

**SITE DEVELOPMENT AND IMPROVEMENT AGREEMENT  
FOR  
TOWN OF JOHNSTOWN  
(Roosevelt High School)**

This Site 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 Weld County School District RE-5J, a school district of the State of Colorado (the “Developer”).

**WITNESSETH:**

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

**WHEREAS**, the Property is part of the final plat recorded in the real property records of Weld County, Colorado at Reception No. 4835732 (the “Final Plat”); and

**WHEREAS**, the Town administratively approved a Site Development Plan for the Property (“Site Development Plan”), which is filed in the official records of the Town; and

**WHEREAS**, the Town, and Eleven, LLC , a Colorado limited liability company, executed a Subdivision Development and Improvement Agreement recorded in the real property records of Weld County, Colorado at Reception No. 4835733 (the “Overall Development Agreement”) which affects the Property and provides for the release of the Property from the Overall Development Agreement upon execution of this Agreement; and

**WHEREAS**, Developer seeks to develop the Property and to designate such development as Roosevelt High School (“Development”); and

**WHEREAS**, Developer understands and agrees that, as a further condition of approval of the Development, Developer is required to construct certain Development Improvements (defined below) to the Property, that Developer is responsible for the costs and expenses of those Development Improvements unless otherwise provided herein, and that the Development 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 Site Development Plan, 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 Development Plan” related to the Development and on file with Town.

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

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

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

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

1.6 “**Development Improvements**” shall mean the Public Improvements and Private Improvements.

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

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

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

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

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

1.12 “**Private Improvements**” shall mean the construction, installation and completion of privately owned and maintained common improvements in the Development including, but not limited to, stormwater improvements, landscaping, irrigation, fencing, entry signs, walks and trails.

1.13 “**Public Improvements**” shall mean the construction, installation, completion and dedication of public improvements required by this Agreement or otherwise constructed in the Development, 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.

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

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

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

## **DEVELOPMENT 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 for minor field changes that occur during the course of construction. The Town’s review and approval of the Civil Engineering Construction Plans shall not limit or affect Developer’s responsibility or liability for design,

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

c. **Phasing of the Public Improvements.** [Intentionally omitted.]

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, 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. The parties represent that as of the signing of this Agreement, the Pre-Construction Meeting has occurred, and requirements of this paragraph have been met.

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

## 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, Site Development Plan, the Civil Engineering Construction Plans, the Town's ordinances, resolutions and regulations and all other applicable laws and regulations. All Public Improvements shall be installed and constructed within the rights-of-way or easements dedicated to the Town. Unless otherwise approved by the Town in writing, all materials used for constructing the Public Improvements shall be materials set forth on the Town's approved material list. Workmanship and materials shall be of good quality.

b. At least seven (7) days prior to the commencement of construction, Developer shall provide written notice to all property owners within a 600-foot radius of the construction limits indicated on the Civil Engineering Construction Plans and to any other property owners who are reasonably likely to be impacted by the construction along with contact information for the Developer. Prior to the commencement of the construction, such contact list shall be provided to the Town with a copy of the notification. Notification may be by U.S. mail or by delivering a printed flyer left at each affected home or business location. The parties represent that as of the signing of this Agreement the requirements of this paragraph have been met.

2.3 **Construction Schedule:** [Intentionally omitted.]

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

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

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

2.7 **Performance Guarantee:** [Intentionally omitted.]

### 3. **Private Improvements Stormwater**

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. Construction of the Private Improvements shall not commence until the Town provides written notice of approval of the Development Plan. Developer shall not thereafter modify the approved Development Plan without the written approval of the Town. The Town's review and approval of the Development Plan shall not limit or affect Developer's responsibility or liability for design, construction and installation of the Private Improvements, and to the extent permitted by law, 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. The parties represent that as of the signing of this Agreement the requirements of this paragraph have been met.

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 Town's ordinances, resolutions and regulations and all other applicable laws and regulations. Unless otherwise approved by the Town in writing, all materials used for constructing the Private Improvements shall be new and both workmanship and materials shall be of good quality.

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

3.4 Intentionally Deleted.

3.5 **Replacement of Private Improvements:** As replacement of the Private Improvements is necessary and warranted over time, including but not limited to decorative light fixtures, on-site signs and all other decorative amenities in the Development, the Private Improvements shall be replaced by the Developer. The Town shall not be responsible for replacement of the Private Improvements.

3.6 **Ownership and Maintenance:** The Developer shall own and maintain the stormwater infrastructure for the Development.

#### 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 DEVELOPMENT IMPROVEMENTS

5.1 ***Notice of Construction Acceptance:*** Developer shall make written application to the Town for acceptance of the Public Improvements and for review of the Private Improvements, within thirty (30) days of the completion date of the Development Improvements, with the exception of the improvements for which the Town has authorized an extension of time to complete. With respect to the Public Improvements, among other documents that may be required by the Town, the written application shall include one set of reproducible “as built” drawings and an affidavit executed by Developer affirming that the Public Improvements have been paid in full, certifying the final construction costs and including documentary evidence of the construction costs. If the Town requests, Developer shall provide lien waivers, or other acceptable assurance, from all subcontractors, suppliers and materialmen who have furnished labor, material or services for the design, construction or installation of the Development 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 Development Improvements. If the Development 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 Development Improvements are not satisfactory, the Town, upon coordination with Developer, shall prepare a punch list of all Development 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 Development Improvements, which written application shall contain the items set forth above. The Town shall thereafter use reasonable efforts to promptly re-inspect the Development Improvements. If the Development Improvements are satisfactory, Developer shall be entitled to the issuance of a Notice of Construction Acceptance for the Public Improvements upon receipt of the Maintenance Guarantee and written approval of the Private Improvements.

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

5.3 ***Delivery of Notice of Construction Acceptance.*** Upon satisfaction of the conditions set forth above in Paragraphs 5.1 and 5.2, 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 Development Improvements as long as the Performance Guarantee remains in effect for such uncompleted Public Improvements. Developer shall be entitled to obtain building permits prior to completion of all the Development Improvements as set forth in Sections 7.1 and 7.2.

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

5.5 ***Final Acceptance:*** Two (2) years after the Town's issuance of the Notice of Construction Acceptance, which time period may be extended at the Town's discretion due to remedial or repair work that may be required by the Town during the first two (2) years, Developer shall make a written request to the Town for final inspection of the Development Improvements. If the Town determines that the Development 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 Development 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 Development 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 required by the Town to be recorded shall be recorded at the office of the Weld County Clerk and Recorder.



5.6 ***Dedication and Maintenance of Development 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; and (3) the Dry Utilities shall be owned, operated and maintained, as appropriate and otherwise authorized, by the Developer or the appropriate public utility company.

### **WATER AND SEWER SERVICE**

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

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

### **BUILDING PERMITS**

7.1 The Town shall issue building permits for the Development after: (1) Developer has paid all applicable fees required by the Town, including but not limited to water and tap fees and storm drainage fees; (2) Developer has installed service up to the meter pit/vault and curb stop and meter and curb stop have passed inspection unless otherwise approved by the Town in writing; (3) Developer has provided the Maintenance Guarantee; (4) the parties have entered into a Water and Sewer Service Agreement; (5) Developer has executed the operations and maintenance agreement related to the stormwater infrastructure; and (6) all terms of this Agreement have been faithfully kept by Developer.

7.2 On the condition that all Development Improvements be completed prior to the issuance of certificates of occupancy, the Town may issue building permits prior to the following: (1) completion of the Development Improvements, (2) issuance of the Notice of Construction Acceptance of the Public Improvements and (3) issuance of written notice of approval of the Private Improvements.

7.3 If at any time the Developer is not in compliance with this Agreement, the Site Development Plan, or the Approved Plans, the Town may withhold the issuance of building permits.

### **OPERATION STANDARDS**

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

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

8.3 Developer shall, at all times, keep any public right-of-way which is open for public use 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.

## **DEVELOPMENT STANDARDS**

9.1 Except as otherwise provided in this Agreement, Site Development Plan, or Approved Plans, Developer shall comply with the Code, the Town's zoning ordinances, Development regulations and construction standards and specifications.

9.2 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.

9.3 Developer shall take all necessary steps to prevent its construction activities from harming water quality, water bodies and wetlands. All drainage and holding ponds shall be kept free of standing water by whatever means possible including, but not limited to, pumping water out of any holding ponds.

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

10.1 ***Indemnification:*** To the extent permitted by law, Developer hereby agrees to indemnify and hold the Town, its employees, agents, representatives, insurers and self-insurance pool harmless from and against any and all suits, demands, actions, damages, liability, losses, claims, fees and expenses, including attorney's fees, resulting or arising in any way from any breach or default of this Agreement or any acts or omissions of Developer, its employees, agents, consultants, representatives or subcontractors, except to the extent caused by gross negligence or willful misconduct of the Town. To the extent permitted by law, 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. To the extent permitted by law, Developer also agrees to bear all costs, expenses and attorney's fees related thereto whether or not such liability, claims or demands are groundless, false or fraudulent.

10.2 ***Insurance:*** Developer shall for itself and for its contractors, subcontractors, representatives and agents engaged in the design, construction or installation of the Public Improvements and Private Improvements maintain such liability insurance including general liability, contractors liability, professional liability, comprehensive automobile liability and sufficient public liability insurance as will protect the Town, its employees, agents and representatives against any and all potential liability, claims, damage, demands, losses, and expenses which may be incurred or asserted pursuant to Paragraph 10.1 above. Liability insurance shall be in the minimum amount of One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) aggregate, or such greater amounts as may be established by the Colorado Governmental Immunity Act, §§ 24-10-101 *et seq.*, C.R.S., as may be amended. From and after the Effective Date until issuance of the Notice of Final Acceptance, the Developer shall list the Town, its officers, employees, agents and representatives, as 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, its officers, employees, agents and representatives, as additional insureds. Developer shall not be relieved of any liability, claims, demands or other obligations assumed or set forth in this Development Agreement by reason of its failure to procure or maintain such insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations or types. In addition to the insurance specified above, Developer shall maintain workers compensation insurance, if so required by law, and shall require its contractors, subcontractors, representatives and agents engaged in the design, construction or installation of improvements to maintain workers compensation insurance in the amount required by law.

10.3 **Drainage Liability:** To the extent permitted by law, 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. This provision shall survive Final Acceptance and the termination of this Agreement.

10.4 **Tax Liability:** To the extent required by law, 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, to the extent permitted by law, 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:** [Intentionally omitted.]

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

10.8 **Incorporation of § 22-1-135, C.R.S.:** This Agreement incorporates the requirements of § 22-1-135, C.R.S. in its entirety.

10.9 **Incorporation of § 22-32-124, C.R.S. et seq.:** This Agreement incorporates the requirements of § 22-32-124 C.R.S., *et seq.* in its entirety.

## **DEFAULTS AND REMEDIES**

11.1 A default shall exist if either party fails to fulfill or perform any material obligation contained in this Agreement, the Site Development Plan, or the Approved Plans, or 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 non-defaulting party shall deliver written notice to the

defaulting party of such default and the defaulting party shall have ten (10) business 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, the defaulting party may provide written notice to the non-defaulting party within such period that it is actively and diligently pursuing such cure and the defaulting party shall thereafter have a reasonable time to cure the default, provided that the defaulting party is at all times within that extended period actively and diligently pursuing a cure. In case of emergency, as determined by the Town, such written notice shall be deemed waived and the Town may proceed as it deems necessary at the expense of Developer or the issuers of the Performance Guarantee or Maintenance Guarantee.

11.2 If the default 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. 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, at its discretion, complete such Development 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 (i) general taxes and prior special assessments and (ii) any deed of trust filed of record prior to the date such lien is filed by the Town. The Town may file such lien at any time after said thirty (30) days while Developer is in default of this Agreement.

### **SPECIAL PROVISIONS**

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

12.2 ***Release from Overall Development Agreement.*** The Property is hereby released from the Overall Development Agreement.

### **MISCELLANEOUS**

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

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

13.3 **Recording of Agreement:** This Agreement shall be recorded 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.

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 Development 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 facsimile or electronic mail delivery, but only upon confirmation of receipt of such facsimile or 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:**

Weld County School District RE-5J  
Attention: Michael Everest  
110 S. Centennial Drive, Suite A  
Milliken, CO 80534  
Email: [michael.everest@weldre5j.org](mailto:michael.everest@weldre5j.org)

**TO TOWN:**

Town of Johnstown  
Attention: Town Manager  
450 S. Parish Ave.  
P. O. Box 609  
Johnstown, CO 80534  
Email: [MLeCerf@JohnstownCO.gov](mailto:MLeCerf@JohnstownCO.gov)

13.8 **Costs and Attorney Fees.** If judicial action is commenced to enforce or defend this Agreement and the Town is the prevailing party, 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 **Warranty of Developer:** Developer warrants that the Development Improvements shall be installed in a good and workmanlike manner and in compliance with the Approved Plans, this Agreement, the Final Plat, Site Development Plan, 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.

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

13.11 **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.

13.12 **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.

13.13 **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.

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

materials for the Development Improvements shall not have any right of action under this Agreement.

13.15 **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.

13.16 **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 \_\_\_\_\_, 20\_\_ (the "Effective Date").

**TOWN OF JOHNSTOWN, COLORADO**


ATTEST:


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

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

**WELD COUNTY SCHOOL DISTRICT RE-5J**

ATTEST:

By:  \_\_\_\_\_  
Amanda Proctor, Secretary  
President

By:  \_\_\_\_\_  
Michael Wailes, Board of Education



**SITE DEVELOPMENT AND IMPROVEMENT AGREEMENT  
FOR  
THE TOWN OF JOHNSTOWN  
(Roosevelt High School)**

**EXHIBITS**

**TABLE OF CONTENTS**

<b>EXHIBIT A:</b>	Legal Description of the Property
<b>EXHIBIT B:</b>	Additional Terms, Conditions or Provisions
<b>EXHIBIT C:</b>	Form of Surety

**EXHIBIT A**

**LEGAL DESCRIPTION  
(Property)**

Lot 1 of Whitehall Subdivision Filing No. 1, located in East Half of the Southwest Quarter and Southeast Quarter of Section Twelve (12), Township Four North, Range Sixty-Eight West of the Sixth Principal Meridian, Town of Johnstown, County of Weld, State of Colorado, according to the plat recorded on June 16, 2022, at Reception No. 4835732, County of Weld, State of Colorado.

## **EXHIBIT B**

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

- 1) Developer shall finalize the Fox Tuttle Traffic Impact Study to address outstanding review comments from July 2021, to include long range analysis and ensure pedestrian safety is addressed. Town review and acceptance of this study is required prior to Construction Acceptance.
- 2) Developer shall install a High Intensity Activated Crosswalk (HAWK) pedestrian beacon across Colorado Boulevard at locations approved in coordination with the Town prior to Construction Acceptance.
- 3) Developer shall install solar-powered flashing speed and other needed signage for School Zones, based on a Town-approved traffic study with signage recommendations prior to Construction Acceptance.
- 4) Developer shall participate financially, at a rate of no more than 25%, in the design and construction of the intersection, and installation of a traffic signal and controller system, at Colorado Boulevard and Roosevelt Parkway, to be constructed by the Town or others.
- 5) Prior to Notice of Construction Acceptance, Developer shall reimburse the Town of Johnstown a fee of \$25,000, per crossing, for pre-paid Great Western Railroad crossings. For the two crossings for utilities, utilizing licenses 1 and 2, of 20, the total amount due equals \$50,000.
- 6) Prior to issuance of Certificate of Occupancy, Developer shall pay \$68,179.00 to the Town for associated Stormwater System Development Fees, as required by Johnstown Municipal Code, for Lot 1 (60.25 Ac) and the immediately adjacent 40-foot half-width of Roosevelt Parkway (75,360 SF / 1.73 AC).

**EXHIBIT C**

**FORM OF SURETY**

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 Site Development and Improvement Agreement for Roosevelt High School, dated the \_\_\_\_ day of \_\_\_\_\_, 2022, between the Town of Johnstown and Weld County School District RE-5J, a school district of the State of Colorado.

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

**Or other form as may be acceptable and approved by the Town of Johnstown.**