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March 23, 2022

Mr. Timothy Buschar  
Director of Entitlement  
Colorado Land Acquisition dba Aspen View Homes  
Colorado Springs, Colorado 80921  
Via email: [tbuschar@aspenviewhomes.net](mailto:tbuschar@aspenviewhomes.net)

**Subject: Trails at Aspen Ridge Filing 5 Trip Generation Comparison Letter  
PCD File No. SF-21-38**

Dear Mr. Buschar,

Matrix Design Group (Matrix) submitted a traffic impact study addendum to El Paso County dated February 2, 2021 and revised April 16, 2021 analyzing the impacts for the entirety of the Trails at Aspen Ridge development. The total number of dwelling units for the entire project remains 861 single family dwelling units. The development is now split into 7 filings instead of the 6 filings shown in the PUDSP. Filing 5 contains 58 of the 861 dwelling units. The findings from the February 2021 addendum that was revised in April 2021 are still valid for the entirety of the project as the total number of units remains the same.

Trails at Aspen Ridge will also contribute trips to the Powers Boulevard/Bradley Road intersection that will require improvements in the future. The project will contribute 58.5% of its incoming trips and 46% of its outgoing trips to the Powers Boulevard/Bradley Road in the horizon year of 2040. This equates to 2,561 daily inbound trips and 2,014 outbound daily trips for a total of 4,575 daily trips through the intersection. The intersection will have 57,460 total daily trips in the year 2040. Therefore, the project contributes (2,561/57,460) 7.9% of the total daily trips through the Powers Boulevard/Bradley Road intersection. Filing 5 specifically contributes 7% of the project's daily trips or 306 daily trips to the intersection of Powers Boulevard and Bradley Road. This equates to a 0.53% fair share contribution towards future improvements to the Powers Boulevard/Bradley Road intersection.

The findings from the February 2021 addendum that was revised in April 2021 should be considered valid for Filing 5 since the total number of dwelling units has not changed.

Colorado Land Acquisition (COLA) has a development and cost reimbursement agreement in place with the adjacent commercial property owners for the design and construction of Frontside Drive. A copy of this agreement is attached to this letter.


Please let me know if you have any questions at [Scott.Barnhart@matrixdesigngroup.com](mailto:Scott.Barnhart@matrixdesigngroup.com) or (719) 575-0100. Thank you.

*Excellence by Design*

Anniston, AL | Atlanta, GA | Colorado Springs, CO | Denver, CO | Niceville, FL | Parsons, KS | Phoenix, AZ  
Sacramento, CA | Tamuning, GUAM | Texarkana, TX | Washington, DC

**Traffic Engineer's Statement**

The attached traffic report and supporting information were prepared under my responsible charge and they comport with the standard of care. So far as is consistent with the standard of care, said report was prepared in general conformance with the criteria established by the County for traffic reports.



\_\_\_\_\_  
Scott D. Barnhart, P.E. #37447

\_\_\_\_\_  
March 23, 2022

\_\_\_\_\_  
Date

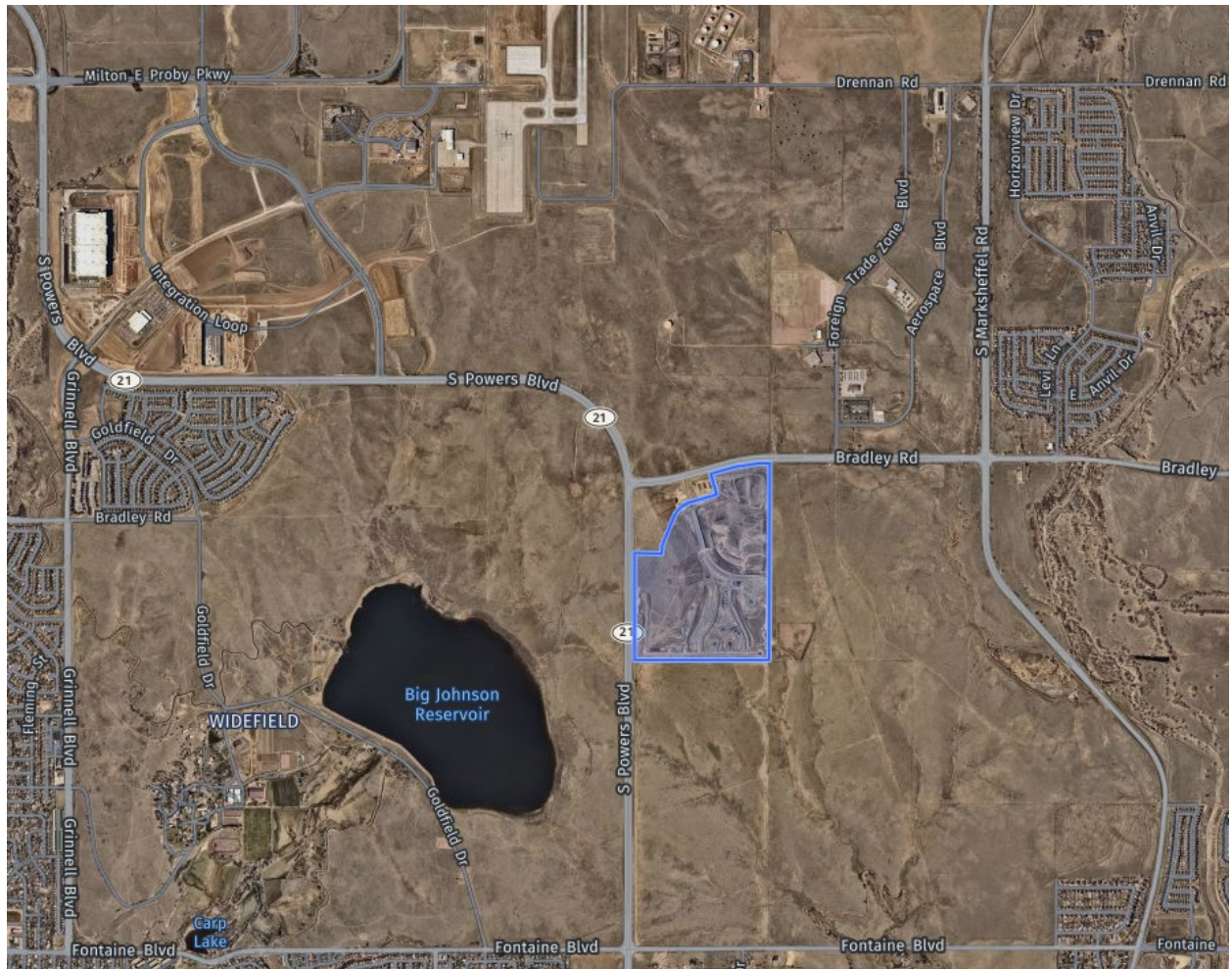
**Developer's Statement**

I, the Developer, have read and will comply with all commitments made on my behalf within this report.

\_\_\_\_\_  
Tim Buschar  
Director of Entitlement  
Colorado Land Acquisition dba Aspen View Homes  
555 Middle Creek Parkway, Suite 500  
Colorado Springs, CO 80921

\_\_\_\_\_  
Date

Figure 1 - Vicinity Map



**TRAILS AT ASPEN RIDGE****DEVELOPMENT AND COST REIMBURSEMENT AGREEMENT WITH LIEN**

**THIS DEVELOPMENT AND COST REIMBURSEMENT AGREEMENT WITH LIEN** (the "**Agreement**") is made as of the 15<sup>th</sup> day of APRIL 2021 (the "**Effective Date**"), by and among COLA, LLC, a Colorado limited liability company ("**COLA**"), CPR ENTITLEMENTS, LLC, a Colorado limited liability company ("**CPR**"), PHI REAL ESTATE SERVICES, LLC, a Colorado limited liability company ("**PHI**"), WATERVIEW EAST DEVELOPMENT, LLC, a Colorado limited liability company ("**Waterview East**"), and FRANK W. HOWARD #2 LIMITED PARTNERSHIP, LLLP, a Colorado limited liability limited partnership ("**Howard**"). COLA, CPR, PHI, Waterview East and Howard are sometimes individually referred to as a "**Party**" and collectively referred to as the "**Parties**."

**RECITALS:**

**A.** COLA, its affiliate, Aspen View Homes, LLC, a Colorado limited liability company ("**AVH**"), Richmond American Homes of Colorado, Inc., a Delaware corporation, and Waterview II Metropolitan District each own a portion of certain real property located in unincorporated El Paso County, Colorado (the "**County**"), which consists of lots and tracts that have been subdivided pursuant to the final subdivision plat of Trails at Aspen Ridge Subdivision Filing No. 1, County of El Paso, State of Colorado ("**Subdivision**") and which real property is described on **Exhibit A** attached hereto and depicted in green on **Exhibit D** attached hereto and labeled thereon as Cola, LLC (the "**COLA Property**").

**B.** Waterview East owns certain real property adjacent to and in the vicinity of the COLA Property, which is identified and more particularly described on **Exhibit C** and depicted in tan on **Exhibit D** attached hereto and labeled thereon as 'Waterview Property' (the "**Waterview Property**").

**C.** A portion of the Rankin East Property (as hereinafter defined), comprised of two (2) separate parcels of real property, is owned by CPR, and the remaining portion of the Rankin East Property, comprised of one (1) separate parcel of real property, is owned by PHI. The Rankin East Property adjacent to and in the vicinity of the COLA Property, and is identified and more particularly described on **Exhibit B** and depicted in pink on **Exhibit D** and labeled thereon as 'Rankin East Property' (the "**Rankin East Property**").

**D.** Howard owns certain real property adjacent to and in the vicinity of the COLA Property, which is identified and more particularly described on **Exhibit B** and depicted in orange on **Exhibit D** attached hereto and labeled thereon as 'CPR East Property' (the "**CPR East Property**").

**E.** The COLA Property, the Waterview Property, the CPR East Property and the Rankin East Property are shown and depicted on the graphic illustration that is attached hereto as **Exhibit D**.

**F.** Each separate portion of the COLA Property, the Rankin East Property, the CPR East Property and the Waterview Property owned by a Party is sometimes referred to herein as a "**Parcel**," and the COLA Property, the Rankin East Property, the CPR East Property and the Waterview Property are collectively the "**Property**."

**G.** COLA has agreed to construct or cause to be constructed certain infrastructure improvements on and near the Property which are described on **Exhibit E** attached hereto ("**Improvements**"). The Improvements benefit and serve the Property.

**H.** The Parties hereby acknowledge and agree that Richmond is executing the below Consent page, which follows the Parties' signature pages, solely for the purpose of acknowledging subsections (i) through (v) as set forth in the Consent.

**I.** The Parties now desire to enter into this Agreement to (i) set forth the terms and conditions under which COLA will construct or cause the Improvements to be constructed, (ii) set forth the terms, conditions, and procedures on which Waterview East, CPR, PHI and Howard will pay and reimburse certain costs incurred by COLA for the construction of the Improvements, and (iii) set forth certain other agreements between the Parties with respect to the Improvements.

#### **AGREEMENT:**

**NOW THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, The Parties agree as follows:

**1. Incorporation of Recitals.** The Parties hereby acknowledge and agree to the Recitals set forth above, which are incorporated herein by this reference.

**2. Responsibilities of COLA.**

**2.1 Generally.** COLA shall coordinate, administer and oversee (a) the preparation and filing of all applications, filings, submittals, plans and specifications, budgets, timetables and other documents pertaining to construction and installation of the Improvements and (b) the construction and installation of the Improvements. Subject to reimbursement as provided below in Section 5, COLA shall pay or cause the payment of all Costs relating to the construction of the Improvements in a prompt and timely fashion so as to avoid the assertion of any claim for payment against Waterview East, CPR, PHI or Howard or the Waterview Property or the Rankin East Property or the CPR East Property. COLA will engage or cause to be engaged consultants, contractors and subcontractors who will be responsible for the construction of the Improvements and suppliers who will be responsible for supplying labor, materials, equipment, services and other work in connection with the construction of the Improvements ("**Service Provider(s)**"). The Parties acknowledge and agree that the Waterview II Metropolitan District ("**District**") may finance, coordinate, administer and oversee the construction of certain Improvements but COLA shall not be released from its obligation to Waterview East, CPR, PHI and Howard to cause the completion of the Improvements, whether or not COLA or the District constructs any portion of the Improvements.

2.2 **Comply with Legal Requirements.** COLA, as part of the Costs (as hereafter defined), shall require all Service Providers in their Contracts (as defined below) to comply with all terms and conditions of applicable law in constructing the Improvements.

2.3 **Surety.** COLA shall provide to the County and any applicable Approving Authority (as hereinafter defined) such letters of credit, bonds, or other surety as required by the County any other applicable Approving Authority for the Improvements, which shall be in form and amount as required by the County or the applicable Approving Authority ("**Surety**"). Waterview East, CPR, PHI and Howard shall take all commercially reasonable actions and execute all documents reasonably requested by COLA to allow COLA to obtain the reduction or release of such Surety at such time as COLA is entitled to obtain a release of the same. Waterview East, CPR, PHI and Howard, respectively, shall indemnify, defend, and hold harmless COLA from all costs and expenses incurred by COLA in the event the County or any Approving Authority draws upon or withholds such Surety posted by COLA due to any default by Waterview East, CPR, PHI or Howard under this Agreement or other act of omission of Waterview East, CPR, PHI and Howard that causes the County or any Approving Authority to draw upon or withhold such Surety.

2.4 **Taxes, Fees and Permits.** COLA shall secure all approvals, easements, assessments, charges, permits and governmental fees, licenses and inspections necessary for completion of the Improvements.

2.5 **Dedications.** COLA, Waterview East, CPR, PHI and Howard shall timely make all conveyances and dedications of the Improvements if and as required by the Approving Authorities, free and clear of all liens and encumbrances.

### **3. Construction of Improvements.**

3.1 **Plans and Specifications.** COLA will construct or cause the construction of the Improvements substantially in conformance with plans and specifications ("**Plans**") approved by the County or any other applicable governmental or quasi-governmental entity or agency or utility provider (each an "**Approving Authority**" and collectively, the "**Approving Authorities**"). The Plans for the Improvements that have been previously approved by the Approving Authorities are identified on **Exhibit F** attached hereto. The Parties acknowledge that some of the Plans have not yet been completed and approved by the applicable Approving Authorities. To the extent the Plans for a particular Improvement have not been approved by the applicable Approving Authority as of the Effective Date, then upon such approval the Parties shall prepare, execute and record an amendment to this Agreement to amend **Exhibit F** to include such approved Plans. If COLA determines that the Plans need to be amended (a "**Plan Change**"), then COLA will use reasonable efforts provide written notice of the change (a "**Notice of Plan Change**") to Waterview East, CPR, PHI and Howard. The Notice of Plan Change must describe the modification to the Plans requested by COLA. Waterview East, CPR, PHI and Howard shall have five (5) business days after receipt of the Notice of Plan Change to provide written notice to COLA if it objects to the proposed Plan Change because such amendment would materially and adversely affect the quality or function of the Improvements or the ability of Waterview East, CPR, PHI and Howard to reasonably develop their respective portions of the Property (a "**Notice of Plan Change Objection**"), which shall describe revisions



to the Plan Change that would render it acceptable to the objecting Party. If any of Waterview East, CPR, PHI and Howard fails to give a timely Notice of Plan Change Objection to COLA, the Plan Change shall be deemed approved by Waterview East, CPR, PHI and Howard. Within five (5) business days after delivery to COLA of a Notice of Plan Change Objection, the Parties shall meet to approve or reject the Plan Change. If the Parties cannot reach an acceptable resolution regarding the Notice of Plan Change Objection within said five (5)-business day period, the dispute shall be resolved pursuant to the arbitration provision set forth in Section 6.6 below. Any increased cost resulting from a Plan Change shall be part of the Costs, as hereinafter defined. None of Waterview East, CPR, PHI or Howard shall have any right to give a Notice of Plan Change Objection if the Notice of Plan Change does not materially adversely affect their respective Parcels.

3.2 **Construction Standard.** The Contracts (as defined below) shall require the Service Providers to cause the Improvements to be constructed in accordance with the Construction Standard. As used herein, the term "**Construction Standard**" means construction and installation in a good, workmanlike manner and in substantial conformity with the Plans (as may be modified pursuant to the terms hereof), and the applicable requirements of the Approving Authorities.

3.3 **Contracts for Work.** COLA or its contractors shall contract for all of the work and materials comprising the Improvements. COLA shall have the right to pursue, negotiate, agree to and execute contracts and agreements with Service Providers for the work and materials comprising the Improvements (each a "**Contract**" and collectively, the "**Contracts**") as COLA deems necessary or appropriate in its commercially reasonable discretion in substantial accordance with industry standards. The Contracts shall be substantially in form and substance to construction contracts used by COLA for the construction of similar improvements in the State of Colorado (the "Contract"). COLA shall cause each Contract, in addition to other matters, to (i) require the Service Provider to name Waterview East, CPR, PHI and Howard as additional insureds on all required insurance maintained by the Service Provider, and (ii) require the Service Providers to provide a warranty on materials and labor supplied by such Service Provider for a period of at least one (1) year.

### 3.4 **Commencement and Completion; Force Majeure.**

3.4.1 **Commencement and Completion.** COLA shall use commercially reasonable efforts to commence and timely complete the Improvements. COLA currently anticipates to achieve Substantial Completion (as hereinafter defined) of the Improvements on or before February 15, 2022. Waterview East, CPR, PHI and/or Howard may, upon ninety (90) days advance notice to COLA, commence and complete all or any portion of the Improvements but only (a) to the extent that COLA has not commenced construction or entered a contract for the construction of the applicable Improvements, and (b) completion of such Improvements are required in connection with Waterview East's, CPR's, PHI's and/or Howard's planned development of the Rankin East Property, the CPR East Property and/or the Waterview Property, as applicable. In such event, Waterview East, CPR, PHI and/or Howard shall complete such portion of the Improvements in accordance with this Agreement, including the budget and all standards and criteria set forth this Agreement applicable to COLA's performance of construction work, and shall receive a credit against their respective Prorata Share obligation set

forth in Section 5.1 equal to the reasonable Costs of constructing the Improvements incurred and paid by Waterview East, CPR, PHI and/or Howard.

**3.4.2 Force Majeure.** Notwithstanding any contrary provision of this Agreement, the time for performance of COLA's obligations under this Agreement shall be extended by a period of time equal to any period that such performance or progress in construction of the Improvements is delayed due to any Dispute, as defined below, acts or failure to act of any Approving Authority, strike, riot, act of war, act of violence, unseasonable or intemperate weather, act of God, pandemic or epidemic, or any other act, occurrence or non-occurrence beyond COLA's reasonable control, notice of which has been provided to Waterview East, CPR, PHI and Howard after the occurrence thereof (each a "**Force Majeure Event**").

### **3.5 Substantial Completion. Definition of Substantial Completion.**

**3.5.1 "Substantial Completion"** of the Improvements (or applicable component thereof) shall be deemed to have occurred when the following, as applicable, have occurred with respect to the Improvements (or applicable component thereof):

(a) The Improvements (or applicable component thereof) substantially comply with the Construction Standard; or

(b) Any Improvements (or applicable component thereof) that are intended to be dedicated to an Approving Authority shall have been inspected and preliminarily accepted by the applicable Approving Authority (subject to the Government Warranty Period (as defined below)); or

(c) With respect to any Improvements constituting dry utilities, COLA shall have signed the applicable utility extension agreement and paid the applicable Approving Authority the sums due under such agreement.

**3.5.2 Notice of Substantial Completion.** COLA shall notify Waterview East, CPR, PHI and Howard in writing when Substantial Completion of the Improvements (or applicable component thereof) has been achieved (the "**Completion Notice**"), except for minor punch-list work, and the date(s) and time(s) the Approving Authorities will inspect such Improvements (or applicable component thereof). Upon request, COLA shall provide Waterview East, CPR, PHI and Howard with copies of any inspection reports or punchlists received from the Approving Authorities in connection with the inspection of the Improvements, and COLA shall be responsible to correct punchlist items from Approving Authorities. If an Approving Authority grants preliminary approval to any of the Improvements that it will accept for maintenance, it shall conclusively be presumed that such Improvement is complete without faults and was completed in accordance with the Construction Standard, subject to completion of the punchlists received from Approving Authorities and the Government Warranty Period.

### **3.6 Warranty Periods.**

**3.6.1 Government Warranty Period.** The Approving Authorities may require a warranty period after the Substantial Completion of the Improvements (a



**"Government Warranty Period"**). In the event defects in the Improvements to which a governmental warranty applies become apparent during the Government Warranty Period, then COLA shall coordinate the repairs with the applicable Approving Authorities and cause the Service Provider(s) who performed the work or supplied the materials in which the defect(s) appear to complete such repairs or, if such Service Providers fail to correct such defects, otherwise cause such defects to be repaired to the satisfaction of the Approving Authorities. Any costs and expenses incurred in connection with any repairs or warranty work performed during the Government Warranty Period (including, but not limited to, any costs or expenses incurred to enforce any warranties against any Service Providers) shall be Costs, unless such defect or damage was caused by Waterview East, CPR, PHI or Howard or their contractors, subcontractors, employees, or agents, in which event Waterview East, CPR, PHI or Howard shall promptly pay to COLA all such costs and expenses to the extent caused by it, its contractors, subcontractors, employees, or agents, which obligation shall survive the expiration or termination of this Agreement.

**3.6.2 Disclaimer.** EXCEPT AS SET FORTH IN THIS AGREEMENT, COLA MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND IN RELATION TO THE IMPROVEMENTS, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF HABITABILITY, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE, AND EXPRESSLY DISCLAIMS ALL OF THE SAME. THIS SECTION 3.7.2. SHALL NOT APPLY TO THE EXTENT PROHIBITED BY C.R.S. § 13-20-806(7)(a). THIS PARAGRAPH SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT. COLA SHALL OBTAIN COMMERCIALY REASONABLE WARRANTIES FROM SERVICE PROVIDERS COMPLETING THE IMPROVEMENTS AND SUCH WARRANTIES SHALL BE SET FORTH IN THE CONTRACTS.

**3.6.3 License for Construction.** Waterview East as to the Waterview Property, and CPR, PHI and Howard as to the Rankin East Property, and Howard as to the CPR East Property hereby grant to COLA and the Service Providers a temporary, non-exclusive license to enter upon the Waterview Property, the Rankin East Property and the CPR East Property as reasonably necessary in connection with the construction and installation of the Improvements and/or the performance of COLA's responsibilities under this Agreement. The rights under this section or any instruments delivered hereunder shall terminate upon the expiration of the Government Warranty Period. COLA shall each indemnify, defend and hold harmless Waterview East, CPR, PHI and Howard and their respective members, officers, employees and agents for, from and against all claims, demands, liabilities, losses, damages (exclusive of special, consequential or punitive damages), costs and expenses, including but not limited to court costs and reasonable attorneys' fees, arising out of COLA's, or its contractors', subcontractors', consultants', employees', or agents' negligent acts or willful misconduct on the Waterview Property, the Rankin East Property and the CPR East Property, except that this indemnity by COLA shall not extend to any such claims, liability or expense to the extent arising from or caused by (a) the act, omission, negligence or misconduct of Waterview East, CPR, PHI or their respective members, officers, employees or agents, or (b) any adverse condition or defect on or affecting the Waterview Property, the Rankin East Property or the CPR East Property not caused by COLA (or its agents and/or contractors) but discovered during their activities, but only to the extent COLA (or its agents and/or contractors) does not exacerbate the existing condition

or defect. COLA's obligations under this Section shall survive the termination or expiration of this Agreement. COLA shall seek to obtain similar indemnifications from any Service Providers completing the Improvements and include such indemnification in the Contracts.

**3.7 Inspection by Waterview East, CPR, PHI and Howard.** Waterview East, CPR, PHI and Howard and their representatives, agents and employees may enter onto the Property from time to time during the construction of the Improvements for the purpose of inspecting the same; provided, however, such entry and inspection shall be performed in a manner that does not interfere with, damage or result in a delay in the construction of the Improvements. Waterview East, CPR, PHI and Howard shall each promptly repair any portion of the COLA Property that is materially damaged by it or its agents, designees, employees, contractors and subcontractors. Waterview East, CPR, PHI and Howard shall each indemnify, defend and hold harmless COLA and its members, officers, employees and agents for, from and against all claims, demands, liabilities, losses, damages (exclusive of special, consequential or punitive damages), costs and expenses, including but not limited to court costs and reasonable attorneys' fees, arising out of Waterview East's, CPR's, PHI's or Howard's, as applicable, or its contractors', subcontractors', consultants', employees', or agents' negligent acts or willful misconduct on the COLA Property, except to the extent caused by the negligence or misconduct of COLA, its members, officers, employees or agents. Waterview East's, CPR's, PHI's and Howard's obligations under this Section shall survive the termination or expiration of this Agreement.

**3.8 Mechanic's Liens.** If because of COLA's or its employees, agents, contractors or subcontractors act or omission under this Agreement, any mechanic's or other lien, charge or order for the payment of money or other encumbrance is filed or threatened against any of the Waterview Property, the Rankin East Property or the CPR East Property (whether or not such lien, charge, order or encumbrance is valid or enforceable as such), COLA (the "**Indemnifying Party**") shall at its own cost and expense, cause the same to be discharged of record or bonded within ninety (90) days after receipt of notice of the assertion or the filing thereof; and COLA shall indemnify, defend and save harmless Waterview East, CPR, PHI and Howard against and from all costs, liabilities, suits, penalties, claims and demands, including reasonable attorneys' fees, resulting therefrom; provided, however, that any loss, cost, damage or expense to which COLA shall be entitled under this Section 3.8 shall be limited to out of pocket losses, costs, damages or expenses.

**3.9 No Further Obligations Upon Substantial Completion.** Upon Substantial Completion of an Improvement, COLA shall have no further obligation under this Agreement or otherwise with respect to the Improvement (or applicable component thereof) except its obligation to pay its share of the Costs related to that Improvement and any obligation arising out of any applicable governmental warranty. This section shall not apply to the extent prohibited by C.R.S. § 13-20-806(7)(a).

#### **4. Costs of Improvements.**

**4.1 Definition of Costs.** As used herein, the term "**Costs**" shall mean all hard and soft costs incurred in connection with the design (including all engineering expenses), construction and installation of the Improvements, including, but not limited to, costs of labor,

materials and suppliers, engineering, design and consultant fees and costs, blue printing services, construction staking, demolition, soil amendments or compaction, any processing, plan check or permit fees for the Improvements, engineering services required to obtain a permit for and complete the Improvements, costs of insurance required by this Agreement, costs of any Surety, letter of credit or other financial assurances required by any Approving Authority in connection with the Improvements, costs of corrections, changes or additions to work required by the Approving Authorities or necessitated by site conditions, municipal, state and county taxes imposed in connection with construction of the Improvements, warranty work, all other items identified as "Costs" in this Agreement, and any other costs incurred in connection with the performance of the obligations of COLA hereunder.

4.2 **Costs Estimate.** Attached hereto as **Exhibit G** is an estimate of the Costs to construct the Improvements (the "**Budget**"). The Costs identified as line items in the Budget are referred to herein as the "**Budgeted Costs**." The Parties acknowledge that the Budget includes a line item(s) for Construction Management Costs in the amount of 2% of the Costs ("**Management Fee**") and the Management Fee is a part of the Costs. The Parties also acknowledge that the Budget includes a line item(s) for a contingency in the amount of 5% of the Costs (excluding the Contingency) (the "**Contingency**") and the Contingency is a part of such Costs. The Parties acknowledge that the Budget set forth on **Exhibit G** is generally based upon construction industry estimating methodologies, firm bids for certain Improvements and construction contracts for certain Improvements, but that final bids to be obtained and conditions and circumstances may hereafter be found to exist that necessitate a change in the Budget and, as a result, neither COLA nor any other Party guarantees that the Improvements can be constructed and completed for the estimated amount of Costs set forth in the Budget. As a result, from time to time, COLA may determine that the Costs set forth in the Budget need to be revised, in which event COLA shall deliver to the other Parties written notice (a "**Budget Revision Notice**"), together with a copy of the revised Budget and appropriate supporting documentation. The revised Budget shall supersede and replace the then-existing Budget and shall constitute the "Budget" for purposes of this Agreement and the revised Costs set forth in the revised Budget shall constitute the "Budgeted Costs" for the purposes of this Agreement. Upon the written request of COLA, the Parties shall prepare, execute and record an amendment to this Agreement to amend **Exhibit G** in its entirety and replace it with any such current revised Budget.

## **5. Payment of the Costs.**

5.1 **Reimbursement Obligation.** Provided that COLA has previously delivered to Waterview East, CPR, PHI and Howard a Completion Notice with respect thereto, then upon Substantial Completion of the Improvements or any portion of the Improvements, Waterview East, CPR, PHI and Howard shall reimburse COLA for the their respective shares of the Costs of constructing the Improvements as set forth in this Section 5. **Exhibit G** identifies each Improvement and sets forth the Budgeted Costs for the design, construction and installation of the Improvements and allocates a percentage of such Budgeted Costs to COLA, Waterview East, CPR, PHI and Howard. The percentage of Budgeted Costs allocated to COLA for each Improvement is referred to herein as the **COLA Prorata Share**; the percentage of Budgeted Costs allocated to Waterview East for the Waterview Property for each Improvement is referred to herein as the **Waterview East Prorata Share**; the percentage of Budgeted Costs allocated to Howard for the CPR East Property for each Improvement is referred to herein as the **CPR East**

**Prorata Share**; and the percentage of Budgeted Costs allocated to CPR, PHI and Howard for the Rankin East Property for each Improvement is referred to herein and the **Rankin East Prorata Share**. Waterview East shall reimburse COLA an amount equal to the Waterview East Prorata Share of the Budgeted Costs for each Improvement and CPR, PHI and Howard shall reimburse COLA an amount equal to the Rankin East Prorata Share of the Budgeted Costs for each Improvement and Howard shall reimburse COLA an amount equal to the CPR East Prorata Share of the Budgeted Costs for each Improvement. Budgeted Costs pertaining to the cost of those Improvements that are eligible for reimbursement by the District or any additional metropolitan districts shall be subject to modification to comply with verification by the applicable District or additional metropolitan district organized pursuant to Section 5.6 below. Each of the prorata shares set forth in this Section will be referred to as a "**Prorata Share**".

## 5.2 **Payment.**

5.2.1 CPR, PHI and Howard shall pay the Rankin East Prorata Share, together with Interest for each Improvement, and the Rankin East Prorata Share shall be due and payable to COLA with respect to the Rankin East Property on the first to occur of the following events: (i) five (5) years after the Effective Date; (ii) eighteen (18) months after the commencement of land development on the Rankin East Property which commencement shall be evidenced by issuance of the first construction or land development permit that is issued after the Effective Date for the Rankin East Property; or (iii) at such time as a metropolitan district (other than the District) or other improvement district is formed which includes the Rankin East Property and such district has issued any debt.

5.2.2 Howard shall pay the CPR East Prorata Share together with Interest for each Improvement, and the CPR East Prorata Share shall be due and payable to COLA with respect to the CPR East Property on the first to occur of the following events: (i) five (5) years after the Effective Date; (ii) eighteen (18) months after the commencement of land development, on the CPR East Property, which commencement shall be evidenced by issuance of the first construction or land development permit that is issued after the Effective Date for the CPR East Property; or (iii) at such time as a metropolitan district (other than the District) or other improvement district is formed which includes the CPR East Property and such district has issued any debt.

5.2.3 Waterview East shall pay the Waterview East Prorata Share together with Interest for each Improvement, and the Waterview East Prorata Share shall be due and payable to COLA with respect to the Waterview Property on the first to occur of the following events: (i) five (5) years after the Effective Date; (ii) eighteen (18) months after the commencement of land development on the Waterview Property which commencement shall be evidenced by issuance of the first construction or land development permit that is issued after the Effective Date for the Waterview Property; or (iii) at such time as a metropolitan district (other than the District) or other improvement district is formed which includes the Waterview Property and such district has issued any debt.

5.3 **District Acquisition and Payment.** The Parties acknowledge that the Property is included in the District. Pursuant to this Agreement and as required by the land use approvals granted by the County in connection with the COLA Property, COLA will be

responsible for the installation and construction of the Improvements for the benefit of the Property. The costs of designing, engineering, testing and construction of some of the Improvements that benefit the COLA Property will be eligible for reimbursement from the District. The Parties acknowledge that COLA and the District have entered into an Infrastructure Acquisition and Reimbursement Agreement that provides for the dedication to and/or acquisition by the District or other appropriate Approving Authority of certain public Improvements constructed by COLA benefiting the COLA Property ("**District Improvements**") and for reimbursements to be paid by the District from available District funds. Waterview East, CPR, PHI and Howard acknowledge and agree that: (i) the construction and conveyance of the District Improvements shall be without compensation to any of Waterview East, CPR, PHI or Howard; and (ii) any reimbursements, credits, payments, or other amounts payable by the District on account of the District Improvements or any other matters related thereto ("**Metro District Payments**") shall remain the property of the COLA and shall not be assigned or conveyed to Waterview East, CPR, PHI or Howard. Upon request of COLA or the District, Waterview East, CPR, PHI and Howard will execute any and all documents that may be reasonably required to confirm the Waterview East, CPR, PHI and Howard waiver of any right to Metro District Payments and the District Improvements. In the event that either Howard or Waterview East, or any other owner of the CPR East Property or Waterview Property, files one or more petitions with the District to exclude the CPR East Property or the Waterview Property, or any portion thereof, from the boundaries of the District, COLA agrees that it will not object to any such exclusion, provided that Waterview East, CPR, PHI and Howard have executed this Agreement and are in compliance with the terms thereof. In consideration of the exclusion of the CPR East Property, simultaneously with the execution of this Agreement, Howard shall execute and deliver to COLA, the Restrictive Covenant applicable to the CPR East Property in the form attached hereto as **Exhibit H**, and COLA may then record the Restrictive Covenant in the real property records of the County. The foregoing right of Waterview East and Howard to de-annex their respective Property from the District is only applicable at such time as such Party has acquired its respective Property. To the extent that certain of the Improvements constructed provide joint benefit to the COLA Property, the Waterview Property, the Rankin East Property and/or the CPR East Property, the Parties shall mutually agree to equitably apportion the Costs incurred to complete such Improvements in accordance with the Prorata Shares set forth herein.

#### **5.4 Widefield Water and Sanitation District Cost Recovery Agreement.**

The Parties acknowledge that COLA, the Widefield Water and Sanitation District and Glen Investment Group No. VIII, LLC ("**Glen**") have entered into or will enter into that certain Cost Recovery Agreement For Water And Sewer Off-Site Improvements ("**WWSD Cost Recovery Agreement**"). The WWSD Cost Recovery Agreement concerns the District's recovery and collection of a fair share of the costs incurred by COLA and Glen for the construction of certain off-site water and sewer public improvements within the District's service area (the "**District Facilities**") from future water and sewer service users for payment to COLA or Glen, as applicable, for constructing such District Facilities. Under the terms of the WWSD Cost Recovery Agreement, the District requires the construction of certain District Facilities as a condition of service to properties owned by COLA, Glen and other properties identified in the WWSD Cost Recovery Agreement, including the Waterview Property, the CPR East Property and the Rankin East Property. Some of the District Facilities which are identified in the WWSD Cost Recovery Agreement are also water and sewer Improvements under this Agreement. Notwithstanding reimbursements under this Agreement and cost recovery under the WWSD

Cost Recovery Agreement that are due to COLA, it is the intent of the Parties that the Waterview East Prorata Share, the CPR East Prorata Share and the Rankin East Prorata Share for water and sewer Improvements under this Agreement which are also District Facilities under the WWSD Cost Recovery Agreement ("**Common Water and Sewer Improvements**") shall be equal to the percentages applicable, respectively, to the Waterview Property, the CPR East Property and the Rankin East Property per Water or Sewer Line Segment as provided and set forth in cost allocation tables shown in the WWSD Cost Recovery Agreement. As such, the amount of reimbursement owed to COLA under this Agreement for Common Water and Sewer Improvements shall be the same as the amount to be recovered from the Waterview Property, the CPR East Property and the Rankin East Property for Common Water and Sewer Improvements, or segment thereof, under the WWSD Cost Recovery Agreements. To the extent COLA has recovered costs under the WWSD Cost Recovery Agreement from the Waterview Property, the CPR East Property or the Rankin East Property for any Common Water and Sewer Improvements, or segment thereof, then the Party paying such cost recovery shall receive a credit against the amount of that paying Party's reimbursement obligation under this Agreement in an amount that is equal to the amount the cost recovery paid. Likewise, to the extent COLA has received reimbursement under this Agreement from the Waterview Property, the CPR East Property or the Rankin East Property for any Common Water and Sewer Improvements, or segment thereof, then COLA shall waive any right to cost recovery under the WWSD Cost Recovery Agreement for such Common Water and Sewer Improvements, or segment thereof, from the Party making the reimbursement hereunder.

## **5.5 Interest on Payments.**

**5.5.1 Interest.** Interest shall accrue on the unpaid and non-delinquent Rankin East Prorata Share, the CPR East Prorata Share and the Waterview East Share applicable to each Improvement at the rate of six percent (6%) per annum ("**Interest**") commencing upon the date of delivery of the Completion Notice for the Improvement until paid in full.

**5.5.2 Failure to Pay Amounts Due.** All amounts not timely paid hereunder shall bear interest at the rate of twenty-six percent (26%) per annum ("**Default Interest**") commencing upon the date such payment is due as provided in Section 5.2 until paid in full.

**5.6 Reimbursement Obligation Secured By Lien.** In addition to any other rights and remedies set forth in this Agreement, if Waterview East, CPR, PHI or Howard (each an "**Owner**") fails to pay any amount due in accordance with Sections 5.2.1, 5.2.2, 5.2.3 and 5.2.4 and thereafter fails to pay the amount due within thirty (30) days after deliver of a notice of nonpayment by COLA to the non-paying party, then any such claim for payment, together with Default Interest, and the costs of collection, constitutes a secured right and a first priority lien against that portion of the Property owned by the nonpaying Owner ("**Lien**"), which Lien shall attach and take effect upon recordation of this Agreement in the real property records of the County. COLA may file or record such other or further notice of any such Lien, or such other or further document, as may be required to confirm the establishment and priority of such Lien; provided, however, that any such Lien is subject and subordinate to liens for taxes and other public charges which by applicable law are expressly made superior. The Lien is also is subject and subordinate to liens recorded in the real property records of the County prior to the date of

recordation of this Agreement except that if any or all of the Waterview Property, the Rankin East Property or the CPR East Property is encumbered by any mortgage or deed of trust that would be a superior to the Lien to be established upon the recording of this Agreement, then Waterview East, CPR, PHI or Howard, as applicable, shall obtain a commercially reasonable subordination and non-disturbance agreement from the holder of such mortgage or deed of trust that subordinates the mortgage or deed of trust to the Lien established by this Agreement. All liens recorded subsequent to the recordation of this Agreement shall be junior and subordinate to the Lien created hereunder. Any filed or recorded claim of Lien shall include the following: (i) the name of the claimant; (ii) a statement concerning the basis of the claim of the lien; (iii) the last known name and address of the Owner of the portion of the Property against which the Lien is claimed and who has not made the required payment; (iv) a description of the property against which the Lien is claimed; (v) a general description of the work performed which has given rise to the claim of Lien; and (vi) a statement that the Lien is claimed pursuant to the provisions of this Agreement, reciting the date and title and parties thereof. The claim of Lien shall be duly acknowledged and shall contain a certificate that a copy thereof has been served upon the Owner against whom the Lien is claimed, either by personal service or by mailing as herein provided. The Lien so claimed shall attach from the date of recordation solely in the amount claimed thereby and shall be enforced in any manner allowed by law for the foreclosure of liens. It shall be only against that portion of the Property owned by the Owner against whom the Lien is claimed.

**5.7 Additional Metropolitan Districts.** The Parties acknowledge that the Waterview Property, the Rankin East Property and/or the CPR East Property may be included in one or more metropolitan districts formed by Waterview East, CPR, PHI and/or Howard ("**Additional Districts**"). The costs of designing, engineering, testing and construction of some of the Improvements that benefit the Waterview Property, the Rankin East Property and/or the CPR East Property will be eligible for reimbursement from the Additional Districts. The Parties acknowledge that Waterview East and/or CPR, PHI and/or Howard and the Additional Districts may enter into one or more Infrastructure Acquisition and Reimbursement Agreements that provide for the dedication to and/or acquisition by the Additional District or other appropriate Approving Authority of certain public Improvements benefiting the Waterview Property, the Rankin East Property and/or the CPR East Property ("**Additional District Improvements**") and for reimbursements to be paid by the Additional Districts from available Additional District funds.

If Waterview East, CPR, PHI and/or Howard act to organize one or more Additional Districts for all any portion of the Waterview Property, the Rankin East Property or the CPR East Property for the purposes of constructing or assisting with the financing related to some or all of the on-site and off-site public infrastructure for the Waterview Property, the Rankin East Property or the CPR East Property within the service area of such Additional Districts including the Improvements constructed by COLA that benefit the Waterview Property, the Rankin East Property or the CPR East Property, the Parties agree that COLA shall be entitled to qualify electors to serve as a majority of the members of the boards of any such Additional Districts if, and only if, Waterview East, CPR, PHI and/or Howard have not paid their respective Prorata Share of Budgeted Costs pursuant to Section 5.1. In such event, the Parties acknowledge and agree that the boards of each Additional District shall consist of five (5) members that are elected or appointed in accordance with applicable law and Waterview East, CPR, PHI and/or Howard,



as applicable, shall enter into contracts with up to three (3) persons designated by COLA to purchase taxable property situated within the boundaries of the Additional Districts in order to qualify such persons as eligible electors of the Additional Districts for the purpose of candidacy for election to the boards of the Additional Districts at the organizational election in accordance with the requirements of law. Waterview East, CPR, PHI and/or Howard, as applicable, covenant that they shall not, and shall not permit their respective affiliates to, qualify more than two (2) additional persons as eligible electors of any such Additional Districts as candidates at the organizational election to serve on the boards of any such Additional Districts. Waterview East, CPR, PHI and Howard covenant that they will not object to COLA entering into an infrastructure acquisition and reimbursement agreement or similar agreement with one or more Additional Districts formed for the Waterview Property, the Rankin East Property and/or the CPR East Property or accepting a note or other instrument of debt from such Additional Districts for the purpose of reimbursing COLA for Costs incurred in constructing Improvements that benefit the Waterview Property and/or the CPR East Property and/or the Rankin East Property. Upon satisfaction of the reimbursement obligations set forth in Section 5.1, COLA will use reasonable and lawful efforts to cause any persons serving on the boards of any such metropolitan districts that were designated by COLA as provided above to submit letters of resignation.

To the extent that Waterview East, CPR, PHI and/or Howard have paid their respective Prorata Share of Budgeted Costs pursuant to Section 5.1 prior to the formation of the Additional Districts then COLA shall have no right to qualify electors of the boards of such Additional Districts or enter into an infrastructure acquisition and reimbursement agreement or similar agreement as provided above. In such event, Waterview East, CPR, PHI and/or Howard shall be entitled to seek reimbursement for their respective Prorata Share of Budgeted Costs previously paid to COLA and COLA shall have no right to seek reimbursement for Costs incurred by COLA in construction the Improvements that benefit of the Waterview Property and/or the CPR East Property and/or the Rankin East Property.

**6. Arbitration of Disputes.** Except for enforcement of the Lien and as otherwise set forth herein, any question, dispute, claim or controversy arising under or in connection with this Agreement on which the Parties cannot agree (a "**Dispute**") shall be resolved by mandatory arbitration in accordance with the Arbitration Rules for the Construction Industry of the American Arbitration Association currently in effect (the "**Rules**"), in accordance with and subject to the following provisions:

**6.1 Dispute Notice.** If any Party believes that a Dispute exists, it may notify the other Parties thereof, which notice (a "**Dispute Notice**") shall identify the Dispute. As promptly as practicable, and in any event within fifteen (15) days following the delivery of the Dispute Notice, the Parties shall meet in an attempt to resolve the Dispute. If the Dispute cannot be resolved at that meeting, any Party may submit the Dispute to arbitration as hereinafter provided.

**6.2 Appointment of Arbitrator.** A single arbitrator at the Denver, Colorado office of the Judicial Arbiter Group shall be the Arbitrator; provided, however, that the individual selected must be recognized in the Denver metropolitan area as having competence in the subject matter of the Dispute, and except as stated in Section 6.6 shall be a member of the State Bar of Colorado experienced in real estate and construction matters. If the affected Parties

are unable to agree upon the Arbitrator within ten (10) days after delivery of the Dispute Notice, then each affected Party shall appoint one Arbitrator at the Judicial Arbitrator Group, and the appointed arbitrators shall select one Arbitrator to hear the Dispute. If a Party fails to appoint one Arbitrator within such ten (10)-day period, then the other Party may unilaterally select the Arbitrator. The term "Arbitrator" as used herein shall mean and refer to the single arbitrator selected pursuant to this Section.

**6.3 Conduct of Arbitration.** The arbitration shall be conducted in Denver, Colorado. The arbitration process shall generally be conducted by the designated Arbitrator in accordance with the Rules, but the Arbitrator shall have discretion to vary from those Rules in light of the nature or circumstances of any particular Dispute. In all events, unless waived by the Parties, the Arbitrator will conduct an arbitration hearing at which the Parties and their counsel shall be present and have the opportunity to present evidence and examine the evidence presented by the other Party. The proceedings at the arbitration hearing shall, unless waived by the Parties, be conducted under oath and before a court reporter. The Parties shall cooperate in good faith to permit, and the Arbitrator shall render, a decision in the arbitration proceeding within thirty (30) days following the appointment of the Arbitrator. The Parties shall also endeavor to submit a joint statement setting forth each Dispute to be submitted to arbitration, including a summary of each Party's position on each Dispute. In addition, the Arbitrator shall require the non-prevailing Party(s) to pay all reasonable costs and fees, including attorney's fees, of the prevailing Party(s) and costs and fees of the Arbitrator.

**6.4 Standards of Conduct.** The Parties agree that with respect to all aspects of the arbitration process contained herein they will conduct themselves in a manner intended to assure the integrity and fairness of that process. To that end, if a Dispute is submitted to arbitration, the Parties agree that they will not contact or communicate with the Arbitrator who was appointed as Arbitrator with respect to any Dispute either *ex parte* or outside of the contacts and communications contemplated by this section, and the Parties further agree that they will cooperate in good faith in the production of documentary and testimonial evidence in a prompt and efficient manner to permit the review and evaluation thereof by the other Party.

**6.5 Decision.** The decision of the Arbitrator with respect to any Dispute shall be final and binding on the Parties and not subject to appeal, in the absence of fraud, and the prevailing Party may enforce the same by application for entry of judgment in any court of competent jurisdiction or by other procedures established by law.

**6.6 Disputes Related to Contracts, Plan Changes, the amount of the Budgeted Costs and Substantial Completion.** Notwithstanding anything to the contrary herein, disputes related to the Contracts, Plan Changes, the amount of the Budgeted Costs, and Substantial Completion ("Expedited Disputes") shall all be resolved by an independent, impartial third party qualified to resolve such disputes as determined by the Parties involved in the Expedited Dispute ("Informal Arbitrator"). If such Parties cannot agree on an Informal Arbitrator, then each such Party shall select a registered engineer and the engineers selected by the Parties shall promptly select an independent, impartial third party qualified to act as the Informal Arbitrator and resolve the Expedited Dispute. Within five (5) business days after a Party delivers a Dispute Notice, each affected Party shall deliver to the Informal Arbitrator a written statement of how such Party believes the Expedited Dispute should be resolved, together

with reasonable supporting documentation of such position ("**Resolution Notice**"). Within ten (10) business days after receipt of Resolution Notices from both Parties, the Informal Arbitrator shall approve one of the Parties' Resolution Notice and shall deliver written notice of such approval to each Party. The decision of the Informal Arbitrator shall be binding on both Parties with respect to the applicable Expedited Dispute. All Parties shall timely cooperate with the Informal Arbitrator in rendering his or her decision. The Standard of Conduct set forth in Section 6.4 shall apply with respect to all aspects of the Expedited Dispute process contained herein. Each Party involved in the Dispute shall pay a pro-rata share of the Informal Arbitrator's fees, based on the number of Parties involved in the Expedited Dispute. Each Party shall bear all of its own costs and attorneys' fees in the resolution of any Expedited Dispute. The Parties acknowledge that there is a benefit to the Parties in having work done as expeditiously as possible and that there is a need for a streamlined method of making decisions described in this Section so that work is not delayed.

**7. Cooperation.** The Parties agree to reasonably cooperate with each other in connection with the construction of the Improvements as set forth in this Agreement including, but not limited to, granting one to the other, governmental entities and such public and private utility providers that service all or a portion of the Property reasonable utility and other easements to accommodate the installation of the Improvements, provided, such easements do not unduly burden or materially disproportionately burden such Party's portion of the Property. Each Party shall promptly on written request of another Party execute, acknowledge and deliver to the appropriate party any and all further instruments reasonably requested or appropriate to evidence or give effect to the provisions of this Agreement.

**8. Notices and Communications.** All notices, approvals and other communications provided for herein or given in connection herewith shall be validly given, made, delivered or served, if in writing, and delivered personally, by facsimile or by nationally recognized overnight courier (e.g., Federal Express, Airborne, UPS) for next-day or next-business-day delivery, to the address of the intended recipient at its address as set forth below, or to such other addresses as either Party may from time to time designate in writing and deliver in a like manner.

To COLA: Aspen View Homes, LLC  
555 Middle Creek Parkway, Suite 380  
Colorado Springs, CO 80921  
Attn: Pat Wood

Aspen View Homes, LLC  
555 Middle Creek Parkway, Suite 380  
Colorado Springs, CO 80921  
Attn: Joe Stifter

With a copy to: Fox Rothschild LLP.  
1225 17th Street, Suite 2200  
Denver, CO 80202  
Attn: Rick J. Rubin, Esq.

To Waterview East: Waterview East Development, LLC  
 31 North Tejon, Suite 500  
 Colorado Springs, CO 80903  
 Attn: Raymond O'Sullivan

With a copy to: Cook Varriano, P.C.  
 511 North Tejon Street, Suite 200  
 Colorado Springs, CO 80903  
 Attn: Michael C. Cook, Esq.

To CPR: CPR Entitlements, LLC  
 31 North Tejon, Suite 500  
 Colorado Springs, CO 80903  
 Attn: Raymond O'Sullivan

With a copy to: Cook Varriano, P.C.  
 511 North Tejon Street, Suite 200  
 Colorado Springs, CO 80903  
 Attn: Michael C. Cook, Esq.

To PHI: PHI Real Estate Services, LLC  
 200 West First Street, Suite 200  
 Pueblo, CO 81103  
 Attn: Nick L Pannunzio

To Howard: Frank W. Howard #2 Limited Partnership, LLLP  
 17 S. Wahsatch  
 Colorado Springs, CO 80903  
 Attn: Kevin Howard

Notices, approvals and other communications provided for herein shall be deemed delivered upon personal delivery, upon email transmission during normal business hours (Monday through Friday, 8:00 a.m.– 5:00 p.m. Colorado time), or on the next business day following deposit with a nationally recognized overnight courier, as herein above provided, prepaid and addressed as set forth above.

**9. Attorneys' Fees.** Except as provided in Section 6.6, should any action be brought in connection with this Agreement, including, without limitation, actions based on contract, tort or statute, the prevailing party in such action shall be awarded all costs and expenses incurred in connection with such action, including reasonable attorneys' fees. The provisions of this Section shall survive the expiration or termination of this Agreement.

**10. Further Acts.** Each of the Parties hereto shall execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement.

**11. No Partnership; Third Parties.** It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement among the Parties hereto. No person or party, other than the Parties, and their successors and assigns, shall, under any circumstances, be deemed a beneficiary of the provisions of this Agreement.

**12. Entire Agreement; Headings for Convenience only; Not to be Construed Against Drafter; No Implied Waiver.** This Agreement and all other written agreements between the Parties constitute the entire agreement between the Parties hereto pertaining to the subject matter hereof. No change or addition is to be made to this Agreement except by written amendment executed by the Parties hereto. The headings, captions and titles contained in this Agreement are intended for convenience of reference only and are of no meaning in the interpretation or effect of this Agreement. This Agreement shall not be construed more strictly against one Party than any other Party merely by virtue of the fact that it may have been initially drafted by one of the Parties or their counsel, since all Parties have contributed substantially and materially to the preparation hereof. No failure by a Party to insist upon the strict performance of any term, covenant or provision contained in this Agreement, no failure by a Party to exercise any right or remedy under this Agreement, and no acceptance of full or partial payment owed to a Party during the continuance of any default by the other Party, shall constitute a waiver of any such term, covenant or provision, or a waiver of any such right or remedy, or a waiver of any such default unless such waiver is made in writing by the Party to be bound thereby. Any waiver of a breach of a term or a condition of this Agreement shall not prevent a subsequent act, which would have originally constituted a default under this Agreement, from having all the force and effect of a default.

**13. Governing Law.** This Agreement is entered into in Colorado and shall be construed and interpreted under the law of the State of Colorado without giving effect to principles of conflicts of law which would result in the application of any law other than the law of the State of Colorado.

**14. Severability.** If any provision of this Agreement is declared void or unenforceable, such provision shall be severed from this Agreement and shall not affect the enforceability of the remaining provisions of this Agreement.

**15. Binding Effect.** This Agreement runs with the Waterview Property, the Rankin East Property and the CPR East Property and is binding upon each Party, and their respective successors and assigns, and any and all grantees or transferees of Waterview East, CPR, PHI or Howard who receives a conveyance of any of the Waterview Property, the Rankin East Property or the CPR East Property or any portion thereof. Each provision of this Agreement and each agreement, promise, covenant, or undertaking to comply with or to be bound by the provisions of this Agreement which is contained herein shall: (a) be deemed incorporated in each deed or other instrument by which any right, title or interest in the Waterview Property, the Rankin East Property or the CPR East Property is granted, devised or conveyed, whether or not set forth or referenced in such deed or instrument; and (b) by virtue of acceptance of any right, title or interest in the Waterview Property, the Rankin East Property or the CPR East Property by any person, such person shall be deemed to have accepted, ratified, adopted and declared said agreement, promises, covenants and undertakings as personal covenants of such owner and such

owner's heirs, personal representatives, successors, and assigns to, with and for the benefit of COLA.

**16. Counterparts; Copies of Signatures.** 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 all attached to a single instrument so that the signatures of all Parties may be physically attached to a single document. Copies of signatures transmitted by electronic mail or facsimile shall be accepted and binding as originals.

**17. Time of the Essence.** Time is of the essence for performance or satisfaction of all requirements, conditions, or other provisions of this Agreement, subject to any specific time extensions set forth herein.

**18. Computation of Time Periods.** All time periods referred to in this Agreement shall include all Saturdays, Sundays and holidays, unless the period of time specifies business days. If the date to perform any act or give a notice with respect to this Agreement shall fall on a Saturday, Sunday or national holiday, the act or notice may be timely performed on the next succeeding day which is not a Saturday, Sunday or a national holiday.

**19. Remedies.** If any Party is in default of any of its obligations under this Agreement, the other Parties shall, except as may otherwise expressly be provided in this Agreement, have all rights and remedies as are expressly provided herein, and as may otherwise be available to such Party at law or in equity, and may recover its actual, out-of-pocket damages (but excluding, without limitation, any incidental, consequential, exemplary or punitive damages, or damages for lost profits), plus any applicable interest as provided in Section 5.4 of this Agreement. Notwithstanding the foregoing, however, no Party shall have a right to terminate this Agreement as a remedy for any default by any of the other Parties hereto.

**20. Recording of Agreement.** This Agreement shall be recorded with the Clerk and Recorder of the County.

**21. Termination.** This Agreement will expire and terminate with respect to the Rankin East Property when COLA has been fully reimbursed for the Rankin East Prorata Share of the Costs to construct the Improvements. This Agreement will expire and terminate with respect to the CPR East Property when COLA has been fully reimbursed for the CPR East Prorata Share of the Costs to construct the Improvements. This Agreement will expire and terminate with respect to the Waterview Property when COLA has been fully reimbursed for the Waterview East Prorata Share of the Costs to construct the Improvements. Upon receipt of full payment and satisfaction of the Rankin East Prorata Share, COLA, upon the request of CPR, PHI and/or Howard, will terminate this Agreement with respect to the Rankin East Property by promptly recording an appropriate termination in the real property records of the County. Upon receipt of full payment and satisfaction of the CPR East Prorata Share, COLA, upon the request of Howard, will terminate this Agreement with respect to the CPR East Property by promptly recording an appropriate termination in the real property records of the County. Upon receipt of full payment and satisfaction of the Waterview East Prorata Share, COLA, upon the request of Waterview East, will terminate this Agreement with respect to the Waterview Property by

promptly recording an appropriate termination in the real property records of the County. Any such termination need only be signed by COLA. After a residential dwelling unit is constructed on a Lot on the COLA Property and sold to a third party homeowner, this Agreement will automatically terminate with respect to such Lot.

**22. Assignment.** CPR and PHI may, from time to time, partially assign its rights and obligations under this Agreement relating to the Rankin East Property to any party acquiring a portion of the Rankin East Property ("**Assignee**"). Evidence of such assignment shall be set forth in a written document ("**Assignment**") executed by CPR, PHI and Assignee and recorded in the real property records of El Paso County, Colorado. The Assignment shall specify the description of the Rankin East Property acquired by the Assignee and shall identify the amount of the Rankin East Prorata Share being assumed by Assignee. From and after the date of the Assignment, the Assignee shall be deemed a party to this Agreement and subject to the terms and conditions set forth herein. Further, CPR and/or PHI and the remaining portion of the Rankin East Property retained by CPR shall thereafter be released from any and all further liability relating to the portion of the Rankin East Property conveyed to Assignee.

**23.** Waterview Commercial Investors LLC, a Colorado limited liability company ("**Waterview Commercial**") anticipates acquiring the Waterview Property from Waterview East on or about April 19, 2021. ROS Equity Holdings – Independence, LLC, a Colorado limited liability company, doing business as RJ Development ("**RJ**"), anticipates acquiring the CPR East Property from Howard during the calendar year 2021. To the extent Waterview Commercial acquires the Waterview Property and/or RJ acquires the CPR East Property, such respective acquiring parties shall be substituted in lieu of the respective Parties which currently own the Waterview Property and/or the CPR East Property, as applicable. Waterview Commercial and RJ, by their execution of the consents below, agree to such substitution and the terms and provisions of this Agreement.

**24.** Where more than one Party owns any Parcel, the owners of such Parcel are jointly and severally liable to pay the Parcel's Prorata Share.

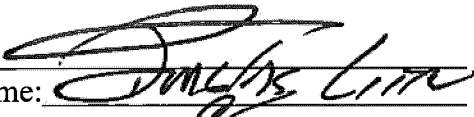
[SIGNATURES INTENTIONALLY ON NEXT PAGES]



IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

**COLA:**

**COLA, LLC,**  
a Colorado limited liability company

By:   
Print Name: Jim Leiferman  
Its: Jim Leiferman - Regional President

STATE OF COLORADO )  
 ) ss.  
COUNTY OF El Paso )

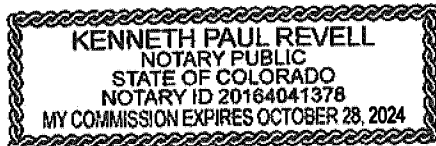
The foregoing Development and Cost Reimbursement Agreement with Lien was acknowledged before me this 6 day of May, 2021, by Jim Leiferman - Regional President as Jim Leiferman - Regional President of COLA, LLC, a Colorado limited liability company.

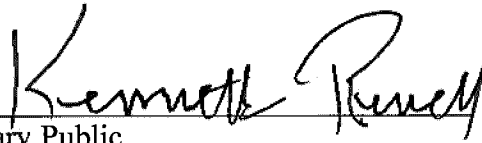
**Jim Leiferman - Regional President**

Witness my hand and official seal.

My commission expires: Oct 28, 2024

[SEAL]



  
Notary Public

**CPR:**

**CPR ENTITLEMENTS, LLC,**  
a Colorado limited liability company,

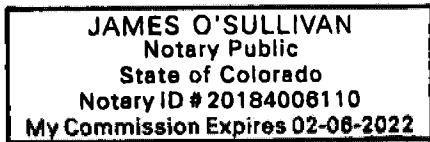
By: [Signature]  
Print Name: P.D. Koscielski  
Its: MANAGER

STATE OF COLORADO                    )  
  ) ss.  
COUNTY OF El Paso                    )

The foregoing Development and Cost Reimbursement Agreement with Lien was acknowledged before me this 15<sup>th</sup> day of April, 2021, by P.A. Koscielski, as Manager of CPR Entitlements, LLC, a Colorado limited liability company.

Witness my hand and official seal.  
My commission expires: 02-06-2022

[SEAL]



[Signature]  
Notary Public

**PHI:**

**PHI REAL ESTATE SERVICES, LLC,**  
a Colorado limited liability company

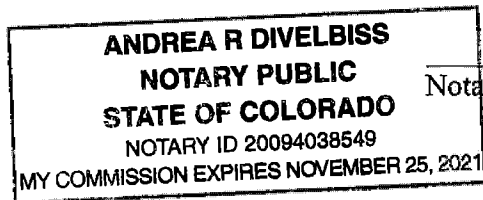
By: [Signature]  
Print Name: NICK PANNUNZIO  
Its: President

STATE OF COLORADO                    )  
  ) ss.  
COUNTY OF Dueblo                    )

The foregoing Development and Cost Reimbursement Agreement with Lien was acknowledged before me this 24<sup>th</sup> day of May, 2021, by Nick Pannunzio, as President of PHI Real Estate Services, LLC, a Colorado limited liability company.

Witness my hand and official seal.  
My commission expires: 11/25/21

[SEAL]



[Signature]  
Notary Public

**WATERVIEW EAST DEVELOPMENT, LLC,**  
a Colorado limited liability company

**WATERVIEW EAST DEVELOPMENT, LLC,**  
a Colorado limited liability company

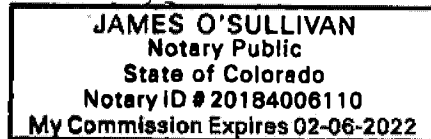
By: [Signature]  
Print Name: P. A. Kosciuszko  
Its: Manager


STATE OF COLORADO )  
 ) ss.  
COUNTY OF H. P. Co. )

The foregoing Development and Cost Reimbursement Agreement with Lien was acknowledged before me this 15<sup>th</sup> day of April, 2021, by P.A. Kosciak, as Manager of Waterview East Development, LLC, a Colorado limited liability company.

Witness my hand and official seal.  
My commission expires: 02-06-2022

[SEAL]



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

**HOWARD:**

**FRANK W. HOWARD #2 LIMITED PARTNERSHIP, LLLP,**  
a Colorado limited liability limited partnership

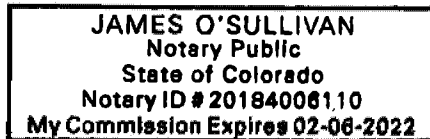
By: [Signature]  
Print Name: Kevin A. Howard  
Its: Co-Partner

STATE OF COLORADO                     )  
   ) ss.  
COUNTY OF El Paso                     )

The foregoing Development and Cost Reimbursement Agreement with Lien was acknowledged before me this 27<sup>th</sup> day of April, 2021, by Kevin Howard, as Co-Partner of Frank W. Howard 32 Limited Partnership, LLLP, a Colorado limited liability limited partnership.

Witness my hand and official seal.  
My commission expires: 02-06-2022

[SEAL]



[Signature]  
Notary Public


## CONSENT

Aspen View Homes, LLC, a Colorado limited liability company, hereby consents to the terms and provisions of the Agreement.

**AVH:**  
 \_\_\_\_\_

ASPEN VIEW HOMES, LLC,  
a Colorado limited liability company

By: \_\_\_\_\_  
Print Name: WILLIAM LITTLE  
Its: CEO Jim Leifer

Its:  **Jim Leiferman - Regional President**

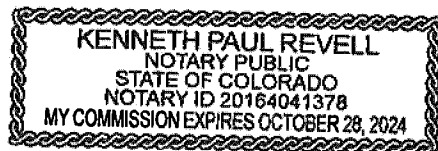
STATE OF COLORADO )  
 ) ss.  
COUNTY OF EL PASO )

The foregoing Development and Cost Reimbursement Agreement with Lien was acknowledged before me this 6 day of May, 2021, by Jim Leiferman - Regional President, as \_\_\_\_\_ of Aspen View Homes, LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: 011 28

[SEAL]



Kenneth Revell  
Notary Public

## CONSENT

Richmond American Homes of Colorado, Inc., a Delaware corporation ("Richmond"), hereby executes this Consent solely for the purpose of acknowledging and agreeing, pursuant to Richmond's understanding and the representation and agreement of the Parties to the Agreement, that (i) Richmond has no obligation under the Agreement to construct or pay for any of the Improvements and shall not be liable or responsible in any manner for the performance of the obligations of any Party under the Agreement, (ii) the construction and conveyance of the Improvements shall be without compensation to Richmond, (iii) any reimbursements, credits, payments, or other amounts payable to COLA under the Agreement on account of the Improvements or any other matters related thereto shall remain the property of COLA and shall not be assigned or conveyed to Richmond, (iv) the Agreement does not constitute an encumbrance on title to the following lots owned by Richmond within the Subdivision (the "Richmond Lots"): Lot 1; Lots 15 and 16; Lots 35 through 73, inclusive; Lots 93 through 102, inclusive; and Lots 123 through 160, inclusive, The Trails at Aspen Ridge Filing No. 1, County of El Paso, State of Colorado; and (v) the Parties to Agreement waive and release any lien rights against Richmond and the Richmond Lots arising from the Agreement.

**RICHMOND:**

Richmond American Homes of Colorado, Inc.,  
a Delaware corporation

By:

Print Name: MATT HENZEL

Its: SENIOR VICE PRESIDENT

STATE OF COLORADO )  
 ) ss.  
COUNTY OF Denver )

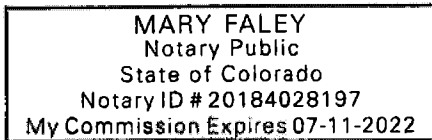
The foregoing Development and Cost Reimbursement Agreement with Lien was acknowledged before me this 10th day of May, 2021, by Matt Hengel, as Senior VP Land of Richmond American Homes of Colorado, Inc., a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: 7/1/22

[SEAL]

Mary Guley  
Notary Public





## CONSENT

Waterview II Metropolitan District (the "**District**"), hereby consents to the terms and provisions of the Agreement and hereby acknowledges and agrees that (i) the District has no obligation under the Agreement to construct any of the Improvements, (ii) the construction and conveyance of the Improvements shall be without compensation to the District, (iii) any reimbursements, credits, payments, or other amounts payable to COLA under the Agreement on account of the Improvements or any other matters related thereto shall remain the property of the COLA and shall not be assigned or conveyed to the District.

**DISTRICT:**

WATERVIEW II METROPOLITAN DISTRICT

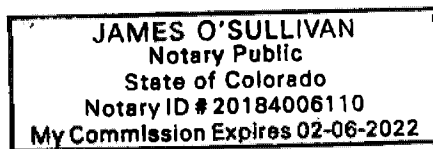
By: Charles K. Cothern  
Print Name: Charles K. Cothern  
Its: President


STATE OF COLORADO )  
 ) ss.  
COUNTY OF El Paso )

The foregoing Development and Cost Reimbursement Agreement with Lien was acknowledged before me this 15<sup>th</sup> day of April, 2021, by Charles Cothern, as President of Waterview II Metropolitan District.

Witness my hand and official seal.  
My commission expires: 02-06-2022

[SEAL]



  
Notary Public

CONSENT

Waterview Commercial hereby consents to the terms and provisions of the Agreement.

WATERVIEWCOMMERCIAL :

WATERVIEW COMMERCIAL INVESTORS LLC,  
a Colorado limited liability company

Western Development CO. LLC, manager

By: Heath A. Herber, manager

Print Name: Heath A. Herber

Its: Manager

STATE OF COLORADO )

) ss.

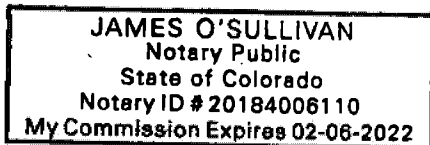
COUNTY OF El Paso )

The foregoing Development and Cost Reimbursement Agreement with Lien was acknowledged before me this 16th day of April, 2021, by Heath Herber, manager, Western Development CO. LLC, as Manager 17th of Waterview Commercial Investors, LLC, a Colorado limited liability company. Manager

Witness my hand and official seal.

My commission expires: 02-06-2022

[SEAL]




[Signature]  
Notary Public

**CONSENT**

RJ hereby consents to the terms and provisions of the Agreement.

**RJ:**

ROS Equity Holdings – Independence, LLC,  
a Colorado limited liability company,  
doing business as RJ Development

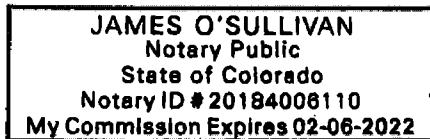
By:   
Print Name: James Buller  
Its: MANAGER


STATE OF COLORADO                    )  
  ) ss.  
COUNTY OF El Paso                )

The foregoing Development and Cost Reimbursement Agreement with Lien was acknowledged before me this 27<sup>th</sup> day of April, 2021, by James Buller, as Manager of ROS Equity Holdings – Independence, LLC, a Colorado limited liability company.

Witness my hand and official seal.  
My commission expires: 02-06-2022

[SEAL]



  
Notary Public

## CONSENT

THE FOLLOWING PARTIES, WHICH ENCUMBER PORTIONS OF THE PROPERTY,  
CONSENT TO THE FOREGOING AGREEMENT.

PHI REAL ESTATE SERVICES, LLC,  
a Colorado limited liability company

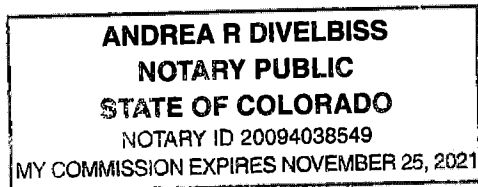
By: Nick Pannuzzio  
Name: Nick Pannuzzio  
Its: President

STATE OF COLORADO )  
 ) ss.  
COUNTY OF Pueblo )

The foregoing Development and Cost Reimbursement Agreement with Lien was acknowledged before me this 24<sup>th</sup> day of May, 2021, by Nick Pannunzio, as President of PHI Real Estate Services, LLC, a Colorado limited liability company.

Witness my hand and official seal.  
My commission expires: 11/25/21

[SEAL]



  
Notary Public

FRANK W. HOWARD #2 LIMITED PARTNERSHIP, LLLP,  
a Colorado limited liability limited partnership

By: 

Name: Kevin A. Howard

Its: Co-Partner

STATE OF COLORADO )

) ss.

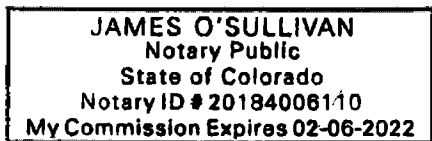
COUNTY OF El Paso )

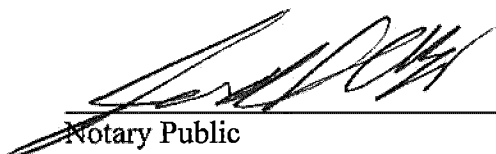
The foregoing Development and Cost Reimbursement Agreement with Lien was acknowledged before me this 27<sup>th</sup> day of April, 2021, by Kevin Howard, as Co-Partner of Frank W. Howard #2 Limited Partnership, LLLP, a Colorado limited liability limited partnership.

Witness my hand and official seal.

My commission expires: 02-06-2022

[SEAL]



  
Notary Public

### **List of Exhibits**

Exhibit A	Description of the COLA Property
Exhibit B	Description of the Rankin East Property and CPR East Property
Exhibit C	Description of the Waterview Property
Exhibit D	Property Illustration
Exhibit E	Improvements
Exhibit F	Plans
Exhibit G	Budget
Exhibit H	Restrictive Covenant

**Exhibit A**  
**to**  
**Development and Cost Reimbursement Agreement**  
**(Description of the COLA Property)**

Lots and Tracts that have been subdivided pursuant to the final subdivision plat of Trails at Aspen Ridge Subdivision Filing No. 1, County of El Paso, State of Colorado.

## **Exhibit B**

**To**

### **Development and Cost Reimbursement Agreement**

#### **Description of the Rankin East Property:**

##### **PARCEL 1**

A TRACT OF LAND LOCATED IN A PORTION OF SECTION 8 AND SECTION 9, BOTH IN TOWNSHIP 15 SOUTH, RANGE 65 WEST OF THE 6TH P.M., EL PASO COUNTY, COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTH 1/4 CORNER OF SAID SECTION 9;

THENCE S00°19'32"E ALONG THE NORTH-SOUTH CENTERLINE OF SAID SECTION 9, A DISTANCE OF 1404.24 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF BRADLEY ROAD AS RECORDED IN BOOK 5307 AT PAGE 1472 OF THE RECORDS OF SAID EL PASO COUNTY;

THE FOLLOWING SEVEN (7) COURSES ARE ON SAID RIGHT-OF-WAY LINE AND THE NORTHEASTERLY RIGHT-OF-WAY LINE OF POWESRS BOULEVARD DESCRIBED IN SAID BOOK 5307 AT PAGE 1472 (NOW HIGHWAY 21):

- 1) THENCE S89°30'29"W A DISTANCE OF 4.29 FEET TO A POINT OF CURVE TO THE LEFT;
- 2) THENCE ON SAID CURVE, HAVING A RADIUS OF 2969.79 FEET; AN ARC LENGTH OF 785.85 FEET, A DELTA ANGLE OF 15°09'41", WHOSE LONG CHORD BEARS S81°55'38"W A DISTANCE OF 783.56 FEET;
- 3) THENCE S74°20'48"W A DISTANCE OF 952.02 FEET TO A POINT OF CURVE TO THE RIGHT;
- 4) THENCE ON SAID CURVE, HAVING A RADIUS OF 2759.79 FEET, AN ARC LENGTH OF 625.43 FEET, A DELTA ANGLE OF 12°59'05", WHOSE LONG CHORD BEARS S80°50'19"W A DISTANCE OF 624.10 FEET;
- 5) THENCE S87°19'53"W A DISTANCE OF 64.33 FEET TO A POINT OF CURVE TO THE RIGHT;
- 6) THENCE ON SAID CURVE, HAVING A RADIUS OF 150.00 FEET, AN ARC LENGTH OF 216.56 FEET, A DELTA ANGLE OF 82°43'14", WHOSE LONG CHORD BEARS N51°18'28"W A DISTANCE OF 198.24 FEET TO A POINT OF REVERSE CURVE TO THE LEFT;
- 7) THENCE ON SAID CURVE, HAVING A RADIUS OF 2105.00 FEET; AN ARC LENGTH OF 2947.68 FEET, A DELTA ANGLE OF 80°13'58", WHOSE LONG CHORD BEARS



N50°03'51"W A DISTANCE OF 2712.68 FEET TO THE NORTH LINE OF THE NE 1/4 OF SAID SECTION 8;

THENCE DEPARTING SAID RIGHT-OF-WAY N89°34'04"E ON SAID NORTH LINE, A DISTANCE OF 1967.80 FEET TO THE NORTHEAST CORNER OF SECTION 8;

THENCE S89°51'23"E ALONG THE NORTH LINE OF SAID SECTION 9, A DISTANCE OF 2636.19 FEET TO THE POINT OF BEGINNING.

PARCEL CONTAINS 5075973 SQUARE FEET OR 116.528 ACRES MORE OR LESS.

**Description of the CPR East Property:**

**PARCEL 2**

A TRACT OF LAND LOCATED IN A PORTION OF SECTION 9, TOWNSHIP 15 SOUTH, RANGE 65 WEST OF THE 6TH P.M., EL PASO COUNTY, COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH 1/4 CORNER OF SAID SECTION 9;

THENCE S00°19'32"E ALONG THE NORTH-SOUTH CENTERLINE OF SAID SECTION 9, A DISTANCE OF 1613.80 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF BRADLEY ROAD AS RECORDED IN BOOK 5307 AT PAGE 1472 OF THE RECORDS OF SAID EL PASO COUNTY;

THE FOLLOWING THREE (3) COURSES ARE ON SAID SOUTHERLY RIGHT-OF-WAY LINE OF SAID BRADLEY ROAD:

- 1) THENCE S89°30'29"W A DISTANCE OF 3.77 FEET TO A POINT OF CURVE TO THE LEFT;
- 2) THENCE ON SAID CURVE, HAVING A RADIUS OF 2759.79 FEET, AN ARC LENGTH OF 730.29 FEET, A DELTA ANGLE OF 15°09'41", WHOSE LONG CHORD BEARS S81°55'38"W A DISTANCE OF 728.16 FEET;
- 3) THENCE S74°20'48"W A DISTANCE OF 385.14 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING ALONG SAID RIGHT-OF-WAY S74°20'48"W A DISTANCE OF 425.01 FEET;

THENCE DEPARTING SAID RIGHT-OF-WAY S15°39'12"W A DISTANCE OF 392.40 FEET TO A POINT OF NON-TANGENT CURVE TO THE LEFT WHOSE RADIAL BEARS N44°25'13"E;

THENCE ON SAID CURVE, HAVING A RADIUS OF 75.00 FEET, AN ARC LENGTH OF 78.64 FEET, A DELTA ANGLE OF 60°04'25", WHOSE LONG CHORD BEARS S75°37'00"E A DISTANCE OF 75.08 FEET;

THENCE N74°20'48"E A DISTANCE OF 199.80 FEET;

THENCE S15°39'12"E A DISTANCE OF 40.00 FEET;

THENCE N74°20'48"E A DISTANCE OF 160.21 FEET;

THENCE N15°39'12"E A DISTANCE OF 469.99 FEET TO THE POINT BEGINNING.

PARCEL CONTAINS 188,446 SQUARE FEET OR 4.33 ACRES MORE OR LESS.

## Exhibit C

to

### Development and Cost Reimbursement Agreement

#### Description of the Waterview Property

##### PARCEL 3

A TRACT OF LAND LOCATED IN A PORTION OF SECTION 9, TOWNSHIP 15 SOUTH, RANGE 65 WEST OF THE 6TH P.M., EL PASO COUNTY, COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH 1/4 CORNER OF SAID SECTION 9;

THENCE S00°19'32"E ALONG THE NORTH-SOUTH CENTERLINE OF SAID SECTION 9, A DISTANCE OF 1613.80 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF BRADLEY ROAD AS RECORDED IN BOOK 5307 AT PAGE 1472 OF THE RECORDS OF SAID EL PASO COUNTY;

THE FOLLOWING THREE (3) COURSES ARE ON SAID SOUTHERLY RIGHT-OF-WAY LINE OF SAID BRADLEY ROAD:

- 8) THENCE S89°30'29"W A DISTANCE OF 3.77 FEET TO A POINT OF CURVE TO THE LEFT;
- 9) THENCE ON SAID CURVE, HAVING A RADIUS OF 2759.79 FEET, AN ARC LENGTH OF 730.29 FEET, A DELTA ANGLE OF 15°09'41", WHOSE LONG CHORD BEARS S81°55'38"W A DISTANCE OF 728.16 FEET;
- 10) THENCE S74°20'48"W A DISTANCE OF 930.15 FEET TO THE POINT OF BEGINNING;

THENCE DEPARTING SAID RIGHT-OF-WAY S15°39'12"W A DISTANCE OF 394.68 FEET TO A POINT OF NON-TANGENT CURVE TO THE RIGHT WHOSE RADIAL BEARS N75°43'37"W;

THENCE ON SAID CURVE, HAVING A RADIUS OF 75.00 FEET, AN ARC LENGTH OF 56.94 FEET, A DELTA ANGLE OF 43°29'55", WHOSE LONG CHORD BEARS S36°01'21"W A DISTANCE OF 55.58 FEET;

THENCE S57°46'18"W A DISTANCE OF 68.47 FEET TO A POINT OF CURVE TO THE LEFT;

THENCE ON SAID CURVE, HAVING A RADIUS OF 450.00 FEET, AN ARC LENGTH OF 280.72 FEET, A DELTA ANGLE OF 35°44'30", WHOSE LONG CHORD BEARS S39°54'03"W A DISTANCE OF 267.19 FEET;

THENCE S67°58'24"E A DISTANCE OF 40.00 FEET;

THENCE S22°01'36"W A DISTANCE OF 538.15 FEET TO A POINT OF CURVE TO THE RIGHT;

THENCE ON SAID CURVE, HAVING A RADIUS OF 260.00 FEET, AN ARC LENGTH OF 61.46 FEET, A DELTA ANGLE OF 13°32'35", WHOSE LONG CHORD BEARS S28°47'53"W A DISTANCE OF 61.31 FEET;

THENCE S00°00'00"W A DISTANCE OF 148.75 FEET;

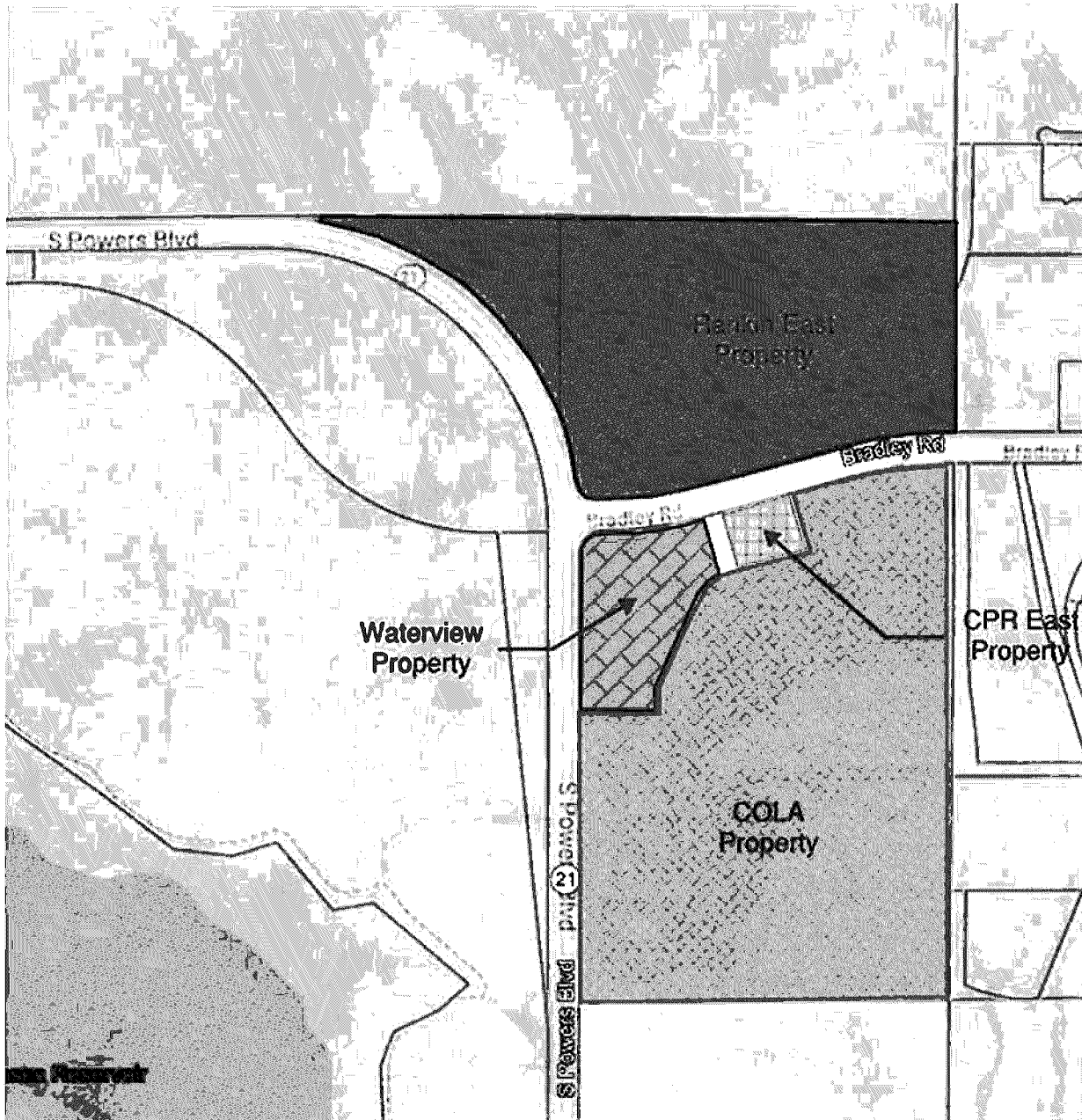
THENCE N90°00'00"W A DISTANCE OF 515.00 FEET TO A POINT ON THE NORTHEASTERLY RIGHT-OF-WAY LINE OF POWERS BOULEVARD DESCRIBED IN SAID BOOK 5307 AT PAGE 1472 (NOW HIGHWAY 21);

THE FOLLOWING FIVE (5) COURSES ARE ON SAID RIGHT-OF-WAY LINE AND THE NORTHERLY RIGHT-OF-WAY LINE OF BRADLEY ROAD AS RECORDED IN BOOK 5307 AT PAGE 1472 OF THE RECORDS OF SAID EL PASO COUNTY:

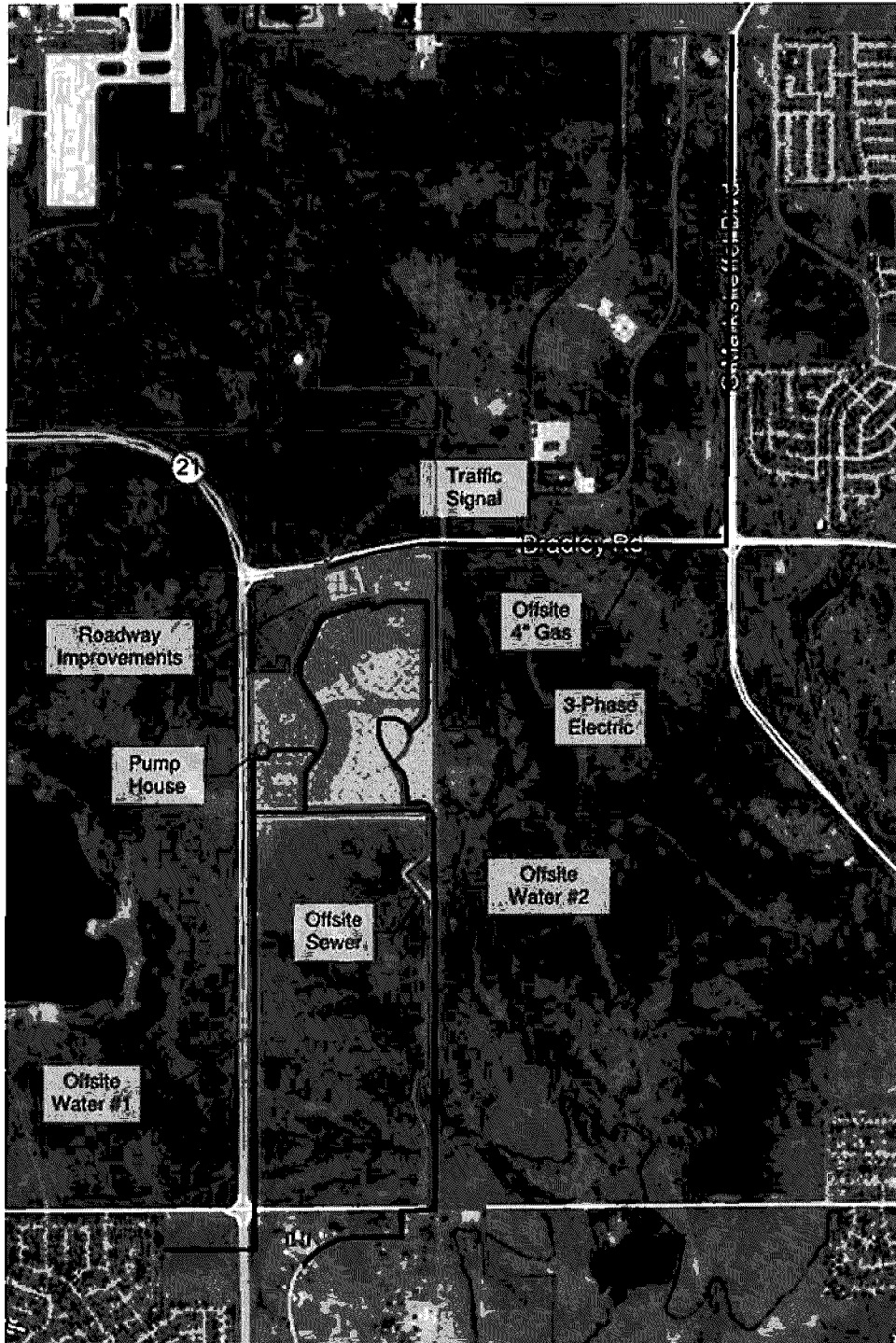
- 1) THENCE N00°29'10"W A DISTANCE OF 1123.38 FEET TO A POINT OF CURVE TO THE RIGHT;
- 2) THENCE ON SAID CURVE, HAVING A RADIUS OF 150.00 FEET, AN ARC LENGTH OF 229.91 FEET, A DELTA ANGLE OF 87°49'03", WHOSE LONG CHORD BEARS N43°25'21"E A DISTANCE OF 208.05 FEET;
- 3) THENCE N87°19'53"E A DISTANCE OF 53.06 FEET TO A POINT OF CURVE TO THE LEFT;
- 4) THENCE ON SAID CURVE, HAVING A RADIUS OF 2967.79 FEET, AN ARC LENGTH OF 673.03 FEET, A DELTA ANGLE OF 12°59'05", WHOSE LONG CHORD BEARS N80°50'20"E A DISTANCE OF 671.59 FEET;
- 5) THENCE N47°20'48"E A DISTANCE OF 21.87 FEET TO THE POINT BEGINNING.

PARCEL CONTAINS 963,596 SQUARE FEET OR 22.121 ACRES MORE OR LESS.

**Exhibit D**  
**to**  
**Development and Cost Reimbursement Agreement**  
**(Property Illustration)**



**Exhibit E**  
**to**  
**Development and Cost Reimbursement Agreement**  
**(Improvements)**



**Exhibit F**

**to**

**Development and Cost Reimbursement Agreement**

**(Plans)**

<b>Plan Name</b>	<b>Approve Date</b>	<b>Approving Entity</b>
Waterview East Off-Site Sanitary Sewer Plan	6/14/2018	Widefield Water and Sanitation District
Waterview East Off-Site Water Plan	6/14/2018	Widefield Water and Sanitation District
Waterview East Pre-Development Grading and Erosion Control Plan	12/26/2018	El Paso County Planning & community Development
Trails at Aspen Ridge Filing No. 1 Final Grading & Erosion Control Plans	2/13/2020	El Paso County Planning & community Development
Trails at Aspen Ridge Filing No.1 Wastewater System Plans	3/26/2019	Widefield Water and Sanitation District
Trails at Aspen Ridge Filing No. 1 8" & 12" Public Water Line Plans	10/14/2019	Widefield Water and Sanitation District
Trails at Aspen Ridge Filing No. 1 Roadway & Storm Improvement Plans	2/13/2020	El Paso County Planning & community Development
Trails at Aspen Ridge Water System Improvements Architectural Floor Plan	Prelim Drawings	
Trails at Aspen Ridge Water System Improvements Mechanical Floor Plan	Prelim Drawings	
Trails at Aspen Ridge Water System Improvements Mechanical Pump Section	Prelim Drawings	
Trails at Aspen Ridge Legacy Hill Drive Streetscape		
Trails at Aspen Ridge Offsite 12" Public Waterline Plans	Prelim Drawings	
<b>Contracts</b>	<b>Date</b>	
Mountain View Electric	2/12/2019	Work Order Number: 18-2065
Colorado Springs Utilities	3/12/2019	Work Order Number: 3382297-01
Colorado Springs Utilities	8/14/2019	Work Order Number: 3426497-03

**Exhibit G**  
**to**  
**Development and Cost Reimbursement Agreement**  
**(Budget)**

<b>3 Phase Electric to Pump House/Commercial</b>		<b>\$ 466,092.00</b>
COLA Property	43.67%	\$ 203,542.38
Rankin East Property	30.75%	\$ 143,323.29
CPR East Property	1.21%	\$ 5,639.71
Waterview Property	5.51%	\$ 25,681.67
	81.14%	\$ 378,187.05
<b>Offsite 4"Gas Main</b>		<b>\$ 1,106,525.22</b>
COLA Property	43.67%	\$ 483,219.56
Rankin East Property	30.75%	\$ 340,256.51
CPR East Property	1.21%	\$ 13,388.96
Waterview Property	5.51%	\$ 60,969.54
	81.14%	\$ 897,834.56
<b>Roadway Improvements</b>		<b>\$ 1,533,263.85</b>
COLA Property	40.05%	\$ 614,072.17
Rankin East Property	0.00%	\$ -
CPR East Property	10.76%	\$ 164,979.19
Waterview Property	49.19%	\$ 754,212.49
	100.00%	\$ 1,533,263.85
<b>Phone/Cable Offsite</b>		<b>\$ 15,000.00</b>
COLA Property	43.67%	\$ 6,550.50
Rankin East Property	30.75%	\$ 4,612.50
CPR East Property	1.21%	\$ 181.50
Waterview Property	5.51%	\$ 826.50
	81.14%	\$ 12,171.00
<b>Bonding Fee (Offsite water/Sewer)</b>		<b>\$ 3,630.00</b>
COLA Property	33.00%	\$ 1,197.90
Rankin East Property	23.28%	\$ 845.06
CPR East Property	0.92%	\$ 33.23
Waterview Property	4.18%	\$ 151.90
	61.38%	\$ 2,228.09



<b>Traffic Signal &amp; Design</b>		<b>\$ 378,222.00</b>
COLA Property	22.45%	\$ 84,910.84
Rankin East Property	17.60%	\$ 66,567.07
CPR East Property	10.99%	\$ 41,566.60
Waterview Property	48.96%	\$ 185,177.49
	100.00%	\$ 378,222.00

<b>Offsite Water line #1</b>		<b>\$ 669,588.79</b>
COLA Property	23.86%	\$ 159,783.78
Rankin East Property	16.78%	\$ 112,325.88
CPR East Property	0.66%	\$ 4,432.01
Waterview Property	3.03%	\$ 20,258.83
	44.33%	\$ 296,800.50

<b>Offsite Sewer Line</b>		<b>\$ 1,111,661.08</b>
COLA Property	33.30%	\$ 370,216.00
Rankin East Property	27.76%	\$ 308,565.00
CPR East Property	0.92%	\$ 10,178.91
Waterview Property	4.19%	\$ 46,528.11
	66.16%	\$ 735,488.02

<b>Offsite Water line #2</b>		<b>\$ 758,550.00</b>
COLA Property	23.90%	\$ 181,273.99
Rankin East Property	16.80%	\$ 127,422.73
CPR East Property	0.66%	\$ 5,037.37
Waterview Property	3.04%	\$ 23,025.97
	44.40%	\$ 336,760.06

<b>Pump House</b>		<b>\$ 1,250,000.00</b>
COLA Property	43.70%	\$ 546,250.00
Rankin East Property	30.70%	\$ 383,750.00
CPR East Property	1.20%	\$ 15,033.13
Waterview Property	5.50%	\$ 68,716.88
	81.10%	\$ 1,013,750.00

<b>Upsizing Internal Water main from Pump House to</b>		<b>\$ 202,212.00</b>
--	--	----------------------

**South of Bradley**

COLA Property	43.70%	\$	88,366.64
Rankin East Property	30.70%	\$	62,079.08
CPR East Property	1.20%	\$	2,426.54
Waterview Property	5.50%	\$	11,121.66
	81.10%	\$	163,993.93

**Construction Management Cost**

		\$	130,832.44
COLA Property	41.73%	\$	54,590.91
Rankin East Property	25.76%	\$	33,703.59
CPR East Property	3.39%	\$	4,431.79
Waterview Property	15.40%	\$	20,142.22
		\$	112,868.52

**Summary of Costs**

COLA Property	\$	<b>2,793,974.67</b>
Rankin East Property	\$	<b>1,583,450.72</b>
CPR East Property	\$	<b>267,328.93</b>
Waterview Property	\$	<b>1,216,813.26</b>

**Exhibit H**  
**to**  
**Development and Cost Reimbursement Agreement**  
**(Restrictive Covenant)**

After recording return to:  
COLA, LLC  
555 Middle Creek Parkway, Suite 500  
Colorado Springs, CO 80921

## RESTRICTIVE COVENANT

THIS RESTRICTIVE COVENANT (this "**Covenant**"), is made as of April 27<sup>th</sup>, 2021 (the "**Effective Date**"), by **FRANK W. HOWARD #2 LIMITED PARTNERSHIP, LLLP**, a Colorado limited liability limited partnership ("**Owner**") whose address is 17 S. Wahsatch, Colorado Springs, CO 80903, for the benefit of **COLA, LLC**, a Colorado limited liability company ("**COLA**") whose address is 555 Middle Creek Parkway, Suite 500, Colorado Springs, CO 80921.

### Recitals

A. COLA is the owner of certain residential building lots (the "**Benefited Property**") that are located within the final subdivision plat of Trails at Aspen Ridge Subdivision Filing No. 1, County of El Paso, State of Colorado ("**Subdivision**").

B. Owner is the owner of real property that is located adjacent to the Subdivision, which real property is more particularly described on **Exhibit A** attached hereto and incorporated herein by this reference (the "**Restricted Property**").

C. In connection with development of the Benefited Property for single-family residential use and the exclusion of the Restricted Property from the boundaries of the Waterview II Metropolitan District, Owner and COLA agreed to enter into this Covenant imposing the restrictions set forth below with respect to the Restricted Property.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, COLA and Owner hereby covenant and agree that the Restricted Property shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the restrictions, conditions, covenants and reservations set forth in this Covenant, each and all of which are for the purpose of implementing a general and common plan to protect, preserve and enhance the value, desirability, and salability of, and which shall run with, the Benefited Property and the Restricted Property, and which shall be binding on any person now or hereafter having any right, title or interest in the Restricted Property, or any part thereof, and their heirs, successors, personal representatives, and assigns, and shall be appurtenant to and inure to the benefit of each owner of all or any portion of the Benefited Property. The acceptance of any deed or conveyance of the Restricted Property or any portion shall constitute a covenant and agreement to accept and hold the Restricted Property described or conveyed in or by such deed of conveyance, subject to the restrictions, conditions, covenants and reservations as follows, to-wit:

1. Architectural Review and Approval. Owner covenants and agrees that no buildings shall be constructed, erected or installed on the Restricted Property, if the same will be

completed by any person other than by or on behalf of a governmental or quasi-governmental entity, unless complete plans and specifications therefor shall have been first submitted to and approved, or conditionally approved, in writing by COLA. Said plans and specifications shall show exterior design, height, materials and location of the building improvements, plotted horizontally and vertically, as well as such other materials and information as may be reasonably required by COLA. COLA shall have the authority to approve or disapprove any proposed building improvements. COLA shall decide each request for approval within thirty (30) days after the complete submission of the request and submission to COLA of all plans, specifications and other materials and information which COLA may require in conjunction with such request. If COLA fails to decide any request and notify the requesting party in writing within thirty (30) days after the complete submission of the plans, specifications, materials and other information with respect thereto, then such request for approval shall be deemed to have been approved by COLA. COLA shall exercise its reasonable judgment in reviewing and deciding each request to the end that (i) all building improvements conform to and generally harmonize with the existing surroundings, residences, landscaping and structures within the Subdivision, (ii) the value, desirability, and salability of the Benefited Property and the Restricted Property is preserved and enhanced, and (iii) there is material adverse impact on property values. Neither COLA nor any representative of COLA shall be liable in damages to any person, or to any Owner, by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove in regard to any matter within its jurisdiction hereunder. Requests for approval shall be submitted to COLA at its principal office street address as listed with the Colorado Secretary of State, which address is currently, as of the Effective Date, set forth above. During any period of time that the Waterview II Metropolitan District ("District") exercises and provides architectural or design review services for the Restricted Property, then the District's design review and approval process shall control over this Covenant and the requirements of this Section 1 shall not be applicable.

2. The covenant set forth in Section 1 above shall automatically expire and be of no further force or effect upon the earliest to occur of (a) the closing of the sale of single-family detached residences constructed on all of the platted single family subdivision lots within the Subdivision, or (b) the fifteenth (15<sup>th</sup>) anniversary of the Effective Date of this Covenant. Notwithstanding that any such expiration is automatic, COLA shall, within 15 days after request by Owner, execute, acknowledge and deliver to Owner such documents as Owner may reasonably request to evidence such expiration.

3. This Covenant touches and concerns and shall run with the land as an appurtenance benefiting the Benefited Property and burdening the Restricted Property, shall specifically inure to the benefit of COLA, and shall be specifically binding upon Owner and its successors in interest in the ownership of the Restricted Property, or any portion thereof, their respective tenants and licensees, and all other parties holding or claiming any possessory or other interest or acting by, through or under any of them so long as this Covenant remains in full force and effect.

4. This Covenant shall be governed by and construed and enforced in accordance with the laws of the State of Colorado. This Covenant shall be recorded in the real property records of El Paso County, Colorado.

5. If there is breach of this Covenant, and such default is not cured within 15 days after written notice of default is given by COLA to Owner or other owner of the Restricted Property, COLA may seek any and all remedies available at law or in equity for the breach of this Covenant, including without limitation, damages, an action for specific performance, and the right to enjoin, without posting a bond, any continuing activity on the Restricted Property which violates this Covenant. COLA and Owner agree that since certain breaches or violations of this Covenant may cause material harm to COLA and the ownership interests in the Benefited Property which would not be adequately addressed or remedied by the right to recover damages, or by other remedies available at law, COLA shall be entitled to enjoy and exercise any and all available equitable remedies, including injunctive relief, for any breach or violation of this Covenant. This right of recourse to equitable remedies shall be essential to the protection of the ownership interests in the Property. All equitable remedies shall be cumulative with and non-exclusive of one another as well as all remedies for damages or otherwise available at law. Any and all such remedies may be pursued concurrently or successively from time to time, as COLA may elect, to seek redress for any breach or violation of this Covenant, and no exercise of any one remedy shall constitute or be construed as an election of remedies to the bar of any other remedy.

6. Time is of the essence in this Covenant.

7. This Covenant constitutes the entire understanding and agreement between COLA and Owner regarding the subject matter hereof, and all prior or extrinsic understandings and agreements between the parties regarding such subject matter are superseded hereby and of no further force or effect.

8. In case any one or more of the provisions contained in this Covenant is for any reason held to be invalid, illegal or unenforceable in any respect, that provision shall not affect any other provision hereunder.

9. This Covenant may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

10. This Covenant may not be amended or modified, nor may any provision hereof be waived to any extent, except to the extent such modification, amendment or waiver is set forth in a recorded written instrument executed by the party against whom enforcement of such amendment, modification or waiver is sought, and then only to extent specifically set forth therein. Each party hereto and its attorneys have had adequate opportunity to review and comment upon the provisions of this Covenant, and accordingly, this Covenant shall be construed without regard to any presumption or other legal rule of construction against the party causing this Covenant to be drafted.

11. No failure or delay of either party in the exercise of any right or remedy given to such party hereunder or the waiver by any party of any condition hereunder for its benefit (unless the time specified herein for exercise of such right or remedy has expired) shall constitute a waiver of any other or further right or remedy. No waiver by either party of any

breach hereunder or failure or refusal by the other party to comply with its obligations shall be deemed a waiver of any other or subsequent breach, failure or refusal to so comply.

IN WITNESS THEREOF, Owner and COLA have made and executed this Covenant as of the day, month, and year first above written.

OWNER:

FRANK W. HOWARD #2 LIMITED PARTNERSHIP, LLLP,  
a Colorado limited liability limited partnership

By: 

Print Name: Kevin Howard

Its: CO-Partner

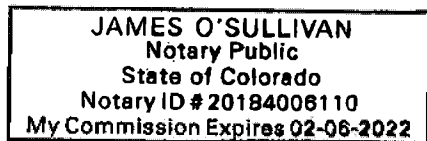
STATE OF COLORADO                     )  
  ) ss.  
COUNTY OF El Paso                     )


The foregoing Development and Cost Reimbursement Agreement with Lien was acknowledged before me this 27<sup>th</sup> day of April, 2021, by Kevin Howard, as CO-Partner of FRANK W. HOWARD #2 LIMITED PARTNERSHIP, LLLP, a Colorado limited liability limited partnership.

Witness my hand and official seal.

My commission expires: 02-06-2022

[SEAL]



  
Notary Public



COLA:

COLA, LLC,  
a Colorado limited liability company

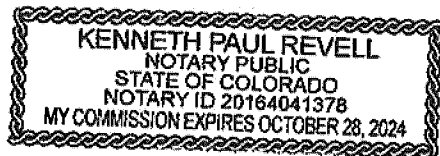
By: [Signature]  
Print Name: Jim Leiferman  
Its: Jim Leiferman - Regional President

STATE OF COLORADO )  
 ) ss.  
COUNTY OF EL PASO )

The foregoing Development and Cost Reimbursement Agreement with Lien was acknowledged before me this 6 day of May, 2024, by Jim Leiferman - Regional President, as COLA of COLA, a LLC.

Witness my hand and official seal.  
My commission expires: OCT 28, 2024

[SEAL]



[Signature]  
Notary Public

## EXHIBIT A TO RESTRICTIVE COVENANT

### Description of Restricted Property

#### **Description of the CPR East Property:**

A TRACT OF LAND LOCATED IN A PORTION OF SECTION 9, TOWNSHIP 15 SOUTH, RANGE 65 WEST OF THE 6TH P.M., EL PASO COUNTY, COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH 1/4 CORNER OF SAID SECTION 9;

THENCE S00°19'32"E ALONG THE NORTH-SOUTH CENTERLINE OF SAID SECTION 9, A DISTANCE OF 1613.80 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF BRADLEY ROAD AS RECORDED IN BOOK 5307 AT PAGE 1472 OF THE RECORDS OF SAID EL PASO COUNTY;

THE FOLLOWING THREE (3) COURSES ARE ON SAID SOUTHERLY RIGHT-OF-WAY LINE OF SAID BRADLEY ROAD:

- 1) THENCE S89°30'29"W A DISTANCE OF 3.77 FEET TO A POINT OF CURVE TO THE LEFT;
- 2) THENCE ON SAID CURVE, HAVING A RADIUS OF 2759.79 FEET, AN ARC LENGTH OF 730.29 FEET, A DELTA ANGLE OF 15°09'41", WHOSE LONG CHORD BEARS S81°55'38"W A DISTANCE OF 728.16 FEET;
- 3) THENCE S74°20'48"W A DISTANCE OF 385.14 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING ALONG SAID RIGHT-OF-WAY S74°20'48"W A DISTANCE OF 425.01 FEET;

THENCE DEPARTING SAID RIGHT-OF-WAY S15°39'12"W A DISTANCE OF 392.40 FEET TO A POINT OF NON-TANGENT CURVE TO THE LEFT WHOSE RADIAL BEARS N44°25'13"E;

THENCE ON SAID CURVE, HAVING A RADIUS OF 75.00 FEET, AN ARC LENGTH OF 78.64 FEET, A DELTA ANGLE OF 60°04'25", WHOSE LONG CHORD BEARS S75°37'00"E A DISTANCE OF 75.08 FEET;

THENCE N74°20'48"E A DISTANCE OF 199.80 FEET;

THENCE S15°39'12"E A DISTANCE OF 40.00 FEET;

THENCE N74°20'48"E A DISTANCE OF 160.21 FEET;

THENCE N15°39'12"E A DISTANCE OF 469.99 FEET TO THE POINT BEGINNING.

PARCEL CONTAINS 188,446 SQUARE FEET OR 4.33 ACRES MORE OR LESS.