

**AGREEMENT CONCERNING MAINTENANCE OF ROADWAY
IMPROVEMENTS AND WATER DEDICATION AND USE**

THIS AGREEMENT CONCERNING MAINTENANCE OF ROADWAY IMPROVEMENTS AND WATER DEDICATION AND USE (“Agreement”) is made and entered into this 16 day of February, 2021, by and between the Town of Johnstown, a home-rule municipal corporation of the State of Colorado (“Town”), and Pindgilzian Properties, LLC, a Colorado limited liability company (“Developer”) (collectively, the “Parties”).

RECITALS

WHEREAS, the Town approved Developer’s application to construct a convenience store with gasoline for property located in the North Half of the Northwest Quarter of Section 9, Township 4 North, Range 67 West of the 6th P.M., Town of Johnstown, County of Weld, State of Colorado, known by street address as 106 East South First Street, consisting of approximately 0.373 acres (“Property”); and

WHEREAS, the approved site development plan provides accesses to the Property via South Parish Avenue and East South First Street; and

WHEREAS, as a condition of approval, Developer agreed to construct an eight-foot concrete sidewalk, compliant with the Americans with Disabilities Act, 42 U.S.C. §12101, *et seq.*, on the street frontages and to install two raised “pork-chop” style traffic islands, one for each access, to prevent motorists from turning left out of the Property (collectively, “Public Improvements”); and

WHEREAS, subsequent to completion of the construction of the Public Improvements, Developer agrees to maintain the Public Improvements in a good and satisfactory condition; and

WHEREAS, as part of the approval, Developer was not required to dedicate water for use on the Property because water was previously dedicated in connection with a prior use of the Property, but agrees that, absent an additional water dedication, Developer’s water use shall not exceed the designated amount set forth in this Agreement; and

WHEREAS, to memorialize the foregoing, the Parties desire to enter into this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the above premises and the covenants as hereinafter set forth, it is agreed by and between the Parties as follows:

1. Incorporation of Recitals. The Parties confirm and incorporate the foregoing recitals into this Agreement.
2. Maintenance of Public Improvements. Upon completion of the Public Improvements, including the eight-foot concrete sidewalk along the street frontages and the two

raised “pork-chop” traffic islands, Developer shall maintain the Public Improvements in a good condition to a level equivalent to the initial installation (“Maintenance Standard”). Developer shall perform maintenance of the Public Improvements at appropriate intervals to sustain the Maintenance Standard. In addition to all other obligations, Developer shall ensure that the signage installed in the “pork-chop” traffic islands remains upright and that, if the signage is knocked down by a vehicle or otherwise, the signage be promptly restored to initial position. The Town shall retain the right to determine whether Developer is properly maintaining the Public Improvements.

3. **Town Inspection; Notice; Cure.** The Town shall have the right to enter the Property at all reasonable times to inspect the Public Improvements. If, upon inspection, the Town determines that Developer has failed to properly maintain, repair or replace the Public Improvements, the Town shall provide written notice to Developer of the default, requiring that corrective work be performed within ten (10) days or, if the failure cannot be cured in ten (10) days, then commenced within ten (10) days and diligently pursued to completion. The Town may, in its discretion, extend the time period for the corrective work.

4. **Town Performance of Maintenance; Developer Reimbursement Obligation.** If the corrective work is not performed or commenced and diligently pursued within the time specified above, the Town may enter the Property and perform the corrective work to bring the applicable Public Improvements to the Maintenance Standard. Upon completion of the work, the Town shall provide written notice of the cost of the corrective work to Developer, which shall include an administrative fee and, if applicable, the Town’s reasonable attorney’s fees. Developer shall reimburse the Town’s costs within thirty (30) days of receipt of the written notice. Notwithstanding anything to the contrary herein, if the Town determines that corrective work needs to be immediately performed to protect the public health, safety or welfare, the Town may undertake to complete such corrective work without providing notice to Developer and shall be entitled to reimbursement for the costs of such work as set forth herein.

5. **Town’s Limited Obligations.** Nothing in this Agreement shall be construed to require the Town to inspect, maintain, repair or replace the Public Improvements. The Town’s undertaking of any of Developer’s obligations as set forth in this Agreement shall not relieve Developer from the continuing obligations to inspect, maintain, repair or replace the Public Improvements as set forth in this Agreement and as otherwise required.

6. **Water Commitment.** The Parties recognize and agree that water was dedicated by a prior owner/user of the Property and that the Town is not requiring Developer to dedicate additional water. The Parties, however, desire to set forth the allotment of water that is apportioned to the Property and the Town’s commitment thereto. Based on an agreed-upon analysis by the Town’s Water Engineer of the anticipated amount of water to be used on the Property, the Town agrees to provide up to 0.42 acre-feet per year of water supply to Developer for use at the Property. Pursuant to the Johnstown Municipal Code, the Town reserves the right to review actual water usage at the Property and to require additional water rights dedication and/or cash-in-lieu payments if Developer’s actual water usage exceeds the amount set forth herein. The Town further reserves the right to require the dedication of additional water if the use of the Property were to change.

7. Term. This Agreement shall commence on the date first shown above and, unless sooner terminated by written agreement of the Parties, shall continue in perpetuity.

8. Insurance. Developer shall maintain and keep in force during the term of this Agreement commercial general liability insurance coverage and automobile liability insurance coverage, written by one or more responsible insurance carrier(s) authorized to do business in the State of Colorado, in no less than the amounts set forth herein.

- a) Commercial general liability insurance in the amount of \$1,000,000.00 combined single limit bodily injury and property damage, each occurrence; \$2,000,000.00 general aggregate. Coverage shall include all major divisions of coverage and be on a comprehensive basis including premises operations, personal injury liability without employment exclusion, blanket contractual, broad form property damages, medical payments and independent developers' coverage.
- b) Automobile liability coverage in the amount \$1,000,000.00 combined single limit bodily injury and property damage, each accident covering any auto.

Developer shall furnish to the Town appropriate certificates of coverage for such insurance. The insurance may not be canceled without at least fifteen (15) days' advance written notice to the Town. Any required deductible or co-insurance amount shall be paid by Developer. All coverages specified above shall waive any right of subrogation against the Town and its elected officials, officers, agents, and employees; such waiver of subrogation shall apply solely to acts, actions, omissions or neglect of Developer, and in no way limits the right of subrogation for acts, actions, omissions or neglect of the Town or others. The Town shall be named as an additional insured on Developer's commercial general liability insurance and automobile liability insurance.

9. Indemnification. Developer assumes full responsibility for any and all damages caused by Developer's exercise of its activities, or failure to act, under this Agreement. Developer agrees that it will at all times protect, defend and indemnify and hold harmless the Town, its elected officials, officers, agents, employees, from and against all liabilities, losses, claims, demands, actions and court costs (including reasonable attorneys' fees), arising from or related to loss or damage to property or injury to or death to any persons resulting in any manner from the actions or failure to act of Developer or any invitees, guests, agents, employees or subcontractors of Developer, whether brought by any of such persons or any other person arising from Developer's obligations pursuant to this Agreement.

10. Notices. All notices required under this Agreement shall be in writing and 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 ("e-mail") delivery, but only upon confirmation of receipt of such facsimile or e-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. Either party, by notice to be given, may change the address to which future notices shall be sent.

Notice to Town:

Town of Johnstown
Attn: Town Manager
450 S. Parish Avenue
P. O. Box 609
Johnstown, CO 80534
Mlecerf@townofjohnstown.com

Notice to Developer:

Pindgilzian Properties, LLC
11846 Bradburn Blvd
Westminster, CO 80031

11. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the Parties and all heirs, transferees, successors and assigns hereof, and shall constitute covenants running with the land. In addition to the foregoing and to the extent excluded therefrom, this Agreement shall be binding upon all developers of the Property or any part thereof.

12. **Governing Law and Venue.** The laws of the State of Colorado shall govern the validity, performance, and enforcement of this Agreement. Should either party institute legal suit or action for enforcement of any obligation contained herein, it is agreed that the venue of such suit or action shall be in Weld County, Colorado.

13. **Colorado Governmental Immunity Act.** Nothing in this Agreement shall be construed to waive, limit or otherwise modify any governmental immunity that may be available by the law to the Town, its elected officials, employees, developers 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.

14. **Amendment.** This Agreement may be amended only by mutual agreement of the Parties. Such amendments shall be in writing, shall be recorded with the County Clerk and Recorder of Weld County, Colorado, shall be covenants running with the land and shall be binding upon all persons or entities having an interest in the Property.

15. **Severability.** The Parties agree that if any part, term, portion, or provision of this Agreement is held by a court of competent jurisdiction to be illegal or in conflict with any law of the State of Colorado or any federal law, the validity of the remaining parts, terms, portions, or provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular part, term, portion, or provision held to be invalid.

16. **Attorney's Fees and Costs.** If Developer breaches this Agreement, 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.

17. **No Presumption.** Each Party acknowledges that it has carefully read and reviewed the terms of this Agreement. Each Party acknowledges that the entry into and execution of this Agreement is of its own free and voluntary act and deed, without compulsion. 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. The Parties agree that this Agreement reflects the joint drafting efforts of all Parties and 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.

18. Entire Agreement. This Agreement embodies the entire agreement of the Parties. There are no promises, terms, conditions or obligations other than those contained herein; and this Agreement supersedes all previous communications, representations or agreements, either verbal or written, between the Parties.

19. Headings. The paragraph headings in this Agreement shall not be used in the construction or interpretation hereof as they have no substantive effect and are for convenience only.

[Signature pages attached]

**TOWN OF JOHNSTOWN, COLORADO,
A MUNICIPAL CORPORATION**

ATTEST:

By: _____
Diana Seele, Town Clerk

By: _____
Gary Lebsack, Mayor

PINDGILZIAN PROPERTIES, LLC,
a Colorado limited liability limited company

By: Mandeet Singh
Name: Mandeet Singh
Its: Developer

STATE OF COLORADO)
) ss.
COUNTY OF Weld)

The foregoing instrument was acknowledged before me this 16th day of February, 2021, by Mandeet Singh, as developer/owner of Pindgilzian Properties, LLC, a Colorado limited liability limited company.

Witness my hand and official seal.

ANNA FLUCKEY
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20164040470
MY COMMISSION EXPIRES OCTOBER 26, 2024

Anna Fluckey
Notary Public
My Commission Expires: 10.26.2024

EXHIBIT A
LEGAL DESCRIPTION
PROPERTY

Johnstown Gas Station Site Plan

106 East South 1st Street, Johnstown, Colorado

LEGAL DESCRIPTION

Lot 1 and 2, Block 6 Purvis Addition, recorded in Weld County dated July 21, 1932 (Reception #650762).

A tract of land located in the N1/2 of the NW1/4 of Section 9, Township 4 North, Range 67 West of the 6th Principal Meridian, Town of Johnstown, Colorado, containing 0.373 acres, more or less.