



## **TOWN OF ELIZABETH**

COMMUNITY DEVELOPMENT DEPARTMENT

**TO:** Honorable Mayor and Board of Trustees

**FROM:** Zach Higgins, AICP Community Development Director

**DATE:** April 9<sup>th</sup>, 2024

**SUBJECT:** Discussion and Possible Action Regarding Winchester Estates Subdivision Agreement Amendment and Restatement, Resolution 24R19

### **SUMMARY**

RKM Homes, LLC, the current owners of Winchester Estates Subdivision, are requesting approval for an amendment and restatement to the Winchester Estates Subdivision Agreement (SDA). Located at the northwest corner of Washington Street and N Banner Street, the subdivision consists of five vacant lots zoned R-1, Low-Density Residential. Initially approved by the Board of Trustees on November 27th, 2018, the Winchester Estates Final Plat and Subdivision Agreement required a \$45,256 letter of credit from the previous owner, Sunwest of Colorado, LLC, to ensure the completion of crucial public improvements. With the subsequent transfer of ownership to RKM Homes, LLC, it has become prudent to update the SDA and obtain a new letter of credit to accurately reflect the outstanding public improvements. Community Development staff has consulted with the Public Works Director and the Town's civil engineering consultant, and RKM Homes, LLC has agreed to provide a \$34,756 letter of credit to cover the remaining necessary improvements. Upon approval of the restated and amended Winchester Estates SDA, the existing letter of credit from Sunwest of Colorado, LLC will be released and replaced with a new one from RKM Homes, LLC in the amount stated above.

### **STAFF RECOMMENDATION**

Staff recommends approval of Resolution No. 24R19, a Resolution approving the amended and restated Subdivision Agreement for the Winchester Estates Subdivision.

### **ATTACHMENTS**

Resolution 24R19

Amended and Restated Subdivision Agreement

## RESOLUTION 24R19

### **A RESOLUTION APPROVING THE AMENDED AND RESTATED SUBDIVISION AGREEMENT FOR THE WINCHESTER ESTATES SUBDIVISION, AND APPROVING THE ASSIGNMENT OF ALL OBLIGATIONS RELATED THERETO**

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF ELIZABETH, COLORADO AS FOLLOWS:

Section 1. The Amended and Restated Subdivision Agreement between the Town and RKM Homes, LLC, a Colorado limited liability company, attached hereto as **Exhibit A**, is hereby approved by the Board of Trustees, and the Mayor is authorized to execute the same on behalf of the Board of Trustees.

Section 2. The assignment of all rights and obligations related to the approval of the Winchester Estates Subdivision from Sunwest of Colorado, LLC to RKM Homes, LLC is hereby approved by the Town.

PASSED, APPROVED, and ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2024, by the Board of Trustees of the Town of Elizabeth, Colorado, on first and final reading, by a vote of \_\_\_\_\_ for and \_\_\_\_\_ against.

\_\_\_\_\_  
Tammy Payne, Mayor

ATTEST

\_\_\_\_\_  
Michelle M. Oeser, Town Clerk

## **AMENDED AND RESTATED SUBDIVISION AGREEMENT**

THIS AMENDED AND RESTATED SUBDIVISION AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by and between the Town of Elizabeth, Colorado, a statutory municipality (the "Town"), and RKM Homes, LLC, a Colorado limited liability company (the "Developer").

### **RECITALS**

A. The Developer is the owner of certain real property located in the Town known as Winchester Estates, which is more particularly described in **Exhibit A**, attached hereto and incorporated herein (the "Property").

B. The Developer's predecessor in interest, SunWest of Colorado LLC, entered into that Subdivision Agreement dated November 27, 2018 (the "Original Agreement"), following public hearings on the final plat for the Property by the Board of Trustees and the Planning Commission of the Town. A copy of the final plat is attached hereto as **Exhibit B** and incorporated herein.

C. Developer has received an assignment of all right, title and interest to the Property from SunWest of Colorado LLC, and the Town and the Developer desire to update the Original Agreement as set forth herein.

D. The approvals cited above are contingent upon the express condition that all duties created by this Agreement are faithfully performed by the Developer.

### **AMENDED AND RETATED AGREEMENT**

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the sufficiency of which are mutually acknowledged, the parties hereto agree as follows:

1. **Purpose.** The purpose of this Agreement is to set forth the terms, conditions and fees to be paid by the Developer upon subdivision of the Property. All conditions contained herein are in addition to any and all requirements of the Town of Elizabeth Subdivision Ordinance and Zoning Ordinance, any and all state statutes, and any other sections of the Elizabeth Municipal Code, and are not intended to supersede any requirements contained therein.

2. **Fees.** The following fees shall be paid to the Town by the Developer.

a. The Developer hereby agrees to pay the Town the actual cost to the Town for plan review, engineering review, hydrological and surveying review, prior to and during the development process, and for construction observation, inspection and materials testing during the construction process for public improvements, and for construction observation, inspection and materials testing and electronic deliverable review during the warranty period for public improvements, and for legal services (the "actual costs") rendered in connection with the review of the subdivision of the Property, including related administrative fees not to exceed one hundred

fifteen percent (115%) of the actual costs. In addition, the Developer shall reimburse the Town for the costs of making corrections or additions to the master copy of the official Town map and for the fee for recording the final plat and accompanying documents with the Elbert County Clerk and Recorder.

b. The Developer acknowledges and agrees that the Town, pursuant to this Agreement, shall be granted construction easement(s) that are reasonably sufficient to complete the public improvements.

3. Specific Conditions. The Developer hereby agrees that:

a. Developer shall construct the improvements more particularly described in **Exhibit C**, attached hereto and incorporated herein by this reference (the "Public Improvements"), consisting generally of the following:

(iii) The stormwater and water quality detention facilities set forth on Exhibit C;  
and

(iv) The curb cuts and sidewalk improvements for the new entry drives to the Property.

b. Developer shall dedicate by special warranty deed, free and clear of all liens and encumbrances, the property more particularly described in **Exhibit D**, attached hereto and incorporated herein by this reference, which consists of thirty (30) feet of rights-of-way along Banner Street for future town roadway improvements;

c. Landscaping to be installed in accordance with the Town standards; and

4. Title Policy. A title commitment for the Property as described in Exhibit D shall be provided to the Town. The title commitment shall show that the property in Exhibit D to be dedicated to the Town is, or shall be, subsequent to the execution and recording of the final plat, free and clear of all liens and encumbrances (other than real estate taxes which are not yet due and payable); which would make the dedications unacceptable as the Town, in its sole discretion, determines. The title policy evidenced by the title commitment shall be provided thirty (30) days after the recording of the final plat.

5. Breach by the Developer; the Town's Remedies. In the event of a breach of any of the terms and conditions of this Agreement by the Developer, the Board of Trustees shall be notified immediately and the Town may take such action, as permitted and/or authorized by law, this Agreement or the ordinances of the Town, as the Town deems necessary to protect the public health, safety and welfare; to protect lot buyers and builders; and to protect the citizens of the Town from hardship and undue risk. The remedies include, but are not limited to:

a. The refusal to issue any building permit or certificate of occupancy;

b. The revocation of any building permit previously issued under which construction directly related to such building permit has not commenced, except a building permit previously issued to a third party;

c. A demand that the security given for the completion of the Public Improvements be paid or honored; or

d. Any other remedy available at law.

Unless necessary to protect the immediate health, safety, and welfare of the Town, or to protect the interest of the Town with regard to security given for the completion of the Public Improvements, the Town shall provide the Developer thirty (30) days' written notice of its intent to take any action under this paragraph, during which thirty-day period the Developer may cure the breach described in the notice and prevent further action by the Town.

6. Public Improvements and Warranty. Trickle drain, detention pond, and any curb cuts and sidewalk improvements for the new entry driveways, and slope easements as referenced in the final construction plans dated and stamped on 12/06/2018. Landscape plans and the associated construction documents (the "Public Improvements"), as approved by the Director of Public Works of the Town, shall be installed and completed at the expense of the Developer and dedicated and/or conveyed to the Town. The Public Improvements required by this Agreement and shown on the final plat, as well as the final construction plans dated and stamped on 12/06/2018 approved by the Director of Public Works of the Town and the costs of these Public Improvements, are set forth on **Exhibit C**. All Public Improvements covered by this Agreement shall be made in accordance with the final plat and the final construction plans dated and stamped on 12/06/2018 drawn in accordance with regulations and construction standards for such improvements and approved by the Director of Public Works of the Town.

The Developer shall warrant any and all Public Improvements, which are conveyed to the Town, pursuant to this Agreement, for a period of two (2) years from the date the Town's Director of Public Works grants probationary acceptance of the Public Improvements, as approved by the Town. The warranty period shall extend two (2) years from the date final acceptance is granted in writing by the Town's Director of Public Works. The Developer shall be responsible for scheduling the necessary inspections for probationary and final acceptance provided by the Developer's third-party engineer. Specifically, but not by way of limitation, the Developer shall warrant the following:

a. That the title conveyed for the trickle drain, inlet tank, pipe to storm drain at street, curb cuts and sidewalk improvements for the new entry driveways shall be marketable and its transfer rightful;

b. Any and all facilities conveyed shall be free from any security interest or other lien or encumbrance; and

c. Any and all facilities so conveyed shall be in conformity with the Town's specifications and shall be free of defects in materials or workmanship for a period of two (2) years, as stated above, including, but not limited to, cracks, breakage, settling, or other deterioration of the Public Improvements, no matter the cause, for a period of two (2) years, as stated above.

The Town will accept for maintenance all Public Improvements after the warranty period has expired; provided, all warranty work, if any, has been completed. The Town shall accept for

snow removal purposes only all dedicated public streets after probationary acceptance has been granted in writing by the Director of Public Works. The Developer shall make all corrections necessary to bring the Public Improvements into conformity with the Town's specifications, prior to final acceptance.

7. Observation. The Town shall have the right to make reasonable engineering observations at the Developer's expense, as the Town may request. Observation, acquiescence in, or approval by any engineering inspector of the construction of physical facilities at any particular time shall not constitute the approval by the Town of any portion of the construction of such Public Improvements. Such approval shall be made by the Town only after completion of construction and in the manner hereinafter set forth.

8. Completion of Public Improvements. The obligations of the Developer provided for in paragraph 6 of this Agreement, including the inspections hereof, shall be performed on or before April 1, 2026, and proper application for acceptance of the Public Improvements shall be made on or before such date. Upon completion of construction by the Developer of such Public Improvements, the Town's Director of Public Works or his designee shall inspect the improvements and certify, with specificity, their conformity or lack thereof to the Town's specifications. The Developer shall make all corrections necessary to bring the improvements into conformity with the Town's specifications. Once approved by the Town's Director of Public Works, the Town shall accept said improvements upon conveyance, pursuant to paragraph 10; provided, however, the Town shall not be obligated to accept the Public Improvements until the actual costs described in paragraphs 2.a. and b. of this Agreement are paid in full by the Developer.

9. Related Costs – Public Improvements. The Developer shall provide all necessary engineering designs, surveys, field surveys and incidental services related to the construction of the Public Improvements, at its sole cost and expense, including reproducible "as built" drawings certified accurate by a professional engineer registered in the State of Colorado.

10. Improvements to be the Property of the Town. All Public Improvements for roads, concrete curbs and gutters, storm sewers, and drainage improvements accepted by the Town shall be dedicated to the Town and warranted for a period of two (2) years following probationary acceptance by the Town, as provided above. Upon completion of construction and conformity with the final plat and associated construction plans dated and signed on 12/06/2018, and any properly approved changes, the Developer shall convey to the Town, by bill of sale, all installed physical facilities.

11. Performance Guarantee. In order to secure the construction and installation of the Public Improvements, the Developer shall, no later than ninety (90) days after the execution of this Agreement, furnish the Town, at the Developer's or the Developer's assignee's expense, with the performance guarantee described herein. The Town shall record the final plat in the real estate records of Elbert County, which recording shall occur upon written notice from the Developer of the scheduled closing with the entity that is posting the security. The performance guarantee shall be in the form of cash or an irrevocable letter of credit in which the Town is designated as beneficiary, in an amount equal to one hundred ten percent (110%) of the estimated costs of the Public Improvements to be constructed and installed, as set forth in Exhibit C, to secure the performance and completion of the Public Improvements (the "Performance Guarantee"). The

Developer agrees that approval of the final plat by the Town is contingent upon the Developer's provision of a Performance Guarantee to the Town within ninety (90) days of the execution of this Agreement, in the amount and form provided herein, and the failure of the Developer to provide a Performance Guarantee to the Town, in the manner provided herein, shall negate the Town's approval of the final plat. Letters of credit shall be substantially in the form and content set forth in **Exhibit D-1**, attached hereto and incorporated herein, and shall be subject to the review and approval of the Town Attorney. The cash shall be paid to the Town according to the terms and conditions of the "Financial Guarantee," which shall be substantially in the form and content set forth in **Exhibit D-2**, attached hereto and incorporated herein, and shall be subject to the review and approval of the Town Attorney. The 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 Town has received and approved the Performance Guarantee or approved permit for specific work issued by the Town.

The estimated costs of the Public Improvements shall be a figure mutually agreed upon by the Developer and the Town's Director of Public Works, as set forth in Exhibit C. If, however, they are unable to agree, the Director of Public Works' estimate shall govern after giving consideration to information provided by the Developer, including, but not limited to, construction contracts and engineering estimates. The purpose of the cost estimate is solely to determine the amount of security. No representations are made as to the accuracy of these estimates and the Developer agrees to pay the actual costs of all such Public Improvements.

The estimated costs of the Public Improvements may increase in the future. Accordingly, the Town reserves the right to review and adjust the cost estimates on an annual basis. Adjusted cost estimates will be made according to changes in the Construction Costs Index, as published by the Engineering News Record. If the Town adjusts the cost estimate for the Public Improvements, the Town shall give written notice to the Developer. The Developer shall, within thirty (30) days after receipt of said written notice, provide the Town with a new or amended Performance Guarantee in the amount of the adjusted cost estimates. If the Developer refuses or fails to so provide the Town with a new or amended Performance Guarantee, the Town may exercise the remedies provided for in paragraph 5 of this Agreement; provided, however, that prior to increasing the amount of additional security required, the Town shall give credit to the Developer for all required Public Improvements which have actually been completed so that the amount of security required at any time shall relate to the cost of required Public Improvements not yet constructed.

In the event the Public Improvements are not constructed or completed within the period of time specified by paragraph 8 of this Agreement or a written extension of time mutually agreed upon by the parties to this Agreement, the Town may draw on the Performance Guarantee 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 the Developer has not yet provided a satisfactory replacement, the Town 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 Town deems appropriate.

Upon completion of performance of such improvements, conditions and requirements within the required time and the approval of the Town Public Works Director, the Developer shall

issue an irrevocable letter of credit to the Town in the amount of twenty percent (20%) of the total cost of construction and installation of the Public Improvements, to be held by the Town during the two-year warranty period or, in the alternative, if the Performance Guarantee held by the Town is cash, the Town will reduce the cash amount to twenty percent (20%) of the total cost of construction and installation of the Public Improvements, to be held by the Town during the two-year warranty period. . The irrevocable letter of credit or cash in lieu shall be released back to the Developer within 14 days of the approval of the Town Public Works Director. If the Public Improvements are not completed within the required time, the monies may be used to complete the improvements.

12. Nuisance Conditions. The Developer agrees to prevent the existence of any nuisances by way of its construction activities, as the same are defined by the Elizabeth Municipal Code. In the event the authorized inspector/designated Town authority determines that a nuisance exists, the Developer shall be subject to the provisions set forth in Elizabeth Municipal Code regarding the abatement of nuisances and the cost assessed for the abatement thereof.

In addition to the provisions above, if the nuisance is not abated or an abatement plan is not submitted to the satisfaction of the Town, the Town may, upon thirty (30) days' notice under this Agreement, exercise the right to draw upon the Performance Guarantee specified in paragraph 11 of this Agreement. The Town may draw on the Performance Guarantee in order to pay the cost of abating the nuisance, including any expenses and penalties incurred under the Elizabeth Municipal Code. The Town may exercise this right in addition to, or in lieu of, the withholding of permits and/or the withholding of certificates of occupancy. The right to draw on the Performance Guarantee shall be subject to the sole discretion of the Town, provided the Developer has received thirty (30) days' notice, as provided herein.

The Town Planning Department and Public Works Department shall be authorized to cease processing any land use or permit applications submitted by the same developer for the property that is contained within the same Planned Unit Development, until the nuisance is abated. This shall include, but not be limited to, acceptance of applications, sending referrals, scheduling meetings or hearings, or conducting reviews of projects.

13. Indemnification. The Developer shall indemnify and hold harmless the Town, its officers, employees, agents or servants from any and all suits, actions and claims of every nature and description caused by, arising from, or on account of, any act or omission of the Developer, or of any other person or entity for whose act or omission the Developer is liable, with respect to construction of the Public Improvements as set for in Exhibit C; and the Developer shall pay any and all judgments rendered against the Town as the result of any suit, action or claim, together with all reasonable expenses and attorney fees incurred by the Town in defending any such suit, action or claim.

The Developer shall pay all property taxes on the Property dedicated to the Town, and shall indemnify and hold harmless the Town for any property tax liability.

The Developer shall require that all contractors and other employees engaged in construction of the Public Improvements shall maintain adequate workers' compensation insurance



and public liability coverage and shall faithfully comply with the provisions of the Federal Occupational Safety and Health Act.

14. Waiver of Defects. In executing this Agreement, the Developer waives all objections it may have concerning defects of deliverables in Exhibit C, if any, in the formalities whereby it is executed, or concerning the power of the Town to impose conditions on the Developer, as set forth herein, and concerning the procedure, substance and form of the ordinances or resolutions adopting this Agreement.

15. Modifications. This Agreement shall not be amended, except by subsequent written agreement of the parties.

16. Release of Liability. It is expressly understood that the Town cannot be legally bound by the representations of any of its officers or agents, or their designees, except in accordance with the Elizabeth Municipal Code and the laws of the State of Colorado.

17. Captions. The captions to this Agreement are inserted only for the purpose of convenient reference and in no way define, limit or prescribe the scope or intent of this Agreement or any part thereof.

18. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns, as the case may be.

19. Invalid Provision. If any provision of this Agreement shall be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision hereof, and all of the other provisions shall remain in full force and effect. It is the intention of the parties hereto, that if any provision of this Agreement is capable of two constructions, one of which would render the provision void and the other which would render the provision valid, then the provision shall have the meaning which renders it valid.

20. Governing Law. The laws of the State of Colorado shall govern the validity, performance and enforcement of this Agreement. Should either party institute legal suit or action for enforcement of any obligation contained herein, it is agreed that venue of such suit or action shall be in Elbert County, Colorado.

21. Attorney Fees. Should this Agreement become the subject of litigation to resolve a claim of default of performance by the Developer and a court of competent jurisdiction determines that the Developer was in default in the performance of the Agreement, the Developer shall pay the attorney fees, expenses and court costs of the Town. If a court of competent jurisdiction determines that the Town was in default in the performance of the agreement, the Town shall pay the attorney fees, expenses and court costs of the Developer.

22. Notice. All notices required under this Agreement shall be in writing and shall be hand delivered or sent by registered or certified mail, return receipt requested, postage prepaid, to the addresses of the parties herein set forth. All notices so given shall be considered effective seventy-two (72) hours after deposit in the United States mail with the proper address, as set forth below. Either party, by notice so given, may change the address to which future notices shall be sent.

Notice to the Town: Town of Elizabeth  
Attn: Town Administrator  
PO Box 159  
Elizabeth, Colorado 80107

With copy to: Corey Y. Hoffmann, Esq.  
Hoffmann, Parker, Wilson & Carberry, P.C.  
511 16<sup>th</sup> Street, Suite 610  
Denver, Colorado 80202

Notice to Developer: RKM Homes, LLC  
36480 Antler Grove Circle  
Elizabeth, CO 80107

With Copies to: David Hansen, Esq.  
Kumpf Charsley & Hansen  
9565 S. Kingston Ct., Suite 100  
Englewood, CO 80112

23. Force Majeure. Whenever the Developer is required to complete the construction, repair or replacement of Public Improvements by an agreed deadline, the Developer shall be entitled to an extension of time equal to a delay in completing the foregoing, due to unforeseeable causes beyond the control and without the fault or negligence of the Developer, including, but not limited to, acts of God, weather, fires and strikes.

24. Approvals. Whenever approval or acceptance of the Town is necessary, pursuant to any provision of this Agreement, the Town shall act reasonably, but not to exceed fourteen (14) days from notification, and in a timely manner in responding to such request for approval or acceptance.

25. Assignment or Assignments. There shall be no transfer or assignment of any of the rights or obligations of the Developer under this Agreement, without the prior written approval of the Town. The Developer agrees to provide the Town with at least fourteen (14) days' advance written notice of the transfer or assignment of any of the rights and obligations of the Developer under this Agreement.

26. Recording of Agreement. This Agreement shall be recorded in the real estate records of Elbert County and shall be a covenant running with the Property, in order to put prospective purchasers or other interested parties on notice as to the terms and provisions hereof.

27. Title and Authority. The Developer expressly warrants and represents to the Town that it is the record owner of the property constituting the Property and further represents and warrants, together with the undersigned individuals, that the undersigned individuals have full power and authority to enter into this Subdivision Agreement. The Developer and the undersigned

individuals understand that the Town is relying on such representations and warranties in entering into this Agreement.

WHEREFORE, the parties hereto have executed this Agreement on the day and year first above written.

**TOWN OF ELIZABETH, COLORADO**

By: \_\_\_\_\_  
Tammy Payne, Mayor

ATTEST:

\_\_\_\_\_  
Michelle M. Oeser, Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Corey Y. Hoffmann, Town Attorney

**DEVELOPER RKM Homes, LLC, a Colorado  
limited liability company**

By: \_\_\_\_\_  
Kerry Moore, Manager

STATE OF COLORADO    )  
  )ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by Kerry Moore as Manager of RKM Homes, LLC, a Colorado limited liability company.

My commission expires: \_\_\_\_\_.

(SEAL)

\_\_\_\_\_  
Notary Public

## **EXHIBIT A**

A PARCEL OF LAND IN THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 7, TOWNSHIP 8 SOUTH, RANGE 64 WEST OF THE 6<sup>TH</sup> P.M., COUNTY OF ELBERT, STATE OF COLORADO, DESCRIBED AS: BEGINNING AT THE NORTH EDGE OF WASHINGTON STREET AND THE CENTER OF THE NORTH END OF BANNER STREET, GARLAND'S ADDITION TO THE TOWN OF ELIZABETH; THENCE NORTH A DISTANCE OF 125 FEET; THENCE WEST A DISTANCE OF 350 FEET; THENCE SOUTH 125 FEET; THENCE EAST 350 FEET TO THE POINT OF BEGINNING.

EXHIBIT B

WINCHESTER ESTATES - FINAL PLAT  
PART OF SECTION 7, T. 8 S., R. 64 W., 6TH P.M.  
TOWN OF ELIZABETH, COUNTY OF ELBERT, STATE OF COLORADO  
(0.917 ACRES - 5 RESIDENTIAL LOTS & 0.087 ACRES R.O.W. DEDICATION)

DEDICATION STATEMENT:

THE UNDERSIGNED, WINCHESTER ESTATES, LLC, a Colorado limited liability company, hereby dedicates to the public use of the State of Colorado the right-of-way shown on the attached plat, to be known as the "WINCHESTER ESTATES RIGHT-OF-WAY". The dedication is made in accordance with the provisions of the Colorado Revised Statutes, Title 31, Article 10, Section 10-10-1, et seq.

ATTEST: I, the undersigned, being duly sworn, depose and swear that the foregoing is a true and correct statement of the facts and circumstances relating to the dedication of the right-of-way shown on the attached plat.

NOTARIAL CERTIFICATE: My commission expires on 03-26-2020. My commission expires on 03-26-2020.

TITLE VERIFICATION: I, the undersigned, being duly sworn, depose and swear that the foregoing is a true and correct statement of the facts and circumstances relating to the dedication of the right-of-way shown on the attached plat.

PROPERTY DESCRIPTION: The subject property is located in the Town of Elizabeth, County of Elbert, State of Colorado, and is described as follows: [Description of property]

SURVEYOR'S CERTIFICATE: I, the undersigned, being duly sworn, depose and swear that the foregoing is a true and correct statement of the facts and circumstances relating to the dedication of the right-of-way shown on the attached plat.

NOTES: 1. ALL EXISTING UTILITIES SHALL BE UNDERGROUND. 2. ACCORDING TO THE RECORDS OF THE ELBERT COUNTY MAPS DEPARTMENT, THERE ARE NO EXISTING UTILITIES SHOWN CROSSING THE SUBJECT PROPERTY.

BASES OF MEASUREMENT: THE SURVEY WAS MADE BY MEASUREMENT OF THE DISTANCE BETWEEN THE CORNERS OF THE SECTION 7, T. 8 S., R. 64 W., 6TH P.M., AND THE CORNERS OF THE SECTION 8, T. 8 S., R. 64 W., 6TH P.M.

ADDITIONAL NOTES: [Additional notes regarding the survey and dedication]

WINCHESTER ESTATES, LLC, a Colorado limited liability company, hereby dedicates to the public use of the State of Colorado the right-of-way shown on the attached plat, to be known as the "WINCHESTER ESTATES RIGHT-OF-WAY".

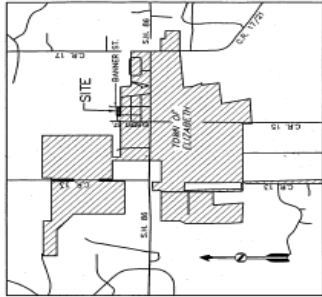
ATTEST: I, the undersigned, being duly sworn, depose and swear that the foregoing is a true and correct statement of the facts and circumstances relating to the dedication of the right-of-way shown on the attached plat.

NOTARIAL CERTIFICATE: My commission expires on 03-26-2020. My commission expires on 03-26-2020.

TITLE VERIFICATION: I, the undersigned, being duly sworn, depose and swear that the foregoing is a true and correct statement of the facts and circumstances relating to the dedication of the right-of-way shown on the attached plat.

PROPERTY DESCRIPTION: The subject property is located in the Town of Elizabeth, County of Elbert, State of Colorado, and is described as follows: [Description of property]

SURVEYOR'S CERTIFICATE: I, the undersigned, being duly sworn, depose and swear that the foregoing is a true and correct statement of the facts and circumstances relating to the dedication of the right-of-way shown on the attached plat.



MONITOR MAP  
SCALE 1"=200'

OWNER/APPLICANT: WINCHESTER ESTATES, LLC  
SITE ADDRESS: 421 N. BANNER STREET  
ELIZABETH, CO. 80107

BOARD OF TRUSTEES: [List of trustees]

PLANNING COMMISSION: [List of commission members]

CLERK AND RECORDER'S CERTIFICATE: [Signature of clerk]

NOTARIAL CERTIFICATE: [Signature of notary]

ADDITIONAL NOTES: [Additional notes regarding the survey and dedication]

BASES OF MEASUREMENT: THE SURVEY WAS MADE BY MEASUREMENT OF THE DISTANCE BETWEEN THE CORNERS OF THE SECTION 7, T. 8 S., R. 64 W., 6TH P.M., AND THE CORNERS OF THE SECTION 8, T. 8 S., R. 64 W., 6TH P.M.

ADDITIONAL NOTES: [Additional notes regarding the survey and dedication]

WINCHESTER ESTATES, LLC, a Colorado limited liability company, hereby dedicates to the public use of the State of Colorado the right-of-way shown on the attached plat, to be known as the "WINCHESTER ESTATES RIGHT-OF-WAY".

ATTEST: I, the undersigned, being duly sworn, depose and swear that the foregoing is a true and correct statement of the facts and circumstances relating to the dedication of the right-of-way shown on the attached plat.

NOTARIAL CERTIFICATE: My commission expires on 03-26-2020. My commission expires on 03-26-2020.

TITLE VERIFICATION: I, the undersigned, being duly sworn, depose and swear that the foregoing is a true and correct statement of the facts and circumstances relating to the dedication of the right-of-way shown on the attached plat.

PROPERTY DESCRIPTION: The subject property is located in the Town of Elizabeth, County of Elbert, State of Colorado, and is described as follows: [Description of property]

SURVEYOR'S CERTIFICATE: I, the undersigned, being duly sworn, depose and swear that the foregoing is a true and correct statement of the facts and circumstances relating to the dedication of the right-of-way shown on the attached plat.

High Prairie Survey Co.  
LAND SURVEYING  
CONSTRUCTION STAKING  
OL AND GAS SURVEYING  
3032-41-1072 FAX 303-41-7749  
NIPPA, COLORADO 80117

313 1419

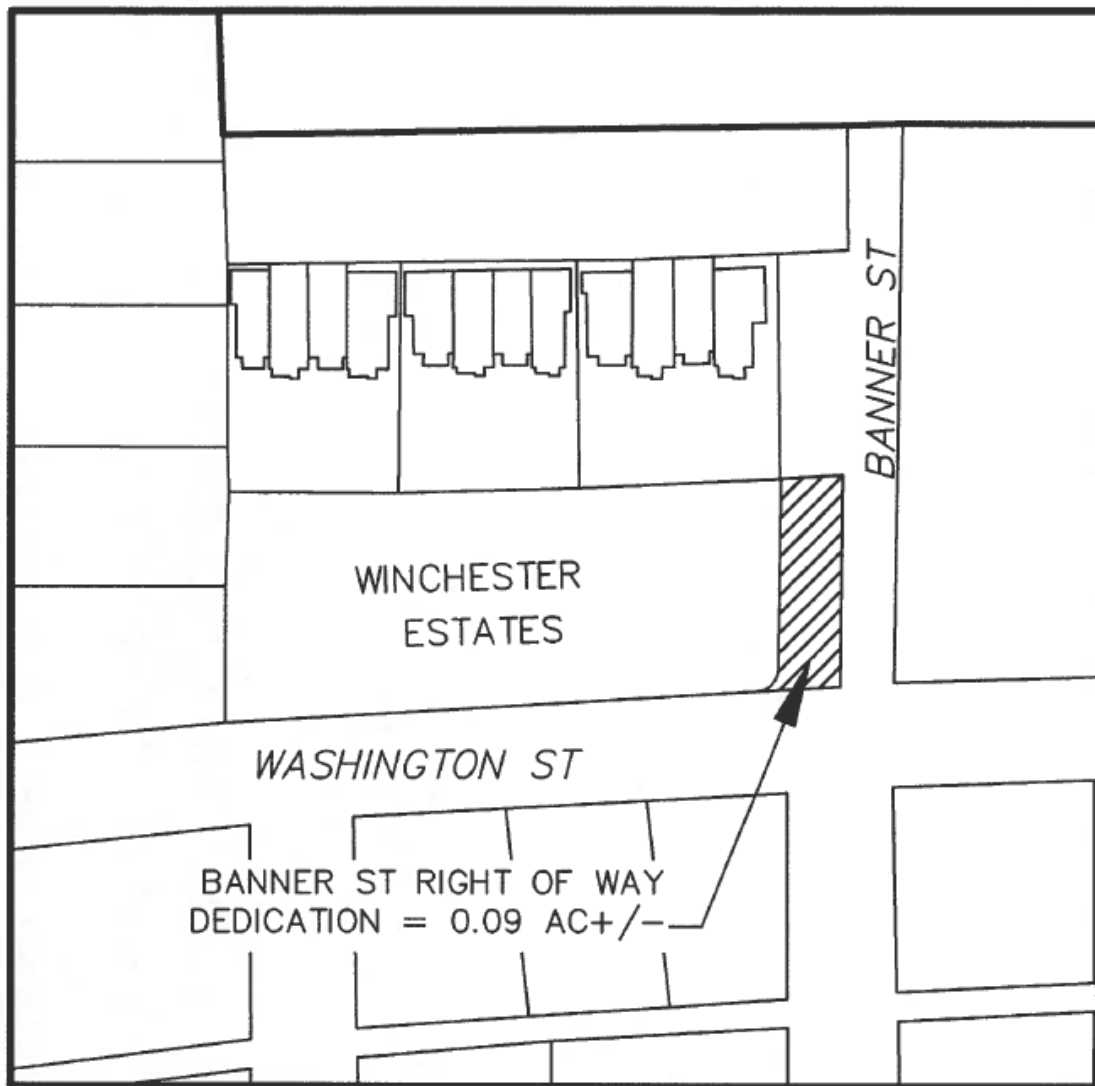
**EXHIBIT C**  
**WINCHESTER ESTATES**  
**Public Improvement Cost Estimate**

Date: 03/03/2024

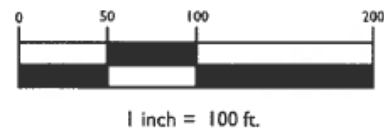
Work Item		Quantity	Unit Cost	Estimated Cost
Over Lot Grading				
	Importing of dirt	2100 yards	\$5.94	\$12,455
	Cut/fill/spreading of soil	2100 yards	\$2.70	5,670
<i>Subtotal</i>				<i>\$18,125</i>
Detention/Water Pond				
	Type C Outlet Tank	1 EA	\$4,500	\$4,500
	Metal Work: grate, galvanized steel, etc.	1 EA	1,000	1,000
	2 foot Concrete Trickle Drain with Micropool	265 LF	\$17	4,505
	12" CL II RCP	45 LF	20	900
	Excavation – Grading	60 CY	2.70	162
	Fill – Grading	150 CY	2.70	405
	Emergency spillway cutoff wall			2,000
<i>Subtotal</i>				<i>\$13,472</i>
<b>TOTAL</b>				<b>\$31,597</b>

## EXHIBIT D

### APPROXIMATE BANNER ST RIGHT OF WAY DEDICATION WINCHESTER ESTATES



583981 B: 792 P: 764 RES  
02/27/2019 11:09:39 AM Page: 16 of 24 R 128.00 D  
Dallas Schroeder Recorder, Elbert County, Co



## Exhibit D-1

### FORM- IRREVOCABLE LETTER OF CREDIT

Issuing Bank's Letterhead

Irrevocable Letter of Credit

Issuing Bank: [Type in bank name.]

Letter of Credit No.: [Type letter of credit number.]

Amount: [Type in aggregate amount.]

Issuance Date: [Type loc issuance date.]

Expiry Date: [Type loc expiration date.]

Name of Developer: [Type in name of developer.]

Town of Elizabeth

[Address]

Attention: Mayor and Town Attorney

Ladies and Gentlemen:

We hereby establish this Irrevocable Letter of Credit in your favor for an amount up to the aggregate sum of \$34,756.70 U.S. Dollars.

Funds under this credit are available to you by your draft or drafts drawn at sight on us containing the number of this Letter of Credit, as set forth above, in the Form of Sight Draft attached hereto as **Exhibit 1** and incorporated by this reference. Partial drawings are permitted. The amount of the funds available under this Letter of Credit may not be reduced, except by payment of drafts drawn hereunder, or pursuant to written authorization given to us by the Town. The sole condition for payment of any draft under this Letter of Credit is that the draft be accompanied by a letter, on the Town's letterhead, signed by the Mayor or designee, stating that one or more of the following conditions exist:

a. The Town has determined that the Developer is in default of its obligations under that certain agreement, to secure the performance of the *Amended and Restated Subdivision Agreement for Winchester Estates*;

Drafts for payment by the Town, pursuant to this Letter of Credit, shall be deemed timely presented if, prior to the date of expiration of the Letter of Credit, the draft is deposited in the U.S. mail or otherwise delivered for transmission by any other usual means of communication with postage or cost of transmission prepaid and properly addressed to the above letterhead address.



We hereby agree with the Town that such drafts will be processed in good faith and duly honored, upon presentation to us, as provided herein. In case of wrongful dishonor, we agree to reimburse the Town for all court costs, investigative costs and reasonable attorney's fees the Town may incur in obtaining payment, according to the terms of this Letter of Credit. This Letter of Credit shall be governed by and construed in accordance with the laws of the State of Colorado. We further agree that the exclusive venue for any action concerning this Letter of Credit shall be the District Court for Elbert County, Colorado.

Very truly yours,  
[Name of Bank]

By: \_\_\_\_\_  
Signature of Authorized Signing Officer

\_\_\_\_\_  
Print  
Name  
[Signature Must Be Notarized]

STATE OF COLORADO    )  
  )ss.  
COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me this        day of  
20   , by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_

My commission expires: \_\_\_\_\_ -

SEAL

\_\_\_\_\_  
Notary Public

# EXHIBIT 1

## FORM OF SIGHT DRAFT

Date: \_\_\_\_\_

At sight, pay to the order of Town of Elizabeth \_\_\_\_\_  
Dollars

(\$\_\_\_\_\_), for value received and charge to the account of *[name of Developer]*.

Drawn under Letter of Credit No \_\_\_\_\_  
*[type letter of credit issuance date]*.

To: *[name of Issuing Bank]* \_\_\_\_\_, Town of Elizabeth, beneficiary,

*[Address of Issuing Bank]* \_\_\_\_\_

\_\_\_\_\_  
By: *[type Mayor or designee]*

## EXHIBIT D-2

### FINANCIAL GUARANTEE AGREEMENT

THIS FINANCIAL GUARANTEE AGREEMENT (the "Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the Town of Elizabeth, Colorado, a municipal corporation (the "Town"), and \_\_\_\_\_ (the "Developer").

#### RECITALS

WHEREAS, the Town and the Developer have entered into that certain Subdivision Agreement (the "Subdivision Agreement") dated \_\_\_\_\_, 20\_\_, concerning that certain real property known as \_\_\_\_\_, which is more particularly described in **Exhibit A**, which is attached to the Subdivision Agreement (the "Property"); and

WHEREAS, pursuant to the Subdivision Agreement, the Developer has agreed to install and complete at its expense certain Public Improvements (as that term is defined in the Subdivision Agreement) on the Property and to provide the Town with a financial guarantee, in an amount equal to one hundred ten percent (110%) of the costs of the Public Improvements naming the Town as the designated beneficiary, to secure the performance and completion of the Public Improvements.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the sufficiency of which is hereby acknowledged and confessed, the parties hereto covenant and agree as follows:

1. Purpose. The purpose of this Agreement is to provide for a financial guarantee to the Town for the performance and completion of the Public Improvements described in the Subdivision Agreement and, accordingly, to supplement the terms and conditions of the Subdivision Agreement. Defined terms within the Subdivision Agreement shall have the same meaning when used herein.

2. Financial guarantee. In order to secure the performance and completion of the Public Improvements, the Developer agrees to deposit with the Town the sum of

\_\_\_\_\_ Dollars (\$ \_\_\_\_\_), which represents one hundred ten percent (110%) of the estimated cost of the Public Improvements (the "Financial Guarantee Funds"). All Financial Guarantee Funds shall be deposited in the Town's General Fund. The Town shall not be required to pay the Developer any interest on the Financial Guarantee Funds.

The estimated costs of the Public Improvements shall be a figure mutually agreed upon by the Developer and the Town's Director of Public Works. If, however, they are unable to agree, the Director of Public Works' estimate shall govern after giving consideration to information provided by the Developer including, but not limited to, construction contracts and engineering estimates. The purpose of the cost estimate is solely to determine the amount of the financial guarantee. No representations are made as to the accuracy of these estimates, and the Developer agrees to pay the actual costs of all such Public Improvements.

The estimated costs of the Public Improvements may increase in the future. Accordingly, the Town reserves the right to review and adjust the cost estimate prior to the issuance of any grading permit for the Property and on an annual basis thereafter. Adjusted cost estimates will be made according to changes in the Construction Costs Index as published by the *Engineering*

*News Record* or based upon actual construction bids, as determined by the Town in the exercise of its sole discretion. If the Town adjusts the cost estimate for the Public Improvements, the Town shall give written notice to the Developer. The Developer shall, within thirty (30) days after receipt of said written notice, provide the Town with new funds in the amount of the adjusted cost estimates. If the Developer refuses or fails to so provide the Town with additional Financial Guarantee Funds, the Town may exercise the remedies provided for in paragraph 6 of the Subdivision Agreement; provided, however, that prior to increasing the amount of additional Financial Guarantee Funds required, the Town shall give credit to the Developer for all required Public Improvements which have actually been completed so that the amount of Financial Guarantee Funds required at any time shall relate to the cost of required Public Improvements not yet constructed.

3. Release of Financial Guarantee Funds.

a. The Developer intends to enter into several different contracts with different contractors to install the Public Improvements. It is the intent of the parties hereto that Financial Guarantee Funds will be released as work is completed on each individual contract. In the event the Public Improvements are not constructed or completed within the period of time specified by paragraph 9 of the Subdivision Agreement or a written extension of time mutually agreed upon by the parties to this Agreement, the Town may draw on the Financial Guarantee Funds to complete the Public Improvements called for in this Agreement.

b. The Financial Guarantee Funds are to be used solely and exclusively for the completion of the Public Improvements. The Town will disburse up to ninety percent (90%) of the estimated cost of the Public Improvements as progress payments according to the schedule of values attached as **Exhibit 1** and incorporated by this reference (the "Schedule of Values"), upon the Developer's satisfaction of the following draw requirements:

1. The Developer delivers an application to the Town (which includes a certification signed by the Developer of the percentage of the total Public Improvements completed according to the Schedule of Values), which application will be made no more than once per month and shall be tied to progress toward the completion of the Public Improvements, as identified in the application (the "Application").

2. Upon receipt of the Application, the Town shall have thirty (30) calendar days within which to provide written acknowledgement from the Public Works Director or designee of the Town that the Application may be paid, partially paid or denied. The Town's affirmation and payment will not constitute approval by the Town of the completion and/or acceptance of Public Improvements, or any portion thereof. Such acknowledgement shall not be unreasonably denied or withheld by the Town and shall be given if the Public Improvements described in the Application are completed in accordance with the construction plans approved by the Town.

3. The Town shall have no obligation to provide probationary acceptance of the Public Improvements, until all of the Public Improvements are completed and all deficiencies, of any type, including, but not limited to, maintenance, materials or workmanship, that are identified by the Public Works Director at the final inspection are corrected (regardless of the cause of the deficiency).

4. Upon the Town's probationary acceptance of the Public Improvements, the Developer has the option of substituting a letter of credit for twenty percent (20%) of the cost of the Public Improvements that the Town is holding for the two-year warranty

period, as described in the Subdivision Agreement, in a form and from a financial institution acceptable to the Town.

c. That portion of the Financial Guarantee Funds which represents twenty percent (20%) of the estimated costs of the Public Improvements shall be retained by the Town during the two-year warranty period described in the Subdivision Agreement. At the end of the warranty period and upon final acceptance by the Town, the remaining Financial Guarantee Funds shall be released to the Developer. The Town may draw on the Financial Guarantee Funds during the warranty period to correct any problems with the Public Improvements which have not been corrected by the Developer, as provided by the Subdivision Agreement.

4. Modifications. This Agreement shall not be amended, except by subsequent written agreement of the parties.

5. Release of Liability. It is expressly understood that the Town cannot be legally bound by the representations of any of its officers or agents or their designees, except in accordance with the Elizabeth Municipal Code and the laws of the State of Colorado.

6. Captions. The captions to this Agreement are inserted only for the purpose of convenient reference and in no way define, limit, or prescribe the scope or intent of this Agreement or any part thereof.

7. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors, and assigns as the case may be.

8. Invalid Provision. If any provision of this Agreement shall be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision hereof, all of the other provisions shall remain in full force and effect. It is the intention of the parties hereto that if any provision of this Agreement is capable of two (2) constructions, one of which would render the provision void, and the other which would render the provision valid, then the provisions shall have the meaning which renders it valid.

9. Governing law. The laws of the State of Colorado shall govern the validity, performance and enforcement of this Agreement. Should either party institute legal suit or action for enforcement of any obligation contained herein, it is agreed that venue of such suit or action shall be in Elbert County, Colorado.

10. Notice. All notice required under this Agreement shall be in writing and shall be hand delivered or sent by registered or certified mail, return receipt requested, postage prepaid, to the addresses of the parties herein set forth. All notices so given shall be considered effective seventy-two (72) hours after deposit in the United States mail with the proper address as set forth below. Either party, by notice so given, may change the address to which future notices shall be sent.

Notice to the Town: Town of Elizabeth  
Attn: Public Works Director

Town of Elizabeth  
Attn: Director of Community Development

With a copy to: Hoffmann, Parker, Wilson & Carberry, P.C.  
Attn: Corey Y. Hoffmann, Town Attorney  
511 16<sup>th</sup> Street, Suite 610  
Denver, Colorado 80202

Notice to Developer: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

With a copy to: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

11. Assignment or Assignments. There shall be no transfer or assignment of any of the rights or obligations of the Developer under this Agreement without the prior written approval of the Town. The Developer agrees to provide the Town with at least fourteen (14) days' advance written notice of the transfer or assignment of any of the rights and obligations of the Developer under this Agreement.

12. Title and Authority. The Developer expressly warrants and represents to the Town that it is the record owner of the property constituting the Property and further represents and warrants, together with the undersigned individual(s) that the undersigned individual(s) has or have full power and authority to enter into this Financial Guarantee Agreement. The Developer and the undersigned individual(s) understand that the Town is relying on such representations and warranties in entering into this Agreement.

13. Conflict with Subdivision Agreements. In the event there is a conflict between the language contained within the Financial Guarantee Agreement and the language contained within the Subdivision Agreement, the language contained in the Subdivision Agreement shall control.

WHEREFORE, the parties hereto have executed this Agreement on the day and year first above written.

**TOWN OF ELIZABETH, COLORADO**

By: \_\_\_\_\_  
Patrick Davidson, Town Administrator

ATTEST:

\_\_\_\_\_  
Michelle M. Oeser, Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Corey Y. Hoffmann, Town Attorney

By: \_\_\_\_\_  
[*Name, title*]

SEAL \_\_\_\_\_  
Notary Public