

**SUBDIVISION DEVELOPMENT AND IMPROVEMENT AGREEMENT  
FOR  
TOWN OF JOHNSTOWN  
(Revere at Johnstown Filing No. 1)**

**This Subdivision Development and Improvement Agreement** (“Agreement”), made and entered into by and between the **Town of Johnstown, Colorado**, a municipal corporation (the “Town”), and **Forestar (USA) Real Estate Group Inc.**, a Delaware corporation (the “Developer”).

**WITNESSETH:**

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

**WHEREAS**, Developer seeks to develop the Property and to designate such development as Revere at Johnstown, Filing No. 1 (“Development”); and

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

**WHEREAS**, the Town Council approved, or will approve, the Final Plat by passage of Resolution No. 2021-\_\_\_\_, 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 **“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, landscaping, irrigation, fencing, entry signs, street signs and posts, street lighting, parks and open space, trails, and postal service boxes.

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. The Public Improvements include, but are not necessarily limited to, the improvements documented the in Civil Engineering Construction Plans, and as listed on **Exhibit B-3**, in whatever form they are referenced, that will be dedicated to the Town and the improvements listed on **Exhibit C**.

1.9 **“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 the Civil Engineering Construction Plans to the Town Engineer for review. Construction of the Public Improvements shall not commence until the Town provides written notice of approval of the Civil Engineering Construction Plans. Developer shall not thereafter modify the approved Civil Engineering Construction Plans without the written approval of the Town. The Town’s review and approval of the Civil Engineering Construction Plans shall not limit or affect Developer’s responsibility or liability for design, construction and installation of the Public Improvements, and Developer agrees to save and hold the Town harmless from any claims, fault, or negligence attributable to such design, and 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 Public Improvements, Developer shall acquire, at its own expense, good and sufficient rights-of-way or easements, clear of any encumbrances that would interfere with the intended use and maintenance of the Public Improvements, 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 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, encumbrances that would interfere with the intended use and maintenance of the Public Improvements and monetary 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 land dedication or acceptance of improvements shall be provided to the Town for review prior to receipt of a building permit. In addition, Developer shall obtain all the requisite permits and licenses necessary for construction of the Public 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 Public Improvements in accordance with the schedule of public improvements set forth on **Exhibit C**, attached hereto and incorporated herein by reference ("Schedule of Public Improvements"). Once construction begins, Developer shall keep the Town Manager informed by monthly status reports of the progress of the work and a projection of when the Public Improvements will be completed as well as the cost of such Public Improvements.

**2.4 Testing 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 Public Improvements for a particular phase no later than eighteen (18) months from the commencement of the construction for such phase, 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 **Performance Guarantee:** If Developer seeks, and the Town authorizes the issuance of, building permits prior to the completion of certain Public Improvements or Private 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 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, and postal service boxes. Landscaping and fencing shall be designed in accordance with the Town’s landscape guidelines. Construction of the Private Improvements shall not commence until the Town provides written notice of approval of the Site Development Plan. 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, and 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 for any particular phase shall be completed no later than the date that the Public Improvements for such phase 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 shall allow Developer to defer completion of the landscaping services between October 15 and April 15 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. For clarity, the Private Improvements referenced herein do not apply to backyard improvements, which are anticipated to be installed by the homeowners.

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 applicable phase of Public Improvements ("Initial Acceptance"), and for final review of such phase of the Private Improvements, within thirty (30) days of the completion date of the Public Improvements and the Private Improvements for the subject phase, 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. Provided that documentation is submitted to the Town in accordance with Section 4.1 above, then initial acceptance shall not be unreasonably withheld.

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, a Private Improvement, is satisfactorily established during the period between Initial Acceptance and Final Acceptance of the Public Improvements. For the avoidance of doubt, the Maintenance Guarantee shall apply to the particular phase of Public Improvements for which Initial Acceptance was given.

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 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, 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 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 ***Dedication and Maintenance of Subdivision Improvements:*** Upon Final Acceptance of the Subdivision Improvements: (1) unless otherwise agreed by the Town and Developer, the Public Improvements shall be owned, operated and maintained by the Town; (2) the Private Improvements shall be owned, operated and maintained, as appropriate and otherwise authorized and approved by the Town, by a metropolitan district or homeowners association; and (3) the Dry-Utilities shall be owned, operated and maintained, as appropriate and otherwise authorized, by a metropolitan or special district or the appropriate public utility company.

5.7 ***Homeowners Association:*** Prior to Final Acceptance and prior to the sale of lots or homes in the Development, if Developer establishes a homeowners' association for the Development, Developer shall provide the Town with proposed covenants, bylaws and articles of incorporation for the homeowners' association.

## **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 If the Developer hereinafter desires to utilize a non-potable water system to water common landscaped areas, the Town and Developer shall enter into a subsequent agreement regarding such system and, if appropriate, amend the Water and Sewer Service Agreement.

6.3 The metropolitan district shall own and maintain the detention pond(s) in the Development.

### **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 Weld County Clerk and Recorder; (2) Developer has paid all applicable use tax due and owing to the Town and all other fees required by the Town, including but not limited to water and tap fees, impact fees, storm drainage fees and cash-in-lieu payments due, if any, to the Weld County School District RE-5J; (3) Developer has received written notice of 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, if applicable; and (7) all terms of this Agreement have been faithfully kept by Developer.

7.2 Notwithstanding the foregoing, (i) the Town shall not unreasonably withhold building permits prior to completion of Private Improvements and Dry Utilities so long as the Developer has provided a Performance Guarantee to the Town in an amount equal to 115% of the total cost of any incomplete Private Improvements and Dry Utilities; and (ii) the Town may, in its sole discretion, issue building permits prior to completion of certain of the less critical Public Improvements, as determined by the Town in its sole discretion, on the condition that such improvements, including Dry Utilities, be completed prior to the issuance of certificates of occupancy. At the discretion of the Town Manager, the Town may also issue a limited number of building permits for the construction of model homes for the purpose of early sales.

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

## **OPERATION STANDARDS**

8.1 Basic operation standards are found in the Johnstown Municipal Code and the Civil Engineering Construction Plans. In the event that Developer fails to perform to these standards within a reasonable time period after receiving written notice from the Town, not to exceed ten (10) calendar days, 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.

8.2 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.

8.3 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, if operative with respect to the Development, the approved design guidelines as set forth in the Great Plains Village Outline Development Plan and the Revere at Johnstown, Filing No. 1 Final Development Plan.

9.3 As a PUD (Planned Unit Development), appropriate architectural design standards within the Final Development Plan must meet or exceed those adopted by the Town as the Town Design Guidelines, as in effect on the date of this Agreement. Section 31(a) of the Hamilton Annexation Agreement requires a design review committee and architectural and design guidelines be agreed to by the Town and Developer with development application. The Final Development Plan in conjunction with Town Design Guidelines serves as these required guidelines. The review committee shall be established with the metropolitan district or homeowners' association, as appropriate, for ongoing management of adherence to these design guidelines within the Development.

9.4 All Final Plat and construction drawings shall be submitted in mylar, print, and digital form, which must conform to the Town's format and content requirements.

9.5 Developer shall take all necessary steps to prevent its construction activities from harming water quality, water bodies and wetlands. All drainage and holding ponds shall be kept

free of standing water by whatever means possible including, but not limited to, pumping water out of any holding ponds.

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

10.1 **Indemnification:** Developer hereby agrees to indemnify and hold the Town, 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 gross negligence or willful misconduct of the Town. Developer shall promptly investigate, handle, respond to, and provide defense for and defend against any such liability, claims or demands at the sole expense of Developer. Developer also agrees to bear all costs, expenses and attorney's fees related thereto whether or not such liability, claims or demands are groundless, false or fraudulent.

10.2 **Insurance:** Developer shall for itself and for its contractors, subcontractors, representatives and agents engaged in the design, construction or installation of the Public Improvements and the 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, 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) 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. 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, 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. In the event of a default, the Town shall deliver written notice to Developer of such default and Developer shall have ten (10) days from receipt of such notice to cure the default. If the default is not of a type that may be cured within such ten (10) day period, Developer may provide written notice to the Town within such period that it is actively and diligently pursuing such cure and Developer shall thereafter have a reasonable time to cure the default, provided that Developer is at all times within that extended period actively and diligently pursuing a cure. In case of emergency, as determined by the Town, such written notice shall be deemed waived and the Town may proceed as it deems necessary at the expense of Developer or the issuers of the 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, complete such Subdivision Improvements at Developer's expense. The Town shall estimate the cost of such improvements and give notice to Developer to pay such cost estimate. The Town shall use such payment for said improvements and refund any money collected in excess of the actual cost of said improvements. Should payment not be made within thirty (30) days of such notice, the Town may assess the amount of the cost estimate, plus ten percent (10%) to defray the cost of collection as provided by state law, to the Property and file a lien against the Property, such lien to have priority over all liens except general taxes and prior special assessments and 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 Developer, District, or the homeowner's association, 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 At least fourteen (14) days prior to the commencement of construction, Developer shall provide written notice to all property owners impacted by the construction, along with contact information for a work site supervisor. A list of those contacted and a copy of the notification shall be provided to the Town prior to the commencement of construction. Notification may be by U.S. mail or by delivering a printed flyer to each affected home or business location.

### **MISCELLANEOUS**

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

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

13.3 **Recording of Agreement:** This Agreement shall be recorded with the approved Final Plat and shall be a covenant running with and against all the Property, property rights and improvements contained within the Development described in **Exhibit A** in order to put prospective owners, purchasers, successors, assigns, and others acquiring any interest in the

property on notice as to the terms and obligations herein. No lots, tracts or parcels may be separately conveyed prior to recording the Agreement and the Final Plat.

13.4 ***Binding Effect:*** Unless otherwise provided herein, this Agreement shall be binding upon Developer's heirs, successors, assigns, transferees and any other person or entity acquiring or purchasing any interest in any of the Property described in the attached **Exhibit A**, 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 Council.

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:**

FORESTAR  
Attn: Matthew Napier  
9555 S. Kingston Ct.  
Englewood, CO 80112  
Email: [MatthewNapier@Forestar.com](mailto:MatthewNapier@Forestar.com)

FORESTAR  
Attn: Carrie Cappel  
2221 E. Lamar Blvd.  
Suite 790  
Arlington, TX 76006  
Email: [CarrieCappel@Forestar.com](mailto:CarrieCappel@Forestar.com)

**TO TOWN:**

TOWN OF JOHNSTOWN  
Attention: Town Manager  
450 So. Parish  
P.O. Box 609  
Johnstown, CO 80534  
Email: [mlecerf@townofjohnstown.com](mailto:mlecerf@townofjohnstown.com)

Avi S. Rocklin, Esq.  
Law Office of Avi S. Rocklin, LLC  
1437 N. Denver Avenue, #330  
Loveland, CO 80538  
Email: [avi@rocklinlaw.com](mailto:avi@rocklinlaw.com)

Notice may also be provided by electronic mail (“e-mail”) communication on the condition that the recipient acknowledges receipt of the e-mail.

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 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 or Weld 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.*** 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 Subdivision Improvements.

13.16 ***Force Majeure.*** Neither party shall be liable for a failure to perform hereunder if such failure is the result of force majeure, which shall mean causes beyond the reasonable control of a party such as acts of God, labor strikes, war, terrorism, fire 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 \_\_\_\_\_, 2021.

**FORESTAR (USA) REAL ESTATE GROUP INC**

By: \_\_\_\_\_

Name:

Title:

STATE OF COLORADO )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

SUBSCRIBED AND SWORN to before me this \_\_\_\_ day of \_\_\_\_\_, 2021, by

\_\_\_\_\_, of Forestar  
(USA) Real Estate Group, Inc.

WITNESS my hand and official seal.

My commission expires:

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

TOWN OF JOHNSTOWN, COLORADO  
A Municipal Corporation

By: \_\_\_\_\_  
Mayor Gary Lebsack

ATTEST:

By: \_\_\_\_\_  
Diana Seele, Town Clerk

**SUBDIVISION DEVELOPMENT AND IMPROVEMENT AGREEMENT  
FOR  
THE TOWN OF JOHNSTOWN  
(Revere at Johnstown, Filing No. 1)**

**EXHIBITS**

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<b>EXHIBIT A:</b>	Legal Description of the Property
<b>EXHIBIT B-1:</b>	Copy of Final Plat
<b>EXHIBIT B-2:</b>	Town Resolution Approving Development
<b>EXHIBIT B-3:</b>	Additional Terms, Conditions, or Provisions
<b>EXHIBIT C:</b>	Schedule of Public Improvements
<b>EXHIBIT D:</b>	Irrevocable Letter of Credit Form

## EXHIBIT A

### LEGAL DESCRIPTION (Property)

#### REVERE AT JOHNSTOWN FILING NO. 1

A PARCEL OF LAND BEING A PORTION OF THE NORTH HALF OF SECTION 2, TOWNSHIP 4 NORTH, RANGE 68 WEST OF THE 6<sup>th</sup> PRINCIPAL MERIDIAN; TOWN OF JOHNSTOWN, COUNTY OF WELD, STATE OF COLORADO; BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**COMMENCING** AT THE NORTH QUARTER CORNER OF SAID SECTION 2, FROM WHICH THE CENTER QUARTER CORNER OF SAID SECTION 2 BEARS SOUTH 03°12'37" EAST, A DISTANCE OF 2,307.04, WITH ALL BEARINGS HEREIN RELATIVE THERETO;

THENCE SOUTH 06°24'24" EAST, A DISTANCE OF 30.18 FEET TO THE **POINT OF BEGINNING**, BEING A POINT ON THE SOUTHERLY RIGHT-OF-WAY OF COUNTY ROAD 50 AS DEDICATED IN BOOK 86 AT PAGE 273 IN THE RECORDS OF THE WELD COUNTY CLERK AND RECORDER;

THENCE SOUTH 06°25'27" EAST, A DISTANCE OF 2,285.39 FEET TO A POINT ON THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 2;

THENCE SOUTH 88°56'44" WEST, ALONG SAID SOUTH LINE, A DISTANCE OF 129.91 FEET TO SAID CENTER QUARTER CORNER OF SECTION 2;

THENCE SOUTH 88°59'30" WEST, ALONG THE SOUTH LINE OF THE EAST HALF OF THE NORTHWEST QUARTER OF SAID SECTION 2, A DISTANCE OF 1,262.03 FEET TO THE CENTER WEST SIXTEENTH CORNER OF SAID SECTION 2;

THENCE SOUTH 88°57'54" WEST, ALONG THE SOUTH LINE OF THE WEST HALF OF SAID NORTHWEST QUARTER OF SECTION 2, A DISTANCE OF 139.80 FEET;

THENCE THE FOLLOWING ELEVEN (11) COURSES;

1. NORTH 06°12'56" WEST, A DISTANCE OF 553.37 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 800.00 FEET;
2. NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 25°33'04", AN ARC LENGTH OF 356.76 FEET;
3. NORTH 70°39'52" WEST, A DISTANCE OF 40.00 FEET;
4. NORTH 19°20'08" EAST, A DISTANCE OF 0.91 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 15.00 FEET;
5. NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90°00'00", AN ARC LENGTH OF 23.56 FEET;
6. NORTH 19°20'08" EAST, A DISTANCE OF 80.00 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 15.00 FEET, THE RADIUS POINT OF SAID CURVE BEARS NORTH 19°20'08" EAST;

7. NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90°00'00", AN ARC LENGTH OF 23.56 FEET;
8. NORTH 19°20'08" EAST, A DISTANCE OF 164.12 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 760.00 FEET;
9. NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 25°32'39", AN ARC LENGTH OF 338.83 FEET;
10. NORTH 06°12'32" WEST, A DISTANCE OF 738.28 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 25.00 FEET;
11. NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 83°57'00", AN ARC LENGTH OF 36.63 FEET;

THENCE SOUTH 89°50'28" WEST, A DISTANCE OF 13.99 FEET;

THENCE NORTH 04°42'30" WEST, A DISTANCE OF 30.10 FEET TO A POINT ON SAID SOUTHERLY RIGHT-OF-WAY OF COUNTY ROAD 50;

THENCE NORTH 89°50'17" EAST, ALONG SAID SOUTHERLY RIGHT-OF-WAY, A DISTANCE OF 1,324.79 FEET TO THE **POINT OF BEGINNING**.

CONTAINING AN AREA OF 73.514 ACRES, (3,202,273 SQUARE FEET), MORE OR LESS.