

**SITE IMPROVEMENTS AGREEMENT
(ZIGGI'S COFFEE SHOP)**

THIS AGREEMENT is entered into between the City of Evans, a Colorado home rule municipality ("the City") and DLR Property Holdings, LLC ("the Developer") effective the 7th day of July, 2020.

WHEREAS, the Developer is the owner of the real property described on Exhibit A, attached, (hereinafter referred to as "the Property");

WHEREAS, the City has approved the Site Plan, case file 20-SP-03 for the Property in accordance with the provisions of the Evans City Code (the "Site Plan").

WHEREAS, the Developer intends to develop the Property, the effect of which will be to directly impact and generate the need for on-site and off-site improvements. The Developer acknowledges that the exactions set forth herein are reasonably attributable to the special impacts which will be generated by the proposed uses of the Property, and that the terms and conditions set forth in this Agreement are necessary, reasonable and appropriate;

WHEREAS, the City has approved the Construction Plans prepared by HCI Engineering a division of Harber Carpentry, Inc. dated May 29, 2020 for the Property (the "Construction Drawings");

WHEREAS, the parties desire to provide for the construction of the improvements described in the Construction Drawings that are required to serve the Property (the "Improvements") as set forth herein.

NOW, THEREFORE, in consideration of the premises, the Parties hereto agree as follows:

1. Improvements Required

Developer agrees to make, construct and install (or cause to be made, constructed or installed) the improvements set forth in Exhibit B attached hereto and incorporated herein by reference (the "Developer Improvements"). Such improvements shall be made, constructed and installed in accordance with the Construction Drawings. Any and all costs of City inspection of improvements shall be borne solely by the Developer. The extent of the Developer's compliance with this Agreement shall be determined solely by the City and its duly authorized agents and employees. Prior to commencement of work on the Property, the Developer shall obtain all necessary permits to complete the Improvements. In addition, Developer shall fully comply with all terms and conditions of any such permits.

2. Performance Guarantee

The Developer shall furnish the City in a form and substance acceptable to the City, an Irrevocable Letter of Credit, or other security deemed acceptable by the City (the "Performance Guarantee"), in an amount not less than one hundred fifteen percent (115%) of the total

estimated cost of the improvements, as certified to the City by the Developer and as accepted by the City and as set forth in Exhibit B which have not been completed as of the date on which such security is provided to the City. The security is included in Exhibit C.

The Performance Guaranty shall be subject to the following terms and conditions:

a. The Developer providing the Performance Guarantee shall have no direct or indirect ownership or managerial control over the entity issuing any Performance Guarantee.

b. In the event that prior to City acceptance of the Improvements the Performance Guarantee should expire or the entity issuing the Performance Guarantee becomes non-qualifying, or the cost of improvements construction is reasonably determined by the City to be greater than the amount of the security provided, then the City shall furnish the Developer with written notice of such condition, and within fifteen (15) days of receipt of such notice the Developer shall provide the City with a substituted qualifying Performance Guarantee, or augment the deficient security to achieve one hundred fifteen percent (115%) of the cost of improvements completion. If such Performance Guarantee is not timely furnished, then development activities including but not limited to the issuance of building permits and certificates of occupancy and the extension of utility services, may be suspended by the City pending compliance herewith.

c. The Developer shall ensure that all contractors and/or subcontractors employed in connection with construction or installation of the Improvements shall be licensed, to the extent such licensing is required, before any work on the Improvements is commenced.

3. Completion of Improvements

All improvements described in this Agreement shall be completed within 24 months of the date of this Agreement. The time for completion of the improvements may be extended by mutual agreement of the parties, particularly when the need for such extension is caused by persons or matters over which the Developer has no control.

4. Completion of Improvements by City

In the event the Developer fails to complete the Improvements in compliance with this Agreement, the City may, but shall not be obligated to, proceed with restoring or completing some or all of the remaining portions of the Improvements to a condition satisfactory, in the sole discretion of the City Council, to the health, safety and welfare of the City. The City shall be entitled to draw on the letter of credit or security in order to accomplish such restoration and/or completion. The City must give the Developer at least Thirty (30) days prior written notice of its intent to draw on the letter of credit or security in order to restore or complete all or any portion of the Project. If the City completes some or all of the Improvements, then the City Council shall have full discretion to determine the rules and regulations governing use of the Improvements and any fees to be charged for or associated with such use.

5. Development Standards and Procedures

a. Engineering Services

The Developer shall at its sole expense procure all engineering and landscaping services necessary and appropriate in conjunction with the development of the Property, which shall fully conform to the City's applicable ordinances, standards and specifications. Professional services shall be performed by engineers, surveyors, architects or other professionals duly licensed by the State of Colorado as may be appropriate. Landscaping services shall be performed by persons trained in landscape architecture or horticultural design.

b. Review

The Construction Drawings prepared by HCI Engineering a division of Harber Carpentry, Inc. dated May 29, 2020 were reviewed and approved by the City on June 9, 2020.

c. Testing

The Developer, at its sole expense, shall employ a professionally qualified, independent testing company acceptable to the City to perform all testing of materials or construction that may reasonably be required by the City to ensure compliance with applicable standards and specifications. Developer shall furnish the City with certified copies of test results, and agrees to release and authorize full access by the City and its designated representatives to all work-up materials, procedures and documents used in preparing the test results as requested by the City.

d. Inspection

At all times during construction of the Improvements, and until final acceptance thereof by the City, the City shall have the right, but not the duty, to inspect materials and workmanship in order to ascertain conformance with the Construction Drawings and all applicable standards and specifications. Developer shall reasonably cooperate and assist the City to gain appropriate access to the areas designated for inspection. It shall also be the duty of the Developer to notify the City upon discovery of any nonconformance with the said plans, standards and specifications. Inspection and acceptance of work by City personnel shall not relieve the Developer of any responsibility.

e. Street access

Developer shall, at its own expense, be responsible for keeping on-site streets, off-site streets used as construction routes, and rights-of-way clean of mud, rocks, and debris at all times during said construction. All work shall conform to the requirements for erosion control as described in statutes, ordinances, or

regulations. Should the Developer fail to meet said requirements, the City may take corrective action and invoice the Developer at the City's prevailing rate.

f. Initial acceptance of improvements

The Developer shall submit a Request For Initial Acceptance, including Certification of Completion, "as built" drawings of the Improvements and certified cost estimates of Public Improvements, to the City upon completion of the Improvements. Said Certification shall be submitted upon written oath or affirmation of the Developer that the Improvements have been fully paid for and Developer has fully paid all persons or entities having furnished labor or materials for the design, construction and installation of such Improvements. The City, however, shall not be deemed to have accepted any payment responsibility or liability in conjunction with the ascertainment of such payment. The City shall inspect such Improvements within ten (10) working days of the City's receipt of the Developer's request for Initial Acceptance, unless unable to do so due to inclement weather or other natural conditions or conditions beyond the City's control. Upon a finding of satisfactory completion of the Improvements in compliance herewith and all applicable ordinances and standards of the City, the City shall issue a Certificate of Initial Acceptance to the Developer, for the completed improvements. Following the issuance of the Certificate of Initial Acceptance, the City shall, upon request by the Developer, release the Performance Guarantee, provided a Warranty Guarantee meeting the requirements of subsection (g) below has been executed and delivered to the City, and provided no mechanics lien statements have been filed with respect to the project.

Upon the issuance of the Certificate of Initial Acceptance with respect to the Improvements consisting of water and sewer lines and facilities, the Developer shall convey such lines and facilities to the City by bill of sale.

g. Warranty

(1) For a period of two (2) years from the date of initial acceptance or the date of repair for repairs made during the initial warranty period, Developer warrants that all improvements hereunder will be free from defects, including but not limited to defects in materials, workmanship, design, construction and installation, and that the Improvements otherwise fully comply with all applicable standards and specifications.

(2) A Warranty Guarantee shall be equal to fifteen percent (15%) of the total cost of the Improvements, as certified to the City. The Warranty Guarantee shall be in the form of an Irrevocable Letter of Credit or other security acceptable to the City conforming to the requirements applicable to the Performance Guarantee set forth at Section 2 hereof. The Warranty Guarantee shall provide security for the costs which may be incurred in repairing and/or replacing improvements during a warranty period of two years following Initial Acceptance by the City.

(3) In the event that any substantial repair or replacement is required to any of the Improvements during the warranty period and such repair or replacement is not timely made upon notice of defect or in any event before the expiration of the warranty period, the City may elect, but shall not be obligated, to:

(a) call the Warranty Guarantee and secure repair or replacement of the nonconforming improvements, or

(b) order denial or suspension of building permits, utility services or certificates of occupancy outstanding until repair or replacement of any non-conforming Improvements have been performed.

(c) Take such other action as may be authorized in law or equity.

6. Procedure for Final Acceptance of Improvements

a. No earlier than sixty (60) days or later than thirty (30) days prior to the expiration of the warranty period, the Developer shall submit a written request for Final Acceptance of Improvements, and within ten (10) days of such request the City shall conduct a final inspection of the Improvements, unless precluded from doing so by weather or natural conditions. If the Improvements subject to the inspection request fully conform to this Agreement and all applicable standards and specifications, and/or all repairs, if any are needed, have been made to bring same into such conformance, then the City shall issue a Certificate of Completion and certify Final Acceptance of the Improvements to the Developer. After Final Acceptance the Developer may request, and the City shall release the Warranty Guarantee, and Developer shall have no further obligations or liabilities with respect to such Improvements.

b. If Developer fails to have Improvements finally accepted as provided in this Section 6, the Developer shall be in default of this Agreement and the City may exercise its rights to secure performance as provided by Section 4 hereof. In the event that the Developer has not requested Final Acceptance forty-five (45) days prior to the scheduled completion dates applicable, as may have been extended as herein provided, the City shall have the right, but not the obligation, to at any time thereafter conduct a final inspection of the Improvements. If pursuant to Final Inspection requested by the Developer or initiated by the City, any such Improvements are found to not conform to this Agreement, or applicable standards and specifications, the City shall have the rights set forth at Section 4, 5, and elsewhere herein.

Nothing herein shall be construed or deemed as requiring the City to finally accept and release from warranty any Improvements that are defective or damaged.

7. Liability Limitations

a. Indemnification

The Developer agrees to indemnify and hold harmless the City, and its officers, agents and employees, from and against all liability, claims, demands, and expenses, including court costs and attorney fees, on account of any injury, loss, or damage, which arises out of or is in any manner connected with the work to be performed under this Agreement, if

such injury, loss, or damage is caused in whole or in part by, the negligent act or omission, error, professional error, mistake, accident or other fault of the Developer, any Subcontractor of the Developer, or any officer, employee, or agent of the Developer, contractor or subcontractor. The obligations of this Section shall not apply to damages for which the City shall become liable by final judgment to pay a third party as a result of the negligent act or omission, error, professional error, mistake, accident, or other fault of the City.

b. Insurance

(1) The Developer agrees to procure and maintain in force during the term of this Agreement, at its own cost, the following coverages: Commercial General or Business Liability Insurance with Minimum combined single limits of NineHundred Ninety Thousand Dollars (\$990,000) for any one occurrence, with respect to each of the Developer's owned, hired or non-owned vehicles assigned to or used in performance of the services. In the event that the Developer's insurance does not cover non-owned automobiles, the requirements of this paragraph shall be met by each employee of the Developer who utilizes an automobile in providing services to the City or the Developer under this Agreement.

(2) Developer shall insure that all contractors and subcontractors providing services provide Workers' Compensation as required by the Labor Code of the State of Colorado and Employers' Liability Insurance;

(3) If approved by the City in its sole discretion, evidence of qualified self-insured status may be substituted for one or more of the foregoing insurance coverages.

(4) Developer shall at a minimum procure and maintain insurance coverages listed herein. Such coverages shall be procured and maintained with forms and insurers acceptable to the City. All coverages shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Developer pursuant to retroactive dates, and extended reporting periods shall be procured to maintain such continuous coverage.

(5) A Certificate of Insurance shall be completed by the Developer's insurance agent as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be subject to review and approval by the City prior to commencement of any services under this Agreement. The Certificate shall identify this Agreement and shall provide that the coverages afforded under the policies shall not be canceled, terminated or materially changed until at least thirty (30) days prior written notice has been given to the City.

(6) Failure on the part of the Developer to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material Breach of Agreement and, if said breach is not cured within ten (10) days of written notice by City to Developer, City may immediately terminate this Agreement, or at its discretion, City may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith and all monies so paid by City shall be repaid by the Developer to City upon demand, or City may offset the cost of the premiums against any monies

due to Developer from City, or the City may cease to issue building permits or certificates of occupancy, or to provide utility services until the defect has been remedied.

(7) The City reserves the right to request and receive a certified copy of any policy and any endorsement thereto. Developer agrees to execute any and all documents necessary to allow the City access to any and all insurance policies and endorsements pertaining to this particular job.

(8) The parties hereto understand and agree that the City, its officers, and its employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations (currently \$330,000 per person and \$990,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, Sections 24-10-101, et seq., C.R.S., as from time to time amended, or otherwise available to the City, its officers, agents or employees.

c. Nonliability

Developer acknowledges that the City's review and approval of plans for the development of the Property is done in furtherance of the general public health, safety and welfare, and that no specific relationship with, or duty of care to the Developer or third parties is created or assumed by such review approval, or is any immunity waived, as is more specifically set forth at Section 24-10-101, et seq. C.R.S., Colorado Governmental Immunity Act.

No one, individually or otherwise, other than the parties hereto, shall acquire, as a result of this Agreement, any rights, claims or obligations from or against the City, its agents, employees or officers. Actions by the City against Developer to enforce any provision of this Agreement shall be at the sole discretion of the City Council of the City. No third parties shall have any right to require any action by the City pursuant to this Agreement; and this Agreement shall not create a liability on the part of or be a cause of action against the City for any personal or property damage that may result to any third parties from the failure of Developer to perform or construct the improvements herein specified.

8. Enforcement and Remedies

a. Breach of Agreement

In the event the Developer fails to timely comply with any of the terms, conditions, covenants and undertakings hereof, and if such noncompliance is not cured and brought into compliance within thirty (30) days of written notice of breach to the Developer by the City, unless the City in writing designates a longer cure period reasonably requested by the Developer, then the City may call for payment of the Performance or Warranty Guarantee. The City may also during the cure period withhold any additional building permits, certificates of occupancy, or provision of new utilities fixtures or services. Nothing hereunder shall be construed to limit the City from pursuing any other remedy at law or in equity which may be appropriate under the statutes and ordinances, and applicable laws and legal standards of the State of Colorado or the United States, before

any court of competent jurisdiction. Such remedies shall be cumulative. Notice by the City to the Developer shall specify the conditions of default.

b. Non-Waiver

The failure of the City to take timely action with respect to any breach of any term, covenant or condition hereof shall not be deemed to be a waiver of such performance by Developer, or a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained.

9. Binding Effect

This Agreement shall be binding on the parties hereto, their respective successors and assigns, and shall be deemed to constitute a covenant running with the land. The Developer and any such successor and assign shall be jointly and severally liable for performance of this Agreement; provided, however, that no individual lot that has been sold to an individual lot owner shall have any obligation or liability of any kind under this Agreement.

10. Entire Agreement

This Agreement shall constitute the entire agreement between the parties. No subsequent amendment hereto shall be valid unless made in writing and properly executed by the parties hereto.

11. Notice

Any notice given under the terms of this Agreement shall be made in writing, and shall be deemed made upon personal service or upon mailing by United States Mail, postage prepaid, to the other, and unless amended by written notice, to the following:

City Manager
City of Evans
1100 31st Street
Evans, Colorado 80620

DLR Property Holdings, LLC
20067 Northmoor Dr
Johnstown CO 80534

12. Applicable Law, Jurisdiction, Venue and Severability

This Agreement is to be governed and construed according to the laws of the State of Colorado. Any action or claim filed to enforce this Agreement or relating directly or indirectly to the provisions, performance or enforcement of this Agreement shall be filed in the District Court of Weld County, State of Colorado. In the event that any provision of this Agreement is held to be in violation of the City's ordinances or the laws of the State of Colorado or the United States and

thereby rendered unenforceable, such unenforceable provision shall be ineffective without invalidating the remaining provisions of this Agreement

IN WITNESS WHEREOF, and agreeing to be fully bound by the terms of this Agreement the parties have set their hands below on the dates indicated.

CITY OF EVANS

[DEVELOPER]

By: _____
Brian Rudy, Mayor

By: Lisa M Dell
owner, manager
Ziggi's Coffee
DLR Property Holdings LLC

ATTEST:

Karen Frawley, City Clerk

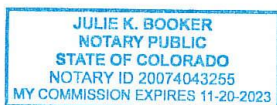
STATE OF COLORADO)
)
COUNTY OF Larimer) ss

Acknowledged before me this 26 day of May, 2020 by Lisa M Dell
as owner, of Ziggi's Coffee a DLR Property Holdings.

Witness my hand and official seal.

My commission expires: 11/20/2023

(Seal)



Julie K Booker
Notary Public