

FINANCIAL GUARANTEE AGREEMENT

THIS FINANCIAL GUARANTEE AGREEMENT (the "Agreement") is entered into this 30th day of November, 2018, by and between the Town of Parker, a Colorado home rule municipality (the "Town"), and KB HOMES OF COLORADO, a Colorado corporation (the "Developer").

RECITALS

WHEREAS, the Town and the Developer have entered into that certain Subdivision Agreement (the "Subdivision Agreement") dated Nov. 30th, 2018, concerning that certain real property known as Trails at Crowfoot Filing No. 15 (the "Property"); and

WHEREAS, pursuant to the Subdivision Agreement, the Developer has agreed to install and complete at its expense certain Public Improvements (as that term is defined in the Subdivision Agreement) on the Property and to provide the Town with a financial guarantee, in an amount equal to one hundred ten percent (110%) of the costs of the Public Improvements naming the Town as the designated beneficiary, to secure the performance and completion of the Public Improvements.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the sufficiency of which is hereby acknowledged and confessed, the parties hereto covenant and agree as follows:

1. Purpose. The purpose of this Agreement is to provide for a financial guarantee to the Town for the performance and completion of the Public Improvements described in the Subdivision Agreement and, accordingly, to supplement the terms and conditions of the Subdivision Agreement. Defined terms within the Subdivision Agreement shall have the same meaning when used herein.

2. Financial guarantee. In order to secure the performance and completion of the Public Improvements, the Developer agrees to deposit with the Town the sum of Five Hundred Eighty-Eight Thousand Ninety-Seven and 01/100 Dollars (\$588,097.01), which represents one hundred ten percent (110%) of the estimated cost of the Public Improvements (the "Financial Guarantee Funds"). All Financial Guarantee Funds shall be deposited in the Town's General Fund. The Town shall not be required to pay the Developer any interest on the Financial Guarantee Funds.

The estimated costs of the Public Improvements shall be a figure mutually agreed upon by the Developer and the Town's Director of Engineering/Public Works. If, however, they are unable to agree, the Director of Engineering/Public Works' estimate shall govern after giving consideration to information provided by the Developer including, but not limited to, construction contracts and engineering estimates. The purpose of the cost estimate is solely to determine the amount of the financial guarantee. No representations are made as to the accuracy of these estimates, and the Developer agrees to pay the actual costs of all such Public Improvements.

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The estimated costs of the Public Improvements may increase in the future. Accordingly, the Town reserves the right to review and adjust the cost estimate prior to the issuance of any grading permit for the Property and on an annual basis thereafter. Adjusted cost estimates will be made according to changes in the Construction Costs Index as published by the *Engineering News Record* or based upon actual construction bids, as determined by the Town in the exercise of its sole discretion. If the Town adjusts the cost estimate for the Public Improvements, the Town shall give written notice to the Developer. The Developer shall, within thirty (30) days after receipt of said written notice, provide the Town with new funds in the amount of the adjusted cost estimates. If the Developer refuses or fails to so provide the Town with additional Financial Guarantee Funds, the Town may exercise the remedies provided for in paragraph 6 of the Subdivision Agreement; provided, however, that prior to increasing the amount of additional Financial Guarantee Funds required, the Town shall give credit to the Developer for all required Public Improvements which have actually been completed so that the amount of Financial Guarantee Funds required at any time shall relate to the cost of required Public Improvements not yet constructed.

3. Release of Financial Guarantee Funds.

a. The Developer intends to enter into several different contracts with different contractors to install the Public Improvements. It is the intent of the parties hereto that Financial Guarantee Funds will be released as work is completed on each individual contract. In the event the Public Improvements are not constructed or completed within the period of time specified by paragraph 9 of the Subdivision Agreement or a written extension of time mutually agreed upon by the parties to this Agreement, the Town may draw on the Financial Guarantee Funds to complete the Public Improvements called for in this Agreement.

b. The Financial Guarantee Funds are to be used solely and exclusively for the completion of the Public Improvements. The Town will disburse up to ninety percent (90%) of the estimated cost of the Public Improvements as progress payments according to the schedule of values attached as **Exhibit 1** and incorporated by this reference (the "Schedule of Values"), upon the Developer's satisfaction of the following draw requirements:

1. The Developer delivers an application to the Town (which includes a certification signed by the Developer of the percentage of the total Public Improvements completed according to the Schedule of Values), which application will be made no more than once per month and shall be tied to progress toward the completion of the Public Improvements, as identified in the application (the "Application").

2. Upon receipt of the Application, the Town shall have thirty (30) calendar days within which to provide written acknowledgement from the Director of Engineering/Public Works or designee of the Town that the Application may be paid, partially paid or denied. The Town's affirmation and payment will not constitute approval by the Town of the completion and/or acceptance of Public Improvements, or any portion thereof. Such acknowledgement shall not be unreasonably denied or withheld by the Town and shall be given if the Public Improvements described in the Application are completed in accordance with the construction plans approved by the Town.

3. The Town shall have no obligation to provide probationary acceptance of the Public Improvements, until all of the Public Improvements are completed and all deficiencies, of any type, including, but not limited to, maintenance, materials or workmanship, that are identified by the Director of Engineering/Public Works at the final inspection are corrected (regardless of the cause of the deficiency).

4. Upon the Town's probationary acceptance of the Public Improvements, the Developer has the option of substituting a letter of credit for twenty percent (20%) of the cost of the Public Improvements that the Town is holding for the two-year warranty period, as described in the Subdivision Agreement, in a form and from a financial institution acceptable to the Town.

c. That portion of the Financial Guarantee Funds which represents twenty percent (20%) of the estimated costs of the Public Improvements shall be retained by the Town during the two-year warranty period described in the Subdivision Agreement. At the end of the warranty period and upon final acceptance by the Town, the remaining Financial Guarantee Funds shall be released to the Developer. The Town may draw on the Financial Guarantee Funds during the warranty period to correct any problems with the Public Improvements which have not been corrected by the Developer, as provided by the Subdivision Agreement.

4. Modifications. This Agreement shall not be amended, except by subsequent written agreement of the parties.

5. Release of Liability. 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 Parker Municipal Code and the laws of the State of Colorado.

6. Captions. The captions to this Agreement are inserted only for the purpose of convenient reference and in no way define, limit, or prescribe the scope or intent of this Agreement or any part thereof.

7. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors, and assigns as the case may be.

8. Invalid Provision. If any provision of this Agreement shall be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision hereof, all of the other provisions shall remain in full force and effect. It is the intention of the parties hereto that if any provision of this Agreement is capable of two (2) constructions, one of which would render the provision void, and the other which would render the provision valid, then the provisions shall have the meaning which renders it valid.

9. Governing law. The laws of the State of Colorado shall govern the validity, performance and enforcement of this Agreement. Should either party institute legal suit or action for enforcement of any obligation contained herein, it is agreed that venue of such suit or action shall be in Douglas County, Colorado.

10. Notice. All notice required under this Agreement shall be in writing and shall be hand delivered or sent by registered or certified mail, return receipt requested, postage prepaid,

to the addresses of the parties herein set forth. All notices so given shall be considered effective seventy-two (72) 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 shall be sent.

Notice to the Town: Town of Parker
Attn: Director of Engineering/Public Works
20120 E. Mainstreet
Parker, Colorado 80138

With a copy to: Town of Parker
Attn: Town Attorney
20120 E. Mainstreet
Parker, Colorado 80138

Notice to Developer: KB Homes of Colorado Inc.
Attn: Doug Shelton
7807 E. Peakview Ave., Suite 300
Centennial, Colorado 80111

11. Assignment or Assignments. There shall be no transfer or assignment of any of the rights or obligations of the Developer under this Agreement without the prior written approval of the Town. The Developer agrees to provide the Town with at least fourteen (14) days' advance written notice of the transfer or assignment of any of the rights and obligations of the Developer under this Agreement.

12. Title and Authority. The Developer expressly warrants and represents to the Town that it is the record owner of the property constituting the Property and further represents and warrants, together with the undersigned individual(s) that the undersigned individuals(s) has or have full power and authority to enter into this Financial Guarantee Agreement. The Developer and the undersigned individual(s) understand that the Town is relying on such representations and warranties in entering into this Agreement.

13. Conflict with Subdivision Agreements. In the event there is a conflict between the language contained within the Financial Guarantee Agreement and the language contained within the Subdivision Agreement, the language contained in the Subdivision Agreement shall control.

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

TOWN OF PARKER, COLORADO

By: [Signature]
John Fussa, Community Development Director

By: [Signature]
Tom Williams, Director of Engineering/Public Works

ATTEST:

[Signature]
Carol Baumgartner, Town Clerk
Deputy Town Clerk

APPROVED AS TO FORM:

[Signature]
James S. Maloney, Town Attorney

DEVELOPER: KB HOMES OF COLORADO INC., a Colorado corporation

By: [Signature]
RANDY CARPENTER, PRESIDENT [Name, title]

STATE OF COLORADO)

)ss.

COUNTY OF Arapahoe)

The foregoing instrument was acknowledged before me this 27th day of November, 2018, by Randy Carpenter, as President of KB HOMES OF COLORADO INC.

My commission expires: 01/28/2022

(SEAL)

[Signature]
Notary Public

JOSEPH SALZANO
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20144003892
MY COMMISSION EXPIRES 01/28/2022

EXHIBIT LIST

Exhibit 1 Schedule of Values

EXHIBIT 1

Project: TRAILS AT CROWFOOT
Developer/Owner: HR 935 LLC

Payment Application No.:
Dates (From/To):

No.	Description	Value	**Previously Completed Percentage	This Pay Application Percentage	Complete To Date Percentage	Previously Completed Value	This Pay Application Value	Complete To Date Value
1	General Conditions (Contingency, Construction Management, Testing, Survey, Mobilization, Traffic Control, Etc.)	\$123,376.99			0.0%	\$0.00	\$0.00	\$0.00
2	Earthwork *(Earthwork, Topsoil, Removals & Etc.)	\$0.00			0.0%	\$0.00	\$0.00	\$0.00
3	Pavement & Base (Asphalt Pavement, Concrete Pavement, Aggregate Base Courses, Chemically Stabilized Subgrade & Etc.)	\$262,250.87			0.0%	\$0.00	\$0.00	\$0.00
4	Structures (Concrete Box Culverts, Bridges & Etc.)	\$0.00			0.0%	\$0.00	\$0.00	\$0.00
5	Storm Drainage (Culverts, Inlets, Manholes, Surface Drains, Riprap, Detention Pond Appurtenances & Etc.)	\$36,048.00			0.0%	\$0.00	\$0.00	\$0.00
6	Concrete Flatwork (Sidewalks, Curb & Gutter, Median Cover Material, Trails & Etc.)	\$102,339.78			0.0%	\$0.00	\$0.00	\$0.00
7	Signage & Pavement Markings (Signage, Delimiters, Pavement Markings & Etc.)	\$10,618.00			0.0%	\$0.00	\$0.00	\$0.00
8	Traffic Signals/Lighting (Traffic Signals, Lighting & Etc.)	\$0.00			0.0%	\$0.00	\$0.00	\$0.00
9	Miscellaneous (Guardrail, Survey Monumentation & Etc.)	\$0.00			0.0%	\$0.00	\$0.00	\$0.00
Total =		\$534,633.64						
		x 110%						
		\$588,097.01						
		<i>(Security held at 10% per the SA)</i>						

Totals = \$0.00 \$0.00 \$0.00 \$0.00 \$0.00
 Overall Percent Complete = 0.0% 0.0% 0.0% 0.0% 0.0%
 Warranty Retention @ 10% = \$0.00 \$0.00 \$0.00 \$0.00 \$0.00
 Net Payment Value Total = \$0.00 \$0.00 \$0.00 \$0.00 \$0.00

Security Remaining to date \$534,633.64
 10% Retention Due to date \$53,463.36
 Amount Available \$481,170.28

Notes: * Erosion Control Security Included with Grading Permit.
 ** This column values must match previous pay-applications "completed to date" value.