

SUBDIVISION IMPROVEMENTS AGREEMENT

THIS AGREEMENT, made between Sunset Village View, LLC, hereinafter called the "Subdivider," and El Paso County by and through the Board of County Commissioners of El Paso County, Colorado, hereinafter called the "County," shall become effective the date signed by the Executive Director of the El Paso County Planning and Community Development Department.

WITNESSETH:

WHEREAS, the Subdivider has purchased most if not all of the undeveloped lots in the Sunset Village Filing 4 Subdivision; and

WHEREAS, the Subdivider wishes 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 Exhibits A-1 (Financial Assurance Estimate Form, Phase I) and A-2 (Financial Assurance Estimate Form, Phase II) 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 irrevocable letters of credit.

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

1. The Subdivider agrees to construct and install, at his sole expense, all of those improvements as set forth on Exhibits A-1 and A-2 attached hereto. To secure and guarantee performance of its 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 one or more irrevocable letters of credit in the amounts of \$380,906.24 for Phase I and the amount of \$185,611.77 for Phase II issued by Integrity Bank of Colorado Springs, CO.
2. 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 (Financial Assurance Estimate Form, Phase I); have been completed and final acceptance is received from the County. If replacement collateral is used for renewal, approval by Board of County Commissioners is required.
3. 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, the following

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-1: Block 1, Lots 1-7; Block 4, Lots 14-21; Block 5, Lots 1 & 2; Block 6, Lots 1 & 2; Block 7, Lot 1**, and the following 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-2: Block 2, Lots 1-11; Block 4, Lots 2-11**.

4. The Subdivider agrees that all of those certain public improvements to be completed as identified on Exhibits A-1 and A-2, 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.
5. All improvements shall be completed by the Subdivider, meeting all applicable standards for preliminary acceptance, within 12 (twelve) months from the date of notice to proceed in the Construction Permit for the Subdivision. 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 required 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 requests 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.
6. 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 this article. 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 otherwise prior to commencement of construction on any such lot, lots, tract or tracts of land.
7. 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 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 will not

construct any or all of the improvements in accordance with all of the specifications, 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.

- 8. The Subdivider agrees, and both parties acknowledge that the construction of the improvements identified and guaranteed through this Subdivision Improvements Agreement shall follow the inspection, collateral, 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, replacement of performance collateral with 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.
- 9. 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.
- 10. The Subdivider agrees for itself and its successors and assigns that Subdivider and/or its said successors and assigns shall be required to pay road impact fees in accordance with the El Paso County Road Impact Fee Program at or prior to the time of building permit submittals.

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 of Signature)

By: _____
Craig Dossey, Executive Director
Planning and Community Development
Authorized signatory pursuant to LDC

Approved as to form:

County Attorney's Office

SUBDIVIDER

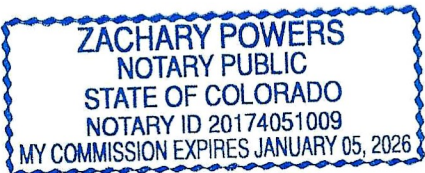
Sunset Village View, LLC

By: Scott Van Wyhe
Name: Scott Van Wyhe

Title: Managing Member

Subscribed, sworn to and acknowledged before me this 18 day of March, 2022
by the parties above named.

My commission expires: 1-5-26.



Zachary Powers
Notary Public