

SUBDIVISION IMPROVEMENTS AGREEMENT
BRANDING IRON AT STERLING RANCH FILING NO. 2, a Replat of
Tract K, Sterling Ranch Filing No. 1

THIS AGREEMENT, made between **SR LAND, L.L.C.**, (the “Subdivider”) **STERLING RANCH METROPOLITAN DISTRICT NO. 1** (the “District”) and **EL PASO COUNTY**, by and through the Board of County Commissioners of El Paso County, Colorado (the “County”) shall become effective the date of approval of the Final Plat by the Board of County Commissioners.

WITNESSETH:

WHEREAS, the Subdivider, as a condition of approval of the final plat of Branding Iron at Sterling Ranch Filing No. 2 Subdivision (“Branding Iron No. 2”) and the District wish to enter into a Subdivision Improvements Agreement, as provided for by Section 30-28-137 (C.R.S.), Chapter 5 of the El Paso County Engineering Criteria Manual and Chapter 8 of the El Paso County Land Development Code incorporated herein; and

WHEREAS, pursuant to the same authority, the Subdivider is obligated to provide security or collateral sufficient in the judgment of the Board of County Commissioners to make reasonable provision for completion of certain public improvements set forth on Exhibit A attached hereto and incorporated herein; and

WHEREAS, the Subdivider wishes to provide collateral to guarantee performance of this Agreement, including construction of the above-referenced improvements, by means of a letter of credit; and

WHEREAS, Branding Iron No. 2 is replat of Tract K, Sterling Ranch Filing No. 1, located within Sterling Ranch, a 1,444 acre master planned community; and

WHEREAS, the parties hereto desire to set forth their understanding and agreement with regard to the construction and installation of the improvements set forth on Exhibit A attached hereto.

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

1. **Responsibility to Construct:** The Subdivider and District agree to construct and install, at their sole expense, all of those improvements as set forth on Exhibit A attached hereto. Such obligation shall be joint and several unless otherwise set forth herein. To secure and guarantee performance of the Subdivider’s and the District’s obligations as set forth herein, the Subdivider agrees to provide collateral to remain in effect at all times until the improvements are completed and accepted in accordance with Chapter 5 of the ECM. Security and collateral shall be posted in the form of cash in the amount of \$578,907.20.

2. **Renewal of Collateral:** Subdivider is responsible for providing any renewals of collateral to ensure that there is never a lapse in security coverage. Subdivider shall procure renewal/extension/replacement collateral at least fifteen (15) days prior to the expiration of the original or renewal/extension/replacement collateral then in effect. Failure to procure renewal/extension/replacement collateral within this time limit shall be a default under this Agreement and shall allow the County to execute on the collateral. In addition, if Subdivider allows collateral to lapse at any time, no lots in the subdivision may be sold, conveyed or transferred, whether by Deed or Contract, after the expiration date of such collateral until the improvements identified on Exhibit A have been completed and final acceptance is received from the County. If replacement collateral is used for renewal, approval by the Board of County Commissioners is required.
3. **Construction of Improvements or Collateral:** No lots in the subdivision shall be sold, conveyed or transferred, whether by Deed or by Contract, nor shall building permits be issued until and unless the required improvements for the subdivision have been constructed and completed in accordance with the approved construction plans and preliminary acceptance is received from the County. In the alternative, lots within the subdivision may be sold, conveyed or transferred and/or have building permits issued upon receipt of collateral acceptable to the County, pursuant to this Agreement, which is sufficient to guarantee construction of the improvements in the attached Exhibit A.
4. **Roads:** The roads set forth in this final plat will be designed, constructed and dedicated to the County pursuant to the terms and conditions contained herein.
5. **Design Standards:** The Subdivider and District agree that all of the public improvements to be completed as identified in Exhibit A shall be constructed in compliance with the following:
 - a. All laws, resolutions and regulations of the United States, State of Colorado, El Paso County and its various agencies, affected special districts and/or servicing authorities.
 - b. Such other designs, drawings, maps, specifications, sketches and other matter submitted to and approved by any of the above-stated- governmental entities.
6. **Timing of Construction and Acceptance:**
 - a. **General.** All improvements, with the exception of the Branding Iron No. 2 Drainage Improvements, the Channel Improvements (as defined in subsection 5.b. herein below), and the Meridian System, including the Meridian System Connection, shall be completed by the Subdivider, meeting all applicable standards for preliminary acceptance, within 24 (twenty-four) months from the date of notice to proceed in the Construction Permit for the Subdivision.
 - b. **Drainage Improvements and Channel Improvements.**

The drainage ways, detention ponds and bank stabilization (i.e., soil, riprap, and turf reinforcement matting along embankment toes and slopes) associated with this Subdivision (collectively, the “Branding Iron No. 2 Drainage Improvements”) shall be completed by the Subdivider, meeting all applicable standards for preliminary acceptance, within twelve (12) months of recording the final plat.

The drainage improvements in Tract D, Sterling Ranch Filing No. 1, located in the Sand Creek Channel, which improvements consist of drop structures, check structures and similar stabilization or protection improvements (collectively, the “Channel Improvements”), shall be completed by the District within the time frames set forth in subsection 6.b. of the *Subdivision Improvements Agreement for Sterling Ranch Filing No. 1*, dated May 30, 2018, and recorded in the real property records for El Paso County, Colorado at reception number 218061175.

If the Subdivider determines that the completion date needs to be extended, the Subdivider shall submit a written request for a change in the completion date to the ECM Administrator at least 90 days in advance of the completion date. The request shall include the reasons for the requested change in completion date, the proposed new completion date, and prove collateral is in place to cover the extension time requested. The completion date for the Subdivision may be extended one time, for a period no longer than 6 months at the discretion of the ECM Administrator. Any additional request for extension of the completion date will be scheduled for hearing by the Board of County Commissioners. The ECM Administrator or the Board of County Commissioners may require an adjustment in the amount of collateral to take into account any increase in cost due to the delay including inflation.

- c. **Vollmer Road.** As more particularly described in the Subdivision Improvements Agreement for Sterling Ranch Filing No. 1, the parties agree that the addition of two lanes to the existing two-lane cross section of Vollmer Road shall be completed no later than May 30, 2021, three years from the date of recording of Filing No. 1. In the event that any portions of the four lane cross section of Vollmer Road are not completed within the three year period, collateral sufficient in the opinion of the County to assure completion of the improvements must be posted by the Subdivider and a deadline by which such road improvements shall be completed shall be established by written agreement.
- d. **Wastewater Treatment.** The District has an intergovernmental agreement, dated on or about September 11, 2014, with Meridian Service Metropolitan District for the provision of wastewater treatment services (the “Meridian System”). The District has also entered into an intergovernmental agreement with the City of Colorado Springs and Colorado Springs Utilities which provides for temporary wastewater treatment services while the District completes its connection to the Meridian System (“Meridian System

Connection”). The agreement with the City provides for interim treatment services for a period of up to one year from the execution of the agreement, or August 12, 2020.

Subdivider has previously provided construction drawings for the Meridian System Connection, including the sewer line and lift station, that have been signed by the Meridian Service Metropolitan District, as well as Financial Assurance Estimates for the completion of such improvements (the “Meridian Line Collateral”). The Meridian System Connection is substantially complete, as set forth in the report dated October 6, 2020, from the District Engineer, Brad Simons of MMI Engineering, LLC, and shall be operationally complete by November 30, 2020. It is understood by the parties hereto that, should it become necessary for the County to draw on the Meridian System Connection Collateral to complete the Meridian System Connection, the County intends to authorize and designate Elite Properties of America, Inc. as the appropriate entity to complete said connection. A copy of an agreement between the Subdivider and Elite addressing this potential work has been provided to the County. Finally, it is agreed that, should it become necessary for the County to draw on the Meridian System Connection Collateral to complete the connection, the County may impose a moratorium on the issuance of additional building permits on lots located in all recorded final plats at Sterling Ranch until the Meridian System Connection is completed.

- e. **Briargate Parkway.** The following roadways shall be completed and ready for preliminary acceptance no later than six (6) months following final plat recording:
 - i. the southerly two lanes of Briargate Parkway from Vollmer Road to Wheatland Drive, in accordance with the Briargate Parkway “Interim” Street Improvement Plans (approved by the County in connection with Sterling Ranch Filing No. 1), a copy of which is attached hereto as Exhibit A-1; and
 - ii. Wheatland Drive from Briargate Parkway to Dines Boulevard, as identified on the Sterling Ranch Dines Boulevard and Wheatland Drive Street Improvement Plans (approved by the County in connection with Sterling Ranch Filing No. 1) a copy of which is attached hereto as Exhibit A-2.

- 7. **Construction Criteria:** The Subdivider and District agree, and the parties acknowledge that the construction of the improvements identified and guaranteed through this Subdivision Improvements Agreement shall follow the inspection and acceptance process that is identified in Chapter 5 of the County’s Engineering Criteria Manual. This is to include among other things, a Preliminary Acceptance process, posting of appropriate Warranty collateral at that time, and a 2-year warranty period prior to final acceptance. Where any inconsistency exists between Chapter 5 of the Engineering Criteria Manual and

the Land Development Code with respect to these inspections, collateral and acceptance processes, the Engineering Criteria Manual is the controlling document.

8. **Plat Restriction Remedy:** It is mutually agreed pursuant to the provisions of Section 30-28-137(3) C.R.S. that the County or any purchaser of any lot, lots, tract or tracts of land subject to a plat restriction which is the security portion of a Subdivision Improvements Agreement shall have the authority to bring an action in any District Court to compel the enforcement of any Subdivision Improvements Agreement on the sale, conveyance, or transfer of any such lot, lots, tract or tracts of land or of any other provision of Article 28 of Title 30, Colorado Revised Statutes. Such authority shall include the right to compel rescission of any sale, conveyance, or transfer of any lot, lots, tract or tracts of land contrary to the provisions of any such restrictions set forth on the plat or in any separate recorded instrument, but any such action shall be commenced prior to the issuance of a building permit by the County where so required or other otherwise prior to commencement of construction on any such lot, lots, tract or tracts of land.
9. **Releases:** It is further mutually agreed that, pursuant to the provisions of Section 30-28-137 (2) C.R.S., and Chapter 5 of the County's Engineering Criteria Manual, as improvements are completed, the Subdivider may apply to the Board of County Commissioners for a release of part or all of the collateral deposited with said Board. Upon inspection and approval, the Board shall release said collateral. The County agrees to respond to an inspection request in a reasonable time upon receipt of the request. If the Board determines that any of such improvements are not constructed in substantial compliance with specifications it shall furnish the Subdivider and District a list of specific deficiencies and shall be entitled to withhold collateral sufficient to ensure such substantial compliance.

If the Board of County Commissioners determines that the Subdivider or District will not construct any or all of the improvements in accordance with all of the specifications and the provisions of this Agreement, the Board of County Commissioners may withdraw and employ from the deposit of collateral such funds as may be necessary to construct the improvements in accordance with the specifications. In addition, and with respect to the Meridian System Connection only, either as an alternative to the withdrawal of collateral or in connection therewith, at the County's sole discretion, the County may request Elite to complete the Meridian System Connection in accordance with the approved plans and specifications for such connection set forth in Exhibit A-3. If the County draws on the posted collateral and Elite thereafter completes the improvements, the County shall reimburse Elite for such work in the amount of the collateral withdrawn or the cost of such work, whichever is less. If Elite declines to complete the Meridian System Connection, the County shall withdraw and employ from the deposit of collateral such funds as may be necessary to complete the Meridian System Connection in accordance with the specifications.

10. **Title Insurance:** The Subdivider agrees to provide the County with a title insurance commitment at time of final platting evidencing that fee simple title of all lands in the subdivision is vested with the Subdivider.

11. **Plat Approval:** The County agrees to approval of the final plat of the Branding Iron at Sterling Ranch Filing No. 2 Subdivision subject to the terms and conditions of this Agreement.
12. **Amendment:** Parties hereto mutually agree that this Agreement may be amended from time to time provided that such amendment be in writing and signed by all parties hereto.
13. **Effective Date:** This Agreement shall take effect on the date of approval of the Final Plat by the Board of County Commissioners.
14. **Traffic Impact Fees:** The Subdivider agrees for itself and its successors and assigns that Subdivider and/or its said successors and assigns shall be required to pay traffic impact fees in accordance with the El Paso County Road Impact Fee Program at or prior to the time of building permit application. This fee obligation, if not paid in full at final plat recording, shall be documented on plat notes and all sales documents to ensure that a title search would reveal such fee. The Subdivider agrees to the inclusion of Branding Iron at Sterling Ranch Filing No. 2 into the El Paso County Public Improvement District No. 2.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year below written.

**BOARD OF COUNTY COMMISSIONERS OF
EL PASO COUNTY, COLORADO**

(Date Final Plat Approved)

By: _____, Chair

ATTEST:

County Clerk and Recorder

**STERLING RANCH METROPOLITAN
DISTRICT NO. 1**

By: 
James Morley, President

SR LAND, LLC

By: 
James Morley, Manager