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Arapahoe County Clerk, CO

Page: 1 of 12

Joan Lopez, Clerk & Recorder

E3045407

Arapahoe County Case No. ASP21-010

**SUBDIVISION IMPROVEMENT AGREEMENT
RELATING TO THE DEVELOPMENT OF
Lot 2, Block 1, Dove Valley Business Park Subdivision Filing No .26
Paonia Building**

THIS AGREEMENT is made this 28th day of June, 2023 between the Board of County Commissioners of Arapahoe County Colorado, 5334 S Prince Street, Littleton Colorado 80166 (hereinafter referred to as "County") and DC, LLC (hereinafter referred to as "Developer"), whose legal address is 5055 List Drive, Colorado Springs, CO 80919

WITNESSETH:

WHEREAS, Developer has submitted to County for approval, and execution of a administrative site plan designated Lot 2, Block 1, Dove Valley Business Park Subdivision Filing No .26 (hereinafter referred to as "the Plan"); and

WHEREAS, Developer owns the following property within unincorporated Arapahoe County and which comprises the property subject to the Plan:

Lot 2, Block 1

Dove Valley Business Park Subdivision Filing No. 26

County of Arapahoe, State of Colorado

WHEREAS, County has fully considered the Plan, the proposed development and improvement of the land therein and the requirements to be imposed upon other adjoining or neighboring properties by reason of the proposed development and improvement of the land included in the Plan; and

WHEREAS, County is willing to approve and execute the Plan upon the agreement of Developer to the matters hereinafter described, and subject to all the requirements, terms and conditions of the Arapahoe County Land Development Code, including the Arapahoe County Stormwater Management Manual and the Arapahoe County Infrastructure Design and Construction Standards, now in effect and other laws, rules, and regulations, as those are promulgated by statutes, resolutions, or otherwise; and

WHEREAS, County and Developer mutually acknowledge and agree that the matters hereinafter set forth are reasonable conditions and requirements to be imposed by Arapahoe County in connection with its approval and execution of the Plan, and that such matters are necessary to protect, promote, and enhance the public welfare; and

WHEREAS, It is further mutually acknowledged that Arapahoe County is entitled to other assurance that the matters hereinafter agreed to will be performed as agreed by Developer, and in that regard, Developer will furnish to County collateral in such form as approved herein to secure completion of such matters in accordance with the provisions of this Agreement and all applicable County or State rules, regulations, standards and codes.

NOW, THEREFORE, in consideration of the premises, the mutual covenants herein contained, and the approval, execution of the Plan by County, it is agreed as follows:

IMPROVEMENTS TO BE COMPLETED

1. All streets, curb, gutter, sidewalk, pans and drainage improvements within the Plan and an equitable share of specified on and off-site improvements that serve the Plan as itemized on a cost estimate dated August 16, 2022, a copy of which is attached hereto as Exhibit "A" and made a part hereof, shall be constructed and improved by Developer according to the applicable standards, rules, and regulations of County, and according to the approved Plans and profiles submitted by Developer. The improvements identified in Exhibit A are hereinafter referred to as the Public Improvements.

TIME OF COMPLETION

2. Except where a lesser time period is prescribed, all Public Improvements and all matters herein agreed to be performed shall be installed, constructed, or performed by Developer within two (2) years from the date hereof, provided however, that labor disputes, fire, unusual delay in transportation, unavoidable casualties, or such other cause beyond the Developer's control which County determines may justify the delay shall extend the said time period for performance of this Agreement. All construction shall be performed in a good and workmanlike manner and in accordance with applicable County standards, rules, and regulations governing such construction, as determined by the Arapahoe County Director of Public Works and Development, Engineering Services Division.

COLLATERAL

3. It is estimated that the cost of constructing and installing the Public Improvements herein described in Exhibit A will not exceed \$142,904.50. In order to secure the performance of the construction and installation of the Public Improvements by Developer, the Developer has provided the County with collateral, dated 5-10-2023, in the form of a *letter of credit* in the amount of \$ 142,904.50 (the "Collateral") as a guarantee that there are available funds in the amount of the aforesaid estimated cost for the construction and installation of the Public Improvements for the effective period of this Agreement including written extensions. The terms of the Collateral shall provide that said Collateral shall not expire prior to the final acceptance of the Public Improvements set forth in this Agreement unless it is released in whole or in part by the County. In the event that any portion of work and Public Improvements have not been made, installed, or performed within said two (2) year period, except as provided for in paragraph 2 above, then, and in that event, County may have such remaining work and Public Improvements completed within a reasonable time by such means and in such manner, by contract with or without public letting, or otherwise, as it may deem advisable, at Developer's expense. County shall be entitled to draw against such Collateral to provide funds for County's costs and expenses incurred in contracting for said work and Public Improvements and shall be entitled to reimbursement from Developer upon demand for any costs incurred by County which are not paid from the Collateral, with interest as specified herein. In the event Collateral is not maintained, through final acceptance of the Public Improvements, Developer shall be in default of this Agreement and County may make demand on the then existing Collateral and Developer shall be liable to County for the remaining cost of completion of such Public Improvements.

OWNERSHIP OF IMPROVEMENTS

4. Subject to the provisions of the Arapahoe County Land Development Code or other applicable County standards, rules or regulations relating to County's acceptance of improvements for maintenance purposes, upon completion of construction of the Public Improvements located within County right-of-way identified in Exhibit A, all such Improvements shall become the sole property of Arapahoe County, free and clear of all liens, encumbrances, and restrictions. Developer

shall furnish to County lien waivers and/or satisfactory proof that all claims and payments to be made in connection with construction of said Improvements have been satisfied. All other Public Improvements referenced in this Agreement shall be owned and maintained by Developers and their successors and assigns.

STANDARDS FOR ACCEPTANCE

5. County shall accept the Public Improvements identified on Exhibit A and shall accept those Public Improvements identified on Exhibit A that are in County right-of-way for full maintenance in accordance with its applicable regulations and under the following terms and conditions:

- A. As soon as all of the Public Improvements which are covered by this Agreement are installed in accordance with the terms of this Agreement, Developer shall send a letter to the Public Works and Development, Engineering Services Division requesting probationary acceptance in accordance with Chapter 9 of the Infrastructure Design and Construction Standards. When the Public Improvements are determined to be constructed in accordance with County approved construction plans, the County will send a letter to the Developer granting probationary acceptance of the Public Improvements. The probation period will be stated in this letter and will normally terminate one year from the date of probationary acceptance. The County will submit its statement allowing a reduction of the Collateral to not less than 10% of the original value of the Public Improvements, as defined in Exhibit A.
- B. Once the Public Improvements have been completed and the designated warranty period as outlined in the Probationary Acceptance documents have been met, the owner/developer may request Final Acceptance. Requests for final acceptance may be received by Arapahoe County no sooner than nine (9) months following the probationary acceptance date. After inspection, the County will identify and provide a written list of deficiencies based on a physical inspection of the Public Improvements. The Developer shall correct all of said deficiencies to the County's satisfaction within six (6) months from the date said deficiency list was issued.



When all of said deficiencies have been corrected, including application of a final seal coat to streets and traffic striping when necessary, the County will grant a final acceptance to the Developer.

- C. The County shall not release the remaining or final ten percent (10% of the total amount of the Collateral until the Public Improvements have been granted final acceptance by the County.

EXECUTION – NO GUARANTEE

6. Upon execution of this Agreement by the parties hereto, the County's receipt of the approved Collateral as provided herein, and provided all requirements, terms, and conditions of the Arapahoe County Land Development Code, the Arapahoe County Building Code, and conditions of approval of the Plan and other applicable conditions have been met by Developer, County agrees to execute the Plan and, if appropriate, accept the same for recordation in the Clerk and Recorder's Office. The execution of this Agreement by the Board of County Commissioners of Arapahoe County or its designee in no way represents that the County will accept the Public Improvements set forth in Exhibit A to this Agreement for the title or maintenance purposed until said Improvements have been completed in strict compliance with applicable Arapahoe County standards, rules and regulations.

PARTIAL RELEASE

7. From time to time, as work to be performed and improvements to be constructed hereunder progresses, Developer may request in writing that County inspect such work and improvements as are completed and that corresponding reductions of the Collateral be granted. These requests will be processed in a manner identical to a request for probationary acceptance. When the County is satisfied that such work and improvements as specified by Developer have been completed in accordance with the terms hereof, Arapahoe County will submit its statement that it has no objection to the partial reduction of so much of the above specified Collateral (and equal reduction of the outstanding balance of such Collateral) as is necessary to pay the cost of the work performed and improvements installed pursuant to the terms of this Agreement. The procedures for completion of improvements and work by County and payment to County therefore from the

Collateral shall apply whether there be one or more defaults on the part of Developer in performing the terms, conditions, and covenants contained in this Agreement.

PRESERVATION OF OTHER REMEDIES

8. The rights and remedies of the County provided in this Agreement shall not be exclusive and are in addition to any other rights or remedies provided by law. Developer, in developing the property contained within the Plan, and the Public Improvements herein described, shall fully comply with all applicable rules, regulations, standards, and laws of the County and other governmental agencies and bodies having jurisdiction.

RESPONSIBILITY FOR INSTALLING UTILITIES AND FOR THE PERMITTING OF THEIR INSTALLATION

8. Developer agrees to be responsible for contracting for installation of any or all utilities where required, including, but not limited to water, sewer, natural gas, and electricity. It is agreed that electrical and telephone service for this Subdivision shall be underground in accordance with the Arapahoe County Land Development Code. Developer understands that no building permits shall be issued prior to assurances to the Arapahoe County Building Division that all utilities as well as adequate roadways are available or provided for each lot seeking a building permit.

Subject to the procedures in Chapter 9 of the Infrastructure Design and Construction Standards, Arapahoe County, as the owner of public right-of-way and public easements in this Plan, retains the right to issue street cut and right-of way use permits to utility companies or to other persons, companies, corporations or organizations prior to the final acceptance of the Public Improvements. The Developer is given prior notice of all such street cut and right-of-way use permits by being a required counter-signatory to all such permit applications submitted to the County. The Developer agrees not to unreasonably withhold concurrence signature on such permit applications when requested by utility companies or others applying for permitted right-of-way use. The County agrees that enforcement of repairs to street cuts described in this paragraph shall be a County responsibility, but hereby gives notice that County policy and practice is not to permit open street cuts within a two year period following the construction date of new streets.

STIPULATIONS

10. This Agreement in addition to the consideration of the premises, the mutual covenants herein contained, and the approval and execution, of the Plan by Arapahoe County shall be and is subject to the following stipulations(s) and Developer agrees to the following:

- A) The attached cost estimate (Exhibit A) has been prepared using the best available data known at this time. It is provided for the purpose of establishing a collateral amount only. It is not a guarantee of project quantities or costs and should not be construed as such.

SECTION HEADINGS

11. The section headings are inserted herein only for convenience of reference and in no way shall they define, limit or describe the scope or intent of any provisions of this Agreement.

ASSIGNMENT CLAUSE

12. Upon written notification to Developer by County, County may assign this Agreement in whole or in part, to any person or third party ("Assignee"). Prior to assignment, County shall determine whether any portion of the Collateral is to be retained by the County for work not constructed to the County's satisfaction ("Collateral Retainer"). Notwithstanding the above, County may release the balance of the Collateral ("Collateral Balance") to the Assignee however, County may assign its right to make improvements to the Developer's unsatisfactory work to the Assignee along with the Collateral Retainer. County's notification to Developer shall state the date of the assignment, the name of the Assignee, the percentage and or limits of the project being assigned, and if applicable work not completed to the County's satisfaction and the amount of the Collateral being retained by the County.

Developers, upon receiving written notification from County of its intent to assign this Agreement, agree to transfer the Collateral Balance to the Assignee on the date of assignment.

Upon assignment, County shall be relieved of any liability or obligation under this Agreement.

Developer may only assign this Agreement with County's prior consent and subject to assignee executing a new subdivision improvements agreement prior to the effective date of the assignment. Upon execution of the new subdivision improvements agreement with the assignee

and the acceptance and approval of replacement collateral by County, Developer may be relieved of any liability or obligation under this Agreement.

NO THIRD PARTY BENEFICIARIES

13. Nothing in this Agreement shall, be deemed to create any third party benefits or beneficiaries, or create a right or cause of action for the enforcement of its terms, in any entity or person not a party to this Agreement.

SEVERABILITY

14. If any portion of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable, it is the intent of the parties hereto that the remaining provisions of this Agreement shall be full force and effect.

EXTENT OF AGREEMENT

15. This Agreement represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representatives, or agreements, either written or oral.

AMENDMENTS

16. Any amendments to this Agreement shall be in writing and signed by both parties.

ATTORNEY FEES

17. In the event of litigation between the parties hereto to enforce the terms of this Agreement, the prevailing party in such litigation shall be entitled to its own cost, including reasonable attorney fees and expert witness fees, from the opposing party.

BINDING EFFECT

18. This Agreement shall inure to the benefit of, and shall be binding upon, the parties and their successors and assigns as permitted hereunder, including the grantees of any fee interest in the Property and shall run with the title to the Property.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

DEVELOPER: DC, LLC

By: Donald D Cannella

Title: MM

County of El Paso)
) s.s.
State of Colorado)

This foregoing instrument was acknowledged before me this 13th day of June, 2023 by Donald D Cannella as Managing Member of DC, LLC.

My commission expires: June 30, 2025. Witness my hand and official seal.

Wendy Nicole Estes

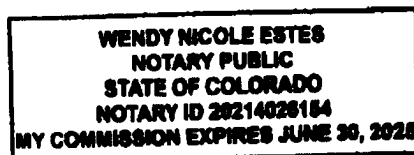
Signature

WENDY NICOLE ESTES

Name of notary

5055 Lisle Dr. Colorado Springs, CO 80919

Address of notary



For the Board of County Commissioners
Arapahoe County

Bryan
Weimer

Digitally signed by Bryan Weimer
DN: cn=Bryan Weimer,
o=Arapahoe County, ou=Public
Works and Development,
email=bweimer@arapahogov.co
m, c=US
Date: 2023.06.28 10:16:46 -0600

Bryan D. Weimer, PWLF, Director
Public Works and Development
Authorization pursuant to Resolution No. 23-038

SC

Exhibit A
Engineer's Cost Estimate
for
Paonia, Inc.

Prepared for:
Paonia, Inc.
Lot 2, Block 1, Dove Valley Business Park
Arapahoe County Case No. ASP21-010

Prepared by:
Infinity Land Consultants, LLC

Date Prepared:
27-Sep-21

Revised:
11-Apr-22
16-Aug-22

Engineer's Cost Estimate
Exhibit A
for
Paonia, Inc.
Arapahoe County Case No. ASP21-010

ON-SITE IMPROVEMENTS

Description	Unit	Quantity	Unit Cost	Amount
1 <u>Storm Drainage Facilities</u>				
A <u>Storm Drain System</u>				
18" RCP CLASS III	LF	66	\$118.00	\$7,788.00
18" FES	EA	1	\$1,200.00	\$1,200.00
4' Storm MH	EA	1	\$3,500.00	\$3,500.00
Type M Rip Rap	CY	2	\$350.00	\$700.00
5' Type C Inlet W/ Conc. Collard	EA	1	\$7,500.00	\$7,500.00
Double Comb. Type 16 Inlet	EA	1	\$7,500.00	\$7,500.00
WQ Grass Swale Low Grow Seed	LS	1	\$5,500.00	\$5,500.00
WQ Grass Buffer Low Grow Seed Mix with Landscape Irrigation System (See Landscape Plan)	SF	30675	\$1.50	\$46,012.50
WQ Grass Swale Peat Mix Growing Media 12" Deep	CU	4940	\$3.80	\$18,772.00
WQ Grass Buffer Peat Mix Growing Media 12" Deep	CU	4100	\$3.80	\$15,580.00
			Sub Total	\$106,264.50

OFF-SITE IMPROVEMENTS

1 <u>Street</u>				
<u>E. Jamison Place</u>				
Street Cut & Patch Back	LS	1	\$4,500.00	\$4,500.00
			Sub Total	\$4,500.00

SUMMARY**On-site Improvements:**

	Sub Total I	\$106,264.50
Contingency & Non-Itemized Improvements (15%)		\$15,940.00
On-site Total		\$122,204.50

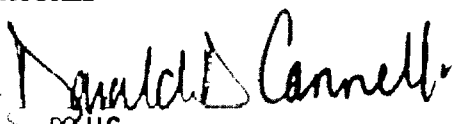
Off-site Improvements:

	Sub Total I	\$18,000.00
Contingency & Non-itemized Improvements (15%)		\$2,700.00
Off-site Total		\$20,700.00

Combined Total	\$142,904.50
(Letter of Credit) Grand Total	\$142,904.50

SIGNATURES

APPROVED:


DC, LLC
Donald Cannella
Owner

APPROVED: Sue 10-20-2022

Arapahoe County, Engineering Services Division
Sue Liu a, P.E., CFM

APPROVED: Tyler Lowe 10-20-2022

Tyler Lowe
Infinity Land Consultants, LLC

SC