

**SUBDIVISION DEVELOPMENT AND IMPROVEMENT AGREEMENT
FOR
TOWN OF JOHNSTOWN
(Welty Ridge Subdivision, 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 municipality corporation (the “Town”), and **Platte Land & Water, LLC**, a Delaware 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 Welty Ridge Subdivision, 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 2024-___, 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, as more fully described below.

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 or associated with 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 “**District**” shall mean Welty Ridge Metropolitan District No. 1 and/or Welty Ridge Metropolitan District No. 2, their successors and assigns.

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

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

1.10 “**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.

1.11 “**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.

1.12 “**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. Private Improvements may, at the sole discretion of the Developer and in conformance with Colorado Revised Statute Title 32 , be financed, constructed, conveyed to, owned and maintained by the District.

1.13 “**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 the Engineer’s Opinion of Cost included herein as **Exhibit C**. Public Improvements may, at the sole discretion of the Developer and in conformance with Colorado Revised Statute Title 32, be financed and constructed by the District, however Public Improvements shall be dedicated to the Town subject to the dedication and acceptance provisions herein.

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

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

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

1.17 “**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 over Developer's written objection.

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 may be approved or released according to the approved phasing plan. An approved phasing plan may only be modified upon written approval of the Town. An approved phasing plan is attached hereto and incorporated herein by reference as **Exhibit B-4**.

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. Unless otherwise agreed by the Town in writing, 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 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. 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 fourteen (14) days prior to the commencement of construction, Developer shall provide written notice to all property owners within an 800-foot radius of the construction limits indicated on the Civil Engineering Construction Plans and to any other property owners who are reasonably likely to be impacted by the construction of the fact of the 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 ***Engineer's Opinion of Cost and Construction Schedule:*** Developer estimates the cost of the Subdivision Improvements as set forth on the Engineer's Opinion of Cost, attached hereto and incorporated herein by reference as **Exhibit C**. 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, 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, 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 Civil Engineering Construction Plans. Any material or work not conforming to the Civil Engineering Construction Plans shall be promptly removed, repaired or replaced, at Developer's expense and to the satisfaction of the Town.

2.6 ***Completion of Construction:*** Subject to the provisions of the approved Phasing of Public Improvements defined herein, 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 and Developer has obtained the Town's written consent to the extension.

2.7 ***Performance Guarantee:*** To secure the construction, installation, improvement and completion of the Subdivision Improvements, Developer shall, prior to the commencement of any Phase of Public Improvements, 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 wherein the Town is designated as the beneficiary (“Performance Guarantee”) in an amount equal to 110% of the cost of the improvements associated with the commenced Phase of Public 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 over Developer’s written objection. 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. 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 and subject to the provisions of the approved Phasing of Private Improvements defined herein, 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.

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, an owner's association or the 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, 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 acceptable 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 are satisfactory, 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 are not satisfactory, the Town, upon coordination with Developer, shall prepare a punch list of all Subdivision Improvements that are not in compliance with the Approved Plans, subject to any changes that have been approved or required by the Town. After curing the defects and matters set forth on the punch list, Developer shall make a renewed written application to the Town for re-inspection of the Subdivision Improvements, which written application shall contain the items set forth above. The Town shall thereafter use

reasonable efforts to promptly re-inspect the Subdivision Improvements. If the Subdivision Improvements are satisfactory, 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, a bond in the form approved by the Town or an irrevocable letter of credit in the form wherein 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 and subject to the approved phasing included herein. 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, the Town shall provide written Notice of Construction Acceptance of the Public Improvements and written approval of the Private Improvements to Developer. At its 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. In which case, at the Town’s discretion, Developer may be entitled to obtain building permits prior to completion of all the Subdivision Improvements, assuming satisfaction of the remaining terms of this Agreement and based on conditions otherwise set forth herein.

5.4 ***Maintenance, Repair and Replacement:*** Until Final Acceptance, Developer shall warrant the Public Improvements. 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 costs thereof. 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 Maintenance Guarantee. Notwithstanding the foregoing, the Town may, at its discretion and upon written advisement to Developer, be responsible for routine maintenance of the Public Improvements (street sweeping, snow removal, etc.).

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 determines that the Subdivision Improvements are free of defects in materials and workmanship and have been repaired and maintained to the extent required, 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 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, 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 deems appropriate.

Upon issuance of the Notice of Final Acceptance, the Maintenance Guarantee shall be released to Developer, and the Town shall thereafter maintain the Public Improvements dedicated to the Town.

5.6 *Owners Association or Metropolitan District:* Prior to issuance of the Notice of Final Acceptance and prior to the sale of lots in the Development, Developer shall establish an owners' association for the Development or shall delegate covenant enforcement and design review services to the District. If an owners' association is created, Developer shall provide the Town with proposed covenants, bylaws and articles of incorporation for the 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 owners' 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 owner's association or the District; and (3) the Dry Utilities shall be owned, operated and maintained, as appropriate and otherwise authorized, by the Developer, the owners' association, 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.

6.1a The Water Demand Estimate identifies 3.54 acres of right-of-way landscaping for the Development. The annual right-of-way irrigation water demand is estimated as 5.13 acre-feet. The Developer shall provide raw water to meet the total annual water demand of 5.13 acre-feet, and any share that are dedicated to the Town shall be accompanied by the

share certificate number and history of ownership. This water shall be provided prior to the issuance of any construction permits for the Development.

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 owners' association or the 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 approval concurrently with the Civil Engineering Construction Plans. Upon approval, Developer or the District 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; (8) Developer has established an owners' association or delegated covenant enforcement and design review services to the District as set forth in Paragraph 5.6 above; and (9) 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 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.

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

OPERATION STANDARDS

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

8.2 Developer shall 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 object to the weed management plan. Developer further agrees to use the appropriate herbicide and undertake mowing of the property within the Development. If, at the Town's sole determination, Developer does not control the weeds in or properly mow the Property, the Town may provide Developer with three (3) days written notice to cure the breach, which time period may be extended in writing by the Town Manager for good cause. If the breach is not cured, at the Town's sole determination, the Town shall issue a stop work order on all construction in the Development. The Town or Developer shall thereafter mitigate the nuisance by taking measures to control the weeds or mow the Property. If the Town mitigates the nuisance, upon fifteen (15) days of receipt of an invoice from the Town, Developer shall the pay the invoice for services rendered, which will include the actual costs and a ten percent (10%) administrative fee. The stop order will be released, if one had been issued, upon Developer's payment of the invoice. If the Developer mitigates the nuisance, the stop order will be released upon a Town inspection and determination the nuisance has been mitigated.

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 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 said cost. Developer shall pay the Town for all costs incurred by the Town 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 ensure that Developer's subcontractors cooperate with the Town's construction inspectors in all manners. Developer shall take all steps necessary 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 Developer shall dedicate all outlots and tracts containing open space, park areas, and trails to the District unless otherwise authorized, in writing, by the Town. 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 harming water quality, water bodies and wetlands. All drainage and holding ponds shall be kept free of standing water by whatever means possible 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 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 gross 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 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 insureds on such liability policies. Whenever requested by the Town, Developer agrees to promptly 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. 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 within a public right-of-way 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 prior to or at the time of 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.

10.6 ***Cost Reimbursement to Town:*** Developer shall reimburse the Town for professional consultants, including, but not limited to engineers, testing and inspection companies and attorneys, engaged by the Town to complete the processing and approval of the Approved Plans and complete inspection and acceptance of the Subdivision Improvements.

10.7 ***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, the 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 pertaining to this Agreement. 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 in any obligation under this Agreement in connection with any Subdivision Improvements, the Town may, at its discretion, complete or remove such Subdivision Improvements at Developer's expense. The Town shall estimate the cost of undertaking such work and give notice to Developer to pay such cost estimate. The Town shall use such payment for construction or removal of 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, such lien to have priority over all liens except general taxes and prior special assessments and be placed upon the tax list for the current year to be collected in the same manner as taxes are collected. 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**.

13.5 **Transfer or Assignments:** In the event of a sale or transfer of any portion of the Development, 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:

PLATTE LAND & WATER, LLC

Attention: Tod Matuga
210 University Blvd., Suite 710
Denver, CO 80206

Email: Tod@platteassets.com

TO TOWN:

TOWN OF JOHNSTOWN

Attention: TOWN MANAGER
450 South Parish Avenue
P. O. Box 609

Johnstown, CO 80534

Email: notices@JohnstownCO.gov

13.8 **Costs and Attorney Fees.** If any judicial proceedings may hereafter be brought related to this Agreement, the prevailing party, shall be entitled to recover the costs of such proceedings, including reasonable attorney's fees and reasonable expert witness fees.

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 reasonable discretion, said plat may be vacated by action of the Town subject to thirty (30) days' prior written notice to the Developer.

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 the Code. Venue for any claim, proceeding or action arising out of this Agreement shall be in the County of Weld, State of 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 concerning the subject matter contained herein and supersedes all prior agreements or understandings concerning such subject matter. 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 buyers, materialmen, laborers or others providing work, services or materials for the Subdivision Improvements.

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.

13.18 ***Responsible Agency Comments and Conditions.*** Any mutually agreed upon written comment and/or condition received from any responsible agency who participated in the review of this project shall be made part of the approval of this Agreement. Any mutually agreed upon comments/conditions that have not been satisfied at the time of this Agreement shall be fully approved/remedied prior to the issuance of any construction permits for the Development. Responsible agencies include, but are not limited to, the following:

- a. Front Range Fire Rescue
- b. Town Review Engineers - IMEG
- c. Town Traffic Engineers – FHU
- d. Town Water Modeling Engineers – JUB
- e. Town Water Engineers – Helton & Williamsen
- f. Little Thompson Water District
- g. Larimer County
- h. CDOT

[Signatures follow on next page]

IN WITNESS WHEREOF, and agreeing to be fully bound by the terms of this Agreement, the parties have set their hands below on this ____ day of _____, 2024.

PLATTE LAND & WATER, LLC,
a Delaware limited liability company

By: _____
Name: Timothy B. Walsh
Title: President

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2024, by Timothy B. Walsh, as President of Platte Land & Water, LLC, a Delaware limited liability company.

WITNESS my hand and official seal.

My commission expires: _____

Notary Public

TOWN OF JOHNSTOWN, COLORADO
a municipal corporation

By: _____
Michael P. Duncan, Mayor

ATTEST:

By: _____
Hannah Hill, Town Clerk

**SUBDIVISION DEVELOPMENT AND IMPROVEMENT AGREEMENT
FOR
THE TOWN OF JOHNSTOWN
(Welty Ridge Subdivision, Filing No. 2)**

EXHIBITS

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EXHIBIT A:	Legal Description of the Property
EXHIBIT B-1:	Copy of Final Plat
EXHIBIT B-2:	Town Resolution Approving Development
EXHIBIT B-3:	Additional Terms, Conditions or Provisions
EXHIBIT B-4:	Phasing Plan
EXHIBIT C:	Engineer's Opinion of Cost
EXHIBIT D:	Welty Ridge Offsite Water Line Bore

EXHIBIT A

LEGAL DESCRIPTION (Property)

Tract A of Welty Ridge Subdivision – Filing No. 1 recorded December 15, 2001 as Reception No. 4785368 of the Records of Weld County, and along with Commerce Drive Right of Way as dedicated by Welty Ridge Subdivision – Filing No. 1, located in the Northeast Quarter (NE1/4) of Section Ten (10), Township Four North (T.4N.), Range Sixty-eight West (R.68W.) of the Sixth Principal Meridian (6th P.M.), Town of Johnstown, County of Weld, State of Colorado.

TOGETHER WITH a portion of Nugget Road Right of Way as dedicated by Welty Ridge Subdivision - Filing No. 1 and being more particularly described as follows:

BEGINNING at the Southwest corner of said Nugget Road Right of Way and assuming the West line of said Northeast Quarter as bearing North 00°23'18" West being a Grid Bearing of the Colorado State Plane Coordinate System, North Zone, North American Datum 1983/2011, a distance of 2669.73 feet with all other bearings contained herein relative thereto;

THENCE North 00°25'12" West along the West line of said Right of Way a distance of 9.37 feet to the beginning point of a curve, non-tangent this line;

THENCE along the arc of a curve concave to the left a distance of 18.76 feet, said curve has a Radius of 515.00 feet, a Delta of 02°05'12" and is subtended by a Chord that bears South 81°19'03" East a distance of 18.75 feet to a Point of Reverse Curvature;

THENCE along the arc of a curve concave to the right a distance of 11.91 feet, said curve has a Radius of 15.00 feet, a Delta of 45°30'31" and is subtended by a Chord that bears South 59°36'23" East a distance of 11.60 feet to a line non-tangent to this curve and to the South line of said Right of Way;

THENCE South 88°39'28" West along the South line of said Right of Way a distance of 28.49 feet to the **POINT OF BEGINNING**.

Said described parcel of land contains 106.756 Acres, more or less (±).

EXHIBIT B-1

PLAT

(SEE ATTACHED)

EXHIBIT B-2

(RESOLUTION APPROVING PLAT)

(SEE ATTACHED)

EXHIBIT B-3

ADDITIONAL TERMS, CONDITIONS OR PROVISIONS

1. **Water & Sewer Service Agreement (WSSA):** The raw water demand estimate identifies 3.54 acres of right-of-way landscaping for Phase 1 of the Development. The annual right-of-way irrigation water demand for Phase 1 is estimated as 5.13 acre-feet. The Developer shall execute a WSSA and dedicate raw water to meet the total annual water demand of 5.13 acre-feet prior to any pre-construction meetings for the Development, as noted in Section 2d of this Agreement. The Town shall not issue building permits for subsequent phases of development until the Town and Developer execute other WSSAs, and the amount of water necessary for the applicable phase of the Development has been dedicated to the Town.

2. **I-25 Water Main Extension:** A 12-inch water main shall be extended from Welty Ridge, under Interstate 25 (“I-25”), and looped into the water system at Ledge Rock Center on the east side of I-25 (“**I-25 Water Main Extension**” – see Exhibit D). Plans for the I-25 Water Main Extension shall receive approval from the Colorado Department of Transportation (CDOT) prior to the Town’s approval of the I-25 Water Main Extension improvement plans. Construction of the water main bore under I-25 shall be completed as part of the second phase of development, regardless of the phase number identified in Exhibit B-4 of this Agreement, and no building permits for vertical construction within the second phase of development shall be received prior to the Town’s issuance of a notice of construction acceptance of the I-25 Water Main Extension. The Town agrees that Developer is entitled to reimbursement for the I-25 Water Main Extension improvements in the form of Sales and Use Tax Reimbursements generated within the Development. The details and processing of the reimbursement are set forth in Paragraph 6 of this Exhibit B-3.

3. **Off-Site Sanitary Sewer:** The off-site sanitary sewer plans submitted with the application packet (the “**Off-Site Sanitary Sewer**”) shall be fully approved and executed prior to issuance of any building permits for the Development. Plans for the sanitary sewer trench or bore under I-25 shall receive approval from CDOT prior to the Town’s approval of the Off-Site Sanitary Sewer improvement plans. The Developer has agreed to upsize the Off-Site Sanitary Sewer to accommodate future downstream developments. The Town agrees that Developer is entitled to reimbursement for the Off-Site Sanitary Sewer improvements in the form of Sales and Use Tax Reimbursements generated within the Development. The details and processing of the reimbursement are set forth in Paragraph 6 of this Exhibit B-3.

4. **Johnstown Parkway Improvements:** Developer shall fund the construction necessary to widen and improve the section of Weld County Road 48 (“**Johnstown Parkway**”) as more specifically shown in the plans submitted with the application packet. The improvements to the northern half of Johnstown Parkway (the “**North Half Improvements**”), while being funded and constructed by Developer, is a regional improvement. The Town agrees that Developer is entitled to reimbursement for the North Half Improvements in the form of Sales and Use Tax Reimbursements generated within the Development. The details and processing of the reimbursement are set forth in Paragraph 6 of this Exhibit B-3.

5. **Other Property Reimbursements:** In addition to the Sales and Use Tax reimbursements specified in Paragraphs 2, 3, 4 and 6 of this Exhibit B-3, reimbursement of the costs associated with the I-25 Water Main Extension, Off-Site Sanitary Sewer and North Half Parkway Improvements (collectively the “**Regional Improvements**”) may be eligible for reimbursement by other land owners and/or developers whose properties benefit from the Regional Improvements (the “**Benefitted Owners**”). Upon completion of the construction, submittal of the certified costs to the Town, which costs are subject to review and approval by the Town’s Engineering Director, and any other documentation or information required by the Town, the Town and the Developer shall enter into a separate reimbursement agreement setting forth the terms and conditions by which Developer may receive reimbursement from the Benefitted Owners. The Town agrees to use its best efforts to maximize the opportunity for, and amounts of reimbursement payable to Developer, in connection with the development of any other property connecting to or otherwise making use of any Regional Improvements, and, if appropriate, coordinate the execution and delivery of necessary reimbursement agreements among the Town, the Developer, and the owner/developer of any other such property in order to obtain such reimbursement for Developer. Any reimbursement arrangements referred to in this Paragraph 5 are in addition to any arrangements for any tax reimbursement payments pursuant to Paragraphs 2, 3, 4, and 6 of this Exhibit B-3, except that Developer shall not be reimbursed twice for the same improvement.

6. **Sales and Use Tax Reimbursements:** Pursuant to that certain Veeman Annexation Agreement, approved by the Town on or around March 17, 2008 (Recordation No. 3560161), the Town shall provide the following sales and use tax reimbursements to Developer for the commercial development on the Development (“Sales and Use Tax Reimbursements”):

- a) **Taxes Collected and Applied to Regional Improvements:** The Town shall set-aside one percent (1.00%) of sales and use taxes collected within the commercial area of the Development for the purpose of reimbursing the Developer for the cost of the Regional Improvements. Such sales and use taxes shall be separately accrued and identified in the Town records so that the location of origin, date of receipt, and source of taxation may be determined for application of reimbursement payments as described herein. The Town’s obligation to reimburse the Developer from such sales and use taxes shall expire twenty (20) years after the issuance of the first certificate of occupancy for commercial development in the Development
- b) **Certified Cost:** Upon completion of the Regional Improvements, the Developer shall provide the certified costs of the Regional Improvements to the Town, which costs are subject to review and approval by the Town’s Engineering Director, and the Town shall, on a monthly basis, disburse the Sales and Use Tax Reimbursements to Developer until the costs of the Regional Improvements are reimbursed in full, if at all, prior to the expiration of the Sales and Use Tax Reimbursement period. The Developer shall be obligated to provide documentation to the Town evidencing the reimbursement received for the Regional Improvements, if at all, as provided in Paragraph 5 of this Exhibit B-3. The Town shall make the payments to the Developer unless the Developer, in writing, requests that the Town make such payments to a third party.

- c) Interest: All costs incurred by the Developer that are eligible for reimbursement pursuant to this Paragraph 6 shall also include interest accruing from the date of completion and acceptance of the eligible improvement, but interest shall accrue only for a period of seven (7) years from the date of completion. The rate of the interest shall be equal to the interest rate received by the Town on its investments over the twelve-month period preceding the date such interest commences to accrue. The interest shall be compounded annually.
- d) Administrative Fee: The Town shall be entitled to charge Developer a reasonable administrative fee for the administration of the separate sales and use tax reimbursement fund.

This Paragraph 6 of Exhibit B-3 to the Agreement shall supersede and replace Paragraph 29(c) of the Veeman Annexation Agreement and the Developer's right to the Sales and Use Tax Reimbursements shall be governed solely by this Agreement and not by the Veeman Annexation Agreement.

7. ***Landscape Verification***: The landscaping associated with the Final Development Plan (the "**Landscaping**") shall be inspected and verified, upon completion, by the landscape professional(s) who created the plan. A letter from said professional shall be submitted to the Town verifying that the Landscaping and irrigation was installed pursuant to the approved landscape plan. Landscaping for each development phase shall be completed prior to the issuance of the first building permit for each applicable development phase, unless the completion date is extended for reasons beyond the reasonable control of Developer and Developer has obtained the written approval of the extension from the Town's Planning Director. Should Developer be unable to complete the Landscaping due to weather or seasonal planning considerations as determined solely by the Town's Planning Director, Developer may defer completion of the Landscaping until such time as the Landscaping can reasonably be completed. If the design professional(s) who created the landscape plan is no longer in business at the time of landscape installation, Developer shall contract with a licensed landscape architect to complete the inspection and submit the verification letter.

8. ***Veeman Annexation Agreement***: Except as modified herein, this Development shall conform with the provisions set forth in the Veeman Annexation Agreement, approved by the Town of Johnstown Town Council on March 17, 2008, and recorded by Weld County on June 12, 2008 (Recordation No. 3560161), as may be amended in the future in accordance with its terms.

9. ***Welty Ridge Outline Development Plan (ODP)***: Except as modified herein, this Development shall conform with the provisions set forth in the Welty Ridge ODP, approved on January 6, 2020 by Town Ordinance 2020-169, and recorded by Weld County on March 16, 2020 (Recordation No. 4575191), as may be amended in the future as approved by the Town.

EXHIBIT B-4
PHASING PLAN
(SEE ATTACHED)

EXHIBIT C
ENGINEER'S OPINION OF COST
(ATTACHED)

EXHIBIT D

**WELTY RIDGE OFFSITE WATER LINE BORE
(SEE ATTACHED)**