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El Paso County, CO



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SF-20-010

PRAIRIE RIDGE FILING NO. 1
ESCROW AGREEMENT

This Escrow Agreement (“Agreement”) is entered into this 1st day of November, 2022 (“Effective Date”) by and between the El Paso County, Colorado, a body corporate and politic and a political subdivision of the State of Colorado, (“County”), by and through the Board of County Commissioners of El Paso County, Colorado (“Board”), and Clovis Point CO, LLC, a Colorado Limited Liability Company (“Developer”). The County and the Developer may be collectively referred to herein as the Parties.

Recitals

WHEREAS, on September 6, 2022 and pursuant to Resolution No. 22-310, the Board approved the final plat of a subdivision known as Prairie Ridge Filing No. 1 (the “Subdivision”); and

WHEREAS, pursuant to condition of approval for the Subdivision, Developer is required to deposit with the County certain sums as its fair, equitable and proportionate contribution toward the construction of improvements to Brown Road; and

WHEREAS, the El Paso County Treasurer has agreed to receive, hold and disburse the funds deposited by Developer in a separate interest-bearing account that is not part of the County’s operating budget.

Agreement

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the sufficiency of which are hereby acknowledged by the Parties, the Parties agree as follows:

1. Incorporation of Recitals. The Parties hereby incorporate by reference the above-stated Recitals into this Agreement as if fully set forth herein.

2. Deposit of Funds. Developer has deposited, or at time of recording of the final plat, shall deposit, with the El Paso County Treasurer Sixty-Six Thousand One Hundred Fifty dollars (\$66,150) as a portion of its fair, equitable and proportionate contributions toward the cost of the design and construction of the road improvements and any necessary related improvements to Brown Road (the “Brown Road Funds”). Additionally, Developer shall require as a condition of sale and closing of each of the seven lots contained within the subdivision, at time of closing each lot, payment by the buyer to Developer of 1/7th of the remaining Thirty-Five Thousand Seven Hundred Twenty-One dollars (\$35,721) balance of the contributions, or Five Thousand One Hundred Three dollars (\$5,103) per lot, which funds the Developer shall cause to be paid to Planning and Community Development Department within thirty (30) days of receipt, who in turn will transfer the funds to the El Paso County Treasurer for deposit into the account described in Part 3 Escrow Accounts.

3. Escrow Accounts. The El Paso County Treasurer has agreed to accept and escrow the Brown Road Funds and to hold these funds in a separate interest-bearing account that is not part of the County's operating budget. The El Paso County Treasurer shall receive, hold and disburse the funds in accordance with the terms of this Agreement.

4. Disbursement of Funds. On or before November 1st, 2032 or five (5) years from the closing date of sale of the last lot in the subdivision, whichever is later, the County may request the disbursement of the Brown Road Funds, including any interest accrued thereon, to be used only for the design and construction of the Brown Road improvements. Any such disbursement request shall be signed by the County Engineer on behalf of the Board of County Commissioners of El Paso County, Colorado and shall reference this Agreement. The El Paso County Treasurer has agreed that a request presented in conformity with the terms of this Agreement will be duly honored.

5. Reimbursement of Funds Not Used. Should the County not use the Brown Road Funds prior to or on November 1st, 2032 or five (5) years from the closing date of sale of the last lot in the subdivision, whichever is later, the El Paso County Treasurer shall return such funds, with any interest accrued thereon, to Developer or its successors or assigns, excluding individual lot owner successors.

6. No Liability of Treasurer. The El Paso County Treasurer shall not be liable in either his/her official or individual capacity for any act he/she may do or omit to do hereunder while acting in good faith and in the exercise of his/her own judgment; and any act done or omitted by him/her pursuant to the advice of his/her own attorneys shall be conclusive evidence of such good faith. No provision of this Agreement shall be deemed or construed to be a relinquishment or waiver of any kind of the applicable limitation of liability provided to the County by the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S.

7. No Duty of Treasurer to Verify. The El Paso County Treasurer shall be under no duty or obligation to ascertain the identity, authority or rights of the parties executing or delivering or purporting to execute or deliver these instructions or any documents or papers or payments deposited or called for hereunder, and the El Paso County Treasurer assumes no responsibility or liability for the validity or sufficiency of these instructions or any documents or payers or payments deposited or called for hereunder.


8. General Provisions.

- a. This Agreement may be amended by mutual written agreement of all Parties or their respective successors or assigns.
- b. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Colorado. Venue shall be exclusively in the District or County Court in and for El Paso County, Colorado.
- c. The undersigned hereby acknowledge and represent that they have the legal authority to bind their respective Party to this Agreement.

- d. If any paragraph, section, subsection, clause or phrase of this Agreement is, for any reason, held to be invalid by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Agreement.
- e. The waiver of a breach of any of the provisions of this Agreement by any Party shall not constitute a continuing waiver or a waiver of any subsequent breach of the same or other provision of this Agreement.
- f. This Agreement does not and shall not be deemed to confer on any third party the right to the performance of or proceeds under this Agreement, to claim any damages or to bring any legal action or other proceeding against any Party for any breach or other failure to perform this Agreement.
- g. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages shall all be attached to a single instrument.
- h. A fully executed copy of this Agreement shall be recorded in the records of the El Paso County Clerk and Recorder.

In witness of the foregoing provisions, the Parties have executed this Agreement as of the Effective Date set forth above.

ATTEST



 Chuck Groerman
 County Clerk & Recorder


22-445

BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO

By:


 Stan Vanderwerf, Chair

APPROVED AS TO FORM:


 County Attorney's Office

Clovis Point CO, LLC, a Colorado Limited Liability Company

By: 

Name: Alexander Kuhnke

Title: Managing Member

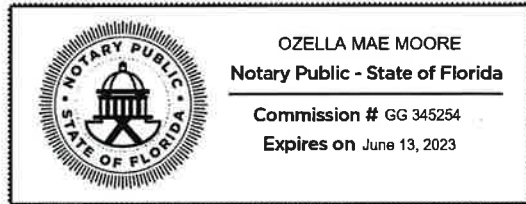
STATE OF Florida)
) S.S.
COUNTY OF okaloosa)

The foregoing instrument was acknowledged before me this 1st day of November, 20²², by Alexander Kuhnke, as Managing Member of Clovis Point CO, LLC, a Colorado limited liability company. Provided CA DL for Identification

WITNESS my hand and official seal.

My commission expires: 06/13/2023


Notary Public OZELLA MAE MOORE



Notarized online using audio-video communication