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CITY OF SALIDA, COLORADO
RESOLUTION NO. 19
(Series 2021)

A RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF SALIDA, COLORADO APPROVING THE SUBDIVISION IMPROVEMENT AND INCLUSIONARY HOUSING AGREEMENT FOR THE CHERRY GROVE MAJOR SUBDIVISION.

WHEREAS, the property owners, Scott Street, LLC ("Developer") are owners of the proposed Cherry Grove subdivision; and

WHEREAS, on March 02, 2021 the City Council approved Resolution No. 2021-05 for the Cherry Grove major subdivision which consists of seven (7) lots on the 1.2 acres ("Property"); and

WHEREAS, pursuant to Sections 16-2-60 of the Salida Municipal Code ("Land Use Code") and the conditions set forth in Resolution 2021-05, the City and the Developer wish to enter into a Subdivision Improvement Agreement to set forth their understanding concerning the terms and conditions for the construction of the subdivision public improvements and other improvements; and

WHEREAS, pursuant to Section 16-13-20(g) of the Land Use Code, residential developments must also enter into an inclusionary housing development agreement with the City Council; and

WHEREAS, the City Council therefore now wishes to approve and execute a Subdivision Improvement and Inclusionary Housing Agreement with Developer for the Cherry Grove Major Subdivision; and

WHEREAS, upon such approval, city staff shall be permitted to correct nonsubstantive errors, typos and inconsistencies that may be found in the Agreement, as approved by the Mayor.

NOW, THEREFORE, BE IT RESOLVED by the City Council for the City of Salida that:

The Subdivision Improvement and Inclusionary Housing Agreement for the Cherry Grove Major Subdivision, annexed hereto and incorporated herein as "Exhibit A" is hereby approved.

RESOLVED, APPROVED AND ADOPTED on this 1st day of June, 2021.

CITY OF SALIDA, COLORADO

~~Mayor PT Wood~~
Mayor Pro Tem Dan Shore

(SEAL)
ATTEST:

City Clerk/Deputy City Clerk

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EXHIBIT A

SUBDIVISION IMPROVEMENT; AND INCLUSIONARY HOUSING AGREEMENT
Cherry Grove Major Subdivision

THIS SUBDIVISION IMPROVEMENT; AND INCLUSIONARY HOUSING AGREEMENT (the "Agreement") is made and entered into this 25th day of June, 2021, by and between the CITY OF SALIDA, COLORADO, a Colorado statutory city ("City"), and Scott Street, LLC ("Developer") (each a "Party" and together the "Parties").

Section 1 - Recitals

1.1 The Developer represents that it is the fee title owner of certain lands known as the "Cherry Grove Major Subdivision" consisting of 1.2 acres and more particularly described on attached **Exhibit B**, which is incorporated herein by this reference (the "Property"). The Property is located within the boundaries of the City.

1.2 On March 2, 2021 the City Council approved the Cherry Grove Major Subdivision consisting of the Property described herein by adoption of Resolution 2021-05; a condition of the approval requires entering into a subdivision improvement agreement pursuant to Section 16-2-60 of the Salida Municipal Code and further defines how the affordable housing requirements will be met.

1.3 Pursuant to Section 16-13-20 (g) of the Land Use Code residential developments must enter into an inclusionary housing development agreement with the City Council. Such agreements may be part of a subdivision improvement agreement. The agreement shall address the total number of units; the number of affordable units provided; standards for parking, density and other development standards for projects meeting the requirements; design standards for the affordable units and any restrictive covenants necessary to carry out the purposes of the inclusionary housing requirements.

1.4 The City wishes to advance development within municipal boundaries in accordance with the City of Salida 2013 Comprehensive Plan adopted April 16, 2013, as it may be amended.

1.5 Pursuant to Section 16-2-60; 13-2-160 and 170; and 16-13-20 of the Land Use Code, the City and the Developer wish to enter into this Agreement to set forth their understanding concerning the terms and conditions for the construction of subdivision public improvements and other improvements; and for meeting the inclusionary housing requirements as required by Ordinance 2018-14.

1.6 The City and the Developer acknowledge that the terms and conditions hereinafter set forth are reasonable, within the authority of each to perform, and consistent with the City of Salida Comprehensive Plan.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the City and the Developer agree as follows:

Section 2 – Definitions

As used in this Agreement, the following terms have the following meanings:

2.1 "Agreement" means this Subdivision Improvement and Inclusionary Housing Agreement for the Cherry Grove Major Subdivision. The Recitals in Section 1 above are fully incorporated into this Agreement and made a part hereof by this reference.

2.2 "City" means the City of Salida, a Colorado statutory City.

2.3 "City Administrator" means the City Administrator of the City of Salida, and the City Administrator's designee.

2.4 "City Code" means the City of Salida Municipal Code.

2.5 "City Council" means the City Council of the City of Salida, Colorado.

2.6 "Dedicated Lands" means those lands the Developer will convey to the City for public use.

2.7 "Developer" means Scott Street LLC and its successor(s).

2.8 "Development" means all work on the Property required to transform the Property into the Cherry Grove Major Subdivision approved by the City by means of Resolution 2021-05. The term "Development" includes, without limitation, the demolition of existing structures; grading; construction of new structures; and construction of improvements, including without limitation streets, signage, landscaping, drainage improvements, sidewalks, utilities, and other improvements. When the context so dictates, the verb "Develop" may be used in place of the noun "Development."

2.9 "Drainage Plan" means the drainage system designed for the subdivision in accordance with Section 16-8-60 of the Land Use Code.

2.10 "Effective Date" means the date on which City Council adopted a resolution approving the execution of this Agreement. On the Effective Date, this Agreement will become binding upon and enforceable by the City and the Developer.

2.11 "Force Majeure" means acts of God, fire, abnormal weather, explosion, riot, war, labor disputes, terrorism, or any other cause beyond the applicable Party's reasonable control. A lack of money or inability to obtain financing does not constitute Force Majeure.

2.12 "Land Use Code" means the City's Land Use and Development Code, Title 16 of the City Code.

2.13 "Native Vegetation" means "native plant" as defined in the Colorado Noxious Weed Act, C.R.S. § 35-5.5-103(15).

2.14 "Noxious Weed" takes the meaning given to that term in the Colorado Noxious Weed Act, C.R.S. § 35-5.5-103(16).

2.15 "Other Required Improvements Warranty Period" means a period of two years from the date that the City Engineer or the City Engineer's designee, in accordance with the terms and conditions of paragraph 5.10 below, approves the Required Improvements that are not Public Improvements, and certifies their compliance with approved specifications.

2.16 "Performance Guarantee" means cash, a letter of credit, a cash bond, a performance bond, or other security acceptable to the City Attorney to secure the Developer's construction and installation of the Required Improvements, in an amount equal to 125% of the estimated cost of completing said Required Improvements.

2.17 "Property" means the land that is known as the Cherry Grove major subdivision and described in **Exhibit B**.

2.18 "Public Improvements" means Required Improvements constructed and installed by the Developer and dedicated to the City in accordance with this Agreement, including without limitation water mains, water service lines, water laterals, fire hydrants, and other water distribution facilities; irrigation lines and facilities; wastewater collection mains, lines, laterals, and related improvements; drainage facilities in public rights-of-way; handicap ramp improvements; and required curbs, sidewalks, and street improvements. The Required Improvements that are also Public Improvements are identified on attached **Exhibit C**.

2.19 "Public Improvements Warranty Period" means a period of one year from the date that the City Engineer or the City Engineer's designee, in accordance with the terms and conditions of paragraph 5.10 below, approves the Public Improvements and certifies their compliance with approved specifications.

2.20 "Reimbursable Costs and Fees" means all fees and costs incurred by the City in connection with the City's processing and review of the proposed Development Plan and the Subdivision Plats; and the City's drafting, review, and execution of this Agreement as described in **Exhibit D.**

2.21 "Required Improvements" means the public and other improvements that the Developer is required to make to the Property as part of the subdivision approval and pursuant to this Agreement, including without limitation improvements for streets, landscaping, parks, trails, drainage improvements, sidewalks, and utilities.

2.22 "Subdivision Plat" means the Cherry Grove Major Subdivision of the Property approved by Resolution No. 2021-05.

Any term that is defined in the Land Use Code or the City Code but not defined in this Agreement takes the meaning given to that term in the Land Use Code or the City Code.

Section 3 – Purpose of Agreement and Binding Effect

3.1 Contractual Relationship. The purpose of this Agreement is to establish a contractual relationship between the City and the Developer with respect to the Required Improvements for the Property and the provision of inclusionary housing. The terms, conditions, and obligations described herein are contractual obligations of the Parties, and the Developer waives any objection to the enforcement of the terms of this Agreement as contractual obligations.

3.2 Binding Agreement. This Agreement benefits and is binding upon the City, the Developer, and the Developer's successor(s). The Developer's obligations under this Agreement constitute a covenant running with the Property.

3.3. Reservation. To the extent that the City becomes aware of new information about the Property, and notwithstanding anything to the contrary herein, the City reserves the right to require new terms, conditions, or obligations with respect to the Required Improvements for the Property.

Section 4 – Development of Property

4.1 The City agrees to the Development of the Property, and the Developer agrees that it will Develop the Property, only in accordance with the terms and conditions of this Agreement and all requirements of the City Code; and major subdivision Resolution No. 2021-05 and all other applicable laws and regulations, including without limitation all City Ordinances and regulations, all State statutes and regulations, and all Federal laws and regulations.

4.2 The approval of the major subdivision by the City Council on March 2, 2021 constitutes approval of the site specific development plan and establishment of vested property rights for the project per Section 16-2-20 of the Code. An established vested property right precludes any zoning or land use action by the City or pursuant to an initiated measure which would alter, impair, prevent, diminish, impose a moratorium on development, or otherwise delay the development or use of the property as set forth in the approved site specific development plan.

Section 5 – Terms and Conditions for Development of Property

5.1 Other Applicable Laws and Regulations. All terms and conditions imposed by this Agreement are in addition to and not in place of any and all requirements of the City Code; Cherry Grove Major Subdivision Resolution No. 2021-05 and all other applicable laws and regulations, including without limitation all City Ordinances and regulations, all State statutes and regulations, and all Federal laws and regulations.

5.2 Submittals to and Approvals by City Administrator. Unless this Agreement specifically provides to the contrary, all submittals to the City in connection with this Agreement must be made to the City Administrator. In addition, unless this Agreement specifically provides to the contrary, the City Administrator and/or City Council must provide all approvals required of the City in connection with this Agreement.

5.3 Required Improvements. Attached **Exhibit C**, which is incorporated herein by this reference, provides a detailed list of the Required Improvements for which the Developer is responsible, along with the reasonably estimated costs to complete construction and installation of those Required Improvements, including both labor and materials. The Required Improvements must be designed, built, and installed in conformity with the City's Public Works Manual and the City's Standard Specifications for Construction ("Standard Specifications"), and must be designed and approved by a registered professional engineer retained by the Developer. Before the Developer's commencement of construction or installation of the Required Improvements, the City Engineer or the City Engineer's designee must review and approve the drawings and plans for such improvements, which drawings and plans must be stamped by the engineer retained by the Developer. In addition to warranting the Required Improvements as described in paragraph 5.10 below, the Developer shall perform routine maintenance on the Public Improvements for the duration of the Public Improvements Warranty Period and on the other Required Improvements for the duration of the Other Required Improvements Warranty Period.

5.4 Construction Standards. The Developer shall ensure that all construction is performed in accordance with this Agreement and with the City's rules, regulations, requirements, and criteria, and with industry standards governing such construction.

5.5 Observation of Development and Inspection of Required Improvements. The City may observe all Development on the Property, and may inspect and test each component of the Required Improvements. Consistent with Section 16-2-60(r) of the Land Use Code, the Developer shall reimburse the City for all costs associated with the City's observation of Development on the Property and inspection of the Required Improvements, and the City shall not give its written approval of the Required Improvements, as described in paragraph 5.7 below, until such costs have been reimbursed. Such observation and inspection may occur at any point before, during, or upon completion of construction.

5.6 City Engineer's Written Approval of Required Improvements. At the Developer's request, the City Engineer or the City Engineer's designee shall inspect the Required Improvements to ascertain whether they have been completed in conformity with the approved plans and specifications. The City Engineer or the City Engineer's designee shall confirm in writing the date(s) on which (i) individual Required Improvements have been completed in conformity with the approved plans and specifications, and (ii) all Public Improvements have been completed in conformity with the approved plans and specifications. The Developer shall make all corrections necessary to bring the Required Improvements into conformity with the approved plans and specifications.

5.7 Performance Guarantee. Before commencement of any further construction on the Required Improvements, the Developer shall furnish the City with an effective Performance Guarantee in the amount of 125% of the total estimated cost of completing the Required Improvements, as shown on **Exhibit C**. The total estimated cost of completing the Required Improvements, including both labor and materials, is $86,670.00. Therefore, the Performance Guarantee must be in an amount equal to $108,337.50.

5.7.1 The Performance Guarantee must provide for payment to the City upon demand, based upon the City's written certified statement that the Developer has failed to construct, install, maintain, or repair, as required by this Agreement, any of the Required Improvements.

5.7.2 The Developer shall extend or replace the Performance Guarantee at least thirty days prior to its expiration. In the event that the Performance Guarantee expires, or the entity issuing the Performance Guarantee becomes non-qualifying, or the City reasonably determines that the cost of completing the Required Improvements is greater than the amount of the Performance Guarantee, then the City shall give written notice to the Developer of the deficiency, and within thirty days of receipt of such notice, the Developer shall provide the City an increased or substituted Performance Guarantee that meets the requirements of this paragraph 5.8 and the Land Use Code.

5.7.3 Upon completion of portions of the Required Improvements ("Completed Improvements"), the Developer may apply to the City for a release of part of the Performance Guarantee. Any such application must include submittal of as-built drawings and a detailed cost breakdown of the Completed Improvements. Upon the City Engineer's inspection and written approval of the Completed Improvements in accordance with paragraph 5.6 above, and upon approval of the City Council, the City may authorize a release of the Performance Guarantee in the amount of 75% of the documented cost of the Completed Improvements.

5.7.4 Upon the City Engineer's inspection and written approval of all Required Improvements in accordance with paragraph 5.7 above, City Council shall authorize a release of the Performance Guarantee in the amount of 90% of the total estimated cost of all Required Improvements, as shown on **Exhibit C**.

5.7.5 Upon the expiration of both the Public Improvements Warranty Period and the Other Required Improvements Warranty Period described in paragraph 5.8 below, the Developer's correction of all defects discovered during such periods, and the City's final acceptance of the Public Improvements in accordance with paragraph 5.9 below, City Council shall authorize a full release of the Performance Guarantee.

5.7.6 Failure to provide or maintain the Performance Guarantee in compliance with this paragraph will constitute an event of default by the Developer under this Agreement. Such default will be subject to the remedies, terms, and conditions listed in Section 8 below, including without limitation the City's suspension of all activities, approvals, and permitting related to the Subdivision Plats.

5.8 Conveyance of Public Improvements. Within twenty-eight days of the City's final acceptance of the Public Improvements in accordance with paragraph 5.10 below, the Developer shall, at no cost to the City, do the following:

5.8.1 Execute and deliver to the City a good and sufficient bill of sale describing all of the Public Improvements constructed, connected, and installed by the Developer pursuant to this Agreement, together with all personal property relating to the Public Improvements ("Bill of Sale"). In the Bill of Sale, the Developer shall warrant the conveyance of the Public Improvements as free from any claim, demand, security interest, lien, or encumbrance whatsoever. Pursuant to Section 16-2-60(j) of the Land Use Code, acceptance of the Bill of Sale must be authorized by City Council.

5.8.2 Execute and deliver to the City a good and sufficient General Warranty Deed conveying to the City, free and clear of liens and encumbrances, all easements necessary for the operation and maintenance of the Public Improvements to the extent the Public Improvements are not constructed within dedicated easements or rights-of-way as shown on the Cherry Grove Major Subdivision recorded at Reception No._____.

5.8.3 Deliver to the City all engineering designs, current surveys, current field surveys, and as-built drawings and operation manuals for the Public Improvements and for all improvements made for utilities, or make reasonable provision for the same to be delivered to the City. The legal description of all utility service lines must be prepared by a registered land surveyor at the Developer's sole expense.

5.9 Warranty. The Developer shall warrant the Public Improvements for one year from the date that the City Engineer, in accordance with paragraph 5.7 above, approves the Public Improvements and certifies their compliance with approved specifications ("Public Improvements Warranty Period"). The Developer shall warrant all other Required Improvements for a period of two years from the date that the City Engineer, in accordance with paragraph 5.6 above, approves the other Required Improvements and certifies their compliance with approved specifications ("Other Required Improvements Warranty Period"). In the event of any defect in workmanship or quality during the Public Improvements Warranty Period or the Other Required Improvements Warranty Period, the Developer shall correct the defect in workmanship or material. In the event that any corrective work is performed by the Developer during either Warranty Period, the warranty on said corrected work will be extended for one year from the date on which it is completed. Should the Developer default in its obligation to correct any defect in workmanship or material during either the Public Improvements Warranty Period or the Other Required Improvements Warranty Period, the City will be entitled to draw on the Performance Guarantee and/or to pursue any other remedy described in Section 8 below.

5.10 Final Acceptance of Public Improvements. Upon expiration of the Public Improvements Warranty Period, and provided that any breaches of warranty have been cured and any defects in workmanship and/or materials have been corrected, the City shall issue its final written acceptance of the Public Improvements. Thereafter, the City shall maintain such Public Improvements.

5.11 Inspection Distinguished from Approval. Inspection, acquiescence, and/or verbal approval by any City official of the Development, at any particular time, will not constitute the City's approval of the Required Improvements as required hereunder. Such written approval will be given by the City only in accordance with paragraph 5.7 above.

5.12 Revegetation. Any area disturbed by construction must be promptly revegetated with Native Vegetation following completion of such work unless a building permit application has been requested for such area. In addition, the Developer shall control all Noxious Weeds within such area to the reasonable satisfaction of the City.

5.13 Local Utilities. In addition to the Required Improvements, the Developer shall install service lines for both on-site and off-site local utilities necessary to serve the Property, including without limitation service lines for telephone, electricity, natural gas, cable television, and street lights. The Developer shall install such service lines underground to the maximum extent feasible. If such lines are placed in a street or alley, they must be in place prior to surfacing.

5.14 Landscape Improvements. Other Required Improvements are landscape improvements consisting of right of way and parkway landscaping in accordance with the requirements of the approved landscape improvement plan for the Subdivision and the requirements of Section 16-8-90 of the Land Use Code. The Developer or homeowner's association shall be responsible for the Other Required Improvements Warranty Period.

5.15 Drainage Improvements. As shown on **Exhibit** C, certain of the Required Improvements are drainage improvements.

5.15.1 In accordance with Section 16-8-60 of the Land Use Code, the Developer shall retain a registered professional engineer to prepare a drainage study of the Property and to design a Drainage Plan according to generally accepted storm drainage practices.

5.15.2 All site drainage, including drainage from roof drains, must be properly detained and diverted to the drainage system approved in the Drainage Plan before any certificate of occupancy will be issued for the Property.

5.15.3 All drainage improvements within public rights-of-way will be dedicated to the City as Public Improvements. All drainage improvements on private property will be maintained by the Developer, subject to easements to allow the City access in the event that the Developer fails to adequately maintain the drainage facilities.

5.16 Slope Stabilization. Any slope stabilization work must be performed in strict compliance with applicable law, including City Ordinances and regulations, State statutes and regulations, and Federal law and regulations. The City will determine on a case-by-case basis whether additional requirements apply to slope stabilization work.

5.17 Blasting and Excavation. Any removal of rock or other materials from the Property by blasting, excavation, or other means must be performed in strict compliance with applicable law, including City Ordinances and regulations, State statutes and regulations,

and Federal law and regulations. The City will determine on a case-by-case basis whether additional requirements apply to blasting and excavation work.

5.18 Trash, Debris, and Erosion. During Development, the Developer shall take all necessary steps to control trash, debris, and erosion (whether from wind or water) on the Property. The Developer also shall take all necessary steps to prevent the transfer of mud or debris from construction sites on the Property onto public rights-of-way. If the City reasonably determines and gives the Developer written notice that such trash, debris, or erosion causes or is likely to cause damage or injury, or creates a nuisance, the Developer shall correct any actual or potential damage or injury and/or abate such nuisance within five working days of receiving such written notice. When, in the opinion of the City Administrator or Chief of Police, a nuisance constitutes an immediate and serious danger to the public health, safety, or welfare, or in the case of any nuisance in or upon any street or other public way or public ground in the City, the City has authority to summarily abate the nuisance without notice of any kind consistent with Section 7-1-60 of the City Code. Nothing in this paragraph limits or affects the remedies the City may pursue under Section 8 of this Agreement.

5.19 Compliance with Environmental Laws. During Development, the Developer shall comply with all Federal and State environmental protection and anti-pollution laws, rules, regulations, orders, or requirements, including without limitation solid waste requirements and all requirements under the Federal Water Pollution Control Act, as amended ("Clean Water Act"); and shall comply with all requirements pertaining to the disposal or existence of any hazardous substances, pollutants, or contaminants as defined by the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, and regulations promulgated thereunder.

5.20 Fees. The Developer shall pay to the City the fees described below at the time set forth below:

5.20.1 Developer's reimbursement of processing fees. Consistent with Sections 16-2-10 and 16-2-60(r) of the Land Use Code, the Developer shall reimburse the City for all fees and costs incurred by the City in connection with the City's processing and review of the proposed Subdivision Plats, including without limitation processing and review of the Zoning and Subdivision Applications and supporting documentation, and the City's drafting, review, and execution of this Agreement ("Reimbursable Costs and Fees"). The Reimbursable Costs and Fees include but are not limited to the City's costs incurred for engineering, surveying, and legal services, including the services of outside City consultants and/or counsel; recording fees; printing and publication costs; and any and all other costs incurred by the City.

5.21.2 Work by City staff other than City Attorney. Reimbursable Costs and Fees attributable to work completed by City staff, not including the City Attorney, will be determined based on the fee schedule attached to the City's then-effective Open Records Policy. The fee schedule attached to the Open Records Policy in effect as of the date of this Agreement is attached as **Exhibit D**.

5.21.3 Work by City Attorney. Reimbursable Costs and Fees attributable to work completed by the City Attorney or by the City's outside consultants and/or counsel will be equal to the actual costs and fees billed to and paid by the City for that work.

5.21.4 Amounts due and unpaid. Interest will be imposed at rate of 1.5% per month on all balances not paid to the City within 30 days of the effective date of the City's invoicing of the Developer for the Reimbursable Costs and Fees, with that effective date determined in accordance with the notice provisions Section 11 below. In addition to any and all remedies available to the City and in the event the City is forced to pursue collection of any amounts due and unpaid under this provision or under this Agreement, the City shall be entitled to collect attorneys' fees and costs incurred in said collection efforts in addition to the amount due and unpaid.

5.21.5 Currently existing fees. Payment of Currently Existing Fees as a Condition of Development. The Developer shall pay to the City any fees required to be paid under this Agreement or the currently existing City Code, regardless of whether the relevant provisions of the City Code are later amended, repealed, or declared to be invalid. Payment of such fees pursuant to this Agreement is agreed to by and between the Parties as a condition of the Development. The Developer further agrees not to contest any Ordinance imposing such fees as they pertain to the Property.

Section 6 – Construction Schedule

6.1 Construction Schedule. Attached **Exhibit C**, which is incorporated herein by this reference, provides the schedule according to which construction and installation of the Required Improvements will occur ("Construction Schedule"). If the Developer fails to commence or to complete any phase of construction and installation of the Required Improvements in compliance with the Construction Schedule, the City will take action in accordance with Section 16-2-60(e) of the Land Use Code.

6.2 Site Restoration. If the Developer fails to commence or complete construction and installation of the Required Improvements in accordance with the Construction Schedule, the Developer nonetheless shall complete all site restoration work necessary to protect the health, safety, and welfare of the City's residents and the aesthetic integrity of the Property ("Site Restoration Improvements"). Site Restoration Improvements will include, at minimum, all excavation reclamation, slope stabilization, and landscaping improvements identified as Required Improvements on **Exhibit C**.

6.3 Force Majeure. If the Developer fails to commence or complete construction and installation of the Required Improvements in accordance with the Construction Schedule due to Force Majeure, the City shall extend the time for completion by a reasonable period. In such an event, the City and the Developer shall amend the Construction Schedule in writing to memorialize such extension(s).

Section 7 – Inclusionary Housing

7.1 Agreement to Provide Affordable Housing Consistent with Article XIII of the Land Use Code within Cherry Grove Major Subdivision. Developer hereby specifically agrees to abide by the existing city ordinance regarding Inclusionary Housing, Article XIII, section 16-13 et. Seq. as amended.

7.1.1. The owner shall pay a fee-in-lieu for each principal residential unit constructed equal to the lessor of $7.87 per habitable square feet or $15,748 due at the time of building permit submittal.

7.1.2 The fee-in-lieu amounts shall remain at the above amount for five (5) years from the date of this Agreement. After the five (5) year period the fee-in-lieu shall be the amount that is in effect at the time of issuance of building permit for a principal residence.

Section 8 – Default by Developer and City's Remedies

8.1 City's Remedies on Developer's Default. In the event of the Developer's default with respect to any term or condition of this Agreement, the City may take any action necessary or appropriate to enforce its rights, including without limitation any or all of the following:

8.1.1 The refusal to issue any building permit or certificate of occupancy to the Developer.

8.1.2 The revocation of any building permit previously issued and under which construction directly related to such building permit has not commenced; provided, however, that this remedy will not apply to a third party.

8.1.3 Suspension of all further activities, approvals, and permitting related to the Subdivision Plat.

8.1.4 A demand that the Performance Guarantee be paid or honored.

8.1.5 Any other remedy available in equity or at law.

8.2 Notice of Default. Before taking remedial action hereunder, the City shall give written notice to the Developer of the nature of the default and an opportunity to be heard before the City Council concerning such default. No sooner than thirty days after the Developer's receipt of the notice or any hearing before City Council, whichever occurs later, the City may take any and all remedial action consistent with this Agreement, the City Code, and the Land Use Code.

8.3 Immediate Damages on Developer's Default. The Developer recognizes that the City may suffer immediate damages from a default. In the event of such immediate damages resulting from the Developer's default with respect to any term or condition of this Agreement, the City may seek an injunction to enforce its rights hereunder.

8.4 Jurisdiction and Venue. The District Court of the County of Chaffee, State of Colorado, will have exclusive jurisdiction to resolve any dispute over this Agreement.

8.5 Waiver. Any waiver by the City of one or more terms of this Agreement will not constitute, and is not to be construed as constituting, a waiver of other terms. A waiver of any provision of this Agreement in any one instance will not constitute, and is not to be construed as constituting, a waiver of such provision in other instances. Nothing herein allows the City to waive any provision of the City Code or Land Use Code.

8.6 Cumulative Remedies. Each remedy provided for in this Agreement is cumulative and is in addition to every other remedy provided for in this Agreement or otherwise existing at law or in equity.

Section 9 – Indemnification and Release

9.1 Release of Liability. The Developer acknowledges that the City cannot be legally bound by the representations of any of its officers or agents or their designees except in accordance with the City Code, City Ordinances, and the laws of the State of Colorado. The Developer further acknowledges that it acts at its own risk with respect to relying or acting upon any representation or undertaking by the City or its officers or agents or their designees. Accordingly, the Developer expressly waives and releases any current or future claims related to or arising from any such representation or undertaking by the City or its officers or agents or their designees.

9.2 Indemnification.

9.2.1 The Developer shall indemnify and hold harmless the City, and the City's officers, agents, employees, and their designees, from and against any and all claims, damages, losses, and expenses, including but not limited to attorneys' fees and costs, arising from or in connection with the following: (a) the City's approval of the Subdivision Plat; (b) acts or omissions by the Developer, its officers, employees, agents, consultants, contractors, or subcontractors in connection with the Subdivision Plat; (c) the City's required disposal of hazardous substances, pollutants, or contaminants; required cleanup necessitated by leaking underground storage tanks, excavation, and/or backfill of hazardous substances, pollutants, or contaminants; or environmental cleanup responsibilities of any nature whatsoever on, of, or related to the Dedicated Lands; provided that such disposal or cleanup obligations do not arise from any hazardous substance, pollutant, or contaminant generated or deposited by the City upon the Dedicated Lands; (d) any remedial action required of the City as a result of the Developer's violation of the Clean Water Act; or (e) any other item contained in this Agreement.

9.2.2 The Developer shall reimburse the City for all fees, expenses, and costs, including attorneys' fees and costs, incurred in any action brought against the City as a result of the City's approval of the Subdivision Plat; and shall reimburse the City for all fees, expenses, and costs, including attorneys' fees and costs, associated with any proceedings to challenge the City's approval of the Subdivision Plat.

9.2.3 Fees, expenses, and costs attributable to work completed by City staff, not including the City Attorney, will be determined based on the fee schedule attached to the City's then-effective Open Records Policy. The fee schedule attached to the Open Records Policy in effect as of the date of this Agreement is attached as **Exhibit D**.

9.2.4 Fees, expenses, and costs attributable to work completed by the City Attorney or by the City's outside consultants and/or counsel will be equal to the actual costs and fees billed to and paid by the City for that work.

Section 10 – Representations and Warranties

10.1 Developer's Representations and Warranties. The Developer represents and warrants to the City that the following are true and correct as of the date of the Developer's execution of this Agreement and will be true and correct as of the Effective Date:

10.1.1 Authority. This Agreement has been duly authorized and executed by the Developer as a legal, valid, and binding obligation of the Developer, and is enforceable as to the Developer in accordance with its terms.

10.1.2 Authorized signatory. The person executing this Agreement on behalf of the Developer is duly authorized and empowered to execute and deliver this Agreement on behalf of the Developer.

10.1.3 No litigation or adverse condition. To the best of the Developer's knowledge, there is no pending or threatened litigation, administrative proceeding, or other claim pending or threatened against the Developer that, if decided or determined adversely, would have a material adverse effect on the ability of the Developer to meet its obligations under this Agreement; nor is there any fact or condition of the Property known to the Developer that may have a material adverse effect on the Developer's ability to Develop the Property as contemplated in the proposed Subdivision Plat.

10.1.4 Compliance with environmental laws and regulations. To the best of the Developer's knowledge, all property to be dedicated to the City hereunder (both in fee simple and in the form of easements) is in compliance with all Federal and State environmental protection and anti-pollution laws, rules, regulations, orders, or requirements, including solid waste requirements and all requirements under the Clean Water Act; and all such dedicated property is in compliance with all requirements pertaining to the disposal or existence of any hazardous substances, pollutants, or contaminants as defined by the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, and regulations promulgated thereunder.

10.1.5 No conflict. Neither the execution of this Agreement nor the consummation of the transaction contemplated by this Agreement will constitute a breach under any contract, agreement, or obligation to which the Developer is a party or by which the Developer is bound or affected.

10.2 City's Representations and Warranties. The City hereby represents and warrants to the Developer that the following are true and correct as of the date of the City's execution of this Agreement and will be true and correct as of the Effective Date:

10.2.1 Authority. Upon execution, this Agreement will have been duly authorized by City Council as a legal, valid, and binding obligation of the City, and is enforceable as to the City in accordance with its terms.

10.2.2 Authorized signatory. The person executing this Agreement on behalf of the City is duly authorized and empowered to execute this Agreement on behalf of the City.

10.2.3 No adverse condition. To the best of the City's knowledge, there is no fact or condition of the Property known to the City that may have a material adverse effect on the Developer's ability to Develop the Property as proposed in the Subdivision Plat.

10.2.4 No conflict. Neither the execution of this Agreement nor the consummation of the transaction contemplated by this Agreement will constitute a breach under any contract, agreement, or obligation to which the City is a party or by which the City is bound or affected.

Section 11– General Provisions

11.1 Waiver of Defects. In executing this Agreement, the Developer waives all objections it may have to any defects in the form or execution of this Agreement concerning the power of the City to impose conditions on the Developer as set forth herein. The Developer further waives all objections it may have to the procedure, substance, and form of the Ordinances or resolutions adopting this Agreement.

11.2 Final Agreement. This Agreement supersedes and controls all prior written and oral agreements and representations of the Parties with respect to a Subdivision Improvement; and Inclusionary Housing Agreement associated with Development of the Property, and is the total integrated agreement between the Parties with respect to those subjects.

11.3 Modifications. This Agreement may be modified only by a subsequent written agreement executed by both Parties.

11.4 Voluntary Agreement. The Developer agrees to comply with all of the terms and conditions of this Agreement on a voluntary and contractual basis.

11.5 Survival. The City's and the Developer's representations, covenants, warranties, and obligations set forth herein, except as they may be fully performed before or on the Effective Date, will survive the Effective Date and are enforceable at law or in equity.

11.6 Notice. All notices required under this Agreement must be in writing and must be hand-delivered or sent by registered or certified mail, return receipt requested, postage prepaid, to the addresses of the Parties as set forth below. All notices so given will be considered effective immediately upon hand-delivery, and seventy-two hours after deposit in the United States Mail with the proper address as set forth below. Either Party by notice so given may change the address to which future notices are to be sent.

Notice to the City:	City of Salida Attn: City Administrator and City Attorney 448 East First Street Suite 112 Salida, CO 81201
Notice to the Developer:	Scott Street LLC Attn: Lee Hunnicut William Smith PO Box 1351 Salida, CO 81201

11.7 Severability. The terms of this Agreement are severable. If a court of competent jurisdiction finds any provision hereof to be invalid or unenforceable, the remaining terms and conditions of the Agreement will remain in full force and effect.

11.8 Recording. The City shall record this Agreement with the Clerk and Recorder of Chaffee County, Colorado, at the Developer's expense. The City shall ensure recordation of the Ingress and Egress Access Easement Agreement, encumbering Lots 2-7, with the Subdivision Plat, with the Clerk and Recorder of Chaffee County, Colorado, at the Developer's expense. Should any term of this Agreement be severed in accordance with paragraph 11.7 above, the Parties will cooperate to record an amended form of this Agreement evidencing which terms have been severed and which terms remain in full force and effect.

11.9 No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, confers or is intended to confer any rights or remedies whatsoever upon any person or entity other than the City or the Developer.

11.10 No Waiver of Immunity. Nothing in this Agreement, express or implied, waives or is intended to waive the City's immunity under Colorado State law, including without limitation the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 through -120.

11.11 Joint Drafting. The Parties acknowledge that this Agreement represents the negotiated terms, conditions, and covenants of the Parties, and that the Party responsible for drafting any such term, condition, or covenant is not to be prejudiced by any presumption, canon of construction, implication, or rule requiring construction or interpretation against the Party drafting the same.

11.12 Subject to Annual Appropriation. Any financial obligation of the City arising under this Agreement and payable after the current fiscal year is contingent upon funds for that purpose being annually appropriated, budgeted, and otherwise made available by the City Council in its discretion. Nothing herein creates a multi-year fiscal obligation on behalf of the City.

11.13 Exhibits. All schedules, exhibits, and addenda attached to this Agreement and referred to herein are to be deemed to be incorporated into this Agreement and made a part hereof for all purposes.

11.14 Counterparts. This Agreement may be executed in multiple counterparts, all of which taken together constitute one and the same document.

WHEREFORE, the parties hereto have executed duplicate originals of this Agreement on the day and year first written above.

This page intentionally left blank. Signature pages follow.

472072

472072 7/7/2021 10:10 AM Lori A Mitchell
18 of 20 RESC R$108.00 D$0.00 Chaffee County Clerk

CITY OF SALIDA SEAL COLORADO

CITY OF SALIDA, COLORADO

By: _____
~~Mayor PT Wood~~
Mayor Pro Tem Dan Shore

ATTEST:

Erin Kelley
City Clerk/Deputy City Clerk

STATE OF COLORADO)
)ss
COUNTY OF CHAFFEE)

Acknowledged, subscribed, and sworn to before me this 24th day of June 2021 by Dan Shore, as Mayor, Pro Tem and by Erin Kelley, as Clerk, on behalf of the City of Salida, Colorado.

WITNESS my hand and official seal.
My Commission expires: April 15, 2025.

Kristi A. Jefferson
Notary Public

Kristi A. Jefferson
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20094011745
MY COMMISSION EXPIRES April 15, 2025

472072

472072 7/7/2021 10:10 AM Lori A Mitchell
19 of 20 RESC R$108.00 D$0.00 Chaffee County Clerk

Scott Street, LLC

By: _____
~~William Smith~~ LEE HUNNICUT

STATE OF COLORADO)
) ss.
COUNTY OF CHAFFEE)

Acknowledged, subscribed, and sworn to before me this 25th day of June 2021 by Lee Hunnicutt.

WITNESS my hand and official seal. My Commission expires: April 15, 2025.

_____
Notary Public

Kristi A. Jefferson
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20094011745
MY COMMISSION EXPIRES April 15, 2025

LEGAL DESCRIPTION

TRACT 1

The North Half (N½) of part of the Northeast Quarter of the Southwest Quarter (NE¼ SW¼) of Section 4, Township 49 North, Range 9 East of the New Mexico Principal Meridian, Chaffee County, Colorado, more particularly described as:
Commencing at a point 15 rods North of the center of the SW¼ of Section 4;
thence North along the line between the NE¼ and the NW¼ Quarters of said SW¼ of Section 4, 5 rods;
thence due East 16 rods;
thence due South 5 rods;
thence due West 16 rods to the place of beginning, being formerly known as the Nettle place.
ALSO commencing at the center of the SW¼ of Section 4, Township 49 North, Range 9 East;
thence North along the line between the NW¼, and NE¼ of the SW¼, 14 rods, 1.5 feet;
thence North 15 rods;
thence due East 16 rods;
thence South 15 feet;
thence West 16 rods.

TRACT II

Part of the South Half of the Northeast Quarter of the Southwest Quarter (S½ NE¼ SW¼) of Section 4, Township 49 North, Range 9 East of the New Mexico Principal Meridian, Chaffee County Colorado, described as follows:
Beginning at a point on the west line of the said S½ NE¼ SW¼ from whence the southwest corner of the said S ½ NE¼ SW¼ bears South 132.5 feet;
thence North 100 feet;
thence East 264 feet;
thence South 100 feet;
thence West 264 feet to the point of beginning.

AND BOTH OF THE ABOVE NAMED TRACTS ARE MORE ACCURATELY AND IN MORE CONTEMPORARY TERMS DESCRIBED AS FOLLOWS:
A tract of land located within the North Half of the Southwest Quarter (N½ SW¼) of Section 4, Township 49 North, Range 9 East of the New Mexico Principal Meridian, Chaffee County, Colorado, being more particularly described as follows:
Commencing at a point on the north side of Chaffee County Road No. 105 from whence the southeast corner (brass Cap) of Section 4 bears South 69°56' East 4117. 5 feet, and also from whence the highway right-of-way marker (brass cap) as Station 2304+26 of the centerline survey of U. S. Highway No. 50 bears North 89°35' West 217.9 feet;
thence North 00°23' West along the west boundary of a road known as Scott Street a distance of 129.17 feet;
thence continuing North 00°23' West along the said west boundary of Scott Street 197.53 feet;
thence South 89° 18' East 51. 91 feet to a point on the east boundary of said Scott Street, said point being the point of beginning of the tract herein described;
thence continuing South 89°18' East 262.3 feet;
thence South 0° 52' West 197. 5 feet to the northeast corner of that certain parcel of land as described in Book 502 at Page 186 of the Records of Chaffee County, Colorado;
thence North 89° 18' West along the north boundary of said parcel as described in said book and page and a projection Westerly thereof a distance of 262.3 feet to the east boundary of Scott Street;
thence North 0°52' East along the easterly boundary of Scott Street, a distance of 197.5 feet to the point of beginning.

472072

472072 7/7/2021 10:10 AM Lori A Mitchell
20 of 20 RESC R$108.00 D$0.00 Chaffee County Clerk