

DEVELOPMENT AGREEMENT
Peakview Subdivision

THIS DEVELOPMENT AGREEMENT (“Agreement”) is made this ____ day of _____, 2020 and entered into between the City of Evans, a Colorado home rule municipality (hereafter, the “City”), which term shall include its successors and assigns, and Solstice Development LLC, a Colorado limited liability company, (hereafter, the “Developer”), which term shall include its predecessors, heirs, affiliates, successors and assigns.

RECITALS

WHEREAS, Solstice Holdings LLC, a Colorado limited liability company, (“Property Owner”) and an affiliate of Developer, is the owner of certain real property located in the City of Evans, Colorado, described on Exhibit "A" (Legal Description) attached hereto and incorporated herein (hereafter, the “Property”); and

WHEREAS, Developer submitted to the City an application to develop the Property as a Planned Unit Development to be known as “Peakview Estates” or the “Peakview Subdivision” and shown on Exhibit "B" (PUD/Site Plan) attached hereto and incorporated herein as the “PUD/Site Plan”; and

WHEREAS, Developer acknowledges that approval of the PUD, Preliminary Plan, Final Plat, and Site Plan along with the subsequent use of the Property will directly impact existing infrastructure and generate the need for both on-site and off-site improvements (such improvements (the “Improvements”) being further described in Exhibit "C" (Developer Requirements) attached hereto). The Improvements are required as set forth on Exhibit "D" (Schedule of Improvements) hereto and incorporated herein to this Agreement; and

WHEREAS, the City approved the PUD Change of Zone by Ordinance No. 689-19 on February 19, 2019; which was recorded by the City with the Weld County Clerk and Recorder's office at Reception 4489500 on May 8, 2019; and

WHEREAS, the City approved the Preliminary Plan by Resolution No. 08-2019 on April 2, 2019; which was recorded by the City with the Weld County Clerk and Recorder's office at Reception 4489500 on May 8, 2019; and

WHEREAS, Developer intends to develop the Property in two or more development phases (each, a “Phase”) pursuant to a phasing plan attached hereto as Exhibit "F" (Phasing Plan) describing the period for commencement and completion of all work, the Phase boundaries, sequencing and Improvements to be included within each Phase. This Agreement applies to the entire Development, but shall toll for vesting purposes only for a particular Phase as more particularly set forth on Exhibit "F" (Phasing Plan). For purposes of clarification, this first phase of development includes Phase IA and IB as referenced below in Exhibit F and the phasing map attached hereto. Developer and City acknowledge future amendment to this Agreement may be warranted; and

WHEREAS, the City has approved the PUD Final Plat for Filing I by Resolution 27-2019 on December 3, 2019 and shall be recorded by the City with the Weld County Clerk and Recorder’s office; and

WHEREAS, Developer agrees and acknowledges that the exactions and requirements set forth in this Agreement are reasonably attributable to the special impacts that will be generated by the proposed

development and use of the Property, and that the terms and conditions set forth in this Agreement are necessary, reasonable and appropriate, and directly benefit or result from the impact of the Development.

AGREEMENT:

NOW, THEREFORE, in consideration of the premises, mutual covenants and obligations contained herein, and the sufficiency of which is acknowledged, the parties mutually agree as follows:

1. Title and Scope of Development: The Development subject to this Agreement shall initially be titled Peakview Estates. Subsequent Filings may necessitate an amendment to this Agreement. Notwithstanding anything in this Agreement to the contrary, Developer may elect to use a name other than “Peakview Estates” for marketing one or more portions of the Development, including, without limitation, a name using the word “Solstice.”

2. Description of Development and Uses: Peakview Estates is an approximately 225-acre site located in the area identified on the PUD/Site Plan contained in Exhibit “B” (PUD/Site Plan). The Development will be used for residential, commercial, recreational and/or ancillary purposes in accordance with the PUD Site Plan and Final Plat.

3. Definitions: For the purposes of this Agreement, the following words and terms shall be defined as follows:

- 3.1 “City Official” includes the City Manager, City Attorney, City Treasurer, Public Works Director, Community Development Director, and their designated representatives.
- 3.2 “Developer” includes the Developer, Developer’s agents, representatives, predecessors, heirs, affiliates, successors or assigns, or any other party authorized by the Developer to provide services, construction, or maintenance of any improvements required by this Agreement, including any Metropolitan District. It is anticipated that one or more metropolitan districts will be formed in support of this subdivision.
- 3.3 “Development” means all the Property, property rights and Improvements within and related to the Property.
- 3.4 “Metropolitan District” shall mean the one or more metropolitan districts (collectively, the “Metropolitan District”) which may from time to time pay for and construct, own, operate and maintain certain public improvements needed for the Property.
- 3.5 “Plans and Specifications” shall refer to the engineering and design documents that have been reviewed and approved by the City submitted to the City on November 6, 2019.
- 3.6 “Final Plat Materials” means those certain Final Plat Materials including but not limited to Final Plat, Development Guide and Neighborhood Development Plan. The final grading plans, drainage reports, utility plans, road plans, landscape plans (“Construction Plans”), shall be prepared and submitted for review and approval by the City prior to issuance of a grading permit. Final Plat Materials and supporting Construction Plans are to be prepared with each Final Plat Filing Application. The Final Plat for Filing 1 was prepared by Northern Engineering, dated November 7, 2019, and approved by the City on December 3, 2019.

4. Public Improvements: Developer shall design, construct and install at its own expense, the public Improvements described in Exhibit "C" attached hereto and incorporated herein to this Agreement. Once the Metropolitan District is formed, it is the intent of the City and the Developer that certain obligations created under this Agreement may be assumed and transferred to the Metropolitan District. However, such assumption or transfer of obligations to the Metropolitan District shall not release the Developer from any of its obligations under the Agreement unless such release is specifically agreed to by the City in writing. Developer may use commercially reasonable efforts to cause such districts to expressly assume the development and maintenance obligations herein to the extent allowed by their respective service plans. Any obligation of Developer may be met through a contract with an appropriately authorized Metropolitan District, but the obligation and performance responsibility of the Developer shall not be released by such contract. From time to time and upon the City's reasonable request, Developer agrees to keep the City informed of the progress of its work and provide a projection of when Improvements will be installed as well as the approximate cost of the remaining Improvements.

- 4.1 Dedication of Improvements. Upon completion of an improvement and Final Acceptance of the improvement by the City or by the Metropolitan District, the Improvements shall be dedicated as set forth on Exhibit "C-2" (Dedications to the City) and Exhibit "C-3" (Dedications to Metropolitan District). As more particularly described in Exhibit C-2, upon request of the City, Developer shall convey Improvements, or a portion of them, to the City by bill of sale or other conveyance documents deemed appropriate by the City Attorney.
- 4.2 Certificates of Occupancy & Water Meters: Certificates of Occupancy are required for all residential and commercial construction. A water meter is required for connection to the Metropolitan District's non-potable water supply, for the landscaping required by this Agreement. Water meters for potable and non-potable water for individual lots will be installed at the expense of the individual builder for each such lot.

5. Completion of Public Improvements:

- 5.1 Developer Obligations: The obligations of the Developer provided for herein shall be performed on or before the Estimated Completion Date set forth in the Exhibit "D" (Schedule of Improvements) and the Phasing Plan attached hereto as Exhibit "F" (Phasing Plan), subject to extension as provided herein or for delays due to Force Majeure. The Schedule of Improvements set forth on Exhibit "D" is hereby approved by the City.
- 5.2 Plans and Specifications: Construction of the Improvements shall be in substantial and material conformance with the Plans and Specifications, as reviewed and approved by the Public Works Director or a designated representative, and which shall be in compliance with all policies, ordinances, standards and specifications adopted by the City relating thereto in effect at the time of such construction. The City's review and approval of the Plans and Specifications shall not impose any liability on the City and shall not limit or affect Developer's responsibility or liability for design, construction and installation of the Improvements. Developer agrees to save and hold the City harmless from any claims, fault or negligence attributable to the City's review and approval of such design, construction and installation, in accordance with the provisions of section 17.1 herein below.
- 5.3 Developer Responsibilities and Liabilities: Developer shall remain solely responsible and liable for the following:

- 5.3.1 Testing: Developer shall employ (at its own expense) a qualified independent testing company to be approved by the Public Works Director or a designated representative in its reasonable discretion, to perform all testing of materials or construction that may be reasonably required by the City during Developer's construction of the Improvements and for a period of up to six (6) months following completion of construction of the Improvements. Developer shall furnish certified copies of test results to the Public Works Director and, upon request by the Public Works Director, release and authorize full access to the Public Works Director of all work-up materials, procedures and documents used in preparing the test results.
- 5.3.2 Inspection: At all times during construction of the Improvements, on a reasonable schedule to be mutually agreed by the parties, and until final acceptance by the City, the City shall have the right, but not the duty, to inspect materials and workmanship utilized for the Improvements at Developer's cost, provided the City's inspector is accompanied by Developer or its designated representative. All materials and work must conform to the approved Plans and Specifications and all applicable regulations. Any material or work not materially and substantially conforming to the Plans and Specifications or other applicable regulations shall be promptly removed, repaired or replaced by Developer, at Developer's expense and to the reasonable satisfaction of the Public Works Director.
- 5.3.3 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 reasonably 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 applicable statutes, ordinances, or regulations.
- 5.3.4 Utilities: Developer shall furnish proof in a form acceptable to the City (as-built construction documents) in its reasonable discretion that all proper conveyances and arrangements have been made for the installation of streets, streetlights, sidewalks, water, sanitary sewer, gas, electricity, cable television (or equivalent satellite, internet or other technology based communications), telephone services, drainage facilities, and other public improvements.
- 5.3.5 Completion of Landscape Improvements: Developer shall install landscaping and related elements including irrigation required by this Agreement for each Phase of Development no later than six (6) months after completion of all non-landscaping improvements for such Phase, unless an extension is granted in writing by the Public Works Director or the Community Development Director. Extensions will not be denied if reasonably requested due to seasonal or weather issues or Force Majeure events. Completion of the landscaping and related elements including irrigation shall be assured by Developer in the form of a Letter of Credit for landscaping given by the Developer or the contractor for the construction and installation of the landscaping, in a form acceptable to the City, and provided with this Agreement in an amount being 115% of the approved estimated cost of the landscaping improvements and related elements. Upon inspection and approval of the landscaping and related elements by the City, and provision to the City of as-built drawings acceptable to the City, the amount of the landscaping letter of credit will be reduced to 15% of the approved estimated cost of the landscaping improvements and related elements, which shall be held for a two (2)-year warranty period by the City. On completion of the two (2)-year warranty period the remaining balance shall be returned to the Developer. If any of the landscaping or related elements fails to such an

extent that such landscaping or related elements must be entirely replaced, such failed portion shall be replaced with similar landscaping deemed satisfactory to the Public Works Director in the exercise of his reasonable discretion, and upon completion of such replacement and approval by the Public Works Director, the two (2)-year warranty period shall begin anew as to the replaced Improvement only. At any time following inspection and approval of the landscaping improvements by the City, the landscaping improvements may be conveyed by Developer to the Metropolitan District for ownership, operations and maintenance. Conveyance of the landscaping improvements from the Developer to the District does not relieve the Developer from its obligations under this section unless and until the City agrees in writing to relieve the Developer from such landscaping obligations, in whole or in part. For the avoidance of doubt, notwithstanding anything herein to the contrary, Developer shall not be required to construct landscaping improvements upon any lot to be developed for residential or commercial use.

- 5.3.6 Completion of Other Improvements: Obligations of the Developer required by this Agreement and provided for herein shall be performed on or before the estimated completion date set forth in Exhibit "D" (Schedule of Improvements) attached hereto and incorporated herein to this Agreement as such date may be hereafter extended from time to time in accordance with the provisions of this Agreement. The Developer's construction and completion of the Improvements shall be assured by the Developer or the general contractor for the construction of the Improvements (Gerrard Excavating Inc.) providing a Performance Guarantee in the amount of 115% of the estimated cost of the Improvements at the time of development. The Developer shall have no direct or indirect ownership or managerial control over the entity issuing any Performance Guarantee. In the event that prior to the City's initial acceptance of the Improvements, the Performance Guarantee should expire or the entity issuing the Performance Guarantee becomes non-qualifying or the cost of the Improvements 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 thirty (30) 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 115% of the cost of the Improvements. 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, may be suspended by the City pending compliance herewith, and upon such compliance shall be immediately reinstated. To the extent the Performance Guarantee shall cover more than one Phase of Development, the amount of the Performance Guarantee shall be reduced from time to time upon completion of each Phase of Development in the amount attributable to the completed Phase and a Performance Guarantee Reduction Notice (in substantially the form annexed hereto as Exhibit D-4) for such costs shall be signed and issued to Developer (and to the issuer of the Performance Guarantee) by the City's Public Works Director.
- 5.3.7 If the Developer cannot or wishes not to perform and/or construct some or all of the Improvements, then, provided Developer has first obtained the City's consent in writing (which consent may be issued administratively by the City's Public Works Director and without public hearing), the Metropolitan District shall be permitted to construct and complete the proposed Improvements in place of the Developer if: (1) the District is legally permitted to construct such Improvements, (2) the District is ready, willing and able to construct those Improvements, and (3) the District can demonstrate the financial

ability to complete the construction in a manner deemed by the City to be sufficient to meet the Performance Guarantee requirements for such portion of the Development. If the Metropolitan District provides evidence of its financial ability to construct and/or install all or such part of the Improvements and the City is satisfied with the same, then the Improvements' guarantee requirements, including without limitation, the Performance Guarantee, for such portion of the Improvements shall be deemed to have been met with respect to the same and a Guarantee Reduction Notice (in substantially the form annexed hereto as Exhibit D-4) releasing the guarantor to such extent, shall be promptly signed and issued to Developer (and to such guarantor) by the City's Public Works Director. If the Metropolitan District has issued and sold the bonds needed to construct and/or install such Improvements and furnishes evidence of the placement of such bonds and the segregation of the proceeds from such bonds in a separate account that cannot be used for other purposes, then upon demonstrating these matters to the satisfaction of the City's Director of Public Works, the Metropolitan District will be deemed to have the financial ability needed to construct and/or install such Improvements, and will not be required to provide any evidence required under Subsections (i)-(iii), below nor any further evidence of its financial abilities, and no letter of credit or financial guarantee shall be required. In order to demonstrate its financial ability to construct, complete, and/or install those Improvements for which the Metropolitan District desires to assume all responsibility, except as otherwise permitted by the preceding sentence, the District shall submit the following materials to the City in connection with each phase of the Development:

- (i) Most-recent monthly financial statement of the Metropolitan District;
- (ii) Most-recent annual audit of the Metropolitan District, if available; and
- (iii) A letter bearing the signature of the Metropolitan District's accountant containing the accountant's statement that the funds for this project are available and that the Metropolitan District is financially viable, is reasonably implementing its general plan of finance contained in its service plan, and is reasonably capable of financing the construction, completing and/or installing the Improvements for which the waiver of security is sought and that the funds available for this project have been set aside in a separate account that cannot be used for other purposes.

5.3.8 Ashcroft Sewer Line Reimbursement: The Development will benefit from use of the Ashcroft Draw sanitary sewer line and thus is subject to the Agreement Regarding Discount of Sewer Reimbursement (regarding the Ashcroft Draw Sanitary Sewer Main) pursuant to the Ashcroft Draw Sanitary Sewer Joint Venture. The agreement is included as Exhibit J. Development is in Sub-basins 1, 2A and 3. It is subject to the 130% per acre Surcharge Rate of \$1,023.21 plus ten years of compounded interest at 3.9% for a total per acre Surcharge Rate of \$1,500.10. A portion of the Development's reimbursement responsibility was fulfilled in 2003 when Wheeler Management Group, INC. made an initial payment of \$151,966 for the area in Sub-basins 1 and 2A. The Development is responsible for the remaining area lying outside of Sub-basins 1 and 2A.

Based on a site area of 96 acres existing outside of Sub-basins 1 and 2A and a per-acre cost of \$1,500.10, the reimbursement amount due is approximately \$144,009.60. The absolute reimbursement costs will be calculated based upon the gross area at the time of

final platting and prorated among residential units for each filing or phased development. This amount will be added to the City of Evans' building fees to be paid at the time of building permit issuance. The City of Evans will remit these fees to the developer of the sewer line.

The Developer's reimbursement obligation under this subsection may be satisfied by a separate agreement between the Developer and the Ashcroft Draw Sanitary Sewer Joint Venture, acknowledging that all obligations for reimbursement pursuant to the provisions of the Ashcroft raw Sanitary Sewer Reimbursement Agreement in connection with the Development have been satisfied in full and will be permitted to be reduced to \$120,000 as a "Discounted Reimbursement" if the conditions are met as outlined in Exhibit J.

5.3.9 Phasing of Improvements. It is anticipated that the first phase of development will be broken into three separate phases:

- (i) Offsite Improvements Phase
- (ii) Phase IA Improvements
- (iii) Phase IB Improvements

Each phase shall have its own security, letter of credit or payment and performance bond in a form acceptable to the City as provided in this Agreement and shall be considered separately (not in the aggregate). The warranty for each phase will not start until that certain phase is completed. The City can release the letter of credit or payment and performance bond provided by contractor of certain Improvements in each phase when the utilities are completed for each phase. This concession is allowed to ensure sufficient security is provided by Developer or contractor for a phase or Improvement construction, but will allow for the release of a completed phase so the bond, letter of credit or security can be released and the construction can begin on the next phase. With regard to all or such part of the security, letter of credit or payment and performance bond, if the City is satisfied that some or all of the Improvements are completed and initial acceptance has been granted for any or all of the following improvements within each phase listed above:

- (A) Offsite Improvements
- (B) Grading
- (C) Utilities
- (D) Pavement

And provided the City is satisfied with the same, then the Improvements' guarantee, letter of credit or payment and performance bond related to those completed improvements, including without limitation, the Performance Guarantee, for such portion of the Improvements shall be deemed to have been met with respect to the same and a Guarantee Reduction Notice as referenced in Section 5.3.7 (in substantially the form annexed hereto as Exhibit D-4) releasing the guarantor to such extent, shall be promptly signed and issued to Developer (and to such guarantor) by the City's Public Works Director.

5.3.10 Procedure for Release of Warranty Security. Except as otherwise expressly provided by any agreement in other sections of this Agreement, immediately preceding the expiration of the warranty for any Improvements within a Phase outlined in Section 5.3.9, the Developer shall make a written request to the City to inspect and accept the

Improvements for that phase. The City shall inspect such Improvements within twenty (20) days of such request and shall notify Developer in writing of any deficiencies and repairs required to meet the construction standards within twenty (20) days of the inspection. Developer shall, within thirty (30) days of receiving such notice, correct such defect or, if the defect is of a nature that cannot reasonably be cured within thirty (30) days, notify the City that it has commenced reasonable efforts to cure such defect within said thirty (30)-day period and continue diligently thereafter. After Developer has corrected all such defects and completed all required repairs identified in the City's written notice, if any, the City shall issue to Developer a letter indicating its acceptance of the applicable Improvements. After satisfaction of any deficiency issues related to Improvements dedicated to the City or other public entity, the City shall make such security available for the Improvements which have been conveyed to the City for fulfillment of any warranty obligations owed to the City. At the time all deficiencies relating to the Improvements have been cured, and written notice of final acceptance has been received from the City, the City shall release all remaining warranty security to Developer for those Improvements dedicated to the City. This procedure for release of warranty security shall also apply and be duplicated for the Improvements to be dedicated to the Metro District as applicable for ownership, operation and maintenance.

6. Initial Acceptance: Developer shall make written application to the Public Works Director for initial acceptance of the Improvements for the first Phase of development (and any subsequent Phase of development subjected to this Agreement by Developer pursuant to Exhibit "F" (Phasing Plan)) ("Initial Acceptance") within 30 days of their completion and issuance by the City of a Certificate of Initial Acceptance, as defined below. Such Improvements will be described on a "Developer's Contribution Worksheet" provided by the City Engineer. The Developer shall be responsible for the accuracy and completeness of all information provided. The affidavit, lien waivers and other materials described below may be reviewed by the City, but the City assumes no responsibility or liability to or for anyone regarding the veracity of the information so provided. Developer's application for initial acceptance shall be accompanied by the following information and materials:

- 6.1. As Built Drawings: One (1) set of surveyed Mylar and one digital/CAD file of the "as built" drawings, certified as to accuracy by the Developer or its architect or Engineer; and
- 6.2. Engineer's Certification: Written certification by the Developer's Engineer that the Improvements for such Phase of development have been fully constructed and installed in substantial conformance with the Plans and Specifications; and
- 6.3. Cost Affidavit: A final affidavit of the Improvements' construction cost including verification reasonably satisfactory to the City; and
- 6.4. Improvements Affidavit: Developer shall provide a signed affidavit that the Improvements for such Phase of development have been paid for in full; and
- 6.5. Lien Waivers: Developer shall provide lien waivers from (i) its general contractor, and (ii) from all subcontractors, suppliers and materialmen who have furnished or performed \$25,000.00 or more in labor, material or services for the Improvements for such Phase of development. To the extent Developer bonds any outstanding disputed claim and/or recorded lien by a surety or judicial bond equal to the amount of the alleged liability, the claim or lien so bonded shall be deemed equivalent to a lien waiver for purposes of satisfying this subsection 6.5; and
- 6.6. Maintenance Guarantee: Developer acknowledges the Maintenance Guarantee that accompanies

the request for Initial Acceptance shall be in the form of (1) a cash escrow deposited with the City, or (2) an irrevocable letter of credit in the form approved by the City as Exhibit "E" (Letter of Credit) attached hereto and incorporated herein to this Agreement, in which the City is designated as the beneficiary and in the amount of fifteen percent (15%) of the total costs of the Improvements. The City hereby acknowledges and agrees that such letter of credit may be given by Gerrard Excavating Inc., rather than Developer,. Unless expressly stated otherwise in the form attached as Exhibit "E", the Maintenance Guarantee shall be subject to the same conditions as those set forth for the Performance Guarantee in Section 5.3.6 and Exhibit "G" of this Agreement. The Maintenance Guarantee shall warrant and guarantee all expenses and costs for maintenance, repairs, and replacement of the Improvements for a period of two (2) years after their Initial Acceptance by the City. If any of the Improvements shall fail and require repair or replacement, such failed Improvements shall be repaired or replaced with similar Improvements deemed satisfactory by the Public Works Director in the exercise of his reasonable discretion, and upon completion of such repair or replacement and approval by the Public Works Director, the two (2)-year warranty period shall begin anew as to the replaced Improvement only. In such instance, the Maintenance Guarantee shall remain in place during such extended warranty period. Notwithstanding anything herein to the contrary, the amount that may be drawn or demanded on under the Letter of Credit or cash escrow, as the case may be, given for the Maintenance Guarantee shall be reduced to fifteen (15) percent of the approved estimated cost of the improvement upon completion signified by issuance of a Certificate of Initial Acceptance.

7. Receipt and Inspection by City: City and Developer acknowledge that the City is relying on the construction documents prepared by Northern Engineering dated December 12, 2019. Developer is to ensure construction occurs according to the Construction Documents. After the receipt of said written application, the Public Works Director (or a designated representative) will use reasonable efforts to promptly inspect the Improvements and prepare a detailed written description of all Improvements that are not in compliance with the requirements of the City or the Plans and Specifications and deliver that description to the Developer. Any review, inspections, testing, or acceptance by the City does not relieve Developer of its obligations to design and construct the improvements in a manner that substantially complies with all applicable drawings, rules and regulations. Any actions conducted by the City do not relieve Developer or the Developer's engineer from representations made in the Construction Documents. After curing such defects as are noted (if any) on the written statement provided by the Public Works Director to the Developer, if defects were noted and cured, the Developer shall make written application to the City for re-inspection of the Improvements, and the Public Works Director will use reasonable efforts to promptly (no later than three (3) weeks following receipt of Developer's written application for re-inspection) re-inspect such Improvements. (No re-inspection shall be required in the absence of any defects having been noted on such written statement.) Nothing in this paragraph shall preclude the City and Developer from modifying the Construction Documents to reflect actual field conditions which shall be memorialized in Construction Document Record Drawings to be provided to the City.

8. Approval and Certification by City: No Improvements shall be deemed to be initially accepted by the City until the Public Works Director has certified, in writing, by signing a Certificate of Initial Acceptance (substantially in the form annexed hereto as D-1) that the Improvements appear to have been completed in accordance with the applicable Plans and Specifications. This shall then constitute Initial Acceptance.

9. Maintenance, Repair and Replacement: Until Final Acceptance of the Improvements by a Certificate of Completion reviewed and approved by the Public Works Director as set forth in Section 10 of this Agreement, Developer agrees that (a) the Maintenance Guarantee shall not be released; and (b) the Developer shall bear all risks and liability related to any loss, damage, or claims due to defects or failures

of any of the Improvements; and (c) the Developer shall perform all maintenance and make all repairs and replacements of all defects or failure of Improvements at Developer's expense which, in the reasonable opinion of the Public Works Director, may be necessary. If, within thirty (30) days after the Developer's receipt of written notice from a City Official requesting such reasonably required maintenance, repairs, and/or replacements of the Improvements, the Developer shall not have undertaken with due diligence to make same, the City, after providing written notice to Developer, may make such maintenance, repairs, and/or replacements at the Developer's expense. The City shall be entitled to draw upon the Maintenance Guarantee, either before undertaking to make such repairs or at any time thereafter, or the City may charge the Developer for the costs thereof if such charges are not paid by the Maintenance Guarantee. In case of emergency (an "emergency" being a circumstance presenting an imminent threat of harm to persons or property upon the Property, which harm would be exacerbated by providing written notice to Developer as otherwise required herein), such written notice shall be waived and the City may proceed as it reasonably deems necessary, at the expense of the Developer or the issuers of the Maintenance Guarantee. In the event Developer elects to subject any subsequent Phase of development to this Agreement pursuant to Exhibit "F" (Phasing Plan), the provisions of this Section 9 shall apply to such Phase or Phases.

10. Final Acceptance: The Developer shall make a written request to the Public Works Director (or a designated representative) for a final inspection of the Improvements no sooner than two (2) years after the City's Initial Acceptance of all of the Improvements for such Phase of Development, or such earlier time as the City shall agree in writing. Upon receipt of such request the City may, but shall not be obligated to, conduct a final inspection of the Improvements. If the Developer fails to have the Improvements finally accepted as provided in this Section within one year and six months after the City's Initial Acceptance, the City shall have the right, but not the obligation, at any time thereafter to conduct a Final Inspection of the Improvements. If, pursuant to a final inspection requested by the Developer or initiated by the City, any Improvement is found to not conform to this Agreement, the Plans and Specifications, or other applicable regulation or requirement, then the City shall have the rights set forth in Section 5 (Completion of Public Improvements) of this Agreement to remedy such defects. Nothing herein shall be construed or deemed as requiring the City to finally accept and release from the Maintenance Guarantee any Improvement that is defective or damaged. After receipt of satisfactory evidence that the Improvements substantially and materially conform to this Agreement, the Plans and Specifications, all applicable regulations and requirements, and that all of the maintenance, repairs, and replacements reasonably requested by City Officials pursuant to the terms of this Agreement have been completed to the reasonable satisfaction of the City, the Public Works Director shall certify completion and Final Acceptance of such Improvements by signing a Certificate of Completion (substantially in the form annexed hereto as Exhibit D-2). This shall then constitute Final Acceptance. The Maintenance Guarantee provided by the Developer shall be released after the Final Acceptance and delivery of a true copy of the Certificate of Completion to the City.

11. Rights-of-Way and Easements: Before commencing the construction of any Improvements the Developer shall acquire, at its own expense, good and sufficient rights-of-way or easements, clear of any encumbrances except permitted encumbrances to which the City has consented in advance and in writing, on all lands and facilities, if any, traversed by the proposed improvements. All such rights-of-way and easements shall be conveyed to the City at the time of Initial Acceptance and the documents of conveyance shall be in a commercially reasonable form acceptable to the City and shall be furnished to the Public Works Director or their designee for recording.

11.1 Title Insurance: The Developer shall provide at its expense a policy of title insurance with a reputable title insurance company, insuring title in the City, free and clear of all liens and encumbrances other than those encumbrances identified on a commitment for title insurance delivered to the City on or prior to the Effective Date, as set forth in Exhibit D-3 hereto and hereby deemed acceptable, for all land, property, and easements dedicated or conveyed (except

those easements that do not affect the City's use of the property) to the City or for public use.

12. Engineering Services: The Developer shall furnish, at its expense, all engineering and landscaping services in connection with the Development and the Improvements.

- 12.1 Professional Engineer Requirement: Engineering services shall be performed by a professional engineer registered in the State of Colorado.
- 12.2 Engineering Scope of Services: Engineering services shall consist of, but not be limited to, survey, designs, plans, and profiles, estimates, studies, construction supervision, and the furnishing of necessary documents in connection therewith. All engineering plans shall be submitted for review by the Public Works Director. The City's review will not relieve Developer or Developer's Engineer of any responsibility or liability for design, construction and installation of the improvements and Developer agrees to save and hold the City harmless from any claims for fault or negligence attributable to such services, in accordance with the provisions of section 17.1 herein below.
- 12.3 Landscape Plan Preparation: Landscaping plans shall be provided by or under the supervision of a Landscape Architect licensed and registered in the State of Colorado.

13. Water and Non-potable Water Service: The Development has been approved for a maximum of 1,097 residential dwelling units and 19.32 acres of commercial space. The parties acknowledge that Developer has dedicated 763 EQRs to the City as described by Exhibit I.

13.1 The approved, maximum 1,097 residential dwelling units is comprised of 446 Single-Family units (utilizing a 0.60 EQR/unit rate) and 651 Multi-family units (utilizing a rate of 0.35 EQR/unit rate). Based on the projected number of units and their respective EQR/unit rate the total required EQR's for residential use equals 495.45 as described by Exhibit I.

13.2 The Development has committed to the use of a non-potable irrigation system. Based on the projected irrigation demand, the Development requires 152.00 EQR's for the non-potable system as described by Exhibit I.

13.3 The projected EQR demand for residential and irrigation use equals 647.45 EQRs (495.45 residential + 152.00 irrigation). The Development has dedicated a total of 763 EQRs. The remaining EQR total equals 115.55 (763-495.45-152.00). The projected consumption of water (EQR requirement) planned for the 19.32 acres of commercial space is unknown at this time. The remaining EQRs are intended to be applied to the commercial space as needed to meet the City's EQR dedication requirements. Additional EQRs may be needed if the commercial EQR requirement exceeds the remaining 115.55 EQRs.

13.4 The City shall be under no obligation to construct or operate a non-potable water system. Exhibit H provides information regarding the expectations for the operation of the Peakview Non-potable Water system.

14. Operation Standards:

- 14.1 Construction Equipment: The operation of construction equipment outside an enclosed structure (i.e. grading, other surface improvements, underground utilities, either public or private) shall be prohibited between the hours of 8:00 p.m. and 6:00 a.m. on weekdays and

4:00 p.m. and 8:00 a.m. on legal holidays and weekends. In situations of need, and upon written request, the hours of operation may be altered by the Public Works Director.

- 14.2 Debris in the Public Right-of-Way: The Developer shall, at all times, keep the public right-of-way reasonably free from accumulation of waste material or rubbish caused by its operation. Developer shall remove such rubbish no less than weekly and, at the completion of its work, shall remove all waste materials, rubbish, tools, construction equipment, machinery, and surplus materials from the public right-of-way caused by its operation. Any excessive accumulation of dirt and/or construction materials shall be considered sufficient cause for the City, after written notice and failure by Development to cure within seven (7) days after receipt of such notice, to withhold building permits and/or certificates of occupancy or other approvals or permits until corrected to the reasonable satisfaction of the Public Works Director or designee.
- 14.3 Erosion Control Requirements: Developer shall install temporary and permanent erosion control in the Development to control erosion by both wind and water. Developer shall maintain said erosion controls on a routine basis. In the event that the Developer fails to perform erosion control maintenance, Developer shall have 20 days upon receiving written notice to bring the Development into compliance, or to commence to cure for those corrections that cannot be reasonably completed within such 20-day period. Failure to comply shall be sufficient cause, after further written notice, for the City to withhold water service or any approvals or permits until corrected to the satisfaction of the Public Works Director or designee. By way of explanation and without limitation, said control may consist of seeding of approved grasses, temporary dikes, gabions and/or other devices.
- 14.4 Notification of Failure to Comply: In the event that the Developer fails to perform the work required under this Agreement and after reasonable written notice and opportunity to Developer to cause such work to be performed or to be commenced to be performed, the City may perform the work required and charge the Developer for said cost of such work. In the event Developer responds to the City in writing objecting to the City's view that Developer has failed to perform, then no action to perform such work shall be undertaken by the City unless and until such issue has been finally determined in accordance with the dispute resolution process set forth herein at Section 30. The Developer shall pay the City for all costs incurred by the City in the performance of the above said service within 30 days of the City submitting an invoice for said services.
- 14.5 Standards for Subcontractors: The Developer hereby agrees that it shall require its subcontractors to cooperate with the City's construction inspectors by, after receipt of notice from the City, ceasing operations when winds are of sufficient velocity to create blowing dust, which, in the inspector's opinion, is hazardous to the public health and welfare.
- 14.6 Dust Mitigation and Stormwater Management. The Developer shall provide a final dust mitigation plan at the time of Grading Permit application for each Phase of Development. The Stormwater Management Plan shall be kept on site and one copy shall be provided to the City. Evidence of filing with the Colorado Department of Public Health and Environment shall be provided to the City. Evidence should be an acknowledgement of the Developer or Contractor filing a Notice of Intent with the Colorado Department of Public Health and Environment. The Dust Mitigation Plan and the Stormwater Management Plan shall be implemented by Developer during construction of the Improvements. Developer will implement such plan at its sole cost and expense.

15. Development Standards: Developer acknowledges certain responsibilities for design, engineering, construction, maintenance and funding of improvements detailed below.

- 15.1 Road Improvements: Developer will design and construct road, sidewalk, drainage and landscaping improvements adjacent to that portion of the Property to be improved during the first Phase of Development or subsequent Phases as reflected in Exhibit "F" (Phasing Plan), and in accordance with the approved Construction Plans prepared by Northern Engineering and approved by the City on December 12, 2019. Road improvements identified as site-related improvements are required adjacent to (on the same side of the street) of the first Phase of Development and shall include asphalt paving, curb and gutter, asphalt paving for right and left turn lanes, and arterial street landscaping (trees along with deciduous shrub beds, bluegrass or approved seed mix, and an irrigation system), ornamental street lighting, a meandering pedestrian/bike path constructed in accordance with City standards applicable at the time of construction, uniform fencing with columns (i.e. brick, stone, etc.) on 50-foot centers, and bus shelters if required by G.E.T. (Greeley-Evans Transit). All overhead primary, secondary and service utility lines shall be placed underground. Road improvements and landscaping for roads must be completed within six (6) months after the start of construction (weather permitting) but in any event, no later than the issuance of Initial Acceptance. Prior to commencing construction, Developer shall provide an irrigation system plan, landscaping plan, fencing plan, and an entryway signage plan, all to have prior approval of City Officials, which approval shall not be unreasonably withheld, conditioned or delayed.
- 15.2 Right-of-Way Improvements and Dedications: Developer has dedicated appropriate right-of-way as shown on Exhibit "B" (PUD/Site Plan) attached hereto and incorporated herein to this Agreement, for all public streets in and adjacent to this Development, in accordance with the most current City standards for the same. Except as expressly otherwise set forth herein, Developer shall construct, at its expense, all right-of-way improvements at the time when adjacent rights-of-way are planned adjacent to the property as required by the Public Works Director including road improvements, auxiliary lanes, signalization, landscaping, irrigation, utility lines and bikeway/walkways. Except as expressly otherwise set forth herein, Developer shall also construct, at its expense all streets, roadways and right-of-way improvements as required by the Public Works Director and agreed by Developer as reflected in Exhibit "C" (Developer Requirements). This should be set forth, preferably in a graphic, to make sure all parties are in agreement, the costs should be included in the Developer's engineer's estimate of costs and the costs should be covered by the Performance Guarantee.
- 15.3 Internal Roadway Standards: Roadways shall be designed and constructed in accordance with the design standards adopted by and in effect for the City at the time of development. Upon Final Acceptance, the City will maintain the internal roads.
- 15.4 Fencing Standards: Fencing required for the trail improvement depicted on Exhibit "B" (PUD/Site Plan) shall be constructed in accordance with plans approved in advance by the City. Fencing required for any Phase of Development shall be completed no later than the deadline for completion of all other Improvements for such Phase. The Developer shall maintain, repair, and replace all fencing within the Property.
- 15.5 Access and Egress Requirements: There shall be a minimum of two means of all-weather ingress and egress into the Development at all times for emergency vehicle access or as may otherwise be approved by the City. A temporary all-weather ingress and egress has been

identified for the first Phase of Development. This is for emergency vehicles only and is depicted on Exhibit "B" (PUD/Site Plan). Developer shall design, construct, maintain, repair and replace all access egress points.

- 15.6 Mailbox Locations: Developer shall install mailboxes as may be required by the United States Postal Service.
- 15.7 Overhead Utility Lines: The existing and proposed Xcel Energy and Poudre Valley Rural Electric Association Utility Transmission lines, if any, located on the property or in the right-of-way adjacent to the property, are required to be located or relocated underground. Other than the Xcel Energy and Poudre Valley Rural Electric Association Utility Transmission lines, there are no other overhead utility lines on the property at the time of this approval. Maintenance of utilities is provided by the utility.
- 15.8 Bicycle & Pedestrian Trails: If and to the extent Exhibit "B" (PUD/Site Plan) attached hereto provides for a trail easement to be dedicated as part of the Development, then construction of the trail easement shall be performed on (or before) the Estimated Completion Date as set forth in Exhibit "D" (Schedule of Improvements) attached hereto and incorporated herein to this Agreement, subject to delays due to weather, season, or Force Majeure. Any bicycle/pedestrian trails within the Development must be constructed in accordance with City standards applicable at the time of construction and must be constructed of approved materials. Trails shall be ten (10) feet wide (six (6) inches thick) and constructed of concrete. Interior sidewalks shall be a minimum of five (5) feet wide (six (6) inches thick) and constructed of concrete. If required by the PUD/Site Plan and Development Guide, Developer shall also construct fencing consistent with existing fencing owned by the City along the trail section already in place along the existing trail improvement. Any trail and fencing design and construction shall be approved by the City Community Development Department or designee prior to final acceptance of the improvements. The City shall maintain sidewalks and trails dedicated to the City after Final Acceptance. The Developer shall maintain, repair and replace all sidewalks and trails on the Property other than those dedicated to the City.
- 15.9 Final Plat and As-Built Drawings: All final plat and as-built construction drawings of the Improvements shall be surveyed and submitted in Mylar, print, and digital form (which must conform to the City's format and content requirements).
- 15.10 Management of Storm Water Improvements: Subject to the approved Final Plans, Developer (or its assignees, subject to the advance written approval of the Public Works Director, which may include the Metropolitan District,) shall maintain and keep reasonably free of debris all storm water management improvements constructed as part of each Phase of development as subjected to this Agreement by Developer pursuant to Exhibit "F" (Phasing Plan) in perpetuity, unless and until dedication of same to an appropriate entity. Such dedication shall be subject to the advance written approval of the Public Works Director. The City shall have the right, but not the duty, to inspect storm water improvements at any reasonable time to verify they are in proper working order and reasonably free of debris. Any damage or other defect shall be promptly corrected by Developer (at Developer's expense) and to the satisfaction of the Public Works Director or a designated representative. The Developer shall maintain, repair, replace and operate the Storm Water Improvements.

- 15.11 Non-Potable Water System: Developer and the City agree that each Phase of development subjected to this Agreement from time to time will be served by a non-potable water system for irrigation. The non-potable system shall be installed on (or before) the Estimated Completion Date set forth in the Exhibit "D" (Schedule of Improvements) attached hereto and incorporated herein to this Agreement. Improvements shall be subject to the provisions of this Agreement regarding inspection, testing and acceptance, and shall be subject to a two (2) - year warranty period and maintenance guarantee, as provided in connection with the Improvements. The parties acknowledge that Developer has dedicated 763 EQRs to the City, as outlined on Exhibit I. Of these EQRs, 152 are reserved for non-potable irrigation as outlined in Exhibit K, the Aqua Engineering Outdoor Water Use Analysis. Developer shall cause the system to be engineered, designed and constructed to the standards established by the Municipal Code. The non-potable water system shall be dedicated to the Metropolitan District, or such other entity as the City shall approve in writing. This system shall not be designed for human consumption. Developer or its assigns shall also install non-potable water signs as specified by the City, throughout the Development and around any non-potable irrigation ponds within the Development.
- 15.12 Developer and City have agreed the improvements to oversize the sewer line on 37th Street as shown on the PUD/Site Plan and according to the Final Plans prepared by Northern Engineering are necessary as a benefit to both the City and Developer. Developer and City have agreed that in lieu of a Reimbursement Agreement to cover the additional costs required to upsize and construct these additional 37th Street Sewer Line improvements, the City shall reimburse Developer \$93,740 from the City's Sewer Tap Fees collected at the time of Building Permit issuance for those Building Permits with regard to the 37th Street Sewer Line improvements. This amount will be reimbursed to the Developer by the City once the applicable tap fees collected from building permits issued within the Development reaches the total amount due. Upon the Developer's full construction and the City's initial acceptance of the oversized 37th Street Sewer Line improvements, Developer shall submit a full accounting of the construction and installation of the upsized and upsized and oversized 37th Street Sewer Line improvements to the City. Improvements necessitating closure of 37th Street shall occur during extended periods of time when school is not in session. Any street closure will require prior written approval from the City.
- 15.13 Developer and City have agreed the improvements to oversize the water lines as shown on the PUD/Site Plan and according to the Final Plans prepared by Northern Engineering are necessary as a benefit to both the City and Developer. Developer and City have agreed that in lieu of a Reimbursement Agreement to cover the additional costs required to upsize and construct these additional water line improvements, the City shall reimburse Developer \$177,958 from the City's Water Tap Fees collected at the time of Building Permit issuance for those Building Permits with regard to the water line improvements. This amount will be reimbursed to the Developer by the City once the applicable tap fees collected from building permits issued within the Development reaches the total amount due. Upon the Developer's full construction and the City's initial acceptance of the oversized water line improvements, Developer shall submit a full accounting of the construction and installation of the upsized and upsized and oversized water line improvements to the City.
- 15.14 Arterial Road. Developer will construct all Arterial Roads surrounding the Property as shown on the PUD/Site Plan and according to the Final Plans. Such construction is necessary to serve the Development. Future Final Plans will necessitate additional construction by the Developer along 37th Street in accordance with Freedom Parkway requirements. These improvements shall occur prior to construction commencement in Phase 4. Future Final Plans

will necessitate construction by Developer along 77th Avenue. It is anticipated that construction of the 77th Avenue improvements may be warranted prior to construction of Phase 2. The necessity and timing for when the roadway discussed in this Section 15.14 will be required to be constructed by the Developer will be determined solely by the City in the exercise of its reasonable discretion and consistent with the roadway and development requirements of the City.

15.14.1 Design and construction of the arterial section of 65th Avenue along the property frontage will be completed by Developer during extended periods of time when school is not in session such as summer break. Construction shall not interfere with school-related traffic. Developer will expedite construction and minimize closure time for 65th Avenue and 37th Street. This construction will include transitions to the existing road section north and south of the property as shown on the plans prepared by Northern Engineering dated December 12, 2019. Any street closure will require prior written approval from the City.

Developer and City have agreed the improvements to 65th Avenue as shown on the PUD/Site Plan and according to the Final Plans prepared by Northern Engineering are necessary as a benefit to both the City and Developer. Developer and City have agreed that in lieu of a Reimbursement Agreement to cover the additional costs required to upsize and construct these additional roadway improvements, the City shall reimburse Developer up to \$80,814 from the City's Street Impact Fees collected at the time of Building Permit issuance for those Building Permits with regard to the 65th Avenue improvements. This amount will be reimbursed to the Developer by the City once the impact fees collected from building permits issued within the Development reaches the total amount due. Upon the Developer's full construction and the City's initial acceptance of the oversized street Improvements, Developer shall submit a full accounting of the construction and installation of the upsized and oversized street Improvements to the City

15.14.2 37th Street is a City of Greeley roadway. The developer shall construct 37th Street improvements across the entire frontage of the property before building permits are issued for Phase 4 or before October 1, 2025, whichever comes first. The developer shall be required to design and construct the roadway improvements in accordance with City of Greeley requirements. The improvements shown on the plans prepared by Northern Engineering dated December 12, 2019 were not approved by the City of Greeley. The City of Greeley has required that the Developer and Northern Engineering revise the plans for 37th Street to comply with City of Greeley standards and specifications. No portion of 37th Street will be constructed until the revised plans have been approved by the City of Greeley and the City of Evans.

- 15.15 37th Street Project Entrance and Access Cost Sharing/Reimbursement. The Parties acknowledge that Developer, at the City's request, has incurred significant costs related to the design of roadway connectivity improvements serving certain real property adjacent to and east of the Property consisting of approximately 16 acres (the "16-Acre Parcel") as contained in the final Construction Plans. The 16-Acre Parcel is currently owned by Advantage Bank in Colorado. Future developers of the 16-Acre Parcel may benefit by receiving design and engineering services as part of the Peakview Development for site access to any future development that may occur on the 16-Acre Parcel. Design and engineering works include a) A shared access from 37th Street onto the Peakview property and onto the 16-Acre Property as separate accesses from 37th Street will not be allowed; b)

A roundabout providing access to both the Peakview property and the 16-Acre Property; and
c) A transition lane to be constructed across the frontage of the 16-Acre Property.

The City agrees to notify future developers of the 16-Acre Parcel of this access limitation and to encourage the developers of the 16-Acre Parcel to work with the developers of Peakview to negotiate a reimbursement agreement pursuant to the formula provided in Exhibit M and prepared by Delich Associates, Traffic and Transportation Engineer dated October 11 2018 (see Exhibit M). The share of the 16 Acre Parcel for purposes of reimbursement is hereby deemed to be 27.50% of the total engineering and/or design costs incurred by Developer for same. Current designed improvement costs through preliminary approval associated with the 16 Acre Parcel are \$17,700 based upon Engineering Cost estimates.

Developer shall construct in accordance with approved development plans the roadway and access points, however, the roundabout or future access to the 16 Acre Parcel from Developer's property into the 16 Acre Parcel shall be the sole responsibility of the adjacent property owner.

16. Other Special Provisions: Other special terms, conditions or provisions relating to this Development are set forth in Exhibit "C" (Developer Requirements).

17. Liability:

17.1 Indemnification: To the extent permitted by law, Developer hereby agrees to indemnify and hold the City, City Officials, its employees, agents, representatives, and insurers (collectively, "City Parties") harmless from and against any and all suits, demands, actions, damages, liability, losses, claims, fees, and expenses (including reasonable attorney's fees) resulting or arising in any way from any breach or default of this Agreement or any acts or omissions of the Developer, its employees, agents, consultants, representatives, or subcontractors except to the extent caused by negligence, gross negligence or willful misconduct of the City or one or more City Parties. Developer, using counsel reasonably acceptable to the City, shall promptly investigate, handle, respond to and provide defense for and defend against any such liability, claims, or demands at the sole expense of Developer. Developer also agrees to bear all reasonable costs, expenses, and attorney's fees related thereto whether or not such liability, claims or demands are groundless, false or fraudulent unless they are caused by negligence, gross negligence or willful misconduct of the City or one or more of its officers, agents or employees. Further, the City shall promptly provide written notice to Developer of any suit or claim that, in the City's reasonable opinion, may or would trigger the obligations of Developer to indemnify or hold the City harmless under this Sub-Section 17.1.

17.2 Insurance: Developer shall (for itself and for its contractors, subcontractors, representatives and agents engaged in the design, construction, or installation of Improvements) maintain such liability insurance including general liability, contractors liability, professional liability for those professionals performing professional services pursuant to this Development Agreement and subcontracts intended to perform requirements hereof, comprehensive automobile liability, worker's compensation insurance and sufficient public liability insurance as will protect the City, City Officials, City's employees, agents and representatives against any and all potential liability, claims, damage, demands, losses and expenses, that may be incurred or asserted pursuant to Sub-Section 17.1 above. Liability

insurance shall be in the minimum amount of three hundred thirty thousand dollars (\$330,000.00) for injury to one person, or nine hundred ninety-thousand dollars (\$990,000.00) for injury to two or more persons in any single occurrence, or such greater amounts as may be established by the Colorado Governmental Immunity Act, as it may be amended. Whenever reasonably requested by City or City Officials, the Developer agrees to submit certificates of insurance evidencing sufficient amounts, types and duration of insurance and which show the City, City Officials, its employees, agents, and representatives as additional insureds. Developer shall not be relieved of any liability, claims, demands or other obligations assumed or set forth in this Agreement by reason of its failure to procure or maintain such insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.

- 17.3 Drainage Liability: To the extent permitted by law, Developer shall indemnify and hold the City harmless from any liability the City may have on account of any change in the nature, direction, quantity or quality of drainage flow, resulting from the Development, in accordance with the provisions of Sub-Section 17.1 herein above. In addition, Developer shall reimburse the City for any and all costs, fees, and expenses, including reasonable attorney's fees, that the City incurs in acquiring any rights of way or easements that the City deems necessary or is required to acquire or condemn or that the City is held to have acquired or condemned for drainage or as a result of or relating in any manner to the Development. Prior to the City commencing or defending any litigation related to these easements, rights of way or condemnation, the City shall obtain the written consent of the Developer, which consent shall not be unreasonably withheld or delayed. Further, the City shall promptly provide written notice to Developer of any suit or claim that, in the City's reasonable opinion, would trigger the obligations of Developer under this Section 17.3.
- 17.4 Tax Liability: Developer shall pay any outstanding taxes, encumbrances or obligations on any property dedicated or conveyed to the City prior to or at the time of such dedication or conveyance, and shall indemnify and hold the City harmless from any and all encumbrances, obligations, or tax liability incurred prior to the dedication or conveyance to the City. Any use tax due for construction materials shall be paid prior to construction of any improvements on the Property. The City shall promptly provide written notice to Developer of any suit or claim that, in the City's reasonable opinion, may or would trigger the obligations of Developer to indemnify or hold the City harmless under this Sub-Section 17.4.
- 17.5 Use Tax: Any and all use tax due on construction and building materials for public facilities shall be paid as provided under Municipal Code including but not limited to Section 3.04.200.
- 17.6 Cost Reimbursement to City: Developer shall reimburse City for all reasonable costs incurred for professional consultants including but not limited to engineers, testing companies, contractors, and attorneys reasonably used by the City in connection with the preparation or implementation of this Agreement and in the review and processing of the Application, as well as the design, construction, review, testing, completion, repair, replacement, and approval of the Development. Any request for reimbursement shall be made in writing within six (6) months following the completion of the Phase of Development in which the asserted costs were incurred.

18. Breach of Agreement by Developer: If at any time this Agreement (or any part hereof) has been breached by Developer or if Developer has failed to make satisfactory progress (substantially in accordance with Exhibit "D" (Schedule of Improvements) on the design, construction, installation, repair, replacement

or maintenance of the Improvements the City may, after 30 days' prior written notice to Developer or such additional period as may reasonably be agreed to by the City in writing in light of the nature of the alleged breach, draw on the Performance Guarantee or Maintenance Guarantee and the City may withhold approval of any or all building permits, certificates of occupancy, water meters, or tap hook-ups for any area within the Development, or other approvals or permits, if Developer then fails to make reasonable progress as reasonably determined by the City, unless such failure is caused by circumstances which are outside the Developer's reasonable control, meaning that such circumstance is a result of an act of god (including fire, flood, earthquake, or other natural disaster) regionally recognized shortage of materials, strike, lockout or interruption of utility service or Force Majeure. Notwithstanding these rights and remedies, the City may pursue whatever additional remedies it may have against Developer or anyone, either at law, equity, or pursuant to this Agreement. The City's remedies shall be cumulative.

19. Breach of Agreement by City: If at any time the Developer believes the City is in breach of this Agreement, the Developer shall provide the City with 20 days' prior written notice before pursuing any of the remedies set forth in this Section 19. In the event the City fails to remedy the alleged breach within such 20 days or such additional period as may be necessary in light of the nature of the alleged breach, then the Developer's remedies are limited to specific performance of this Agreement and shall not include any claim for damages, unless Developer suffers damages caused by the gross negligence or willful misconduct of the City or one or more City Parties, in which case Developer may pursue all rights and remedies available at law or in equity based on such gross negligence or willful misconduct.

20. No Waiver: Delays by a Party in enforcement or the waiver of any one or more breaches of this Development Agreement shall not constitute a waiver of any of the remaining terms or obligations or any future breaches. In addition, the parties acknowledge that the City is a Colorado home rule municipality and entitled to the protections afforded by the Colorado Governmental Immunity Act (CGIA), Sections 24-10-101, et seq., C.R.S. Any provision of this Agreement to the contrary notwithstanding, the City does not waive any of the rights, protections or immunities afforded to it by the CGIA.

21. Severability: If any provisions or parts of this Development Agreement are judged to be unenforceable or invalid, to the extent practicable, such judgment shall not affect, impair, or invalidate the remaining parts of this Agreement, the intention being that the various parts and provisions hereof are severable.

22. Recording of Agreement and Encumbrance on the Property: This Development Agreement shall be recorded with the Weld County Clerk and Recorder at Developer's expense and shall be a covenant running with and against all the Property, property rights, and improvements contained within the Development in order to put prospective owners, purchasers, successors, assigns, and others acquiring any interest in the Property on notice as to the terms and obligations herein.

23. Binding Effect: Unless otherwise provided herein, this Development Agreement shall be binding upon each Party's heirs, successors, assigns, transferees, and any other person or entity acquiring or purchasing any interest in any part of the Property.

24. Transfer or Assignments: In the event of a sale or transfer of any portion of the Property, the seller or transferor and the purchaser or transferee shall be jointly and severally liable for the performance of each of the obligations contained in this Development Agreement unless, prior to the transfer or the sale, a written Agreement delineating and allocating the various rights and obligations for the Improvements, has been approved and executed by the City Council. Notwithstanding anything herein to the contrary, Developer shall have the right to transfer and/or assign its rights and interests in this Agreement to any entity that

controls, is controlled by, or is under common control with Developer without the approval of the City or City Council, provided the City is given written notice within 30 days of such transfer.

25. Title and Authority: Developer expressly warrants and represents to the City that, as of the Effective Date, Solstice Holdings LLC, an affiliate of Developer, is the record owner of the Property and further represents and warrants that the undersigned has full power and authority to enter into this Development Agreement. Developer understands that the City is relying on the representations and warranties contained herein, in its consideration of the application and in entering into this Agreement.

26. Notice: Any notice to Developer or the City, which may be given under the terms of this Agreement, shall be in writing and shall be deemed sufficiently given on the fifth (5th) day following the date such notice is sent by certified or registered U.S. Mail, postage prepaid, return receipt requested, or as of the immediately following business day after deposit with Federal Express or a similar overnight courier service that provides evidence of receipt, addressed as follows:

TO CITY:

Attention: City Manager
1100 37th Street
Evans, CO 80620-2036

With a copy to

Scotty P. Krob

Krob Law Office LLC
8400 E. Prentice Ave, Penthouse
Greenwood Village, CO 80111

TO DEVELOPER:

Solstice Holdings LLC
c/o ROI Dev Canada Inc.
Sherbrooke West, Suite 1430
Montreal (Quebec) H3A 3L6 Canada
Attention: M. Scott Vayer, Manager

With a copy to:

Spencer Fane, LLP
1700 Lincoln Street, Suite 2000
Denver, Colorado 80203
Attention: David O'Leary

With a copy, VIA EMAIL ONLY, to:

Marc-André Lévesque

Email: malevesque@roilandinvestments.com

Phone: 303-918-7918

Any party may change its notice address by providing the other party(ies) notice as set forth in this section.

27. Force Majeure: Whenever a period of time is herein prescribed for an action to be taken or performed by any Party, that Party will not be liable to so perform within such time period due to, and there will be excluded from the computation of such period of time, any delays due to, strikes, riots, acts of God, shortages of labor and materials, war, governmental laws, regulations or restriction or any other cause of any kind whatsoever which are beyond the reasonable control of the Party required to take or perform such action.

28. Recitals: The recitals to this Agreement are true and correct and are hereby incorporated into this Agreement by this reference.

29. Conflicting Terms: If and to the extent any of the terms or descriptions of the Improvements described in this Agreement shall conflict with the Plans and Specifications attached and made a part of Exhibit C and Exhibit D, the City-approved Plans and Specifications shall control.

30. Dispute Resolution: If a dispute arises relating to this Agreement and is not resolved, the parties shall first proceed in good faith to submit the matter to mediation before a mutually acceptable mediator with experience in real estate development in the greater Denver, Colorado metropolitan area. The parties will jointly appoint an acceptable mediator and will share equally in the cost of such mediation. In the event the dispute is not resolved within ninety (90) calendar days from the date written notice requesting mediation is sent by one of the parties to the other(s), the mediation, unless otherwise agreed, shall terminate.

(No Further Information This Page)

IN WITNESS WHEREOF, and agreeing to be fully bound by the terms of this PUD Development Agreement, the parties have set their hands below on this ___ day of _____, 2020.

SOLSTICE DEVELOPMENT LLC (DEVELOPER)

By: [Signature] _____ Title Manager _____ Date August 21, 2020 _____

ATTEST:

Secretary/Member _____ Date _____

STATE OF ~~COLORADO~~ NEW YORK

COUNTY OF BRONX ss. SUBSCRIBED AND SWORN to before me this 21st day of AUGUST, 2020 by

M. SCOTT VAYER _____

MARIA D BLONDETT
Notary Public, State of New York
No. 01BL6288407
Qualified in Bronx County
Commission Expires February 6, 2022

WITNESS my hand and official seal.

My commission expires: February 6, 2022 [Signature]
Notary Public

(SEAL)

SOLSTICE HOLDINGS LLC (PROPERTY OWNER)

By: [Signature] _____ Title Manager _____ Date August 21, 2020 _____

ATTEST:

Secretary/Member _____ Date _____

STATE OF ~~COLORADO~~ NEW YORK

COUNTY OF BRONX ss. SUBSCRIBED AND SWORN to before me this 21st day of AUGUST, 2020 by

M. SCOTT VAYER _____

WITNESS my hand and official seal.

My commission expires: FEBRUARY 6, 2022

Maria D. Blondett

Notary Public

(SEAL)

MARIA D BLONDETT
Notary Public, State of New York
No. 01BL6288407
Qualified in Bronx County
Commission Expires February 6, 2022

CITY OF EVANS, COLORADO
A Municipal Corporation

By: _____
Mayor

ATTEST:

By: _____
City Clerk

**Development Agreement
Peakview Estates
List of Exhibits**

- EXHIBIT A: Legal Description**
- EXHIBIT B: PUD/Site Plan**
- EXHIBIT C: Developer Requirements and Additional Terms, Conditions, or Provisions**
- EXHIBIT C-1: Improvements Map**
- EXHIBIT C-2: City Public Improvements and Engineer's Cost Estimate**
- EXHIBIT C-3: Metropolitan District Improvements and Engineer's Cost Certificate**
- EXHIBIT D: Schedule of Improvements**
- EXHIBIT D-1: Form of Certificate of Initial Completion**
- EXHIBIT D-2: Form of Certificate of Completion**
- EXHIBIT D-3: Commitment for Title Insurance**
- EXHIBIT E: Irrevocable Letter of Credit**
- EXHIBIT F: Phasing Plan**
- EXHIBIT G: Performance Guarantee**
- EXHIBIT H: Peakview Non Potable Water Operations**
- EXHIBIT I: Peakview Analysis of Equivalent Residential Units (EQRs)**
- EXHIBIT J: Ashcroft Draw Sanitary Sewer Reimbursement Agreement**
- EXHIBIT K: Aqua Engineering Outdoor Water Use Analysis dated August 10, 2018**
- EXHIBIT L: Peakview Development Guidelines prepared by LAI Design Group dated November 15, 2019**
- EXHIBIT M: Letter regarding proportionate share of the 37th Street Access and the Peakview Transportation Impact Study dated September, 2018, both prepared by Delich and Associates**

EXHIBIT A
LEGAL DESCRIPTION
(See following pages)

Peakview Subdivision Legal Description

A parcel of land being a part of the Northwest Quarter (NW1/4) and the Southwest Quarter (SW1/4) of Section 28, Township 5 North, Range 66 West of the 6th P.M., City of Evans, County of Weld, State of Colorado more particularly described as follows:

COMMENCING at the Northwest Corner of said Section 28 and assuming the North line of the Northwest Quarter (NW1/4) to bear North 89°31'10" East, a grid bearing of the Colorado State Plane Coordinate System, North Zone, North American Datum 1983/92, a distance of 2630.69 feet with all other bearings herein relative thereto;

THENCE South 00°00'23" West along the West line of the Northwest Quarter (NW1/4) of said Section 28 a distance of 1300.00 feet to the POINT OF BEGINNING;

THENCE North 87°18'20" East a distance of 5.50 feet;

THENCE North 85°13'21" East a distance of 96.84 feet;

THENCE South 27°27'44" East a distance of 242.29 feet;

THENCE South 67°07'10" East a distance of 57.18 feet;

THENCE South 89°36'33" East a distance of 149.42 feet;

THENCE South 81°22'04" East a distance of 17.54 feet;

THENCE South 70°20'32" East a distance of 15.18 feet;

THENCE South 89°24'31" East a distance of 54.03 feet;

THENCE North 87°48'26" East a distance of 458.26 feet;

THENCE North 88°16'13" East a distance of 458.19 feet;

THENCE North 87°51'08" East a distance of 396.99 feet;

THENCE South 86°26'03" East a distance of 219.45 feet;

THENCE South 87°36'34" East a distance of 233.89 feet;

THENCE South 76°40'27" East a distance of 81.06 feet;

THENCE South 55°55'55" East a distance of 124.97 feet;

THENCE South 49°40'47" East a distance of 82.48 feet;

THENCE South 65°54'17" East a distance of 62.19 feet;

THENCE South 81°05'34" East a distance of 64.18 feet; to the East line of the Northwest Quarter (NW1/4) of said Section 28;

THENCE South 00°03'05" East along the East line of the Northwest Quarter (NW1/4) of said Section 28 a distance of 925.43 feet to the South line of the Northwest Quarter (NW1/4) of said Section 28;

THENCE South 00°04'21" East along the East line of the Southwest Quarter (SW1/4) of said Section 28 a distance of 43.09 feet to the South line of a parcel of land described in Reception No. 3040268 of the Records of Weld County;

THENCE South 89°38'54" West along the South line of said parcel of land a distance of 941.80 feet;

THENCE North 43°27'30" West along the Westerly line of said parcel of land described in Reception No. 3040268 a distance of 59.04 feet to the South line of the Northwest Quarter (NW1/4) of said Section 28 and the Southeast Corner of a parcel of land described in Reception No. 3040269 of the Records of Weld County;

THENCE North 43°27'30" West along the Easterly line of said parcel of land described in Reception No. 3040269 a distance of 28.42 feet to the North line of said parcel of land;

THENCE South 89°58'24" West along the North line of said parcel of land described in Reception No. 3040269 a distance of 1631.39 feet to the West line of the Northwest Quarter (NW1/4) of said Section 28;

THENCE North 00°00'23" East along the West line of the Northwest Quarter (NW1/4) a distance of 1304.36 feet to the POINT OF BEGINNING.

TOGETHER WITH

The Northeast Quarter (NE1/4) of Section 29, Township 5 North, Range 66 West of the 6th P.M., in the City of Evans, County of Weld, State of Colorado.

AND EXCEPTING THEREFROM parcels of land conveyed by instruments recorded in Book 114 at Page 124, and in Book 1557 as Reception No. 2502153, both of the Records of Weld County.

Containing 225.72 acres more or less

EXHIBIT B
PUD/SITE PLAN
(See following page)

The Final Plat has been recorded at Reception _____ with the Weld County Clerk and Recorder's office.

EXHIBIT C
DEVELOPER REQUIREMENTS AND ENGINEER'S COST ESTIMATES

1. Traffic Study: Developer shall comply with all requirements of the City approved Traffic Impact Study.
2. Engineering Plans: City Approved Final engineering Plans and Specifications shall be followed during construction of the project. Any revisions to the plans resulting in substantive changes to design concepts shall be submitted to the City for determination of need for revised City approval. Revisions deemed minor shall be noted on the contractor redlines and depicted on final project record drawings for the associated phase of construction.
3. Water and Sewer Lines: All water and sewer lines shown on the City approved construction drawings shall be installed with associated phases and documented on phased record drawings prior to issuance of Initial acceptance.
4. Drainage Design: Developer shall comply with all requirements of the City approved Final Drainage Report
5. Easements and Rights-of-Way: All Public Easements and Rights of way within the site as shown on Exhibit "B" (PUD/Site Plan) shall be dedicated to the City of Evans by execution of the subdivision plat. All Public Easements and Rights of way along 37th Street and 77th Avenue shall be dedicated to the City of Greeley by execution of the subdivision plat.
6. Description of Improvements, all as set forth on the approved Plans and Specifications, inclusive of those Improvements contained in Section 15 of this Agreement:
 - Landscaping
 - Parks
 - Trails
 - Sidewalks
 - Streets and Drives
 - Streetlights
 - Development Signage – monument and street signs, traffic control signs, for example
 - Sanitary Sewer
 - Subsurface drainage facilities.
 - Water Utilities
 - Stormwater Drainage Facilities
 - Internal Streets
 - Irrigation & Non-Potable Water Lines, Water
 - Irrigation and Ditch piping
 - Improvements to 65th Avenue
 - Improvements to 37th Street
 - Improvements to 77th Avenue
 - Participation in a proportionate share agreement for lighted intersection at 37th and 77th
 - Internal School Bus Stops and Mail Box locations
 - Community Center
 - Commercial Parking lot

See Exhibits C-1, C-2 and C-3 for additional information on the Improvements.

7. Additional Terms, Conditions or Provisions:

7.1 Developer shall provide surety for adequate facilities according to the requirements within the City Code and approved by this Final Plat and associated approved Construction Plans. The Performance Guarantee shall be provided prior to commencement of work on the Property. The Maintenance and Warranty Guarantee shall be provided at the time of Initial Acceptance.

EXHIBIT C-1
Improvements Map

(The improvements maps can be found by reviewing the landscaping plans of LAI dated November 20, 2019, irrigation plans provided by Aqua Engineering dated December 12, 2019, and construction plans provided by Northern Engineering dated December 12, 2019 – on file with the City)

EXHIBIT C-2
Improvements to be conveyed to City
and
Engineer's Cost Estimate

PART I: LIST OF PUBLIC IMPROVEMENTS TO BE DEDICATED TO CITY

(Describe type of Public Improvement and whether construction will be by Developer or District--it is the intent of the Developer to enter into an agreement with the Metropolitan District, which may change this designation of Constructor from Developer to Metropolitan District. In the event such a change takes place, the Developer will notify the City in writing of such change).

IMPROVEMENT	CONSTRUCTOR	TIMING
Potable Water Improvements	Developer	Following Gravity Sewer and installed per phase
Street Improvements On-Site	Developer	Following wet utility installation per phase
37 th Street Improvements	Developer	Prior to construction of Phase 4
65 th Avenue Improvements	Developer	During onsite street installation Phase 1A
77 th Avenue Improvements	Developer	Prior to construction of Phase 2
Traffic Signal Improvements at the intersection of 37 th Street and 77 th Avenue	Greeley	Installed by others with financial participation from the developer only (the Developer share is anticipated to be paid in 2021 depending upon completion of development phases).
Right of Way Storm Drainage Improvements as shown on Improvements Map at Ex. C-1	Developer	Following sanitary sewer installation and installed per phase
Sanitary Sewer Improvements	Developer	Following overlot grading and installed per phase

PART II: ENGINEER'S COST ESTIMATES: See engineer's estimates included with Exhibit C-3

PART III: ANY SPECIAL PROVISIONS REGARDING TIMING, FEES, DESIGN, OR OPERATIONS WITH RESPECT TO ANY PUBLIC IMPROVEMENT

1. **Potable and Non-Potable Water Improvements.** The Developer will provide potable water and dedication of raw water rights including any credits for provision of a non-potable water system shall be in accordance with applicable rules and regulations as contained in Exhibits H and I. Upon completion of the installation of the potable water Improvements and upon initial acceptance by the City, the potable water improvements shall be conveyed by Developer to the Metropolitan District, which in turn shall immediately convey the potable water Improvements to the City for ownership, operations and maintenance.

2. **Street Improvements.** Upon completion of the installation of the Street Improvements and upon initial acceptance by the City, all Street Improvements shall be conveyed by Developer to the Metropolitan District, which in turn shall immediately convey said Street Improvements to the City for ownership, operations and maintenance.

Developer shall be responsible for maintaining the construction elements within the roadways until the same are accepted by the City, and during the warranty period unless otherwise agreed and approved by the City.

3. **Traffic Signal Improvements.** Developer's financial participation will be based on a proportionate share of the development's impact to the intersection at 37th Avenue and 77th Street. The proportionate share of traffic at the intersection that can be attributed to the development has been determined by current traffic counts and is estimated to be \$270,000.00 to be paid prior to issuance of the first Building Permit in Phase 1B.

4. **Storm Drainage Improvements.** Upon completion of the installation of the Storm Drainage Improvements and upon initial acceptance by the City, only the Storm Drainage Improvements as shown on Exhibit C-1 shall be conveyed by Developer to the Metropolitan District, which in turn shall immediately convey the Storm Drainage Improvements to the City for ownership. Developer, or if consented to by the City in writing, the Metropolitan District, shall remain responsible for , operations and maintenance, repair and replacement until successful completion of the two-year warranty period. City will only be conveyed the hard surfaces of Storm Drainage Improvements. All soft-surface drainage facilities shall be owned and maintained by the Developer or the Metropolitan District as may be agreed to in writing by the City.

EXHIBIT C-3
Improvements that may be conveyed to District
and
Engineer’s Cost Estimate

PART I: LIST OF PUBLIC IMPROVEMENTS TO BE DEDICATED TO METROPOLITAN DISTRICT (Describe type of Public Improvement and whether construction will be by Developer or District--it is the intent of the Developer to enter into an agreement with the Metropolitan District, which may change this designation of Constructor from Developer to Metropolitan District. In the event such a change takes place, the Developer will notify the City in writing of such change). Note that improvements within the public right-of-way which have been accepted for dedicated to the City will be the City’s responsibility to maintain after the warranty period has expired. Improvements outside the public right-of-way which have are the maintenance responsibility of either Developer or Metro District.

IMPROVEMENT	CONSTRUCTED BY
Storm Drainage Improvements as shown Utility Plans	Developer
Landscape Improvements	Developer
Non-potable Water Improvements	Developer

PART II: ENGINEER'S COST ESTIMATES: See engineer’s estimates included with Exhibit C

PART III: ANY SPECIAL PROVISIONS REGARDING TIMING, FEES, DESIGN, OR OPERATIONS WITH RESPECT TO ANY PUBLIC IMPROVEMENT

1. **Storm Drainage Improvements.** Upon completion of the installation of the Storm Drainage Improvements and upon initial acceptance by the City, hard surfaces of the Storm Drainage Improvements as shown on Exhibit C-1 shall be conveyed by Developer to the Metropolitan District, which in turn shall immediately convey the hard surfaces of the Storm Drainage Improvements to the City for ownership, operations and maintenance. City will only be conveyed the hard surface drainage facilities of the Storm Drainage Improvements. All soft-surface drainage facilities shall be conveyed by Developer to the Metropolitan District and all such soft-surface drainage facilities shall be owned and maintained by the Metropolitan District.

2. **Landscape Improvements.** Upon completion of the installation of the Landscape Improvements and upon Initial Acceptance by the City, all Landscape Improvements may be conveyed by Developer to the Metropolitan District for ownership, operations maintenance, repair and replacement if such conveyance is approved in writing by the City.

3. **Non-potable Water Improvements.** Non-potable water improvements shall provide a system to provide irrigation water service to individual lots and landscaped areas within the Property as set forth in the PUD/Site Plan. Upon completion of the installation of the Non-potable Water Improvements and upon Initial Acceptance by the Metropolitan District, all Non-potable Water Improvements may be conveyed by Developer to the Metropolitan District for ownership, operations, maintenance, repair and replacement if such conveyance is approved in writing by the City.

EXHIBIT D
SCHEDULE OF IMPROVEMENTS
(See the following page)

The following is a draft only and remains subject to change by Developer with acceptance by the City.
Developer to provide timing of all on-site and off-site improvements – attached or incorporate here.

PEAKVIEW CONSTRUCTION PRELIMINARY SCHEDULE

	<u>Start</u>	<u>Finish</u>
Offsite improvements phase 1A: Sewer Water 37 th St Demo 65 th Ave Curb Gutter Paving	March 2021	Jun 2021
Offsite improvements phase 1B: Sewer 37 th St 37 th St turn lanes: Demo Earthwork Curb Gutter Paving	Jun 2022	Sep 2022
Offsite improvements phase 2: Connect to Two Rivers Parkway	Jun 2023	Apr 2023
Offsite improvements phase 3-4: Two Rivers Parkway Access 37 th St access	Jun 2025	Sept 2025
Onsite improvements phase 1A:	Jun 2021	Dec 2021
Onsite Improvements Phase 1B:	Jun 2022	Dec 2022
Onsite improvements Phase 2:	Jun 2023	Jun 2024
Onsite improvements Phase 3-4:	Jun 2025	Dec 2025

***: Subject to financing in place and home builders contracts signed.

EXHIBIT D-1
FORM OF CERTIFICATE OF INITIAL COMPLETION

[Date]

[Name]
[Address]
[Address]
[Address]

Re: Two Year Warranty Commencement—[Name of Project]

Dear []:

This letter will serve as notice of the Initial Acceptance and the commencement of the two (2) year warranty period for public improvements specifically related to the [] Project. All items detailed in the public improvements plan and the development agreement associated with [] Project have been satisfactorily completed and confirmed with an initial acceptance walkthrough. The warranty period begins effective the date of this letter. The City's initial acceptance is based on the representations of the Developer and the Developer's engineer that all of the improvements have been constructed of acceptable materials, in a workmanlike manner, and in substantial conformance with all applicable Plans and Specifications, rules, regulations, and laws. The City's acceptance of the improvements does not relieve Developer of its obligations to design and construct the improvements in a manner that substantially complies with all applicable drawings, rules, regulations, and professional standards.

When the two (2) year warranty period is nearing completion, a final acceptance walkthrough will be conducted and a punch-list of damaged improvements will be documented and provided to you. Until the warranty period is complete, it will be the responsibility of [Name of Contractor/ Developer] to repair or replace any damaged or defective improvements as per the contract documents and the development agreement associated with [] Project. Once the final punch list items have been completed satisfactorily and the two year period has expired for all Improvements, including any that were repaired or replaced during the tow year warranty period, City staff will prepare, a final letter accepting full responsibility for perpetual maintenance of the public improvements.

The City thanks you for your hard work and time in making this project a success. If you have any questions and/or concerns, please call me at (970) 475-1110.

Sincerely,

Mark Oberschmidt, P.E.
City Engineer

cc: File

EXHIBIT D-2
FORM OF CERTIFICATE OF COMPLETION

[Date]

[Name]
[Address]
[Address]
[Address]

Re: Final Acceptance Letter—[Name of Project]

Dear []:

This letter serves as notice of the end of the two (2) year warranty of public improvements specifically related to the [_____] Project and the City's acceptance of the public improvements within the [_____] Project limits. All items detailed in the public improvements plans and the development agreement associated with [_____] Project have been satisfactorily completed and confirmed with a final acceptance walkthrough on [_____]. The City's acceptance is based on the representations of the Developer and the Developer's engineer that all of the improvements have been constructed of acceptable materials, in a workmanlike manner, and in substantial conformance with all applicable Plans and Specifications, rules, regulations, and laws and have operative without defect or failure for at least two years. The City's acceptance of the improvements does not relieve Developer of its obligations to design and construct the improvements in a manner that substantially complies with all applicable drawings, rules, regulations, and professional standards.

The City thanks you for your hard work and time in making this project a success. If you have any questions and/or concerns, please call me at (970) 475-1110.

Sincerely,

Mark Oberschmidt, P.E.
City Engineer

cc: File

EXHIBIT D-3
COMMITMENT FOR TITLE INSURANCE

Unified Title Company of Northern Colorado, LLC
1275 58th Avenue, Unit C
Greeley, CO 80634
Phone: 970-356-3551
Fax: 970-356-2063

Transmittal Information

Date: 12/18/2019
File No: 18717UTG
Property Address: 7090 West 37th Street, Evans, CO 80620
Buyer\Borrower: Solstice Holdings LLC, a Colorado limited liability company
Seller:

For changes and updates please contact your Escrow officer(s):

Escrow Officer: Not Applicable Unified Title Company of Northern Colorado, LLC 1275 58th Avenue, Unit C Greeley, CO 80634 Phone: 970-356-3551 Direct Phone: Fax: 970-356-2063 Email:	Title Officer: Melissa Scherer Unified Title Company of Northern Colorado, LLC 1275 58th Avenue, Unit C Greeley, CO 80634 Phone: 970-356-3551 Fax: 970-356-2063 Email: mscherer@unifiedtitle.com
---	--

Escrow Processor:

E-Mail:
Direct Phone:

Copies Sent to:

Customer:
ROI Land Investments, LTD.
1002 Sherbrooke West, Suite 1430
Montréal, Québec, Canada, H3A 3L6
Phone: 303-918-7918 Fax:
Attn:

Buyer:
Solstice Holdings LLC, a Colorado limited liability
company

Seller:

DELIVERED VIA: AGENT

Buyer's Agent:

Seller's Agent:

Buyer's Attorney:

Seller's Attorney:

Lender:

Mortgage Broker:

**Phone: Fax:
Attn:**

**Phone: Fax:
Attn:**

Other:

**ROI Land Investments, LTD.
45 Rockefeller Plaza, 20th FL, Office #87
New York, NY 10111
Phone: 303-918-7918
Attn: Marc-André Lévesque
DELIVERED VIA: E-MAIL**

COMMITMENT FOR TITLE INSURANCE

Issued by

Westcor Land Title Insurance Company

SCHEDULE A

1. Effective Date: **December 11, 2019, 8:00 am**

2. Policy to be issued:

(a) 2006 ALTA® Owner's Policy

Proposed Insured:

Proposed Policy Amount:

(b) 2006 ALTA® Loan Policy

Proposed Insured:

Proposed Policy Amount:

<u>Working Commitment Search End</u>	\$	250.00
Total:	\$	250.00

3. The estate or interest in the land described or referred to in this Commitment is **Fee Simple**.

4. The Title is, at the Commitment Date, vested in:
Solstice Holdings LLC, a Colorado limited liability company

5. The land referred to in this Commitment is described as follows:
SEE ATTACHED EXHIBIT "A"

For Informational Purposes Only: **7090 West 37th Street, Evans, CO 80620**

Countersigned

Unified Title Company of Northern Colorado, LLC

By: *Melissa Scherer*
Melissa Scherer

EXHIBIT "A"

A parcel of land being a part of the Northwest Quarter (NW ¹/₄) and the Southwest Quarter (SW ¹/₄) of Section 28, Township 5 North, Range 66 West of the 6th P.M., City of Evans, County of Weld, State of Colorado, more particularly described as follows:

COMMENCING at the Northwest Corner of said Section 28 and assuming the North line of the Northwest Quarter (NW ¹/₄) to bear North 89°31'10" East, a grid bearing of the Colorado State Plane Coordinate System, North Zone, North American Datum 1983/92, a distance of 2,630.69 feet with all other bearings herein relative thereto;

THENCE South 00°00'23" West along the West line of the Northwest Quarter (NW ¹/₄) of said Section 28 a distance of 1300.00 feet to the TRUE POINT OF BEGINNING;

THENCE North 87°18'20" East a distance of 5.50 feet;

THENCE North 85°13'21" East a distance of 96.84 feet;

THENCE South 27°27'44" East a distance of 242.29 feet;

THENCE South 67°07'10" East a distance of 57.18 feet;

THENCE South 89°36'33" East a distance of 149.42 feet;

THENCE South 81°22'04" East a distance of 17.54 feet;

THENCE South 70°20'32" East a distance of 15.18 feet;

THENCE South 89°24'31" East a distance of 54.03 feet;

THENCE North 87°48'26" East a distance of 458.26 feet;

THENCE North 88°16'13" East a distance of 458.19 feet;

THENCE North 87°51'08" East a distance of 396.99 feet;

THENCE South 86°26'03" East a distance of 219.45 feet;

THENCE South 87°36'34" East a distance of 233.89 feet;

THENCE South 76°40'27" East a distance of 81.06 feet;

THENCE South 55°55'55" East a distance of 124.97 feet;

THENCE South 49°40'47" East a distance of 82.48 feet;

THENCE South 65°54'17" East a distance of 62.19 feet;

THENCE South 81°05'34" East a distance of 64.18 feet to the East line of the Northwest Quarter (NW ¹/₄) of said Section 28;

THENCE South 00°03'05" East along the East line of the Northwest Quarter (NW ¹/₄) of said Section 28 a distance of 925.43 feet to the South line of the Northwest Quarter (NW ¹/₄) of said Section 28;

THENCE South 00°04'21" East along the East line of the Southwest Quarter (SW ¹/₄) of said Section 28 a distance of 43.09 feet to the South line of a parcel of land described in [Reception No. 3040268](#) of the Records of Weld County;

THENCE South 89°38'54" West along the South line of said parcel of land a distance of 941.80 feet;

THENCE North 43°27'30" West along the Westerly line of said parcel of land described in [Reception No. 3040268](#) a distance of 59.04 feet to the South line of the Northwest Quarter (NW ¹/₄) of said Section 28 and the Southeast Corner of a parcel of land described in [Reception No. 3040269](#) of the Records of Weld County;

THENCE North 43°27'30" West along the Easterly line of said parcel of land described in [Reception No. 3040269](#) a distance of 28.42 feet to the North line of said parcel of land;

THENCE South 89°58'24" West along the North line of said parcel of land described in [Reception No. 3040269](#) a distance of 1631.39 feet to the West line of the (NW ¹/₄) of said Section 28;

THENCE North 00°00'23" East along the West line of the Northwest Quarter (NW ¹/₄) a distance of 1304.36 feet to the POINT OF BEGINNING.

AND

The Northeast Quarter (NE ¹/₄) of Section 29, Township 5 North, Range 66 West of the 6th P.M., in the City of Evans, County of Weld, State of Colorado. EXCEPTING THEREFROM parcels of land conveyed by instruments recorded in [Book 114 at Page 124](#), in [Book 258 at Page 186](#) and in [Book 1557 as Reception No. 2502153](#).

AND

A one hundred (100) foot strip or parcel of land, being fifty (50) feet on each side of the center line as surveyed through the property beginning at a point on the north line of the property above mentioned 1202 feet more or less from the north west corner of the said property and continuing on a two degree curve to the left 1040 feet to a point; thence south 22 degrees 47 minutes west to the east line at a point 552 feet more or less from the southwest corner of said property with the privilege of re-locating said center line fifty (50) feet to one or the other side of said above described center line, in the NE 1/4 of Section 29, Township 5 North, Range 66 West of the 6th P.M., County of Weld, State of Colorado.

COMMITMENT FOR TITLE INSURANCE

Issued by

Westcor Land Title Insurance Company

SCHEDULE B, PART I Requirements

Effective Date: December 11, 2019 at 8:00am

The following are the requirements to be complied with prior to the issuance of said policy or policies. Any other instrument recorded subsequent to the effective date hereof may appear as an exception under Schedule B of the policy to be issued. Unless otherwise noted, all documents must be recorded in the office of the clerk and recorded of the county in which said property is located.

All of the following Requirements must be met:

1. The Proposed Insured must notify the Company in writing of the name of any party not referred to in this Commitment who will obtain an interest in the Land or who will make a loan on the Land. The Company may then make additional Requirements or Exceptions.
2. Pay the agreed amount for the estate or interest to be insured.
3. Pay the premiums, fees, and charges for the Policy to the Company.
4. Documents satisfactory to the Company that convey the Title or create the Mortgage to be insured, or both, must be properly authorized, executed, delivered, and recorded in the Public Records.

NOTE: This commitment has been issued for information purposes only and there are no requirements. The liability of the Company in terms of this Commitment is limited to the charges paid for the Commitment.

FOR INFORMATIONAL PURPOSES ONLY:

24-month Chain of Title: The only conveyance(s) affecting said land recorded within the 24 months preceding the date of this commitment is (are) as follows:

Deed recorded February 15, 2019 as [Reception No. 4467243](#).

Deed recorded August 14, 2015 as [Reception No. 4130762](#).

Deed recorded June 10, 2015 as [Reception No. 4114851](#).

NOTE: If no conveyances were found in that 24 month period, the last recorded conveyance is reported. If the subject land is a lot in a subdivision plat less than 24 months old, only the conveyances subsequent to the plat are reported.

Westcor Land Title Insurance Company

Westcor Land Title Insurance Company

SCHEDULE B, PART II

Exceptions

Effective Date: December 11, 2019 at 8:00am

THIS COMMITMENT DOES NOT REPUBLISH ANY COVENANT, CONDITION, RESTRICTION, OR LIMITATION CONTAINED IN ANY DOCUMENT REFERRED TO IN THIS COMMITMENT TO THE EXTENT THAT THE SPECIFIC COVENANT, CONDITION, RESTRICTION, OR LIMITATION VIOLATES STATE OR FEDERAL LAW BASED ON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, GENDER IDENTITY, HANDICAP, FAMILIAL STATUS, OR NATIONAL ORIGIN.

The Policy or Policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company:

1. Rights or claims of parties in possession not shown by the Public Records.
2. Easements or claims of easements not shown in the Public Records.
3. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, and any facts which a correct survey and inspection of the land would disclose, and which are not shown by the public record.
4. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
5. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires of record for value the estate or interest or mortgage thereon covered by this Commitment.
6. Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof.
7. Any water rights or claims or title to water, in or under the land, whether or not shown by the public records.
8. Taxes due and payable; and any tax, special assessments, charge or lien imposed for water or sewer service, or for any other special taxing district. Note: Upon verification of payment of all taxes the above exception will be amended to read, "Taxes and assessments for the current year, and subsequent years, a lien not yet due and payable."
9. Rights of way, whether in fee or easement only. for county roads 30 feet wide on each side of section and township lines as established by Order of the Board of County Commissioners for Weld County recorded October 14, 1889 in [Book 86 at Page 273](#).
10. Reservations by the Union Pacific Railroad Company of (1) all coal and other minerals underlying subject property, (2) the exclusive right to prospect for, mine and remove coal and other minerals, and (3) the right of ingress and egress and regress to prospect for, mine and remove coal and other minerals, all as contained in Deed recorded August 23, 1899 in [Book 170 at Page 462](#), and any

interests therein or rights thereunder.

11. Right of way, whether in fee or easement only, for Lateral Ditch, as conveyed by instrument recorded April 3, 1903 in [Book 207 at Page 179](#), in which the specific location is not defined.
12. Terms, agreements, provisions, conditions and obligations as contained in Agreement by and between John M. Michael and Jerome Igo recorded December 19, 1907 in [Book 272 at Page 12](#).
13. This item is hereby intentionally deleted.
14. Right of way, whether in fee or easement only, for Ramsdell Lateral as conveyed by instrument recorded March 23, 1922 in [Book 655 at Page 396](#), in which the specific location is not defined.
15. Oil and gas lease between Union Pacific Railroad Company and Pan American Petroleum Corp. recorded February 16, 1971 at [Reception No. 1562223](#), and any interests therein or rights thereunder.
16. Oil and gas lease between Roland L. Coltrane, Dorene O. Igo-Ancillary Personal Representative for the William J. Igo Estate, Robert Paul Igo, & Margaret Virginia Igo Peterson, and Aeon Energy Co. dated April 1, 1981, recorded June 29, 1981 in Book 940 as [Reception No. 1861871](#), and any interests therein or rights thereunder.
17. Right of way, whether in fee or easement only, to lay, maintain, inspect, replace, erect, operate, and remove one pipeline and appurtenances, as granted to Snyder Oil Corporation by Roland L. Coltrane, Dorene O. Igo, Margaret Virginia Igo Peterson, and Robert Paul Igo, in the instrument recorded February 10, 1995 in Book 1479 as [Reception No. 2426211](#), the location of which is shown in the map attached to said instrument.
18. Terms, agreements, provisions, conditions and obligations as contained in Surface Owner 's Agreement by and between May Ann Feuerstein and Kenneth Homyak and Union Pacific Resources Company recorded December 16, 1992 in Book 1363 as [Reception No. 2314776](#).
19. Right of way, whether in fee or easement only, for 3" gas pipeline and appurtenances, granted to SOCO Wattenberg Corporation by Mary Ann Feuerstein and Kenneth Homyak by instrument recorded March 3, 1993 in Book 1372 as [Reception No. 2323860](#), in which the specific location of the easement is not defined.
20. Right of way, whether in fee or easement only, for various purposes, granted to Snyder Oil Corporation by Kenneth Homyak by instrument recorded August 12, 1994 in Book 1454 as [Reception No. 2402117](#), in which the specific location of the easement is not defined.
21. Right of way, whether in fee or easement only, for various purposes, granted to Snyder Oil Corporation by Mary Ann Feuerstein by instrument recorded August 12, 1994 in Book 1454 as [Reception No. 2402118](#), in which the specific location of the easement is not defined.
22. Right of way, whether in fee or easement only, for pipeline and appurtenances, granted to Snyder Oil Corporation by Mary Ann Feuerstein by instrument recorded August 16, 1994 in Book 1455 as [Reception No. 2402528](#), in which the specific location of the easement is not defined.
23. Right of way, whether in fee or easement only, pipeline and appurtenances, granted to Snyder Oil Corporation by Kenneth Homyak by instrument recorded August 16, 1994 in Book 1455 as [Reception No. 2402529](#), in which the specific location of the easement is not defined.
24. Right of way, whether in fee or easement only, for pipeline and appurtenances, granted to Snyder Oil Corporation by Kenneth Homyak by instrument recorded July 7, 1995 in Book 1500 as [Reception No. 2445641](#) , in which the specific location of the easement is not defined.

25. Right of way, whether in fee or easement only, for various purposes, granted to Snyder Oil Corporation by Kenneth Homyak by instrument recorded July 7, 1995 in Book 1500 as [Reception No. 2445642](#), in which the specific location of the easement is not defined.
26. Right of way, whether in fee or easement only, for pipeline and appurtenances, granted to Snyder Oil Corporation by Mary Ann Feuerstein by instrument recorded July 7, 1995 in Book 1500 as [Reception No. 2445643](#), in which the specific location of the easement is not defined.
27. Right of way, whether in fee or easement only. for various purposes, granted to Snyder Oil Corporation by Mary Ann Feuerstein by instrument recorded July 7, 1995 in Book 1500 as [Reception No. 2445644](#), in which the specific location of the easement is not defined.
28. Oil and gas lease between Union Pacific Resources Company and Snyder Oil Corporation recorded July 13, 1995 at [Reception No. 2446330](#), and any interests therein or rights thereunder.
29. Oil and gas lease between Union Pacific Resources Company and Snyder Oil Corporation recorded April 30, 1996 at [Reception No. 2488267](#), and any interests therein or rights thereunder.
30. Terms, agreements, provisions, conditions, obligations and restrictions, as Annexation Agreement recorded April 3, 2002 as [Reception No. 2939511](#) and Annexation Maps recorded April 3, 2002 at [Reception No. 2939512](#) and [Reception No. 2939513](#).
31. All items as set forth on the ALTA/ACSM Land Title Survey recorded December 30, 2003 at [Reception No. 3139679](#).
32. Terms, conditions, provisions and obligations of Resolution no. 55-2008, recorded November 26, 2008 at [Reception No. 3592075](#).
33. Right(s) of way, including its terms and conditions, whether in fee or easement only, as granted to Kinder Morgan Interstate Gas Transmission LLC, as described in instrument recorded April 25, 2008 at [Reception No. 3549952](#).
34. Terms, agreements, provisions, conditions, obligations and easements as contained in Surface Use Agreement, recorded July 16, 2009 at [Reception No. 3636904](#).
35. Terms, conditions, provisions and obligations of Notice of Right to Use Surface of Land, recorded February 25, 2010 at [Reception No. 3677921](#).
36. Notice of Property line Waiver recorded June 17, 2009 at [Reception No. 3630696](#), at [Reception No. 3630697](#), at [Reception No. 3630698](#) and at [Reception No. 3630699](#).
37. Request for Notification of Surface Development recorded by Noble Energy, Inc., et al recorded October 15, 2007 at [Reception No. 3511023](#).
38. Request for Notification of Surface Development recorded by Kerr-McGee Oil & Gas Onshore LP December 21, 2007 at [Reception No. 3525268](#).
39. Any leases or tenancies and any and all parties claiming by, through, or under such leases or tenancies.
40. The following items as set forth on the ALTA/ACSM Land Title Survey prepared by King Surveyors, dated March 3, 2015, File name: 2015051ALTA recorded April 29, 2015 at [Reception No. 4103083](#), to-wit:
 - a. Concrete and Dirt Ditches.
 - b. Surveyors note 4.
 - c. Dirt and gravel Access roads.
 - d. Irrigation Structures.

e. Any loss or damage arising from the fact that the fence lines on or near the perimeter of subject property do not coincide with the exact property lines as described in Improvement Location to Property Line Table.

f. Bridges.

g. Notes.

41. Mineral reservations made by Great Northern Properties, LLLP, a Colorado limited liability limited partnership and Bensler Family LLLP, a Colorado limited liability limited partnership, as described in deed recorded June 10, 2015 at [Reception No. 4114851](#), and any interests therein or rights thereunder.
42. Deed of Trust from ROI DEV CANADA INC., a Canadian business corporation to the Public Trustee of Weld County, Colorado for the use of Great Northern Properties, LLLP, a Colorado limited liability limited partnership and Bensler Family LLLP, a Colorado limited liability limited partnership to secure \$3,350,000.00, dated June 8, 2015 and recorded June 10, 2015 at [Reception No. 4114852](#), Modification of Deed of Trust recorded May 5, 2017 at [Reception No. 4299630](#).
43. Reservations made by Great Northern Properties, LLLP, a Colorado limited liability limited partnership and Bensler Family LLLP, a Colorado limited liability limited partnership, as described in deed recorded August 4, 2015 at [Reception No. 4130762](#), and any interests therein or rights thereunder.
44. Deed of Trust from ROI DEV CANADA INC., a Canadian business corporation to the Public Trustee of Weld County, Colorado for the use of ROI LAND INVESTMENTS LTD., a Nevada (USA) corporation to secure \$3,350,000.00, dated June 9, 2015 and recorded October 2, 2015 at [Reception No. 4147066](#).
45. Terms, agreements, provisions, conditions, obligations and easements as contained in Dry-Up Covenant, recorded September 27, 2016 at [Reception No. 4240321](#).
46. Deed of Trust from ROI DEV CANADA INC., a Canadian business corporation to the Public Trustee of Weld County, Colorado for the use of Great Northern Properties, LLLP, a Colorado limited liability limited partnership and Bensler Family LLLP, a Colorado limited liability limited partnership to secure \$3,350,000.00, dated March 30, 2017 and recorded April 18, 2017 at [Reception No. 4294623](#).
47. Deed of Trust from ROI DEV CANADA INC., a Canadian business corporation to the Public Trustee of Weld County, Colorado for the use of Kapito Canada, SAS to secure € 900,155.62, dated April 13, 2017 and recorded April 20, 2017 at [Reception No. 4295469](#).
48. Deed of Trust from ROI DEV CANADA INC., a Canadian business corporation to the Public Trustee of Weld County, Colorado for the use of ROI SECURITISATION, SA to secure €10,000,000.00, dated June 22, 2017 and recorded June 26, 2017 at [Reception No. 4313113](#).
49. Final Award in Arbitration No. 02-15-0005-6466 in International Centre for Dispute Resolution, International Arbitration Tribunal, entitled Seth Shaw vs. ROI LAND INVESTMENTS, LTD., recorded July 31, 2017 at [Reception No. 4322686](#).
50. Terms, agreements, provisions, conditions, obligations and easements as contained in Dry-up Covenant, recorded November 15, 2017 at [Reception No. 4352560](#).
51. Judgment in favor of Seth Shaw, against ROI Land Investments, Ltd., in the amount of \$861,859.67, plus interest and court costs, entered on March 1, 2018 in Case No. 2:17-cv01165-JAD-VCF, United State District Court Court, District of Nevada, recorded May 30, 2018 at [Reception No. 4403073](#).
52. Request for Notification of Application for Development recorded August 2, 2018 at Reception

No. [4420477](#).

53. The effect, if any, of the inclusion in the Peakview Metropolitan District No. 1, the Peakview Metropolitan District No. 2, the Peakview Metropolitan District No. 3, and the Peakview Metropolitan District No. 4, as evidenced in instruments recorded November 29, 2018 at [Reception No. 4449961](#) and recorded November 29, 2018 at [Reception No. 4449991](#) and recorded November 29, 2018 at [Reception No. 4450005](#) and recorded November 29, 2018 at [Reception No. 4450006](#).
54. Deed of Trust from ROI Dev Canada Inc. to the Public Trustee of Weld County, Colorado for the use of ROI Land Investments Ltd. to secure \$7,675,045.00, dated February 14, 2019 and recorded February 15, 2019 at [Reception No. 4467238](#).
55. Deed of Trust from Solstice Holdings LLC, to the Public Trustee of Weld County, Colorado for the use of ROI Securitisation S.A. to secure EURO \$20,000,000.00 or its equivalent in U.S. Dollars, dated February 14, 2019 and recorded February 15, 2019 at [Reception No. 4467250](#).
56. Terms, agreements, provisions, conditions, obligations and easements as contained in City of Evans, Colorado Ordinance No. 689-19, recorded February 22, 2019 at [Reception No. 4468647](#).
57. All items as shown on map of Peakview PUD Master Plan Rezoning recorded May 8, 2019 at [Reception No. 4487500](#).
58. All items as shown on map of Peakview Zoning Amendment Map recorded May 8, 2019 at [Reception No. 4487502](#).
59. Mechanics Lien, evidenced by statement of Mechanics' Lien, in the amount of \$12,913.17 recorded September 23, 2019 at [Reception No. 4525741](#) and Amended Statement of Mechanics' Lien recorded October 1, 2019 at [Reception No. 4528445](#).
60. Terms, agreements, provisions, conditions, obligations and easements as contained in Surface Use Agreement, recorded October 1, 2019 at [Reception No. 4528404](#).
61. Terms, agreements, provisions, conditions, obligations and easements as contained in Notice of Oil and Gas Operations, recorded October 25, 2019 at [Reception No. 4535483](#).
62. Terms, agreements, provisions, conditions, obligations and easements as contained in City of Evans, Colorado City Council Resolution No. 24-2019, recorded December 9, 2019 at [Reception No. 4547971](#).
63. Terms, agreements, provisions, conditions, obligations and easements as contained in City of Evans, Colorado Resolution No. 30-2019, recorded December 9, 2019 at [Reception No. 4547973](#).

NOTE: The following notices pursuant to CR5 9-1.5-103 concerning underground facilities have been filed with, the Clerk and Recorder. These statements are general and do not necessarily give notice of underground facilities within the property.

- (a) Mountain Bell Telephone Company, recorded October 1, 1981 in Book 949 as [Reception No. 1870705](#).
- (b) Colorado Interstate Gas Company, recorded August 31, 1984 in Book 1 041 as [Reception No. 1979784](#).
- (c) Associated Natural Gas, Inc., recorded April 10, 1989 in Book 1229 as [Reception No. 2175917](#).
- (d) Western Slope Gas Company, recorded March 9, 1993 in Book 990 as [Reception No. 1919757](#).
- (e) Panhandle Eastern Pipe Line Company, recorded June 26, 1986 in Book 1117 as [Reception No. 2058722](#).

NOTE: The policy(s) of insurance may contain a clause permitting arbitration of claims at the request of either the Insured or the Company. Upon request, the Company will provide a copy of this clause and the accompanying arbitration rules prior to the closing of the transaction.

EXHIBIT E
Letter of Credit

(Signed LOC to be provided for acceptance prior to this Agreement being signed by the City, based on the template below.)

FORM--IRREVOCABLE LETTER OF CREDIT NO. __

[NAME OF ISSUING BANK]
[ADDRESS OF ISSUING BANK]

City of Evans
1100 37th Street
Evans, CO 80620-2036

ATTENTION: CITY OF EVANS ATTORNEY AND CITY MANAGER

We hereby establish, at the request and for the account of this Irrevocable Letter of Credit, in favor of the City of Evans in the amount of \$. The purpose of this Letter of Credit is to secure performance of a Developments Agreement for __ Subdivision, dated _____, 20__, between the City of Evans and _____.

You are hereby authorized to draw on sight by drafts or written demand up to the aggregate amount of \$ _____. The sole condition for payment of any demand made or draft drawn against this Irrevocable Letter of Credit is that the City's demand or draft be accompanied by a letter, on the City's stationary, signed by the City Manager to the effect that "the City of Evans has declared a default under the Developer's Agreement" and an affirmation, certified as truthful to the best of their knowledge and belief, by the City Manager summarizing the factual particulars of such declared default (such letter and affirmation, collectively, called the "Presentment Documents").

We hereby agree with the City of Evans and its drawers, endorsers, and bona fide holders of demands made or drafts negotiated under this Letter of Credit that the same shall be duly honored upon presentation and delivery of the documents as specified above.

This Irrevocable Letter of Credit is not transferable.

This Irrevocable Letter of Credit shall not expire unless the City of Evans City Manager and the City of Evans Attorney have received 60 days' prior written notice by certified U.S. Mail of the impending expiration. Such expiration shall not occur prior to 36 months from the date of this letter. Upon your receipt of our written notification of impending expiration, you may draw the unused balance of this Irrevocable Credit upon your written demand or your sight draft accompanied by the Presentment Documents. Subject to Public Works Director acceptance, the Letter of Credit may be reduced if presented with a payment and performance bond by the contractor constructing some or all of the Improvements which shall cover the costs of construction and construction guaranty for those improvements covered by said payment and performance bond. A sample form of such bond is attached hereto.

With the exception of C.R.S. '4-5-112(1) which allows three (3) banking days in which to honor or reject a draft, demand or credit, this credit shall be governed and construed in accordance with the laws of the State of Colorado. In the event of a conflict between the provisions of the Colorado Uniform Commercial Code and the provisions hereof, the provisions hereof shall control.

Signed this _____ day of _____, 20__.

Issuing Bank: _____

By: _____

Officer's Title: _____

Address: _____

STATE OF COLORADO
COUNTY OF _____

SUBSCRIBED AND SWORN to before me this ____ day of _____, 201__

by _____ as the _____ of
_____.

WITNESS my hand and official seal.

My commission expires: _____

Notary Public

2. For purposes of this Agreement, Developer has provided a Performance Guarantee only for the Phase or Phases of development that have been subjected to this Agreement by Developer in writing (initially, the first Phase only). Prior to construction of any subsequent Phase, Developer shall provide the City with Performance Guarantees for those Phases, except as otherwise set forth in the Agreement to which this Performance Guarantee is attached.

3Public Improvements Constructed by or Owned by the Metropolitan District. For any particular public improvement authorized by the Metropolitan District's Service Plan and conveyed to the Metropolitan District with the express written consent of the City, so long as the Metropolitan District requires payment and performance bonds, payable to the City or the District, on any contracts in excess of Twenty-Five Thousand Dollars (\$25,000), or in such higher amount as may then be required pursuant to the Special District Act, the City shall not require any additional bond, letter of credit or other form of security or collateral from the Developer to ensure the completion of such Public Improvement for the benefit of the Property to the extent that such Metropolitan District is constructing particular Improvements and can demonstrate adequate funds on hand in Metropolitan District accounts to cover 115% of the Engineer's cost estimate as set forth herein, which funds are by resolution of the District Board appropriated and restricted for such construction to the satisfaction of the City and cannot be released from such restriction or used for other purposes unless the City specifically agrees to such release in writing, the City will waive any further security for construction of Improvements covered by such funds.

The payment and performance bond shall be in a form reasonably acceptable to and approved by the City in an amount equal to one hundred percent (115%) of the cost of any such contract for metropolitan district improvements, naming the City as an additional obligee or insured. Such bonds shall be issued by a corporate surety company which is acceptable to the City and the Metropolitan District, is authorized to transact business in the State of Colorado, is rated by A.M. Best as a A-minus or better, and is listed in the current printing of the U.S. Treasury Department Circular 570, listing of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies." Notwithstanding the foregoing, the City may require for completed Public Improvements such warranties, surety bonds or other security as may be required by City Regulations or this Agreement.

- a. Prior to the release of any security provided for in such Performance Guarantee agreement, as-built plans shall have been submitted and shall be in substantial compliance with the Plans and Specifications approved by the City. All other requirement of the Development Agreement and the Municipal Code shall be fulfilled.
- b. The parties hereby agree that in addition to and independent of executing on any Performance Guarantee provided by Developer, the City may, in addition to any other remedies it may have against Developer, withhold the issuance of building permits requested on the Property or a certificate of occupancy for property for which a permit was previously issued.
- d. Notwithstanding any other provision herein to the contrary, if any Improvement is not completed as required by this Agreement, the City shall give Developer notice

of its empirical, quantified deficiencies. Developer shall then, within thirty (30) days of such notice, correct such construction defect. If the construction defect is of a nature that cannot reasonably be cured within thirty (30) days, Developer shall not be considered in default provided that they have commenced reasonable efforts to cure such defect within said thirty (30) day period and continue diligently thereafter. If such defect is not cured within the thirty (30) day period, or if reasonable efforts have not been made to cure within said thirty (30) day period, the City may exercise the powers set forth in this Agreement.

4. Notwithstanding anything in the Performance Guarantee (and any letter of credit, surety bond or other form of security therefor) to the contrary, the amount that may be drawn or demanded on under the Performance Guarantee shall be reduced to 15% of the cost of the improvement upon presentation of a Guarantee Reduction Notice referencing such Performance Guarantee and signed by the City's Director of Public Works, in the format annexed hereto as Schedule A.

Exhibit H
Peakview Non-Potable Water Operations

The following information will be provided and attached to the Peakview Development Agreement (DA) within 90 days following the adoption of the DA by the Evans City Council. The City Council does not need to re-hear the DA with approval by the City Attorney, City Engineer, and City Community Development Director of the following documentation:

1. The City of Evans will be deeded running rights in the Ramsdell Ditch for sufficient water carriage to meet the non-potable demands of the Peakview subdivision. This is illuminated in the attached Certificate of Transfer dated September 30, 2020 and is contingent upon the Developer satisfying the promissory note dated June 8, 2015. The dedication of these running rights shall be made within 90 days following the approval of the Development Agreement by the Evans City Council and attached to this document.

2. An Agreement between the Developer/Peakview Metro District and the City of Evans shall be executed and will include the following at a minimum:
 - a. The Peakview Metro District has the responsibility to design, construct, operate maintain, repair, and replace the non-potable system.
 - b. Calling for water – even though the water rights are owned by the City, the Metro District will have permission to place calls for the non-potable water.
 - c. The method of metering and accounting of the non-potable water delivered to the Peakview ponds.
 - d. Maximum delivery of raw water shall not exceed 152 acre-feet per year as determined by the “Aqua Engineering Outdoor Water Use Analysis” developed by Aqua Engineering on August 10, 2018 for the Peakview Development found in Exhibit J.
 - e. Peakview Metro District is to reimburse City for the annual assessment on the water provided by the City and assessed and paid by the City as part of the non-potable system.
 - f. First Right of Refusal – Metro District agrees to retain ownership of the System. After the effective date of the Development Agreement, the Developer and the Metro District agree that prior to entering into any agreement or letter of intent for the purchase, long-term lease, transfer or option for any of the foregoing of all or any portion of the System, the City shall have a right of first refusal to purchase, long-term lease, acquire the transfer or obtain an option for any of the foregoing on substantially the same basis as set forth in the proposed agreement or letter of intent with any other person or entity. The City shall have a minimum of 60 days to determine whether to exercise its right of first refusal.

For Value Received Solstice Holdings, LLC hereby sell, transfer and assign
to The City of Evans, Colorado

The 16 Shares of Stock within The Ramsdell Lateral Company,
certificate No. 66 and authorize the Secretary of Said Company to cancel this
certificate and issue new certificate, or certificates, to effectuate this transfer, on the Stock Books
and Stock Ledger of said Company.

On this day of September 30, 20 20

[Signature] Owner

In presence of [Signature]
KEI KOTANI

EXHIBIT I
Peakview Analysis of Equivalent Residential Units (EQRs)

EXHIBIT J
Ashcroft Draw Sanitary Sewer Reimbursement Agreement

Attached is an Agreement Regarding Discount of Sewer Reimbursement between Solstice Holdings LLC and the Ashcroft Draw Sanitary Sewer Joint Venture which is not dated.

EXHIBIT K
Aqua Engineering Outdoor Water Use Analysis

August 10, 2018 Aqua Engineering Outdoor Water Use Analysis

T A B L E 1: WATER USE ANALYSIS

Aqua Engineering, Inc. 4803
Innovation Drive
Fort Collins, Colorado 80525



August 10, 2018
Project Name: Evans
Location: Evans, CO
Prepared By: JHK

	Turf	Seed	Lots	Pond Evaporation	TOTAL
AREA , acres	31.8	43.1	32	1.5	108.4
PEAK SEASON DESIGN					
PLANT WATER REQUIREMENT, inches/day	0.20	0.15	0.15	0.00	NA
OPERATING LOSS, inches	0.09	0.06	0.06	0.00	NA
TOTAL DAILY APPLICATION REQUIREMENT, inches	0.29	0.21	0.21	0.00	NA
TOTAL DAILY APPLICATION REQUIREMENT, acre*ft	0.77	0.75	0.56	0.00	2.08
TOTAL DAILY APPLICATION REQUIREMENT, gallons	250,900	244,400	182,500	0	677,800
SEASONAL PLANT WATER REQUIREMENTS, inches	21	16	16	30	81.86
SEASONAL EFFECTIVE PRECIPITATION, inches	5.5	5.5	5.5	5.5	NA
TOTAL SEASONAL IRRIGATION APPLICATION, inches	21.8	14.4	14.4	35.0	NA
TOTAL SEASONAL IRRIGATION APPLICATION, acre*ft	57.7	51.6	38.3	4.3	151.83
TOTAL SEASONAL IRRIGATION APPLICATION, gallons	18,792,000	16,807,000	12,487,000	1,388,000	49,474,000
IRRIGATION FLOW REQUIREMENT WITH AN IRRIGATION WINDOW OF 8 HOURS, (gpm)	762	743	554	0	2,059
IRRIGATION FLOW REQUIREMENT WITH AN IRRIGATION WINDOW OF 10 HOURS, (gpm)	610	594	444	0	1,647
IRRIGATION FLOW REQUIREMENT WITH AN IRRIGATION WINDOW OF 12 HOURS, (gpm)	508	495	370	0	1,373

NOTES:

- 1) IRRIGATION SYSTEM APPLICATION EFFICIENCY IS ASSUMED TO BE 70%.
- 2) IRRIGATION SYSTEM TAP UTILIZATION EFFICIENCY IS ASSUMED TO BE 80%.
TAP UTILIZATION EFFICIENCY IS DEFINED AS THE AVERAGE DESIGN FLOW/AVERAGE AVAILABLE FLOW.
- 3) PEAK SEASON PLANT WATER REQUIREMENT OF 0.20 IN/DAY IS ASSUMED FOR Turf
AND IS BASED ON Northern Colorado Water Conservation District DATA AND A CROP COEFFICIENT OF 80%.
- 4) PEAK SEASON PLANT WATER REQUIREMENT OF 0.15 IN/DAY IS ASSUMED FOR Seed
AND IS BASED ON Northern Colorado Water Conservation District DATA AND A CROP COEFFICIENT OF 60%.
- 5) PEAK SEASON PLANT WATER REQUIREMENT OF 0.15 IN/DAY IS ASSUMED FOR Lots
AND IS BASED ON Northern Colorado Water Conservation District DATA AND A CROP COEFFICIENT OF 60%.
- 6) PEAK SEASON PLANT WATER REQUIREMENT OF 0.00 IN/DAY IS ASSUMED FOR Pond Evaporation
AND IS BASED ON Northern Colorado Water Conservation District DATA AND A CROP COEFFICIENT OF 0%.
- 7) A SEASONAL PRECIPITATION OF 11- INCHES IS USED AND IS BASED ON Northern Colorado Water Conservation District
DATA PRECIPITATION IS ASSUMED TO BE 50% EFFECTIVE.

EXHIBIT L

**Peakview Development Guidelines prepared by LAI Design Group
dated November 18, 2019 on file with the City and need not be recorded**

EXHIBIT M

**Peakview Transportation Impact Study prepared by Delich and Associates
dated September 2018 on file with the City and need not be recorded**