

CARTER & SANDS, P.C.

201 West Third Street, Suite 201

P.O. Box 192

Rifle, Colorado 81650-0192

Attorneys at Law - Established 1980

Stephen L. Carter

Edward P. Sands

Telephone: 970-625-1075

Facsimile: 970-625-3989

Email: ed@cartersands.com

<http://www.cartersands.com>

April 6, 2007

Robert P. Cucchetti

Bob Bower

Montclair Properties, LLC

800 Belford Avenue

Grand Junction, CO 81501

Subject: Defects in Construction of Improvements for the Montclair Subdivision

To whom it may concern:

I represent the Town of Palisade, Colorado.

As you are aware, on or about January 11, 2005, the Town of Palisade, Colorado ("Town") entered into a Subdivision Improvements Agreement with Montclair Properties, LLC ("Developer") concerning the development of the Montclair Subdivision. Subsection 5.4 of Section 5 of the Subdivision Improvements Agreement provides that the Developer shall warrant any and all public improvements constructed by the Developer for a period of eighteen (18) months from the date the Town Administrator or his/her designee conducts a final inspection and certifies the same conform with approved specifications and the Board of Trustees authorizes a reduction in the security as set forth in subsection 9.4 of Section 9 of the Subdivision Improvements Agreement. All other subdivision improvements are also subject to a warranty for a period of eighteen (18) months.

On October 25, 2005, the Board of Trustees of the Town adopted Resolution No. 2005-37 which accepted the public improvements constructed by the Developer, thus triggering the commencement of the warranty period. Paragraph 2 of that Agreement provides as follows:

"During the period of eighteen (18) months after the effective date of this acceptance of the Public Improvements, Developer shall, at its sole cost and expense make all needed and necessary repairs and replacements to the Public Improvements due to defective materials, design and/or workmanship, breach of contract or failure to abide by Palisade's approved plans or standards. If after thirty (30) days from mailing of a written notice to Developer requesting repairs, which thirty (30) days shall be extended for weather conditions preventing such

work, Developer shall not have undertaken with due diligence to make such maintenance or repairs, then Palisade may make the same at Developer's expense either by bid or negotiated price."

Paragraph 3 of Resolution No. 2005-37 states as follows:

"Developer has posted performance guarantee to secure its performance during the eighteen (18) month warranty period. This Paragraph 3 shall not limit Palisade's right to pursue any other legal means to collect the costs incurred to repair any defects during the warranty period, including withholding of building permits, certificates of occupancy, or any other approvals requested by Developer or for any phase of the Subdivision."

Pursuant to subsection 9.7 of Section 9 of the Subdivision Improvements Agreement and pursuant to Resolution No. 2005-37, please consider this letter a notice of default. Frank H. Watt, Public Works Director of the Town has conducted an inspection of the Montclair Subdivision improvements and has determined a number of deficiencies exist which require immediate correction. On April 11, 2005, a letter from the Town's Engineer, Wayne Lizer, outlined many of the same items. Please refer to Mr. Lizer's correspondence as well. The following matters must be corrected to the reasonable satisfaction of the Town within thirty (30) days from your receipt of this letter or from the date of any hearing before the Board of Trustees, whichever is later:

- The Town has not received "As-built" Drawings as required by subsection 5.7 of Section 5 of the Subdivision Improvements Agreement.
- A video inspection of the sewer line has revealed a significant crack in the sewer pipe approximately twenty feet (20') to the north of manhole #5 which is located at 9+01.21. The pavement is marked above the point of the break. The Town's Public Works Department will be more than happy to allow you to observe the video tape.
- The meter pits at 870 and 872 Montclair Drive are several inches above grade and must be lowered.
- The meter pits at 855, 860 and 864 Montclair Drive have been damaged and need to be repaired and/or replaced.
- The sidewalk along 870 and 872 Montclair Drive and then along Rodeo Road is cracked in several places and must be replaced.
- There is a section of cracked sidewalk in the driveway at 838 Montclair Drive that must be replaced.
- The right-of-way to the south of Rodeo Road contains several defects. The existing silt fence is in total disrepair and is ineffective. It does not appear that any type of re-vegetation has taken place. An effective ground cover must be established and until such time as that has occurred, all storm-water BMPs must be properly installed and functional.
- All gutters must be cleaned, all weeds removed and the pavement line at the gutter needs to be crack sealed along both sides of Montclair Drive and Rodeo Road. There are several places where the gap between the asphalt and concrete are unacceptable.

- No notification pads for impaired pedestrians at the ADA ramps have been installed.
- All storm-water catch basins must be cleaned.
- All entry and exit points at the detention pond must be cleaned.
- All fire hydrants need to be re-painted.

All of the above mentioned affected areas have been photographed and these photographs can be made available to you for discussion and clarification purposes. Please do not hesitate to contact Frank H. Watt, Town of Palisade Public Works Director, 970-464-1116, if you have any questions or concerns.

In accordance with subsection 9.7 of Section 9 of the Subdivision Improvements Agreement, you may request a hearing before the Board of Trustees on April 24, 2007 at 7:00 p.m. Your request should be in writing addressed to Tina Darrah, Palisade Town Clerk, P.O. Box 128, Palisade, CO 81526. However, if you fail to cure the defaults as listed above, within thirty (30) days of your receipt of this letter or of the date you appear before the Board of Trustees, whichever is later, or such reasonable time as is necessary to cure the default provided that Developer has commenced in good faith to cure the default, please be advised that the Town will give written notice to the Escrow Agent, Grand Valley National Bank, that the Town, as agent for the Developer, will be proceeding with the task of correcting the defects outlined in this letter. In addition, please be advised that pursuant to subsection 5.10 of Section 5 of the Subdivision Improvements Agreement and Resolution No. 2005-37, the Town will be unable to issue any further zoning clearances for building permits or certificates of occupancy until the deficiencies have been corrected.

Your immediate cooperation to correct the deficiencies outlined in this letter will be greatly appreciated. Thank you for your prompt attention.

Yours truly,
CARTER & SANDS, P.C.

Edward P. Sands, Town Attorney

EPS: kb

xc: Tim Sarmo, Town Administrator
Vohnnie Pearson, Town Planner
John Frederick, Grand Valley National Bank
Frank Watt, Public Works Director