

**TOWN OF MEAD, COLORADO
RESOLUTION NO. 69-R-2023**

**A RESOLUTION OF THE TOWN OF MEAD, COLORADO, GRANTING
CONDITIONAL ACCEPTANCE OF THE PUBLIC IMPROVEMENTS FOR
ELEVATION 25 FILING NO. 1 FINAL PLAT (PHASE 1 ONLY)**

WHEREAS, Elevation 25 Industrial Owner, LLC, a Delaware limited liability company (the “Developer”), has caused the completion of certain public improvements benefitting the Elevation 25 Filing No. 1 Final Plat (“Development”), specifically the public improvements associated with Phase 1 on Lots 1 and 2 of the Development, including the installation of concrete curb and gutter, sidewalks, asphalt paving, landscaping, and storm drainage facilities (collectively, the “Phase 1 Improvements”); and

WHEREAS, the Phase 1 Improvements are identified in that certain Subdivision Improvement Agreement dated March 17, 2022, and recorded on May 10, 2022, at Reception No. 4825841 in the Weld County property records (the “SIA”); and

WHEREAS, the Phase 1 Improvements are subject to a warranty period of two (2) years following the conditional acceptance of the improvements, and conditional acceptance is accomplished by resolution of the Board of Trustees per Section 16-4-130 of the *Mead Municipal Code* (“MMC”); and

WHEREAS, Developer has requested conditional acceptance of the Phase 1 Improvements by the Board of Trustees of the Town of Mead; and

WHEREAS, the Town Engineer has reviewed the construction of Phase 1 Improvements, has determined that the Phase 1 Improvements have been constructed and installed in substantial conformance with the Town’s construction standards, and is recommending that the Board grant conditional acceptance of the Phase 1 Improvements, subject to the additional conditions attached to this Resolution as **Exhibit B**; and

WHEREAS, the Board of Trustees desires to grant conditional acceptance of the Phase 1 Improvements subject to the conditions set forth in this Resolution; and

WHEREAS, the MMC requires the Developer to maintain the Phase 1 Improvements during the two (2) year warranty guaranty period and clarifies that the Developer shall, at its own expense, take all actions necessary to maintain the Phase 1 Improvements and make needed repairs or replacements that, in the reasonable opinion of the Town (and the Town Engineer), shall become necessary; and

WHEREAS, if the Developer fails to make necessary repairs to the Phase 1 Improvements in accordance with the requirements set forth in the MMC, the Town may withhold final acceptance of the Phase 1 Improvements, may proceed to withhold building permits, temporary certificates of occupancy, or certificates of occupancy for those lots located within boundaries of the Development, or may take any other action authorized by the SIA.

NOW THEREFORE, BE IT RESOLVED by the Town of Mead, Weld County, Colorado, that:
Section 1. Recitals. The foregoing recitals are incorporated herein by reference as findings and determinations of Board of Trustees.

Section 2. Conditional Acceptance of Phase 1 Public Improvements. The Board of Trustees on behalf of the Town of Mead, hereby grants “conditional acceptance” of the Phase 1 Improvements identified in this Resolution as of the effective date of this Resolution. In accordance with Section 202.8.A.1.a of the *Town of Mead Design Standards and Construction Specifications* (“[f]or all

projects where Conditional Acceptance is granted between the dates of November 1st and April 30th, the two (2) year warranty guarantee period shall not begin until May 1st") the two-year warranty guaranty period applicable to the Phase 1 Improvements shall not commence until May 1, 2024. Conditioned on approval of this Resolution by the Board of Trustees, Town Staff shall be authorized to finalize and deliver the correspondence to Developer, in substantially the form attached to this Resolution as **Exhibit A** (draft correspondence dated November 14, 2024).

Section 3. Developer Obligation to Maintain Improvements during Warranty Guarantee Period. Developer shall maintain the Phase 1 Improvements for a two (2) year period commencing May 1, 2024 and ending on May 1, 2026 (the "Guarantee Period"). Developer shall, at its own expense, take all actions necessary to maintain the Phase 1 Improvements and make needed repairs or replacements that, in the reasonable opinion of the Town (and the Town Engineer), shall become necessary during the Guarantee Period. Failure of the Developer to maintain the Phase 1 Improvements during the Guarantee Period shall violate the requirements this Section 3 and shall constitute a violation of the MMC pursuant to MMC Sec. 16-6-10(c)(1)(g). In addition to any contractual remedies available to the Town under the SIA, Town Staff shall be authorized to take any and all enforcement actions as necessary to ensure that the Developer completes necessary repairs and replacements of the Phase 1 Improvements during the Guarantee Period and prior to final acceptance of the Phase 1 Improvements, as authorized by the MMC, including but not limited to the enforcement actions set forth in Article VI of Chapter 16 of the MMC.

Section 4. Severability. If any part, section, subsection, sentence, clause or phrase of this resolution is for any reason held to be invalid, such invalidity shall not affect the validity of the remaining sections of the resolution. The Town Board hereby declares that it would have passed the resolution including each part, section, subsection, sentence, clause or phrase thereof, irrespective of the fact that one or more parts, sections, subsections, sentence, clauses or phrases are declared invalid.

Section 5. Repealer. All resolutions and motions of the Board of Trustees of the Town of Mead or parts thereof, in conflict with this resolution are, to the extent of such conflict, hereby superseded and repealed.

Section 6. Effective Date. This resolution shall become effective immediately upon adoption.

Section 7. Certification. The Town Clerk shall certify to the passage of this resolution and make not less than one copy of the adopted resolution available for inspection by the public during regular business hours.

INTRODUCED, READ, PASSED, AND ADOPTED THIS 13TH DAY OF NOVEMBER, 2023.

ATTEST:

TOWN OF MEAD:

By: _____
Mary E. Strutt, Town Clerk

By: _____
Colleen G. Whitlow, Mayor

Exhibit A

Letter from the Town to Developer, dated November 14, 2023

(attached, two (2) pages)

Exhibit B

Additional conditions (Conditional Acceptance)

1. With respect to the collateral reduction contemplated in Section X.A. of that certain Subdivision Improvement Agreement dated March 17, 2022 and recorded on May 10, 2022 at Reception No. 4825841 of the Weld County records (“SIA”), there are two options:

OPTION 1

Developer shall replace Letter of Credit (LOC) No. 181245-340044, dated April 11, 2022, in the amount of \$2,257,953.00 (having an expiration date of April 11, 2024) (the “Existing Lots 1 and 2 LOC”) with **one new replacement LOC** in the form required by the SIA in the amount of **three hundred thirty-eight thousand six hundred ninety-two and 95/100 dollars (\$338,692.95)** (representing 15% of the face amount of the Existing Lots 1 and 2 LOC) and having an expiration date **not earlier than July 1, 2026** (the “Warranty LOC”).

OPTION 2

At Developer’s request, the Town will send a letter to CIBC Bank USA requesting an amendment to the Existing Lots 1 and 2 LOC as follows:

- Reduce face amount of LOC No. 181245-340044 from \$2,257,953.00 to \$338,692.95, and
- Extend final expiration date from April 11, 2024 to **July 1, 2026**

(the “AMENDED LOC – Warranty Period”).

2. If Developer selects OPTION 1, the Developer shall proceed to have CIBC Bank USA file the Warranty LOC with the Town Engineer on or before December 1, 2023. Upon filing of the Warranty LOC, the Town Engineer or designee shall cause the Existing Lots 1 and 2 LOC to be released.
3. If Developer selects OPTION 2, the Developer shall proceed to have CIBC Bank USA process the requested amendments and file the AMENDED LOC – Warranty Period with the Town Engineer on or before December 1, 2023.