

ATTACHMENT 1

SUBDIVISION DEVELOPMENT AND IMPROVEMENT AGREEMENT

FOR

TOWN OF JOHNSTOWN

(The Ridge at Johnstown, Filing No. 2)

This Subdivision Development and Improvement Agreement (“Agreement”), made and entered into by and between the **Town of Johnstown, Colorado**, a Colorado home rule municipal corporation (the “Town”) and **J-25 Land Holdings, LLC**, a Delaware limited liability company (the “Developer”) and the **Villages at Johnstown Metropolitan District No. 1**, a quasi-municipal corporation and political subdivision of the State of Colorado (“District”).

WITNESSETH:

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 The Ridge at Johnstown, Filing No. 2 (“Development”); and

WHEREAS, the Town and Developer recognize and agree that Developer owns additional real property near or adjacent to the Property referenced herein and that the Developer intends to develop such real property in phases of the overall development of The Ridge at Johnstown, which subsequent phases shall be subject to separate subdivision development and improvement agreements; 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 will approve, the Final Plat by passage of Resolution No. 2020-___, 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 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.

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 Site Development Plan” related to the Development and on file with Town.

1.2 **“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**.

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

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

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

1.6 **“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.

1.7 **“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, detention pond(s), landscaping, irrigation, fencing, entry signs, street signs and posts, street lighting, parks and open space, trails, postal service boxes and school bus stop shelters.

1.8 **“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, and other public facilities and improvements to serve the Development.

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

1.10 **“Subdivision Improvements”** shall mean the Public Improvements, Private Improvements and Dry-Utilities.

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

1.12 **“Town Engineer”** shall mean the professional engineer designated by the Town Manager to perform the obligations set forth in this Agreement.

1.13 **“Town Manager”** shall include the Town Manager and his authorized designees.

1.14 **“Town Official”** shall include the Town Manager, Town Attorney, Town Treasurer, Town Engineer, Town Planner and their 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 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, Developer shall submit for review and approval the Civil Engineering Construction Plans to the Town Engineer for review. Construction of the Subdivision 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 Subdivision 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. **Rights-of-Way, Easements, Permits and Use Tax:** Prior to commencing construction of the Subdivision 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 Subdivision Improvements. All such rights-of-way and easements shall be conveyed to the Town and the documents of conveyance shall be furnished to the Town Manager 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. Such title insurance shall be subject to "Permitted Exceptions" as the Town and Developer may mutually agree. In addition, Developer shall obtain all the requisite permits and licenses necessary for construction of the Subdivision Improvements. Developer shall also pay all applicable use tax due and owing to the Town.

2.2 ***Construction of Public Improvements:*** Upon satisfaction of the conditions set forth in Paragraph 2.1, 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 new and both workmanship and materials shall be of good quality.

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

2.4 ***Testing and Inspection:*** Developer shall employ, at its own expense, a qualified independent testing company, approved by the Town Engineer, 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 Engineer. 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 Engineer.

2.5 **Completion of Construction:** Developer shall complete construction of the Subdivision 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 Manager's written consent to the extension.

2.6 If Developer seeks, and the Town authorizes the issuance of, building permits prior to the completion of certain of the Subdivision Improvements, Developer shall furnish to the Town a cash escrow deposited with the Town or an irrevocable letter of credit in the form attached hereto as **Exhibit D** in which the Town is designated as the beneficiary ("Performance Guarantee") in an amount equal to 110% of the cost of such uncompleted improvements, which cost shall be certified by Developer's professional engineer, licensed in the State of Colorado and approved by the Town Engineer, to secure the installation, improvement and completion of the improvements. The Performance Guarantee shall be released after Initial Acceptance as defined in Paragraph 5.1 below of such improvements.

3. **Private Improvements**

3.1 **Pre- Construction:** Prior to commencing construction of the Private Improvements, Developer shall submit a Site Development Plan to the Town. The Site Development Plan shall contain the proposed Private Improvements for the Development, including a plan for stormwater improvements, an irrigation system, landscaping, fencing, entry-way signage, street signs and posts, street lighting, parks and open space, trails, postal service boxes and school bus stop shelters. 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 Site Development Plan, with the exception of approval of the school bus shelters, which must be approved by the school district. Developer shall not thereafter modify the approved Site Development Plan without the written approval of the Town. The Town's review and approval of the Site 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. Developer shall also pay all applicable use tax due and owing to the Town.

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 Site 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 architect or engineer. 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 Site Development Plan. Any material or work not conforming to the Site 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 Manager, 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 Manager's written consent to the extension. The Town may, in 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 in the form of a cash escrow deposited with the Town or an irrevocable letter of credit in the form attached hereto as **Exhibit D** in which the Town is designated as the beneficiary is provided to the Town.

3.5 **Replacement of Private Improvements:** As replacement of the improvements is necessary and warranted over time, the Private Improvements shall be replaced by, as appropriate, the Developer, the homeowner's association or a metropolitan or special district. The Town shall not be responsible for replacement of the Private Improvements.

4. **Dry-Utilities**

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

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

ACCEPTANCE OF SUBDIVISION IMPROVEMENTS

5.1 **Initial Acceptance:** Developer shall make written application to the Town Manager for initial acceptance of the Public Improvements ("Initial Acceptance"), and for final 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, 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 Manager 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 Initial 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 shall prepare a detailed written description of all Subdivision Improvements which are not in compliance with the Approved Plans, subject to any changes that have been approved by the Town and any changes that have been required by the Town as a result of any unforeseen engineering design issues. Such report shall be delivered to Developer. After curing the defects, 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 Initial Acceptance of the Public Improvements upon receipt of the Maintenance Guarantee and written approval of the Private Improvements.

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

5.3 ***Delivery of Initial Acceptance.*** Upon satisfaction of the conditions set forth above in Paragraphs 5.1 and 5.2, the Town shall provide written notice of Initial Acceptance of the Public Improvements and written approval of the Private Improvements to Developer. The Town may issue written notice of Initial Acceptance of the Public Improvements and written approval of the Private Improvements prior to completion of certain of the less critical improvements, as determined and agreed-upon by the Town in its sole discretion. In which case, the 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 of 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 thirty (30) 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, upon Initial Acceptance, the Town shall be responsible for routine maintenance of the Public Improvements (street sweeping, snow removal, etc.) and the Developer shall be responsible for all maintenance, repairs and replacement of the Private Improvements.

5.5 Final Acceptance: Two (2) years after the Town's Initial Acceptance of the Public Improvements, which time period may be extended in the Town's reasonable discretion due to remedial or repair work that may be necessary in the first two (2) years by providing written notice to Developer, Developer shall make a written request to the Town Manager for a final inspection of the Public Improvements and the landscaping ("Final Acceptance"). If the Town Engineer determines that the Public Improvements are free of defects in materials and workmanship and have been repaired and maintained to the extent required and the landscaping is established, the Town Manager shall provide a written certification of completion and Final Acceptance. If the Town Engineer determines that the Public Improvements are not free of defects in materials and workmanship and have not been repaired and maintained to the extent required or that the landscaping is not properly established, the Town Manager 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 Manager for a final inspection of the Public Improvements and the landscaping. Failure of the Developer to make a timely request for Final Acceptance shall not limit the Town's rights hereunder nor shall it limit the Town's right to utilize or operate the Public Improvements as the Town deems appropriate.

5.6 Homeowners Association: Prior to Final Acceptance and prior to the sale of lots or homes in the Development, Developer shall establish a homeowners association for the Development. Developer shall provide the Town with proposed covenants, bylaws and articles of incorporation for the homeowners association. Upon written approval of the covenants, bylaws and articles of incorporation by the Town, the same shall be recorded with the appropriate County Clerk and Recorder and the homeowners association shall thereafter be deemed to be established.

5.7 Dedication and Maintenance of Subdivision Improvements: Upon Final Acceptance of the Subdivision Improvements: (1) the Public Improvements shall be owned, operated and maintained by the Town; (2) the Private Improvements shall be owned, operated and maintained, as appropriate by the Town, by the homeowner's association or the Villages at Johnstown Metropolitan District No. 1 (the "District"); and (3) the Dry-Utilities shall be owned, operated and maintained, as appropriate and otherwise authorized, by the homeowner's association, or the District, or the appropriate public utility company.

WATER AND SEWER SERVICE

6.1 The Town and Developer shall enter into a Water and Sewer Service Agreement setting forth their agreement concerning water rights dedication, preliminary projections of water and sewer demand and a commitment by the Town for water and sewer service to the Development. The Water and Sewer Service Agreement, whenever executed, shall be incorporated into this Agreement and made a part hereof.

BUILDING PERMITS

7.1 The Town shall not issue building permits or install water meters 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 Initial 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) meter and curb stop pass inspection; (5) the parties have entered into a Water and Sewer Service Agreement; (6) Developer has established a homeowners association as set forth in Paragraph 5.6 above; and (7) all terms of this Agreement have been faithfully kept by Developer.

7.2 Notwithstanding the foregoing, the Town may, in its sole discretion, issue building permits prior to completion of certain of the less critical Subdivision Improvements, as determined by the Town in its sole discretion, on the condition that 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. In the Town's discretion, the Town may provide written notice to the Developer and an opportunity to cure prior to withholding building permits. In any event, the Town and the Developer shall endeavor to work together to resolve the outstanding deficiencies in a timely manner.

CONSTRUCTION OPERATION STANDARDS

8.1 The operation of construction equipment outside an enclosed structure shall be prohibited between the hours of 8:00 p.m. or dusk, whichever is earlier, and 7:00 a.m. on weekdays and between the hours of 7:00 p.m. or dusk, whichever is earlier, and 8:00 a.m. on weekends and legal holidays. The Town Manager may, upon written application, alter the hours of operation for good cause by providing written notice to Developer.

8.2 Developer agrees to control all weeds growing within the Development. 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.

8.5 When the Town Engineer provides written notice that erosion, by wind or water, is likely to be an issue, Developer shall install temporary or permanent erosion control into the Development at the earliest practicable time. By way of explanation and without limitation, said control may consist of seeding of approved grasses, temporary dikes, gabions or other similar devices.

8.6 In the event that Developer fails to perform the work specified in Paragraphs 8.3, 8.4 or 8.5 within a reasonable time period after receiving written notice from the Town, not to exceed ten (10) days for the work specified in Paragraphs 8.3 and 8.4, 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 Maintenance Guarantee, if there is such a guarantee.

8.7 Developer hereby ensures that Developer's subcontractors shall cooperate with the Town's construction inspectors in all manners, including, but not limited to, by ceasing operations when winds are of sufficient velocity to create blowing dust which the Town, in its discretion, determines is hazardous to the public health and welfare.

8.8 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 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 Johnstown's municipal code, zoning ordinances, subdivision regulations, landscape guidelines and the Performance Standards for the Ridge at Johnstown (also known as the Performance Standards for Villages at Johnstown), which were approved by Town Council on December 2, 2018. Be there a conflict with the Performance Standards and Johnstown's municipal code, zoning ordinances, subdivision regulations and landscape guidelines (collectively "Codes"), the Town shall decide the proper application of the Codes and the Performance Standards.

9.3 Unless otherwise set forth in the Code, the Performance Standards or the Approved Plans, the following design standards must be met including, but not limited to, the following:

- A. Developer shall submit detailed elevations showing architectural features of the proposed dwelling units. Architectural features, elevations and home sites shall have prior approval of the Town. Such approvals shall not be unreasonably withheld.

- B. In areas built with single family homes, no individual unit shall be built with the same elevation within three (3) units of itself on both sides of the street and all units shall have at least a two-car garage, except the multi-family homes.
- C. In areas built with single family homes, at least twenty-five percent (25%) of the facade of each dwelling unit, excluding windows, doors, and garage doors, shall be of masonry, stone, brick, or an equivalent. All roofs shall have thirty (30) year architectural style shingles. Any shingle type or style other than architectural style shingles shall be submitted to the Town for prior approval, but three-tab conventional asphalt shingle roofing shall not be permitted.

LIABILITY, INSURANCE AND COST REIMBURSEMENT

10.1 ***Indemnification:*** Developer hereby agrees to indemnify and hold the Town, Town Officials, 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 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 Subdivision 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, Town Officials, 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), 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. Whenever requested by the Town Manager, Developer agrees to promptly submit certificates of insurance evidencing sufficient amounts, types and duration of insurance and which show the Town, Town Officials, its employees, agents and representatives as additional insureds. Developer shall not be relieved of any liability, claims, demands or other obligations assumed or set forth in this 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 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. Any use tax due for construction materials shall be paid prior to construction of any improvements on the Property.

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

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

DEFAULTS AND REMEDIES

11.1 A default by Developer shall exist if Developer fails to fulfill or perform any material obligation contained in this Agreement, the Final Plat, the Resolution, or the Approved Plans, or Developer fails to comply with the Town's ordinances, resolutions and regulations and all other applicable laws and regulations. Without limiting the Town's right to withhold building permits as set forth herein, in the event of a default, the Town shall deliver written notice to Developer of such default and Developer shall have thirty (30) days from receipt of such notice to cure the default. If the default is not of a type that may be cured within such thirty (30) 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 Maintenance or Performance Guarantee.

11.2 If the default arises subsequent to Initial Acceptance and the default is not timely cured, the Town may draw on the Maintenance Guarantee. 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. 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, in its discretion, after notice and opportunity to cure as set forth in Paragraph 11.1, 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 six percent (6%) 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 to 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 this Development are set forth in **Exhibit B-3**, which is attached hereto, incorporated herein by this reference, and made a part of this Agreement.

12.2 As set forth in Paragraph 3.5 above, Developer, the homeowner's association or a metropolitan district, as appropriate, shall be responsible for replacement of decorative light fixtures, decorative street signs and all other decorative amenities in the Development when replacement is necessary and warranted over time.

12.3 Notwithstanding anything to the contrary, use tax is due and owing prior to construction of any and all Subdivision Improvements.

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 substantially shall be recorded with the approved Final Plat and shall be a covenant running with and against all the Property, property rights and improvements contained within the Development described in **Exhibit A** in order to put prospective owners, purchasers, successors, assigns, and others acquiring any interest in the property on notice as to the terms and obligations herein. No lots, tracts or parcels may be separately conveyed prior to recording the Agreement and the Final Plat.

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

13.5 **Transfer or Assignments:** In the event of a sale or transfer of any portion of the Development, except to a bona fide residential home buyer of a completed owner-occupied home, the seller or transferor and the purchaser or transferee shall be jointly and severally liable for the performance of each of the obligations contained in this Agreement unless, prior to the transfer or the sale, a written agreement satisfactory to the Town delineating and allocating the various rights and obligations for the Subdivision Improvements has been approved and executed by the Town Manager.

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 facsimile or email-delivery, but only upon confirmation of receipt of such facsimile or email; (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:

J-25 LAND HOLDINGS, LLC
Attention: ROY BADE
8901 E. Mountain View Rd, Ste 150
Scottsdale, AZ 85258
Email: Roy.Bade@calibercos.com

COPY TO:

Hunter & Goodhue, PLLC
Attention: Mark F. Hunter
4845 Pearl East Circle, Suite 101
Boulder, CO 80301
Email: mark@huntgoodlaw.com

TO TOWN:

TOWN OF JOHNSTOWN
Attention: TOWN MANAGER
450 So. Parish
P. O. Box 609
Johnstown, CO 80534
Email: mlecerf@townofjohnstown.com

COPY TO:

Avi S. Rocklin, Esq.
Law Office of Avi S. Rocklin, LLC
1437 N. Denver Avenue, No. 330
Loveland, CO 80538
Email: avi@rocklinlaw.com

TO DISTRICT:

Hunter & Goodhue, PLLC
Attention: Mark F. Hunter
4845 Pearl East Circle, Suite 101
Boulder, CO 80301
Email: mark@huntgoodlaw.com

Notice may also be provided by electronic mail (“e-mail”) communication on the condition that the recipient acknowledges receipt of the e-mail and does not object.

13.8 **Costs and Attorney Fees.** If the Developer breaches this Agreement, the Developer shall pay the Town’s reasonable costs and expenses, including attorney’s fees, incurred in the enforcement of the terms, conditions and obligations of this Agreement. Nothing herein shall be construed to prevent or interfere with the Town’s rights and remedies specified elsewhere in the Agreement.

13.9 **Vested Right.** The Final Plat shall have vested rights pursuant to §§ 24-68-101, *et seq.*, C.R.S. for a period of three (3) years from the date of this Agreement.

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 Larimer County, Colorado.

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

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

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

13.15 **No Third Party Beneficiaries.** Lenders, lot or home buyers and materialmen, laborers or others providing work, services or materials for the Subdivision Improvements shall not have any right of action under this Agreement.

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

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 _____, 2020.

J-25 LAND HOLDINGS, LLC

By: J-25 Development Group, LLC, a Delaware limited liability company, as Manager

By: Caliber Services, LLC, an Arizona limited liability company, as its sole Member

By: Caliber Companies, LLC, an Arizona limited liability company, as Manager

By: Caliberco, Inc., a Delaware corporation, as its sole Member

DocuSigned by:
Jennifer Schrader
55B0A4649A0A4A6

Jennifer Schrader, Director

Original, notarized signature page en route to Town

STATE OF ARIZONA)

)ss.

COUNTY OF MARICOPA)

SUBSCRIBED AND SWORN to before me this ____ day of December 2020 by Jennifer Schrader, Director, J-25 Land Holdings, LLC.

WITNESS my hand and official seal.

Notary Public

My commission expires: _____

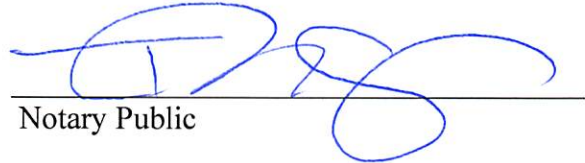
Villages at Johnstown Metropolitan District No. 1

By: 
Mark F. Hunter, President

STATE OF COLORADO)
)ss.
COUNTY OF BOULDER)

SUBSCRIBED AND SWORN to before me this 15 day of December 2020, by Mark F. Hunter, President, Villages at Johnstown Metropolitan District No. 1.

WITNESS my hand and official seal.


Notary Public

My commission expires: 6/12/2024

TERRY RENEE BERGER
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20204020644
MY COMMISSION EXPIRES JUNE 12, 2024

TOWN OF JOHNSTOWN, COLORADO
A Colorado Home Rule Municipal Corporation

By: _____
Gary Lebsack, Mayor

ATTEST:

By: _____
Diana Seele, Town Clerk

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

EXHIBITS

TABLE OF CONTENTS

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 C:	Schedule of Public Improvements
EXHIBIT D:	Irrevocable Letter of Credit Form

EXHIBIT A

**LEGAL DESCRIPTION
(Property)**

PART OF THE SOUTH HALF OF THE NORTHWEST QUARTER OF SECTION 26,
TOWNSHIP 5 NORTH, RANGE 68 WEST OF THE 6TH PM, LARIMER COUNTY,
COLORADO, DESCRIBED AS FOLLOWS;

BEGINNING AT THE CENTER QUARTER CORNER OF SAID SECTION 26,
MONUMENTED WITH A 2 ½" ALUMINUM CAP IN RANGE BOX, STAMPED LS 38304,
2014.

THENCE N89°44'19"W, A DISTANCE OF 1315.85 FEET ON THE SOUTH LINE OF THE
SOUTHEAST QUARTER OF SAID NORTHWEST QUARTER TO THE CENTER WEST
1/16TH CORNER, MONUMENTED WITH A NUMBER 6 REBAR WITH A 2 ½" ALUMINUM
CAP STAMPED 26512, 2018;

THENCE N89°43'42"W, A DISTANCE OF 235.59 FEET ON THE SOUTH LINE OF THE
SOUTHWEST QUARTER OF SAID NORTHWEST QUARTER;

THENCE N00°10'22"E, A DISTANCE OF 109.03 FEET TO A NON-TANGENT POINT OF
CURVATURE;

THENCE ON A SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 55.00 FEET, A
CENTRAL ANGLE OF 106°28'13", A DISTANCE OF 102.20 FEET, A CHORD BEARING
OF N03°17'04"W WITH A CHORD DISTANCE OF 88.12 FEET TO A REVERSE CURVE;

THENCE ON A SAID CURVE TO THE LEFT, HAVING A RADIUS OF 15.00 FEET, A
CENTRAL ANGLE OF 49°46'41", A DISTANCE OF 13.03 FEET, A CHORD BEARING OF
N25°03'42"E WITH A CHORD DISTANCE OF 12.63 FEET;

THENCE N00°10'22"E, A DISTANCE OF 263.90 FEET;

THENCE N09°27'44"W, A DISTANCE OF 65.41 FEET;

THENCE N00°00'00"E, A DISTANCE OF 75.42 FEET;

THENCE ALONG SAID CURVE TO THE LEFT, HAVING A RADIUS OF 160.00 FEET, A
CENTRAL ANGLE OF 17°12'16", A DISTANCE OF 48.04 FEET, A CHORD BEARING OF
N08°36'08"W WITH A CHORD DISTANCE OF 47.86 FEET TO THE NORTH LINE OF
SAID SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 26;

THENCE S89°56'13"E, A DISTANCE OF 253.77 FEET ON SAID NORTH LINE TO THE
CENTER 1/16TH CORNER OF THE NORTHWEST QUARTER, MONUMENTED BY A 2"
IRON PIPE FILLED WITH CONCRETE AND A ¾" WASHER STAMPED LS 4845 SET IN
THE CONCRETE;

THENCE S89°49'38"E, A DISTANCE OF 1262.67 FEET ON THE NORTH LINE OF THE
SOUTH HALF OF SAID SOUTHEAST QUARTER OF THE NORTHWEST QUARTER TO
THE WEST RIGHT OF WAY LINE OF COUNTY ROAD 3E, MONUMENTED WITH A
NUMBER 5 REBAR WITH A 1-1/4" PURPLE PLASTIC CAP STAMPED "PLS 37067";

THENCE S00°18'18"W, A DISTANCE OF 288.21 FEET ON SAID WEST RIGHT OF WAY LINE, MONUMENTED WITH A NUMBER 5 REBAR WITH A 1-1/4" PURPLE PLASTIC CAP STAMPED "PLS 37067";

THENCE S89°46'36"E, A DISTANCE OF 55.00 FEET TO THE EAST LINE OF SAID SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 26, MONUMENTED WITH A NUMBER 5 REBAR WITH A 1-1/4" PURPLE PLASTIC CAP STAMPED "PLS 37067";

THENCE S00°18'18"W, A DISTANCE OF 374.22 FEET ON SAID EAST LINE TO THE POINT OF BEGINNING.

PARCEL CONTAINS 1,013,967 SQUARE FEET OR 23.777 ACRES.

BASIS OF BEARING:

BEARINGS ARE BASED ON THE COLORADO STATE PLANE COORDINATE SYSTEM, NORTH ZONE, IN WHICH THE SOUTH LINE OF SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 26, T5N, R68W, 6TH PM, LARIMER COUNTY, CO; BEARS N89°44'19"W, A DISTANCE OF 1,315.85 FEET BETWEEN THE CENTER QUARTER CORNER OF SECTION 26, MONUMENTED A 2 1/2" ALUMINUM CAP IN RANGE BOX, STAMPED LS 38304, 2014. AND THE CENTER WEST 1/16TH CORNER, MONUMENTED WITH A NUMBER 6 REBAR WITH A 2 1/2" ALUMINUM CAP STAMPED 26512, 2018; WITH ALL OTHER BEARINGS RELATIVE THERETO.

EXHIBIT B-1

PLAT OR PLAN

(SEE ATTACHED)



THE RIDGE AT JOHNSTOWN
 FILING NO. 2 (CENTER VILLAGE)
 PART OF THE SOUTH HALF OF THE NORTHWEST QUARTER OF SECTION 26,
 RANGE 68 WEST OF THE 6TH P.M., TOWNSHIP 5 NORTH,
 LARIMER COUNTY, COLORADO

THE RIDGE AT JOHNSTOWN FILING NO. 2 (CENTER VILLAGE)
 PART OF THE SOUTH HALF OF THE NORTHWEST OF SECTION 26,
 T. 5 N., R. 68 W. OF THE 6TH P.M.,
 JOHNSTOWN, LARIMER COUNTY, COLORADO

PARCEL CORNER SEGMENT TABLE

CURVE TAG #	BETA	LENGTH (FT)	RADIUS (FT)	CHORD BEARING	CHORD LENGTH (FT)
C0	90°00'00"	53.2	53.00	S00°00'00"W	14.55
C1	90°00'00"	53.2	53.00	S00°00'00"W	14.55
C2	90°00'00"	53.2	53.00	S00°00'00"W	14.55
C3	90°00'00"	53.2	53.00	S00°00'00"W	14.55
C4	90°00'00"	53.2	53.00	S00°00'00"W	14.55
C5	90°00'00"	53.2	53.00	S00°00'00"W	14.55
C6	90°00'00"	53.2	53.00	S00°00'00"W	14.55
C7	90°00'00"	53.2	53.00	S00°00'00"W	14.55
C8	90°00'00"	53.2	53.00	S00°00'00"W	14.55
C9	90°00'00"	53.2	53.00	S00°00'00"W	14.55
C10	90°00'00"	53.2	53.00	S00°00'00"W	14.55
C11	90°00'00"	53.2	53.00	S00°00'00"W	14.55
C12	90°00'00"	53.2	53.00	S00°00'00"W	14.55
C13	90°00'00"	53.2	53.00	S00°00'00"W	14.55
C14	90°00'00"	53.2	53.00	S00°00'00"W	14.55
C15	90°00'00"	53.2	53.00	S00°00'00"W	14.55
C16	90°00'00"	53.2	53.00	S00°00'00"W	14.55
C17	90°00'00"	53.2	53.00	S00°00'00"W	14.55
C18	90°00'00"	53.2	53.00	S00°00'00"W	14.55
C19	90°00'00"	53.2	53.00	S00°00'00"W	14.55
C20	90°00'00"	53.2	53.00	S00°00'00"W	14.55

PARCEL CORNER SEGMENT TABLE

CURVE TAG #	BETA	LENGTH (FT)	RADIUS (FT)	CHORD BEARING	CHORD LENGTH (FT)
C0	90°00'00"	53.2	53.00	S00°00'00"W	14.55
C1	90°00'00"	53.2	53.00	S00°00'00"W	14.55
C2	90°00'00"	53.2	53.00	S00°00'00"W	14.55
C3	90°00'00"	53.2	53.00	S00°00'00"W	14.55
C4	90°00'00"	53.2	53.00	S00°00'00"W	14.55
C5	90°00'00"	53.2	53.00	S00°00'00"W	14.55
C6	90°00'00"	53.2	53.00	S00°00'00"W	14.55
C7	90°00'00"	53.2	53.00	S00°00'00"W	14.55
C8	90°00'00"	53.2	53.00	S00°00'00"W	14.55
C9	90°00'00"	53.2	53.00	S00°00'00"W	14.55
C10	90°00'00"	53.2	53.00	S00°00'00"W	14.55
C11	90°00'00"	53.2	53.00	S00°00'00"W	14.55
C12	90°00'00"	53.2	53.00	S00°00'00"W	14.55
C13	90°00'00"	53.2	53.00	S00°00'00"W	14.55
C14	90°00'00"	53.2	53.00	S00°00'00"W	14.55
C15	90°00'00"	53.2	53.00	S00°00'00"W	14.55
C16	90°00'00"	53.2	53.00	S00°00'00"W	14.55
C17	90°00'00"	53.2	53.00	S00°00'00"W	14.55
C18	90°00'00"	53.2	53.00	S00°00'00"W	14.55
C19	90°00'00"	53.2	53.00	S00°00'00"W	14.55
C20	90°00'00"	53.2	53.00	S00°00'00"W	14.55

- LEGEND**
- PROPERTY LINE
 - ADJACENT PROPERTY LINE
 - PLANNED ALLOT LINE
 - CONTINGENT ALLOT
 - ALLOT CORNER (AS DESCRIBED)
 - FOUND CORNER (AS DESCRIBED)
 - SETBACK CORNER (AS DESCRIBED)
 - PUBLIC UTILITY CORNER (AS DESCRIBED)
 - OTHER CORNER
 - REC. NO.
 - SECTION NUMBER
 - AC

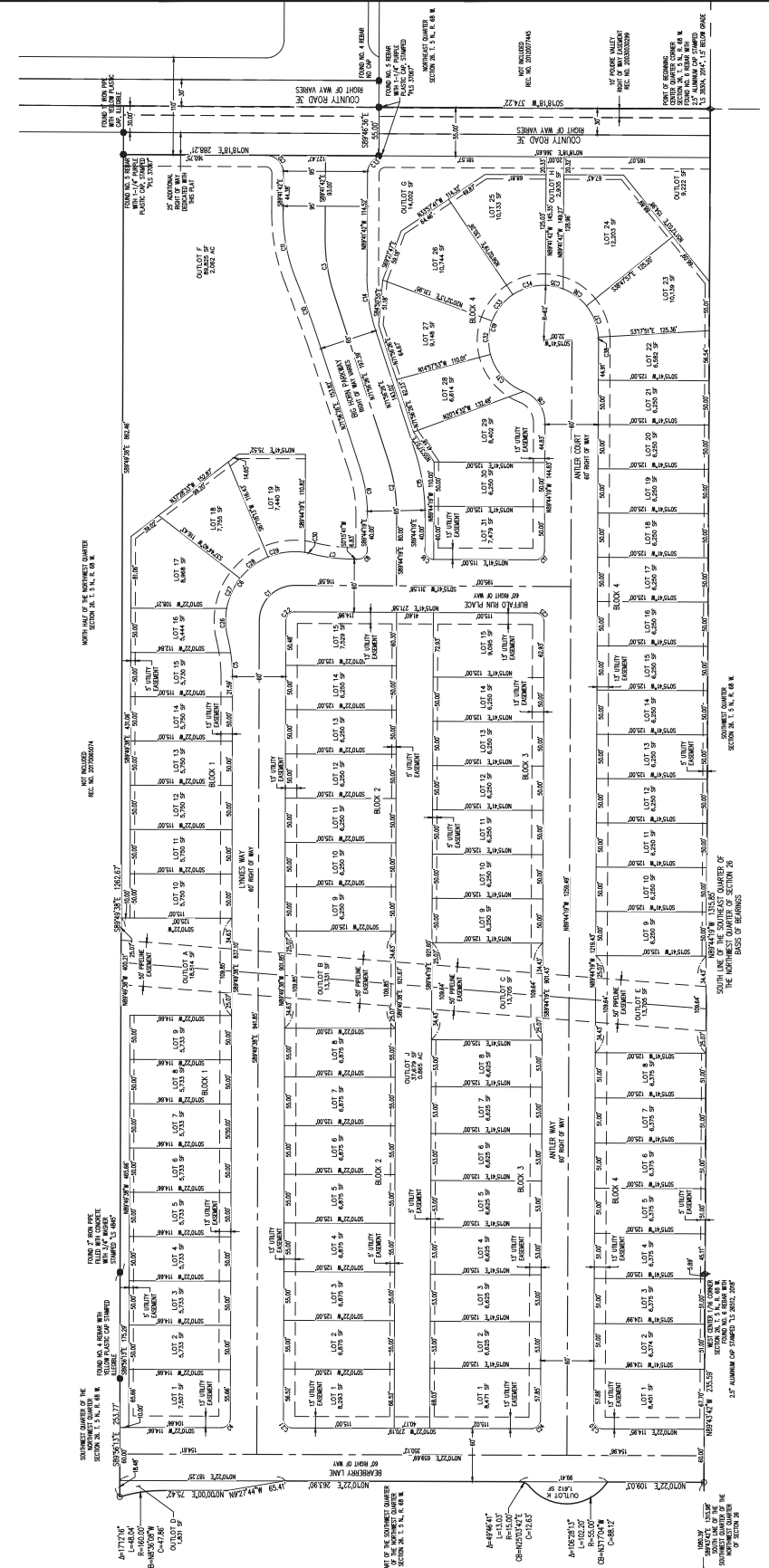


EXHIBIT B-2

(RESOLUTION APPROVING PLAT OR PLAN)

(SEE ATTACHED)

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

EXHIBIT B-3

ADDITIONAL TERMS, CONDITIONS OR PROVISIONS

1. Non-potable Water System. Concurrent with the execution of this Agreement, the Town and Developer are entering into a Water and Sewer Service Agreement. If the Developer hereinafter desires to utilize a non-potable water system to water common landscaped areas, the Town and Developer agree to enter into a subsequent agreement regarding such system and amend the WSSA to reflect the reduced potable water requirement.
2. County Road 18 (“CR18”) Traffic Signal. Because the Development will directly impact traffic on CR 18, when a traffic signal is warranted at the intersection of CR18 and High Plains Boulevard (LCR3), Developer or the Villages at Johnstown Metropolitan District No. 1 (“District”) shall pay a pro-rata share of the cost of the traffic signal based on a percentage to be determined by a traffic study completed at that time. Such amount shall be due and payable within thirty (30) days of written notice from the Town.
3. County Road 3e (CR3e) Transportation Improvements. In conjunction with The Ridge at Johnstown, Filing No. 1 (“Filing No. 1 Development”), and related agreements:
 - a. Developer agrees to construct improvements, including curb, gutter, sidewalk and tree lawn, to CR3e along the frontage of the Development (the north to south edge of Development being the frontage) to an Interim Minor Arterial Cross Section standard (two-lane) as described in the Town’s Transportation Plan. Such improvements shall be in place prior to the issuance of the first certificate of occupancy for a residential structure in the Development, except that, in Town staff’s discretion, completion of the tree lawn improvements may be extended until a reasonable date after issuance of the first certificate of occupancy.
 - b. Due to the traffic generated by the Development and by the Filing No. 1 Development, paving of the current two-lane LCR3e is required from County Road 18 to the northern boundary of the Development frontage, and from County Road 16 to the southern boundary of the Development frontage, as traffic is anticipated to exceed the 400 VPD Larimer County threshold for an unpaved road. Paving, turn lanes and interchange improvements as required by the master traffic study from County Road 18 to the northern boundary of the Development shall be completed by the Developer on or before the Town’s issuance of certificates of occupancy for a cumulative one hundred thirty (130) single family homes for Filings No. 1 and No. 2. Paving and any required turn lane improvements from the southern boundary of the Development to County Road 16 shall be completed by the Developer within one (1)

year following the issuance of the cumulative 130 certificates of occupancy. Subject to Larimer County's agreement and approval, paving from County Road 18 to the northern boundary of the Development may be subject to a reimbursement agreement among the Town, the Developer, and Larimer County.

- c. Prior to commencement of the CR3e improvements set forth in subparts (a) and (b), and in sufficient time to allow Developer to meet the required deadlines, Developer shall obtain the appropriate Larimer County approvals. If any updated associated traffic study shows that additional improvements to CR3e are warranted based on the generation of traffic arising from or related to Filings No. 1 and No. 2, Developer shall be obligated to construct those improvements in the form and manner required by the Town.
4. Off-site Sanitary Sewer Line. In connection with the Filing No. 1 Development, Developer is required to install an offsite sanitary sewer line ("Offsite Sanitary Sewer Line") extending a new main north from the Property within the future CR3 right-of-way alignment and then east to the Low Point Wastewater Treatment Plant ("LPWWTP"), in accordance with approved construction drawings and in compliance with Town standards, as more fully described in the Subdivision Improvement and Development Agreement for the Ridge at Johnstown, Filing No. 1, dated on or about August 3, 2020 ("Filing No. 1 Development Agreement"). Development of this Property is wholly contingent upon construction of the Offsite Sanitary Sewer Line, and completion of the Offsite Sanitary Sewer Line, in accordance with the Filing No. 1 Development Agreement, is a condition precedent to the right to obtain building permits in this Development.
5. Interchange Reimbursement Fee. Developer recognizes and agrees that the Town intends to adopt a special fee to obtain reimbursement for the Town's costs related to the improvements to the Interstate 25 and State Highway 402 interchange ("Interchange") and that such fee shall be due and payable upon issuance of building permits in the Development. The Town recognizes that Developer incurred costs to improve the Interchange. Without waiving its rights, and specifically reserving the right to collect the special fee in full as adopted, the Town agrees, at a subsequent date, to consider the costs expended by the Developer that benefit the area generally, and not just the Development specifically, as an offset against the funds due and owing to the Town from the imposition of the special fee.
6. Construction drawings. Civil construction drawings shall be approved by the Town Engineer and a pre-construction meeting with the Town Public Works Department shall be conducted prior to commencement of construction of the Public Improvements. Construction drawings for off-site improvements may also be subject to approval by the other governing entities with jurisdiction, including, but not necessarily limited to, Larimer County. Developer shall coordinate any such approvals and required license, permits and similar items directly with those entities.
7. Magellan Pipeline Easement and Encroachment Agreement. In order to construct and use Public and Private Improvements, Developer is required to cross the existing 50-foot easement for the Magellan Pipeline Company, L.P., located on the Property. Magellan

Pipeline, the Town and Developer have executed; 1) a Partial Release and Grant of Right of Way, recorded in the records of the Larimer County Clerk and Recorder, on August 21, 2020, Reception No. 202000655510, and; 2) an Encroachment Agreement on September 11, 2020, Reception No. 20200073045 (collectively “Magellan Agreements”) for Developer to cross Magellan’s easement. Developer shall amend the Magellan Agreements with Magellan and the Town to include the District before the acceptance of the Public and Private Improvements by the Town.

8. Harry Lateral Ditch Company Irrigation Easement and Agreement. A Harry Lateral Ditch Company irrigation ditch currently bisects the Property, and must be diverted and piped through the Development while maintaining appropriate flows. An exclusive easement is granted on the plat. Developer shall provide the final as-built drawing to the Town prior to the Town’s initial acceptance of the improvement. Developer shall also execute an easement agreement with the Harry Lateral Ditch Company, in a form that it is acceptable to the Town.
9. Detention pond(s). The District shall own and maintain the detention pond(s) in the Development. Upon final construction and with Initial Acceptance of Public Improvements, Developer shall furnish to the Town final as-built plans and an approved Operation and Maintenance manual for the District-owned detention pond(s). The District shall maintain these facilities, with notice provided by the Town for any maintenance needed; if within a reasonable time period, at the sole discretion of the Director of Public Works, required maintenance remains outstanding, the Town may perform said maintenance and seek recovery of expenses for said work from the District, in accordance with all applicable laws. Developer must submit as built plans in hard copy and electronic format, as well as completed Mile High Flood District UD Detention Pond worksheet(s) with all necessary calculations, in electronic form (Excel spreadsheet, or as currently required).
10. Open Spaces, Parks and Trails. Developer shall dedicate all property containing open space, park areas and trails to the District no later than issuance of final Certificate of Occupancy. The open spaces, parks and trails shall be available for public use, subject to the Districts’ approved service plan.
11. Development Schedule. Developer, in cooperation with the Town, intends to deliver lots to builders in phases throughout the Development. Phased lot delivery will be coordinated with the Town, Front Range Fire Rescue Fire Protection District, and include coordination regarding emergency access, sewer phasing, and the issuance of building permit.
12. Fencing. Prior to installation, Developer and Town staff shall agree upon fencing for the Development
13. Landscaping. In Town staff’s discretion, landscaping may deviate from the approved Performance Standards for the Development including low-water xeriscape requirements for single family lots enforceable by the homeowners’ association for the Development, and to be included as a requirement in the Water and Sewer Service Agreement.

(SEE ATTACHED FOR REVIEW)

EXHIBIT C

**SCHEDULE OF PUBLIC IMPROVEMENTS
(ATTACHED)**

EXHIBIT C



5265 Ronald Reagan Blvd., Suite 210
 Johnstown, CO 80534
 970.800.3300 • GallowayUS.com

**The Ridge Filing 1 - ACTUAL
 ENGINEER'S OPINION OF PROBABLE COST**

ITEM NO.	DESCRIPTION	UNITS	QUANTITY	UNIT PRICE	COST
1	6" ABC Under 4" HBP	Square Yard	34,887	\$ 16.25	\$ 566,913.75
2	7" ABC Under 5" HBP	Square Yard	4,983	\$ 19.50	\$ 97,168.50
3	9.5" ABC Under 7" HBP (CR3E)	Square Yard	10,283	\$ 22.75	\$ 233,938.25
4	Town of Johnstown Crosspans (6-Foot)	Each	5	\$ 965.00	\$ 4,825.00
					\$ 902,845.50
5	18" Reinforced Concrete Pipe (Class III)	Linear Foot	1,588	\$ 40.00	\$ 63,502.80
6	24" Reinforced Concrete Pipe (Class III)	Linear Foot	2,711	\$ 52.00	\$ 140,994.88
7	30" Reinforced Concrete Pipe (Class III)	Linear Foot	684	\$ 65.00	\$ 44,473.65
8	36" Reinforced Concrete Pipe (Class III)	Linear Foot	1,288	\$ 85.00	\$ 109,500.40
9	42" Reinforced Concrete Pipe (Class III)	Linear Foot	547	\$ 115.00	\$ 62,921.10
10	48" Reinforced Concrete Pipe (Class III)	Linear Foot	330	\$ 128.75	\$ 42,487.50
11	54" Reinforced Concrete Pipe (Class III)	Linear Foot	182	\$ 150.00	\$ 27,319.50
12	4' Dia. Storm Sewer Manhole	Each	8	\$ 1,930.00	\$ 15,440.00
13	5' Dia. Storm Sewer Manhole	Each	8	\$ 2,500.00	\$ 20,000.00
14	6' Dia. Storm Sewer Manhole	Each	4	\$ 3,575.00	\$ 14,300.00
15	7' Dia. Storm Sewer Manhole	Each	2	\$ 6,865.00	\$ 13,730.00
16	8' Dia. Storm Sewer Manhole	Each	3	\$ 7,500.00	\$ 22,500.00
17	3' Concrete Cutoff Walls	Each	2	\$ 180.00	\$ 360.00
18	24" RCP Flared End Section	Each	1	\$ 550.00	\$ 550.00
19	Inlet, Type R (5')	Each	1	\$ 3,952.00	\$ 3,952.00

**The Ridge Filing 1 - ACTUAL
ENGINEER'S OPINION OF PROBABLE COST**

ITEM NO.	DESCRIPTION	UNITS	QUANTITY	UNIT PRICE	COST
20	Inlet, Type R (10')	Each	2	\$ 5,935.00	\$ 11,870.00
21	Inlet, Type R (15')	Each	1	\$ 8,225.00	\$ 8,225.00
22	Inlet, Type R (20')	Each	7	\$ 10,350.00	\$ 72,450.00
23	Inlet, Type 16 (3')	Each	1	\$ 3,250.00	\$ 3,250.00
24	Inlet, Type 16 (12')	Each	1	\$ 6,250.00	\$ 6,250.00
25	Inlet, Type 16 (18')	Each	7	\$ 9,900.00	\$ 69,300.00
26	Inlet, Type C (35" x 35")	Each	4	\$ 2,535.00	\$ 10,140.00
27	Modified CDOT Box 10'x11' Box Base MH	Each	1	\$ 12,850.00	\$ 12,850.00
28	Pond Outlet Structure	Each	2	\$ 7,670.00	\$ 15,340.00
29	Forbay Structure	Each	3	\$ 3,575.00	\$ 10,725.00
30	Trickle Channel	Linear Feet	1,458	\$ 16.50	\$ 24,057.00
					\$ 826,488.83
31	6" Concrete Sidewalk (5')	Square Yard	11,768	\$ 9.00	\$ 105,912.00
32	6" Concrete Sidewalk (8')	Square Yard	3,576	\$ 9.00	\$ 32,184.00
33	6" Concrete Sidewalk (10')	Square Yard	2,184	\$ 9.00	\$ 19,656.00
33	Square Handicap Ramp	Each	16	\$ 940.00	\$ 15,040.00
34	Radius with Handicap Ramp	Each	24	\$ 1,105.00	\$ 26,520.00
34	Curb and Gutter, Mountable	Linear Foot	17,049	\$ 15.50	\$ 264,259.50
35	Curb and Gutter, Vertical	Linear Foot	3,150	\$ 15.50	\$ 48,825.00
35	Curb and Gutter, Island	Linear Foot	467	\$ 13.50	\$ 6,304.50
36	Speed Limit Signs	Each	5	\$ 410.00	\$ 2,050.00
37	Stop Signs	Each	13	\$ 320.00	\$ 4,160.00

**The Ridge Filing 1 - ACTUAL
ENGINEER'S OPINION OF PROBABLE COST**

ITEM NO.	DESCRIPTION	UNITS	QUANTITY	UNIT PRICE	COST
38	Street Name Signs	Each	13	\$ 320.00	\$ 4,160.00
					\$ 529,071.00
39	8" Sanitary SDR 35 PVC Pipe, (Complete in place)	Linear Foot	9,622	\$ 30.00	\$ 288,660.00
40	Sanitary Services	Each	208	\$ 650.00	\$ 135,200.00
41	4' Dia. Sanitary Sewer Manhole	Each	32	\$ 2,795.00	\$ 89,440.00
42	6' Dia. Sanitary Sewer Manhole w/ Platform	Each	3	\$ 3,225.00	\$ 9,675.00
					\$ 522,975.00
43	Fire Hydrant Assembly with 6" Gate Valve	Each	16	\$ 3,120.00	\$ 49,920.00
44	6" Water C900 PVC PIPE (Complete in Place)	Linear Foot	280	\$ 30.00	\$ 8,400.00
45	8" Water C900 PVC PIPE (Complete in Place)	Linear Foot	10,557	\$ 32.50	\$ 343,102.50
46	20"x8" Tee and Gate Valve	Each	1	\$ 1,625.00	\$ 1,625.00
47	8" Gate Valve	Each	46	\$ 1,072.50	\$ 49,335.00
48	8"x8" Cross	Each	2	\$ 495.00	\$ 990.00
49	6"x8" Reducer	Each	2	\$ 133.00	\$ 266.00
50	8"x8" Tee	Each	7	\$ 330.00	\$ 2,310.00
50	8"x6" Swivel Tee	Each	15	\$ 285.00	\$ 4,275.00
52	6" Gate Valve	Each	16	\$ 590.00	\$ 9,440.00
53	Water Services	Each	208	\$ 1,075.00	\$ 223,600.00
54	8" Deflection	Each	6	\$ 405.00	\$ 2,430.00
55	11.25 Bend	Each	10	\$ 200.00	\$ 2,000.00
56	45 Bend	Each	2	\$ 200.00	\$ 400.00

**The Ridge Filing 1 - ACTUAL
ENGINEER'S OPINION OF PROBABLE COST**

ITEM NO.	DESCRIPTION	UNITS	QUANTITY	UNIT PRICE	COST
57	90 Bend	Each	2	\$ 215.00	\$ 430.00
58	Testing Chlorination	Each	10,557	\$ 2.00	\$ 21,114.00
					\$ 719,637.50
58	15" Sanitary PVC (Off-Site)	Each	4,174	\$ 50.00	\$ 208,700.00
58	12" Sanitary PVC (Off-Site)	Each	1,798	\$ 46.25	\$ 83,157.50
58	4' Sanitary Manhole (Off-Site)	Each	11	\$ 2,762.50	\$ 30,387.50
58	6' Sanitary Manhole (Off-Site)	Each	5	\$ 8,580.00	\$ 42,900.00
					\$ 365,145.00
Total					\$ 3,866,162.83

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 _____, dated this day _____ of _____, 20____, between the Town of Johnstown and _____.

You are hereby authorized to draw 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