

**SUBDIVISION DEVELOPMENT AND IMPROVEMENT AGREEMENT  
FOR  
TOWN OF JOHNSTOWN  
(Iron Horse, Filing No. 3)**

**This Subdivision Development and Improvement Agreement** (this “Agreement”), made and entered into by and between the **Town of Johnstown, Colorado**, a Colorado home-rule municipality (the “Town”), **Centerra Commercial, LLC**, a Colorado limited liability company (together with its successors and assigns, “Developer”), and **Johnstown North Metropolitan District No. 1**, a quasi-municipal corporation and political subdivision of the State of Colorado (together with its successors and assigns, the “District”).

**RECITALS**

**WHEREAS**, Developer is the owner of a parcel of land situated in the Town of Johnstown, County of Larimer, 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 Iron Horse, Filing No. 3; and

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

**WHEREAS**, the Town Council has approved, or intends to approve in substantially the same form as the Resolution (as defined herein), the Final Plat by passage of Resolution No. 2023\_\_\_\_, containing terms and conditions of approval of the Final Plat, which is 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 (as 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**, the District may construct any of the Subdivision Improvements required in this Agreement, and may assume all or some obligations of the Developer, so long as such Subdivision Improvements are permitted by state law and the District service plan; 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.

#### 1. 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 “Development Plan” related to the Development and on file with Town.

1.2 **“Civil Engineering Construction Plans”** shall mean the 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 **“Development”** shall mean all the Property, property rights and Subdivision Improvements within or associated with the legal description in **Exhibit A**.

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

1.6 **“District Improvements”** shall mean any improvements the District is authorized to finance, acquire, construct, install, own, operate, maintain, repair or replace, pursuant to state law and the District service plan. To the extent any of the “Subdivision Improvements” are also District Improvements, the District may construct the same consistent with the provisions of this Agreement.

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 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 privately owned and maintained common improvements comprised of 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 are comprised of 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 “**Subdivision Improvements**” shall mean the Public Improvements, the Private Improvements and the District Improvements.

1.14 “**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. Except as expressly provided herein, 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, except in the event of any negligence or willful misconduct by the Town, including without limitation, 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 consistent with the subdivision plats, planned unit development plans or site plans and any executed agreements pertaining to the Property and approved by the Town in a written phasing plan (“Phasing Plan”); and (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. The Phasing Plan shall set forth the timeline and requirements for construction acceptance, financial security and building permit eligibility of each phase. The 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 Public Improvements as shown on the Civil Engineering Construction Plans. 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. 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 approved 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 those materials set forth in the Civil Engineering Construction Plans. 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 of construction and contact information for Developer to all property owners within a 600-foot radius of the construction limits indicated on the approved Civil Engineering Construction Plans. Prior to the commencement of the construction, Developer shall provide such contact list to the Town with a copy of the notification. Notification may be by U.S. mail or by delivering a printed flyer to 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 delivering quarterly status reports setting forth the progress of the work, an estimated date of completion of Public Improvements and the anticipated cost of such Public Improvements.

2.4 **Testing:** Upon request by the Town, Developer shall employ, at its own expense, a qualified independent testing company, which testing company shall be subject to the Town's reasonable approval, to perform certain testing of materials or construction, as reasonably required by the Town. Developer shall furnish certified copies of test results to the Town, as applicable.

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 approved Civil Engineering Construction Plans. Any material or work not conforming to the approved 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:** Developer shall complete construction of the Public Improvements, as evidenced by the Town's issuance of the Notice of Construction Acceptance for such 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. If the Town approved a Phasing Plan, construction of the Public Improvements of each applicable phase shall be completed pursuant to the timeline set forth in the Phasing Plan.

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 in the form attached hereto as **Exhibit D** in which the Town is designated as the beneficiary ("Performance Guarantee") in an amount equal to 100% of the estimated cost of the improvements, which cost shall be certified by Developer's professional engineer licensed in the State of Colorado and reasonably 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 outside of the public right-of-way, an irrigation system, landscaping and soil amendments, fencing, entryway signage, street signs and posts, 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. Except as expressly provided herein, 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, except in the event of any negligence or willful misconduct by the Town, including without limitation, 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 approved 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 landscaping and soil amendments as set forth in Section 3.1 above 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 those materials set forth in the Development Plan. 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 approved Development Plan. Any material or work not conforming to the approved 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, as evidenced by the Town's issuance of a notice of approval for such Private Improvements, no later than the date that the Public Improvements are completed, unless (i) 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, or (ii) such completion date is otherwise set forth in a Phasing Plan. 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:*** The Town shall not be responsible for replacement of the Private Improvements, and to the extent that the replacement of any Private Improvements becomes necessary and warranted over time, including without limitation, replacement of decorative light fixtures, decorative street signs and all other decorative amenities in the Development, such replacement shall be performed, as appropriate, by the Developer, the District or an owners' association.

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, as evidenced by the Town's issuance of the Notice of Construction for such Public Improvements.

4.2 ***Easements:*** All easements approved by the applicable utility companies responsible for the Dry Utilities shall be submitted to the Town.

5. **ACCEPTANCE OF SUBDIVISION IMPROVEMENTS**

5.1 ***Notice of Construction Acceptance:*** Within thirty (30) days of completion of construction of the Subdivision Improvements, as evidenced by Developer's delivery of written notice to the Town that such construction is completed, Developer shall make written application to the Town for acceptance of the Public Improvements and for review of the Private Improvements, with the exception of the improvements for which the Town has authorized an extension of time to complete or as otherwise set forth in a Phasing Plan. 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 the 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 attached hereto as **Exhibit D** in which the Town is designated as the beneficiary. 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, 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 maintain 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. Notice of Final Acceptance and all releases shall be recorded at the office of the Larimer County Clerk and Recorder.

**5.6 Owners' Association or Metropolitan District:** Prior to issuance of the Notice of Final Acceptance, 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 owners' association. Upon written approval of the covenants, bylaws and articles of incorporation by the Town, which approval shall not be unreasonably withheld, conditioned or delayed, the same shall be recorded with the Larimer 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 District or the owners' association; and (3) the Dry Utilities shall be owned, operated and maintained, as appropriate and otherwise authorized, by the Developer, the District, the owners' association or the appropriate public utility company.

## **6. 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 Developer shall own and maintain the stormwater infrastructure for the Development. Developer shall provide the Town with a proposed operations and maintenance manual ("Operations and Maintenance Manual") for the stormwater infrastructure for review and approval concurrently with the Civil Engineering Construction Plans. Upon approval of the Operations and Maintenance Manual, 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. Notwithstanding the foregoing, Developer may assign the ownership and maintenance of the stormwater infrastructure to the District on the conditions that: (i) Developer notifies the Town and (ii) in writing, the Developer assigns, and the District accepts assignment of, the Operations and Maintenance Agreement, agreeing, among other matters, to comply with the Town-approved Operations and Maintenance Manual.

## 7. **BUILDING PERMITS**

7.1 The Town shall not issue building permits for the Development until: (1) the Final Plat has been recorded with the Larimer 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 Thompson School District R2-J; (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) meters and curbs 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. If the Development is developed in phases in accordance with Section 2.1(c), the issuance of building permits for each phase shall be governed by the Phasing Plan.

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.

## 8. **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.

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.

## 9. **DEVELOPMENT STANDARDS**

9.1 Developer shall comply with the requirements contained in Annexation Agreement Spreng Annexation, dates as of November 3, 2006 and recorded as Reception No. 2006-0083934 in the official real property records of Larimer County, Colorado, as amended, 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 Iron Horse Design Guidelines.

9.3 Developer shall dedicate all outlots designated for dedication on the Final Plat to one or more of the Districts.

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.

## 10. LIABILITY, INSURANCE AND COST REIMBURSEMENT

10.1 **Indemnification:** Developer hereby agrees to indemnify and hold the Town, its employees, agents and representatives 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 by Developer, its employees, agents, consultants or representatives, 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, including without limitation, any costs, expenses and attorney's fees related thereto, except in the event 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 as an additional insured 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 as an additional insured. 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 historical 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 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 process and complete the Development.

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 and the District, their employees, or agents, or any other person acting on behalf of the Town and the District and, in particular, the governmental immunity afforded pursuant to the Colorado Governmental Immunity Act, §§ 24-10-101 *et seq.*, C.R.S., as amended.

## 11. **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 reasonably 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, the Town may, at its discretion, complete such Subdivision Improvements 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, 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.

## 12. 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.

## 13. 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:**

**Centerra Commercial, LLC**  
c/o McWhinney Real Estate Services, Inc.  
Attention: Mike McBride  
1800 Wazee Street, Suite 200  
Denver, CO 80202  
Email: [Mike.McBride@mcwhinney.com](mailto:Mike.McBride@mcwhinney.com)

**TO TOWN:**

**TOWN OF JOHNSTOWN**  
Attention: TOWN MANAGER  
450 So. Parish  
P. O. Box 609  
Johnstown, CO 80534  
Email: [MLeCerf@JohnstownCO.gov](mailto:MLeCerf@JohnstownCO.gov)

With a copy to:  
McWhinney Real Estate Services, Inc.  
Attention: Legal Department  
1800 Wazee Street, Suite 200  
Denver, CO 80202  
Email: [LegalNotices@mcwhinney.com](mailto:LegalNotices@mcwhinney.com)

**TO DISTRICT:**

**Johnstown North Metropolitan District No. 1**  
c/o Pinnacle Consulting Group, Inc.  
550 W. Eisenhower Boulevard  
Loveland, Colorado 80537  
Email: [jnmdadmin@pcgi.com](mailto:jnmdadmin@pcgi.com)

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.

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 the County of Larimer, 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 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 buyers, 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 LEFT INTENTIONALLY 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 \_\_\_\_ day of May, 2023.

Developer:

Centerra Commercial, LLC,  
a Colorado limited liability company

By: McWhinney Real Estate Services Inc.,  
a Colorado corporation, Manager

By: [Signature]  
Name: Kyle Harris  
Title: SVP, Community Development

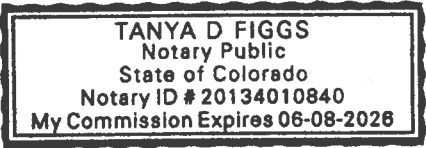


STATE OF COLORADO )  
 ) ss.  
COUNTY OF Larimer )

SUBSCRIBED AND SWORN to before me this 4<sup>th</sup> day of May, 2023, by Kyle Harris, as the SVP, Community Development of McWhinney Real Estate Services, Inc., a Colorado corporation, Manager of Centerra Commercial, LLC, a Colorado limited liability company.

WITNESS my hand and official seal.

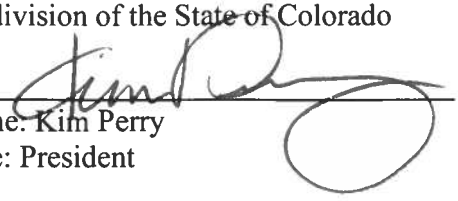
My commission expires: 06-08-2026



[Signature]  
Notary Public

District:

**Johnstown North Metropolitan District  
No. 1,**  
a quasi-municipal corporation and political  
subdivision of the State of Colorado

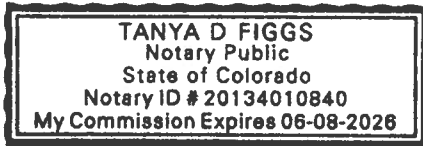
By:   
Name: Kim Perry  
Title: President

STATE OF COLORADO )  
                                  ) ss.  
COUNTY OF Lincoln )

SUBSCRIBED AND SWORN to before me this 5<sup>th</sup> day of May, 2023, by  
Kim Perry, as the President of Johnstown Metropolitan District No. 1, a quasi-municipal  
corporation and political subdivision of the State of Colorado.

WITNESS my hand and official seal.

My commission expires: 06-08-2026



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

**Town:**

**Town of Johnstown, Colorado,**  
a Colorado home-rule municipality

By: \_\_\_\_\_  
Troy D. Mellon, Mayor

ATTEST:

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

**SUBDIVISION DEVELOPMENT AND IMPROVEMENT AGREEMENT  
FOR  
THE TOWN OF JOHNSTOWN  
(IRON HORSE, FILING NO. 3)**

**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>	Engineer's Opinion of Cost
<b>EXHIBIT D:</b>	Irrevocable Letter of Credit Form

**EXHIBIT A**  
**LEGAL DESCRIPTION**  
**(Property)**  
**(SEE ATTACHED)**



# IRON HORSE FILING THREE

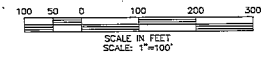
Situate in the Northwest Quarter of Section 13, Township 5 North, Range 68 West of the 6th P.M.,  
Town of Johnstown, County of Larimer, State of Colorado

CURVE	LENGTH	RADIUS	DELTA	CHORD	CH BEARING
C1	164.23'	435.00'	213°00'	163.26'	S78°55'44"E
C2	20.59'	32.00'	36°52'12"	20.24'	S49°40'37"E
C3	89.41'	56.00'	90°23'43"	79.27'	S24°24'31"E
C4	162.30'	435.00'	217°43'00"	160.40'	N79°07'10"W
C5	2.87'	435.00'	0°23'10"	2.87'	N88°18'18"W
C6	143.4'	5.00'	90°00'00"	12.73'	N23°06'43"W
C7	143.4'	5.00'	90°00'00"	12.73'	S66°23'17"W
C8	14.14'	9.00'	90°00'00"	12.73'	S44°14'45"E
C9	14.14'	9.00'	90°00'00"	12.73'	S45°13'14"W
C10	89.21'	56.00'	68°21'57"	65.17'	N56°04'18"E
C11	21.48'	18.00'	88°21'57"	20.22'	N56°04'18"E
C12	10.85'	32.00'	19°59'18"	10.80'	N79°39'37"W
C13	198.02'	106.00'	107°34'23"	171.00'	N58°34'17"E
C14	83.52'	106.00'	107°34'23"	80.58'	N89°43'48"E
C15	105.43'	106.00'	94°59'07"	101.13'	N32°04'33"E
C16	10.85'	32.00'	19°59'18"	10.80'	S32°05'08"W
C17	15.71'	10.00'	90°00'00"	14.14'	S23°06'43"E
C18	72.25'	88.00'	47°02'19"	70.25'	N85°59'59"E
C19	15.71'	10.00'	90°00'00"	14.14'	S23°06'43"E
C20	9.55'	6.00'	82°21'57"	8.99'	N56°34'18"E

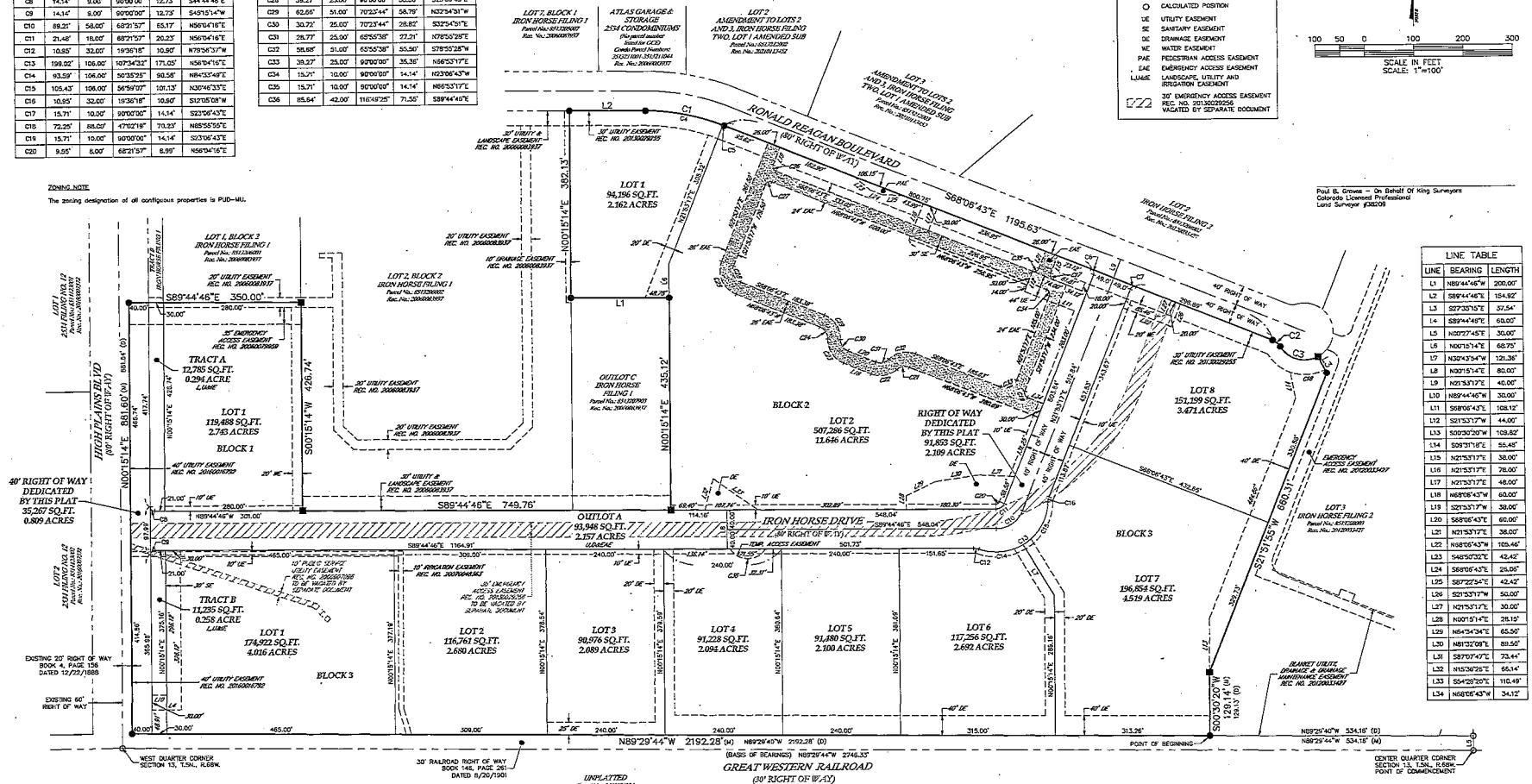
CURVE	LENGTH	RADIUS	DELTA	CHORD	CH BEARING
C21	27.31'	25.00'	62°34'44"	25.97'	S89°35'30"W
C22	55.72'	51.00'	62°34'44"	52.07'	N82°52'52"E
C23	68.86'	51.00'	77°03'44"	58.39'	S22°54'30"E
C24	38.22'	25.00'	70°23'44"	38.82'	N32°54'31"W
C25	36.11'	51.00'	90°00'00"	72.12'	S23°06'43"E
C26	15.71'	10.00'	90°00'00"	14.14'	S23°06'43"E
C27	15.71'	10.00'	90°00'00"	14.14'	S66°23'17"W
C28	38.22'	25.00'	90°00'00"	35.26'	S23°06'43"E
C29	62.60'	51.00'	70°23'44"	58.79'	N32°54'31"W
C30	30.72'	25.00'	70°23'44"	28.82'	S32°54'31"E
C31	29.77'	25.00'	62°34'44"	27.21'	N78°52'28"E
C32	58.68'	51.00'	62°34'44"	53.50'	S78°23'28"W
C33	38.22'	25.00'	90°00'00"	35.26'	N62°51'7"E
C34	15.71'	10.00'	90°00'00"	14.14'	N32°04'33"E
C35	15.71'	10.00'	90°00'00"	14.14'	N86°53'17"E
C36	85.64'	42.00'	116°49'25"	71.55'	S89°44'45"E

## LEGEND

- PROPERTY BOUNDARY
- - - RIGHT OF WAY LINE
- - - EASEMENT LINES
- - - SECTION LINE
- FOUND ALLOY CORNER AS DESCRIBED
- FOUND MONUMENT AS DESCRIBED
- SET 2" OF #4 REBAR WITH A BLUE PLASTIC CAP STAMPED "R.S. 15 3000"
- CALCULATED POSITION
- LE UTILITY EASEMENT
- SE SANITARY EASEMENT
- DE DRAINAGE EASEMENT
- WE WATER EASEMENT
- PAE PEDESTRIAN ACCESS EASEMENT
- EAE EMERGENCY ACCESS EASEMENT
- LAER LANDSCAPE UTILITY AND IRRIGATION EASEMENT
- 30' EMERGENCY ACCESS EASEMENT REC. NO. 2012002006 VADATED BY SEPARATE DOCUMENT



**JOINING NOTE**  
The zoning designation of all contiguous properties is RUD-III.



LINE	BEARING	LENGTH
L1	N89°44'45"E	202.00'
L2	S89°44'45"E	154.82'
L3	S27°32'15"E	21.54'
L4	S89°44'45"E	69.00'
L5	N07°27'45"E	30.00'
L6	N07°31'4"E	68.75'
L7	N32°43'34"W	121.26'
L8	N07°31'4"E	80.00'
L9	N25°31'7"E	45.00'
L10	N89°44'45"W	202.00'
L11	S89°44'45"E	108.12'
L12	S21°32'7"W	44.00'
L13	S89°32'00"W	109.82'
L14	S89°31'18"E	55.48'
L15	N25°31'7"E	38.00'
L16	N25°31'7"E	78.00'
L17	N25°31'7"E	48.00'
L18	N89°44'45"W	60.00'
L19	S25°31'7"W	26.00'
L20	S89°44'45"E	60.00'
L21	N25°31'7"E	38.00'
L22	N89°44'45"W	108.42'
L23	S48°50'30"E	42.42'
L24	S89°44'45"E	26.00'
L25	S87°22'54"E	42.42'
L26	S25°31'7"W	50.00'
L27	N25°31'7"E	30.00'
L28	N07°31'4"E	28.12'
L29	N64°24'34"E	65.58'
L30	N89°32'00"E	80.48'
L31	S87°07'47"E	72.44'
L32	N32°30'25"E	65.14'
L33	S84°29'20"E	110.49'
L34	N89°44'45"W	34.12'

DATE: 1/24/2022  
FILE NAME: 202103785J.B  
SCALE: 1"=100'  
DRAWN BY: CSK  
CHECKED BY: PC

**KING SURVEYORS**  
650 E. Grand Drive 1 Windsor, Colorado 80550  
phone: (970) 686-5011 | email: contact@KingSurveyors.com



DATE: 1/24/2022  
REVISED: TRACT A, B & C W/ EASEMENT LINES  
DRAWN FOR: CLIENTS

**IRON HORSE FILING THREE**  
WILSON & COMPANY, INC.  
1875 BROADWAY, SUITE 200  
DENVER, CO 80202

PROJECT #: 20210378

**EXHIBIT B-2**  
**(RESOLUTION APPROVING PLAT)**  
**(SEE ATTACHED)**



**TOWN OF JOHNSTOWN, COLORADO  
RESOLUTION NO. 2023-18**

**APPROVING THE PRELIMINARY/FINAL PLAT FOR IRON HORSE FILING NO. 3, A SUBDIVISION SITUATED IN THE NORTHWEST QUARTER OF SECTION 13, TOWNSHIP 5 NORTH, RANGE 68 WEST OF THE 6<sup>TH</sup> P.M., TOWN OF JOHNSTOWN, COUNTY OF LARIMER, STATE OF COLORADO, CONSISTING OF APPROXIMATELY 45.839 ACRES**

**WHEREAS**, the Town of Johnstown, Colorado (“Town”) is a Colorado home rule municipality, duly organized and existing under the laws of the State of Colorado and the Town’s Home Rule Charter; and

**WHEREAS**, the Town Council is vested with authority to administer the affairs of the Town; and

**WHEREAS**, Centerra Commercial, a Colorado limited liability company, submitted an application to the Town for approval of a Preliminary/Final Plat for Iron Horse Filing No. 3, a subdivision situated in the Northwest Quarter of Section 13, Township 5 North, Range 68 West of the 6<sup>th</sup> P.M., Town of Johnstown, County of Larimer, State of Colorado, and consisting of approximately 45.839 acres; and

**WHEREAS**, on March 22, 2023, the Planning and Zoning Commission held a hearing, reviewed the request and recommended that the Town Council approve the Preliminary/Final Plat; and

**WHEREAS**, on April 3, 2023, the Town Council held a public hearing concerning approval of the Preliminary/Final Plat and, after considering the Planning and Zoning Commission’s recommendation, reviewing the file and conducting such hearing, found that the Preliminary/Final Plat is consistent with the Town’s Comprehensive Plan and meets the requirements contained in the Johnstown Municipal Code and the Town’s regulations; and

**WHEREAS**, based on the foregoing, the Town Council desires to approve the Preliminary/Final Plat for Iron Horse Filing No. 3.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF JOHNSTOWN, COLORADO, THAT:**

**Section 1. Preliminary/Final Plat Approval:** The Preliminary/Final Plat for Iron Horse Filing No. 3, a subdivision situated in the Northwest Quarter of Section 13, Township 5 North, Range 68 West of the 6<sup>th</sup> P.M., Town of Johnstown, County of Larimer, State of Colorado, and consisting of approximately 45.839 acres, attached hereto and incorporated herein by reference at Exhibit A, is hereby approved.

**Section 2. Recording:** The Town Clerk is hereby directed to obtain the appropriate signatures for the Preliminary/Final Plat and thereafter record the Preliminary/Final Plat at the office of the Larimer County Clerk and Recorder.

PASSED, SIGNED, APPROVED, AND ADOPTED THIS 3<sup>rd</sup> day of April, 2023.

ATTEST:

By: Hannah Hill  
Hannah Hill, Town Clerk



**TOWN OF JOHNSTOWN, COLORADO**

By: Gary Lebsack  
Gary Lebsack, Mayor

## **EXHIBIT B-3**

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

1. Stormwater. Prior to receipt of Notice of Construction Acceptance for the first phase of the Development, Developer shall obtain Town approval of the stormwater Operations and Maintenance Manual for the three master-planned regional ponds for the Development and execute an Operations and Maintenance Agreement with the Town.

2. High Plains Boulevard Design. Prior to receipt of Notice of Construction Acceptance for the second phase of the Development, Developer shall design and construct the ultimate half-width of High Plains Boulevard (Larimer County Road 3) to a major arterial standard, including, but not limited to, the configuration, design and construction of the intersection at High Plains Boulevard and Iron Horse Drive, along the frontage of this Development. Construction plans for this improvements shall meet Town standards and be reviewed and approved by the Town prior to construction.

3. Sidewalks. Pursuant to the Civil Engineering Construction Plans submitted to date, Developer shall construct road improvements to include curb and gutter and paving. The Town stipulates that the completion of ultimate right-of-way improvements, to include remaining sidewalks, irrigation, and landscaping, may be completed by the Developer, or may become the responsibility of individual lots as those lots develop. Notwithstanding the foregoing provision, once twenty (20) or more acres of the lots in the Development (approximately 50% of total acreage of Filing No 3) have received certificates of occupancy/completion, Developer shall install connecting sidewalks, meeting Town standards, across all undeveloped lots. If there is a conflict between this Agreement and the Civil Engineering Construction Plans, this Agreement shall control.

**EXHIBIT C**  
**ENGINEER'S OPINION OF COST**  
ATTACHED  
(SEE ATTACHED)

**Bid Schedule of Values**

District	Johnstown North Metropolitan District No. 1
Project Name	Johnstown North Iron Horse Filing 3 Public Infrastructure Improvements
Project Number	JNMD-IHF3-PI
Plan Set	Iron Horse Filing Three Bid Set dated 09/01/2022
Bidder Name	Gerrard Excavating, Inc.
Bidder Phone	(970) 669-1463
Date Submitted	October 10, 2022

Item #	Sub Item #	Description	Quantity	Unit	Unit Price	Total
<b>1000</b>	<b>Demolition and Removal</b>					
	1001	Clear & Grub	1	LS	\$ 3,260.00	\$ 3,260.00
	1002	Remove Curb and Gutter	105	LF	\$ 11.10	\$ 1,165.50
	1003	Remove 48" RC Storm Pipe	7	LF	\$ 100.00	\$ 700.00
	1004	Remove 48" FES	1	EA	\$ 670.00	\$ 670.00
	1005	Strip & Stockpile Existing Gravel Roadway (Assumed 6-Inch Thick)	1,050	CY	\$ 1.77	\$ 1,858.50
	1006	Remove and Reuse Existing Orifice Plate on Outlet Structure of Pond 310	1	LS	\$ 2,125.00	\$ 2,125.00
		<b>Subtotal</b>				\$ 9,779.00

<b>2000</b>	<b>Grading, Earthwork and Seeding</b>					
	2001	6" Topsoil Strip, Stockpile, Reuse	6,100	CY	\$ 3.20	\$ 19,520.00
	2002	Unclassified Excavation (Complete In Place)	4,800	CY	\$ 5.03	\$ 24,144.00
	2003	Borrow (Complete In Place)	16,100	CY	\$ 10.52	\$ 169,372.00
	2004	Native Seeding (Dry Land Seed Mix with Straw Mulch)	7	AC	\$ 2,550.00	\$ 17,850.00
	2005	North American Green SC250 Erosion Mat (Complete In Place)	225	SY	\$ 10.50	\$ 2,362.50
		<b>Subtotal</b>				\$ 233,248.50

<b>3000</b>	<b>Erosion Control</b>					
	3001	Erosion Logs (12" Wattle) (Various Installations)	330	LF	\$ 3.75	\$ 1,237.50
	3002	Curb Inlet Protection 1	4	EA	\$ 305.00	\$ 1,220.00
	3003	Drop Inlet Protection 3	5	EA	\$ 305.00	\$ 1,525.00
	3004	Rock Sock	4	EA	\$ 165.00	\$ 660.00
	3005	Silt Fence	4,700	LF	\$ 1.97	\$ 9,259.00
	3006	Check Dam	4	EA	\$ 1,410.00	\$ 5,640.00
	3007	Concrete Washout	1	EA	\$ 2,475.00	\$ 2,475.00
	3008	Vehicle Tracking Pad	1	EA	\$ 2,855.00	\$ 2,855.00
		<b>Subtotal</b>				\$ 24,871.50

<b>4000</b>	<b>Sanitary Sewer</b>					
	4001	Connect to Existing Manhole	1	EA	\$ 14,055.00	\$ 14,055.00
	4002	4' Sanitary Manhole	9	EA	\$ 4,345.00	\$ 39,105.00
	4003	6' Sanitary Manhole	2	EA	\$ 12,200.00	\$ 24,400.00
	4004	6" Sanitary Sewer Service	250	LF	\$ 54.40	\$ 13,600.00
	4005	10" Sanitary Sewer Main	3,310	LF	\$ 74.35	\$ 246,098.50
	4006	20" Dia. Steel Casing Pipe w/ Flow Fill & Cathodic Protection	60	LF	\$ 415.00	\$ 24,900.00
	4007	Jet and Clean Sewer	3,310	LF	\$ 1.05	\$ 3,475.50
		<b>Subtotal</b>				\$ 365,634.00

<b>5000</b>	<b>Domestic Water</b>					
	5001	6" Removal of AC Watermain & Replacement with 6" PVC Waterline	69	LF	\$ 210.00	\$ 14,490.00
	5002	8" Watermain	2,589	LF	\$ 58.60	\$ 151,715.40
	5003	8" Water Lowering	3	EA	\$ 5,415.00	\$ 16,245.00
	5004	6" Gate Valve	13	EA	\$ 1,515.00	\$ 19,695.00
	5005	8" Gate Valve	23	EA	\$ 2,350.00	\$ 54,050.00
	5006	Watermain Connections	2	EA	\$ 2,605.00	\$ 5,210.00
	5007	6" Fire Hydrant Assembly	9	EA	\$ 5,890.00	\$ 53,010.00
	5008	1-1/2" Service Line	95	LF	\$ 143.00	\$ 13,585.00
	5009	6" Fire Hydrant Line	201	LF	\$ 65.00	\$ 13,065.00
	5010	6" Fire Line	109	LF	\$ 155.00	\$ 16,895.00
		<b>Subtotal</b>				\$ 357,960.40

<b>6000</b>	<b>Storm Sewer</b>					
	6001	Type L Buried Riprap 1.5' Bury Depth w/6" Granular Bedding & Topsoil (CIP)	307	SY	\$ 79.20	\$ 24,314.40
	6002	Emergency Overflow Spillway w/ Concrete Cutoff Wall (Includes Rebar) (CIP)	1	LS	\$ 12,690.00	\$ 12,690.00
	6003	5' Storm Manhole	2	EA	\$ 4,885.00	\$ 9,770.00
	6004	Core & Grout Ex MH (with Storm D)	1	EA	\$ 1,370.00	\$ 1,370.00
	6005	CDOT Box Base Manhole w/ Flat Top Lid	2	EA	\$ 16,370.00	\$ 32,740.00
	6006	5' Type R Inlet	1	EA	\$ 6,500.00	\$ 6,500.00
	6007	10' Type R Inlet	2	EA	\$ 10,340.00	\$ 20,680.00
	6008	Type C Inlet w/ 2' sump	3	EA	\$ 3,670.00	\$ 11,010.00
	6009	Type D Inlet w/ 2' sump	2	EA	\$ 6,450.00	\$ 12,900.00
	6010	18" RCP	104	LF	\$ 80.70	\$ 8,392.80
	6011	24" RCP	579	LF	\$ 108.35	\$ 62,734.65
	6012	36" RCP	39	LF	\$ 170.55	\$ 6,651.45
	6013	60" RCP	646	LF	\$ 348.35	\$ 225,034.10
	6014	24" RC FES w/ Cutoff Wall	1	EA	\$ 3,865.00	\$ 3,865.00
	6015	36" RC FES w/ Cutoff Wall	1	EA	\$ 4,925.00	\$ 4,925.00

**Bid Schedule of Values**

District	Johnstown North Metropolitan District No. 1
Project Name	Johnstown North Iron Horse Filing 3 Public Infrastructure Improvements
Project Number	JNMD-IHF3-PI
Plan Set	Iron Horse Filing Three Bid Set dated 09/01/2022
Bidder Name	Gerrard Excavating, Inc.
Bidder Phone	(970) 669-1463
Date Submitted	October 10, 2022

Item #	Sub Item #	Description	Quantity	Unit	Unit Price	Total
	6016	60" RC FES w/ Cutoff Wall	1	EA	\$ 6,825.00	\$ 6,825.00
<b>Subtotal</b>						\$ 450,402.40

7000 Concrete						
	7001	Vertical 6" Curb & Gutter	2,350	LF	\$ 34.70	\$ 81,545.00
	7002	3' Concrete Pan	777	LF	\$ 43.05	\$ 33,449.85
	7003	Concrete Curb Ramp & Sidewalk (Ronald Reagan Intersection)	70	SY	\$ 101.00	\$ 7,070.00
	7004	Detectable Warning	24	SF	\$ 67.00	\$ 1,608.00
	7005	9" Concrete Flatwork	90	SY	\$ 118.00	\$ 10,620.00
<b>Subtotal</b>						\$ 134,292.85

8000 Roadway Material						
	8001	Asphalt Pavement (7 inches) [S(75) or SX (75) with PG 58-28 Binder]	2,200	TON	\$ 118.50	\$ 260,700.00
	8002	Asphalt Patch (High Plains Blvd & Ronald Reagan)	155	SY	\$ 150.00	\$ 23,250.00
	8003	Aggregate Base Course (10 inches) (Class 6)	3,300	TON	\$ 27.35	\$ 90,255.00
	8004	Relocate Gravel Drive (8 inches)	980	CY	\$ 22.00	\$ 21,560.00
<b>Subtotal</b>						\$ 395,765.00

9000 Signage and Striping & Gates						
	9001	Sign w/ Post (Stop w/ Streets, No Parking {3}, Curve Ahead {2}, Speed Limit, No Outlet, Ditch {3})	11	EA	\$ 460.00	\$ 5,060.00
	9002	4" Solid Yellow Stripe	2,030	LF	\$ 1.25	\$ 2,537.50
	9003	4" Dashed Yellow Stripe (10' Long w/ 30' Gap)	2,030	LF	\$ 1.25	\$ 2,537.50
	9004	Performed Pavement Marking (X-Walk & Stop Bar)	167	SF	\$ 17.00	\$ 2,839.00
	9005	32' Steel Gate w/ "Emergency Vehicles Only" Sign Attached to Gate	2	EA	\$ 4,170.00	\$ 8,340.00
<b>Subtotal</b>						\$ 21,314.00

10000 Traffic Control						
	10001	Traffic Control	1	LS	\$ 42,680.00	\$ 42,680.00
<b>Subtotal</b>						\$ 42,680.00

11000 Miscellaneous						
	11001	Mobilization	1	LS	\$ 47,265.00	\$ 47,265.00
<b>Subtotal</b>						\$ 47,265.00

**TOTAL BID** \$ 2,083,212.65

12000 Add Alternate						
	12001	Sleeving - 2" PVC	1	LF	\$ 61.05	\$ 61.05
	12002	Sleeving - 4" PVC	1	LF	\$ 66.10	\$ 66.10
	12003	Sleeving - 6" PVC	1	LF	\$ 72.85	\$ 72.85
	12004	Dewatering - Setup and Removal	1	EA	\$ 7,510.00	\$ 7,510.00
	12005	Dewatering - Trench Excavation and Backfill	1	LF	\$ 10.10	\$ 10.10
	12006	Dewatering - Pumping per Day	1	DAY	\$ 735.00	\$ 735.00
<b>Subtotal</b>						\$ 8,455.10

by: Wilson & Company and Pinnacle Consulting Group, Inc.

Bidders Signature

Note:



**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 Iron Horse, Filing No. 3, dated \_\_\_\_\_, 2023, between the Town of Johnstown and Centerra Commercial, 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