

**FIRST AMENDMENT
TO SUBDIVISION IMPROVEMENT AGREEMENT
FOR POSTLE SUBDIVISION FILING NO. 1 FINAL PLAT**

THIS FIRST AMENDMENT TO SUBDIVISION IMPROVEMENT AGREEMENT FOR POSTLE SUBDIVISION FILING NO. 1 FINAL PLAT (this “**Amendment**”) is made and entered into by and between the TOWN OF MEAD, a municipal corporation of the State of Colorado (the “**Town**”), MEAD INDUSTRIAL DEVELOPMENT, LLC, a Colorado limited liability company, and MEAD INVESTORS 1, LLC, a Colorado limited liability company (together referred to herein as “**Developer**”) (together, the “**Parties**”). This Amendment shall be effective on the date of mutual execution hereof by the Parties (“**Amendment Effective Date**”).

Recitals

This Amendment is made with respect to the following facts:

A. Developer and the Town previously entered into that certain Subdivision Improvement Agreement for Postle Subdivision Filing No. 1 Final Plat, recorded in the real property records of the clerk and recorder for Weld County, Colorado, on March 22, 2022, at Reception No. 4811738 (the “**Subdivision Agreement**”). Initially capitalized terms used but not defined herein shall have the meanings given them in the Subdivision Agreement.

B. On or prior to the Town’s execution of this Amendment, the Town has entered into a written Sewer Facilities Acquisition Agreement with the Raterink Operator (“**Acquisition Agreement**”) pursuant to which the Town will acquire the private lift station for sewer service more particularly described in Section IV.A.2 of the Subdivision Agreement (the “**Lift Station**”).

C. The Parties desire to amend the Subdivision Agreement to provide for Developer’s use of the Lift Station to serve the Property conditioned on the payment of the Lift Station Capital Payment (as that term is defined below) and the remaining terms and conditions of the Subdivision Agreement.

Amendment

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and promises set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties promise, covenant, and agree as follows:

1. Amendment. Section IV of the Subdivision Agreement is hereby amended and replaced in its entirety as shown below (with deletions shown in ~~striketrough~~ and additions underlined):

Section IV. Sewer Improvements

A. It is agreed by the parties that the Property will receive sanitary sewer service from St. Vrain Sanitation District (SVSD), unless the following conditions are met:

1. The Property has been excluded from the SVSD 208 Boundary Area and included within the Town’s 208 Boundary Area;

2. Developer has either (i) entered into a binding agreement with an adjacent property owner (“Raterink Operator”), which owns and operates an existing private lift station for sewer service (the “Lift Station”) pursuant to the Subdivision Improvement Agreement for Raterink Mixed-Use Subdivision Final Plat recorded with the Weld County Clerk & Recorder on November 19, 2019, at Rec. No. 4542530, and provided to the Town an executed copy of the agreement(s) with the Raterink Operator prior to the issuance of any building permit for development within the Property (with the exception of the foundation-only permit on Lot 2, Block 1), or (ii) agreed to construct such lift station as may be sufficient to serve the Property, upon the approval of the construction plans for the same by the Town Engineer and the approval of any governmental authorities having jurisdiction. In the event that Developer proceeds to construct a lift station to serve the Property, the Parties shall enter into a written amendment to this Agreement or a separate agreement providing for the posting of collateral for the lift station and related improvements prior to Developer proceeding to install the lift station and related improvements in accordance with the approval final construction plans for same; ~~and~~

3. Alternatively, and in lieu of the options set forth in Section IV.A.2 above: (i) the Developer has remitted \$540,548.00 to the Town (the “Lift Station Capital Payment”) which the Developer and Town agree represent the Developer’s pro rata share of the public improvements and acquisition costs associated with the Lift Station, and (ii) the Town has acquired the Lift Station from the Raterink Operator in accordance with the terms and conditions of the Acquisition Agreement; and

4. In accordance with the final independent expansion analysis that identifies the improvements required for the Town’s wastewater treatment facility and collection system to adequately serve the Property (the “Expansion Analysis”), which Expansion Analysis has been prepared in accordance with the scope of work set forth in that certain letter from JVA Consulting Engineers to Ms. Erika Rasmussen, P.E., Town Engineer/Public Works Director, dated May 7, 2021 (Reference: Wastewater Treatment Facility Expansion Analysis JVA Job No. 1970, 1970.134c), the Developer has agreed in writing to assume the costs of all necessary improvements to the Town’s sanitary sewer collection system in order to provide sewer service to the Property, at no expense to the Town, including without limitation the installation of sewer trunk and main lines, service lines, master meters, lift stations, and force main facilities including back-up electric generating equipment, and necessary appurtenances, in accordance with the following:
 - a. All facilities and equipment installed by the Developer shall be in conformance with the Town’s "Standard Design Criteria" and shall not cause a degradation of the existing sanitary sewer service to the Town’s residents. The improvements to be dedicated to the Town shall be identified with specificity in the

Expansion Analysis or subsequent written agreement between the Town and Developer. Any such improvements dedicated to the Town shall be dedicated free and clear of all encumbrances.

- b. The required improvements may include the oversizing of lines and lift stations and force main facilities for future development of adjacent property, provided that to the extent such improvements will serve real property other than the Property, the Town will seek contributions from such other property based on its pro rata share of capacity with respect to such improvements and reimburse Developer for such amounts.
 - c. The Developer shall be responsible for the payment of all fees required by the Town for sanitary sewer service including, without limitation, tap fees, sewer plant investment fees, administrative fees, sewer user fees, and industrial discharge permit fees.
 - d. All such costs and expenses payable pursuant to this Section IV.A.34 shall be due and payable prior to the issuance of a building permit for any lot, parcel, or other portion of the Property, based on the pro rata share of such costs attributable to each lot as set forth in **Exhibit I** attached hereto (the "Sewer PIF Costs"); provided, however, that Developer may propose modifications to the allocation of such Sewer PIF Costs from time to time, including without limitation, in connection with any further subdivision, resubdivision, or otherwise modification of the applicable lots, for the Town's approval, which approval shall not be withheld so long as the reallocation does not reduce the overall amount of Sewer PIF Costs to be paid by Developer pursuant to this Section. Further, the outstanding Sewer PIF Costs shall be adjusted for inflation on January 1, 2023, and on January 1 of each year thereafter until paid in full based on the then-current Engineering News Record (ENR) 20-Cities Construction Cost Index (CCI), or its successor index, as measured for the five (5) year period immediately preceding the January 1 adjustment date.
- B. The Developer shall be responsible for all costs for the Expansion Analysis and for the costs of any expanded scope of work deemed necessary in the sole discretion of the Town. The Developer shall remit payment for such costs on or before fifteen (15) days of receipt from the Town of a written invoice.
- C. In the event the conditions set forth in subsection A of this Section IV are not satisfied and Developer receives sanitary sewer service from SVSD, the Developer shall comply at the time of development with SVSD's requirements, the Town shall require proof of purchase of a sewer tap for the building site before a building permit will be issued for the Property, and if the Property is not already in the boundaries of SVSD, the Developer agrees to petition for inclusion in SVSD and to pay any fees and taxes levied by SVSD as a

condition of said inclusion. The Town does not warrant the availability and capacity of sewer service by SVSD to the Developer for any phase of development.

2. No Further Modifications. Except as modified by this Amendment, the Subdivision Agreement remains in full force and effect according to its terms. In the event of any conflict between the terms of this Amendment and the terms of the Subdivision Agreement, the terms of this Amendment will control.

3. Recording of Agreement. The Town shall record this Amendment in the office of the Clerk and Recorder, County of Weld, State of Colorado.

[Signature Pages Follows This Page]

[Town signature page to First Amendment to Subdivision Improvement Agreement]

IN WITNESS WHEREOF, the Parties have made this Amendment as of the date first set forth above.

TOWN OF MEAD

By: _____
Helen Migchelbrink, Town Manager,
authorized pursuant to Resolution No. _____

ATTEST:

REVIEWED BY:

By: _____
Town Clerk

By: _____
Town Attorney

[Developer signature page to First Amendment to Subdivision Improvement Agreement]

DEVELOPER:

MEAD INDUSTRIAL DEVELOPMENT, LLC,
a Colorado limited liability company

By: _____
Ronald J. Corsentino, Manager

STATE OF COLORADO)
) ss.
CITY AND COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022, by Ronald J. Corsentino, as Manager of Mead Industrial Development, LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: _____

(SEAL)

Notary Public

[Developer signature page to First Amendment to Subdivision Improvement Agreement]

MEAD INVESTORS 1, LLC,
a Colorado limited liability company

By: _____
Ronald J. Corsentino, Manager

STATE OF COLORADO)
) ss.
CITY AND COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022, by Ronald J. Corsentino, as Manager of Mead Investors 1, LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: _____

(SEAL)

Notary Public