

**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE TOWN OF JOHNSTOWN AND DEVELOPER  
CONCERNING PLAZA GARDENS AT JOHNSTOWN**

This non-binding Memorandum of Understanding (“**MOU**”), is made and entered into on this \_\_\_\_ day of May, 2021, by and between the Town of Johnstown, a home rule municipality and political subdivision of the State of Colorado (“**Town**”), and The Plaza of JC, LLC, a Kansas limited liability company (“**Developer**”).

**RECITALS:**

1. Developer is in negotiations to contract to purchase approximately 150 acres of property located within the boundaries of the Town at the corner of U.S. Interstate 25 and U.S. Highway 60, described on the map attached hereto and incorporated herein by reference as **Exhibit A** (“**Property**”).
2. The Town currently owns approximately 50 +/- acres generally located in the vicinity of the Property (the “**Town Parcel**”).
3. Developer desires to construct a retail shopping center containing approximately 75 acres of new retail uses, and also containing 125 acres of multifamily and single family residences on the Property and the Town Parcel (the “**Project**”).
4. Pursuant to the terms of a purchase and sale agreement to be negotiated between the Town and Developer and/or the New MD (defined below) on the Town Parcel, it is the intent of Developer to have access to the Town Parcel to include it within the Project (the “**PSA**”).
5. Developer and the Town will negotiate on the terms of a Development and Reimbursement Agreement, defined below. The Project will be developed in multiple phases, with Phase I to begin upon closing on the Property.
6. Developer is affiliated with Johnstown Plaza, LLC.
7. Johnstown Plaza, LLC is the developer of the Johnstown Plaza Project and, in that capacity, believes it is entitled to an additional reimbursement for certain public improvement costs and/or verified eligible costs, including interest, related to the Johnstown Plaza Project that have not been previously reimbursed by the Johnstown Plaza Metropolitan District (“**JPMD**”) from the Bonds issued in 2016 by JPMD (the “**2016 JPMD Bonds**”) for which Johnstown Plaza, LLC is now seeking reimbursement (the “**JP Requested Reimbursement**”).

8. Johnstown Plaza, LLC is in discussions with JPMD regarding the possibility of refinancing the 2016 JPMD Bonds and including in the refunding issuance additional Bonds that would fund the JP Requested Reimbursement (the “**JP New Money Bonds**”).

9. Developer and the Town acknowledge that Johnstown Plaza, LLC and the Town will need to enter into one or more amendments to existing agreements related to the pledge of revenues, if the Town agrees to the issuance of the JP New Money Bonds (the “**Amended JP Documents**”). Developer understands and agrees that the Town shall not allow the Credit PIF, as defined in the existing agreements, for payment of JP New Money Bonds to extend beyond December 1, 2046.

10. Johnstown Plaza, LLC has represented, and Developer is representing to the Town, that the JP Requested Reimbursement from the proceeds generated from the JP New Money Bonds would be committed to the funding of public improvements to serve the non-residential portion of the Project (the “**JP Developer Contribution**”).

11. The JP Developer Contribution will not be sufficient to fund the public improvements to serve the non-residential portion of the Project. Developer will therefore be seeking the organization of one or more new metropolitan district(s) (“**New MD**”) to finance, construct operate and maintain the public improvements to serve the non-residential portion of the Project (the “**New MD Bonds**”).

12. Developer has provided the Town with a conceptual drawing, attached hereto and incorporated herein by reference as **Exhibit B**, that generally illustrates the mix of uses to be included in the Project and a preliminary Project layout (“**Conceptual Plan**”).

13. The Town has determined the Project will serve a public use, will promote the health, safety, prosperity, security and general welfare of the inhabitants thereof and of the people of the Town.

14. The Town is authorized to utilize economic incentives to promote and encourage development activity within the boundaries of the Town, including in the Project.

15. The development of the Project will provide more housing options, activities, entertainment, retail, and dining options for current residents, while attracting new residents, job opportunities, and providing economic and social benefits to the Town.

16. If the Town approves the Amended JP Documents, entering into of a Development and Reimbursement Agreement for the Project and a PSA, the Town anticipates amending its sales tax ordinance to provide for the allowance of sales tax credits as well as additional fees on all taxable retail sales within the boundaries of the Project to provide up to 2% credit from the Town’s existing sales tax (“**CPIF**”) to be pledged to payment of the new public debt (“**New Public Debt**”), and the imposition of an additional fee on all taxable retail sales in the amount of 2.5% to be similarly pledged to the payment of the New Public Debt (“**Add-On**”).

**PIF**”). In no event will the CPIF or Add-On PIF be pledged for payment of Bonds issued to fund public improvements to serve the residential portion of the Project.

17. To provide Developer with assurance of the Town’s intentions, Developer has requested that the Town execute this non-binding MOU at this early stage of the Project to allow Developer time to provide the Town with a Project Summary, as defined below. After receipt of the Project Summary, the Parties shall conduct the PG Economic Impact Analysis, defined below, and the Updated JP Economic Impact Analysis, defined below. If the PG Economic Impact Analysis and the Updated JP Economic Impact Analysis supports the Project, the Town would anticipate negotiating and, if the parties mutually agree to the terms, entering into the Amended JP Documents, Development and Reimbursement Agreement and the PSA on or before the last day of the ninth (9<sup>th</sup>) month, following the month in the date first set forth above, including the final terms of the parties’ agreement related to the Project (the “**Outside Execution Date**”).

18. Developer has agreed to advance funds to the Town for payment of all of the Town’s expenses to be incurred in the negotiation of this MOU, the preparation of the PG Economic Impact Analysis and the Updated JP Economic Impact Analysis, the Amended JP Documents, the Development and Reimbursement Agreement and the PSA, without regard as to whether the terms of the Amended JP Documents, the Development and Reimbursement Agreement and the PSA are ever agreed to by the Town and Developer.

NOW, THEREFORE, based expressly on Developer’s representations in the Conceptual Plan and otherwise set forth herein, the parties hereby set forth their non-binding understanding of certain of the terms of the Development and Reimbursement Agreement and PSA to be negotiated in good faith, and if all terms are agreed to, executed with regard to the Project, and state as follows:

1. **Recitals.** The Recitals are incorporated as if set forth fully herein.
2. **Project Summary.** Developer shall deliver on or before the last date of the sixth (6<sup>th</sup>) month, following the month in the date first set forth above, a Project Summary that includes a description of the mix of uses to be included in the Project, the proposed square footage of new retail uses, estimated revenue generation, an illustration of the Project layout, an estimate and general description of the public improvement costs required to support the Project, a timeline for the development and absorption of the uses proposed within the Project, the organization of one or more New MDs, a financing plan for the New Public Debt, and other critical path elements for the Project (the “**Project Summary**”).
3. **Evaluation of Service Costs, Sales Tax Revenue Generation and Town Parcel Property Value.**
  - (a) **Johnstown Plaza Project Updated JP Economic Impact Analysis.** When the Johnstown Plaza Project incentive documentation related to the 2016 JP Bonds was

considered for approval, the Town Council received reports and presentations on the economic impacts of the proposed incentives related to the Johnstown Plaza Project. The report prepared by Ray Real Estate Services, Inc. focused on the projection of potential Town revenues, net of any incentives, to be received from the Johnstown Plaza Project. The report prepared by BBC Research and Consulting focused on a forecast of the cost of the provision of services by the Town to the Johnstown Plaza Project offset by the projected net revenue from the Ray Real Estate Services, Inc. Report. The presentation concluded in a projection of the net revenue benefit to the Town of the Johnstown Plaza Project (the “**JP Economic Impact Analysis**”). Developer acknowledges the JP Economic Impact Analysis will need to be updated (the “**Updated JP Economic Impact Analysis**”) and the Town will consider the results of the Updated JP Economic Impact Analysis in determining, in its sole discretion, whether to proceed with the approval of the Amended JP Documents. The Town will also require that it approve all reimbursements to be funded with proceeds from the JP New Money Bonds.

(b) **Plaza Gardens at Johnstown Economic Impact Analysis.** Developer acknowledges that the Town will secure an independent determination as to the value of the Town Parcel (the “**Town Parcel Value**”). Developer acknowledges that an economic impact analysis, prepared by the same consultants, or consultants with substantially similar expertise, will need to be completed for the non-residential portion of the Project and will include in the evaluation the Town Parcel Value (the “**PG Economic Impact Analysis**”). The Town will consider the results of the PG Economic Impact Analysis in determining, in its sole discretion, whether to proceed with the approval of the Reimbursement and Development Agreement and the PSA for the Town Parcel.

4. **Consideration of Service Plan for New MD and Support for Organization of New MD:** The Town agrees to process the review and consideration for approval of a Service Plan for New MD on a schedule that is in sync with the critical path for the Project and is in support of the concept of New MD being the issuer of Bonds to fund the public improvements for the Project.

(a) The Town and the New MD shall enter into an intergovernmental agreement whereby, among other provisions, the New MD shall agree to operate and maintain the Project as a first-class facility and, if not so maintained, shall provide the Town with the right, in its absolute discretion, to demand maintenance and require the imposition of a mill levy to fund operation and maintenance expenses.

(b) The costs associated with issuing any New MD Bonds shall not exceed 4% of the aggregate par value of the Bonds. If a metropolitan district is needed for the residential portion of the Project, one or more separate District(s) may be formed to coordinate the financing, construction and operations any public improvements needed for the Project separate from the non-residential portions of the Project.

(c) In no event will the CPIF or Add-On PIF be pledged for payment of Bonds issued to fund public improvements to serve the residential portion of the Project.

(d) In no event will the JP Developer Contribution be reimbursable to Developer or any other party or third party.

5. **Development and Reimbursement Agreement:** The Development and Reimbursement Agreement will include terms that require:

(a) Prior to issuance of any New MD Bonds, Developer and New MD must obtain the Town's reasonable approval of the Developer Financing Plan. The Developer Financing Plan must set forth the overall financing plan to construct the Project, use of New MD Bond proceeds, and the anticipated CPIF and Add-On PIF derived from the Project. The Town will also require that it approve all public improvements and reimbursements to be funded out of the New MD Bonds. The Developer Financing Plan shall set forth, in a form and substance acceptable to the Town, the following:

- (i) Developer's debt and equity financing necessary to develop the Project, including the JP Developer Contribution;
- (ii) Summary of estimated revenues from the New MD Debt Mill Levy, the CPIF and Add-On PIF;
- (iii) Project pro-forma budget including Project revenues and Project costs; and
- (iv) Underwriting assumptions sufficient for the underwriter of the New MD Bonds to sufficiently evaluate the Developer Financing Plan including financing assumptions and basic operating expense assumptions.

(b) **Release Conditions for CPIF.** Prior to the sharing of CPIF, Developer and the Town shall agree on phasing for the Project and:

- (i) An agreed upon amount and location of public improvements;
- (ii) An agreed upon amount of square footage of sales tax producing retail; and
- (iii) An agreed upon outside date for performance.

(c) **Required Public Improvements.** Developer acknowledges that the Department of Transit and Rail has requested the location of approximately 90 Park and Ride parking spaces to be included in the Project and agrees to work with the Colorado Department of Transportation ("CDOT") to accommodate this request as mutually agreed between CDOT and Developer. Developer further acknowledges that it shall be required to construct on-site and off-site public improvements that will be determined during the land use review process in accordance with the Town's ordinances, rules and regulations. Developer understands and

agrees that the off-site improvements shall include, among other potential improvements: (i) improvements to State Highway 60, as required by and in coordination with the Town and CDOT; (ii) improvements to High Plans Boulevard, as required by and in coordination with the Town and Weld County; (iii) improvements to the Home Supply Ditch, as required by and in coordination with the Town and Consolidated Home Supply Reservoir and Ditch Company; and (iv) undergrounding electric utilities adjacent to the Town Parcel, as required by the Town and in coordination with the Town and the electric utility provider. Any required public improvements that cannot be funded from the proceeds of the JP Developer Contribution and the New MD Bonds shall be the responsibility of the Developer to fund and may be reimbursed by the New MD, however in no event shall those expenses be reimbursed by the New MD from CPIF or from any future Bonds issued by the New MD that are to be repaid from any CPIF.

(d) **Construction Standards.** All construction shall meet the Town's construction standards and requirements.

(e) **Public Bidding Requirements.** The public improvements for the Project shall be publicly bid, with the lowest reasonable responsive bidder being awarded the contract. All costs expended shall be certified by an independent engineer as being, among other things, a public improvement that is within the Service Plan authority of the New MD to provide and does not exceed the reasonable price for the public improvement. General contractor fees are anticipated to be included in the public bid and shall not exceed the industry standard amount. Project management fees may be negotiated between the parties and will not exceed the amount certified by an independent engineer to be reasonable for the services provided. In addition,

- (i) As-Built of the public improvements shall be provided to the Town;
- (ii) Developer and general contractor shall indemnify the Town; and
- (iii) Developer shall reimburse the Town for all costs and fees associated with the Project.

(f) **Payment In Lieu of Taxes Covenant.** The Developer shall impose on the Property and the Town Parcel a Payment In Lieu of Taxes Covenant (“**PILOT**”) that shall require a declaration of covenants, by Developer as declarant, subject to approval by the Town, imposing and implementing a payment in lieu of taxes on all or certain portions of the Project for any uses which are exempt from property taxation under Colorado law.

(g) **CPIF and Add-On PIF.** Concurrently with and after approval of the terms of the Development and Reimbursement Agreement, the Town intends to amend its sales tax ordinance to provide for the allowance of sales tax credits as well as additional fees on all taxable retail sales within the Project's boundaries and subsequently approve a CPIF and an Add-On PIF based on the following conditions: (a) the CPIF will be in an amount up to 2% and the Add-On PIF will be in the amount of 2.5%; (b) the revenue from the CPIF and Add-On PIF shall

be pledged to payment of the New Public Debt; provided however, in no event will the CPIF or Add-On PIF be pledged for payment of Bonds issued to fund public improvements to serve the residential portion of the Project; (c) the Add-On PIF shall not be reduced and shall be continuously imposed until the New Public Debt is completely repaid; (d) the CPIF shall be pledged for payment of the New Public Debt for a maximum duration of thirty (30) years from the date of initial issuance of the New Public Debt; (e) the New Public Debt shall be in the maximum amount of capacity from the bond issuance with all funds being used for the non-residential portion of the Project. In no event will the CPIF or Add-On PIF be pledged for payment of Bonds issued to fund public improvements to serve the residential portion of the Project.

(h) **Timing on Release of Funds**: The parties acknowledge that there will be restrictions on the release of the JP Developer Contribution and the funds in the project fund of the New Public Debt. Developer has requested the restrictions set forth below on the release of those funds. The parties agree that the final restrictions to be included in the Development and Reimbursement Agreement will be negotiated and mutually acceptable to both parties to this MOU, which may include use of an escrow account and the release of funds based upon the satisfaction of certain conditions or thresholds.

(i) **Restrictions on Release of JP Developer Contribution for Construction**. Developer requests that the JP Developer Contribution will be released and allowed to be used for construction when a grading permit has been released for the non-residential portion of the Project.

(i) **Delivery of Opinion Letters**. Enforceability opinions shall be received prior to the issuance of the New Public Debt.

(j) **Raw Water Dedication**. The Town may accept, in its discretion, cash-in-lieu of raw water dedication at the then-existing fair market value for the non-residential portion of the Project, but shall not accept cash-in-lieu for the residential portion.

6. **Subordinate Debt**. To the extent that the New MD is unable to issue New Public Debt in the amount necessary, Developer anticipates financing the difference between the maximum amount forecasted by the bond underwriter and the actual net to Project (“**Subordinate Debt**”). The Town intends to permit the CPIF to be pledged to payment of the Subordinate Debt based on the following conditions: (a) the Subordinate Debt shall not be paid until the New Public Debt is completely repaid; (b) the Subordinate Debt may accrue interest at a reasonable rate to be agreed upon between the parties; (c) the 2.5% Add-On PIF shall not be reduced and shall be continuously imposed until the Subordinate Debt is completely repaid; and (d) the CPIF shall be pledged for the payment of the Subordinate Debt for a maximum period of twenty-five (25) years from the date of the initial issuance of New Public Debt (the clock on the 25 years does not restart when the New Public Debt is refunded).

7. **PSA on Town Parcel**. The Purchase and Sale Agreement on the Town Parcel will contain terms and conditions to be negotiated and a proposed closing to occur at a subsequent time after Town acquisition of the Town Parcel, including but not limited to, the obligation of the Developer to the following provisions:

- (a) Not being in default under the Reimbursement and Development Agreement;
- (b) Completing construction of certain of the public improvements by a date certain; and
- (c) Imposition of a PILOT on the Town Parcel.

8. **Term of MOU**. The term of this MOU shall begin on the day and year first written above and shall expire on the first to occur of the following:

- (a) The date of execution of the Development and Reimbursement Agreement and the PSA; or
- (b) The Outside Execution Date.

IN WITNESS WHEREOF, the parties hereto have caused this non-binding Memorandum of Understanding to be executed the day and year first above written.

**TOWN OF JOHNSTOWN, COLORADO**

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

Attest:

\_\_\_\_\_  
Diana Seele, Town Clerk



**THE PLAZA OF JC, LLC**

By: \_\_\_\_\_  
Michael Schlup, its Authorized Agent

# PROPERTY EXHIBIT

## EXHIBIT A

NW1/4 SECTION 11, TOWNSHIP 4 NORTH, RANGE 68 WEST, 6TH P.M.



**NOTES:**  
 1. THIS EXHIBIT IS NOT A PROPERTY BOUNDARY SURVEY AND CANNOT BE RELIED UPON TO DETERMINE OWNERSHIP.

### LEGEND

- PROPOSED WELL
- PROPOSED WELL PAD
- PROPOSED FACILITY PAD
- OIL AND GAS OPERATIONS AREA
- 70' WIDE ACCESS EASEMENT
- 800' BUFFER
- PROPERTY LINE
- ALLOCATED LAND (±48.96 ACRES)
- NON-ALLOCATED LAND (±99.29 ACRES)



**609 CONSULTING, LLC**  
 LOVELAND OFFICE: 6706 North Franklin Avenue, Loveland, Colorado 80538, Phone: 970-776-4331  
 SHERIDAN OFFICE: 1095 Saberton Avenue, Sheridan, Wyoming 82801, Phone: 307-674-0609

DATE SURVEYED: N/A  
 DATE: 7/25/19  
 DRAFTER: SRS  
 REVISED: 7/29/19

**DATA SOURCES:**  
 - AERIAL COURTESY OF ESRI, INC.  
 - WATER WELLS COURTESY OF COLORADO DIVISION OF WATER RESOURCES

PREPARED FOR:  
**Kerr-McGee Oil & Gas Onshore L.P.**



**A WEST RETAIL:**

acreage	55.0 ac
pads sf	42 k
retail sf	480 k
total sf	522 k
	9.5k sf/ac

**B EAST RETAIL:**

acreage	30.5 ac
pads sf	30 k
retail sf	204 k
total sf	234 k
	7.7k sf/ac

**C NORTH APARTMENTS:**

acreage	23.2 ac
# buildings	6
units/bldg	84
total units	504
apts sf	564 k
ckubhs sf	7 k
self-stor bldg	38 k
total sf	609 k
	26.2k sf/ac

**D SOUTH APARTMENTS:**

acreage	23.6 ac
# buildings	6
units/bldg	84
total units	504
apts sf	564 k
ckubhs sf	7 k
self-stor bldg	38 k
total sf	609 k
	25.8k sf/ac

**E NORTH SINGLE FAMILY:**

acreage	15.5 ac
# homes	57 +/-
	4.5 per ac

**F SOUTH SINGLE FAMILY:**

acreage	37.9 ac
# homes	101 +/-
	4.5 per ac

# Overall Site Plan " B3 "

April 19, 2021

