

FIRST AMENDMENT TO THE SUBDIVIDER'S AGREEMENT BY AND
BETWEEN THE CITY OF ARVADA AND SANFORD K. METZEL
RELATING TO THE PALMETTO CLUB APARTMENTS.

1.0 PARTIES. The parties to this Agreement are the City of Arvada, a Colorado municipal corporation, hereinafter referred to as the "CITY," and Sanford K. Metzels, and Palmetto Associates, a Colorado general partnership, hereinafter referred to as the "OWNER/DEVELOPER."

2.0 RECITALS AND PURPOSE.

- 2.1 The parties entered into a subdivider's agreement on December 17, 1984, which was recorded in the records of the Jefferson County Clerk and Recorder on January 3, 1985, under reception number 85000748. The subdivider's agreement is by reference incorporated herein for all purposes.
- 2.2 The OWNER/DEVELOPER has applied to the building official of the CITY for certificates of occupancy for apartment buildings he has constructed on the Palmetto Club site, which is described as Lot 2, Palmetto Club, County of Jefferson, State of Colorado. Upon final inspection of the apartment buildings by the building official, it was discovered that the runs on the exterior stairways fail to meet the requirements of the Uniform Building Code, 1982 Edition, hereinafter referred to as the "UBC," which was adopted by reference by the CITY in Article IV of Chapter 7 of the Arvada City Code. The runs of the exterior stairways do not meet the 10 inch requirement of § 3306(c) of the UBC. The runs measure from between 9 inches to 9 3/4 inches. The architectural plans reflect 10 inch runs for the exterior stairways.
- 2.3 Sixty-eight stairways have been installed throughout nine apartment buildings in the Palmetto Club. A requirement by the CITY to replace these stairways in order to conform with § 3306(c) of the UBC would cause the replacement stairways to be lengthened by as much as 15 inches each. In order to install such replacement stairways, doors, interior partitions, electrical wiring, or landing modifications would be required.
- 2.4 All stairways have open risers and all treads measure between 10 inches and 10 1/2 inches. The building official is satisfied that the stairways in the Palmetto Club are not inimical to the interests of the CITY or to the safety of persons who use these stairways; provided, however, that additional safety measures are taken by the OWNER/DEVELOPER.
- 2.5 Section 106 of the UBC authorizes the building official to grant modifications where there are practical difficulties in carrying out the provisions of the UBC. Based on the facts and circumstances set forth in ¶ 2.3 and ¶ 2.4 above, the building official finds that a special individual reason makes the strict letter of the UBC impractical, and that the modification authorized in ¶ 3.0 of this Agreement is in conformity with the purpose and intent of the UBC and that such modification does not lessen any fire protection requirements or any degree of structural integrity; provided, however, the OWNER/DEVELOPER mitigates the noncompliances as hereinafter provided in ¶ 3.0 of this Agreement.

*1st amendment
Subdivider's Agreement
Palmetto Club Apts*

6-10-86
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*reception 86069881
June 26 1986*

- 2.6 The OWNER/DEVELOPER does not admit any error or liability in the construction of the stairs or their runs. The OWNER/DEVELOPER believes the stairs and their respective runs are sufficient and safe as built.

3.0 MODIFICATION. Pursuant to the provisions of § 106 of the UBC, the CITY, by and through its building official, does hereby grant the following modification: the 10 inch run requirement of § 3306(c) of the UBC is hereby modified for all external stairways for apartment buildings constructed in the Palmetto Club to not less than 9 inches for each run of each stairway; provided, however, that each such stairway shall have handrails installed on both sides in the manner prescribed in § 3306(j) of the UBC. In addition to the handrails, the OWNER/DEVELOPER agrees to conspicuously post signs at the top and bottom of each stairway in letters of 2 or more inches the words "USE HANDRAILS." It is understood by the parties to this Agreement that this modification does not relieve the OWNER/DEVELOPER of any other UBC requirement or of any requirement of the subdivider's agreement or other lawful City requirement.

4.0 TERMS AND CONDITIONS.. In consideration for the modification granted in ¶ 3.0 above, the OWNER/DEVELOPER covenants as follows:

- 4.1 The OWNER/DEVELOPER agrees to indemnify and hold harmless the CITY or any of its officers or employees against any and all claims, damages, liability, and court awards, including costs, expenses, and attorneys fees incurred as a result of any act or omission of the CITY or any of its officers or employees relating to the modification granted to the OWNER/DEVELOPER as specified in ¶ 3.0 above. The OWNER/DEVELOPER further agrees that it will never institute any action or suit at law or in equity against the CITY or any of its officers or employees, nor institute, prosecute, or any way aid in the institution or prosecution of any claim, demand, or compensation for or on account of any damages, loss, or injury either to person or property, or both, known or unknown, past, present, or future, arising from the modification granted to the OWNER/DEVELOPER in ¶ 3.0 above.
- 4.2 The OWNER/DEVELOPER agrees to purchase and maintain liability insurance on all apartment buildings in the Palmetto Club at all times in amounts of not less than \$150,000 for injury to one person in any single occurrence and not less than \$400,000 for injury to two or more persons in any single occurrence, as such amounts may be recoverable under § 24-10-114(1), C.R.S. Should, however, the amounts recoverable under § 24-10-114(1), C.R.S., increase in the future, the OWNER/DEVELOPER agrees to increase such insurance liability coverage correspondingly. In addition the OWNER/DEVELOPER agrees to name the CITY and its officers and employees as additional insureds by endorsement to the OWNER/DEVELOPER'S liability insurance policy.
- 4.3 It is expressly understood by the parties to this Agreement that the hold harmless and indemnification provision in ¶ 4.1 above and the insurance requirement in ¶ 4.2 above shall inure to the benefit of the CITY and its officers and employees and shall bind the OWNER/DEVELOPER, his legal representatives, successors, heirs, and assigns.
- 4.4 The OWNER/DEVELOPER agrees to pay all attorneys fees and related expenses, including court costs, incurred by the CITY for any action or suit at law or in equity to enforce the provisions of ¶ 4.1 and ¶ 4.2 against the

OWNER/DEVELOPER. Should the OWNER/DEVELOPER fail to keep in force the liability insurance policy in the amounts prescribed in ¶ 4.2 above or fail to name the CITY and its officers and employees as additional insureds, the CITY may institute an action against the OWNER/DEVELOPER for breach of this Agreement. In addition to any other remedies or damages and court costs awarded to the CITY by a court of competent jurisdiction, it is expressly understood by the parties that such court may order the OWNER/DEVELOPER to secure a bond to indemnify the CITY and its officers and employees to the amount prescribed in § 24-10-114(l), C.R.S. 3

4.5 The OWNER/DEVELOPER agrees to deliver to the city attorney copies of liability insurance policies and endorsements thereto that are required in ¶ 4.2 above. The OWNER/DEVELOPER agrees to pay the premiums for the liability policy and endorsements and to immediately provide notice to the city attorney in writing of any lapse of policy, change of policy, or change in insurance carrier.

5.0 DUTY OF CARE. By entering into this Agreement, neither the CITY nor any of its officers and employees shall be deemed to have assumed a duty of care of any person. Further, the granting of the modification in ¶ 3.0 above does not give rise to a duty of care to any person. The CITY does not waive sovereign immunity under any term, condition, or provision of this Agreement.

6.0 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 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 or parties. Such notice shall be deemed to have been given when deposited in the United States Mail.

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

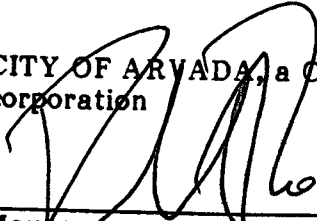
8.0 ADDITIONAL DOCUMENTS OR ACTION. The parties agree to execute any additional documents or take any additional action that is necessary to carry out this Agreement.

9.0 INTEGRATION AND AMENDMENT. This Agreement represents the entire agreement between the parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the parties. If any other provision of this Agreement is held invalid or unenforceable, no other provision shall be affected by such holding, and all of the remaining provisions of this Agreement shall continue in full force and effect.

10.0 WAIVER OF BREACH. A waiver by any party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either party.

11.0 GOVERNING LAW. This Agreement shall be governed by the laws of the State of Colorado.

CITY OF ARVADA, a Colorado municipal corporation



Mayor
8101 Ralston Road
Arvada, Colorado 80002

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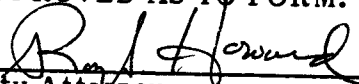
ATTEST:



City Clerk



APPROVED AS TO FORM:



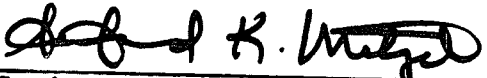
City Attorney

RECOMMENDED AND APPROVED:

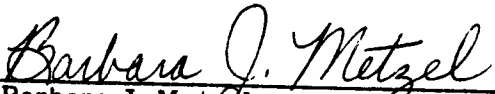


Building Official

OWNER/DEVELOPER



Sanford K. Metzel, individually and as a
general partner of Palmetto Associates



Barbara J. Metzel, general partner of
Palmetto Associates

RECEPTION NO. 86069881

STATE OF COLORADO)
) SS.
COUNTY OF JEFFERSON)

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Subscribed and sworn to before me this 10th day of June, 1986, by Sanford K. Metzel.

Deona L. Rightbell
Notary Public

(SEAL)

My Commission expires: Aug 1, 1988

STATE OF COLORADO)
) SS.
COUNTY OF JEFFERSON)

Subscribed and sworn to before me this 10th day of June, 1986, by Barbara J. Metzel.

Deona L. Rightbell
Notary Public

(SEAL)

My Commission expires: Aug 1, 1988

NO SEAL