

**TOWN COUNCIL  
TOWN OF GYPSUM, STATE OF COLORADO**

**RESOLUTION NO. 12 (SERIES 2022)**

**A RESOLUTION OF THE TOWN OF GYPSUM APPROVING THE VALLEY  
AIRPARK FILING 5 FINAL PLAT AND SUBDIVISION IMPROVEMENT  
AGREEMENT**

WHEREAS, the Town of Gypsum, Colorado (“Town”), is a home rule municipality of the State of Colorado, duly organized and existing under Article XX of the Colorado Constitution and the Gypsum Home Rule Charter effective October 21, 1982; and

WHEREAS, the Town of Gypsum has the power and authority to adopt regulations regarding the subdivision of land and to enjoin any such subdivision which does not comply with such regulations, pursuant to Sections 31-23-214 and 31-23-216, C.R.S.; and

WHEREAS, the Town Council of the Town of Gypsum (“Council”) has adopted Title 17 of the Gypsum Municipal Code (G.M.C.) governing the subdivision and regulation of land and Title 18 of the G.M.C. governing zoning; and

WHEREAS, pursuant to Chapters 17.16 and 17.20, G.M.C., preliminary plan and final plats shall be considered at a Gypsum Planning and Zoning Commission (“Planning Commission”) meeting and recommendations as a result of this review will be made to the Council who may approve, deny, or approve the application with conditions; and

WHEREAS, VALLEY AIRPARK, LLC (the “Applicant”) is the owner of the real property described on Exhibit A, attached hereton, and

WHEREAS, Applicant has submitted an application (“Application”) on April 28, 2022, for approval of the Valley Airpark Filing 5 Final Plat (the “Final Plat”) , attached hereto as Exhibit B and incorporated herein, located in Gypsum, Colorado; and

WHEREAS, pursuant to Sections 17.16.030 and 17.20.050 of the G.M.C., a public hearing before the Planning Commission on the Application was held on July 6, 2022 at 7:00 p.m. and the Planning Commission recommended approval of the Final Plat; and

WHEREAS, the Council hereby finds that pursuant to Section 17.70.010 of the G.M.C., all public notice requirements for the public hearing before the Planning Commission and the meeting for the Council were met, as follows:

- a. On June 21, 2022 notice of the hearing before the Planning Commission and hearing before the Town Council was mailed to property owners within three hundred feet of the Property;
- b. On May 23, 2022 Public Notice was physically posted at the Property prior to the public hearings of which an affidavit of posting has been received.

WHEREAS, the Town and Applicant wish to enter into a Subdivision Improvement Agreement for Valley Airpark Filing 5 (the "SIA") outlining terms and obligations related to the construction of the Property, in substantially the same format as attached hereto as Exhibit C; and

WHEREAS, the Council has considered the criteria of Sections 17.20.050 and 17.16.030., G.M.C., in reviewing the subdivision application, including (1) the comments and recommendations of Town staff, (2) comments of the general public, and (3) impacts on adjoining areas and the Town as a whole.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF GYPSUM, COLORADO, as follows:

1. **Incorporation of Recitals and Findings.** The above Recitals and Findings of the Planning Commission are hereby incorporated into this Resolution.

2. **Final Plat Approved.** The Final Plat of Valley Airpark Filing 5, attached hereto as Exhibit B and incorporated herein, is approved subject to the conditions set forth in this Resolution.

3. **Subdivision Improvement Agreement.** The Subdivision Improvement Agreement is approved subject to the conditions set forth in this Resolution.

4. **Conditions.** This Resolution, Final Plat and the SIA approvals are conditioned on the following:

- a) The Applicant meets the criteria of Section 17.20.050(e).
- b) That as otherwise modified by representations of the applicant in this application, all material representations of the applicant in this application, correspondence and public meetings shall be adhered to and considered conditions of approval, unless otherwise amended by other conditions.
- c) If the actual out-of-pocket costs of the Town in reviewing the application are greater than the amount of the deposit paid by applicant, applicant shall pay the additional out-of-pocket costs incurred by the Town no later than within 30 days of receipt of an invoice.
- d) The Final Plat shall not be recorded until all water and sewer fees have been paid.
- e) The Final Plat shall not be recorded until the Subdivision Improvements Agreement has been fully executed.

5. **Severability.** If any portion of this Resolution is found to be void or ineffective, it shall be deemed severed from this Resolution and the remaining provisions shall remain valid and in full force and effect.

6. **Effective date.** This Resolution shall become effective and be in force immediately upon approval.

Approved and resolved this 13<sup>th</sup> day of September 2022 at a regular meeting of the Town Council of the Town of Gypsum, Colorado by a vote of 4 in favor and 0 against.

TOWN OF GYPSUM

By: *Steve Carver*

Steve Carver, Mayor

*Tom Edwards, Mayor Pro Tem*

ATTEST:

By: *Becky Close*  
Becky Close, Town Clerk



**EXHIBIT A**  
**LEGAL DESCRIPTION**

## Exhibit A

### Property

#### Parcel A

A parcel of land being a part of Tracts 57 and 80, Sections 3 and 10, Township 5 South, Range 85 West of the 6th Principal Meridian, in the Town of Gypsum, County of Eagle and State of Colorado, more particularly described as follows:

Commencing at Angle Point 5 of said Tract 57;

thence N.00°34'34"W. 1272.64 feet to a point on the east right-of-way of Gilder Way and being the Point of Beginning;

thence N.00°01'48"W. 973.47 feet along said east right-of-way to a point;

thence along a curve to the right having a radius of 25.00 feet, a delta angle of 87°29'58", an arc length of 38.18 feet, and a long chord of 34.58 feet bearing N.37°35'45"E. to the south right-of-way of Plane Street;

thence N.81°20'44"E. 495.97 feet along said south right-of-way to a point on the west line of Valley Airpark Filing 1;

thence S.00°00'00"E. 1074.95 feet along said west line to a point;

thence S.89°56'20"W. 510.90 feet to the Point of Beginning;

AND

#### Parcel B

A parcel of land being a part of Tracts 57 and 80, Sections 3 and 10, Township 5 South, Range 85 West of the 6th Principal Meridian, in the Town of Gypsum, County of Eagle and State of Colorado, more particularly described as follows:

Commencing at Angle Point 5 of said Tract 57;

thence N.00°34'34"W. 1272.64 feet to a point to a point on the east right-of-way of Gilder Way;

thence N.00°01'48"W. 1089.97 feet along said east right-of way, to the Point of Beginning;

thence N.00°01'48"W. 442.61 feet continuing along said east right-of-way to a point;

thence N.40°19'30"E. 66.58 feet to a point to the southerly right-of-way of Cooley Mesa Road;

thence N.80°40'31"E. 474.89 feet along said southerly right-of-way to a point on the west line of Valley Airpark Filing 1;

thence S.00°00'00"E. 504.10 feet along said west line to a point on the north right of way of Plane Street;

thence S.81°20'44"W. 488.41 feet along said north right-of-way to a point;

thence along a curve to the right having a radius of 25.00 feet, a delta angle of 104°32'10", an arc length of 45.61 feet, and a long chord of 39.54 feet bearing N.46°23'11"W. to the Point of Beginning;

**EXHIBIT B**  
**FINAL PLAT**







**EXHIBIT C**

**SUBDIVISION IMPROVEMENT AGREEMENT**

**SUBDIVISION IMPROVEMENT AGREEMENT  
VALLEY AIRPARK FILING V SUBDIVISION**

**DATED: September 13, 2022**

**TOWN OF GYPSUM, COLORADO**

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**EXHIBITS**

- Exhibit A    Legal Description of Property
- Exhibit B    Development Plan Final Plat

**SUBDIVISION IMPROVEMENT AGREEMENT**  
**VALLEY AIRPARK FILING V SUBDIVISION**

This Subdivision Improvement Agreement (“Agreement”) is entered into this 13 day of September, 2022, by and between the TOWN OF GYPSUM, Colorado (“Gypsum”), a home rule municipal corporation organized pursuant to Article XX of the Colorado Constitution and Gypsum’s Home Rule Charter effective October 21, 1982, and Valley Airpark, LLC, a Colorado Limited Liability Company (referred to as “Developer”). Gypsum and Developer are collectively referred to as “Parties”, or occasionally in the singular as “Party.”

Whereas, Developer is the owner of and has applied for subdivision approval for the Property, which is located within Gypsum and to be known as the Valley Airpark Filing V Subdivision, to allow development of the Project consistent with the Development Plan, as such capitalized terms are defined herein; and

Whereas, Developer previously installed, at its own cost, the infrastructure improvements needed to serve the Property, including but not limited to the water, road facilities and related improvements during the construction project of Valley Airpark Filing V; and

Whereas, Developer provided and Gypsum accepted a Bill of Sale for certain infrastructure improvements needed to serve the Property with Resolution No. 24 (Series 2009); and

Whereas, Gypsum has considered and previously approved the Preliminary Plan for the Project.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, it is agreed as follows:

1. Definitions. Unless otherwise defined herein or the context otherwise requires, capitalized terms used herein shall have the following meanings. These definitions shall be equally applicable to both the singular and the plural forms of the terms so defined.

A. “Agreement” shall mean this Subdivision Improvement Agreement.

B. “Annexation Agreement” shall mean the Annexation Agreement for the Property dated September 8, 1999, and recorded in the real property records of the Eagle County Clerk and Recorder at reception number 708057.

C. “Application” shall mean an application for approval filed under the Code for a development activity including but not limited to an application for zoning, subdivision, planned unit development, or building permit.

D. “Code” shall mean the Gypsum Municipal Code as in effect on the effective date of this Agreement and as may be amended from time to time.

E. “Construction Security” shall mean a letter of credit, cash or other financial security that is easily convertible into cash in a form acceptable to Gypsum to secure the construction of the Required Improvements. Required Improvements were installed, and therefore Construction Security is not required under this Agreement.

F. “Design Plans” shall mean plans for the construction, installation, or improvement of the Required Improvements, together with all subsequently approved updates to those plans. Design Plans were submitted as part of Valley Airpark Filing IV and the Required Improvement have been installed, no Design Plans are required under this Agreement.

G. “Developer” shall mean the individuals or entities identified as the Developer in the first paragraph of this Agreement, individually and collectively, and all successors, assigns, heirs and subsequent owners of all or any part of the Property.

H. “Development Plan” shall mean the Final Plat for development of the Property attached hereto as **Exhibit B** and incorporated herein, subject to any modifications in such Development Plan as may be finally approved by Gypsum.

I. “Engineer’s Cost Estimate” an estimate of the cost of constructing Required Improvements prepared on behalf of the Developer and stamped by a professional engineer, registered in the State of Colorado, upon which, among other uses, the amount of Construction Security and Warranty Security shall be based. Required Improvements were installed and dedicated to the Town, therefore an Engineer’s Cost Estimate is not required under this Agreement.

J. “Final Plat” shall mean a final subdivision plat pursuant to Chapter 17.20 of the Code for all or a portion of the Property, including all associated approval documents.

K. “Gypsum” or “Town” shall mean the Town of Gypsum, Colorado.

L. “Project” shall mean the development of the Property pursuant to the Development Plan and this Agreement. The Project is anticipated to consist of up to eight light industrial lots.

M. “Preliminary Plan” shall mean a preliminary subdivision plan pursuant to Chapter 17.16 of the Code for all or a portion of the Property. If the zoning

of the portion of the Property which is the subject of the Preliminary Plan is planned unit development, the term "Preliminary Plan" shall also mean a preliminary planned unit development plan pursuant to Chapter 18.32 of the Code, which can be combined with and satisfy requirements for a preliminary subdivision plan.

N. "Property" shall mean the real property that is owned by the Developer and that is the subject of this Agreement containing approximately 18.0174 acres more or less and described on **Exhibit A** attached hereto and incorporated herein.

O. "Required Improvements" shall mean all public or private improvements required pursuant to this Agreement or as a condition of Final Plat approval, generally to be completed prior to the issuance of a building permit.

P. "Subdivision" shall mean subdivision of the Property through a final subdivision plat pursuant to Title 17 of the Code, consistent with the Development Plan and this Agreement.

Q. "Submittal Requirements" shall mean that the Application, submittal, or design includes and complies with the requirements of this Agreement, the Code and regulations promulgated thereunder, the Gypsum Public Works Manual, and the Annexation Agreement, and the requirements of the applicable utility or service provider if other than the Town, and provided further, that all standard fees charged generally by Gypsum are paid unless otherwise agreed to in writing.

R. "Warranty Security" shall mean a letter of credit, cash or other financial security that is easily converted into cash in a form acceptable to Gypsum to secure Developer's warranty obligations as regards public Required Improvements. Required Improvements have already been installed and the warranty period has passed, therefore no Warranty Security is required under this Agreement.

S. "Zoning" shall mean zoning of the Property pursuant to Title 18 of the Code.

#### Development Requirements.

Developer shall develop the Property, pursuant to the Development Plan, the Final Plat for any portion of the Property, approved Design Plans and the Submittal Requirements, in effect at the time of development, all under the regulatory supervision of Gypsum. If any such authorities are in conflict, the terms of this Agreement shall supersede and control over the terms of any other authority, except that the Final Plat shall supersede and control over the terms of any other authority. This Agreement shall not prevent Gypsum from imposing additional requirements that are not inconsistent with this Agreement as conditions of approval of the Final Plat. All matters not covered by specific agreement shall be controlled by the Code and the Gypsum Public Works



Manual. Any capitalized terms used but not defined herein shall have the meaning set forth in the Annexation Agreement or the Code.

Reimbursement of Costs and Expenses.

Pursuant to Sections 3.16.010, *et seq.*, 13.08.090, 13.08.130, 17.04.060, and 21.02.020 A., of the Gypsum Municipal Code, Developer shall reimburse Gypsum for all costs and expenses incurred by Gypsum in reviewing Applications, preparation of this Agreement and other services or reviews requested or provided by Gypsum in connection with the Project, within thirty (30) days of the presentment of a bill therefore. Final action on any pending Application or other matter associated with any portion of the Property, including other phases that at the time are subject to different ownership, may be withheld by Gypsum until outstanding costs and expenses have been reimbursed, including withholding building permits or certificates of occupancy.

Applicable Regulations.

Any construction related to development of the Project shall be subject to the Submittal Requirements in effect at the time Gypsum gives approval, except as such Submittal Requirements are expressly modified by this Agreement. Should such Submittal Requirements change subsequent to the date of this Agreement, Developer agrees as a matter of contract to abide by such changes for all construction for which Gypsum approval is given after the date of such changes.

Required Improvements. All Required Improvements, including water, sewer, roads, sidewalks, signs, lighting, shallow utilities and related improvements were previously installed and dedicated to the Town.

Design Plans.

Design Plans have already been submitted as part of the Required Improvements of Valley Airpark Filing IV and is not a requirement of this Agreement.

Geological Assessment.

With the application for any preliminary plan approval, Developer shall conduct and submit, or already has conducted and submitted, a report of additional geological investigation. Such investigation shall include site specific exploration and testing regarding moisture sensitive soils; further evaluation of sink hole potential; review of development plans by a surface water hydrologist and geotechnical engineer for flood and debris flow mitigation requirements; and application of mitigating grading criteria, coupled with final grading plans based on site specific geotechnical engineering studies including subsurface exploration, sampling and laboratory testing.

Water.

Gypsum shall provide water utility service to the Project when Developer has met all of Gypsum's requirements for water service contained in this Agreement and the Gypsum Municipal Code.

A. Water Rights Dedication. Developer's water rights dedication requirement for the Development shall be calculated based on the provisions of Chapter 13.08 of the Gypsum Municipal Code. Developer shall pay to Gypsum the full in lieu of water rights fee based on such calculation prior to building permits being issued for any construction. The current in lieu water rights dedication fee is \$7,000 per EQR, but the payment for final water rights dedication fees shall be governed by the Gypsum Municipal Code provisions existing at the time of Final Plat.

i. Estimated EQR Calculation. Gypsum and Developer agree that the demand calculation for each lot cannot be made until a site plan is developed for each lot showing the extent and nature of water use and landscaping. The parties agree that an initial estimate of 1.0 EQR per lot, resulting in a total EQR calculation for the Property of 8.0 EQR (1.0 x 8 lots), based on the 8 lots contained in the Final Plat Application will be assessed and that the Water Rights Dedication Fee due at this time shall be \$56,000 (\$7,000 x 8.0 EQR). At such time that each lot submits for a building permit or water tap, a site plan shall be submitted to the Town which identifies all use of water including inside uses and the expected demands for landscaping which shall encompass a square footage estimate of irrigation, the type of irrigation (drip or sprinkler), and the expected peak monthly demand for irrigation. At that time, the Town shall determine if any additional water rights dedication compliance is due at the then applicable rate charged by the Town. The current assessment of 1.0 EQR per lot is based on the assumption that one EQR provides water supply for two toilets and two sinks on a commercial building, provided however that no eating or kitchen facilities or process or manufacturing water use shall be made without further compliance with this section.

ii. Additional EQR Determination and Payment. Any additional water rights dedication fees shall be paid during the building permit stage. At the time of approval of a building permit, each lot owner shall demonstrate estimated EQR's and any additional EQRs that are required. The lot owner will be assessed in full and shall pay the required fee prior to issuance of a building permit. Pursuant to the Code, Gypsum may re-verify actual use at each lot, and retains the discretion to assess appropriate additional water rights dedication fees if the actual use exceeds the estimate in this Agreement.

iii. EQR Limitation. Notwithstanding the above, there shall be no more than 16.7 EQRs allocated to building permits, including irrigation, for this full subdivision without Gypsum's approval.

B. Tap Fees. Developer shall pay \$1,200 of the water service tap fee per EQR upon final plat approval, as credit toward future water tap fees to be determined at the time of building permit application. The final tap fee shall be made pursuant to the Gypsum Municipal Code then existing. The total amount of the water service tap fee due for the 8.0 EQR at final plat is \$9,600.00. (8.0 EQR x \$1,200). Lot owners submitting a building permit request shall pay Gypsum's water service tap fee and the full amount for any EQR assessed over 1.0 per lot, before making the individual connection, based on the water service tap fee charged generally by Gypsum at the time of connection and based upon the EQR determination made at that time. The current water service tap fee is \$6,000 per EQR. Pursuant to the Code, Gypsum may re-verify actual use at each lot, and retains the discretion to assess appropriate additional water service tap fees if the actual use exceeds the EQRs estimated in this Agreement.

C. Connection Fees. Developer shall pay all costs, materials, labor and fees required to connect water service lines to water main lines, including Gypsum inspection charges.

D. Service Line. All service lines and stub-outs shall be installed by the Developer, at the Developer's cost. No reimbursement shall be allowed.

E. On-Site Improvements. All service lines and necessary improvements and facilities within the Development were installed and dedicated with Valley Airpark Filing IV.

F. Non-Potable Irrigation System. It is not anticipated that Developer will install a raw water irrigation system. Therefore, all irrigation/outdoor (including common open space) water use is limited to the square footage allowed by Gypsum and the EQR for determining water right dedication fees and tap fees that is properly assigned to each lot under the current Code. For irrigation square footage; EQR shall be calculated per 100 feet of square feet irrigated as noted in the Gypsum Town Code, and water dedication fees and water tap fees assessed accordingly prior to issuing building permits. All lot owners are to utilize best management practices for conserving outdoor water use on their individual lots and any common entry features.

G. Inadequate System Capacity. Gypsum estimates that it currently has sufficient water system capacity to serve the number of units proposed for the Property so long as such units are planned to be below the "blue line" which indicates the elevation to which Gypsum can provide water service. To the extent any planned units are to be above the blue line, Developer agrees to provide Gypsum with an adequate plan prior to final plat and proposed financing to resolve such water delivery engineering, including fire protection. In any case, use of Gypsum's water system capacity is on a "first come, first serve" basis and sufficient capacity may not be available when building permits are

requested. For the purpose of this Agreement, insufficient water system capacity to serve the Property means insufficient system capacity of whatsoever kind of nature, be it well water, treatment or distribution capacity to serve all properties currently served by Gypsum whether located within or without Gypsum, and also serve the Property, all areas currently served by Gypsum located within and without Gypsum, and also serve the Property. Gypsum may impose a temporary or permanent moratorium on issuing water taps to serve the Property, should Gypsum determine in its sole subjective discretion that it has insufficient water treatment capacity to serve the Property. Upon any such moratorium, Gypsum shall take reasonable efforts to increase system capacity to serve the Property. Should Gypsum fail to provide water service to the Property when desired, the Developer's sole remedy shall be to require Gypsum to disconnect the Property from Gypsum and terminate this Agreement and all of the easements set forth in this Agreement including the Avigation Easement and/or to seek a refund of any amounts paid for water right dedication fees and/or water service tap fees paid for any lots affected by the moratorium. If Gypsum subsequently provides water service to the Property, all refunded fees shall be repaid to Gypsum as a condition of service.

H. Open Space Irrigation and Irrigation on Lots. It is not anticipated that any irrigation will be required for open space within this filing. Irrigation for lot landscaping will be the responsibility of the lot owner.

Sewer.

Gypsum shall provide sewage utility service to the Development when Developer has met all of Gypsum's requirements for sewage service contained in this Agreement and the Gypsum Municipal Code.

A. Tap Fees. Developer shall pay \$1,400 of the sewer service tap fee per EQR upon approval of the final plat, as credit toward future tap fees determined at the time of building permit application. The total amount of the sewer service tap fee at Final Plat shall be estimated at one (1) EQR per lot, for a total of \$11,200.00 (8 EQRs x \$1,400.00). Lot owners submitting a building permit application shall pay Gypsum's remaining sewer service tap fee, at the time that the individual connection is made, based on the sewer tap fee charged generally by Gypsum at the time of connection. Pursuant to the Code, Gypsum may re-verify actual use at each lot, and retains the discretion to assess appropriate additional sewer service tap fees if the actual use exceeds the EQRs estimated in this Agreement.

B. Connection Fees. Developer shall pay sewer connection fees for each connection of a sewer service line at the time of connection, based on the connection fee charged generally by Gypsum at the time of connection. The current fee for connection of sewer service is \$75 plus actual costs to Gypsum. A reinspection fee shall be paid for any service connections that are not approved on the initial inspection.

C. Service Lines. All service lines and stub-outs shall be installed by the Developer, at Developer's cost. No reimbursement shall be allowed.

D. Storm Water Drainage. All storm water drainage improvements and facilities within the Development were constructed with Valley Airpark Filing IV. No additional storm water drainage improvements are required under this Agreement. All storm water drainage improvements shall be conveyed to and become the property of the individual property owners or, for improvements located within common areas or public areas, to a property owners association. In the event such improvements are not properly maintained and Gypsum determines it is necessary to maintain the same, Gypsum may do such maintenance as it deems necessary in its discretion and may charge or assess such amounts against the affected portions of the Property or the entire Property, as it deems equitable, and certify collection thereof to the Eagle County Assessor pursuant to Section 31-20-105, C.R.S., impose a lien on the Property, and/or seek a judgment against the Developer and/or its successors in interest to recover any deficiencies.

10. Roads. All road related Required Improvements were previously installed during the construction project of Valley Airpark Filing IV, and have been dedicated to Gypsum.

Land for Public Purpose Requirement.

As outlined in the Subdivision Improvement Agreement for Phase II dated December 10, 2002, recorded with the Eagle County Clerk and Recorder at Reception No. 826411, Developer was required to convey 2.8 acres to Gypsum via a Special Warranty Deed. This obligation was fulfilled with the subdivision of Valley Airpark Filing IV, therefore no additional Land for Public Purpose is required for this filing.

12. Warranty. All warranty for previously constructed Required Improvements was provided at the time of dedication to Gypsum and no further warranty is required.

Construction Site Maintenance.

During lot construction, Developer or lot owner shall use proper dust and erosion control and maintain streets and roads in such a manner that they may be reasonably traveled upon. Gypsum may order construction to cease, or abatement measures to be taken, and Developer or lot owner shall comply with such order, when Gypsum determines in its sole discretion that dust emanating from the Project related to construction activities is unacceptable. Developer or lot owner may secure construction areas within the Property from the general public during construction, except for necessary local traffic, representatives of Gypsum and other appropriate jurisdictions on official business and emergency service providers.

Contractual Obligations.

Developer agrees that the provisions and requirements of this Agreement are entered into with full knowledge, free will and without duress. Developer agrees and desires that the agreements contained herein regarding the payment of fees, conditions for subdivision and building approvals, including the incorporation of provisions of the Gypsum Municipal Code, are imposed by contract, independent of the continued validity or invalidity of any of the provisions of the Gypsum Municipal Code, subdivision, zoning and building regulations or other regulations. The agreements to pay fees, and construct and dedicate improvements or provide security are reasonable and binding commitments on the part of Developer and closely relate to Developer's estimates of the extent and timing of impacts to the safety and welfare of Gypsum and its citizens which are expected to occur from the Project and are in rough proportion both in nature and extent to such impacts.

Fire District Impact Fees.

As provided by Section 17.50 of the Gypsum Municipal Code, Developer or lot owner shall pay to Gypsum on behalf of the Gypsum Fire Protection District ("Fire District") all Fire District Impact Fees. The Impact Fee shall be due at the time of building permit.

Assignment.

This Agreement may not be assigned or delegated without the written consent of Gypsum, which will not be unreasonably withheld.

Binding Effect.

This Agreement shall inure to the benefit of, and be binding upon, Parties and their respective legal representatives, successors and assigns. This Agreement shall continue upon subdivision and shall bind Developer and all of Developer's purchasers, lessors, successors and assigns, including subsequent owners of any Property within the Property until all provisions are satisfied. Either Party may record this Agreement in the real Property records of Eagle County, Colorado.

Condition of Plat Approval.

The terms of this Agreement are hereby imposed upon all of the Property and any present or subsequent owners of all or a portion of the Property as a condition of approval by Gypsum of any Plat associated with the Project, and shall be referenced on each approved Plat within the Property.

Notices.

Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified or registered mail, postage and fees prepaid, addressed to the Party to whom such notice is intended to

be given at the address set forth on the signature page below, or at such other address as has been previously furnished in writing to the other Party. Such notice shall be deemed to have been given when deposited in the U.S. Mail.

Section Captions.

The captions of the Sections are set forth only for convenience and reference and are not intended in any way to define, limit, or describe the scope or intent of this Agreement.

Additional Documents or Action.

Parties agree to execute any additional document and to take any additional action necessary to carry out this Agreement.

Developer's Breach.

Upon breach by Developer, until the breach is otherwise remedied (by the Developer or by Gypsum), Gypsum shall have the right to refuse to issue for any phase of development building permits, certificates of occupancy, temporary certificates of occupancy, or water and sewer taps, or approve any Plat within the Property. Upon such breach and written order from Gypsum, Developer shall also cease any development activity, including construction pursuant to a previously issued building permit. Any amounts due and owing to Gypsum under this Agreement which are not paid in a timely manner may be certified to the Eagle County Treasurer pursuant to Section 31-20-105, C.R.S., for collection with taxes. Gypsum may also record a lien against the Property and/or seek a judgment against the Developer and/or its successors in interest to recover any deficiencies.

Waiver of Breach.

The waiver by any Party to this Agreement of a breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by any Party.

Specific Performance.

In addition to any of the remedies the Parties may have upon the breach of this Agreement by the other Party, the aggrieved Party shall have the right to request a court of proper jurisdiction to enter a mandatory injunction against the other Party requiring specific performance of the terms contained in this Agreement.

Indemnification.

Developer shall indemnify, defend and hold Gypsum, and its employees, agents, engineers and attorneys, harmless from and against all costs, claims, damages, judgments,

losses and expenses of every nature, including reasonable attorneys' fees, arising at any time from any act or omission of Developer, its employees, subcontractors and their employees, and all other persons directly or indirectly involved in or performing work for the Developer on the Project. Developer's obligation to indemnify and hold harmless shall include any liability Gypsum may have on account of any change in direction, nature, quality, or quantity of historical drainage flow, resulting from the development of the Property, or from construction of streets and storm sewers within or serving the Property, or damages to any Property within the Project resulting from natural conditions including but not limited to expansive soils, geologic hazard, wildfire hazard or flood hazard, if Developer is established to be negligent.

Contractors.

Developer shall give notice of the terms of this Agreement in all contracts for construction of the improvements and provide a copy of this Agreement to the contractors.

Entire Agreement.

This Agreement represents the entire agreement between the Parties, with the exception of the Plat and the Annexation Agreement, and supersedes any prior oral or collateral agreements or understandings.

Amendment.

This Agreement may be amended only by an instrument in writing signed by Parties.

Time is of the Essence.

All the time limits stated in this Agreement are of the essence of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the date first above written.

TOWN OF GYPSUM

By:   
Steve Carver, Mayor

Attest:

\_\_\_\_\_



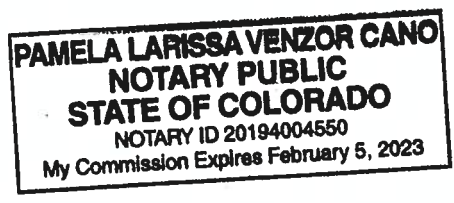
  
Becky Close, Town Clerk

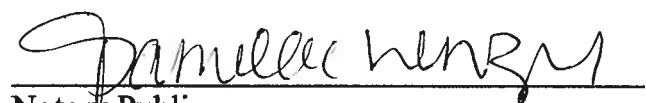
STATE OF COLORADO )  
 ) ss.  
COUNTY OF EAGLE )

The foregoing Subdivision Improvements Agreement was acknowledged before me this 29 day of September, 2022, by Steve Carver, as Mayor of Gypsum, Colorado.

Witness my hand and official seal.

My commission expires: 2/5/23



  
Notary Public

VALLEY AIRPARK FILING V  
SUBDIVISION

By:   
Valley Airpark, LLC

STATE OF COLORADO )  
 ) ss.  
COUNTY OF EAGLE )

The foregoing Subdivision Improvements Agreement was acknowledged before me this 6<sup>th</sup> day of September, 2022, by Donna M Giordano, as Manager/Developer of Valley Airpark, LLC.

Witness my hand and official seal.

My commission expires: 06/02/2025



  
Notary Public