

PUBLIC IMPROVEMENTS EASEMENT AGREEMENT

THIS PUBLIC IMPROVEMENTS EASEMENT AGREEMENT (“Agreement”), made and entered into this _____, 202__ by [name of Grantor] (hereafter referred to as “Grantor”) and the CITY OF STEAMBOAT SPRINGS, a Colorado municipal corporation (hereafter referred to as “City”).

WHEREAS Grantor is the owner of certain real property known as _____, located at _____, Steamboat Springs, Colorado, described in Exhibit “A” (hereafter the “Property”); and

WHEREAS, in connection with and as a condition of approval of the mixed use development known as the _____ by the City, Grantor has agreed to construct an extension of the existing pedestrian and related improvements known as the Promenade, such extension to be referred to herein as the “Promenade Extension”; and

WHEREAS, Grantor desires to convey to City a non-exclusive public improvements easement over and across that part of the Property on which the Promenade Extension will be constructed; and

WHEREAS, the City desires to accept said public improvements easement under the terms, conditions and agreements specified herein.

NOW, THEREFORE, in consideration of the covenants contained herein, the sufficiency of which is hereby acknowledged, it is agreed as follows:

1. EASEMENT DESCRIPTION. Grantor hereby grants and conveys to City, a nonexclusive public improvements easement (“Easement”) for the use and benefit of the public in, to, over, under and across the Property in the approximate location shown on the map attached as Exhibit “B” (“Easement Premises”). Upon completion of the Promenade, Grantor and the City shall record an amendment to this Agreement which shall contain an as-built legal description of the Easement Premises in substitution of the map attached hereto as Exhibit “B.”
2. AGREEMENT PURPOSE. The Easement shall be for the installation, construction, operation, use, inspection, repair and maintenance of the following improvements:

and for the construction and maintenance of associated drainage improvements (together “Promenade Extension”).

3. MAINTENANCE.

Operation and maintenance of the Promenade Extension shall include snow removal, landscape maintenance and irrigation, hard and soft surface repair and all other aspects of general care and maintenance to allow said Promenade Extension to exist in satisfactory condition as described below and shall be performed by Grantor in accordance with the requirements set forth in Exhibit "C" attached hereto ("Standard of Care"). The Standard of Care may be amended from time to time by agreement of the City and Grantor. In the event the City negotiates a lesser Standard of Care with any property owner whose property is burdened by the Promenade, Grantor shall have the right to have the Standard of Care modified to such lesser Standard of Care by an amendment to this Agreement.

Notwithstanding, Grantor may, in Grantor's sole discretion, elect to plow or remove snow from the Promenade Extension within the Easement by means other than operation of a snowmelt system, in which case the standard of care shall be as follows: accumulations of snow of one inch or more shall be removed as soon as is practical between the hours of 6:00 a.m. and 12:00 midnight.

4. OTHER OBLIGATIONS OF THE CITY. The Easement is granted subject to the following terms and conditions.
 - A. In the event of a breach of a term or condition of this Agreement by the City, the remedy available to Grantor shall be by way of an action, in law or equity, including relief for specific performance and damages but not rescission of this Agreement.
 - B. Except as otherwise provided herein, the promises and agreements made hereunder are acknowledged by Grantor as full consideration for the Easement. Grantor reserves the right to cultivate, use and occupy the Easement Premises for any purposes consistent with the rights and privileges above granted.
5. MOTOR VEHICLE RESTRICTIONS. Except as provided below, the use by Grantor of motorized vehicles, including but not limited to, four-wheel drive vehicles, snowmobiles, motorcycles, and construction vehicles on the Promenade Extension shall be permitted only with the prior written approval of the City, which approval shall not be unreasonably withheld, conditioned or delayed. The City shall not permit the public to use motorized vehicles in the Easement Premises, including but not limited to, four-wheel drive vehicles, snowmobiles, motorcycles, and construction vehicles. If the use of motor vehicles is permitted on the Promenade Extension, adequate protection of the facilities shall be in place prior to their use and any repair of damage shall be at the expense of the City. Nothing herein shall preclude the City or Grantor from using motorized vehicles to maintain or police the Easement Premises and nothing herein shall preclude the use of motor vehicles to provide emergency services on or adjacent to the Easement Premises. This Easement is

granted subject to and shall be subordinate to easements for access, loading and deliveries previously granted which encumber the Easement Premises.

The foregoing notwithstanding, Grantor shall be permitted the following motor vehicle uses on the Easement Premises: any and all types of motor vehicles, including, by way of example, cars, trucks, and vans, that are crossing the Easement Premises in order to provide for the operation, maintenance and repair of the facilities located on the Property.

6. ENFORCEMENT OF PROHIBITED USES. Either party may notify, in writing, the other party of any apparent unauthorized uses of the Easement Premises including, but not limited to, commercial or vehicular use of the area in violation of the terms of this Agreement. The party receiving such written notification shall cease or take commercially reasonable steps to prevent further prohibited use of the area.
7. OBSTRUCTIONS. Grantor agrees not to obstruct, impede, or interfere with the City's use of the Easement Premises, and City agrees not to obstruct, impede, or interfere with Grantor's use of the Property. Nothing herein shall prohibit the constructions of building overhangs and similar architectural features within the Easement Premises which do not obstruct, impede, or interfere with the use of the Easement.
8. RELOCATION OF EASEMENT PREMISES: Grantor reserves the right to relocate the Easement Premises and Promenade Extension located therein by recording an Amendment to this Agreement setting forth the legal description of the relocated Easement Premises. Grantor shall give the City six months written notice of Grantor's intent to relocate the Easement Premises and Promenade Extension and shall obtain the consent of the City prior to relocation. City shall consent to the relocation of the Easement Premises and Promenade Extension unless the proposed relocation unreasonably interferes with the public's use of the Promenade Improvements.
9. INSURANCE. The City shall at all times have insurance of the types set forth herein and in the coverage amount of \$5,000,000.00 (such coverage amount to be periodically adjusted to reflect increases in the consumer price index) and shall furnish to Grantor a certificate or certificates of insurance evidencing such insurance acceptable to Grantor. Each insurance certificate shall contain, in addition to the matters as customarily set forth in such certificates under insurance industry's practices an undertaking by the insurer to give Grantor not less than thirty (30) days written notice of any cancellation or change in scope or amount of coverage of such policy. Grantor and any additional insured reasonably requested by Grantor shall be named as additional insured under any policy of insurance required hereunder. The following insurance is required:

A. Comprehensive General Liability Insurance; and

B. Workers Compensation Insurance meeting statutory requirements.

10. INDEMNIFICATION. To the extent permitted by law, the City shall indemnify Grantor against any liability for damages, costs, losses and expenses (including attorney's fees and court costs) resulting from, arising out of, or in any way connected with the occupation or use of the Easement Premises by the City, its contractor and agents, or the failure on the part of the City to perform fully all and singular of the City's promises herein. The City's covenant to indemnify hereunder (a) shall not be deemed a waiver of sovereign immunity under the Colorado Governmental Immunity Act (the "Act"), (b) shall only be effective to the extent of the limits of the Act as set forth in C.R.S. §24-10-114, as those may be amended from time to time, (c) shall only be effective if the City's obligation to indemnify Grantor is insured by the Colorado Intergovernmental Risk Sharing Agency ("CIRSA") or CIRSA's successor as the City's general liability carrier. The parties acknowledge that the purported indemnification hereunder by the City may violate the state constitution and be an ultra vires act.
11. BINDING ON SUCCESSORS. This Agreement shall run with the land and be binding upon and shall inure to the benefit of the Grantor's successor in title to the property encumbered by this Agreement. Upon the conveyance or other transfer of title to a parcel of property encumbered by this Agreement, the transferring owner shall no longer have any liability hereunder. If all or a substantial portion of the property encumbered by this Agreement is hereafter submitted to a common interest community owners' association ("HOA") under the Colorado Common Interest Ownership Act ("CCIOA") then this Agreement shall only be the obligation of such HOA and shall no longer encumber or apply to individual units within such new common interest community or to any Grantor.
12. WHOLE AGREEMENT. It is expressly agreed that this Agreement contains the entire understanding of the parties and that there are no other verbal or written representations, agreements, warranties, or promises relating to the Agreement. The covenants and agreements herein contained are for the benefit of Grantor and the City and do not create any obligations, duties, or benefits to persons not party hereto.
13. MODIFICATION. It is agreed that neither this Agreement nor any of its terms, provisions, conditions, representations or covenants can be modified except by written instrument duly executed and recorded by the parties.
14. SEVERABILITY. If any of the provisions of this Agreement shall be held invalid, illegal, or unenforceable, the validity, legality, or enforceability of other provisions of this Agreement or the Agreement as a whole shall remain unaffected.
15. NOTICES. All notices, communications, or written devices concerning this Agreement and the right-of-way granted herein shall be mailed by certified mail,

return receipt requested, to the addresses listed below. Notices shall be deemed received on the date of delivery indicated on the return receipt.

CITY OF STEAMBOAT SPRINGS
c/o Legal Department
P.O. Box 775088
137 10th St.
Steamboat Springs, CO 80477

16. REMEDIES. In the event the City at any time in its reasonable discretion that operation and maintenance of the Promenade Extension has not been performed by Grantor in accordance with the Standard of Care described in Exhibit C hereto as may be amended, the City shall provide written notice (“Notice”) to Grantor of such deficiencies and describing the nature of such deficiencies. Grantor shall have ten (10) days from receipt of such notices to correct the deficiencies described in the Notice provided, however, that if such deficiencies are of such a nature that they reasonably cannot be cured within such ten (10) day period, such period shall be extended for such additional period of time as shall be reasonably necessary (“Cure Period”). In the event Grantor fails to timely correct the deficiencies contained in the Notice within the Cure Period, City shall be authorized to enter upon the Promenade Extension and to correct such deficiencies. The City shall provide, an itemized invoice (“Invoice”) within fifteen (15) days of its actual out-of-pocket expenditures (Grantor’s “Expenditures”) necessary to correct deficiencies contained in said Notice. Grantor shall promptly reimburse the City for any amounts contained in such Invoice within fifteen (15) days of receipt of such Invoice. In the event, Grantor fails to satisfy its obligations as provided in this Agreement, the City may seek any legal or equitable remedies, including specific performance

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

CITY OF STEAMBOAT SPRINGS

, City Council President

Attest:

City Clerk

ATTEST:

DRAFT