

TRAFFIC SIGNAL REIMBURSEMENT AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____ 2023, by and between South Quincy Residential Developers, Inc. (the “DEVELOPER”) and the BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF ARAPAHOE, STATE OF COLOADO, 5334 S. Prince St., Littleton, CO 80166 (the “COUNTY”) together (the “PARTIES”) and is based upon the following facts:

WHEREAS, the COUNTY has adopted subdivision regulations, zoning regulations, storm sewer polices, building code regulations and related policies for governmental purposes, including the regulation of subdivision and development of land within unincorporated Arapahoe County and for the provision of public infrastructure related to the development (collectively; the “Development Policies”); and

WHEREAS, the Development Policies generally require the construction of public infrastructure improvements, or secured commitments to fund the construction, from developers, builders and Subdividers as a condition of granting permits and development approvals, resulting in the construction or financing of infrastructure concurrent with or after the development is constructed; and

WHEREAS, in accordance with the Development Policies, the PARTIES entered into two Traffic Signal Escrow Agreements (collectively, the “TSEAs”), dated August 8, 2018 and October 23, 2018, to fund the cost of the Traffic Signal at the intersection of S. Picadilly Street and E. Radcliff Parkway required by reason of the traffic impacts of the Copperleaf developments identified in the TSEAs (“the Traffic Signal”); and

WHEREAS, the August 8th TSEA paid the then estimated cost of a traffic signal for fifty percent (50%) of the share of the total cost of the Traffic Signal based on the traffic associated with Copperleaf Subdivision Filing No. 17 and the October 23rd TSEA paid that estimated cost for the remaining 50% share of the cost of the Traffic Signal based on the traffic associated with Copperleaf Subdivision Filing No. 18; and

WHEREAS, pursuant to the TSEAs, Developer deposited a total of \$300,000 (\$150,000 for each TSEA) for payment towards the cost of the design, construction, and installation of the Traffic Signal; and

WHEREAS, under the Development Policies, the Developer as developer of both Copperleaf Filings Nos. 17 and 18, and as agreed under the TSEAs, the Developer is responsible to and agreed to fund the total actual cost to design, construct and install the Traffic Signal and the \$300,000 total share advance payment reflected only the then estimated cost of a traffic signal; and

WHEREAS, the Developer acknowledges that it is its responsibility and obligation to design, construct and install the Traffic Signal in accordance with the Manual on Uniform Traffic Control Devices (the “MUTCD”) standards and at its own expense or to fund the total cost for the design, construction, and installation of the Traffic Signal; and

WHEREAS, the COUNTY has determined that the intersection of S. Picadilly Street and E. Radcliff Parkway now meets warrants for installation pursuant to the MUTCD; and

WHEREAS, DEVELOPER has requested, pursuant to the TSEAs, that the County design, construct and install the Traffic Signal and provide project management services related to installation of the Traffic Signal; and

WHEREAS, COUNTY is willing to design, construct, and install the Traffic Signal and is willing to provide project management services for the work and estimates that the cost of such project management services is reasonably valued at \$25,000.00; and

WHEREAS, the County and DEVELOPER mutually and reasonably anticipate that the actual cost of the Traffic Signal will exceed the \$300,000 deposited in the escrow account and the DEVELOPER has requested that the COUNTY advance the funding for the difference between the total cost of the Traffic Signal and the funds deposited in the escrow account; and

WHEREAS, the COUNTY desires to expedite the installation of the Traffic Signal and in order to do so, is willing to advance the difference between the actual cost of the Traffic Signal and the funds deposited in the escrow account, provided that the DEVELOPER reimburses the COUNTY for that difference plus the estimated cost of project management for the design, construction, and installation of the Traffic Signal and provided that the DEVELOPER pays the County interest as provided herein on such advanced funds.

WHEREAS, the DEVELOPER has hired a consultant to complete the TRAFFIC SIGNAL design and the County has approved the design. The DEVELOPER paid for the design from the \$300,000 that on deposit with the County.

NOW, THEREFORE, in consideration of the above recitals and the mutual promises set forth below, and upon other good and valuable considerations, the PARTIES agree as follows:

1. Agreement. DEVELOPER agrees and affirms that the DEVELOPER is responsible for the total cost to design, construct, and install the Traffic Signal at the intersection of S. Picadilly Street and E. Radcliff Parkway, including project management costs of \$25,000. DEVELOPER further agrees that the remaining \$300,000 on deposit with the County under the TSEAs shall be applied towards such costs and hereby relinquishes any and all claim to such funds.
2. Construction. The County agrees to construct the signals per the design and install the Traffic Signal using its forces or selected contractor and agrees to provide project management services for the project using its forces or selected contractor.
3. Procurement. The County intends to procure the signal poles and equipment in a separate process in an effort to speed up the construction of the Traffic Signal. Following the receipt of qualifying quotes for this material, the County will furnish the Developer a copy of the quotes for its information and a copy of the purchase order. The construction of the Traffic Signal services will be obtained through an invitation to bid for the construction and installation of the Traffic Signal. Both processes will be in accordance with the County's procurement policies. Following receipt of qualifying bids, the County shall furnish Developer a copy of the bid tabulation sheet for its information and following the County's selection of the contractor, the County shall furnish to Developer a copy of the executed contract.
4. Payment. The COUNTY shall utilize the remaining \$300,000 funding provided under the TSEAs and held by County for the Traffic Signal and the County agrees to advance the remaining balance of the actual cost of the Traffic Signal, subject to Developer's agreement herein to reimburse the County for all funds advanced by the County for construction of the Traffic Signal, including any additional funding as necessary for cost overruns, plus twenty-five thousand (\$25,000) dollars for project management costs, and the accrued interest.

5. Project Reporting. The County agrees to provide periodic status reports on the construction of the Traffic Signal and further agrees to provide to Developer ten (10) business days advance notice prior to executing any change order that increases the contract price for the Traffic Signal. The Developer may comment on the change order and suggest reasonable alternatives; however, approval of the change order shall be the County's sole determination and decision.

6. Notice of Completion/Accrual of Interest. The County shall provide notice of substantial completion of the Traffic Signal installation to the Developer. Upon payment of final settlement to the Traffic Signal contractor, the County shall furnish a written Statement of Total Cost to install the Traffic Signal, including the project management amount of \$25,0000, but less the \$300,000 paid under the TSEAs. Interest shall commence to accrue as of the date of the Statement of Total Cost on the full amount of such Statement as the agreed principal amount of Developer's debt to the County.

7. Reimbursement. The DEVELOPER shall reimburse the COUNTY the full amount of the Statement of Total Costs plus all interest accrued at the rate stated below prior to the 2nd anniversary of this agreement or final plat approval of Tract H3 Copperleaf 2nd Filing or annexation of the parcel whichever occurs first.

8. Interest. The interest period will begin to accrue from the date of the Statement of Total Costs and end when full reimbursement of the full principal and all accrued interest is paid to the County. The rate of interest shall be xx percent compounded annually.

9. Miscellaneous Provisions.

a. Default and Remedies. In the event of a material default by a PARTY, the non-defaulting PARTY shall be entitled to all legal and equitable remedies, including the right to recover reasonable attorney fees and court costs.

b. Governing Law/Forum/Interpretation. This Agreement shall be construed according to the laws of the State of Colorado, and venue shall be in Arapahoe County, Colorado.

c. Binding Effect/Survival. This Agreement shall inure to the benefit of, and shall be binding upon, the PARTIES', their successors, and their permitted assigns. In addition, this Agreement shall be recorded against the PROPERTY: in the office of the Arapahoe County Clerk and Recorder and is intended to run with the land and shall be binding on any subsequent purchasers of the PROPERTY known as Tract H3 Copperleaf 2nd Filing. Any transfer of the reimbursement obligation under this Agreement may only occur upon consent of the COUNTY and in accordance with the amendment provisions specified herein.

d. Severability. The parties intend this Agreement to be legally valid and enforceable in accordance with its terms to the fullest extent permitted by law. If any

term or provision of this Agreement is finally determined to be invalid or unenforceable by a court of competent jurisdiction, the parties agree the defect shall not affect any other term of this Agreements and agree that the term shall be stricken, and the Agreement given the fullest effect without the invalid term.

e. Notices. Unless otherwise specifically required by a provision of this Agreement any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if hand delivered or sent by certified mail or registered mail, postage and fees prepaid, addressed to the PARTY to whom such notice is to be given at the address set forth below or at such other address as has been previously furnished in writing, to the other PARTIES. Such notice shall be deemed to have been given when deposited in the United States Mail properly addressed to the intended recipient. Alternatively notice may be provided in writing by el3ctronic mail at the following addresses:

For the Developer: _____

For the County: _____

f. Headings. Paragraph headings are used for reference purposes only and shall not limit or define the effect of any term of this Agreement.

g. Assignments. This Agreement is not assignable, except in writing and with the prior written consent of the other PARTY, which consent may not be unreasonably withheld; except that consent by COUNTY to assignment by DEVELOPER may be conditioned on the provision of adequate and acceptable security or collateral to guarantee payment of the reimbursement obligation provided in this Agreement. The restriction on assignment in this Paragraph, however, is not intended to apply to any agreement between COUNTY and a contractor for construction of the IMPROVEMENTS or any portion thereof and shall not be construed to prohibit COUNTY from assigning the reimbursement payment obligation herein, in whole or in part, for purposes of debt collection.

h. Nothing in this Agreement is intended to be or shall be construed as a multi-fiscal year obligation for COUNTY or as creating any multi-fiscal year obligation within the meaning of Article X, Section 20 of the Colorado Constitution. Any payment obligation of COUNTY incurred under this Agreement or associated agreement shall be subject to annual appropriation by COUNTY in accordance with Colorado law.

i. This Agreement is intended to serve a public purpose and confer a public benefit by advancing construction of transportation improvements at S. Picadilly Street and E. Radcliff Parkway. This Agreement is not intended to be construed as a loan or pledge of the credit or faith thereof Arapahoe County as prohibited under Article XI, Section 1 of the Colorado Constitution. However, to whatever extent it may be construed as implicating the provisions of said Article XI, Section 1, the provisions of this Agreement provide a public benefit to the traveling public and residents of Arapahoe County.

j. Nothing in this Agreement is intended to be or shall be construed as a waiver of any governmental immunity available to Arapahoe County under C.R.S. 24-10-101, *et seq.* or any other State or Federal statute or the common law.

k. Nothing in this Agreement is intended to create or shall be construed to create any third-party beneficiary rights.

l. The undersigned persons signing this Agreement on behalf of their respective organization affirm and warrant their authority to execute this Agreement and bind the respective Parties to the terms and conditions of this Agreement.

(Remainder of page intentionally left blank)

IN WITNESS WHEREOF, the parties hereto set their hands in agreement the date first written above.

DEVELOPER:

NAME OF DEVELOPER

By: _____
NAME

Title: _____

Arapahoe County)
) S.S.
State of Colorado)

The foregoing instrument was acknowledged before me this _____ day of _____, 2023, by
_____ as attorney of fact for _____

My Commission Expires: _____

Witness my hand and official seal.

Signature

Name of Notary

Address of notary

COUNTY:

For the Board of County Commissioners, Arapahoe County, Colorado

BY: _____

Bryan D. Weimer, PWLF Director PW&D

Authorization pursuant to Resolution No. 23-038