

**TOWN OF PALISADE, COLORADO  
RESOLUTION NO. 2020-21**

**A RESOLUTION OF THE BOARD OF TRUSTEES TOWN OF  
PALISADE, COLORADO APPROVING THE FINAL PLAT FOR  
CRESTHAVEN ACRES SUBDIVISION FILING 2.**

**WHEREAS**, Chronos Property, LLC (“Developer”) filed an application with the Town of Palisade for approval of the Cresthaven Acres Subdivision containing approximately 22.24 acres establishing seventy-one (71) residential lots; and

**WHEREAS**, Developer filed an application with the town for Final Plat approval of Filing 2 of Cresthaven Acres Subdivision containing approximately 10.02 acres and 44 residential lots which is described on Exhibit A attached hereto and incorporated herein by this reference (hereinafter the "Property"); and

**WHEREAS**, on May 7, 2018 after a duly-noticed public hearing and pursuant to Section 4.05(A) of the Town of Palisade’s Land Development Code, the Palisade Planning Commission approved a Preliminary Plat for the Property; and

**WHEREAS**, on September 8<sup>th</sup>, 2020 the Palisade Board of Trustees reviewed the Final Subdivision Plat application for the Property and desires to approve the Final Plat and Subdivision Improvements Agreement for Cresthaven Acres Subdivision Filing 2, subject to all terms and conditions set forth herein.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF  
THE TOWN OF PALISADE, COLORADO:**

1. The Town Board of Trustees incorporates the foregoing recitals as findings by the Town Board of Trustees.
2. The Final Plat for Cresthaven Acres Subdivision Filing 2 is hereby approved and the land dedications shown thereon are hereby accepted by the Town.
3. The Subdivision Improvements Agreement for Cresthaven Acres Subdivision Filing 2 (“SIA”) is hereby approved and the Mayor and Town Clerk are authorized to execute the SIA on behalf of the Town. The Town’s approval of the the Final Plat for the Property is expressly subject to Developer’s compliance with the terms and conditions of the SIA. Town staff is hereby authorized to amend and finalize the cost estimates of the subdivision improvements appended to the SIA to be secured prior to the recording of the Final Plat. The Town further approves the Escrow Disbursement Agreement to secure Developer’s construction of the subdivision improvements as required by the SIA.
4. Developer shall comply with all of Developer’s representations made in any applications and in statements during the public hearings before the Planning Commission and Town Board of Trustees and they shall be conditions of approval with which Developer shall

Town of Palisade, Colorado  
Resolution No. 2020-21

comply unless specifically modified. Developer shall also comply in full with the requirements of the Palisade Land Development Code, including without limitation the requirements of the Town Public Works Manual. Developer shall also comply in full with the Community Development Department's staff report presented to the Town Board of Trustees on the date herewith.

5. The Mayor of the Town is hereby authorized to indicate the Town Board of Trustees approval of the Final Plat for the Property by signing two (2) reproducible copies of the Final Plat. A true and correct copy of the Final Plat shall be deposited with the Town Clerk and shall be available for public inspection at the Clerk's office after being fully executed by the parties.

6. The Town Clerk is hereby directed to file one (1) copy of the Final Plat for the Property and the original of this Resolution in the Office of the Town Clerk.

7. The Town Clerk is hereby further directed to record this Resolution, the SIA and the Final Plat for the Property in the Office of the Clerk and Recorder of Mesa County, and to file one (1) certified copy of the Final Plat and this Resolution with the Mesa County Assessor.

**RESOLVED, APPROVED, AND ADOPTED** at a regular meeting of the Board of Trustees of the Town of Palisade, Colorado, held on September 8<sup>th</sup>, 2020.

TOWN OF PALISADE, COLORADO

  
\_\_\_\_\_  
Greg Mikolai, Mayor

ATTEST:

  
\_\_\_\_\_  
Town Clerk



Town of Palisade, Colorado  
Resolution No. 2020-21

**EXHIBIT A**

The legal description for 2941-032-21-100 is:

LOT 100 CRESTHAVEN ACRES FILING 1 LOC WITHIN SEC 3 1S 2E UM RECD 1212/2018 R-2864235 CORRECTED BY CRESTHAVEN ACRES FILING 1 CORRECTION PLAT RECD 3/15/2019 R-2872924 & AN UND INT IN TRACTS A THRU E MESA CO RECDS - 5.75AC

The legal description for 2941-032-21-101 is:

LOT 101 CRESTHAVEN ACRES FILING 1 LOC WITHIN SEC 3 1S 2E UM RECD 1212/2018 R-2864235 CORRECTED BY CRESTHAVEN ACRES FILING 1 CORRECTION PLAT RECD 3/15/2019 R-2872924 & AN UND INT IN TRACTS A THRU E MESA CO RECDS - 1.85AC

The legal description for 2941-032-21-102 is:

LOT 102 CRESTHAVEN ACRES FILING 1 LOC WITHIN SEC 3 1S 2E UM RECD 1212/2018 R-2864235 CORRECTED BY CRESTHAVEN ACRES FILING 1 CORRECTION PLAT RECD 3/15/2019 R-2872924 & AN UND INT IN TRACTS A THRU E MESA CO RECDS - 2.05AC

Town of Palisade, Colorado  
Resolution No. 2020-21

**EXHIBIT B**





**SUBDIVISION IMPROVEMENT AGREEMENT**

**TOWN OF PALISADE SUBDIVISION IMPROVEMENTS AGREEMENT  
CRESTHAVEN ACRES SUBDIVISION  
FILING 2**

**THIS AGREEMENT** is made and entered into effective this 22<sup>nd</sup> day of September 2020, by and between the TOWN OF PALISADE, COLORADO, a municipal corporation, whose address is 175 East Third Street, Palisade, Colorado (hereinafter referred to as the "Town"), and CHRONOS PROPERTY, LLC, whose address is 637 25 Road, Grand Junction, Colorado 81505 (hereinafter referred to as the "Developer").

**RECITALS**

**WHEREAS**, in 2018, Chronos Property, LLC (“Developer”) filed an application with the Town of Palisade for approval of the Cresthaven Acres Subdivision containing approximately 22.24 acres establishing seventy-one (71) residential lots; and

**WHEREAS**, on October 9, 2018 by Resolution No. 208-57, the Board of Trustees approved a Final Subdivision Plat for Filing 1 of Cresthaven Acres Subdivision, which Plat is recorded with the Mesa County Clerk and Recorder on December 12, 2018 at Reception No. 2864235 (“Filing 1 Final Plat”), including a Subdivision Improvements Agreement recorded with the Mesa County Clerk and Recorder at Reception No. 2864236 (“Filing 1 SIA”); and

**WHEREAS**, Developer has filed an application with the Town for the subdivision of certain property to be known as Cresthaven Acres Subdivision, Filing 2, a tract of land located in the Town of Palisade, County of Mesa, State of Colorado, containing approximately 10.02 acres, as more fully described in Exhibit A, attached hereto and incorporated herein by this reference, herein referred to as the ("Subdivision" or the "Property"), which is intended to be improved as a single family residential development; and

**WHEREAS**, the Developer, as a condition of approval of the Final Plat of Cresthaven Acres Subdivision, Filing 2, desires to enter into Subdivision Improvements Agreement, as provided for by Section 9.07, of the Palisade Land Development Code; and

**WHEREAS**, the Town seeks to protect the health, safety and general welfare of the community by requiring the completion of various improvements in the Subdivision and limit the harmful effects of substandard subdivisions, including premature subdivision, which leaves property undeveloped and unproductive; and

**WHEREAS**, pursuant to Section 9.07, of the Palisade Land Development Code, the Developer is required to provide security or collateral sufficient to insure completion of the public improvements and other necessary subdivision improvements described in the Preliminary Plan and the Subdivision Final Plat for the Property, and all accompanying documents, drawings, and plans; and



**WHEREAS**, the purpose of this Agreement is to protect the Town from the cost of completing subdivision improvements itself and is not executed for the benefit of material supplies, laborers, or others providing work, services or material to the Subdivision or for the benefit of lot owners or occupants in the Subdivision; and

**WHEREAS**, the mutual promises, covenants and obligations contained in this Agreement are authorized by State law and Chapter 9 of the Palisade Land Development Code.

**NOW, THEREFORE**, for and in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Town and the Developer agree as follows:

## **SECTION 1** **DEFINITIONS**

- 1.1 Agreement. This Subdivision Improvements Agreement for the Cresthaven Acres Subdivision, Filing 2, between Developer and the Town.
- 1.2 Board of Trustees. The governing body of the Town of Palisade, Colorado.
- 1.3 Developer. Chronos Property, LLC, and its successors and assigns.
- 1.4 Property or Subdivision. The real property known as the Cresthaven Acres Subdivision, Filing 2, as more fully described in Exhibit "A", attached hereto and incorporated herein by this reference.
- 1.5 Subdivision Final Plat. The Final Plat for the Cresthaven Acres Subdivision, Filing 2, as approved by the Board of Trustees.
- 1.6 Town. The Town of Palisade, Colorado, a municipal corporation.

## **SECTION 2** **TERM**

The term of this Agreement and the vested property rights expressly established under this Agreement shall commence on the effective date of the Town Board of Trustees approval of this Agreement and the Subdivision Final Plat and shall continue until the third (3<sup>rd</sup>) anniversary of the effective date. After the expiration of the term, this Agreement may be terminated and will then be of no further force or effect except as to any maintenance requirements for the public and common areas contained herein, and the warranty of public and other Subdivision improvements; provided, however, that any such termination shall not affect (a) the annexation of the Property to the Town; (b) any common law vested rights obtained prior to such termination; (c) the prior

conveyance of any lots or parcels within the Subdivision; (d) any right arising from other Town permits, approvals or other entitlements for the Property which were granted or approved prior to, concurrently with, or subsequent to the approval of this Agreement and the Subdivision Final Plat; or (e) the parties' rights pursuant to subsection 18.5 below.

**SECTION 3**  
**SCOPE OF THIS AGREEMENT**

3.1 Purpose. This Agreement is intended to set forth the parties' understanding and agreement as to the subdivision of the Property pursuant to Article 23 of Title 31 of the Colorado Revised Statutes and Chapter 9 of the Palisade Land Development Code; as to the nature of the development proposed for the Subdivision; as to the procedures, limitations and standards applicable to the construction of public and private improvements to be installed to serve the Subdivision; as to the responsibilities of the parties for various costs, fees and charges; and as to such other matters the parties believe can be adequately addressed at this time. This Agreement is not intended to address those matters which are more appropriately considered at the time of actual development of lots contained within the Subdivision. The Town reserves all rights to review, approve, or deny any future permit applications submitted in accordance with the ordinances and policies of the Town then in effect.

3.2 Town's Rights Reserved. It is not the intention of the parties in any way to diminish or limit the Town's legislative, quasi-judicial, or other non-delegable discretionary powers or to impose on the Town any duty, beyond its ordinances and regulations as they may from time to time exist, nor to impose any special obligation on the Town to approve or accept any future filings, applications, plans, drawings, security documents, improvements, and conveyances. It is furthermore the express intention of the parties that nothing in this Agreement shall be construed to void the rights and obligations of the parties as set forth herein, to the extent such rights and obligations are consistent with law. The parties expressly agree they will fully perform this Agreement to the extent it is consistent with the law.

**SECTION 4**  
**NATURE OF THE SUBDIVISION**

This Subdivision is zoned Medium Density Residential (MDR) and consists of 44 Lots, and three other Tracts on 10.02 acres.

**SECTION 5**  
**IMPROVEMENTS AND WARRANTY-GENERAL PROVISIONS**

5.1 Construction of Improvements. In accordance with Chapter 9 of the Palisade Land Development Code, all water service lines and laterals, water mains, fire hydrants and other water distribution facilities necessary to provide treated water service for this Subdivision; any irrigation lines and related appurtenances, laterals and mains necessary to provide non-potable irrigation

service for this Subdivision (if required); all wastewater collection lines and related improvements necessary to provide wastewater service for this Subdivision; other required utilities for this Subdivision; any drainage structures required for this Subdivision; street improvements within the Subdivision including pavement, curbs, gutters and sidewalks, survey monuments, and other on-site or off-site public or required Subdivision improvements, as shown in the accompanying plans applicable to this Subdivision including any field changes required by the Town due to unknown site conditions; this Agreement; and any other improvements required by Chapter 9 of the Palisade Land Development Code, the Town's engineering design standards, the Colorado Department of Transportation, and the Mesa County Road and Bridge Specifications, shall be installed and completed at the expense of the Developer. The public and other necessary Subdivision improvements shall be designed and built in conformance with all Town engineering design standards, the Mesa County Road and Bridge specifications and all requirements contained in Chapter 9 of the Palisade Land Development Code. All such public or other required Subdivision improvements shall be designed and approved by a registered professional engineer retained by the Developer. All drawings and plans for such improvements shall be stamped by the engineer. Final plans and specifications shall be submitted by Developer to the Town Engineer for review and approval prior to commencement of any public or other required Subdivision improvements. Unless otherwise provided in this Agreement, all public and other required Subdivision improvements shall be completed no later than one (1) year following commencement of construction of such improvements.

5.2 Compaction Standards. Trench compaction and road subgrade and base course compaction standards and criteria shall be reviewed and approved by the Town prior to the commencement of construction.

5.3 Improvements to be Constructed by Developer. The on-site and off-site improvements to be constructed by the Developer, showing in detail the public and other required Subdivision improvements, including shallow utilities, that it is responsible for constructing, and the cost therefor, is attached hereto as Exhibit "B" and incorporated herein by this reference, as they may be amended with the Town Engineer or Town Public Works Director approval. Separate Exhibits shall be provided for any construction for which the Developer will receive a credit against traffic impact fees otherwise payable, or for which a subsequent recapture agreement will be executed, as delineated in other Sections of this Agreement. Unless otherwise authorized by the Town, no work shall be commenced on such improvements by the Developer until such time as the performance guarantee pursuant to Section 9 of this Agreement has been furnished to the Town.

5.4 Warranty by Developer. The Developer shall warrant any and all public improvements constructed by Developer which are conveyed or dedicated to the Town pursuant to this Agreement, or its Subdivision Final Plat application, for a period of eighteen (18) months from the date the Town's Engineer conducts a final inspection and certifies that the same conform with the approved specifications, and the Town authorizes a reduction in the security as set forth

in subsection 9.4 below. Specifically, but not by way of limitation, the Developer shall warrant the following:

- 5.4.1 That the title conveyed shall be good and its transfer rightful; and
- 5.4.2 Any and all facilities conveyed shall be free from any security interest or other lien or encumbrance; and
- 5.4.3 Any and all facilities so conveyed shall be free of any and all defects in materials or workmanship.

In addition, all other Subdivision improvements such as shallow utility installations and other improvements as shown in the Subdivision application, and approved construction drawings submitted to the Town for this Subdivision shall be warranted for a period of eighteen (18) months following completion and approval, as provided above.

5.5 Town Inspections. The Town shall have the right to make engineering inspections and require testing during construction of the public and other required Subdivision improvements in such reasonable intervals as the Town may request. Inspection, acquiescence and approval of any engineering inspector of the construction of physical facilities, at any particular time, shall not constitute the approval by the Town of any phase of the construction of such public and other required improvements. Such approvals shall be made by the Town only after completion of construction and the establishment of property pins for each lot or parcel, and in the manner hereinafter set forth.

5.6 Final Approval by Town Engineer. Upon completion of construction by the Developer of such public and other required Subdivision improvements, the Town Engineer or Public Works Director shall perform a final inspection of the improvements and certify with specificity its conformity or lack thereof to the approved specifications. The Developer shall make all corrections necessary to bring the improvements into conformity with Town standards and the utility, drainage and street improvement plans and others, as approved. The Town shall be under no obligation to release the performance guarantee, or provide any water service or wastewater collection service, street maintenance, zoning clearances, or certificates of occupancy until all such facilities are brought into conformance with the specifications and finally approved by the Town Engineer or Public Works Director.

5.7 Provision of As-Built Drawings. Developer shall provide all necessary engineering designs, surveys, field surveys, and "as built" drawings for all public improvements and other utilities improvements approved by the Town Engineer or Public Works Director. All "as built" drawings shall be prepared in the manner required by the Town Engineer or Public Works Director. The Developer shall pay for any incidental services related to the construction of the public improvements and other utility improvements, at its sole cost and expense.

5.8 Conveyance of Public Improvements. All public improvements constructed by Developer in accordance with this Agreement, including all water lines, mains, laterals, fire hydrants and related improvements, wastewater collection mains, laterals and related improvements; public street improvements including required pavement, curbs, gutters and sidewalks shall be dedicated or conveyed to the Town. Upon completion of construction in conformity with the plans, and any properly approved changes, the Developer shall convey to the Town, by bill of sale, all physical facilities constructed by Developer necessary for the extension, maintenance and repair of municipal utility services and other public facilities. Acceptance of said conveyance shall be made by the Town Public Works Director. Following such dedication or conveyance, the Town shall be solely responsible for the maintenance of such improvements, unless otherwise provided in this Agreement, except for any correction work required during the warranty period set forth in subsection 5.4 above.

5.9 Construction Schedule. Notwithstanding any provisions contained in the Colorado Vested Property Rights statutes, Section 24-68-101 *et. seq.* C.R.S. to the contrary, Developer agrees that construction of such public and other required Subdivision improvements shall be completed no later than the dates set forth in Exhibit "B". Where Developer is prevented from commencing or completing any of the public and other required Subdivision improvements within the time periods set forth in the construction schedule or otherwise set forth in this Agreement due to an unforeseeable cause or delay beyond the control and without the fault or negligence of the Developer, the times for commencement and/or completion of such improvements shall be extended in an amount equal to the time lost due to such delay if a request is made in writing to the Town by the Developer. Delays beyond the control of Developer shall include, but not be limited to, acts of neglect by the Town, fires, floods, epidemics, abnormal weather conditions, strikes, freight embargos or acts of God. Time extensions, however, will not be granted for rain, snow, wind or other natural phenomena at normal intensity within Mesa County. Delays attributable to and within the control of the Developer's contractors, subcontractors or suppliers shall be deemed to be delays within the control of the Developer.

5.10 Improvements Required Prior to Issuance of Zoning Clearances for Building Permits and Certificates of Occupancy. No zoning clearance necessary to obtain a building permit for construction of any building within the Subdivision shall be issued until all of the required improvements, as specified in this Agreement, have been substantially completed and approved by the Town Engineer or Town Planner. No certificate of occupancy for any building within the Subdivision shall be issued until all required improvements have been fully installed and approved by the Town Engineer or Town Planner.

**SECTION 6**  
**RESERVED**

**SECTION 7**  
**DRAINAGE IMPROVEMENTS**

Pursuant to the Filing 1 SIA, the Developer was required to install an offsite stormwater outfall pipe to discharge from the project detention pond to the City's park drainage and eventually to the Colorado River. This was installed, however, there remains an underdrain system that needs to be completed along the north side of the Grand Valley Irrigation Canal which shall be completed as part of the Filing 2 Public Improvements pursuant to this SIA.

Developer acknowledges that such requirement(s) are roughly proportional to the impacts generated from development of the Property.

## **SECTION 8**

### **WATER AND WASTEWATER SERVICES AND IMPROVEMENTS**

8.1 Construction of Treated Water Distribution System. The Developer, at its sole expense, shall design, purchase, and install all elements of a municipal treated water distribution system to fully service the Subdivision including but not limited to water mains, fire hydrants, pipe lines, and service line laterals to lot lines as required by the Town's engineering design standards, and all other appurtenant facilities necessary to provide treated municipal water service to the Subdivision. All required improvements and the construction and installation of such improvements shall be in accordance with the design drawings, plans and specifications submitted with the Subdivision Final Plat, as approved by the Town.

8.2 Construction and Conveyance of Irrigation System. The Developer, at its sole expense, shall design, purchase and install all elements of a non-potable irrigation system to fully service the Subdivision including all lines, valves, service lines to the lot lines as required by the Town's regulations, and service risers. All required improvements and the construction and installation of such improvements shall be in accordance with the design drawings, plans and specifications submitted with the Subdivision Final Plat, and approved by the Town, and in accordance with applicable provisions of the Town's engineering design standards.

Prior to the sale of any lot within the Subdivision, the Developer shall convey to the Cresthaven Acres Homeowners Association by separate legal instrument(s) the irrigation system, all real property and associated easements necessary for operation and maintenance of the irrigation system and shall also transfer to the Association sufficient irrigation water rights as approved by the Town.

8.3 Construction of Wastewater Collection System. The Developer, at its sole expense, shall design, purchase, and install all elements of the wastewater collection system to fully service the Subdivision, including service lines to the lot lines, pursuant to the provisions of this Agreement and applicable provisions of the Town's engineering design standards. Such wastewater collection system shall be constructed in accordance with the design drawings, plans and specifications submitted with the application for the Subdivision Final Plat, and as approved by the Town.

8.4 Provision of Water and Wastewater Service by the Town. Upon completion of the treated water distribution system and the wastewater collection system by the Developer, and upon approval by the Town Engineer or Public Works Director and acceptance by the Town, the Town agrees to provide domestic water service and wastewater treatment and collection service to the Subdivision upon Developer or other property owner making a written request for such service and the payment of any required plant investment (tap) fees and connection charges. Provision of water or wastewater service by the Town within the Subdivision shall be made pursuant to agreement by the Town and on a first come/first served basis with other water and wastewater service customers, subject to system capacity and any prior commitments, and at the then applicable rate. Except as may otherwise be provided in this Agreement, a lot owner shall not receive any preferences for or assurance of the availability of water service or wastewater service from the Town until the plant investment (tap) fees are paid.

8.5 Sanitary Sewer Line for Lots 60-68 and Lots 54-59. Lots 60-68 and 54-59 shall be connected to the gravity sanitary sewer line in Nectarine Street and Redhaven Street, respectively. Certificate of occupancies for the above described lots shall not be granted until the gravity sanitary sewer lines are installed and in operation for those Lots and all pre-existing sewer infrastructure is formally abandoned as identified on the approved plans for Filing 2.

## **SECTION 9** **PERFORMANCE GUARANTEE**

9.1 Security Required. In order to secure the construction and installation of the public and other required Subdivision improvements, whether on-site or off-site, above described and as shown in the approved design drawings and specifications submitted with the application for the Preliminary Plan and Subdivision Final Plat, for which Developer is responsible, and in accordance with Section 9.07 of the Palisade Land Development Code, Developer shall furnish the Town with: (a) cash to be deposited in an escrow account that is acceptable to the Town pursuant to the Escrow and Disbursement Agreement attached hereto as Exhibit "C" and incorporated herein by this reference; or (b) a letter of credit that is acceptable to the Town; or (c) a performance bond issued by a surety approved by the Town, in an amount equal to one hundred ten percent (110%) of the estimated cost of said facilities.

9.2 Delivery of Security. Developer shall furnish to the Town the security required by this Section and Section 9.07 of the Palisade Land Development Code prior to the recording of the Subdivision Final Plat. Unless expressly authorized by the Town, the Developer shall not commence any work within the Subdivision until such approved security is furnished to the Town. Developer shall not convey any lot within the Subdivision to any third party until such approved security is delivered to the Town.

9.3 Security Standards; Payment upon Default. The initial performance bond or letter of credit, if applicable, issued pursuant to this Agreement shall bear an expiration date of not earlier

than eighteen (18) months from the date of issuance. The Developer shall renew such security as necessary in order to secure the performance and completion of the public and other required on-site and off-site Subdivision improvements in accordance with this Agreement and Section 9.07 of the Palisade Land Development Code, without further notice from the Town. The performance bond, letter of credit, or escrow funds shall be payable at any time upon presentation of an affidavit by the Town stating Developer is in default under this Agreement, has received notice of such default as required by subsection 9.7 of this Agreement, and has failed to cure such default within the time set forth in subsection 9.7 of this Agreement. The performance bond, or letter of credit, or Escrow and Disbursement Agreement shall be in good and sufficient form as approved by the Town Attorney. In the event of a default by the Developer and compliance with the terms of subsection 9.7 of this Agreement, the surety or financial institution shall disperse funds, upon written request by the Town, or the escrow fund may be drawn upon, showing the proposed payee and the amount to be paid. Copies of any such request shall be sent to the Developer at its last known address.

9.4 Partial Release of Security. Upon completion of a certain class of the improvements by the Developer, such as wastewater facilities by way of example, evidenced by a detailed cost breakdown of the completed improvements, the amount of any security issued pursuant to this Agreement may be reduced by up to one hundred percent (100%) of the approved estimated cost for the installation of such class of improvements, upon application of the Developer, and approval by the Town Engineer or Town Planner. Upon completion of all of the public and other required on-site and off-site Subdivision improvements by the Developer, and upon final inspection and approval by the Town Engineer or Public Works Director of all such improvements, the Board of Trustees shall further authorize the reduction of the amount of the security guaranteeing the public and other required Subdivision improvements to ten percent (10%) of the total actual cost of such improvements.

9.5 Full Release of Security. Any performance guarantee issued pursuant to this Agreement shall be fully released and discharged by action of Board of Trustees upon expiration of the eighteen (18) month warranty period, and the correction of any defects discovered during such warranty period. In the event that the correction of defects is not satisfactorily completed upon the expiration of the eighteen (18) month warranty period, the Town may require a new performance guarantee and withhold zoning clearances until a new improvements guarantee is recorded.

9.6 Notice of Defect by Developer's Engineer. Developer shall instruct its engineer, in writing, to promptly provide written notice to Developer and the Town Engineer whenever Developer's engineer becomes aware that an improvement required by this Agreement does not conform to applicable Town or Mesa County standards or approved specifications or is otherwise defective. Developer shall provide the Town with a copy of its written instructions directing Developer's engineer to report any defects.



9.7 Notice of Default. Upon the Developer's failure to perform its obligations under this Agreement, all other applicable plans, drawings, specifications and other documents submitted by the Developer to the Town as approved, within the time periods set forth in this Agreement, the Town may give written notice to Developer of the nature of the default and an opportunity to be heard before the Board of Trustees concerning such default. If such default has not been remedied within ten (10) days of receipt of the notice or of the date of any hearing before the Board of Trustees, whichever is later, the Town may then give written notice to the Developer and any surety on the performance bond, issuer of a letter of credit, or escrow agent that the Town, as agent for the Developer, is proceeding with the task of installing the public and other required Subdivision improvements in whole or in part.

9.8 Power of Attorney Granted. The Developer hereby designates and irrevocably appoints the Palisade Town Administrator, as its Attorney-In-Fact and agent for the purpose of completing all public and other necessary improvements required by this Agreement in the event of a default by the Developer. This Agreement shall be filed in the office of the Clerk and Recorder of Mesa County, Colorado, and shall constitute constructive notice of this Agreement and the power of attorney provided herein. This Agreement and power of attorney contained herein may be enforced by the Town pursuant to all legal, and equitable remedies available, including an action for specific performance in a court of competent jurisdiction.

9.9 Increase in Amount of Security. If a substantial amount of time elapses between the time of posting of the security and actual construction of the improvements, the Town reserves the right to require a reasonable increase in the amount of the applicable security, if necessary because of estimated increased costs of construction.

9.10 Cost Estimate Not Binding. The purpose of the cost estimate described in subsection 9.1 above and Exhibit "B" is solely to determine the amount of security required and may be revised from time to time to reflect the actual costs. No representations are made as to the accuracy of these estimates, and the Developer agrees to pay the actual cost of all such public and other required on-site and off-site Subdivision improvements. Neither the estimated costs nor the amount of the security establishes the maximum amount of the Developer's liability.

9.11 Attorney's Fees. If any legal proceedings are commenced concerning the Town's election to complete the public and/or other required Subdivision improvements, as agent for the Developer, against the Developer, its surety, or issuer of the letter of credit, Developer shall pay the Town its costs and attorney's fees.

## **SECTION 10**

### **INDEMNIFICATION AND INSURANCE**

10.1 Indemnification by Contractors. Any contractor employed by the Developer who performs work within rights-of-way or easements dedicated to the Town or within other property owned by the Town shall indemnify and hold harmless the Town of Palisade, its officers,

employees, insurers, and self-insurance pool, from and against all liability, claims, and demands, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with work performed by such contractor for the Developer within Town rights-of-way, easements or other property, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of such contractor, any subcontractor of the contractor, or any officer, employee, representative, or agent of such contractor or of any subcontractor of the contractor, or which arise out of any workers compensation claim of any employee of the contractor or of any employee of any subcontractor of the contractor. The contractor shall agree to investigate, handle, respond to, and provide a defense for and defend against, any such liability, claims or demands at the sole expense of such contractor. The contractor shall also agree to bear all other costs and expenses related thereto, including court costs and attorney fees, whether or not any such liability, claims, or demands alleged are groundless, false, or fraudulent.

10.2 Insurance Required. Any contractor employed by the Developer to perform work within rights-of-way or easements dedicated to the Town or within any other property owned by the Town, shall agree to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands and other obligations assumed by such contractor pursuant to subsection 10.1 of this Agreement. Such insurance shall be in addition to any other insurance requirements imposed by the Developer or by law. Any such contractor shall not be relieved of any liability, claims, demands or other obligations to be assumed pursuant to subsection 10.1 above by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.

10.3 Nature and Amounts of Insurance. Any contractor employed by the Developer to perform work within rights-of-way and easements dedicated to the Town or other property owned by the Town shall procure and maintain and shall cause any subcontractor of such contractor to procure and maintain, the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to the Town. All coverages shall be continuously maintained to cover all liability, claims, demands and other obligations to be assumed by such contractor pursuant to subsection 10.1 above. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

10.3.1 Workers' Compensation insurance to cover obligations imposed by the Workers' Compensation Act of Colorado and any other applicable laws for any employee engaged in the performance of Work under this contract, and Employers' Liability insurance with minimum limits of ONE MILLION DOLLARS (\$1,000,000) each accident, ONE MILLION DOLLARS (\$1,000,000) disease - policy limit, and ONE MILLION DOLLARS (\$1,000,000) disease - each employee.

10.3.2 Comprehensive General Liability insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and TWO MILLION DOLLARS (\$2,000,000) aggregate. The policy shall be applicable to all premises and operations of contractor. The policy shall include coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations of Contractor. The policy shall contain a severability of interests provision. Coverage shall be provided on an "occurrence" basis as opposed to a "claims made" basis. Such insurance shall be endorsed to name the Town as Certificate Holder and name the Town, its elected officials, officers, and employees and agents as additional insured parties.

10.3.3 Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000) aggregate with respect to each of Contractor's owned, hired and/or non-owned vehicles assigned to or used in performance of the services. The policy shall contain a severability of interests provision. Such issuance must extend to all levels of subcontractors. Such coverage must include all automotive equipment used in the performance of the Agreement.

The policies required by paragraphs 10.3.2 above shall be endorsed to include the Town of Palisade and the Town's officers and employees as additional insureds. Every policy required above shall be primary insurance, and any insurance carried by the Town, its officers, or its employees, or carried by or provided through any insurance pool of the Town, shall be excess and not contributory insurance to that provided by the Developer's contractors. No additional insured endorsement to the policy required by paragraph 10.3.2 above shall contain any exclusion for bodily injury or property damage arising from completed operations. A contractor shall be solely responsible for deductible losses under any policy required above.

Upon request by the Town, the Developer shall provide the Town with a certificate of insurance to be completed by the contractor's insurance agent as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect. The certificate shall identify the contract and shall provide that the coverages afforded under the policy shall not be canceled, terminated or materially changed until at least thirty (30) days prior written notice has been given to the Town.

10.4 Indemnification by Developer. In addition to the indemnification required in subsection 10.1 above, the Developer hereby expressly agrees to indemnify and hold the Town harmless from and against all claims, costs and liability of every kind and nature, for injury or



Pursuant to the First Amendment to the Filing 1 SIA dated June 11, 2019, and in accordance with Section 10.11 of the Palisade Land Development Code, a transportation impact fee was assessed in the amount of \$2,554 per lot x 71 lots = \$181,334 as and for transportation impact fees applicable to all of Cresthaven Acres Subdivision (Filings 1 and 2). Transportation Impact Fees had been paid for 2 lots with houses constructed or under construction in Filing 1 at that time, so the remaining Transportation Impact Fee to be paid was \$176,226 (\$2,554 X 69 remaining lots). Developer further received a credit of \$12,600 for a five-foot sidewalk from Shiraz Drive to the entrance of the Property required by Section 6, Off-Site Street Improvements of the Filing 1 SIA 9the “Sedewalk”), which was not constructed as further discussed below, for a resulting total Transportation Impact Fee of \$163,626 payable in full by July 31, 2019, which the Town acknowledges was paid.

The Developer was unable to obtain approval from the property owner to construct the Sidewalk, for which the Developer received a \$12,600 credit towards Transportation Impact Fees. The Town absolves the Developer of the requirement to build the Sidewalk and Developer shall pay the \$12,600 payable prior to recoding the Final Plat for Filing 2. With that payment, Developer’s Transportation Impact Fees have been satisfied for all of Cresthaven Acres (Filings 2 and 2).

Developer acknowledges that the requirements contained in this Section are roughly proportional to the impacts generated from development of the Subdivision.

### **SECTION 13** **REIMBURSEMENT OF COSTS**

13.1 Review Costs and Fees. The Developer shall pay to the Town the actual third-party cost to the Town for engineering, surveying, consultant planning services, and legal services rendered in connection with the Developer’s subdivision application. Said costs shall be paid prior to the recording of the Subdivision Final Plat. Provided, however, upon request, the Developer shall receive detailed invoices reflecting the nature and description of each charge so incurred by the Town Developer’s obligation hereunder shall continue until all public and other required subdivision improvements are accepted by the Town. Interest shall be imposed at rate of 1.5% per month on all balances not paid within thirty (30) days of the date of the statement. In addition to any and all remedies available to the Town and in the event the Town is forced to pursue collection of any amounts due and unpaid under this provision or under this Agreement, the Town shall be entitled to collect attorney’s fees and costs incurred in said collection efforts in addition to the amount due and unpaid.

13.2 Inspection Costs. Prior to the approval and acceptance of the construction and installation of the public and other required subdivision improvements, the Developer shall pay to the Town the actual cost of all third-party inspections of such improvements made or conducted at the direction of the Town Administrator, Town Engineer, or Public Works Director.

**SECTION 14**  
**FINAL PLAT APPROVAL**

The Town agrees to approve the Subdivision Final Plat provided that said Subdivision Final Plat is in conformance with the Preliminary Plan, drainage, street improvements, and utility plans submitted to and approved by the Town, as well as all of the requirements of applicable law, subject to the terms and conditions of this Agreement.

**SECTION 15**  
**ENFORCEMENT**

15.1 Default; Notice; Termination. In the event of any default or breach by the Developer of a covenant, term, condition, or obligation under this Agreement, and if such default or breach continues after notice thereof and opportunity of a hearing as set forth in subsection 9.7 of this Agreement, this Agreement may be forthwith terminated, at the option of the Town. All rights concerning remedies or attorney's fees shall survive any termination of this Agreement.

15.2 Other Remedies Available to Town. In the event the Developer fails to construct any public or other required on-site and off-site Subdivision improvements in accordance with the terms and conditions of this Agreement, following the issuance of the performance guarantee as set forth in Section 9 of this Agreement, the Town may exercise any of the remedies set forth in Section 9 of this Agreement. Alternatively, the Town may assign the proceeds of the letter of credit, performance bond, or escrow funds to a subsequent Developer or a lender who has acquired the Subdivision by purchase, foreclosure or otherwise who will then have the same rights of completion as the Town if and only if the subsequent developer or lender agrees in writing to complete the unfinished improvements. In addition, the Town also may suspend the Final Plat approval during which time the Developer will have no right to sell, transfer, or otherwise convey tracts or lots within the Subdivision without the express written approval of the Town or until the improvements are completed and accepted by the Town provided, however, such suspension shall not affect (a) the annexation of the Subdivision to the Town; (b) the prior conveyance of any lots or parcels within the Subdivision; (c) any right arising from Town permits, approvals or other entitlements for the Property which were granted or approved prior to, concurrently with, or subsequent to the approval of this Agreement and the Subdivision Final Plat; or (d) the parties' rights pursuant to subsection 18.5 below. These remedies are cumulative in nature; except that during the warranty period, the Town's only remedy will be to draw funds under the letter of credit, performance bond or escrow funds.

**SECTION 16**  
**CONVEYANCES PROHIBITED**

16.1 Recording of Subdivision Final Plat Required. The Developer shall not grant, sell or convey any lot, lots, or other properties subject to this Agreement prior to the recording of the approved Subdivision Final Plat.

16.2 Improvements Agreement Required. If this Agreement is only for a portion or Phase of a Subdivision for which a valid Subdivision Final Plat already exists, the Developer shall not grant, sell or convey any lot or lots not covered by this or a previous Improvements Agreement without the express written consent of the Town. The intent of this subsection is to prevent the sale of legally platted lots within the Subdivision for which public infrastructure does not exist or for which an Improvements Agreement has not yet been executed.

**SECTION 17**  
**VESTED RIGHTS - VACATION OF FINAL PLAT**

17.1 Vested Property Rights. Developer shall have vested property rights to develop the Subdivision for a period of three (3) years from the effective date of this Agreement. The Developer shall be entitled to all rights, privileges, and remedies arising from such vesting for said period in accordance with Section 1.04 of the Palisade Land Development Code and Sections 24-68-101 *et. seq.*, C.R.S.

17.2 Vacation of Final Plat. Failure of the Developer to complete construction of the public and other on-site and off-site Subdivision improvements required by this Agreement within the times provided herein and following the delivery of the notice described in subsection 15.1 hereof and the expiration of the ten (10) day time period described in subsection 9.7 without cure by Developer, the vested property rights associated with the Subdivision Final Plat and this Agreement shall be forfeited. Upon such an event, the Board of Trustees of the Town of Palisade may enact an ordinance vacating the Subdivision Final Plat and upon the effective date of such ordinance, the Subdivision and any permits issued in connection therewith shall be null, void, and of no effect. The Developer shall then be prohibited from granting, selling or conveying any additional lots within the Property. All property rights dedicated to the Town of Palisade for public purposes shall remain the property of the Town and shall be considered liquidated damages. Provided, however, vacation of the Subdivision Final Plat shall not affect (a) the annexation of the Subdivision to the Town; (b) the prior conveyance of any lots or parcels within the Subdivision; (c) any right arising from other Town permits, approvals or other entitlements for the Subdivision which were granted or approved prior to, concurrently with, or subsequent to the approval of the Subdivision Final Plat; or (d) the parties' rights pursuant to subsection 18.5 below.

APPROVAL OF THE SUBDIVISION FINAL PLAT AND THIS AGREEMENT  
CREATES A VESTED PROPERTY RIGHT PURSUANT TO SECTION 24-68-103, C.R.S., AS  
AMENDED.

17.3 Certificate of Compliance. It is agreed that upon completion of all improvements which are the subject of this Agreement, expiration of the warranty period as provided herein, compliance with all of the terms of this Agreement, and upon the written request of Developer, the Town shall execute a resolution or certificate stating that all improvements have been constructed in compliance with this Agreement.

**SECTION 18**  
**MISCELLANEOUS PROVISIONS**

18.1 Waiver of Defects. In executing this Agreement, Developer waives all rights it may have concerning defects, if any, of the form or substance of this Agreement, and the formalities whereby it is executed; concerning the power of the Town to impose conditions on Developer as set forth herein; and concerning the procedure, substance and form of the ordinances or resolutions adopting this Agreement.

18.2 Failure to Exercise Rights. No waiver of any provision of this Agreement will be deemed or constitute a waiver of any other provision, nor will it be deemed or constitute a continuing waiver unless expressly provided for by written amendment to this Agreement signed by both the Town and the Developer; nor will the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The Town's failure to exercise any right under this Agreement will not constitute the approval of any wrongful act by the Developer or the acceptance of any improvement.

18.3 Complete Agreement. This Agreement together with the Subdivision Final Plat contain all of the understandings, conditions and agreements between the Town and Developer relating to the Subdivision at this time, and no other prior or current representation, oral or written, shall be effective or binding upon the Town and Developer, except for representations made by the Developer, or its agent, or the Board of Trustees, or Town staff members at public hearings concerning approval of the Subdivision Final Plat, not in conflict with the express provisions of this Agreement.

18.4 Owners Association; Covenants. An owners association shall be created by Developer under the laws of the State of Colorado before any properties within the development are sold to third parties. The Articles of Incorporation and covenants shall be reviewed by the Town Attorney to insure that they meet the City's requirements that the owners association (1) maintains, operates and assumes full responsibility for all easements and common areas within the Property and shown on the Final Plat, including landscaping; (2) maintains all private open space; and (3) is empowered to enforce any provisions of the covenants, conditions and restrictions affecting the Property. The covenants for the Property shall also address, at a minimum: landscape maintenance, use of limited and general common elements, fencing styles and heights, outdoor storage of vehicles (including recreational vehicles, boats, trailers, and the like), and pets. The Articles of Incorporation and covenants shall be reviewed and approved, and the Articles filed with the Colorado Secretary of State prior to the recordation of the Final Plat.

18.5 Attorney's Fees. In the event that any action is filed or maintained by any party in relation to this Agreement, the substantially prevailing party shall be entitled to its costs and reasonable attorney fees (including legal assistant's fees). All rights concerning remedies or attorney's fees shall survive termination of this Agreement.



18.6 Authorization. The signatories to this Agreement affirm and warrant that they are fully authorized to enter into and execute this Agreement, and all necessary actions, notices, meetings, and/or hearings pursuant to any law required to authorize their execution of this Agreement have been made.

18.7 Amendments. This Agreement may be amended from time to time by written Agreement duly authorized by the parties to this Agreement.

18.8 Representations of Town Officials. It is expressly understood that the Town cannot be legally bound by the representations of any of its officers or agents or their designees except in accordance with the Palisade Municipal Code and ordinances, and that the Developer, when dealing with the Town, acts at its own risk as to any representation or undertaking by the Town or its officers or agents or their designees which is subsequently held unlawful by a court of law, which is in accordance with the laws of the State of Colorado. Provided, however, that this subsection shall not be construed to limit the rights and remedies of the parties otherwise provided by law.

18.9 Covenants. The provisions of this Agreement shall be binding on all subsequent owners of the Property as covenants running with the Property, to be released only by the Town of Palisade, and the benefits and burdens of this Agreement shall bind and inure to the benefit of all estates and interests in the Property and all successors in interest to the parties to this Agreement, except as otherwise provided herein.

18.10 Notices. Any notice required or permitted by this Agreement will be deemed effective when personally delivered in writing, or three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified, and return receipt requested, addressed as follows:

If to Town:                   175 East Third Street  
Palisade, Colorado 81526  
Attn: Community Development Director

With a copy to:           Karp Neu Hanlon, P.C.  
201 14<sup>th</sup> Street, Suite 200  
Glenwood Springs, Colorado 81601

If to Developer:           Chronos Property, LLC  
637 25 Road  
Grand Junction, Colorado 81505  
Attn: Cody Davis

These addresses shall remain valid until notice of a change of address is given to the other party in accordance herewith.

18.11 Time of the Essence. Time is of the essence of this Agreement.

18.12 Jurisdiction and Venue of Courts. This Agreement is made and delivered within the State of Colorado, and the laws of the State of Colorado shall govern its interpretation, validity, and enforceability. Personal jurisdiction and venue for any civil action commenced by either party to this Agreement whether arising out of or relating to the Agreement, a letter of credit, Escrow and Disbursement Agreement, or performance bond will be deemed to be proper only if such action is commenced in the District Court for Mesa County, Colorado. The Developer, escrow agent and issuer of any letter of credit or performance bond pursuant to this Agreement, expressly waive their right to bring such action in or to remove such action to any other court, whether State or federal.

18.13 Rights of Persons Not a Party. No person or entity who or which is not a party to this Agreement will have any right of action under this Agreement, except that if the Town does not exercise its rights within sixty (60) days following an event of default, a purchaser of a tract or unit in the Subdivision may bring an action in mandamus to compel the Town to exercise its rights.

18.14 Provisions Deemed Severable. If any part, term or provision of this Agreement is held by the courts to be illegal or otherwise unenforceable, such illegality or unenforceability will not affect the validity of any other part, term, or provision, and the rights of the parties will be construed as if the part, term, or provision was never part of the Agreement.

18.15 Assignment of Rights; Release of Obligations. The benefits of this Agreement to the Developer are personal and may not be assigned without the express written approval of the Town. Such approval may not be unreasonably withheld, but any unapproved assignment is void. Notwithstanding the foregoing, the burdens of this Agreement are personal obligations of the Developer and also will be binding on the heirs, successors, and assigns of the Developer. There is no prohibition on the right of the Town to assign its rights under this Agreement. The Town will release the original Developer's performance guarantee if it accepts new security from any developer or lender who obtains the Property.

18.16 No Waiver of Immunity. Nothing contained in this Agreement constitutes a waiver of the Town's sovereign immunity or governmental immunity under any applicable State law.

18.17 Recordation of Agreement. The Town shall record a copy of this Agreement in the office of the Clerk and Recorder of Mesa County, Colorado.

18.18 Execution of Other Documents. The parties agree to execute any additional documents and to take any additional actions necessary to carry out the terms of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the day and year first above written.

TOWN OF PALISADE, COLORADO, a municipal corporation, acting by and through its Board of Trustees,

By: \_\_\_\_\_  
Greg Mikolai, Mayor

ATTEST:

\_\_\_\_\_  
Town Clerk

CHRONOS PROPERTY, LLC:

By: \_\_\_\_\_  
Cody Davis, Manager

STATE OF COLORADO    )  
  )ss.  
COUNTY OF MESA        )

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by Cody Davis as Manager of Chronos Property, LLC.

WITNESS MY HAND AND OFFICIAL SEAL.

My commission expires:

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

**EXHIBIT "A"**

**LEGAL DESCRIPTION**

The legal description for 2941-032-21-100 is:

LOT 100 CRESTHAVEN ACRES FILING 1 LOC WITHIN SEC 3 1S 2E UM RECD 1212/2018 R-2864235 CORRECTED BY CRESTHAVEN ACRES FILING 1 CORRECTION PLAT RECD 3/15/2019 R-2872924 & AN UND INT IN TRACTS A THRU E MESA CO RECDS - 5.75AC

The legal description for 2941-032-21-101 is:

LOT 101 CRESTHAVEN ACRES FILING 1 LOC WITHIN SEC 3 1S 2E UM RECD 1212/2018 R-2864235 CORRECTED BY CRESTHAVEN ACRES FILING 1 CORRECTION PLAT RECD 3/15/2019 R-2872924 & AN UND INT IN TRACTS A THRU E MESA CO RECDS - 1.85AC

The legal description for 2941-032-21-102 is:

LOT 102 CRESTHAVEN ACRES FILING 1 LOC WITHIN SEC 3 1S 2E UM RECD 1212/2018 R-2864235 CORRECTED BY CRESTHAVEN ACRES FILING 1 CORRECTION PLAT RECD 3/15/2019 R-2872924 & AN UND INT IN TRACTS A THRU E MESA CO RECDS - 2.05AC

**EXHIBIT "B"**



