

**PLANNING & DEVELOPMENT DEPARTMENT MEMORANDUM
#18-2020**

DATE: May 18, 2020

TO: Honorable Mayor Meredith Leighty and City Council Members

THROUGH: Heather Geyer, City Manager 

FROM: Brook Svoboda, Director of Planning and Development 
Eric Ensey, Senior Planner, AICP

SUBJECT: CR-83 – First Amendment to Karl’s Farm Subdivision Improvement Agreement

PURPOSE

The resolution would approve a First Amendment to the Subdivision Improvement Agreement for the Karl’s Farm Filing #1 Amended #1 Final Plat that identifies the public infrastructure improvements required to serve the Phase 1 of the Karl’s Farm development of 282 single-family residences. The Amendment would extend the requirements for recordation of the final plat and posting of security to August 25, 2020.

BACKGROUND

Due to COVID-19, the anticipated schedule for posting security and recordation of the plat will not occur in the prescribed time originally contemplated in the Subdivision Improvement Agreement. The Development Team believes that this will occur in the late June – early July timeframe. The additional time provided (August 25, 2020) is to serve as buffer to the current schedule.

STAFF RECOMMENDATION

Staff recommends approval of CR-83.

BUDGET/TIME IMPLICATIONS

There are no anticipated direct budgetary impacts from this item.

STAFF REFERENCE

If City Council members have any comments or questions, they may contact Brook Svoboda, Director of Planning and Development, at 303.450.8937 or bsvoboda@northglenn.org.

CR-83 – First Amendment to Karl’s Farm Subdivision Improvement Agreement

SPONSORED BY: MAYOR LEIGHTY

COUNCILMAN'S RESOLUTION

RESOLUTION NO.

No. CR-83
Series of 2020

Series of 2020

A RESOLUTION APPROVING THE FIRST AMENDMENT TO THE SUBDIVISION IMPROVEMENT AGREEMENT FOR KARL'S FARM FILING NO. 1, AMD NO. 1 FINAL PLAT

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO, THAT:

Section 1. The First Amendment to the Subdivision Improvement Agreement for Karl's Farm Filing No. 1, Amd. No. 1 Final Plat between the City of Northglenn, Richmond American Homes of Colorado, Inc., and Meritage Homes of Colorado, Inc., attached hereto as Exhibit 1, is hereby approved and the Mayor is authorized to execute same on behalf of the City of Northglenn, Colorado.

DATED at Northglenn, Colorado, this ____ day of _____, 2020.

MEREDITH LEIGHTY
Mayor

ATTEST:

JOHANNA SMALL, CMC
City Clerk

APPROVED AS TO FORM:

COREY Y. HOFFMANN
City Attorney

**CITY OF NORTHGLENN
FIRST AMENDMENT TO SUBDIVISION IMPROVEMENT AGREEMENT –
FINAL PLAT
FOR KARL'S FARM FILING NO. 1, AMD. NO. 1 FINAL PLAT**

FIRST AMENDMENT TO SUBDIVISION IMPROVEMENT AGREEMENT (the "First Amendment") is entered into and made by and between, **RICHMOND AMERICAN HOMES OF COLORADO, INC.**, a Delaware corporation, and **MERITAGE HOMES OF COLORADO, INC.**, an Arizona corporation, both as assignees of KF Developers, Inc. (collectively, "Owner/Developer") and the **CITY OF NORTHGLENN, COLORADO**, a Colorado home rule municipal corporation whose address is 11701 Community Center Dr, Northglenn, Colorado, hereinafter referred to as the "City" or "Northglenn." Owner/Developer and the City shall collectively be referred to as the "Parties."

RECITALS AND REPRESENTATIONS:

WHEREAS, the Parties predecessors in interest, KF Developers, Inc., entered into that Subdivision Improvement Agreement – Final Plat for Karl's farm Filing No. 1, Amd. No. 1 Final Plat dated February 24, 2020 (the "Original Agreement");

WHEREAS, Richmond American Homes of Colorado, Inc. and Meritage Homes of Colorado, Inc. are assignees of the Original Agreement pursuant to the City's approval of partial assignments dated April 13, 2020; and

WHEREAS, the Parties desire to amend the Original Agreement to provide an extension to the date by which the plat shall be recorded and security provided for the required public improvements.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and agreements of the Parties, the approval by the City of Northglenn of the Final Plat, the dedication of certain land to the City for public purposes, and other good and valuable considerations, the sufficiency and adequacy of which are hereby acknowledged by the Parties, the Parties hereto agree as follows:

AGREEMENT

1. Section 3.0 of the Original Agreement is amended to read as follows:

3.0 RECORDATION OF PLAT. Owner/Developer shall prepare and submit to the City Clerk the Final Plat in a form and upon material acceptable for recordation by the Adams County Clerk and Recorder and Owner/Developer shall provide the required Security as hereinafter defined. Failure to submit an acceptable Final Plat and Security as specified in Section 11 of this Agreement to the City Clerk within *one hundred eighty (180)* ~~ninety (90)~~ days of the date of this Agreement shall, upon the enactment of a resolution by the City Council finding that the submittal was untimely, void Final Plat approval for the Project and this Agreement. If Owner/Developer timely submits a completed and recordation-ready Final Plat to the City, the City agrees to record the Final

Plat no later than fifteen (15) days after it is submitted to and received by the City. The Final Plat and Construction Plans, as approved by the City, are incorporated into this Agreement for all purposes, including illustration and interpretation of the terms and conditions of this Agreement.

2. Section 11.0 of the Original Agreement is amended to read as follows:

11.0 REQUIRED SECURITY FOR PUBLIC IMPROVEMENTS.

11.1 In order to secure the construction and installation of the Public Improvements Owner/ Developer shall, prior to recording the final plat in the real estate records of Adams County, which recording shall occur no later than **one hundred eighty (180)** ~~ninety (90)~~ days after the execution of this Agreement, at Owner/Developer's expense, furnish the City with the performance guarantee described herein. The performance guarantee provided by Owner/Developer shall be cash or an irrevocable letter of credit in which the City is designated as beneficiary in an amount equal to the construction cost estimate described in Section 10.2 of this Agreement, in order to secure the performance and completion of the Public Improvements. Owner/Developer agrees that approval of the final plat of the City is contingent upon Owner/Developer's provision of the performance guarantee described herein within **one hundred eighty (180)** ~~ninety (90)~~ days of the execution of this agreement in the amount and form provided herein. Failure of Owner/Developer to provide cash or an irrevocable letter of credit to the City in the manner provided herein shall negate the City's approval of the final plat. Letters of credit shall be substantially in the form and content set forth in Exhibit E, attached hereto and incorporated herein, and shall be subject to the review and approval of the City Attorney. Owner/Developer shall not start the construction of any public or private improvement on the Property including, but not limited to, staking, earth work, overlot grading or the erection of any structure, temporary or otherwise, until the City has received the cash, an escrow agreement which allows the City to access funds without additional procedures, in priority, that functions similarly to either cash or an irrevocable letter of credit, or received and approved the irrevocable letter of credit.

Due to the length of the construction period for the Public Improvements, Owner/Developer may at any time on or after the anniversary of this Agreement request that the City release that portion of the cash or letter of credit held as security by the City for performance of this Agreement to reduce the amount of such security to the estimated cost of the remaining construction costs to be incurred to complete the Public Improvements. Owner/Developer shall, if requested by the City, provide to the City copies of invoices for construction of the Public Improvements, evidence of payment of such invoices, provisional lien releases for portions of the work performed through such date and any other documents reasonably requested by the City related to construction progress towards completion of the Public Improvements. Upon providing such documentation to the City, the City shall, within twenty (20) days, release to Owner/Developer that portion of the security held by the City equal to the difference between (i) the amount of security held by the City; and (ii) the estimated costs remaining to complete construction of the Public Improvements; provided that such release shall not reduce the amount of the security

below the amount required by this Agreement to be retained by the City between the date of completion of the Public Improvements and the end of the warranty period discussed below.

In the event the Public Improvements are not constructed or completed within the period of time specified herein of this agreement or a written extension of time mutually agreed upon by the Parties to this agreement, the City may draw on the cash or letter of credit to complete the Public Improvements called for in this agreement. In the event the letter of credit is to expire within fourteen (14) calendar days and Owner/Developer has not yet provided a satisfactory replacement, the City may draw on the letter of credit and either hold such funds as security for performance of this agreement or spend such funds to finish the Public Improvements or correct problems with the Public Improvements as the City deems appropriate.

Upon completion of performance of such improvements, conditions and requirements within the required time and the approval of the City Public Works Director, Owner/Developer shall provide cash or shall issue an irrevocable letter of credit to the City in the amount of ten percent (10%) of the total cost of construction and installation of the Public Improvements, to be held by the City during the two (2) year warranty period. If the Public Improvements are not completed within the required time, the monies may be used to complete the improvements.

3. INTEGRATION AND AMENDMENT. Except as specifically amended by this First Amendment, the Original Agreement remains in full force and effect and is hereby ratified by the Parties. This First Amendment and the Original Agreement represents the entire agreement between the Parties and there are no oral or collateral agreements or understandings. This First Amendment and the Original Agreement may be amended only by an instrument in writing signed by the Parties.

DATED THIS ____ DAY OF _____, 2020.

CITY OF NORTHGLENN, a Colorado
home rule municipal corporation

By: _____
Meredith Leighty, Mayor

ATTEST:

By: _____
Johanna Small, CMC, City Clerk

KARL'S FARM METROPOLITAN DISTRICT NO. 2

By: [Signature]
Print Name: Daniel Frank
Title: VP

STATE OF COLORADO)
) ss.
COUNTY OF Denver)

Acknowledged before me on May 12, 2020, by Daniel Frank, as Vice President for Karl's Farm Metropolitan District No. 2.

Witness my hand and official seal.

My commission expires: May 23, 2023

[Signature]
Notary Public

