

**SUBDIVISION DEVELOPMENT AND IMPROVEMENT AGREEMENT
FOR
TOWN OF JOHNSTOWN
(Uncle Benny's Marketplace Re-subdivision)**

This Subdivision Development and Improvement Agreement (“Agreement”) is made and entered into by and among the **Town of Johnstown, Colorado**, a municipal corporation (the “Town”), **Yopp Ltd.**, a Colorado limited liability company (“Yopp”), the **Sandra L. S. Aste Revocable Trust** (“Trust”), and **Johnson-Taylor Family Properties LLLP**, a Colorado limited liability limited partnership (“Johnson-Taylor”).

WITNESSETH:

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

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

WHEREAS, the Final Plat divides the Property into Lots 1 through 4 and references herein to particular lot numbers shall be to the corresponding lot or lots as identified in the Final Plat; and

WHEREAS, Yopp and the Trust (collectively “Developer”) entered into a “Contract to Buy and Sell Real Estate” dated April 3, 2021, with Johnson-Taylor (“Purchase Contract”); and

WHEREAS, under the Purchase Contract, Developer expects to purchase Lots 1 through 3 from Johnson-Taylor with closing on the transaction (“Closing”) to be completed in conjunction with the recording of the Final Plat; and

WHEREAS, Developer seeks to develop Lots 1 through 3 and to designate such development as **Uncle Benny's Marketplace Re-subdivision**; and

WHEREAS, the Town Council approved the Final Plat by passage of Resolution 2022-38, containing terms and conditions of approval of the Final Plat, which Resolution is 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 Development, 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, Johnson-Taylor, 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 **[Deleted. Not applicable.]**

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 of Lots 1 through 3 in **Exhibit A**.

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

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 “**Notice of Construction Acceptance**” shall mean the written certification that the Public Improvements are complete which starts the warranty period.

1.8 “**Notice of Final Acceptance**” or “**Final Acceptance**” shall mean the written certification of final acceptance of the Public Improvements issued subsequent to the warranty period.

1.9 “**Private Improvements**” shall mean, without limitation, the construction, installation and improvement of privately owned and maintained common improvements in the Development including, but not limited to, stormwater improvements, landscaping, irrigation, fencing, entry signs, street signs and posts, street lighting, parks and open space, trails, postal service boxes and school bus stop shelters.

1.10 “**Public Improvements**” shall mean, without limitation, the construction, installation, improvement and dedication of public improvements 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 or signage, and other public facilities and improvements to serve the Development. The Public Improvements include, but are not limited to, the improvements in the Development listed on **Exhibit B-3**, in whatever form they are referenced, that will be dedicated to the Town.

1.11 “**Performance Guarantee**” shall mean a guarantee that the Public Improvements and Private Improvements shall be constructed in conformance with the Approved Plans.

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

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

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

1.15 “**Town Engineer**” shall mean the professional engineer designated by the Town Manager.

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

1.17 “**Town Official**” shall include the Town Manager, Town Attorney, Town Treasurer, Town Engineer, Public Works Director, Planning and Development Director, Utilities Director, 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 for review and shall participate in a pre-construction meeting with the Town Public Works Department. 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. If phasing is indicated on the approved Civil Engineering Construction Plans, such phasing may be modified only with approvals 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, construction and installation, other than negligent designs which are required by the Town over Developer’s written objection.

Phasing of Public Improvements and Private Improvements is indicated on the approved development plans and construction drawings; such phasing may be modified only with the approvals of the Public Works Director and the Planning & Development Director.

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, 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 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 land dedication or acceptance of 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. Developer shall also pay all applicable use tax due and owing to the Town.

2.2 Construction of Public Improvements:

2.2.1 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, 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.

2.2.2 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 and to any other property owners who are reasonably likely to be impacted by the construction of the fact of the construction along with contact information for the Developer. Such contact list shall be provided to the Town with a copy of the notification prior to the commencement of the construction. Notification may be by U.S. mail or by delivering a printed flyer left at each affected home or business location.

2.3 **Construction Schedule:** Developer shall construct the Public Improvements in accordance with a subsequently agreed-upon schedule. Once construction begins, Developer shall keep the Town Manager informed by weekly 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 no later than eighteen (18) months from the commencement of the construction, unless such completion date is extended for reasons beyond the reasonable control of Developer and Developer has obtained the Town Manager's written consent to the extension.

2.6 **Performance Guarantee:** To secure the construction, installation, improvement and completion of the Public Improvements and 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 improvement, which cost shall be certified by Developer's professional engineer, licensed in the State of Colorado and approved by the Town Engineer. The Performance Guarantee shall be released after the Notice of Construction Acceptance has been provided for such improvement.

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 and soil amendments, 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, 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 and the county.

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 contractor

certification of required soil amendment shall be signed by Developer and provided to the Town. Unless otherwise approved by the Town in writing, all materials used for constructing the Private Improvements shall be new and both workmanship and materials shall be of good quality.

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

3.4 **Completion of Private Improvements:** Unless otherwise agreed in writing by the Town Manager, the Private Improvements shall be completed no later than the date that the Public Improvements are completed, unless such completion date is extended for reasons beyond the reasonable control of Developer and Developer has obtained the Town Manager's written consent to the extension. The Town may, in its discretion, allow Developer to defer completion of the landscaping services between December 1 and March 1 of any given year provided that sufficient surety in the form of a cash escrow deposited with the Town or an irrevocable letter of credit in the form attached hereto as **Exhibit D** in which the Town is designated as the beneficiary is provided to the Town. For clarity, the Private Improvements referenced herein do not apply to backyard improvements, which are anticipated to be installed by homeowners.

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, decorative street signs and all other decorative amenities in the Development, the Private Improvements shall be replaced by, as appropriate, the Developer, the owners' 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 *Notice of Construction Acceptance:* Developer shall make written application to the Town Manager for acceptance of the Public Improvements and for final review of the Private Improvements, within thirty (30) days of the completion date of the Subdivision Improvements, with the exception of the improvements for which the Town has authorized an extension of time to complete. With respect to the Public Improvements, the written application shall include one set of reproducible “as built” drawings and an affidavit executed by Developer affirming that the Public Improvements have been paid in full, certifying the final construction costs and including documentary evidence of the construction costs. If the Town Manager requests, Developer shall provide lien waivers, or other acceptable assurance, from all subcontractors, suppliers and materialmen who have furnished labor, material or services for the design, construction or installation of the Subdivision Improvements. The affidavit and lien waivers may be reviewed by the Town, but the Town assumes no responsibility or liability to or for anyone regarding the veracity of the information so provided.

After the receipt of the written application, the Town shall use reasonable efforts to promptly inspect the Subdivision Improvements. If the Subdivision Improvements are satisfactory, Developer shall be entitled to a Notice of Construction 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 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 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 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. 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 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 the issuance of the Notice of Construction 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 issuance of the Notice of Construction 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 certification of completion by issuance of a Notice of 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 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 or operate the Public Improvements as the Town deems appropriate.

5.6 ***Owners' Association:*** Prior to Final Acceptance and prior to any further development approval as contemplated by Section 1 of **Exhibit B-3**, Developer shall establish an owners' association for the Development. Developer shall provide the Town with proposed covenants, bylaws and articles of incorporation for the owners' association. Upon written approval of the covenants, bylaws and articles of incorporation by the Town, the same shall be recorded with the Larimer County Clerk and Recorder and the owners' association shall thereafter be deemed to be established.

5.7 ***Dedication and Maintenance of Subdivision 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, as appropriate by the Developer, the owner's association or a metropolitan district; and (3) the Dry-Utilities shall be owned, operated and maintained, as appropriate and otherwise authorized, by the Developer, the owner's association, a metropolitan or special district or the appropriate public utility company.

WATER AND SEWER SERVICE

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

6.2 If the Water and Sewer Service Agreement ("WSSA") contemplates that the Developer use "Low Water Landscaping" for a designated portion of the Development, such obligation is a material term of this Agreement and shall continue during and subsequent to construction of the Development and shall be a covenant running with the land. If, at any time, the amount of common area irrigated with Low Water Landscaping falls below the acreage indicated in Town-approved landscape plans, then additional raw water must be dedicated to the Town in the amount required by the Town pursuant to the Johnstown Municipal Code, as amended. For purposes of the WSSA and for purposes of this Agreement, the term "Low Water Landscaping" means and consists of non-turf planting areas with beds mulched with rock or organic or inorganic materials and shrubs, trees and ornamental species planted low density and irrigated by automated

irrigation systems zoned separately from turf areas and equipped with a rain sensor shutoff. The application of Low Water Landscaping also includes xeriscape landscape principles and use of native shrubs and grasses.

6.3 If the Developer hereinafter desires to utilize a non-potable water system to irrigate the Development, or any part thereof, the Town and Developer shall enter into a subsequent agreement regarding such system and, if appropriate, amend the Water and Sewer Service Agreement.

6.4 **Stormwater and Detention Facilities.** The owners' association shall own and maintain the detention pond(s) in the Development. Developer shall provide the Town with a proposed "Operations and Maintenance Manual" for the detention pond for review and approval. 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 detention pond. The Operations and Maintenance Agreement shall be executed prior to receipt of the Notice of Construction Acceptance.

BUILDING PERMITS

7.1 The Town shall not issue building permits or install water meters for the Development until: (1) the Final Plat has been recorded with the Larimer County Clerk and Recorder; (2) Developer has paid all applicable use tax due and owing to the Town and all other fees required by the Town, including but not limited to water and tap fees, impact fees, storm drainage fees, and others; (3) Developer has received written notice of Notice of Construction 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) Developer has executed the Operations and Maintenance Agreement related to the detention pond; (5) meter and curb stop pass inspection; (6) the parties have entered into a Water and Sewer Service Agreement; (7) Developer has established an owners association as set forth in Paragraph 5.6 above; and (8) all terms of this Agreement have been faithfully kept by Developer.

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

8.2 The operation of construction equipment for the purpose of grading or constructing either surface improvements or underground utilities, either public or private, shall be prohibited between the hours of 8:00 p.m. or dusk, whichever is earlier, and 7:00 a.m. on weekdays and between the hours of 4:00 p.m. and 8:00 a.m. on legal holidays and weekends. The Town Manager may, upon written application, alter the hours of operation for good cause by providing written notice to Developer.

8.3 Developer agrees to control all weeds growing within the Development. Developer further agrees to use the appropriate herbicide and undertake mowing of the property within the Development.

8.4 Developer shall, at all times, keep the public right-of-way free from accumulation of waste material, rubbish, dirt and mud caused by Developer's operation. Developer shall remove such waste material, rubbish, dirt and mud no less than weekly and, at the completion of the work, shall promptly remove all debris waste materials, rubbish, dirt, mud, tools, construction equipment, machinery, building materials, trash containers, and portable toilets from the public right-of-way.

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

8.6 In the event that Developer fails to perform the work specified in Paragraphs 8.3, 8.4 or 8.5 within a reasonable time period after receiving written notice from the Town, not to exceed ten (10) days for the work specified in Paragraphs 8.3 and 8.4, the Town may, in addition to other remedies, including those set forth in Paragraph 7.3, perform the work required and charge Developer for said cost. Developer shall pay the Town for all costs incurred by the Town in the performance of the above said service within ten (10) days of the Town submitting an invoice for said services. If Developer does not remit the costs, in addition to other remedies, the Town may draw on the Maintenance Guarantee.

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

8.8 Developer shall take all steps necessary to prevent its construction activities from damaging adjacent properties.

DEVELOPMENT STANDARDS

9.1 Developer shall comply with the requirements contained in the Annexation Agreement related to the Property, except as specifically amended by this Agreement.

9.2 Except as otherwise provided in this Agreement, the Final Plat, the Resolution or Approved Plans, Developer shall comply with the Johnstown Municipal Code, zoning ordinances, subdivision regulations, landscape guidelines and, if operative with respect to the Development, the approved design guidelines.

9.3 If the Property is included in a metropolitan district, Developer shall dedicate all outlots and tracts containing open space, park areas, and trails to such metropolitan district. The open spaces, parks, and trails shall be available for public use.

9.4 Developer shall adhere to the requirements of the Johnstown Municipal Code, Johnstown Design Guidelines, and Johnstown Standards and Specifications, as may be amended.

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 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 as part of the Development 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 Development improvements.

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

DEFAULTS AND REMEDIES

11.1 A default by Developer shall exist if Developer fails to fulfill or perform any material obligation contained in this Agreement, the Final Plat, the Resolution, or the Approved Plans, or Developer fails to comply with the Town's ordinances, resolutions and regulations and all other applicable laws and regulations. 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 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, 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 Lots 1 through 3 and file a lien against Lots 1 through 3, 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.

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 therein 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; provided however that the obligations of Developer set forth herein shall be covenants running with and against Lots 1 through 3 only. Except as otherwise provided 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 Johnson Taylor's heirs, successors, assigns, transferees and any other person or entity acquiring or purchasing any interest in any of the Property. This Agreement shall be of no effect until and unless Closing occurs. By signing, the Town authorizes and directs the closing agent responsible for conducting the Closing to record the Final Plat and this Agreement in accordance with the provisions of this section. Immediately following Closing the closing agent is directed to record the following instruments in the order in which they are listed with the Larimer County Clerk and Recorder:

- a. The Final Plat.
- b. This Agreement.
- c. The deed or deeds from Johnson-Taylor conveying Lots 1 through 3 to Yopp and/or the Trust.

It is the intent of the Parties that all of the recording steps described in this section 13.4 are interdependent and that none of them should occur before they all occur. The Parties shall cooperate with each other and shall execute and deliver, or cause to be delivered, all other instruments and shall take all other actions, as any party hereto may reasonably request from time to time in order to effectuate the provisions hereof.

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:*** Johnson-Taylor 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 on its behalf. Yopp and the Trust expressly warrant and represent to the Town that they are under contract to purchase Lots 1 through 3 from Johnson-Taylor and further represent and warrant that the undersigned have full power and authority to enter into this Agreement on their behalf. Johnson-Taylor and Developer understand that the Town is relying on the representations and warranties contained herein in approving and 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 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:

TO JOHNSON-TAYLOR:

Johnson-Taylor Family Properties LLLP
Attention: Chauncey Taylor
2409 Lake Drive
Loveland, CO 80538

TO TOWN:

TOWN OF JOHNSTOWN
Attention: TOWN MANAGER
450 So. Parish
P. O. Box 609
Johnstown, CO 80534

TO DEVELOPER:

Yopp Ltd.
810 Taylor Ave.
Loveland, CO 80537

-and-

Sandra L. S. Aste Revocable Trust
1815 South County Road 13C
Loveland, CO 80537

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 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.

(Signatures on subsequent pages.)

IN WITNESS WHEREOF, and agreeing to be fully bound by the terms of this Agreement, the parties have set their hands below on this 22 day of FEBRUARY, 2022.

OWNER

ATTEST:

Johnson-Taylor Family Properties LLLP

By: Chauncey Taylor

Secretary/Member
(SEAL)

Date

STATE OF COLORADO)
) ss.
COUNTY OF LABIUMER)

SUBSCRIBED AND SWORN to before me this 22nd day of February, 20 22, by Chauncey Taylor.

WITNESS my hand and official seal.

My commission expires: 1-15-2024

MAYRA GRISELDA JOHANN
Notary Public
State of Colorado
Notary ID # 20204001937
My Commission Expires 01-15-2024

Mayra S. Johann
Notary Public

**SUBDIVISION DEVELOPMENT AND IMPROVEMENT AGREEMENT
FOR
THE TOWN OF JOHNSTOWN**

(Uncle Benny's Marketplace Re-subdivision)

EXHIBITS

TABLE OF CONTENTS

EXHIBIT A:	Legal Description of the Property
EXHIBIT B-1:	Copy of Final Plat
EXHIBIT B-2:	Town Resolution Approving Development
EXHIBIT B-3:	Additional Terms, Conditions or Provisions
EXHIBIT C:	Irrevocable Letter of Credit Form

EXHIBIT A

**LEGAL DESCRIPTION
(Property)**

PLS Corporation

Surveying • Mapping
532 West 66th Street • Loveland, Colorado 80538
970.669.2100 office • info@plscorporation.com

Submittal #1

UNCLE BENNY'S MARKETPLACE, MINOR RE-SUBDIVISION

Legal Description

8.3.2021

Legal Description:

Lot 1, Minor Re-Subdivision, being a Replat of Lot 2 of the Replat of Lot 1 of Replat "A" of Lot 2, of the Amended Plat of Great Colorado Marketplace Minor Re-Subdivision, County of Larimer, State of Colorado

and

Lot 2, Minor Re-Subdivision/Lot Line Adjustment, Replat of Lot 2, Minor Re-Subdivision of Replat of Lot 2 of Replat of Lot 1 of Replat "A" of Lot 2, of the Amended Plat of Great Colorado Marketplace Subdivision, County of Larimer, State of Colorado.

EXHIBIT B-1

PLAT

(SEE ATTACHED)

UNCLE BENNY'S MARKETPLACE RE-SUBDIVISION

Being a Replat of
 LOT 1, MINOR RE-SUBDIVISION, BEING A REPLAT OF LOT 2 OF THE REPLAT OF LOT
 1 OF REPLAT 'A' OF LOT 2, OF THE AMENDED PLAT OF GREAT COLORADO
 MARKETPLACE MINOR RE-SUBDIVISION

LOT 2, MINOR RE-SUBDIVISION / LOT LINE ADJUSTMENT, REPLAT OF LOT 2, MINOR
 RE-SUBDIVISION OF REPLAT OF LOT 2 OF REPLAT 'A' OF LOT
 2, OF THE AMENDED PLAT OF GREAT COLORADO MARKETPLACE SUBDIVISION,
 Located in the Northwest 1/4 of Section 35, Township 5 North, Range 68 West of the 6th
 Principal Meridian, Town of Johnstown, Larimer County, Colorado

Ownership and Description:
 Know all men by these presents that the undersigned, being the owners, within the better of that part of the Northwest 1/4 of Section 35,
 Township 5 North, Range 68 West of the 6th Principal Meridian, Larimer County, Colorado, being more particularly described as follows:
 Lot 1, Minor Re-Subdivision, being a Replat of Lot 2 of the Replat of Lot 1 of Replat 'A' of Lot 2, of the Amended Plat of Great Colorado
 Marketplace Minor Re-Subdivision, County of Larimer, State of Colorado
 Lot 2, Minor Re-Subdivision / Lot Line Adjustment, being a Replat of Lot 2 of the Replat of Lot 2 of the Replat of Lot 2 of the Replat 'A' of Lot
 2, of the Amended Plat of Great Colorado Marketplace Subdivision, County of Larimer, State of Colorado.
 Containing 18,450 acres (more or less) being subject to any easements or right of ways of record.
 Now by these presents canted the same to be surveyed and subdivided into lots to be known as, Minor Re-Subdivision, being a UNCLE
 BENNY'S MARKETPLACE RE-SUBDIVISION, to be more particularly described as follows: that the same be as set forth and shown on the plat and as shown
 on this plat. WHEREAS, the plat and as shown on this plat and as shown on this plat and as shown on this plat and as shown on this plat and as shown on this plat
 within our hands and seals the ____ day of _____, 20____.

Owner:
 Johnstn + Benny Property, LLC
 State of Colorado
 County of _____
 The foregoing declaration was acknowledged before me this ____ day of _____, 20____, by _____
 My commission expires _____ Nancy Public

TOWN COUNCIL

This plat to be known as UNCLE BENNY'S MARKETPLACE MINOR RE-SUBDIVISION, is prepared and accepted by the Town of
 Johnstown, by Resolution Number _____, passed and adopted at the meeting held on the ____ day of _____, 20____.

By: _____ Mayor _____ Attest: _____ Town Clerk

- NOTE:**
- Dimensions shown are in U.S. Survey Feet
 - The total area contains 18,450 acres, more or less.
 - No construction drawings have been reviewed or approved by the Town in regards to this subdivision. These lots will be considered unbuildable until such a time as construction drawings have been reviewed and approved by the Town.
 - Said lots are for agricultural purposes only and are not to be used for residential development. Said lots are for agricultural purposes only and are not to be used for residential development. Said lots are for agricultural purposes only and are not to be used for residential development. Said lots are for agricultural purposes only and are not to be used for residential development.

DATE: _____
 BY: _____
 FOR: _____

REVISIONS:
 No. _____ Description _____
 Date: 12-23-21 No. _____ Description _____

CLIENT

Uncle Benny's Building Supplies LLC

PLS Corporation
 532 West 66th Street, Loveland, Colorado 80538
 Phone: 970.669.2100 - info@plscorporation.com

TITLE

Final Subdivision Plat - Minor Re-Subdivision
 UNCLE BENNY'S MARKETPLACE
 Section 35, Township 5 North, Range 68 West, 6th P. M., Larimer County, Colorado

PROJECT NO.

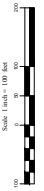
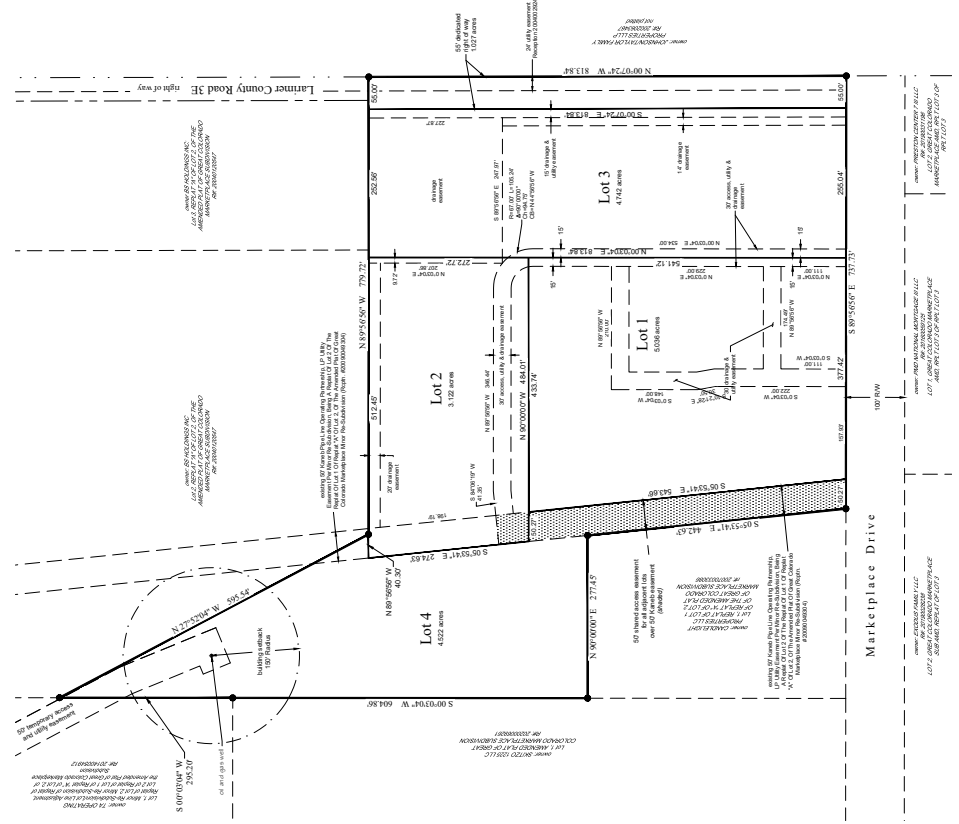
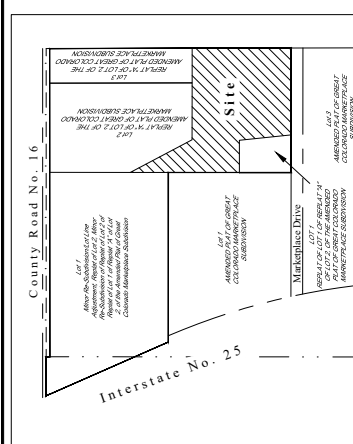
13046.009

SHEET NO.

1

NO. OF SHEETS

1



- LEGEND**
- ▲ dimension found 1/2" error with 1" plate cap marked 'SLS 181.07'
 - dimension found 1/2" error with 1" plate cap marked 'SLS 224.44'
 - dimension easement
 - dimension lotline
 - dimension boundary
 - dimension right of way line

SURVEYORS STATEMENT
 I, S. Bryan Brock, a Colorado Registered Professional Land Surveyor, do hereby state that the Minor Re-Subdivision is true and correct; it represents the results of a survey made by me or under my direct supervision.

Colorado Registered Land Surveyor 85244

EXHIBIT B-2

RESOLUTION APPROVING PLAT

(SEE ATTACHED)

EXHIBIT B-3

ADDITIONAL TERMS, CONDITIONS OR PROVISIONS

1. Notwithstanding any provision in the Agreement to the contrary, the Parties recognize and agree that Johnson-Taylor has sought and obtained approval of the Final Plat without the current intent to develop the Property and install the Subdivision Improvements. The Parties are executing this Agreement in order that Developer's rights and obligations with respect to the Development and the construction and installation of the Subdivision Improvements are mutually understood, agreed-upon, run with Lots 1 through 3, and are binding upon Developer's heirs, successors, assigns, transferees and any other person or entity acquiring or purchasing any interest in any of the Development. Prior to development of any portion of the Property, the property owner or developer of such portion of the Property shall execute an amendment to this Agreement or a separate agreement with the Town addressing development of such portion of the Property and the special conditions, if any, related thereto. No developer or owner shall construct Public Improvements without first obtaining Town approval of Civil Engineering Construction Plans applicable to such portion of the Property nor shall a Developer construct Private Improvements without first obtaining Town approval of a Site Development Plan applicable to such portion of the Property. It is the intent of Johnson-Taylor to use Lot 4 for future development, possibly including expansion of the Candlelight Dinner Playhouse. Nothing in this Agreement shall be construed to impose on Developer any cost of future development of Lot 4.
2. The Public Improvements may include, but are not limited to, the construction of, or financial participation in, water and sanitary sewer extensions in the right-of-way and street construction of Marketplace Drive and street construction of Larimer County Road 3E along the frontage of the Property. Cost-sharing or reimbursement agreements, on pro rata basis, may be available for the improvements that benefit surrounding properties.

EXHIBIT C

FORM--IRREVOCABLE LETTER OF CREDIT

NAME OF ISSUING BANK _____
ADDRESS OF ISSUING BANK _____

Town of Johnstown
450 So. Parish
P. O. Box 609
Johnstown, CO 80534

ATTENTION: TOWN OF JOHNSTOWN ATTORNEY AND TOWN MANAGER

We hereby establish, at the request and for the account of this Irrevocable Letter of Credit in favor of the Town of Johnstown in the amount of \$ _____. The purpose of this Letter of Credit is to secure performance of a Development Agreement for _____, dated this day _____ of _____, 20 ____, between the Town of Johnstown and _____.

You are hereby authorized to draw 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