

**Attachment 3: Agreement between BDC (Browman Development Company)
McKinleyville Associates and the County of Humboldt dated
05/04/1993**

AGREEMENT FOR INSTALLATION OF TRAFFIC SIGNAL

This AGREEMENT is entered into this 4th day of May, 1993, by and between COUNTY OF HUMBOLDT, a political subdivision of the State of California, hereinafter called COUNTY and BDC MCKINLEYVILLE ASSOCIATES, a California limited partnership, hereinafter called SUBDIVIDER.

RECITALS

SUBDIVIDER applied for and received approval of a tentative map for the creation of seven (7) parcels and a conditional use permit for the construction of an approximately 200,000 square foot shopping center on that real property located in McKinleyville and more particularly described in Exhibit "A", attached hereto and incorporated herein by reference. Said projects were filed and are known as Humboldt County Planning and Building Department files' case numbers FMS-09-912; and CUP-27-912.

The shopping center is referred to as the Mill Creek Marketplace Shopping Center.

The conditions of approval of the projects known as FMS-09-912 and CUP-27-912, as approved by the Board of Supervisors of the County of Humboldt, required the completion or security for completion of the Department of Public Works improvements as referenced in a letter to the Planning Department dated June 2, 1992. Said conditions required the SUBDIVIDER to provide the design and relocate the traffic signal at the southwest corner of intersection of Central Avenue and School Road in a manner as directed and approved by the Department of Public Works. A new traffic signal was needed at the main entrance/exit to the shopping center off of Central Avenue. SUBDIVIDER was required to provide the design and construct the new signalization of the main access to the shopping center off of Central Avenue in a manner approved by the Department of Public Works.

SUBDIVIDER would like to be reimbursed for all the costs associated with the installation and design and administration of the traffic signals by the tenants of the Mill Creek Marketplace Shopping Center through a Development Impact Fee Ordinance.

SUBDIVIDER would like to be reimbursed for all costs associated with the creation and administration of the Development Impact Fee Ordinance.

NOW, THEREFORE, the parties hereto mutually agree as follows:

1. OBLIGATIONS OF COUNTY: COUNTY agrees to do the following:

A. The County Planning and Building Department shall prepare and submit to the County Board of Supervisors, a Development Impact Fee Ordinance for reimbursement of the costs of the installation and design and administration of the traffic signals required as conditions of approval of the Mill Creek Marketplace Shopping Center.

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B. Upon adoption by the Board of Supervisors of a Development Impact Fee Ordinance for the installation of the traffic signals for the Mill Creek Marketplace Shopping Center, the COUNTY will collect the development impact fee from applicants for building permits prior to issuance of a building permit for buildings within the Mill Creek Marketplace Shopping Center.

C. COUNTY shall place the money collected pursuant to the Development Impact Fee Ordinance in a trust account for the benefit of the SUBDIVIDER and shall reimburse the SUBDIVIDER for all the costs associated with installation and construction of the traffic signals from the trust account. Upon completion of the installation and relocation of the traffic signals, the COUNTY shall commence to reimburse the SUBDIVIDER on a quarterly basis and shall reduce the amount paid to the SUBDIVIDER by the cost to the COUNTY of collecting and administering the Development Impact Fee Ordinance. Said costs not to exceed 2% of the cost for installation and construction of the traffic signals.

D. The parties hereby agree the COUNTY shall not be liable for reimbursing the SUBDIVIDER for the cost of installing and constructing or relocating the traffic signals which are not collected pursuant to the Development Impact Fee Ordinance.

E. The parties hereby agree that the COUNTY shall not have any obligations under this AGREEMENT to collect the development impact fee unless and until the Board of Supervisors adopt a Development Impact Fee Ordinance for the Mill Creek Marketplace Shopping Center. This AGREEMENT does not bind or obligate the Board of Supervisors to adopt the Development Impact Fee Ordinance. The COUNTY agrees that nothing contained in this Agreement or subsequent Ordinance shall expand or reduce the obligation of the SUBDIVIDER from those set forth in the tentative approval of the tentative map known as FMS-09-912 or the conditions of approval of the conditional use permit 27-912.

2. OBLIGATIONS OF THE SUBDIVIDER: SUBDIVIDER agrees to do the following:

A. SUBDIVIDER agrees that the COUNTY has met it's obligation of reimbursement when the COUNTY has deposited, postage prepaid, in the United States Mail, addressed to BDC McKinleyville Associates, a California limited partnership, c/o Browman Development Co., Inc., 100 Swan Way, Suite 206, Oakland, CA 94621-1459, or to such other addresses designated in writing to the COUNTY by the SUBDIVIDER, the quarterly reimbursement.

B. SUBDIVIDER agrees to comply with the conditions of approval regarding the installation and/or relocation of the traffic signals and shall install and relocate the signals as required by the approval of the tentative parcel map and the conditional use permit. SUBDIVIDER agrees to provide Notice to the County of Humboldt upon completion of the installation and relocation of the signals and to provide notice of address for reimbursing the SUBDIVIDER from the fees collected by the issuance of building permits as required by the proposed Development Impact Fee Ordinance.

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C. Subdivider shall pay for all costs incurred by the County for the processing, developing and implementing the development impact fee ordinances for the Mill Creek Shopping Center. The cost shall include, but is not limited to, all staff time including County Counsel time in preparing the ordinance, the cost of all public hearings and the cost of implementing and collecting the fee. Upon approval of this agreement, Subdivider shall make a deposit with the County. The amount shall be a total of \$2,000.00 to cover said costs.

D. Attached hereto as Exhibit "B" is an Engineer's Estimate for the installation of the traffic signal for the Mill Creek Marketplace Shopping Center's main entrance together with an estimate for the relocation of the traffic signal at School Road and Central Avenue. It is mutually agreed that this Exhibit "B" is a fair and reasonable estimate for said installation and the cost of administration of all costs and shall be used as the basis for determining the Development Impact Fee, including any and all administration costs for creating the Development Impact Fee Ordinance. Said Fee shall be required to be paid as a development impact fee, payable at the time of issuance of building permits. The amount of the fee is to be calculated by the tenant's building's square footage multiplied by the development impact fee rate, as shown on the attached Exhibit "B".

E. SUBDIVIDER shall indemnify and hold harmless COUNTY and COUNTY's officers, employees, independent contractors and agents from and against:

(1) Any and all claims, actions and proceedings related to:

- (a) any breach or default in the performance of, or the omission to perform and obligations imposed upon SUBDIVIDER under this AGREEMENT; and/or
- (b) any negligent act or omission to act by SUBDIVIDER or SUBDIVIDER's agent, representatives, employees, contractors or subcontractors relating to the performance or omission to performing any term or conditions of this AGREEMENT; and/or
- (c) any litigation challenging the legal sufficiency or adequacies of the Development Impact Fee Ordinance from the Mill Creek Marketplace Shopping Center which the County may adopt; and

(2) All costs, attorney fees, expenses and liabilities incurred in the defense of any such claim, action or proceeding brought thereon.

If any such claim, action or proceeding is brought against the COUNTY or County's officers, employees, independent contractors, and agents, SUBDIVIDER, upon Notice from the COUNTY, shall defend the same at SUBDIVIDER's expense by counsel satisfactory to the COUNTY.

COUNTY shall promptly notify SUBDIVIDER of any claim, action or proceeding against COUNTY or County's officers, employees, independent contractors or agents relating to the performance or omission to perform any term or condition of this AGREEMENT or challenging the Development Impact Fee Ordinance for Mill Creek Marketplace Shopping Center. COUNTY shall cooperate fully in the defense of such claim, action or proceeding.

SUBDIVIDER assumes all risk of damage to property or injury to persons resulting from the performance or omission to perform under this

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AGREEMENT by SUBDIVIDER or Subdivider's agents, representatives, employees, contractors and subcontractors. SUBDIVIDER hereby waives all claims in respect thereof against COUNTY and County's officers, employees, contractors and agents.

F. SUBDIVIDER hereby waives all right or claims against the COUNTY for the cost of installing and constructing the traffic signals incurred by the SUBDIVIDER which are not recovered by the COUNTY through the Development Impact Fee Ordinance for the Mill Creek Marketplace Shopping Center except to the extent that the County Board of Supervisors approve the Development Fee Ordinance but the COUNTY fails to collect the fee in accordance with the terms and conditions of the Development Impact Fee Ordinance.

G. The SUBDIVIDER waives the right to terminate this AGREEMENT until such time as the traffic signals are installed or relocated to the satisfaction of the Department of Public Works. If at such time that the traffic signals are installed and the COUNTY has accepted the improvements, the SUBDIVIDER may terminate this AGREEMENT upon written request to the COUNTY for termination of the AGREEMENT.

3. GENERAL PROVISIONS

A. SUBDIVIDER shall not assign or otherwise transfer his duties, obligations or interests under this AGREEMENT without prior written consent of the COUNTY, which shall not be unreasonably withheld. Any attempted assignment or transfer without such consent shall be void.

B. Subject to any provision concerning assignment, all terms and conditions of this AGREEMENT shall be binding upon, inure to the benefit of, and be enforceable by the parties thereto and their respective legal representatives, successors, and assigns.

C. The failure of the COUNTY at any time to require performance by SUBDIVIDER of any of the provisions of this AGREEMENT shall in no way affect the right of the COUNTY thereafter to enforce same, nor shall waiver by COUNTY of any breach of any of the provisions under this AGREEMENT be taken or held to be a waiver of any succeeding breach of this AGREEMENT.

D. This AGREEMENT contains the entire agreement of the parties relating to the transactions contemplated hereby and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged herein.

E. No amendment of this AGREEMENT shall be valid unless made in writing and signed by the parties.

F. Any action to enforce this AGREEMENT shall be governed by the laws of the State of California and shall be tried in court of competent jurisdiction in the County of Humboldt, State of California and the parties hereby waive all provisions of the law provided for a change of venue to any other County or State.

G. Any and all funds collected pursuant to this AGREEMENT or the Development Impact Fee may be used for no other purpose other than the reimbursing of SUBDIVIDER for any of the costs of design, and installation and construction of the traffic signal or the creation or administration of this

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AGREEMENT or Development Impact Fee Finance, unless the
AGREEMENT is terminated by both parties.

4. NUCLEAR FREE HUMBOLDT COUNTY ORDINANCE COMPLIANCE

SUBDIVIDER certifies by it's signature below that SUBDIVIDER is not a nuclear weapons contractor and that SUBDIVIDER is not knowingly or intentionally engaged in the research, development, production or testing of nuclear warheads, nuclear weapon systems, or nuclear weapons components as defined by the Nuclear Free Humboldt County Ordinance. SUBDIVIDER agrees to notify the County immediately if it becomes a nuclear weapons contractor as defined above. COUNTY may immediately terminate this AGREEMENT if it determines that the foregoing certification is false or if SUBDIVIDER becomes a nuclear weapons contractor.

IN WITNESS WHEREOF, the parties hereto have set their hands,

MAY - 4 1993

Dated _____

COUNTY OF HUMBOLDT



Chairperson of the Board of
Supervisors, the County of
Humboldt, State of California

ATTEST:

Chris Arnold, Clerk of the Board
of Supervisors of the County of
Humboldt, State of California

By 
LORA FREDIANI


Assistant Clerk of the Board MAY - 4 1993
SUBDIVIDER:

BDC, McKinleyville Associates,
California limited partnership

Dated: _____

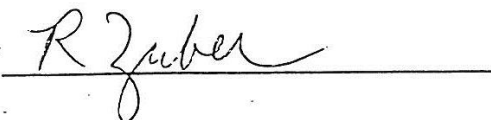
By Browman Development Company,
Inc., a California Corporation, it's
general partner.

By


Darryl Browman, President

APPROVED AS TO FORM:
COUNTY COUNSEL

BY



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09-00 a

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McKinleyville,
Shopping Center
Signal Maintenance

EXHIBIT A

All that property situate in the County of Humboldt, State of California, described as follows:

All that portion of the Northeast Quarter of the Southeast Quarter of Section 6, Township 6 North, Range 1 East, Humboldt Meridian described as follows:

COMMENCING at the east quarter section corner of said Section 6; thence North 89° 25' 53" West on the east-west interior quarter section line of said Section 6, a distance of 773.80 feet; thence leaving said interior quarter section line, South 00° 22' 51" East, 65.01 feet to the POINT OF BEGINNING of this description; thence South 89° 25' 53" East, 65 feet south of and parallel to said interior quarter section line, 504.76 feet; thence South 87° 31' 16" East, 150.00 feet; thence South 89° 25' 53" East, 65.98 feet to the beginning of a curve concave to the southwest having a radius of 30.00 feet and a central angle of 89° 03' 38"; thence southeasterly on the arc of said curve, 46.63 feet to the west line of Central Avenue; thence South 00° 22' 15" East on said west line, 971.49 feet; thence leaving said west line, North 89° 25' 53" West, 749.91 feet; thence North 00° 22' 51" West, 1,006.01 feet to the the point of beginning.

Containing 17.3 +/- Acres

END OF DESCRIPTION

This description was prepared by me or under my direction:

Date 4-9-93

Gary L. Crawford, L.S. 3843
License Expiration Date 6/30/96



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MAJOR CATEGORY TOTALS

AMENITIES & SPECIAL CONSTRUCTION.....	119,000.00
CONSULTANT FEES & SERVICES.....	14,000.00
ORDINANCE ADMINISTRATION, FEES, PERMITS, ETC.....	5,720.00
CONTINGENCIES (10%).....	<u>13,872.00</u>
TOTAL (2)	\$152,592.00

Development Impact Fee \$.767 per total building S.F.

NOTES:

1. Since Phillippi Engineering has no control over the cost of labor, materials, or equipment, or over the contractor's methods of determining prices, or over competitive bidding or market conditions, our opinions of probable project cost or construction cost provided for herein are to be made on the basis of our experience and qualifications and represent our best judgment as design professionals familiar with the construction industry. Phillippi Engineering cannot and does not guarantee that proposals, bids, or the construction cost will not vary from opinions of probable cost prepared by the firm.
2. This estimate does not include any costs for landscaping, undergrounding of utilities, or the connection costs for P.G. & E. Telephone or Cable TV and all City fees.
3. The Development Impact Fee is calculated by dividing the total estimated construction cost of \$152,592.00 by the total building square footage of 198,988.

Reviewed and Approved:

COUNTY OF HUMBOLDT
DEPARTMENT OF PUBLIC WORKS

BY _____
Harless McKinley, Associate Engineer

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