurate survey drawing of such property or properties indicating the easements and their dimensions. The actual documents of conveyance shall be subject to and in conformity with DISTRICT's standard

procedures and approved forms as may be amended from time to time or at any time in the DISTRICT's sole discretion.

- 6. CONVEYANCE OF MAIN LINES AND FACILITIES.** Upon completion, approval and acceptance of the work by the DISTRICT, as shown by the authorized signature of the DISTRICT's authorized representative set forth below, this AGREEMENT shall operate as a sale, conveyance, transfer and assignment by the APPLICANT of all APPLICANT's rights, title, interest and ownership in said main lines and facilities constructed pursuant to this AGREEMENT, such conveyance warranted by the APPLICANT to be free and clear of all claims, liens or encumbrances of any kind or nature whatsoever. APPLICANT shall warrant and defend (or indemnify and hold harmless the DISTRICT at its request) such conveyance against any and all persons or entity's claims or assertions. In addition to the satisfactory performance of all other conditions and terms of this AGREEMENT, the following shall be express conditions precedent to the DISTRICT's acceptance of the work:
- 6.1 A duly executed written statement that all suppliers of labor and materials, including all subcontractors, have been paid in full, with appropriate executed lien waivers attached.
 - 6.2 All deeds or other instruments conveying such easements and rights of way as set forth in paragraph 5 herein have been accepted and approved by the DISTRICT.
 - 6.3 Adequate security has been posted with the DISTRICT in accordance with paragraph 7 herein.
- 7. WARRANTY AND SECURITY FOR REPAIRS/REPLACEMENT.** Upon conveyance of the lines and facilities pursuant to this AGREEMENT, APPLICANT warrants, covenants and agrees that the work is in full compliance with the laws of the State of Colorado, and all other governmental subdivisions, agencies and units and in accordance with the design standards and other engineering and construction specifications and requirements of the DISTRICT. Following completion, approval, full acceptance, conveyance and transfer of lines and facilities to the DISTRICT, the DISTRICT shall assume all responsibility thereafter, and all operational maintenance pursuant to its Rules and Regulations, except as to the 12 month warranty period in accordance with this paragraph 7. APPLICANT shall warrant to the DISTRICT the lines and facilities, as installed, against faulty workmanship and materials for a period of 12 months from date of final acceptance and shall, during said period, pay all cost and expense to cure, repair or replace at the request of the DISTRICT any part or parts of the extension or constructed facilities which the DISTRICT reasonably determines were not designed or constructed in conformity with DISTRICT Rules and Regulations, approved plans, construction notes or its specifications or standards, that the DISTRICT reasonably determines to be defective, of poor or un-workmanlike quality or are not performing to DISTRICT standards for any other reason. Following expiration of the 12 month warranty period and satisfactory remediation of any outstanding warranty issues, the APPLICANT shall be released from all warranty responsibilities owed to the DISTRICT.
- 7.1 To ensure such repairs and replacements will be accomplished, APPLICANT shall furnish to the DISTRICT an irrevocable letter of credit or other security acceptable to the DISTRICT in an amount equal to 10% of the total costs of construction and installation of the lines and facilities, but not less than \$1,000, or such greater amount as the DISTRICT may require in its sole discretion is necessary to adequately protect itself on account of special circumstances arising from the construction of the extension/appurtenances or any portion thereof. Such security shall be maintained for a period of 15 months from the date of final acceptance, and shall be restored to the full amount within 10 calendar days after written notice to the APPLICANT in the event that the DISTRICT draws against such security to effect repairs or replacement. Upon expiration of 15 months following final acceptance, the security required by the DISTRICT shall be released to the APPLICANT. The security may either be extended or called upon at the DISTRICT's discretion if there are any pending claims or assertions which arose during the 12 month warranty period which remain unresolved. In any event, the security shall be maintained until such time as all claims or assertions are resolved to the DISTRICT's satisfaction.
 - 7.2 In the event that the costs and expense of curing any defect, or repairing or replacing any portion of the extension or facilities exceeds the security posted pursuant to this AGREEMENT, the

APPLICANT covenants, warrants and agrees that it will reimburse the DISTRICT within 30 calendar days of presentment or pay directly the full costs and expenses of such remedial work.

8. **SERVICE FROM IMPROVEMENTS.** APPLICANT covenants and agrees that it will not make any warranties or representations to any contractor, home builder, other developer, home owner, lessee, tenant, individual property owner, or any other person or entity, regarding the DISTRICT's system, its capabilities, availability, pressures, or flows, and expressly including the timing of acceptance of any improvements or their authorized activation.
9. **DISTRICT FEES AND REGULATIONS.** The obligations, duties, rights and responsibilities of each party arising under this AGREEMENT shall be subject to all applicable Rules and Regulations of the DISTRICT and applicable review, observation and other fees implemented by the District applicable to the Project which may be amended from time to time. APPLICANT shall have the sole responsibility for inquiring as to the current Rules and Regulations and fee schedule of the DISTRICT.
10. **GOVERNMENTAL REGULATIONS.** All provisions of this AGREEMENT to the contrary notwithstanding, the obligation of the DISTRICT to furnish service under this AGREEMENT, to accept any improvements, and to perform any and all other duties and obligations arising hereunder is limited by, and subject to, all orders, requirements and limitations which may be imposed by federal, state, county or any other governmental or regulatory body or agency having jurisdiction or control over the DISTRICT and the operation of its system pursuant to any statute, regulation, or agreement.
11. **PARAGRAPH CAPTIONS.** The captions of the paragraphs are set forth only for convenience and reference, and are not intended in any way to define, limit, or describe the scope or intent of this AGREEMENT.
12. **ADDITIONAL DOCUMENTS OR ACTION.** The PARTIES agree to execute any additional documents and to take any additional action necessary to carry out this AGREEMENT.
13. **INTEGRATION AND AMENDMENT; PRIOR AGREEMENTS.** This AGREEMENT represents the entire AGREEMENT between them and there are no oral or collateral agreements or understandings. This AGREEMENT may be amended only by an instrument in writing signed by the PARTIES. The APPLICANT shall reimburse the DISTRICT for any expenses incurred by the DISTRICT in connection with any amendment of this AGREEMENT requested by the APPLICANT. If any provision of this AGREEMENT is held invalid or unenforceable, no other provision shall be affected by such holding, and all of the remaining provisions of this AGREEMENT shall continue in full force and effect. All prior agreements and contracts between the PARTIES and regarding the sale and purchase of taps are hereby rescinded. By execution of this AGREEMENT, each of the parties acknowledges that it has had the opportunity to fully review and seek legal counsel regarding the content hereof.
14. **ALTERNATIVE DISPUTE RESOLUTION.** In the event of any dispute or claim arising under or related to this AGREEMENT, the PARTIES shall use their best efforts to settle such dispute or claim through good faith negotiations with each other. If such dispute or claim is not settled through negotiations within 30 calendar days after the earliest date on which one party notifies the other party in writing of its desire to attempt to resolve such dispute or claim through negotiations, then the PARTIES agree to attempt in good faith to settle such dispute or claim by mediation conducted under the auspices of the Judicial Arbitrator Group (JAG) of Denver, Colorado or, if JAG is no longer in existence, or if the PARTIES agree otherwise, then under the auspices of a recognized established mediation service within the State of Colorado. Such mediation shall be conducted within 60 calendar days following either PARTY's written request therefore. If such dispute or claim is not settled through mediation, then either PARTY may initiate a civil action in the District Court for County of either Arapahoe or Douglas County, as applicable for the location of the PROPERTY.
15. **ASSIGNMENT.** If APPLICANT is not in default hereunder, APPLICANT may assign this AGREEMENT without the prior consent of the DISTRICT, provided said assignment is in writing and further provided that the assignment is made in conjunction with a transfer of all or substantially all of the PROPERTY described herein. No assignment shall, however, be effective upon the

DISTRICT unless and until the DISTRICT receives written notice and a copy of the assignment including the name and address of the assignee. If assignment is made by APPLICANT, the DISTRICT reserves the right to require proof of financial capacity to perform the terms of this AGREEMENT of any assignees and to reject such assignment based upon its review thereof.

16. **BINDING EFFECT.** This AGREEMENT shall inure to the benefit of, and be binding upon, the PARTIES, and their respective legal representative, successors, and assigns; provided, however, that nothing in this paragraph shall be construed to permit the assignment of the AGREEMENT except as otherwise specifically authorized herein.
17. **INDEMNIFICATION/INSURANCE.** APPLICANT hereby warrants and agrees that it will indemnify and hold DISTRICT, its Board of Directors, consultants and employees harmless from any and all claims, demands, judgments or awards resulting from any third party loss, injury or property damage (specifically including claims involving property disputes, infringements, wrongful takings or encroachments) which occurs as a result of, or arises from, the construction, installation, or conveyance of the line extension or extensions, easement acquisition, or the performance of any other obligation of APPLICANT arising hereunder. Such indemnification shall extend to all of DISTRICT's costs and expenses, (including reasonable attorneys fees, court costs, costs of litigation, mediation, arbitration or dispute resolution) which it may incur in investigating, processing, and/or defending such claim or demand. The DISTRICT shall be named as an additional insured on all APPLICANT insurance policies related to the PROJECT subject to this AGREEMENT.
18. **EXHIBITS.** All exhibits referred to in this AGREEMENT are, by reference, incorporated in this AGREEMENT for all purposes.
19. **SURVIVAL OF WARRANTIES.** Except as provided in paragraph 7 above, all warranties and representations, and specifically including the obligation of indemnification shall survive completion and conveyance, and shall continue thereafter for a period of three years from date of execution of this AGREEMENT, provided however that if any claim is made against the DISTRICT during such three year period, APPLICANT's obligations shall extend beyond such three year period until such claim is resolved, paid or otherwise compromised.
20. **STATUS OF APPLICANT.** APPLICANT, its employees or contractors shall not represent itself as employees or contractors of the DISTRICT nor in any way authorized to bind the DISTRICT, take action on behalf of or make statements to any third parties on behalf of the DISTRICT.
21. **SPECIAL PROVISIONS.**