



## DEVELOPMENT IMPROVEMENTS AGREEMENT

THIS DEVELOPMENT IMPROVEMENTS AGREEMENT (herein the "Agreement") is entered into this 20<sup>th</sup> day of August, 2024 by and between the Board of County Commissioners of the County of Gunnison, Colorado, whose address is 200 E. Virginia, Gunnison, Colorado 81230 (herein "Gunnison County"), and Adagio Properties, LLC, a Colorado limited liability company, whose address is 2271 J Road, Grand Junction, CO 81505 (herein the "Developer") as follows:

1. Purpose. The Developer has submitted to Gunnison County the Developer's application for Land Use Change Permit No: 2023-00021 regarding Block 6, Crested Butte South – Second Filing (herein the "Project"). The legal description of the Project is attached hereto and incorporated herein as Appendix "A". As valuable and sufficient consideration for this Agreement, Gunnison County and the Developer agree that approval of such application by Gunnison County is expressly conditioned on completion of the improvements described in paragraph 7 below (herein the "Improvements") to the specifications described herein and by the times specified herein. Gunnison County and the Developer further agree that such Improvements are appropriate and necessary requirements to be required by Gunnison County, and to be performed by the Developer and which Developer shall perform. Gunnison County and Developer further agree that an agreement guaranteeing the Developer's performance secured by suitable security to protect the interests of Gunnison County, and the public in the amount set forth herein is an appropriate condition to Gunnison County's approval of such Land Use Change Permit. The parties have entered into this Agreement to memorialize such understandings and agreements. The relationship of the parties to this Agreement is contractual; Developer is an independent contractor and is not an agent of Gunnison County.

2. Developer Bound. The Developer agrees to accept and be bound by the terms and conditions for Gunnison County's issuance of its approval of the Land Use Change Permit No: 2023-00021 and the terms and conditions of this Agreement. Developer accepts Gunnison County's review and permitting authority, process and performance of same in connection with Land Use Change No: 2023-00021, as legal and valid and waives any defect therein.

3. Construction.

A. The Developer agrees to complete construction of the Improvements within the Project in the locations and in accordance with the specifications as identified in paragraph 7 herein, in two phases.



B. *Phase One.* The Phase One Improvements shall consist of the following (the "Phase One Improvements"):

- i. Underground water/fire hydrants, sewer and storm mains and infrastructure. Individual lot sewer and water services, as well as gas, electric and phone services are not included in the infrastructure obligations of Developer. Any water or sewer services shown on the plans are shown for coordination purposes only and no meters or sewer taps will be made as a part of the Improvements. Such connections will be designed, sized, and installed with development of individual lots.
- ii. Roadway improvements and grading of the Ford's Way Right of Way. Paving of Ford's Way will not be completed until Phase Two, as provided below.
- iii. Installation of gravel walkways as shown on the plans. Permanent concrete or other hard surface sidewalks and walkways shall be completed with individual lot development pursuant to the POA Commercial Area Master Plan (CAMP) standards.

C. *Phase Two.* The Phase Two Improvements shall consist of the following (the "Phase Two Improvements"):

- i. Pavement of Ford's Way will be completed.
- ii. All other Improvements required by the plans but not included in Phase One.

D. *Timing.* Phase One will be completed no later than three (3) calendar years after the effective date of this Agreement and Phase Two will be completed no later than the earliest date to occur of a) five (5) calendar years after the effective date of this Agreement, or b) when more than fourteen townhomes on Lots eleven thru sixteen have been completed and received Certificates of Occupancy. Acts of God and any cause beyond the reasonable control of the Developer excepted, including without limitation labor disputes, laws, regulations, or orders of any governmental entity, orders of court, inability to obtain any required authorization, act of war or conditions arising out of or attributable to war, riot, civil strike, insurrection or rebellion, fire, explosion, earthquake, storm, flood or other adverse weather condition, pandemic, delay or failure by suppliers or materialmen, contractors, or subcontractors, shortage of or inability to obtain labor, supplies or materials.

E. *Agreed Extensions.* The completion deadlines set forth in this paragraph 3 may also be extended by Gunnison County in its sole discretion upon written request of Developer if Gunnison County determines that: (1) such extension of time will not operate to the detriment of Gunnison County, the public or the owners of property within



the Project; and (2) Gunnison County's security is adequate to ensure full performance by Developer by the extended completion date; and (3) that such an extension would not be in conflict with the conditions of the approved Land Use Change Permit. Gunnison County may require Developer to provide, at Developer's cost, supplemental estimates by Developer's engineer of the costs of completion and to provide additional security as a prerequisite to its extension of any completion date. Any extended completion date granted by Gunnison County hereunder may be further extended in like manner

F. Each contract entered into by Developer for construction of the Improvements shall provide that Gunnison County is a third-party beneficiary with all rights to enforce such contracts in place of Developer in the event of a default by Developer. Developer shall provide to Gunnison County a copy of each such contract upon its execution.

G. Gunnison County reserves the right not to grant Certificate of Occupancy of any building in the Project prior to full completion of the Improvements described and subject to the Timing and paragraph 7 herein.

4. Estimated Cost. The total cost of the Improvements to be constructed by the Developer in Phase One is estimated currently to be five hundred and three thousand eight hundred and seventy-six and no/100 U.S. Dollars (\$503,876) and the Improvements to be constructed by the Developer in Phase Two is estimated currently to be seventy-one thousand and no/100 U.S. Dollars (\$71,000).

5. Security. In order to secure all obligations of the Developer herein, the Developer and Gunnison County agree that the Developer shall, at Developer's sole cost, and before starting work on each phase of the Project or Improvements, and before conveying any portion of the Project, obtain and provide to Gunnison County the following security:

A. Security for the Phase One Improvements, described above, shall obtain and provide to Gunnison County either cash, a bond, an irrevocable letter of credit or other performance guarantee in a form and content satisfactory to Gunnison County to the benefit of Gunnison County in the amount of Six Hundred Twenty-nine Thousand Eight Hundred Forty-Five and no/100 U.S. Dollars (\$629,845.00) which is 125 percent of the currently estimated cost of the Improvements to include a reasonable contingency amount, obligating Developer's contractor to complete the Phase One Improvements in a good and workmanlike manner, in full compliance with the requirements of the Land Use Change approval. If said security is in the form of cash, it will be placed by Gunnison County in an interest bearing account; the interest shall accrue to Developer at 1% less than received by Gunnison County.



B. Security for the Phase Two Improvements, described above, shall be provided by Developer providing either a payment and performance bond or an irrevocable letter of credit in a form and content satisfactory to Gunnison County to the benefit of Gunnison County in the amount of \$88,750.00 which is 125 % of the currently estimated cost of the Phase Two Improvements.

C. If the contract(s) provided to Gunnison County pursuant to paragraph 3 indicate a substantially different total cost than estimated in paragraph 4, the amount of security may be increased or decreased. For the purposes of this paragraph 5, substantial is defined as 10 percent or more.

D. Pending full performance of all of the terms and conditions hereof by the Developer, Gunnison County shall retain the security described in this paragraph and shall remain the beneficiary of such security. In the event of a default, and after providing written notice to the Developer, if the Developer does not commence within thirty days and continue to prosecute a cure of any uncured default hereunder Gunnison County in its sole discretion, and without any other authority required, may draw upon or otherwise enforce the security provided up to the full amount thereof, upon presentation by Gunnison County to the issuer of a written statement by Gunnison County that such uncured default exists. Upon timely performance of all terms and conditions hereof, said security shall be tendered by Gunnison County back to the Developer or otherwise surrendered or terminated by appropriate means, mutually acceptable, except as provided in paragraph 7.

6. Certification.

A. Not later than the deadlines provided for each phase above, a registered Colorado engineer retained by the Developer at its expense shall certify to Gunnison County whether the Developer's construction obligations regarding Improvements under this agreement have been fully and faithfully performed according to design and time specifications. Upon receipt by the Office of the County Attorney of such certification and receipt of a complete paper and two (2) electronic copies of road and utility as-built specifications and drawings, if required in the phase implicated, Gunnison County shall review the same and shall make an independent judgment whether to accept the same in the sole discretion of Gunnison County. Developer agrees not to cover or otherwise prevent inspection of the Improvements constructed hereunder until Developer's engineer and Gunnison County's designated representative have had reasonable opportunity to inspect such Improvements.

B. Not later than the deadlines provided for each phase above, Developer shall provide to Gunnison County Attorney a sworn affidavit, signed by the Developer's authorized representative, that the Improvements completed in each phase have been



paid for, in full, by the Developer. The Developer shall be responsible for the information so provided. Said written certification will be reviewed by Gunnison County, but Gunnison County shall have no responsibility or liability to any party regarding the veracity of the information so provided.

7. Scope of Work.

A. The scope of work to be done by the Developer shall include:

i. The plans titled, "Block 6 Subdivision Two Gunnison County Colorado", prepared by NCW & Associates, Inc., dated June 8, 2024; and

ii. The cost estimates titled, "Earthworks Cost Proposal", prepared by Earthworks, Kyle Robbins, dated 6/26/24; and

iii. Those conditions cited by the Planning Commission and approved by the Board of Gunnison County Commissioners for Land Use Change Permit No 2023-0021, if any.

B. The conditions of this Agreement and Land Use Change Permit No: 2023-0021 are such that if the obligations hereunder of the Developer are well, truly, faithfully and timely performed by Developer, inspected and certified to by the Developer's engineer, and such performance is accepted by Gunnison County as provided above, the Developer's obligations to Gunnison County under this Agreement except as set forth below shall be at an end; otherwise such conditions and obligations shall remain in full force and effect.

For a period of one year from and after the acceptance of each Phase of the work described in paragraph 7.A above, Developer shall, at its own expense, make all needed repairs and replacements to such work as shall, in Gunnison County's reasonable opinion, become necessary. Gunnison County shall have the right to retain up to 25% of the security provided above for up to one year following the acceptance of all of the work, as security to ensure such repair and replacement.

8. Partial Release of Security.

A. Gunnison County recognizes that as work proceeds upon the Improvements, Gunnison County's need for security shall be reduced. Accordingly, Gunnison County may make a reasonable partial release of the security to be delivered to Gunnison County pursuant to paragraph 5 herein upon receipt of a written certification by Developer's engineer stating the estimated cost of remaining work. Gunnison County shall review the same and shall make an independent judgment whether to accept the



same in the sole discretion of Gunnison County. If Gunnison County does make a partial -release, Gunnison County shall retain security equal to: (a) 125 percent of such-estimated cost of remaining completion of Improvements plus 25 percent of the original estimated cost of the Improvements; and (b) all the estimated costs of all of the Reclamation; and shall release the balance of all security held by Gunnison County.

B. Upon Developer's entering into a contract or contracts for construction of Improvements hereunder, Developer and Gunnison County may negotiate an addendum to this Agreement setting forth such reasonable schedule for partial releases of the security in accordance with the anticipated construction schedule. In such circumstance, Gunnison County shall designate and authorize Gunnison County Manager to make the partial release(s) hereunder after consultation with appropriate Gunnison County staff.

9. Developer's Default. In the event of any default hereunder by the Developer, Gunnison County shall give notice to the Developer specifying the nature of such default, which notice shall be given by facsimile transmission or by certified mail with return receipt requested addressed to the Developer at the address listed above. In the event the Developer does not remedy such default to the satisfaction of Gunnison County within thirty (30) days following such notice, or, within that time, commence and thereafter diligently pursue a cure of the noticed default, Gunnison County may elect, in its discretion to exercise all remedies available to it, including but not limited to:

- A. To specifically enforce the terms and conditions of this Agreement;
- B. To draw upon or otherwise obtain the benefit of the security;
- C. To exercise any other rights and obtain any other remedies provided by law;
- D. To engage a manager to supervise the completion of Improvements as identified herein. The costs incurred for hiring a manager shall be the responsibility of the Developer and may be withdrawn by Gunnison County from the security. Furthermore, all Gunnison County staff time spent thereafter on this Project shall be calculated at an hourly rate and shall be charged to the Developer and may be withdrawn from security.

10. Notice. All notices and other communications required or permitted under this Agreement, including any notice of a change in a party's notice address, shall be in writing and shall be, as determined by the person giving such notice, either hand delivered, mailed by registered or certified mail, return receipt requested or by facsimile or telegraphic communication to the required party at the addresses indicated in the preamble, above, or such other place as may be provided by proper notice.



11. Recording of Agreement. Upon its execution, this Agreement shall be recorded in the Office of the Clerk and Recorder of Gunnison County, and shall be a covenant running with the property herein described in order to put prospective purchasers or other interested parties on notice as to the terms and provisions hereof.

12. Retention of Police Powers. Gunnison County retains the power and right to impose additional requirements upon Developer with regard to the Project if the failure to do so would place the public or owners of property within the Project in a perilous condition, or in the event of substantially changed conditions; that is, nothing in this Agreement is or shall be construed to be a bargaining away Gunnison County's police powers.

13. Transfer or Assignment. No transfer or assignment of any of the rights or obligations of the Developer under this Agreement shall be permitted without prior written approval of Gunnison County which approval shall not unreasonably be withheld.

14. Title and Authority. The Developer expressly warrants and represents to Gunnison County that it is the record owner of the real property constituting the Project, and further represents and warrants, that the undersigned individual has full power and authority to enter into this Agreement. The Developer understands that Gunnison County is relying on such representations and warranties in entering into this Agreement.

15. Litigation. Nothing contained herein shall prevent either party from obtaining a judicial determination of the violation of its rights hereunder; provided however, that written notice to the other party advising the other party of the alleged violation, and advising that in the event the matter is not resolved by the parties within fourteen (14) days thereafter, shall be a condition precedent to the commencement of any litigation.

16. Time of Essence. It is mutually agreed that time of performance is an essential part of this Agreement and that all terms, covenants and conditions herein shall extend to and become obligatory upon the successors and assigns of the respective parties hereto.

17. Venue and Choice of Law. This Agreement is entered into in Gunnison County, Colorado and it is agreed that the exclusive jurisdiction and venue of any action pertaining to the interpretation or enforcement of this Agreement shall be in the District Court of Gunnison County, Colorado. The exclusive choice of law pertaining to this transaction shall be that of the State of Colorado without giving effect to Colorado choice of law principles.

18. Severability. If any term or provision of this Agreement shall be invalid or unenforceable, the remainder of this Agreement and the terms and provisions thereof shall not be affected thereby and all other terms and provisions of this Agreement shall be valid and enforceable to the full extent permitted by law.



19. Hold Harmless Clause. The Developer shall indemnify, defend and hold harmless Gunnison County, its officials, employees and agents from and against liability for damages, injury or death which may arise from the direct or indirect operations of the owner, Developer, contractors or subcontractors, which relate to the Project.

20. Binding Agreement. This Agreement shall be binding upon and inure to the benefit of the heirs, personal representatives, successors and assigns of the parties hereto.

21. Entire Agreement. This Agreement contains the entire and only Agreement between the parties regarding development improvements, and no oral statements or representations not contained in this Agreement shall be of any force and effect between the parties. This Agreement shall not be modified or amended in any manner except by written instrument executed by the parties.

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

BOARD OF GUNNISON COUNTY COMMISSIONERS  
OF THE COUNTY OF GUNNISON, COLORADO

By: 

ATTEST:

  
Deputy Gunnison County Clerk



**DEVELOPER:**  
Adagio Properties, LLC  
a Colorado limited liability Company

By:   
Clark Atkinson, Manager

STATE OF COLORADO )  
 )ss.  
COUNTY OF MESA )



The foregoing instrument was acknowledged before me this 12<sup>th</sup> day of August, 2024, by Clark Atkinson, Manager of Adagio Properties, LLC.

Witness my hand and seal.  
My commission expires: 07/18/2025.

DEBORAH M HOPPE  
Notary Public  
State of Colorado  
Notary ID # 20054028128  
My Commission Expires 07-18-2025

Deborah M. Hoppe  
Notary Public



**Appendix A**  
Legal Description

Lots 2-10 and  
Lots 11A, 11B, 11C, 11D,  
12A, 12B, 12C,  
13A, 13B, 13C, 13D,  
14A, 14B, 14C, 14D,  
15A, 15B,  
16A and 16B, inclusive  
Block 6 Subdivision Two

Gunnison County, Colorado

According to the plat thereof recorded or to be recorded in the records of the Gunnison County Clerk and Recorder.