

**SUBDIVISION IMPROVEMENTS AGREEMENT**

THIS AGREEMENT is made on \_\_\_\_\_, \_\_\_\_\_, between the CITY OF PUEBLO, a Municipal Corporation (“City”), and

\_\_\_\_\_

\_\_\_\_\_ (“Subdivider”).

RECITALS

WHEREAS, Subdivider has subdivided or is about to subdivide a certain tract of land located in the City and legally described in attached Exhibit “A”; and

WHEREAS, the Subdivider, as a condition of approval of the final plat of \_\_\_\_\_

\_\_\_\_\_ (“Subdivision”), wishes to enter into this Subdivision Improvements Agreement as authorized by Chapter 4, Title XII of the Pueblo Municipal Code; and

WHEREAS, Subdivider is required by Chapter 4, Title XII of the Pueblo Municipal Code to construct and install public improvements described and set forth in Chapter 4, Title XII of the Pueblo Municipal Code and the standards and specifications approved by City Council (“Required Public Improvements”); and

WHEREAS, the Required Public Improvements are generally described in the attached Exhibit “B” and shown on approved construction plans and documents on file in the office of the City’s Director of Public Works (“Plans and Documents”).

WHEREAS, by Chapter 4, Title XII of the Pueblo Municipal Code, Subdivider is obligated to provide security or collateral sufficient in the judgement of the Director of Public Works to make reasonable provisions to construct and complete the Required Public Improvements.

NOW, THEREFORE, in consideration of the foregoing and the following mutual covenants and agreements, the City and Subdivider agree as follows:

1. Subdivider agrees within one hundred and eighty (180) days after applying for a building permit to construct any building or structure on any building site within the Subdivision, or upon the issuance of a certificate of occupancy for any such building or structure, whichever occurs first, to construct and install at its sole cost all of the Required Public Improvements.
2. In lieu of installing the Required Public Improvements within the time period prescribed in Paragraph 1, Subdivider or any subsequent owner of the land or any portion thereof shall deposit cash or other collateral with the City Director of Finance, or with any bank or trust company licensed in the State of Colorado, subject to an escrow agreement approved by the City Attorney. The holder of such cash or

collateral shall pay all or any portion thereof to the City upon demand after the time to complete all Required Public Improvements by Subdivider or subsequent owner expires. Such deposit or escrow agreement shall be referred to as the “deposit”.

3. The amount of the deposit shall be computed by the City’s Director of Public Works by estimating the total cost of all uncompleted Required Public Improvements within the block at the time application for building permit is made. The amount of the deposit required by this alternative shall not be less than 25% of such estimate plus the cost of extending all required sewer and water lines from nearest existing sewer and water lines to the proposed building site for which a building permit is sought, plus the costs of extending curb, gutter, sidewalk and paving from the edge of the Subdivision or existing improvements of a like nature, whichever is closer to the proposed building site. In any case where the block, as later defined, exceeds one thousand (1000’) feet in length between intersecting streets, the estimate of the City Director of Public Works under this paragraph may be reduced to the total costs of all uncompleted Required Public Improvements in at least one half (1/2) of such block, and the required deposit shall be based upon such decreased estimate. The Subdivider, however, shall provide a turnaround of at least sixty (60’) feet in diameter at the mid-block point and barricade such street so that no through traffic shall be permitted beyond the point to which the estimate of Director of Public Works is based.
4. Within one hundred eighty (180) days after subsequent application for a building permit to construct any building or structure upon any building site within the block, or upon the issuance of a certificate of occupancy for any such building or structure, whichever occurs first, Subdivider shall also deposit an amount not less than the estimate of the Director of Public Works for all Required Public Improvements from existing improvements to the proposed building site, less any previous deposits made under this agreement upon building sites lying between the most recent proposed site and existing improvements.
5. In the event the Subdivider or any subsequent owner of the land fails to complete the Required Public Improvements or to make such deposit within the required time, no additional building permits shall be issued to the Subdivider or the subsequent owner or to any other person to build or construct any building or structure in the Subdivision until such default is remedied. In addition, the City may treat the amount of such deposit as a debt due the City from the Subdivider or subsequent owner, which debt shall be a lien upon all the land in the Subdivision and notice of lien may be filed for record in the office of the County Clerk and Recorder at any time after such default. Action upon such debt may be instituted by the City within six (6) years from the date of filing such lien for record. All remedies provided for in this agreement are cumulative and the use of one shall not prohibit the use of another.
6. Upon paying such deposit, the City Director of Public Works shall release the proposed building site from the terms of the Agreement except the terms of Paragraph 7 below.

7. As a condition of approval of this Subdivision, and to meet the requirements of Chapter 4, Title XII of the Pueblo Municipal Code, Subdivider specifically agrees that no certificate of occupancy shall be issued by the Pueblo Regional Building Department until the Required Public Improvements, or those improvements necessary as determined by the City Director of Public Works, to totally serve specific lot(s) or block(s) for which certificates of occupancy are sought, have been properly designed, engineered, constructed and accepted as meeting the specifications and standards of the City.

The restrictions on issuing certificates of occupancy contained in this Paragraph 7 and the restriction on the issuance of building permits contained in Paragraph 5 shall run with the land and shall extend to and be binding upon the heirs, legal representatives, successors, and assigns of the Subdivider and may be specifically enforced by the City.

8. Acceptance of this Subdivision by the City does not constitute an acceptance of the roads, parks and other public improvements for maintenance by the City. Until such roads, parks, and other public improvements have been installed and meet the requirements, standards, and specifications of the City, its Subdivision ordinances and any applicable Parks Department specifications, and such are specifically approved and accepted in writing by the City Director of Public Works, and, if appropriate, the City Director of Parks and Recreation, the maintenance, construction, and all other matters pertaining to or affecting said roads, parks and other public improvements and rights-of-way are the sole responsibility of the Subdivider or any subsequent owner(s) of the land within the Subdivision.
9. The required time to complete all Required Public Improvements by Subdivider within such block shall be one (1) year from the date of application for the first building permit issued within such block. Upon completion and written approval and acceptance of the Required Public Improvements within the required time and the payment of all inspection costs by Subdivider, the Director of Public Works shall cause all obligations of the Subdivider relating to the Required Public Improvements within such block to be released. If such Required Public Improvements are not completed within the required time, the City Director of Public Works may cause the proceeds of all deposits or other collateral or monies in escrow to be used to complete the same. If insufficient monies are available at the end of the required time to complete all Required Public Improvements for the entire length of such block, the Director of Public Works shall cause all collateral or monies in escrow to be reduced to cash and shall deposit the same with the Director of Finance. Such cash shall be used to complete that portion of the Required Public Improvements as the Director of Public Works, in the Director's sole discretion, shall determine. Until all the Required Public Improvements are completed and approved by the Director of Public Works, Subdivider and the subdivided land shall remain liable and responsible for all Required Public Improvements.
10. For purposes of this Agreement, the "block" shall mean both tiers of lots fronting or abutting upon the street which the proposed building or structure shall front, to the

rear property line of such lots, or the center line of the alley, if there is an alley, enclosed at either end by a street which intersects both tiers of lots and shall include the full width of all streets upon which such lots abut.

11. If the Required Public Improvements are for a commercial subdivision and include stormwater drainage facilities, stormwater detention facilities, or maintenance and restoration of adjacent drainage channels, and/or associated improvements and revegetation (the “facilities”), located either within or outside of the Subdivision, Subdivider shall install the facilities in accordance with plans and specifications therefore approved by, and on file with the City, and thereafter, the facilities shall be repaired, replaced and maintained in good working order and condition by the owners of the land within the Subdivision. The City is granted the right (but not the obligation) to inspect, control, repair, replace and maintain the facilities and to recover all costs and expenses therefore including an administrative charge of 15% from the owners of the land within the Subdivision. All such City’s costs and administrative charges shall become a perpetual lien on all the land within the Subdivision upon recording in the office of the Pueblo County Clerk and Recorder a statement of lien setting forth the City’s costs and describing the land signed by the City’s Director of Public Works. Failure of the City to inspect, control, repair, maintain, or replace the facilities shall not subject the City to any liability for such failure.
12. Subdivider agrees to provide the City with a current title insurance commitment at the time of final platting evidencing that fee simple title of all lands in the Subdivision is totally vested with the Subdivider free and clear of all liens and encumbrances. If such land is not free and clear, the holder of such indebtedness or encumbrance shall subordinate its interest or encumbrance to this Agreement and all its terms, conditions, and restrictions.
13. The City or the purchaser of any lot(s) within this Subdivision shall have the authority to bring an action in any Court of competent jurisdiction to compel the enforcement of this Agreement or any amendment hereto. Such authority shall include the right to compel rescission of any sale, conveyance, or transfer of any lot(s) or tract(s) contrary to the provisions of the Ordinances of the City or this Agreement. In the event of any litigation arising out of this Agreement, the Court shall award the prevailing party its costs and expenses, including reasonable expert witness and attorney’s fees. Venue for any such litigation shall be Pueblo County, Colorado.
14. City and Subdivider have attempted by the attached Exhibit “B” and Plans and Documents to describe all Required Public Improvements to be constructed and installed by Subdivider with respect to the Subdivision. However, if the attached Exhibit “B” and Plans and Documents fail to describe or to include, for any reason, any Required Public Improvement described and set forth in Chapter 4, Title XII of the Pueblo Municipal Code and the standards and specifications approved by City Council (“Omitted Public Improvement”), Subdivider shall not be released or discharged from Subdivider’s obligation to construct and install the Omitted Public

Improvement in the time and manner contained in this Agreement and Chapter 4, Title XII of the Pueblo Municipal Code.

In order to determine whether or not there are Omitted Public Improvements, the following shall be applicable:

- (a) If the Required Public Improvements are constructed and installed within ten (10) years from the date hereof, or within a five year extension if granted in writing by the Director of Public Works, then Chapter 4, Title XII of the Pueblo Municipal Code and the standards and specifications approved by the City Council and interpreted as of the date hereof shall control, unless adherence to a more recent standard does not require significant engineering modifications or major revisions to the plans and documents.

For the purposes of this subsection, a major revision is defined as, but not necessarily limited to the relocation or re-alignment of any curb and gutter, sanitary sewer, storm sewer, manholes or storm inlets, or the change of size or type of sewer mains, inlets, curb and gutter or sidewalk.

- (b) If the Required Public Improvements are constructed and installed after ten (10) years from the date hereof, or after a five year extension if granted in writing by the Director of Public Works, then Chapter 4, Title XII of the Pueblo Municipal Code and the standards and specifications approved by the City Council and interpreted as of the date the Required Public Improvements are constructed and installed shall control.
- (c) If Chapter 4 of Title XII and/or the standards and specifications approved by the City Council are modified or amended to conform with the requirements of federal or state law, rules or regulations prior to the construction and installation of the Required Improvements, they shall control as so modified and amended.

- 15. Except for guarantee and obligation to correct defects required by Section 12-4-7(j)(9) of the Pueblo Municipal Code, nothing in this Agreement shall be construed to extend any obligation of the Subdivider beyond the date of written approval and accepted by the Director of Public Works of the Required Public Improvements described in attached Exhibit "B", provided, however that the obligation of the Developer to construct or install any Omitted Public Improvements will cease following two (2) years from the date of acceptance of the Required Public Improvements described in the attached Exhibit "B" by the Director of Public Works.
- 16. All Required Public Improvements shall be constructed and installed in compliance with all applicable standards and specifications approved by City Council.
- 17. The parties agree this Agreement may be periodically amended by mutual consent provided such amendment is in writing and signed by all parties.

18. This Agreement shall extend to and be binding upon the successors and assigns of the City and upon the heirs, successors, assigns and legal representatives of Subdivider, and shall be recorded in the office of the County Clerk and Recorder of Pueblo County, Colorado, and shall constitute an agreement running with the land until released as described above.

The parties have caused this Agreement to be executed and attested by its duly authorized and acting officer.

(SEAL)

\_\_\_\_\_  
Subdivider

By: \_\_\_\_\_

By: \_\_\_\_\_

The foregoing instrument was acknowledged before me on \_\_\_\_\_,  
\_\_\_\_\_, by \_\_\_\_\_, Subdivider.

My commission expires:

\_\_\_\_\_  
Notary Public

CITY OF PUEBLO, a Municipal Corporation

By: \_\_\_\_\_  
Mayor of Pueblo, Colorado

ATTEST:

\_\_\_\_\_  
City Clerk

STATE OF COLORADO    )  
                                  ) ss.  
COUNTY OF PUEBLO    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by \_\_\_\_\_, as Mayor of Pueblo, Colorado, and \_\_\_\_\_ as City Clerk of the City of Pueblo, Colorado.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

[ S E A L ]

\_\_\_\_\_  
Notary Public

APPROVED AS TO FORM:

City Attorney

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**SUBDIVISION IMPROVEMENTS AGREEMENT  
EXHIBIT "B"**

SUBDIVISION NAME:

DEVELOPER:

ENGINEER:

Itemization of Required Public Improvements  
(Use Unit Prices Approved by Public Works in Preparation of Exhibit "B")

This is an estimate only. Actual construction costs may vary.

PREPARED BY:

FIRM:

The undersigned hereby certifies that (i) the Required Public Improvements shown hereon and the Plans and Specifications therefore constitute all of the public improvements required to be installed and constructed for the Subdivision by Chapter 4, Title XII of the Pueblo Municipal Code and the standards and specifications approved by City Council, (ii) the quantities of construction elements shown hereon accurately depicts the quantities necessary to construct the Required Public Improvements and (ii) the unit prices shown hereon are the most current unit prices provided by the City of Pueblo.

[P.E. SEAL]

\_\_\_\_\_  
Professional Engineer

\_\_\_\_\_  
Date

REVIEWED BY:

\_\_\_\_\_  
Director of Public Works

\_\_\_\_\_  
Date