

**SUBDIVISION DEVELOPMENT AND IMPROVEMENT AGREEMENT  
FOR  
TOWN OF JOHNSTOWN  
(Johnstown Farms, Filing No. 2)**

**This Subdivision Development and Improvement Agreement** (“Agreement”), made and entered into by and between the **Town of Johnstown, Colorado**, a Colorado home-rule municipal corporation (the “Town”) and **Post Modern Development, LLC**, a Colorado limited liability company (“Developer”).

**RECITALS**

**WHEREAS**, Developer is the owner of a parcel of land situated in the Town of Johnstown, County of Weld, State of Colorado, the description of which is set forth on **Exhibit A** attached hereto and incorporated herein by this reference (the “Property”); and

**WHEREAS**, Developer seeks to develop the Property and to designate such development as Johnstown Farms, Filing No. 2 (“Development”); and

**WHEREAS**, Developer has submitted a final plat depicting the Development, which final plat is attached hereto as **Exhibit B-1** and incorporated herein by this reference (“Final Plat”); and

**WHEREAS**, the Town Council approved, or intends to approve, the Final Plat by passage of Resolution No. 2022-\_\_\_\_, containing terms and conditions of approval of the Final Plat, which Resolution is, or will be, attached hereto as **Exhibit B-2** and incorporated herein by this reference (“Resolution”); and

**WHEREAS**, Developer understands and agrees that, as a further condition of approval of the Final Plat, Developer is required to construct certain Subdivision Improvements (defined below) to the Property, that Developer is responsible for the costs and expenses of those Subdivision Improvements unless otherwise provided herein, and that the Subdivision Improvements contemplated herein are reasonable, necessary, appropriate, and directly benefit the Development; and

**WHEREAS**, Developer agrees to undertake and complete the Development in accordance with this Agreement, the Final Plat, the Resolution, the Town’s ordinances, resolutions and regulations and all other applicable laws and regulations.

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the premises cited above and the mutual covenants and promises contained herein, the sufficiency of which is acknowledged, the Town and Developer agree as follows:

## RECITALS

The Recitals are incorporated as if fully set forth herein.

## DEFINITIONS

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

1.1 “**Approved Plans**” shall mean: (1) with respect to the Public Improvements, the approved “Civil Engineering Construction Plans” related to the Development and on file with Town; and (2) with respect to the Private Improvements, the approved “the Development Plan” related to the Development and on file with Town.

1.2 “**Civil Engineering Construction Plans**” shall mean the approved engineering plans for construction, installation and improvement of the Public Improvements.

1.3 “**Code**” shall mean the Johnstown Municipal Code, as amended from time to time.

1.4 “**Developer**” shall mean the owner(s) of the Property described in **Exhibit A** and any heirs, successors, assigns or transferees of any of the Property described in **Exhibit A**.

1.5 “**Development**” shall mean all the Property, property rights and Subdivision Improvements within the legal description in **Exhibit A**.

1.6 “**Development Plan**” shall mean the approved plans for the construction, installation and improvement of the Private Improvements.

1.7 “**Dry Utilities**” shall mean electricity, natural gas, cable and telephone.

1.8 “**Maintenance Guarantee**” shall mean a guarantee that the Public Improvements constructed shall be free from material defects and failures as more fully described in Paragraphs 5.2 and 5.4 below.

1.9 “**Notice of Construction Acceptance**” shall mean the written certification that the Public Improvements are accepted, which starts the two-year warranty period as provided herein.

1.10 “**Notice of Final Acceptance**” or “**Final Acceptance**” shall mean the written certification of final acceptance of the Public Improvements and, except as otherwise provided herein, the transfer of maintenance of the Public Improvements to the Town.

1.11 “**Private Improvements**” shall mean, without limitation, the construction, installation and improvement of privately owned and maintained common improvements

including, but not limited to, stormwater improvements, landscaping, irrigation, fencing, entry signs, parks, open space, trails and postal service boxes.

1.12 **“Public Improvements”** shall mean, without limitation, the construction, installation, improvement and dedication of public improvements, including, but not limited to public thoroughfares and streets, sanitary sewer facilities, water line facilities, drainage facilities in the public right of way, irrigation structures, if any, that are not exclusively for the benefit of the Development, right-of-way landscaping and irrigation structures, street lighting and signage, and other public facilities and improvements to serve the Development. The Public Improvements include, but are not limited to, the improvements listed on **Exhibit B-3**, in whatever form they are referenced, that will be dedicated to the Town and the improvements listed on **Exhibit C**.

1.13 **“Performance Guarantee”** shall mean a guarantee that the Subdivision Improvements are be constructed in conformance with the Approved Plans.

1.14 **“Subdivision Improvements”** shall mean the Public Improvements and Private Improvements.

1.15 **“Town”** shall mean the Town of Johnstown, Colorado.

1.16 **“Town Manager”** shall include the Town Manager and such person’s authorized designees.

## **SUBDIVISION IMPROVEMENTS**

### **2. Public Improvements**

#### ***2.1 Pre- Construction***

a. **Engineering Services:** Developer shall furnish, at its own expense, all engineering services in connection with design, construction, installation and improvement of the Public Improvements. Engineering services shall be performed by a professional engineer registered in the State of Colorado. Engineering services shall consist of, but not be limited to, survey, designs, plans and profiles, specifications, drawings, estimates, construction administration, and the furnishing of necessary documents in connection therewith, including but not limited to final engineering drawings, final sewer and water design plans and final drainage plans (the “Civil Engineering Construction Plans”).

b. **Civil Engineering Construction Plans:** Prior to commencing construction of the Public Improvements for the Development, Developer shall submit the Civil Engineering Construction Plans to the Town for review. Construction of the Public Improvements shall not commence until the Town provides written notice of approval of the Civil Engineering Construction Plans. Developer shall not thereafter modify the approved Civil Engineering Construction Plans without the written approval of the Town. The Town’s review and approval of the Civil Engineering Construction Plans shall not limit or affect Developer’s responsibility or

liability for design, construction and installation of the Public Improvements, and Developer agrees to save and hold the Town harmless from any claims, fault or negligence attributable to such design, construction and installation, other than negligent designs which are required by the Town.

c. **Phasing of the Public Improvements.** Subdivision plats, planned unit development plans or site plans requiring the construction of Public Improvements may be developed in phases provided: (i) such phasing is approved by the Town and is consistent with the subdivision plats, planned unit development plans or site plans and any executed agreements pertaining to the Property; (ii) the phasing plan supports a logical sequence of development such that each phase can function independently or sequentially with a prior phase; and (iii) each sequential phase satisfies the Town's construction standards and specifications. If phasing of the Public Improvements is approved, construction, acceptance, financial security and building permit eligibility shall be approved or released according to the approved phasing plan. An approved phasing plan may only be modified upon written approval of the Town.

d. **Pre-Construction Meeting.** Subsequent to the Town's approval of the Civil Engineering Construction Plans and prior to the commencement of construction, the Developer and its contractors shall participate in a pre-construction meeting with the Town's Public Works Department. Among other matters, as determined by the Town, the purpose of the meeting shall be to review: (i) the Approved Plans; (ii) permits needed for construction; (iii) relevant provisions of the Code and the Town's construction standards and specifications; and (iv) the construction inspection process and requirements for construction acceptance.

e. **Rights-of-Way, Easements and Permits:** Prior to commencing construction of the Public Improvements, Developer shall acquire, at its own expense, good and sufficient rights-of-way or easements, clear of any encumbrances, on all lands and facilities, if any, traversed by the proposed Public Improvements. All such rights-of-way and easements shall be conveyed to the Town and the documents of conveyance shall be furnished to the Town for recording. At the Town's written request, Developer shall provide at its sole expense a policy of title insurance insuring title in the Town, free and clear of all liens and encumbrances, for all land, property and easements dedicated or conveyed to the Town or for public use. Any agreements or easements to which the Town may effectively become a party upon dedication or acceptance of the improvements shall be provided to the Town for review prior to execution of such agreement or easement and prior to issuance of building permits. In addition, Developer shall obtain all the requisite permits and licenses necessary for construction of the Public Improvements.

## 2.2 *Construction of Public Improvements*

a. Upon satisfaction of the conditions set forth in Paragraph 2.1 and the notice requirement set forth below, Developer shall construct the Public Improvements at its own expense in accordance with this Agreement, the Final Plat, the Resolution, the Civil Engineering Construction Plans, the Town's ordinances, resolutions and regulations and all other applicable laws and regulations; provided that in the event of any conflict between the foregoing, the Civil Engineering Construction Plans shall control. All Public Improvements shall be installed and

constructed within the rights-of-way or easements dedicated to the Town. Unless otherwise approved by the Town in writing, all materials used for constructing the Public Improvements shall be materials set forth on the Town's approved material list. Workmanship and materials shall be of good quality.

b. At least seven (7) days prior to the commencement of construction, Developer shall provide written notice to all property owners within a 600-foot radius of the construction limits indicated on the Civil Engineering Construction Plans of the planned commencement date for construction along with contact information for the Developer. Prior to the commencement of the construction, such contact list shall be provided to the Town with a copy of the notification. Notification may be by U.S. mail or by delivering a printed flyer left at each affected home or business location.

2.3 **Construction Schedule:** Developer shall construct the Public Improvements in accordance with the schedule of public improvements set forth on **Exhibit C**, attached hereto and incorporated herein by reference ("Schedule of Public Improvements"). Once construction begins, Developer shall keep the Town informed by periodic status reports of the progress of the work and a projection of when the Public Improvements will be completed as well as the cost of such Public Improvements.

2.4 **Testing:** Developer shall employ, at its own expense, a qualified independent testing company, reasonably approved by the Town, to perform all testing of materials or construction that may be reasonably required by the Town. Developer shall furnish certified copies of test results to the Town.

2.5 **Inspection:** At all times during construction of the Public Improvements within the then-current phase of construction, the Town shall have the right, but not the duty, to inspect materials and workmanship, at Developer's cost. All materials and work must materially conform to the Civil Engineering Construction Plans. Any material or work not materially conforming to the Civil Engineering Construction Plans shall be promptly removed, repaired or replaced, at Developer's expense to such extent as is necessary to make such material or work materially and substantially conform to the Civil Engineering Construction Plans, as reasonably determined by the Town.

2.6 **Completion of Construction:** Developer shall complete construction of the Public Improvements no later than eighteen (18) months from the commencement of the construction, unless such completion date is extended for reasons beyond the reasonable control of Developer or Developer has obtained the Town's written consent to an extension.

2.7 **Performance Guarantee:** To secure the construction, installation, improvement and completion of the Subdivision Improvements, Developer shall furnish to the Town a cash escrow deposited with the Town, a bond in the form approved by the Town or an irrevocable letter of credit substantially in the form attached hereto as **Exhibit D** in which the Town is designated as the beneficiary ("Performance Guarantee") in an amount equal to 110% of the cost of the improvements, which cost shall be certified by Developer's professional engineer, licensed in the

State of Colorado and approved by the Town. The Performance Guarantee shall be released after the Notice of Construction Acceptance has been provided for the Public Improvements and notice of approval has been provided for the Private Improvements.;

### 3. **Private Improvements**

3.1 ***Pre-Construction:*** Prior to commencing construction of the Private Improvements, Developer shall submit a Development Plan to the Town. The Development Plan shall contain the proposed Private Improvements for the Development, including a plan for stormwater improvements, an irrigation system, landscaping and soil amendments, fencing, entry-way signage, street signs and posts, street lighting, parks, open space, trails and postal service boxes. Landscaping and fencing shall be designed in accordance with the Town's landscape guidelines. Construction of the Private Improvements shall not commence until the Town provides written notice of approval of the Development Plan. Developer shall not thereafter modify the approved Development Plan without the written approval of the Town. The Town's review and approval of the Development Plan shall not limit or affect Developer's responsibility or liability for design, construction and installation of the Private Improvements, and Developer agrees to save and hold the Town harmless from any claims, fault or negligence attributable to such design, construction and installation, other than negligent designs which are required by the Town. In addition, Developer shall obtain all the requisite permits and licenses necessary for construction of the Private Improvements.

3.2 ***Construction of Private Improvements:*** Upon satisfaction of the conditions set forth in Paragraph 3.1, Developer shall construct the Private Improvements at its own expense in accordance with the terms of this Agreement, the Final Plat, the Resolution, the Development Plan, the Town's ordinances, resolutions and regulations and all other applicable laws and regulations; provided that in the event of any conflict between the foregoing, the Development Plan shall control. All landscaping services shall be performed by a professional landscape contractor. Certification of required soil amendment shall be signed by Developer and provided to the Town. Unless otherwise approved by the Town in writing, all materials used for constructing the Private Improvements shall be new and both workmanship and materials shall be of good quality.

3.3 ***Inspection:*** At all times during construction and installation of the Private Improvements, the Town shall have the right, but not the duty, to inspect materials and workmanship, at Developer's cost. All materials and work must conform to the Development Plan. Any material or work not conforming to the Development Plan shall be promptly removed, repaired or replaced, at Developer's expense and to the satisfaction of the Town.

3.4 ***Completion of Private Improvements:*** Unless otherwise agreed in writing by the Town, the Private Improvements shall be completed no later than the date that the Public Improvements are completed, unless such completion date is extended for reasons beyond the reasonable control of Developer and Developer has obtained the Town's written consent to the extension. The Town may, at its discretion, allow Developer to defer completion of the landscaping services between December 1 and March 1 of any given year provided that sufficient

surety is provided to the Town. For clarity, the Private Improvements referenced herein do not apply to yard improvements, which are anticipated to be installed by homeowners.

3.5 ***Replacement of Private Improvements:*** As replacement of the Private Improvements is necessary and warranted over time, including but not limited to decorative light fixtures, decorative street signs and all other decorative amenities in the Development, the Private Improvements shall be replaced by, as appropriate, the Developer, the homeowner's association or a metropolitan or special district. The Town shall not be responsible for replacement of the Private Improvements.

#### 4. **Dry-Utilities**

4.1 ***Utilities:*** Developer shall obtain all proper conveyances and arrangements for the installation and provision of the Dry Utilities to serve the Development. Developer shall provide proof of such conveyances and arrangements to the Town, which proof may be in the form of contracts for such services, no later than the date that the Public Improvements are completed.

4.2 ***Easements:*** All easements approved by the utility companies shall be submitted to the Town.

### **ACCEPTANCE OF SUBDIVISION IMPROVEMENTS**

5.1 ***Notice of Construction Acceptance:*** Developer shall make written application to the Town for acceptance of the Public Improvements and for review of the Private Improvements, within thirty (30) days of the completion date of the Subdivision Improvements for the Development or any approved phase of the Development, with the exception of the improvements for which the Town has authorized an extension of time to complete. With respect to the Public Improvements, among other documents that may be required by the Town, the written application shall include one set of reproducible "as built" drawings and an affidavit executed by Developer affirming that the Public Improvements have been paid in full, certifying the final construction costs and including documentary evidence of the construction costs. If the Town requests, Developer shall provide lien waivers, or other reasonable assurance, from all subcontractors, suppliers and materialmen who have furnished labor, material or services for the design, construction or installation of the Subdivision Improvements. The affidavit and lien waivers may be reviewed by the Town, but the Town assumes no responsibility or liability to or for anyone regarding the veracity of the information so provided.

After the receipt of the written application, the Town shall use reasonable efforts to promptly inspect the Subdivision Improvements. If the Subdivision Improvements have been completed in accordance with the Approved Plans, Developer shall be entitled to a Notice of Construction Acceptance of the Public Improvements upon receipt of the Maintenance Guarantee and written approval of the Private Improvements. If the Subdivision Improvements have not been completed in conformance with the Approved Plans, the Town, in coordination with Developer, shall prepare a punch list of all Subdivision Improvements that are not in material or substantial compliance with the Approved Plans, subject to any changes that have been approved by the Town.

After curing the defects and matters set forth on the punch list, Developer shall provide documentation evidencing the same and the Town shall thereafter use reasonable efforts to promptly re-inspect the Subdivision Improvements. If the Subdivision Improvements are materially and substantially in conformance with the Approved Plans, then Developer shall be entitled to the issuance of a Notice of Construction Acceptance for the Public Improvements upon receipt of the Maintenance Guarantee and written approval of the Private Improvements.

5.2 ***Maintenance Guarantee.*** Prior to the issuance of the Notice of Construction Acceptance of the Public Improvements, Developer shall provide the Town with a Maintenance Guarantee in the form of a cash escrow deposited with the Town or an irrevocable letter of credit in the form attached hereto as **Exhibit D** in which the Town is designated as the beneficiary (“Maintenance Guarantee”). The Maintenance Guarantee shall equal fifteen percent (15%) of the total cost of the Public Improvements. The Maintenance Guarantee shall warrant and guarantee all expenses and costs for maintenance, repairs and replacements of the Public Improvements until Final Acceptance. The Maintenance Guarantee shall be released after Final Acceptance of all of the Public Improvements. The Maintenance Guarantee may also be used to ensure that the installed landscaping, a Private Improvement, is satisfactorily established during the period between the issuance of the Notice of Construction Acceptance and Final Acceptance of the Public Improvements.

5.3 ***Delivery of Notice of Construction Acceptance.*** Upon satisfaction of the conditions set forth above in Paragraphs 5.1 and 5.2 for the Development or any approved phase of the Development, the Town shall provide written Notice of Construction Acceptance of the Public Improvements and written approval of the Private Improvements located within such phase to Developer. At its reasonable discretion, the Town may issue a written Notice of Construction Acceptance of the Public Improvements and written approval of the Private Improvements prior to completion of all the Subdivision Improvements as long as the Performance Guarantee remains in effect for such uncompleted Subdivision Improvements.

5.4 ***Maintenance, Repair and Replacement:*** Until Final Acceptance, Developer shall warrant that the Public Improvements are free from defects. Developer shall promptly perform all maintenance and make all repairs and replacements of all defects or failures of the Public Improvements at Developer’s expense and shall ensure that the installed landscaping is established. If, within ten (10) days after Developer’s receipt of written notice from the Town requesting such maintenance, repairs or replacements, Developer shall not have undertaken with due diligence to make the same, the Town may make such maintenance, repairs or replacements at Developer’s expense and shall be entitled to draw upon the Maintenance Guarantee, either before undertaking to make such repairs or at any time thereafter, or the Town may charge Developer for the reasonable costs thereof. In case of emergency, as reasonably determined by the Town, such written notice shall be deemed waived and the Town may proceed as it deems necessary at the expense of Developer or the issuers of the Maintenance Guarantee. Notwithstanding the foregoing, the Town may, at its reasonable discretion and upon written advisement to Developer, be responsible for routine maintenance of the Public Improvements (street sweeping, snow removal, etc.), which undertaking shall thereafter relieve Developer from the obligation to perform such maintenance.



5.5 ***Final Acceptance:*** Two (2) years after the Town's issuance of the Notice of Construction Acceptance, which time period may be extended at the Town's discretion due to remedial or repair work that may be required by the Town during the first two (2) years, Developer shall make a written request to the Town for final inspection of the Subdivision Improvements. If the Town reasonably determines that the Subdivision Improvements are free of defects in materials and workmanship and have been repaired and maintained to the extent required hereunder, the Town shall provide certification of completion by issuance of a Notice of Final Acceptance of the Public Improvements and written approval of the Private Improvements. If the Town reasonably determines that the Subdivision Improvements are not free of defects in materials and workmanship and have not been repaired and maintained to the extent required hereunder, the Town shall issue a written notice of non-compliance specifying the defects. Developer shall take such action as is necessary to cure the noncompliance and, upon curing the same, provide a new written request to the Town for a final inspection of the Subdivision Improvements. Failure of the Developer to make a timely request for the issuance of a Notice of Final Acceptance shall not limit the Town's rights hereunder nor shall it limit the Town's right to utilize the Public Improvements as the Town reasonably deems appropriate.

Upon issuance of the Notice of Final Acceptance, the Maintenance Guarantee shall be released to Developer and thereafter null and void, and the Town shall thereafter maintain, repair, and replace the Public Improvements dedicated to the Town. Notice of Final Acceptance and all releases shall be recorded at the office of the Weld County Clerk and Recorder.

5.6 ***Homeowners Association or Metropolitan District:*** Prior to issuance of the Notice of Final Acceptance and prior to the sale of lots or homes in the Development, Developer shall establish a homeowners' association for the Development or shall delegate covenant enforcement and design review services to a metropolitan district. If a homeowners' association is created, Developer shall provide the Town with proposed covenants, bylaws and articles of incorporation for the homeowners' association. Upon written approval of the covenants, bylaws and articles of incorporation by the Town, the same shall be recorded with the Weld County Clerk and Recorder and the homeowners' association shall thereafter be deemed to be established.

5.7 ***Dedication and Maintenance of Subdivision Improvements:*** Unless otherwise agreed by the Town and Developer: (1) the Public Improvements shall be owned, operated and maintained by the Town; (2) the Private Improvements shall be owned, operated and maintained by the Developer, the homeowner's association or a metropolitan district; and (3) the Dry Utilities shall be owned, operated and maintained, as appropriate and otherwise authorized, by the Developer, the homeowner's association, a metropolitan or special district or the appropriate public utility company.

## **WATER AND SEWER SERVICE**

6.1 The Town and Developer shall enter into a Water and Sewer Service Agreement setting forth their agreement concerning water rights dedication, preliminary projections of water and sewer demand and a commitment by the Town for water and sewer service to the

Development. The Water and Sewer Service Agreement, whenever executed, shall be incorporated into this Agreement and made a part hereof.

6.2 If the Developer hereinafter desires to utilize a non-potable water system to irrigate the Property, or any part thereof, the Town and Developer shall enter into a subsequent agreement regarding such system and, if appropriate, amend the Water and Sewer Service Agreement.

6.3 The homeowners' association or a metropolitan district shall own and maintain the stormwater infrastructure for the Development. Developer shall provide the Town with a proposed operations and maintenance manual for the stormwater infrastructure for review and reasonable approval concurrently with the Civil Engineering Construction Plans. Upon approval, Developer shall execute an operations and maintenance agreement with the Town addressing, among other issues, notification and remedies related to the operations, maintenance and repair of the stormwater infrastructure. The operations and maintenance agreement shall be executed prior to issuance of the Notice of Construction Acceptance.

### **BUILDING PERMITS**

7.1 The Town shall not issue building permits for the Development until: (1) the Final Plat has been recorded with the Weld County Clerk and Recorder; (2) Developer has paid all applicable use tax due and owing to the Town and all other fees required by the Town, including but not limited to water and tap fees, impact fees, storm drainage fees and cash-in-lieu payments due, if any, to the Weld County School District RE-5J; (3) Developer has received written notice of Notice of Construction Acceptance of the Public Improvements and written notice of approval of the Private Improvements, with the exception of the improvements for which the Town has authorized an extension of time to complete; (4) Developer has provided the Maintenance Guarantee; (5) meter and curb stop pass inspection; (6) the parties have entered into a Water and Sewer Service Agreement; (7) Developer has executed the operations and maintenance agreement related to the stormwater infrastructure; and (8) all terms of this Agreement have been faithfully kept by Developer.

7.2 Notwithstanding the foregoing, the Town may, at its sole discretion, issue building permits prior to completion of certain of the less critical Subdivision Improvements, as reasonably determined by the Town, on the condition that the Performance Guarantee remains in effect and such improvements be completed prior to the issuance of certificates of occupancy. In its discretion, the Town may also issue a limited number of building permits for the construction of model homes for the purpose of early sales.

7.3 If at any time Developer is not in material compliance with this Agreement, the Final Plat, the Resolution or the Approved Plans, the Town may withhold the issuance of additional building permits.

7.4 Notwithstanding anything to the contrary contained in this Agreement, if the conditions described in Section 7.1 are satisfied and/or complete and the Developer is not in default of the terms of this Agreement, then the Town agrees to issue building permits, subject to standard

review and approval, for any lot within a phase of the Development that has received a Notice of Construction Acceptance of the Public Improvements and written notice of approval of the Private Improvements.

### **OPERATION STANDARDS**

8.1 Construction activity shall occur only during the times set forth in the Code.

8.2 Developer shall be responsible to control all weeds growing within the Development. Prior to the commencement of construction, Developer shall provide a weed management plan to the Town, outlining the manner and frequency in which the weeds shall be controlled. The Town shall have the right to reasonably object to the weed management plan. Developer further agrees to use the appropriate herbicide and undertake mowing of the property within the Development.

8.3 Developer shall, at all times, keep the public right-of-way free from accumulation of waste material, rubbish, dirt and mud caused by Developer's operation. Developer shall remove such waste material, rubbish, dirt and mud no less than weekly and, at the completion of the work, shall promptly remove all debris waste materials, rubbish, dirt, mud, tools, construction equipment, machinery, building materials, trash containers, and portable toilets from the public right-of-way.

8.4 Whenever the Town reasonably determines that any activity is occurring which is not in compliance with the requirements of any federal or state regulations applicable to water quality or stormwater control, the Town may order all construction activity stopped upon service of written notice. Developer, or its contractors, shall immediately stop all activity until authorized in writing by the Town to proceed. If Developer or a responsible party is not on the site or cannot be located, the notice to stop work shall be posted in a conspicuous place upon the area where the activity is occurring and shall state the nature of the violation. It shall be unlawful for any person to fail to comply with a stop work order.

8.5 In the event that Developer fails to perform the work specified in Paragraphs 8.2, 8.3 or 8.4 within a reasonable time period after receiving written notice from the Town, as determined by the Town, the Town may, in addition to other remedies, including those set forth in Paragraph 7.3, perform the work required and charge Developer for the actual, direct cost thereof including a reasonable administrative fee. Developer shall pay the Town for all actual, direct costs incurred by the Town and a reasonable administrative fee in the performance of the above said service within ten (10) days of the Town submitting an invoice for said services. If Developer does not remit the costs, in addition to other remedies, the Town may draw on the Performance Guarantee or Maintenance Guarantee.

8.6 Developer shall use commercially reasonable efforts to ensure that Developer's subcontractors cooperate with the Town's construction inspectors in all manners. Developer shall take commercially reasonable steps to prevent its construction activities from damaging adjacent properties.

## **DEVELOPMENT STANDARDS**

9.1 Developer shall comply with the requirements contained in the Annexation Agreement and any other duly executed agreement related to the Property, except as specifically amended by this Agreement.

9.2 Except as otherwise provided in this Agreement, the Final Plat, the Resolution or Approved Plans, Developer shall comply with the Code, the Town's zoning ordinances, subdivision regulations, landscape guidelines and construction standards and specifications and the Johnstown Design Guidelines or, if operative with respect to the Development, the approved design guidelines.

9.3 If the Property is included in a metropolitan district, Developer shall dedicate all outlots and tracts containing open space, park areas, and trails to such metropolitan district. The open spaces, parks, and trails shall be available for public use.

9.4 Upon completion of construction, Developer shall provide complete construction drawings and final as-built drawings to the Town in print and digital form, in a manner that conforms to the Town's format and content requirements.

9.5 Developer shall take all necessary steps to prevent its construction activities from violating applicable federal and state laws applicable to water quality, water bodies and wetlands. All drainage and holding ponds shall be kept substantially free of standing water by whatever commercially reasonable means including, but not limited to, pumping water out of any holding ponds.

## **LIABILITY, INSURANCE AND COST REIMBURSEMENT**

10.1 ***Indemnification:*** Developer hereby agrees to indemnify and hold the Town, its employees, agents, representatives, insurers and self insurance pool 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 Developer, its employees, agents, consultants, representatives or subcontractors, except to the extent caused by negligence or willful misconduct of the Town. Developer 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 costs, expenses and reasonable attorney's fees related thereto whether or not such liability, claims or demands are groundless, false or fraudulent.

10.2 ***Insurance:*** Developer shall for itself and for its contractors, subcontractors, representatives and agents engaged in the design, construction or installation of the Public Improvements and Private Improvements maintain such liability insurance including general liability, contractors liability, professional liability, comprehensive automobile liability and sufficient public liability insurance as will protect the Town, its employees, agents and representatives against any and all potential liability, claims, damage, demands, losses, and

expenses which may be incurred or asserted pursuant to Paragraph 10.1 above. Liability insurance shall be in the minimum amount of One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) aggregate, or such greater amounts as may be established by the Colorado Governmental Immunity Act, §§ 24-10-101 *et seq.*, C.R.S., as may be amended. Developer shall list the Town, its officers, employees, agents and representatives, as additional insured on such liability policies. Whenever requested by the Town, but not more than once per six (6) month period, Developer agrees to submit certificates of insurance evidencing sufficient amounts, types and duration of insurance and showing the Town, its officers, 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 Development 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. In addition to the insurance specified above, Developer shall maintain workers compensation insurance, if so required by law, and shall require its contractors, subcontractors, representatives and agents engaged in the design, construction or installation of improvements to maintain workers compensation insurance in the amount required by law.

10.3 ***Drainage Liability:*** Developer shall indemnify and hold the Town harmless from any liability the Town may have on account of any change in the nature, direction, quantity, or quality of drainage flow resulting from the Development, except to the extent caused by the negligence or willful misconduct of the Town. In addition, Developer shall reimburse the Town for any and all costs, fees, and expenses, including attorney's fees, which the Town incurs in acquiring any rights-of-way or easements which the Town is required to acquire or condemn or which the Town is held to have acquired or condemned for drainage as a result of this Development. This provision shall survive Final Acceptance and the termination of this Agreement.

10.4 ***Tax Liability:*** Developer shall pay all outstanding taxes, encumbrances or obligations on any property dedicated or conveyed to the Town as such may accrue prior to such dedication or conveyance, and shall indemnify and hold the Town harmless from any and all encumbrances, obligations or tax liability incurred prior to the dedication or conveyance to the Town.

10.5 ***Use Tax:*** Developer shall pay all applicable use tax due and owing to the Town prior to the commencement of construction.

10.5 ***Cost Reimbursement to Town:*** Developer shall reimburse the Town for the actual, reasonable cost of professional consultants, including, but not limited to engineers, testing and inspection companies and attorneys, engaged by the Town to process and complete the Development.

10.6 ***Colorado Governmental Immunity Act:*** Nothing in this Agreement shall be construed to waive, limit or otherwise modify any governmental immunity that may be available by the law to the Town, its employees, or agents, or any other person acting on behalf of the Town and, in particular, governmental immunity afforded pursuant to the Colorado Governmental Immunity Act, §§ 24-10-101 *et seq.*, C.R.S., as amended.

## DEFAULTS AND REMEDIES

11.1 A default by Developer shall exist if Developer fails to fulfill or perform any material obligation contained in this Agreement, the Final Plat, the Resolution, or the Approved Plans, or Developer fails to comply with the Town's ordinances, resolutions and regulations and all other applicable laws and regulations. In the event of a default, the Town shall deliver written notice to Developer of such default and Developer shall have ten (10) days from receipt of such notice to cure the default. If the default is not of a type that may be cured within such ten (10) day period, Developer may provide written notice to the Town within such period that it is actively and diligently pursuing such cure and Developer shall thereafter have a reasonable time to cure the default, provided that Developer is at all times within that extended period actively and diligently pursuing a cure. In case of emergency, as determined by the Town, such written notice shall be deemed waived and the Town may proceed as it deems necessary at the expense of Developer or the issuers of the Performance Guarantee or Maintenance Guarantee.

11.2 If the default relates to the improvement secured by the Performance Guarantee and the default is not timely cured, the Town may draw on the Performance Guarantee. If the default arises subsequent to the issuance of the Notice of Construction Acceptance and the default is not timely cured, the Town may draw on the Maintenance Guarantee. In addition, and without limitation, if the default is not timely cured, the Town may withhold approval of any or all building permits, certificates of occupancy, water meters or tap hook-ups for any area within the Development. Notwithstanding these rights and remedies, the Town may pursue whatever additional remedies it may have against Developer or anyone, either at law, equity or pursuant to this Agreement. The Town's remedies shall be cumulative.

11.3 Should Developer default beyond any applicable notice and cure period in any material obligation under this Agreement, the Town may, at its discretion, cure such default at Developer's expense. The Town shall estimate the cost of such improvements and give notice to Developer to pay such cost estimate. The Town shall use such payment for said improvements and refund any money collected in excess of the actual cost of said improvements. Should payment not be made within thirty (30) days of such notice, the Town may assess the amount of the cost estimate, plus ten percent (10%) to defray the cost of collection as provided by state law, to the Property and file a lien against the Property. The Town may file such lien at any time after said thirty (30) days while Developer is in default of this Agreement.

## SPECIAL PROVISIONS

12.1 The additional terms, conditions or provisions relating to the Development are set forth in **Exhibit B-3**, which is attached hereto, incorporated herein by this reference, and made a part of this Agreement.

## MISCELLANEOUS

13.1 **No Waiver:** Delays in enforcement or the waiver of any one or more breaches of this Agreement by the Town shall not constitute a waiver of any of the remaining terms or obligations.

13.2 **Severability:** If any provisions or parts of this 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.

13.3 **Recording of Agreement:** This Agreement shall be recorded with the approved Final Plat and shall be a covenant running with and against all the Property, property rights and improvements contained within the Development described in **Exhibit A** 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. No lots, tracts or parcels may be separately conveyed prior to recording the Agreement and the Final Plat.

13.4 **Binding Effect:** Unless otherwise provided herein, this Agreement shall be binding upon Developer's heirs, successors, assigns, transferees and any other person or entity acquiring or purchasing any interest in any of the Property described in the attached **Exhibit A**, with the exception of a bona fide residential home buyer of a completed owner-occupied home.

13.5 **Transfer or Assignments:** In the event of a sale or transfer of any portion of the Development, except to a bona fide residential home buyer of a completed owner-occupied home, 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 Agreement unless, prior to the transfer or the sale, a written agreement satisfactory to the Town delineating and allocating the various rights and obligations for the Subdivision Improvements has been approved and executed by the Town.

13.6 **Title and Authority:** Developer expressly warrants and represents to the Town that it is the record owner of the Property and further represents and warrants that the undersigned has full power and authority to enter into this Agreement. Developer understands that the Town is relying on the representations and warranties contained herein in approving in entering into this Agreement.

13.7 **Notice:** All notices, consents, applications or other instruments provided for under this Agreement shall be deemed properly given and received: (1) when personally delivered and received, when sent by messenger service, or when forwarded by electronic mail delivery, but only upon confirmation of receipt of such electronic mail; (2) on the next day after deposit for delivery with a nationally-recognized overnight courier service; or (3) three business days after deposit in the United States mail, by certified mail with return receipt requested, postage prepaid and addressed as follows:

**TO DEVELOPER:**

**POST MODERN DEVELOPMENT, LLC**

Attention: Joseph Padilla  
144 North Mason Street, Suite 4  
Fort Collins, CO 80524  
Email: jd@postmoderndevelopment.com

**TO TOWN:**

**TOWN OF JOHNSTOWN**

Attention: TOWN MANAGER  
450 South Parish Avenue  
P. O. Box 609  
Johnstown, CO 80534  
Email: MLeCerf@JohnstownCO.gov

13.8 ***Costs and Attorney Fees.*** If any judicial proceedings may hereafter be brought related to this Agreement, the Town, if the prevailing party, shall be entitled to recover the costs of such proceedings, including reasonable attorney's fees and reasonable expert witness fees. Nothing herein shall be construed to prevent or interfere with the Town's rights and remedies specified elsewhere in the Agreement.

13.9 ***Vested Right.*** The Final Plat shall have vested rights for a period of three (3) years from the date of this Agreement. If, after such time, no reasonable and substantial efforts have commenced to construct the Subdivision Improvements, as determined by the Town at its sole discretion, said plat may be vacated by action of the Town.

13.10 ***Warranty of Developer:*** Developer warrants that the Subdivision Improvements shall be installed in a good and workmanlike manner and in compliance with the Approved Plans, this Agreement, the Final Plat, the Resolution, the Town's ordinances, resolutions and regulations and all other applicable laws and regulations and shall be substantially free of any defects in materials and workmanship.

13.11 ***Governing Law and Venue.*** This Agreement and the interpretation thereof shall be governed by the laws of the State of Colorado and Municipal Code of the Town of Johnstown. Venue for any claim, proceeding or action arising out of this Agreement shall be in Weld County, Colorado.

13.12 ***No Presumption.*** Each party acknowledges that it has obtained, or has had the opportunity to obtain, the advice of legal counsel of its own choosing in connection with the negotiation and execution of this Agreement and with respect to all matters set forth herein. In the event of any dispute, disagreement or controversy arising from this Agreement, the parties shall be considered joint authors and no provision shall be interpreted against any party because of authorship.

13.13 ***Entire Agreement.*** This Agreement constitutes the entire agreement and understanding between the parties and supersedes all prior agreements or understandings. Any amendment to this Agreement must be in writing and signed by the parties.

13.14 ***Compliance with the Law.*** Developer shall comply with all federal, state and local laws and regulations in the performance of the obligations under this Agreement.



13.15 **No Third-Party Beneficiaries.** No person or entity, other than a party to this Agreement, shall have any right of action under this Agreement including, but not limited to, lenders, lot or home buyers and materialmen, laborers or others providing work, services or materials for the Subdivision Improvements shall not have any right of action under this Agreement.

13.16 **Force Majeure.** Neither party shall be liable for a failure to perform hereunder if such failure is the result of force majeure, which shall mean causes beyond the reasonable control of a party such as acts of God, labor strikes, war, terrorism, fire, pandemic or epidemic or action or inaction of government authorities.

13.17 **Headings.** The paragraph headings herein are for the convenience and reference of the parties and are not intended to define or limit the scope or intent of this Agreement.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, and agreeing to be fully bound by the terms of this Agreement, the parties have set their hands below on this 7<sup>th</sup> day of October, 2022.

POST MODERN DEVELOPMENT, LLC

By: [Signature]

Name: J.P. Padilla

Title: Mgt Member

STATE OF COLORADO )

) ss.

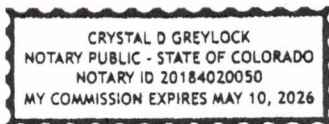
COUNTY OF Larimer )

SUBSCRIBED AND SWORN to before me this 7<sup>th</sup> day of October, 2022, by J.P. Padilla, as the Managing Member of Post Modern Development, LLC.

WITNESS my hand and official seal.

My commission expires:

May 10, 2026



[Signature]  
Notary Public

TOWN OF JOHNSTOWN, COLORADO  
a municipal corporation

By: \_\_\_\_\_  
Gary Lebsack, Mayor

ATTEST:

By: \_\_\_\_\_  
Hannah Hill, Town Clerk

**SUBDIVISION DEVELOPMENT AND IMPROVEMENT AGREEMENT  
FOR  
THE TOWN OF JOHNSTOWN  
(Johnstown Farms, Filing No. 2)**

**EXHIBITS**

**TABLE OF CONTENTS**

<b>EXHIBIT A:</b>	Legal Description of the Property
<b>EXHIBIT B-1:</b>	Copy of Final Plat
<b>EXHIBIT B-2:</b>	Town Resolution Approving Development
<b>EXHIBIT B-3:</b>	Additional Terms, Conditions or Provisions
<b>EXHIBIT C:</b>	Schedule of Public Improvements
<b>EXHIBIT D:</b>	Irrevocable Letter of Credit Form

**EXHIBIT A**

**LEGAL DESCRIPTION  
(Property)**

## Exhibit A

### Legal Description

A portion of the Southwest Quarter of Section 9, Township 4 North, Range 67 West of the Sixth Principal Meridian, County of Weld, State of Colorado, being more particularly described as follows:

Beginning at the West Quarter corner of said Section 9, whence the Center Quarter corner of said Section 9, bears South 89°24'30" East, a distance of 2711.57 feet, all bearings hereon are referenced to this line;

thence along the North line of the Southwest Quarter of said Section 9, South 89°24'30" East, a distance of 1400.63 feet to the westerly line of Johnstown Farms Filing No. 3 recorded at Reception No. 4568150, in the records of the Clerk and Recorder of said county;

thence along said westerly line the following twenty-two (22) courses:

1. South 00°35'30" West, a distance of 243.05 feet;
2. South 17°05'56" East, a distance of 312.42 feet;
3. South 08°16'54" West, a distance of 101.30 feet;
4. South 73°48'68" West, a distance of 301.18 feet;
5. South 38°14'03" West, a distance of 293.89 feet;
6. South 18°23'04" East, a distance of 163.95 feet;
7. South 22°16'35" West, a distance of 165.82 feet;
8. South 34°51'09" East, a distance of 193.10 feet;
9. South 39°39'32" West, a distance of 314.41 feet;
10. North 86°13'22" East, a distance of 210.38 feet;
11. South 29°49'13" East, a distance of 160.73 feet;
12. South 00°51'36" East, a distance of 178.22 feet;
13. South 48°25'30" West, a distance of 98.93 feet;
14. North 90°00'00" West, a distance of 75.86 feet;
15. North 59°40'57" West, a distance of 166.01 feet;

16. South 68°44'13" West, a distance of 104.57 feet;
17. South 34°32'15" East, a distance of 252.50 feet;
18. South 00°00'00" East, a distance of 84.23 feet;
19. South 38°13'50" West, a distance of 97.60 feet;
20. South 61°02'08" East, a distance of 96.44 feet;
21. South 46°04'50" East, a distance of 124.78 feet;
22. South 62°56'25" East, a distance of 71.96 feet to the West Right-of-way line of the Great Western Railroad as excepted in Book 221 at Page 72 in said records;

thence along said West Right-of-way line, South 36°08'54" West, a distance of 101.74 feet to the Southline of the Southwest Quarter of said Section 9; thence along said South line, North 89°11'03" West, a distance of 1014.97 feet to the West line of said Southwest Quarter; thence along the West line of said Southwest Quarter, North 00°52'28" West, a distance of 2613.54 feet to the Point of Beginning. Said described property contains 67.253 acres.

**EXHIBIT B-1**

**PLAT**

(SEE ATTACHED)

# JOHNSTOWN FARMS FILING NO. 2

A PARCEL OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 9, TOWNSHIP 4 NORTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, TOWN OF JOHNSTOWN, COUNTY OF WELD, STATE OF COLORADO

**DEDICATION:**

KNOW ALL PERSONS BY THESE PRESENTS THAT POST MODERN DEVELOPMENT, LLC a Colorado limited liability company, being the sole owner(s) in fee of:

A PORTION OF THE SOUTHWEST QUARTER OF SECTION 9, TOWNSHIP 4 NORTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF WELD, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**BEGINNING AT THE WEST QUARTER CORNER OF SAID SECTION 9, WHENCE THE CENTER QUARTER CORNER OF SAID SECTION 9, BEARS SOUTH 89°24'30" EAST, A DISTANCE OF 2711.57 FEET, ALL BEARINGS HEREON ARE REFERENCED TO THIS LINE:**

THENCE ALONG THE NORTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 9, SOUTH 89°24'30" EAST, A DISTANCE OF 1400.63 FEET TO THE WESTERLY LINE OF JOHNSTOWN FARMS FILING NO. 3 RECORDED AT RECEPTION NO. 4568150, IN THE RECORDS OF THE CLERK AND RECORDER OF SAID COUNTY;

THENCE ALONG SAID WESTERLY LINE THE FOLLOWING TWENTY-TWO (22) COURSES:

1. SOUTH 00°35'30" WEST, A DISTANCE OF 243.05 FEET;
2. SOUTH 7°05'56" EAST, A DISTANCE OF 312.42 FEET;
3. SOUTH 08°16'54" WEST, A DISTANCE OF 101.30 FEET;
4. SOUTH 73°48'58" WEST, A DISTANCE OF 301.18 FEET;
5. SOUTH 38°14'03" WEST, A DISTANCE OF 293.89 FEET;
6. SOUTH 18°23'04" EAST, A DISTANCE OF 163.95 FEET;
7. SOUTH 22°16'55" WEST, A DISTANCE OF 164.82 FEET;
8. SOUTH 34°51'09" EAST, A DISTANCE OF 193.10 FEET (SEE NOTE 13);
9. SOUTH 39°39'32" WEST, A DISTANCE OF 314.41 FEET;
10. NORTH 86°13'22" EAST, A DISTANCE OF 210.38 FEET;
11. SOUTH 29°49'13" EAST, A DISTANCE OF 160.73 FEET;
12. SOUTH 00°51'36" EAST, A DISTANCE OF 178.22 FEET;
13. SOUTH 48°25'30" WEST, A DISTANCE OF 98.93 FEET;
14. NORTH 09°00'00" WEST, A DISTANCE OF 75.86 FEET;
15. NORTH 59°40'57" WEST, A DISTANCE OF 166.01 FEET;
16. SOUTH 68°44'13" WEST, A DISTANCE OF 104.57 FEET;
17. SOUTH 34°32'15" EAST, A DISTANCE OF 252.50 FEET;
18. SOUTH 00°00'00" EAST, A DISTANCE OF 84.23 FEET;
19. SOUTH 38°13'50" WEST, A DISTANCE OF 97.60 FEET;
20. SOUTH 61°02'08" EAST, A DISTANCE OF 96.44 FEET;
21. SOUTH 46°04'50" EAST, A DISTANCE OF 124.78 FEET;
22. SOUTH 62°56'25" EAST, A DISTANCE OF 71.96 FEET TO THE WEST RIGHT-OF-WAY LINE OF THE GREAT WESTERN RAILROAD AS EXCEPTED IN BOOK 221 AT PAGE 72 IN SAID RECORDS;

THENCE ALONG SAID WEST RIGHT-OF-WAY LINE, SOUTH 36°08'54" WEST, A DISTANCE OF 101.74 FEET TO THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 9;

THENCE ALONG SAID SOUTH LINE, NORTH 89°11'03" WEST, A DISTANCE OF 1014.97 FEET TO THE WEST LINE OF SAID SOUTHWEST QUARTER;

THENCE ALONG THE WEST LINE OF SAID SOUTHWEST QUARTER, NORTH 00°52'28" WEST, A DISTANCE OF 2613.54 FEET TO THE POINT OF BEGINNING.

**LEGAL DESCRIPTION PREPARED BY:**

SHAUN D. LEE, PLS 38158  
FOR AND ON BEHALF OF:  
AZTEC CONSULTANTS INC.

Said described parcel of land contains 2,699,261 square feet, or 61.966 acres, more or less (+).

shown on the attached map as embraced within the heavy exterior lines thereon, has (have) subdivided the same into Lots, Blocks, and Outlots, as shown on the attached map; and does (do) hereby set aside said portion or tract of land and designate the same JOHNSTOWN FARM FILING NO. 2, and does (do) dedicate to the public, the streets and all easements over and across said lots at locations shown on said map; and does (do) further certify that the width of said streets, dimensions of the lots and blocks (or building envelopes) and the names and numbers thereof are correctly designated upon said map.

Owner: Post Modern Development, LLC

By: \_\_\_\_\_  
JD Padilla

STATE OF COLORADO )  
) ss  
COUNTY OF WELD )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022 by JD Padilla as of Post Modern Development, LLC.

WITNESS My Hand and Official Seal.

Notary Public

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

**TOWN COUNCIL:**

This Plat, to be known as JOHNSTOWN FARM FILING NO. 2, is approved and accepted by the Town of Johnstown, by Resolution Number \_\_\_\_\_.

Passed and adopted on Final Reading at a regular meeting of the Town Council of the Town of Johnstown, Colorado held on the \_\_\_\_\_ day of \_\_\_\_\_, 2022.

By: \_\_\_\_\_ ATTEST: \_\_\_\_\_  
Gary Lebsack, Mayor Hannah Hill, Town Clerk

**SURVEYOR NOTES:**

1. The lineal unit of measurement for this survey is U. S. Survey Feet.
2. The Basis of Bearings is the West quarter-section line, bearing South 88°59'45" East (an assumed bearing), and monumented as shown on drawing.
3. For all information regarding easements, right-of-way or title of record, Northern Engineering relied upon Order No. ABD25177100, dated 10/20/2020, prepared by Land Title Guarantee Company.
4. Northern Engineering or the Professional Land Surveyor listed hereon, does not have the expertise to address mineral rights, and recommends the owner retain an expert to address these matters. Northern Engineering or the Professional Land Surveyor listed hereon assumes no responsibility for the mineral rights upon the subject property.
5. A copy of the title commitment and the documents contained therein were provided to the owner, client and those entities listed under the surveyor's certification for their use and review.
6. For easements created by separate document and shown hereon refer to record document for specific terms.
7. A prescriptive 60-foot right of way Weld County road 46 1/2 was shown on the subdivision plat of Johnstown Farms Filing No. 3, recorded at reception no. 4568150 with Weld County Clerk and Recorder. Said plat also shows the 60-foot right of way as being attributed to Book 86 Page 283 of the Weld County records. However, the document at Book 86 Page 283 only calls for 60-foot rights of way on section lines, while Weld County road 46 1/2 is along a quarter section line. This survey does not address whether there was a prescriptive 60-foot right of way prior to the platting of Johnstown Farms Filing No. 3.
8. Not all documents listed in title commitment are plottable or definable. Those easements that are definable by their descriptions are shown hereon. Owner, Client and others should refer to the title commitment and those documents listed therein for a true understanding of all rights of way, easements, encumbrances, interests and title of record concerning the subject property.
9. The word "certify" or "certification" as shown and used hereon is an expression of professional opinion regarding the facts of the survey, and does not constitute a warranty or guaranty, expressed or implied. DORA Bylaws and Rules (4 CCR 730-1).
10. Easements and other record documents shown or noted hereon were examined as to location and purpose and were not examined as to restrictions, exclusions, conditions, obligations, terms, or as to the right to grant the same.
11. Adjacent property owner information per the Weld County Property Portal
12. The Professional opinion of the Surveyor is not a determination of law, nor a matter of fact.
13. This bearing appears to have a scrivener's error and should instead read South 30° 51' 09" East, per the plat of Johnstown Farms Filing No. 3 recorded at Reception No. 4568150 by Shaun D. Lee, PLS 38158 for and on behalf of Aztec Consultants Inc., being the same PLS that created this legal description. This survey reflects the aforementioned bearing of South 30° 51' 09" East.
14. A current title commitment was not provided to the surveyor. The surveyor has used the above listed title commitment as the best available evidence to determine rights and encumbrances that may or may not impact the subject property. The surveyor is not responsible for those rights or encumbrances of record or existing not listed in said title commitments. This survey is subject to all easements, rights-of-way, and encumbrances as recorded or existing.
15. A current title commitment will be provided to the surveyor prior to final submittal. This note will be removed prior to finalizing survey.
16. Said described property is located within an area having a Zone Designation AE by the Federal Emergency Management Agency (FEMA), on Flood Insurance Rate Map No. 08069C1410G, Panel 1410, with a date of identification of January 15, 2021, for Community No. 080250, in Town of Johnstown, County of Larimer, State of Colorado, which is the current Flood Insurance Rate Map for the community in which said premises is situated.
17. It is unlawful under Colorado State Statute to knowingly disturb, deface, remove, or destroy a land survey monument.
18. This survey is a draft. Monuments have not been set. Monuments will be set or upgraded prior to finalizing survey. \*THIS NOTE WILL BE REMOVED PRIOR TO FINALIZING THE SURVEY\*

**PLAT NOTES AS REQUESTED BY THE TOWN OF JOHNSTOWN:**

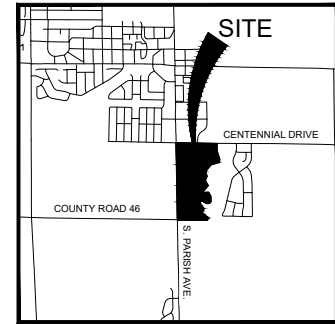
Notes as requested by the Town of Johnstown and listed hereon are being required as a condition of approval by the Town of Johnstown. The notes, as listed hereon, were provided to Northern Engineering by the Town of Johnstown.

- No construction or building may occur on-site until all Final Development Plans, Engineering Plans and Reports, Development Agreement, and the Water/Sewer Service Agreement have received Town approval and construction acceptance, as appropriate.

**SURVEYOR'S STATEMENT**

I, Robert C. Tesseley, a Colorado Registered Professional Land Surveyor, do hereby state that this Subdivision Plat was prepared from an actual survey under my personal supervision, that the monuments, as indicated hereon were found or set as shown, and that the foregoing plat is an accurate representation thereof, to the best of my knowledge, information and belief.

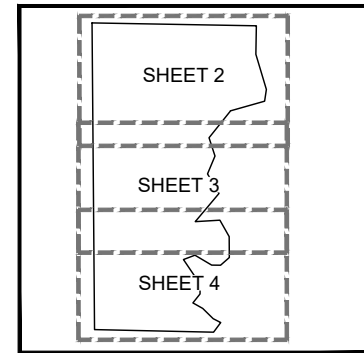
For and on Behalf of Northern Engineering  
Robert C. Tesseley  
Colorado Registered Professional Land Surveyor No. 38470



**VICINITY MAP**  
1" = 200'

**OWNER/DEVELOPER/APPLICANT**  
POST MODERN DEVELOPMENT, LLC  
a Colorado limited liability company  
144 N. Mason Street #4  
Fort Collins, CO 80504

**SURVEYOR**  
Northern Engineering Services, Inc.  
Robert C. Tesseley, PLS  
301 North Hovess Street, Suite 100  
Fort Collins, Colorado 80521  
(970) 221-4158



**SHEET INDEX**  
1"=500'

**NOTICE:**  
According to Colorado law, you must commence any legal action based upon any defect in this survey within three years after the date you discover such defect, or within three years after the date of the survey, whichever date is later. No claim will be commenced more than three years after the date of the certificate above hereon.

SECTION: 9  
TOWNSHIP: 4 NORTH  
RANGE: 67 WEST  
PLAT NO. OF THE 6TH PRINCIPAL MERIDIAN:

**NORTHERN ENGINEERING**  
SURVEYING • MUNICIPAL • LAND DEVELOPMENT

DATE: 07/28/22  
SCALE: AS SHOWN  
PROJECT: JOHNSTOWN FARM FILING NO. 2  
DRAWN BY: R. Tesseley  
CHECKED BY: J. Smith

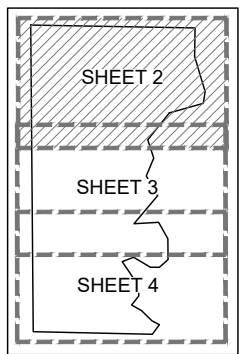
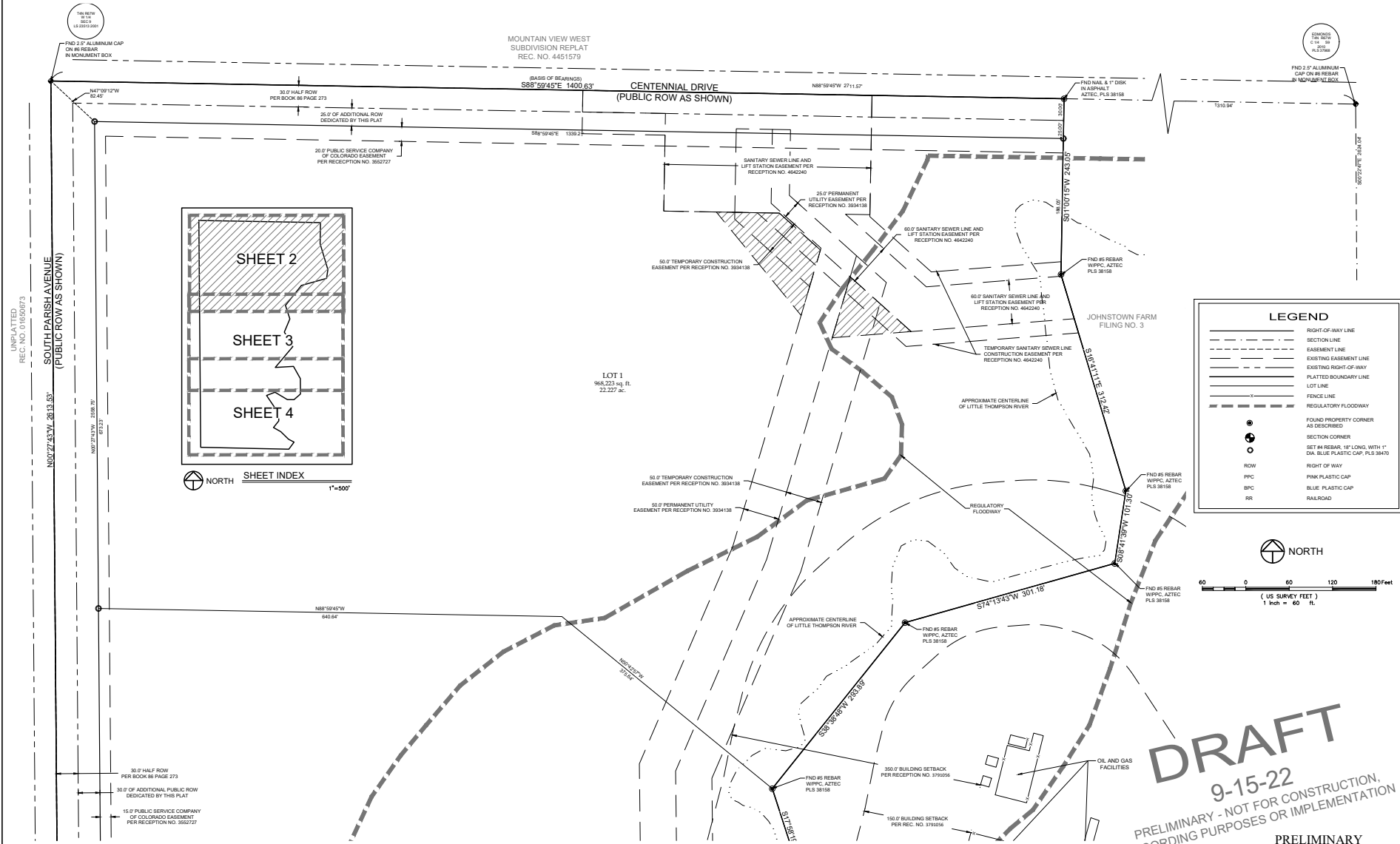
JOHNSTOWN FARMS FILING NO. 2  
TOWN OF JOHNSTOWN  
STATE OF COLORADO

Sheet  
1  
Of 4 Sheets

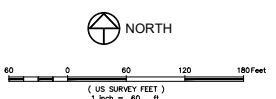


# JOHNSTOWN FARMS FILING NO. 2

A PARCEL OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 9, TOWNSHIP 4 NORTH,  
RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, TOWN OF JOHNSTOWN, COUNTY OF WELD, STATE OF COLORADO



LEGEND	
	RIGHT-OF-WAY LINE
	SECTION LINE
	EASEMENT LINE
	EXISTING EASEMENT LINE
	EXISTING RIGHT-OF-WAY
	PLATTED BOUNDARY LINE
	LOT LINE
	FENCE LINE
	REGULATORY FLOODWAY
	REGULATORY FLOODWAY
	FOUND PROPERTY CORNER
	AS DESCRIBED
	SECTION CORNER
	SET 4# REBAR, 18\"/>
	RIGHT OF WAY
	PPC
	BPC
	RR
	FRNK PLASTIC CAP
	BLUE PLASTIC CAP
	RAILROAD



**DRAFT**  
9-15-22  
PRELIMINARY - NOT FOR CONSTRUCTION,  
RECORDING PURPOSES OR IMPLEMENTATION

**PRELIMINARY**  
Firm and on behalf of Northern Engineering Services, Inc.  
Robert C. Treacy  
Colorado Registered Professional Land Surveyor No. 38470

**NOTICE:**  
According to Colorado law, you must commence any legal action based upon any defect in this survey within three years after the date of the certificate shown hereon.  
If the certificate is not recorded within three years after the date of the certificate shown hereon, the certificate shall be deemed to have been recorded on the date of the certificate shown hereon.

SECTION: 9  
TOWNSHIP: 4N  
RANGE: 67W  
PLAT: 2

**N** **NORTHERN ENGINEERING**  
SURVEY | MUNICIPAL | LAND DEVELOPMENT  
4000 West 104th Avenue, Suite 100, Westminster, CO 80020  
Phone: 303.426.1111 | Fax: 303.426.1112  
www.northerneng.com

DATE: 9/15/22  
PROJECT: JOHNSTOWN FARMS FILING NO. 2  
DRAWN BY: R. Treacy  
CHECKED BY: R. Treacy  
SCALE: AS SHOWN  
PLATTED BY: R. Treacy

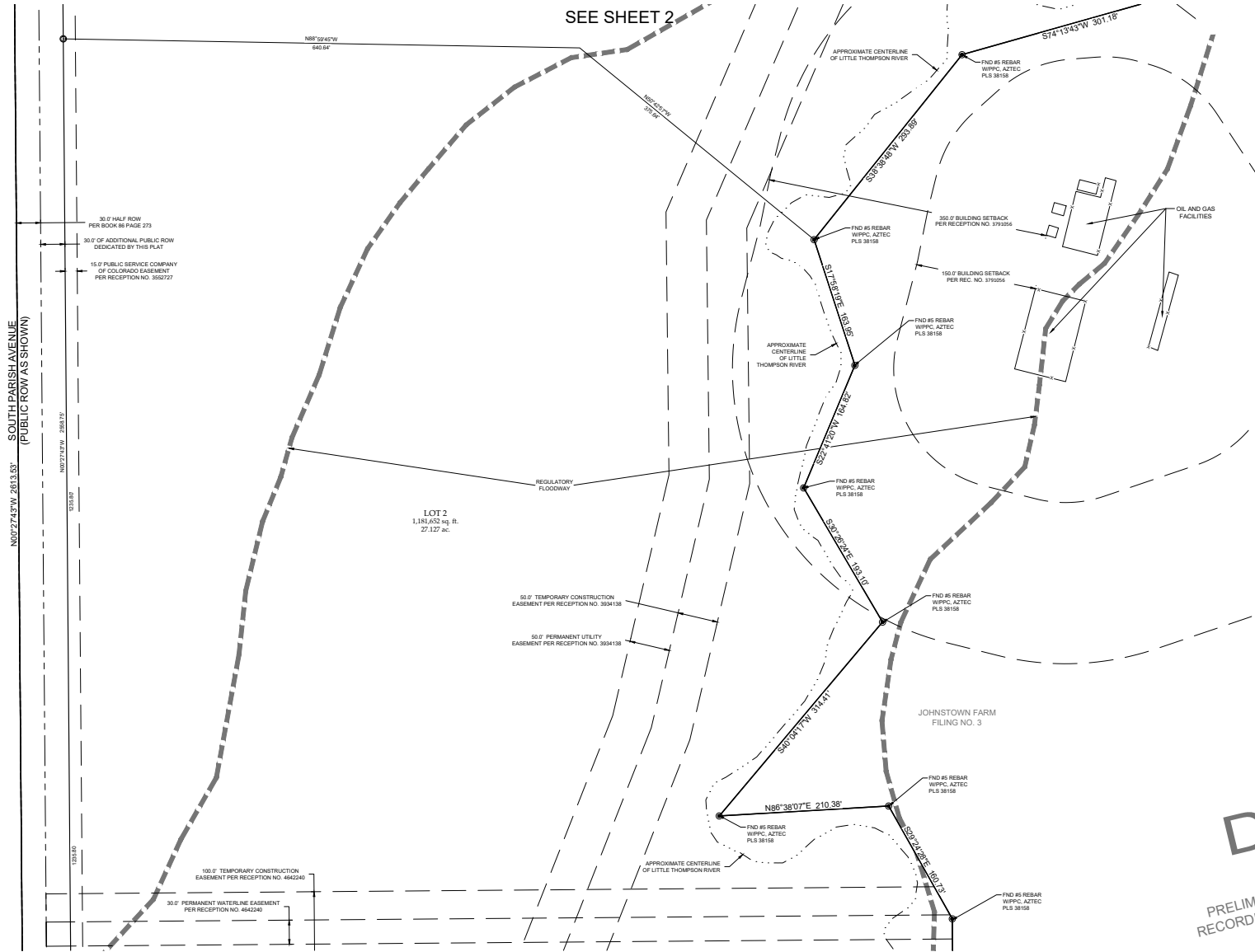
JOHNSTOWN FARMS FILING NO. 2  
TOWN OF JOHNSTOWN  
STATE OF COLORADO

Sheet  
**2**  
Of 4 Sheets

SEE SHEET 3

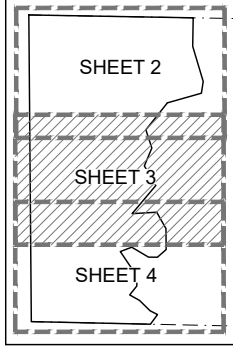
# JOHNSTOWN FARMS FILING NO. 2

A PARCEL OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 9, TOWNSHIP 4 NORTH,  
RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, TOWN OF JOHNSTOWN, COUNTY OF WELD, STATE OF COLORADO



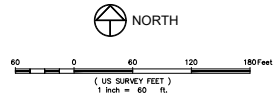
SEE SHEET 2

SEE SHEET 4



**LEGEND**

	RIGHT-OF-WAY LINE
	SECTION LINE
	EASEMENT LINE
	EXISTING EASEMENT LINE
	PLATTED RIGHT-OF-WAY
	LOT LINE
	FENCE LINE
	REGULATORY FLOODWAY
	FOUND PROPERTY CORNER AS DESCRIBED
	SECTION CORNER
	SET 44 REBAR, 18" LONG, WITH 1" DIA. BLUE PLASTIC CAP, PLS 38158
	RIGHT OF WAY
	PINK PLASTIC CAP
	BLUE PLASTIC CAP
	RAILROAD



**DRAFT**  
9-15-22  
PRELIMINARY - NOT FOR CONSTRUCTION,  
RECORDING PURPOSES OR IMPLEMENTATION

**PRELIMINARY**  
For and on behalf of Northern Engineering Services, Inc.  
Robert C. Treacy  
Colorado Registered Professional Land Surveyor No. 38470

**NOTICE:**  
According to Colorado law, you must commence any legal action based upon any defect in this survey within three years after the date of discovery and no later than three years after the date of the certificate shown herein.

SECTION: 9  
TOWNSHIP: 4 NORTH  
RANGE: 67 WEST

**NORTHERN ENGINEERING**  
SURVEY / MUNICIPAL / LAND DEVELOPMENT

DATE: 9/15/22  
PROJECT: JOHNSTOWN FARMS FILING NO. 2  
DRAWN BY: R. Treacy  
CHECKED BY: L. Smith

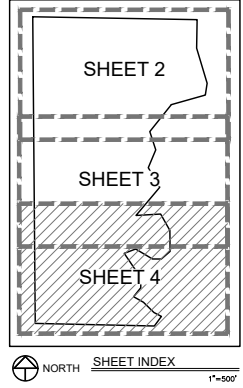
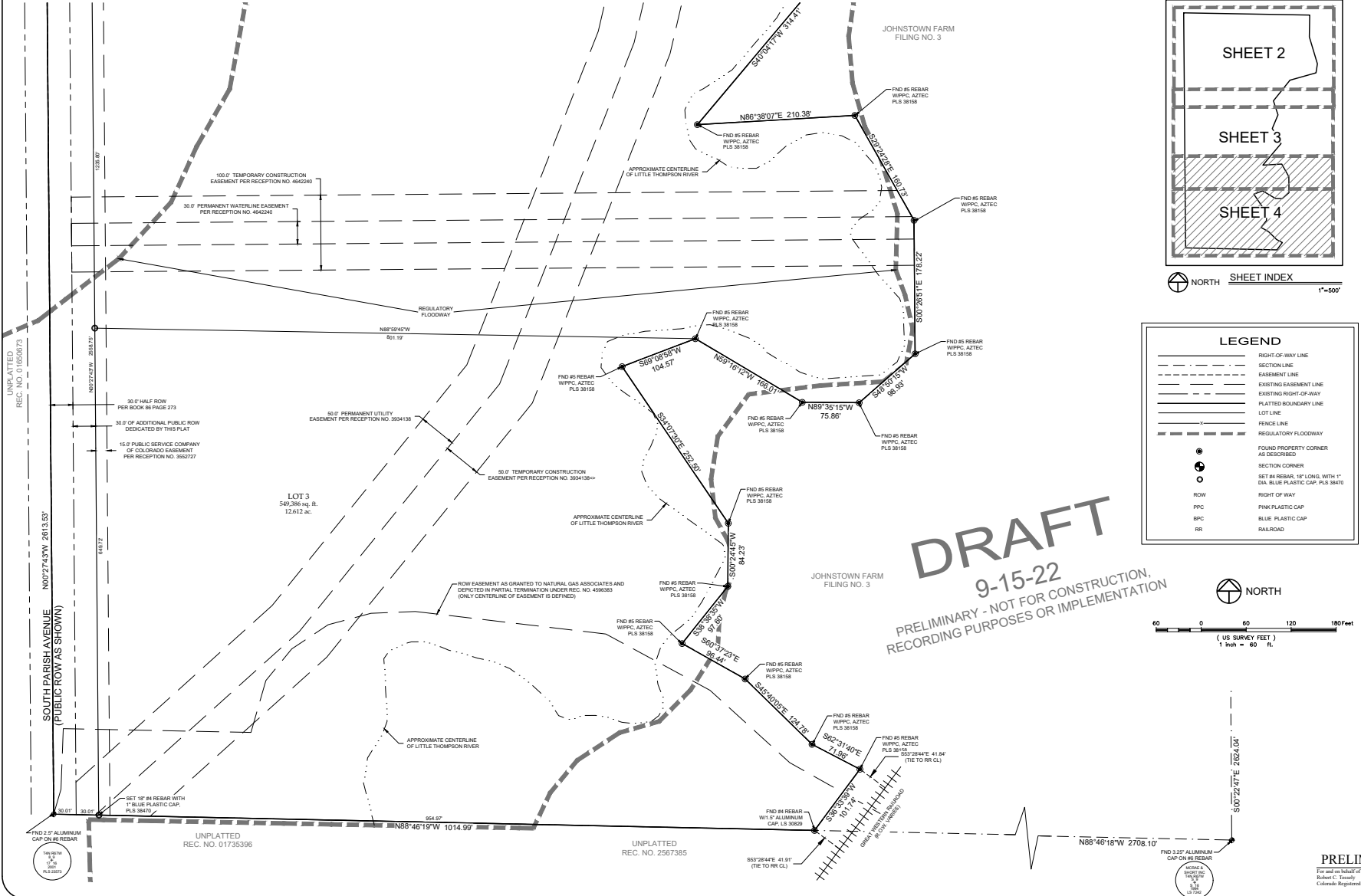
JOHNSTOWN FARMS FILING NO. 2  
TOWN OF JOHNSTOWN  
STATE OF COLORADO

Sheet  
**3**  
Of 4 Sheets

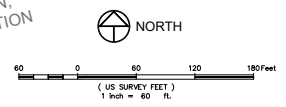
# JOHNSTOWN FARMS FILING NO. 2

A PARCEL OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 9, TOWNSHIP 4 NORTH,  
RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, TOWN OF JOHNSTOWN, COUNTY OF WELD, STATE OF COLORADO

SEE SHEET 3



**DRAFT**  
9-15-22  
PRELIMINARY - NOT FOR CONSTRUCTION,  
RECORDING PURPOSES OR IMPLEMENTATION



**NOTICE:**  
According to Colorado law, you must commence any legal action based upon any defect in this survey within three years after the date of the certificate shown hereon.

SECTION: 9  
TOWNSHIP: 4N  
RANGE: 67W  
DATE OF THE 6TH: 09/15/22

**NORTHERN ENGINEERING**  
SURVEYING / MUNICIPAL / LAND DEVELOPMENT

DATE: 07/22/22  
PROJECT: JOHNSTOWN FARMS FILING NO. 2  
DRAWN BY: R. TERRY  
CHECKED BY: R. TERRY

JOHNSTOWN FARMS FILING NO. 2  
TOWN OF JOHNSTOWN  
STATE OF COLORADO

Sheet  
4  
Of 4 Sheets

**PRELIMINARY**  
For and on behalf of Northern Engineering Services, Inc.  
Robert C. Terry  
Colorado Registered Professional Land Surveyor No. 38470

**EXHIBIT B-2**

**(RESOLUTION APPROVING PLAT)**

(SEE ATTACHED)

## **EXHIBIT B-3**

### **ADDITIONAL TERMS, CONDITIONS OR PROVISIONS**

1. Notwithstanding any provision in this Agreement to the contrary, the Parties recognize and agree that Developer has sought and obtained approval of the Final Plat in conjunction with the subdivision of the Property without the current intent to develop the Property and install the Subdivision Improvements. The Parties are executing this Agreement in order that certain Developer's rights and obligations with respect to the Development and the construction and installation of the Subdivision Improvements within the Development are mutually understood, agreed-upon and binding upon Developer's successors, assigns, transferees and shall run with the Property. Prior to development of any portion of the Property, the property owner or developer of such portion of the Property shall be required to execute an amendment to this Agreement addressing development of such portion of the Property and the special conditions, if any, related thereto. No Developer shall construct Public Improvements without first obtaining Town approval of Civil Engineering Construction Plans applicable to such portion of the Property nor shall a Developer construct Private Improvements without first obtaining Town approval of a Development Plan applicable to such portion of the Property.

2. The final development obligations, as set forth in approved Civil Engineering Construction Plans and included in amendments to this Agreement or other similar future agreements with the Town related to the Development, may include, but are not limited to, road construction, right-of-way improvements, sanitary sewer and stormwater improvements pursuant to the Town's Master Drainage Plan, participation in the configuration of intersections, pro-rata financial participation in the cost of traffic signals, and ditch, railroad and/or easement crossing agreements. Cost-sharing or reimbursement agreements, on pro rata basis, may be available for the portion of the foregoing improvements that materially benefit surrounding properties.

**EXHIBIT C**

**SCHEDULE OF PUBLIC IMPROVEMENTS**

(INTENTIONALLY OMITTED)

**EXHIBIT D**

**FORM--IRREVOCABLE LETTER OF CREDIT**

**NAME OF ISSUING BANK** \_\_\_\_\_

**ADDRESS OF ISSUING BANK** \_\_\_\_\_

Town of Johnstown  
450 So. Parish  
P. O. Box 609  
Johnstown, CO 80534

**ATTENTION: TOWN OF JOHNSTOWN ATTORNEY AND TOWN MANAGER**

We hereby establish, at the request and for the account of this Irrevocable Letter of Credit in favor of the Town of Johnstown in the amount of \$ \_\_\_\_\_. The purpose of this Letter of Credit is to secure performance of a Development Agreement for Johnstown Farms, Filing No. 2, dated \_\_\_\_\_, 20\_\_\_\_, between the Town of Johnstown and Post Modern Development, LLC.

You are hereby authorized to draw on sight by drafts or written demands 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 Town's demand or draft be accompanied by a letter, on the Town's stationery, signed by the Town Manager to the effect that "the Town of Johnstown has declared a default under the Development Agreement."

Partial and multiple drawings are permitted hereunder.

We hereby agree with the Town of Johnstown 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 Letter of Credit shall be for a twelve (12) month term from the date of execution hereof. It is a condition of this Letter of Credit that it shall be automatically renewed, without amendment, for additional periods of one year each from the present or any future expiration date, unless, at least sixty (60) calendar days prior to the effective expiration date, the Town Manager notifies you in writing delivered by certified U.S. mail, return receipt requested, to your address set forth above that the Town of Johnstown elects not to renew this Letter of Credit for any further additional period. 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.

With the exception of C.R.S. §4-5-108(b) concerning the period of time in which to honor or reject a draft, demand or credit, this Letter of 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                            )  
  ) ss.  
COUNTY OF                     )

**SUBSCRIBED AND SWORN** to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ as the \_\_\_\_\_ of \_\_\_\_\_.

WITNESS my hand and official seal.

My commission expires:

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